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report
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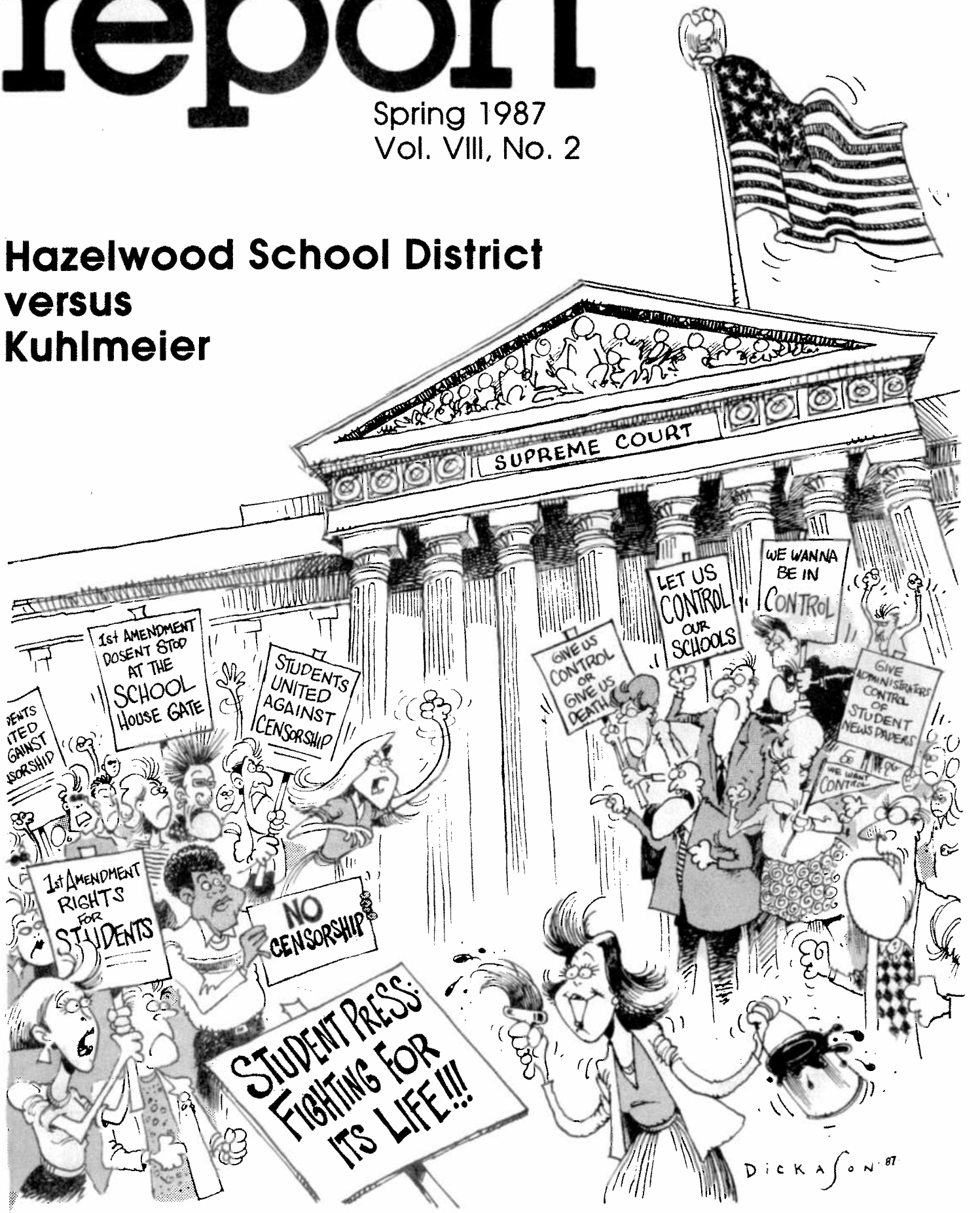
Hazelwood School District versus Kuhlmeier



The SPLC Report

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

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Newspaper censorship goes to the Supreme Court

"Student journalism is literally fighting for its life. The school district is advocating in essence an end to First Amendment protections for the vast majority of high school publications, which could affect a large number of college publications as well."

— Mark Goodman

The United States Supreme Court has agreed to decide whether a Missouri public school district violated the First Amendment rights of three high school students when it censored stories about teen pregnancy, divorce and birth control from their student newspaper.

The Supreme Court agreed on January 20 to hear *Hazelwood School District v. Kuhlmeier,* Docket No. 86-836, and decide if school officials should be allowed to censor student newspapers simply because they are tied to a journalism class in the school curriculum.

The case will be the first high school press case heard by the high court and only the second student expression case since the landmark *Tinker v. Des Moines Independent Community School District* in 1969.

Because no Supreme Court decision has defined the rights of high school student journalists, the decision will have a significant impact on student publications across the country.

"Student journalism is literally fighting for its life," said Mark Goodman, executive director of the Student Press Law Center. "The school district is advocating in essence an end to First Amendment protections for the vast majority of high school publications, which could effect a large number of college publications as well.

"If the Supreme Court rules in favor of the school district, it could effectively mean the end of high school journalism as we know it today," he said.

In the case, the Supreme Court will decide whether a school-sponsored student newspaper produced as part of a journalism class and under a teacher's supervision is a "public forum" for student expression protected by the First Amendment and in what situations a high school administrator can censor student publications. (See the Legal Analysis section of the *Report* for an in-depth analysis of the public forum theory.)

The case began in May 1983, when Robert Reynolds, principal at Hazelwood East High School near St. Louis, removed two pages of articles from Hazelwood East's student newspaper, the *Spectrum.* Reynolds said he felt the topics of the articles were "too sensitive" for a high school publication. One of those stories was about teenage pregnancy and another was about the impact of divorce on children. Both included the personal accounts of students at Hazelwood East.

Reynolds said that he was concerned that the stories invaded the privacy of the students interviewed for the story and might embarrass the students' parents. He said it would not have been difficult for other students to identify who was quoted in the stories even though the paper used fictitious names.

The stories were later published in the St. Louis *Globe-Democrat.* No student or parent raised a complaint.

Reynolds also said the stories were one-sided because they did not give the parents' point of view.

Three students who worked on the newspaper, Cathy Kuhlmeier, Lee Ann Tippett and Leslie Smart, filed suit in federal court when their efforts to get the school to print the censored stories failed. The three students said that Reynolds censorship violated their First Amendment rights to write about controversial topics.

On November 26, 1984, the case went to court and on May 9, 1985, Judge John Nangle ruled in favor of the school district.

Judge Nangle held that censorship of non-libelous, non-obscene material in a "classroom exercise" such as the *Spectrum* was justifiable — provided the principal showed a "substantial and reasonable basis" for his actions.

"Where the particular program or activity is an integral part of the school's educational function, something less than substantial disruption of the educational process may justify prior restraint on students' speech and press activities," Nangle wrote in his opinion.

He said that Reynolds showed suf-

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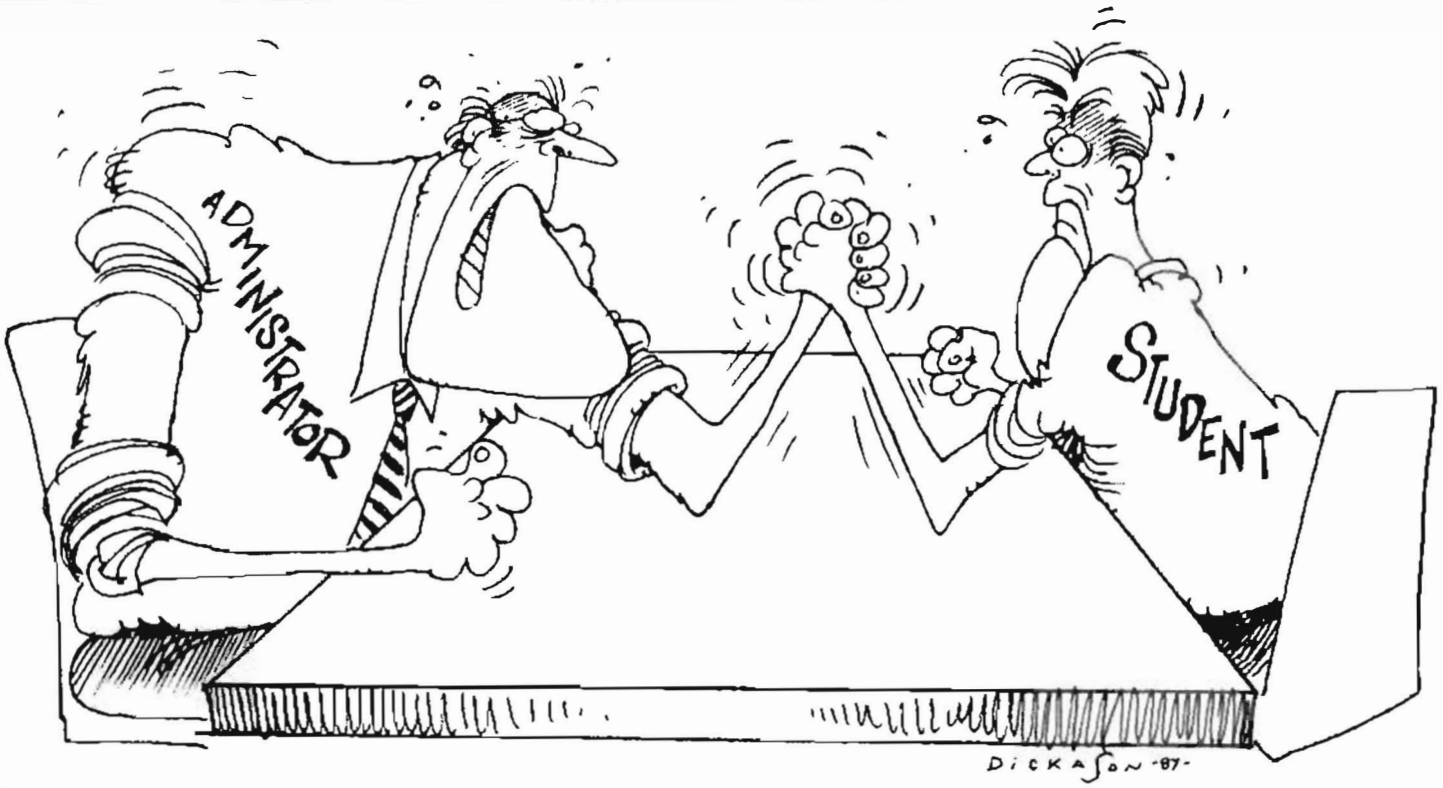

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ficient basis for censoring the articles which were "not appropriate" for *Spectrum* readers "given their age and maturity."

The students appealed the case to the Eighth Circuit Court of Appeals, where a three-judge panel overturned the district court decision.

In a 2-1 decision, the appellate court said, "We hold that the *Spectrum* is a public forum for the expression of student opinion and that the articles objected to by the administrators could not have reasonably been forecast to materially disrupt classwork, give rise to substantial disorder to invade the rights of others."

Citing the *Tinker* case, the court said that before a school official can legally prevent publication of student material, he must demonstrate that the student expression materially disrupts classwork or involved substantial disorder or invasion of the rights of others that would result in liability for the school.

Unhappy with the Eighth Circuit's decision, attorneys for the Hazelwood School District asked last fall for the Supreme Court to hear the case.

The school maintains that *Spectrum* is not a forum for the exchange of student ideas, but an instructional device designed to give students experience writing for a newspaper. Because it is part of the high school curriculum, school administrators should be able to control the type of articles contained in it, they said.

"A high school newspaper produced as a classroom exercise is incompatible with the concept of a public forum," the school's attorney Robert Blaine said in a brief this spring to the Supreme Court explaining the school's views.

He emphasized that high school journalism classes were laboratory situations where a teacher controlled classroom work and edited student writing.

To consider the school newspaper a public forum would "convert an instructional device into a common carrier for student expression," he said.

However, the students contend that the newspaper in fact served as an outlet for students within and outside of the journalism class to express their views. They said that the stories in question were in no way disruptive.

Leslie Edwards, an attorney representing the three students, will provide the Supreme Court with a written argument in late May.

She is expected to ask the justices to uphold the appellate court's ruling.

Because the Hazelwood case will have a tremendous impact on journalism education, the country's two largest high school advisers associations have given strong endorsements to the student reporters.

The Journalism Education Association passed a resolution which said in part, "As journalism educators, we support effective journalism principles, which include teaching students to exercise their First Amendment rights as guaranteed by the constitution. [We] firmly believe that a high school publication and the journalism classroom should provide for open communication."

"JEA deplores any kind of censorship or prior review of the scholastic press by advisers or administrators. The United States Supreme Court is in the position to save high school journalism's life. We urge the Court to not pull the plug."

The Columbia Scholastic Press Advisers Association has adopted a similar resolution.

Both organizations, along with the Student Press Law Center and other journalism education organizations, are filing a friend-of-the-court brief in support of the students before the Supreme Court.

A date for oral arguments before the Supreme Cout justices will be set after all briefs for the parties are filed with the Court. Attorneys expect the case to be heard late this fall with a decision from the court sometime in 1988. ■

California

CSU endorsement ban illegal, judge says

A federal judge ruled illegal a California policy that banned unsigned political endorsements from newspapers at state universities.

The decision, *Rathbone v. Day*, No. 86-24205S (D. Cal, March 9, 1987), handed down by judge Edward Schwartz on March 9, nullifies a policy followed by the California State University Board of Trustees that prohibited newspapers which received partial state funding from supporting or opposing candidates for public office.

Schwartz said the CSU policy was a clear violation of the First Amendment.

Judge Schwartz also issued a temporary injunction barring disciplinary action against Andrew Rathbone, editor of San Diego State University's *Daily Aztec*. Rathbone was suspended after his newspaper published unsigned endorsements for seven candidates and two ballot issues on November 4, 1986.

The decision is the first victory for student journalists in California who have been fighting the policy for three years. The decision is likely to affect the outcome of a similar lawsuit filed against Humboldt State University in 1984.

Schwartz's decision came four months after San Diego State University President Thomas Day suspended Rathbone for intentionally violating the endorsement policy. Rathbone said the policy was unconstitutional and encouraged editors of other CSU newspapers to defy the policy.

Eleven of the 20 newspapers in the CSU system ran unsigned endorsements for candidates in the 1986 general elections to protest the policy, but Rathbone was the only editor punished.

Day said he suspended Rathbone for flouting the CSU rules without first exhausting other remedies, such as taking the matter to court. He said he did not consider the suspension a comment on whether the policy was constitutional.

Rathbone, with American Civil Liberties Union backing, filed a suit in federal court on December 18, saying that his First Amendment rights to freedom of speech and expression had been violated.

"History has shown that students have to speak out politically or no one else is going to speak up for their rights," Rathbone said.

Rathbone said that he was tired of the Board of Trustees skirting the endorsement issue.

"I think that the California State University Trustees don't want students to be politically active and that is why they try to enforce the policy," he said.

A spokeman for the Board of Trustees said the policy was enforced because the trustees felt it was inappropriate for state money to be used for political purposes.

"We are concerned that students will read unsigned endorsements in student newspapers and think that they reflect the view of the university, the board of trustees, and the state," said Beth Lori Faber, Deputy Attorney General for California who defended the CSU board of trustees.

John Allcock, an ALCU attorney who represented Rathbone, said that Faber used flimsy logic to defend the policy.

"They [the board of trustees] contend that everyone who reads the *Daily Aztec* thinks that the editorials that appear there somehow could be interpreted as the state's view. We're not talking about a president's newsletter or a university-authorized statement. We're talking about a student newspaper speaking on its own. I don't think that anyone with nay common sense would think that the newspaper is espousing the views of the state," Allcock said.

He said that the case centered strictly on First Amendment questions.

"The First Amendment says that Congress shall make no law abridging the freedon of speech. Editorials are free speech. The Board of Trustees made a policy abridging free speech. It is as simple as that," he said.

Faber admitted that the state would not have been as vigilant in enforcing its policy if Rathbone's newspaper had published a reasonable disclaimer beside the endorsements.

The *Daily Aztec* disclaimer said, "Signed commentaries and cartoons represent only the authors and artists named. Unsigned editorials represent the *Daily Aztec* editoral policy board."

"The board of trustees did not think the disclaimer in the *Daily Aztec* was broad enough," Faber said.

Judge Schwartz's verbal decision on March 9 will be drafted into a written decision by Allcock for the judge's signature later this spring. Faber said that only when a written opinion is issued will a decision be made whether to appeal the case.

"It is a little premature to decide the impact of this decision, until we

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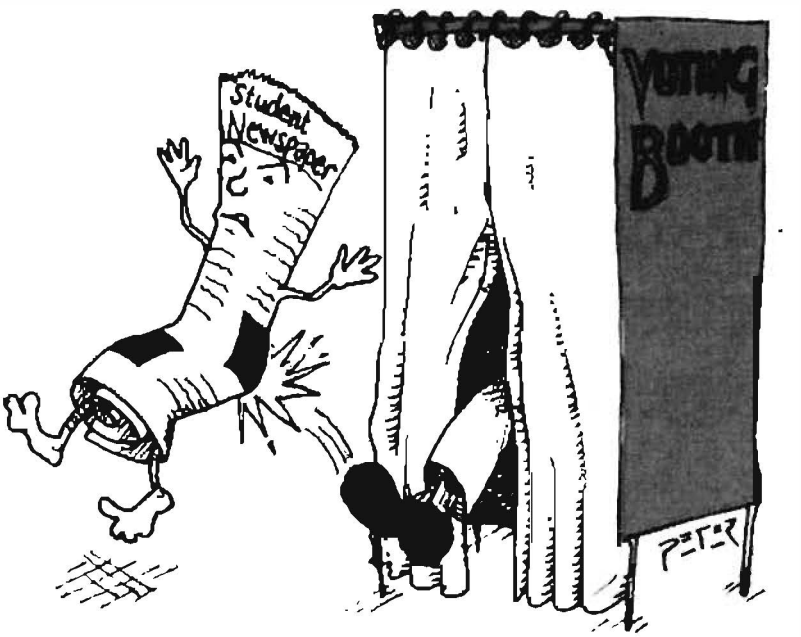

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have time to read a writen opinion and make a decision to appeal or not," Faber said.

If no appeal is made, the Board of Trustees will be bound to carry out Schwartz's ruling. This will likely effect the outcome of a case in state court involving Humboldt State University.

In 1984, Adam Truitt, editor-in-chief of Humboldt State's *Lumberjack*, published an unsigned endorsement for presidential candidate Walter Mondale, a congressman and a state representative. Truitt, like Rathbone, was aware of the policy prohibiting unsigned editorials but decided to defy the policy by publishing the endorsements.

Shortly after the endorsements were published, he was fired as editor. On November 30, 1984, he filed a lawsuit in state court naming 47 people, including university officials and Gov. George Deukmejian as defendants.

The case was scheduled to go to court April 17.

Larry Gumbiner, a deputy attorney general, who is representing the CSU board of trustees in the Humboldt case, said that he would ask the judge assigned to hear the case to declare the Humboldt case moot in light of the Rathbone decision.

If no appeal is made in the Rathbone case, and the Humboldt case is declared moot, the state would enter into an agreement paying Truitt and his attorney, Arnie Braafladt for damages and legal fees, Gumbiner said.

In a letter to Braafladt dated March 27, Gumbiner said that taking the Humboldt case to court would be a ploy on Braafladt's part to increase attorney's fees.

"The university regards any legal activity undertaken by you to pursue the *Lumberjack* matter during the pendence of the *Aztec* injunction as a ploy to increase your attorney's fees and subject the university system and the taxpayers to unnecessary liability," Gumbiner wrote.

Braafladt, however, indicated in a letter dated April 7 that his client would not enter into a settlement in the case because he felt that important press issues, not addressed in the *Daily Aztec* decision, needed to be decided by a court.

Braafladt said the *Daily Aztec* case did not address a student editor's due process rights nor a student's press rights under provisions in the California constitution.

He said that the *Daily Aztec* case was "speedily prepared" with little or no discovery and that the Humboldt case with its "painstaking analysis of issues" would better define student press rights as they pertain to unsigned political endorsements.

"Why should the issue await future cases when it is squarely presented in a ripe, fully-briefed case that has been pending in the Humboldt County Superior Court for two and one-half years?" he asked.

Braafladt said because of CSU trustees' record of rejecting settlement offers, it would be a mistake to delay a court date for the Humboldt lawsuit.

The Rathbone decision will also put on hold lobbying efforts by the California State Students Association (CSSA) for state legislation to change the CSU endorsement policy.

In the past, CSSA has helped introduce legislation that would permit unsigned endorsements. One of their bills passed the legislature last spring, but Gov. Deukmejian vetoed the measure calling it unnecessary.

Sherry Skelly, legislative director of CSSA, said that at this time their resources will be used to put pressure on the CSU trustees not to appeal the decision.

"We will try as hard as possible to convince the CSU trustees not to appeal. We feel that the courts have decided this case, let's get on to other issues," Skelly said.

Skelly said they will introduce more legislation if the state decides to appeal the decision.

"Our legislation is ready to go and we are willing to move forward with our lobbying efforts if the [CSU trustees] decide to fight the Rathbone decision," she said.■

California

Parody decision expected

The California court of appeals is expect to make a decision this spring in the case involving a 1984 April Fools' Day issue of *La Voz del Vaquero*, which ran a story that student editors at Rancho Alamitos High School intented only as a joke.

The appeal stems from an earlier ruling by a lower court against student editor David Leeb, who was barred by Principal James Delong from distributing his April Fools' edition of the paper because it contained "potentially libelous" material.

The paper included a photograph of five fully dressed females along an article stating that *Playboy* magazine would feature them in a nude photo spread called "The Girls of Rancho."

The females admitted to Delong that they had not known how the pictures would be used, but none had complained or had been upset.

In ruling in favor of the school district, a lower court judge said Leeb had not adequately informed the females of the purpose of the photograph. However, the judge did not find anything libelous about the spoof.

In the lawsuit, Leeb, who is now a history major at California State University at Fullerton, is challenging a 1977 state law which allows school officials the right to censor student publications deemed libelous, disruptive, slanderous or obscene.

In his opening remarks to the panel of three appellate judges, Gary Williams, the ACLU attorney representing Leeb, said that school officials should not be allowed to censor student publications. He also said that student editors should be held responsible for what is printed.

A staff attorney for the school district, Ron Wenkart, said that school district's need to impose some restrictions on student publications because of the threat of lawsuits.■

Massachusetts

Free speech upheld at private school

A Massachusetts Superior Court judge ruled in December that students attending Boston University are guaranteed the same free speech rights as those attending public institutions.

The decision in *Abramowitz v. Trustees of Boston University,* No. 82680 (Mass. Superior Ct. Suffolk Division Dec. 2, 1986), was based on provisions of the state civil rights act and consitution. It marks the first time a Massachusetts court has said that students at private schools have the right to freely express their opinions.

Attorneys for Boston University and civil libertarians disagree on the impact of the ruling, but they all agree that based on the decision, student newspapers at private schools in Massachusetts have the same free press protections as their public school counterparts.

Boston University has decided not to appeal the decision saying that "other factors" might cloud the consitutional issues in an appellate court.

The decision came after four students challenged a university policy that prohibited them from hanging banners from windows in their dormitory. The four students were suspended from the university in April 1986 after they hung banners encouraging the school to divest its money from South Africa.

The students complained that the policy violated their free speech rights and filed a lawsuit. Yosef Abramowitz, one of the students, said that the rule was selectively enforced in an effort to stop them from criticizing the school.

University officials said that the policy was designed to uphold the aesthetic quality of the campus and maintain good relations with the neighbors. They admitted in court, however, that several other non-controversial signs and posters were allowed to remain in dorm windows during much of the year.

Judge Haskell Freedman, in siding with the students, said that the free speech rights that the students were seeking in this case "come from" and "find their source" in the constitutions of Massachusetts and the United States.

Freedman said that the state's constitution and civil rights act gave the students more free speech protection than the U.S. Constitution. Because of these additional rights, the four students had a legitimate reason to claim that their right to freedom of speech had been violated by the school.

"Using this case as precedent, I don't see how a private university [in Massachusetts] could restrict what is printed in a newspaper more than a public university."
— Michael Wesiman

Freedman said that Boston University acts like a public institution because it serves as an informational resource to the community, accepts government grants, and invites members of the public to visit its campus.

"I can discern no reason why the free speech rights of students at Boston University should be any narrower than those of students at public universities," he said.

Officials at Boston University said that they were surprised by the decision.

"[The] private sphere is gravely threatened by the interpretation given to the Civil Rights Act by the Superior Court," said Jon Westling, provost of Boston University. "[It] essentially erases the historic line between state action and private conduct."

William Burnett Harvey, the attorney representing the school, said that the decision would have very little affect on how the university runs its operations.

"The case dealt specifically with four students, two of whom have already graduated. Although we will use the case as a catalyst for a policy review, it will not play any part in the decision making process of this university."

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Michael Weisman, attorney for the students, disagreed with Harvey's assessment of the impact of the ruling.

"To say this ruling only affects four people is like saying *Brown v. Board of Education* just affected Brown," Weisman said.

"Of course it was not a class action suit, but the principle that the judge ruled on still applies. It doesn't take a leap of faith to apply the ruling to all the students at the university," he said.

Weisman said that the decision would probably encourage students at private schools around the country to challenge free speech questions under their own state constitutions.

"I guess Weisman and I have different views on the impact of this case," Harvey said. "But I can't put much significance behind a decision in superior court from a retired probate judge."

Both Weisman and Harvey agree that Freedman's interperation of the law gives student newspapers at private universities greater protection, also.

"Using this case as precedent, I don't see how a private university [in Massachusetts] could restrict what is printed in their newspaper more than a public university," Weisman said.

Harvey agreed. He pointed out that the *The Daily Free Press*, the student newspaper at Boston University, operates independently of the university and would not be affected by the court decision. ■

New York

Adviser fights and wins

A New York school district has adopted a new publications policy and will pay $16,000 to a former newspaper adviser who was allegedly replaced because she refused to allow the principal to censor articles written by students.

The settlement between the Carle Place School District and former adviser Joan Lyons Sulsky was made official on March 30, when the Carle Place school board adopted a strongly worded statement reaffirming the First Amendment rights of student journalists.

The policy stated unequivocally that student journalist have First Amendment rights and that unless articles are obscene, libelous, or would cause "material distruption" of school activities, school authorities could not censor them.

"In this settlement, there is no admission of wrongdoing," said Ciro Matarazzo, Sulsky's attorney. "This statement of policy speaks for itself. Instead of admission [of guilt], there was an enlightment on the part of the school board into the current status of student press rights."

The new policy said objections from parents, students and faculty members about controversial or satirical news stories are not legitimate grounds for censorship. It also set up guidelines that a student can follow in appealing a decision to censor an article.

The settlement marked the end of a five-year legal dispute between Sulsky and the school district. In 1981, Carle Place Principal Edward Leistman told Sulsky that he would not be reappointing her as adviser of the *The Crossroads*. In her lawsuit, she cited 11 different times when Leistman told her to remove or change stories. Those stories dealt with such topics aa women in the draft, the school district's budget, and a teachers' strike.

Shortly after the suit was filed, Sulsky was diagnosed as having leukemia. She retired from teaching but continued to pursue the case. A jury trial, scheduled for last July, was postponed because Sulsky was too ill to testify.

Sulsky said that it was her poor health that made her decide to accept the school district's settlement offer.

"I hope that my fight wasn't in vain." she said. "I hope that even though there was no court decision, my efforts will give other advisers and other students the strength to fight when their rights are violated," she said.

Matarazzo said that although no binding court decision was made in the case, he hoped that school boards around the country will use the policy adopted by the school district as a guideline for solving similar problems.

"What will most likely happen is that people will be made aware of this case through First Amendment organizations like the Student Press Law Center and will realize the importance of student press rights," Matarazzo said.

Matarazzo said that the federal judge hearing this case approved the settlement, but that it would probably have little value as legal precedent.■

Texas
School can impose distribution restrictions

A federal judge ruled in April that officials at the Univeristy of Texas at Austin can restrict the distribution of newspapers from specific areas of campus if the newspapers carry advertisements soliciting business from students.

The ruling in *Texas Review Society v. Cunningham,* No. A-86-CA-115 (W.D. Tex. April 3, 1987), upholds a University of Texas solicitation policy which restricts newspapers carrying ads to certain areas of the campus.

"The [University of Texas has] shown that the solicitation rule is content-neutral, is narrowly tailored to serve a significant governmental interest, and leaves open ample alternative channels of communication," Judge James Nowlin said. "The rule is therefore a valid time, place and manner restriction, and does not violate the First Amendment rights to freedom of speech or freedom of the press."

"Although the First Amendment prohibits a state from abridging freedom of speech, the First Amendment does not prohibit regulation of all expressive activities," he said.

Nowlin's decision comes a year after university officials informed the conservative campus newspaper, *Texas Review,* that once it began accepting advertising, it would be treated like any other commercial newspaper and would only by able to distribute from specific locations.

The editors of the newspaper objected to the restrictions, particularly because it included the university's West Mall, a popular area for students to congregate between classes.

Members of the Texas Review Society, the campus organization that publishes the *Texas Review,* had handed out their newspaper free-of-charge from the West Mall until ads were accepted.

Initially, members of the Texas Review Society claimed that the *Daily Texan,* the official student newspaper at the University of Texas at Austin had received preferential treatment from the school's administrators. That allegation was later dropped.

On February 14, 1986, the Texas Review Society sued the university in state court saying their rights under the Texas constitution had been violated. Ten days later, the case was moved to federal court so First Amendment issues could be argued.

In arguments during the trial on December 10, 1986, editors for the newspaper said that the policy had a muzzling effect on their ability to get their viewpoints across to the University of Texas student body.

They claimed that by putting their newspaper in unmanned boxes on the West Mall, the newspaper would not be read by students and that it would

be vulnerable to vandalism.

Drew Coats, *Texas Review* publisher, said by handing out copies of the *Texas Review* on the West Mall, he could distribute as many as 200 newspapers per hour, but when he placed newspapers in the boxes, fewer than seven copies were taken.

"Financial necessity required us to include advertising," said Coats. He said the *Texas Review* should be available to any student who wanted to read it, whether it has advertising or not.

James Todd, assistant Texas attorney general who represented the university in the case, said that by enforcing the policy, the university was trying to preserve the atmosphere of the West Mall as an area where students could express their ideas and views without it becoming a market for companies to sell their products.

Allowing student organizations to solicit for commercial operations, he said, would destroy the character of the area.

"If the rule were changed to accommodate the *Texas Review,* someone like MCI or AT&T could come in and offer student organizations commissions to hawk their advertising, and hordes of student organizations would take them up on it. There is such a financial incentive to do so, as it stands now, the climate, the exchange of ideas, it just won't be there anymore," he said.

Todd said the policy of restricting distribution applied not only to the *Texas Review,* but to the *Daily Texan,* and major Texas dailies, like the *Austin American-Statesman.*

Judge Nowlin was not sympathetic to the Texas Review Society's fear that they would lose readers if the policy was enforced.

"Evidence showed that the *Daily Texan* [the official campus newspaper] is able to distribute up to 1000 copies per day from the same locations, indicating that the distribution point is not unreasonably located," Nowlin said. "Although the First Amendment protects *[Texas Review's]* ability to publish and distribute their paper, it does not guarantee that the paper will be popular, or that their endeavor will be successful."

As of April 15, the Texas Review Society had made no decision whether or not to appeal the decision.

Until a decision to appeal is made, Coats said that the *Texas Review* will eliminate its advertising so it can be distributed hand-to-hand on the West Mall."

"We are going to run the next issue which has already been typeset, with white blocks where the advertisements should have gone. It will make an interesting statement," he said.

Coats said that the *Texas Review* will operate with money it raised from subscriptions, contributions and grants for the rest of the school year.

The Texas Review Society has until May 3 to appeal the case. ■

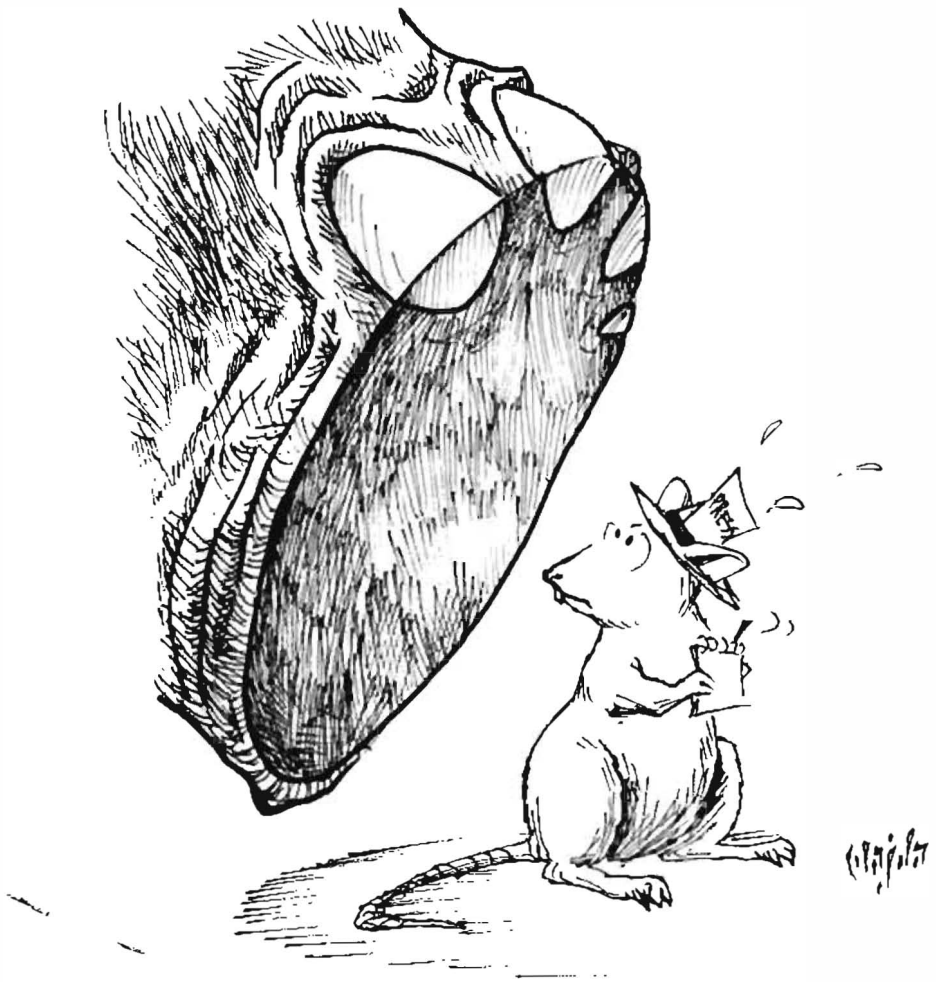
California

Students suspended for editorial cartoon

An editor-in-chief, a news editor and an art director of two California student newspapers were suspended from their jobs this spring after they published a comic strip that satirized affirmative action programs.

Although two of the suspensions were later revoked, the cartoon has sparked charges of poor editorial judgement and racism against editors of the *Daily Bruin* at UCLA and the *Daily Sundial* at California State University at Northridge.

The controversial cartoon first appeared in the *Daily Bruin* on February 11. Created by UCLA student Bruce Finebaum, it showed a rooster, who, in response to a student's inquiry about his presence on a university campus, replied that "Affirmative Action" admitted him.



Minority groups at UCLA said that they were outraged that the cartoon was printed. During a meeting of the newspaper's communications board the next day, several minority groups called for the suspension of editor-in-chief Ron Bell and art director Brian Fujimori.

"I've never seen the *Daily Bruin* handle affirmative action without a biased view, and the campus perception through the *Bruin* is that affirmative action is a handout," said Dannette Martin, a member of the campus' Black Student Alliance.

After other minority groups echoed Martin's complaints, the Communications Board voted to suspend the two editors for a week without pay. The next day, the board reinstated both editors because they said their action violated due process procedures.

A board spokesman said that disciplinary sanctions against the two editors would be discussed at their next meeting, March 5.

At that meeting, Bell apologized for the cartoon and said that in the future, all cartoons would be scrutinized closely. But he also warned the communications board not to be too sensitive to calls for changes in newspaper content.

"You can not chill a forum, impose prior restraint, take overt or subtle actions to regulate content," he said, "You can not fire, expell, penalize, harass, restrict or remove funding from a student journalist because you don't like the content of a publication."

Bell said that regardless of how distasteful the cartoon was, the communications board did not have the right to restrict certain ideas from the newspaper.

"There needs to be some amount of editorial judgement and I think that it needs to come from the editor instead of a publisher."

After an hour long executive session, the board decided to release a statement expressing disappointment in the cartoon's appearance in the *Daily Bruin* but not to reprimand Bell or Fujimori.

The board also voted to give two free pages of advertising to minority students so they could voice their opinions about affirmative action and the cartoon.

Joan Zyda, chairman of the communications board, said that the 12-member board was persuaded that no malice was intended by the cartoon.

"I think its been an important lesson for everyone," she said. "That when you edit, you should edit everything, including the cartoons."

On the same day that the communications board at UCLA decided not to reprimand Bell and Fujimori, the news editor at California State University, Northridge campus, was just beginning to feel heat for printing the same cartoon in his newspaper.

On March 5, James Taranto printed an opinion column in the *Daily Sundial* summarizing the events at UCLA. Taranto said that the minority students at UCLA were over-reacting and that even racist cartoons

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should not be censored. He reprinted the UCLA strip beside his column.

Daily Sundial adviser and journalism instructor Cynthia Rawitch, angered that she was not consulted before the cartoon was printed, suspended Taranto on March 9 for two weeks.

Rawitch is listed as publisher of the *Daily Sundial* on its masthead.

"She [Rawitch] wants to say that this issue centers around the fact that she was not notified of the cartoon before it was printed," Taranto said. "The real reason that she suspended me was because she was offended by the topic."

Rawitch could not be reached for comment.

Taranto said that he got only a handful of letters about the column and the cartoon, the majority of which supported his stand. However, other *Daily Sundial* staff members did not react the same way.

On March 20, the *Daily Sundial* ran an unsigned editorial criticizing Taranto's decision to reprint the cartoon.

"Common sense tells us to heed traffic lights," the editorial began. "With the recent publication of a UCLA *Daily Bruin* comic strip on the *Daily Sundial's* opinion page, this newspaper did not use common sense and did not stop at a red light. Consequently, James Taranto was suspended for two weeks from his post as our news editor.

"Our positions as editors and reporters do not grant us licenses to crash through red lights at 60 mph no matter what. From time to time drivers do just that. When they are caught, they are either ticketed or hauled off to jail."

"We've been cited for reckless driving and are paying the price with our credibility," the editorial said.

Taranto still maintains that he did not err in reprinting the cartoon and was unfairly punished.

"The cartoon was run under a headline wrapped around a story and I can't imagine someone looking at the cartoon, getting angry," he said.

Taranto has filed an academic grievance over his suspension with the university. He said that if the conflict can't be resolved, he will take the matter to court.

"I'm hoping that it won't go that far," he said. ■

Indiana
Photo raises ire of Irish

University of Notre Dame school officials suspended the operation of the student weekly literary and news magazine for four days this spring after the staff printed a photograph of artwork that had been previously censored from the student art journal.

The artwork was an impressionistic depiction of what some described as two individuals engaged in a sexual act.

Members of the *Scholastic* magazine editorial staff were literally locked out of their offices after an article, along with a photograph of the disputed artwork, appeared in their Feb. 19 issue discussing the censorship that had occured last fall in the *Juggler*, the student art journal.

"We felt that the artwork was relevant to the news story," said Maher Mouasher, editor of the *Scholastic*, about the decision to run the photograph that had been previously censored by the school's student activities office.

Last fall, Adele Lanan, assistant director of student activities for media and programming, asked *Juggler* editor Mike Morales to show her the magazine proofs from the publisher before the art journal was printed.

Lanan objected to one of the artists works in the publication. Without Morales' knowledge, Lanan removed the photograph and replaced it with another photograph of artwork by the same artist.

"I felt that they [university officials] couldn't do this. . .this was wrong," said Morales. "I felt what she had done was ridiculous."

He said he decided against fighting the censorship because the *Juggler* came out only twice a school year. "My main concern was to get the magazine out; I didn't know if this was worth loosing the magazine," said Morales. "We had this policy against censorship in the past and I felt like I had my back against the wall.

"The artwork was innocuous," said Morales. "It was shown on public television when they were reporting on the story."

Members of the *Scholastic* magazine decided to feature the controversial censorship in their Feb.19 issue. "We never thought it [the printing of the photograph] would lead to a suspension," said Mouasher. "Before this there was never a hint of prior censorship of the magazine."

The staff believed it was operating under a University of Notre Dame policy which stated that "student publications should be free of censorship and advance approval of copy, and their editors and managers should be free to develop their own editorial policies and news coverage."

The policy also noted, "Editors and managers of student publications which are supported by recognized university bodies should be protected from arbitrary suspension and removal because of student, faculty, administrative or public disapproval of editorial policy or content."

But at 10 p.m. on Sunday, Feb. 22, *Scholastic* staff members received a letter from Joseph A. Cassidy, director of student activities, informing them about the suspension because "the decision to run the photograph in the *Scholastic* was done without consulation with or knowledge of the Student Activities Office."

The staff members were told to vacate their offices by 2 a.m. Monday, Feb. 23. "The locks to our offices were changed that morning," said Mouasher.

He said that in the past *Scholastic* had always given the Student Activities Office an idea of what stories the staff was working on. He said the office's role had "simply been one of advisement and not one of publication control."

The Student Activities Office maintained that it had followed the school's policy because Lanan, as the director of publications, performed an internal management function rather than an external censorship function.

On Feb. 23, the school's student senate unanimously approved resolutions supporting the student magazine's editorial independence. Still under suspension, *Scholastic* staff

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members were allowed back into their offices on Tuesday after meeting with Cassidy.

On Feb. 26, after an agreement between Lanan and Mouasher was reached, the Office of Student Activities lifted the magazine's four-day suspension.

The two parties issued a joint statement that said all editorial decisions concerning the magazine's content would remain with its editors and that the publication would be "free of prior approval of copy."

The statement also stated, "At the same time, however, *Scholastic* agrees, through an ongoing dialogue, to keep the Office of Student Activities informed of pertinent issues."

"The suspension was not meant to be a punishment for the students, but rather it was meant to clear up the adviser's purpose within the publication," said Cassidy.

He said that Lanan's job description made her responsible for both the print and broadcast campus media. "It was difficult for the students to say that she wasn't part of their publication," said Cassidy. "They [the editors] were not clear about their relationship with the publication."

"Sometimes a blow-up is needed in order to realize what everyone's role is," said Lanan, who describes her role as one of providing guidance for publications. "We now have a healthy relationship and we are working well together."

She said the student activities office has also extended the new publication agreement to the *Juggler* staff.

Morales said he felt that the new policy was too vague, especially the part that mentions "ongoing dialogue."

"They [university officials] will interpret the language any way they want," said Morales.■

Kentucky, Illinois

Two editors fired after editorial disputes

Two high school editors, one in Illinois and the other in Kentucky, were fired this spring by principals because of disagreements concerning articles printed in the student newspaper.

In Illinois, the fired editor of Collinsville High School's student newspaper along with the American Civil Liberties Union filed a $200,000 federal lawsuit in April against the school.

The lawsuit contends that Principal Ronald Ganschinietz removed Brian Lunn as editor of the *Kahoki* in March in retaliation for Lunn's opposition to the school board's student conduct code.

Attorney Bruce Goldstein, representing the student, said that Ganschinietz claims he removed Lunn after repeatedly asking him to define his "role as student editor" because several articles with a negative tone had appeared in the *Kahoki*. After waiting for six weeks and receiving no reply, the principal fired him.

One *Kahoki* article mentioned was about a *Chicago Tribune* story concerning drug use at the high school that quoted Ganschinietz.

The principal refused to comment on the lawsuit.

Goldstein said the student was fired in retaliation for his opposition to a school board policy, which was later revised, requiring high school students to sign a "code of conduct" before they could participate in extracurricular activities.

Under the code, Collinsville High School students are barred from sanctioned student activities unless they refrain from drinking, taking drugs or otherwise indulging in unlawful activity either in or out of school.

In December 1986, Lunn wrote an editorial criticizing the school board policy. The following month, the principal suspended the publication.

Lunn maintains the *Kahoki* was suspended because of his editorial. However, the principal claims he suspended publication after the newspaper's adviser stepped down and no replacement had been named.

The student editor said he agreed with the code's intent, but opposed its application to student behavior away from school. The school board in March dropped the provision that students be required to sign the code, but are considering including it in next year's student manual.

Goldstein said as a result of the student editor's opposition to the code, he was suspended from school for three days in December 1986.

The attorney said that the student editor was not allowed to take advantage of a school policy that allowed students with good attendance to be exempt from taking semester exams.

"He was notified of this the day before the exams were scheduled," said Goldstein. "He had only about 24 hours to study for final exams.

As to the charge that the student was fired for failing to respond to the principal's request, Goldstein said that Lunn had tried to ask for an extension. "But the principal simply said 'He's out,'" said Goldstein.

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

The action asks that Lunn be reinstated as editor and the newspaper's suspension be lifted. Also it asks that Lunn's past restrictive status be lifted and references to the school's disciplinary actions be removed from his record.

In Kentucky, Debi Highland, editor of the Bowling Green High School newspaper, lost her job after a disagreement with school officials about one of her editorials. She was later reinstated to the position.

Highland claimed that she was fired by the newspaper adviser Jackie Hurt and Principal W.A. Franklin for writing an editorial advocating the return of school bonfires, longer pep rallies and creation of student talent shows.

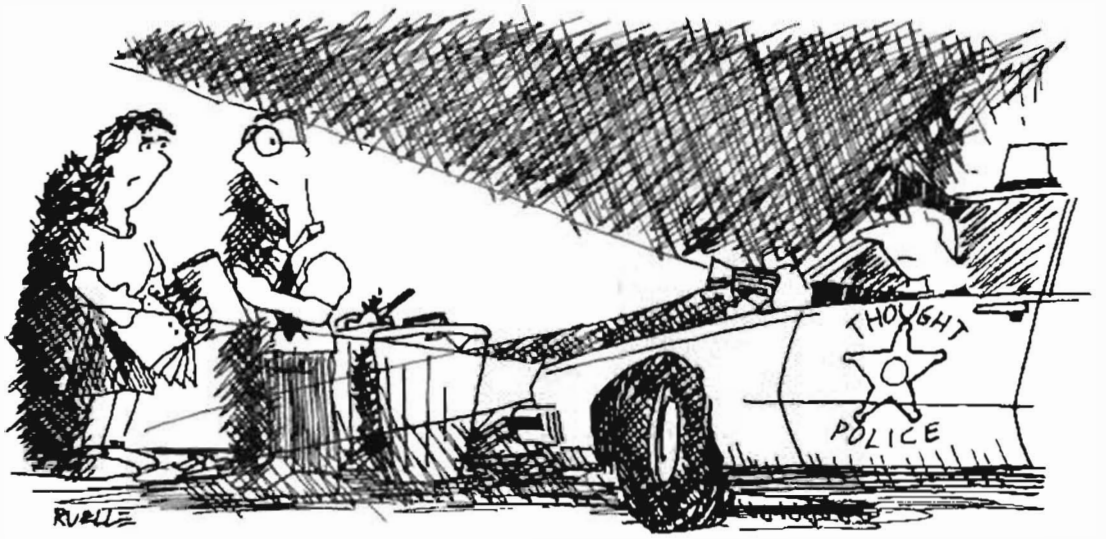
Hurt said that she refused to allow the publication of the editorial because she disagreed with its content and because it was poorly written.

Hurt and Franklin claimed that the student editor resigned in a letter to the adviser expressing her disappointment about the pulling of the editorial. Highland, who threatened to file a lawsuit, was reinstated to her position after a meeting with the superintendent, Franklin and Highland's parents.

Franklin, who described the editorial as "completely harmless," said that it only needed to be checked for grammatical errors.■

Colorado

Story moves police to jail reporter



A reporter who wrote an article documenting violations in Colorado State University's hiring policies was arrested last November because campus police suspected that he got some of his information from stolen business cards.

The arrest of *Rocky Mountain Collegian* reporter Eric Thiel on charges of being an accessory to a burglary, came after Thiel reported that CSU officials failed to complete a required national job search for a position vacancy in the University's development department. Instead, Thiel reported, they hired one man as a "fundraiser" and immediately promoted him to a second position as "deputy executive director" of the department.

In the article, Thiel mentioned that he had "obtained business cards" during his investigation that confirmed that the hiring infraction had taken place.

Campus police, on reading the article, realized that the business cards that Thiel mentioned matched a description of business cards that were reported stolen from a safe in the university's public affairs office.

That burglary was one of five similar burglaries that campus police had been investigating during the semester.

Three days after Thiel's article appeared in the *Collegian,* campus police arrested Thiel and took him to the Larimer County Detention Center. He was released four hours later when editors from the newspaper posted bail.

Collegian editors, as well as several professional journalists, were quick to criticize the university for Thiel's arrest. Some called it a scare tactic used by the university to muzzle Thiel's investigation.

Cara Neth, editor-in-chief of the *Collegian,* said she feels that intimidation was the main motivation behind the arrest.

"I think the action was definitely overreacting," Neth said. "I don't know who was directly responsible for Eric's arrest, but I think now they regret what they did."

Ernie Ford of KSL-TV in Salt Lake City, called the arrest "outrageous."

"It's either a clear cut instance of intimidation by somebody, or a misunderstanding of what a reporter's job is," Ford said.

Thiel echoed those views.

"I was not arrested for any criminal wrong doing but for writing against the administration," he said. "I honestly feel that they thought they could push me around because I was a student reporter."

Because of the appearance of a conflict of interest, CSU Police Chief Donn Hopkins turned the case over to the district attorney's office.

Twenty-six days later, the district attorney decided to drop all pending charges against Thiel because of lack of evidence.

John Davis, an investigator for the district attorney, said that they could not even find evidence of forced entry in any of the burglaries.

"Because of all the strife in the [developement] office, the four business cards could have been taken anytime by anyone," Davis said.

Even after the charges against Thiel were dropped, Police Chief Hopkins defended his department's actions.

"We had an obligation to investigate the articles that were stolen and we knew that Thiel could provide us with information," Hopkins said. "Eric wouldn't provide information about his sources or how be obtained the cards."

During police questioning, Thiel has said that the business cards were left on his desk at the *Collegian* by an anonymous source.

Hopkins also denied that Thiel was treated differently because he was a student reporter.

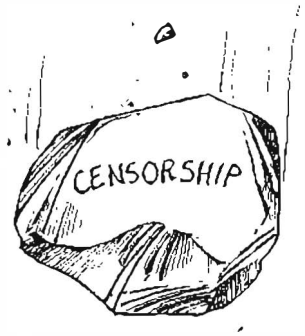
"We were contacting a person who had knowledge of a crime. It was unfortunate that Eric was a member of the news media but that made no difference to the investigation. We would have treated anyone, even a professional journalist, the same way."

The burglary case is now closed. Campus police say that without new evidence, the five burglaries will remain unsolved.

Thiel said he is currently considering suing the Colorado State University to recover $1,600 in legal expenses incurred because of his arrest. ■

Maine

'Offensive' article moves publisher to refuse to print college paper



The editors of a student newspaper at a small Maine college were suprised last fall when they received a phone call from their independent printer saying that unless a certain story was removed, he would not print the paper.

The printer's request so angered Albert Mauro, editor of Bowdoin College's *Orient*, that he changed printers. That decision began a verbal battle between the printer and the student editors over the role the printer should play in putting out the student newspaper.

The story that the publisher objected to was a "stream-of-consciousness" story written by a staff columnist about relationships between male and female students at Bowdoin. The student editors called it a "frank talk about relationships on campus," while an attorney for the printer called it "sophomoric, vulgar and sexist."

'When the printer initially objected, we cut the story for that issue," Mauro said. "Later, when we thought about it, we decided that it was unacceptable for the printer to review all of our stories and tell us what he would or would not print."

The printer who objected to the article, Campbell Niven, publisher of the Brunswick, Maine, *Times-Record* would not talk about the incident.

Niven had printed the *Orient* under a verbal agreement with the newspaper. There had never been a written contract stating the conditions under which Niven agreed to print the paper.

Niven's lawyer, John Piper, said that Niven's right to not print material he objects to is constitutionally protected.

"If we don't like the material that is given to us, we don't have to print it," Piper said. "Mr. Niven was not trying to censor the student newspaper, but he was offended by the content and didn't want to print it."

Mauro said that because of the few printers that his paper has access to, Niven's action was a certainly a form of censorship.

"It is really bad going into a situation not knowing if your paper will get printed or not," Mauro said. He said that it is tougher to get the paper to the new printer but that he is willing to put up with the sacrifice to insure that the students have control of their paper. ■

Oklahoma

Fired editor fights for campus newspaper

The *Horizon*, the student newspaper at Tulsa Junior College, has just about been forced by school officials to ride off into an Oklahoma sunset.

This school year, two *Horizon* student editors were dismissed and the newspaper, which once had a circulation of 5,000, has been relegated to serve as a journalism class "laboratory excerise" with a readership of 100.

Former editor David Arnett, who was fired in February for printing an editorial, concerning the right to freedom of the student press, launched a campaign to reinstate the *Horizon* to its former status.

College officials maintain that the *Horizon* is part of an instructional lab without constitutional protection.

"We feel that it was stolen from us deliberately and viciously by the administration," said Arnett.

The college, the third largest in Oklahoma, is comprised of three separate campuses in Tulsa. "We feel that 16,000 students need some kind of vehicle for communication," said Arnett. "We are not fighting for porno in America; we are fighting for a newspaper. . .any newspaper."

His campaign has included letters to various news organization and state legislators asking for their help and support in abolishing a 1977 college board policy that prohibits publishing editorials, letters to the editor and criticism of public officials in the "laboratory excerise."

Last December, Arnett appealed to TJC president Alfred Philips in a letter. The student said, "As a matter of principle, I must pursue whatever course of action is necessary to lift those restrictions. However, it is my ernest desire to avoid litigation and the negative public contoversy that such litigation would create."

Also in December, Arnett, in one of his three appearances before the

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board of regents, presented a 20-page document to school officials explaining the need for a student newspaper and how one could be established.

In February, Arnett again asked the board of regents to establish a student newspaper. He informed them that the American Civil Liberties Union had agreed to represent him if he decided to file a lawsuit.

"They [the regents] said since I had talked to lawyers then this makes it a legal matter and they weren't going to talk to us," said Arnett. "This made no difference because no one had talked to us anyway."

Arnett made one final appearance before the board of regents in April that resulted in the body seeking a legal opinion from its lawyer as to whether their policy violates the First Amendment.

"What they [the regents] are saying is that they don't want any input from students, only from their attorneys," Arnett said. "They're not so much interested in a student newspaper, but what legally they can do to avoid a student newspaper."

"We have tried to negotiate this and we have tried to compromise and we have sought cooperation," Arnett continued. "But when we go to court, we will not compromise. . .this is a personal point of pride for me."

Philips' secretary said that the president could not discuss the *Horizon*. Both Deryl Gotcher, the school's attorney, and Oneta Ryan, in charge of the school's public relations, were not available for comment.

Arnett has said that because of the administration's repeated refusal to allow the reinstatement of the *Horizon*, he was forced into establishing and publishing the *Independent Student News*.

The publication is partially funded with his own money along with contributions he receives from paid advertisements and individual contributions. One contributor has agreed to pay for the printing of the *Independent Student News*, which covers the TJC campus and another educational institution, the University Center at Tulsa.

Arnett said administration officials never told him directly the reason for his dismissal, but instead he "had to read it in one of the local newspapers."

College administrators said Arnett violated policy by publishing editorials and letters to the editor in the Jan. 26 issue of the *Horizon*.

He also printed a disclaimer in the issue stating that since TJC defined the newspaper as a "journalistic exercise," that the staff "intended to excercise our obligation to report truthfully, fairly and with all accuracy on the events, personalities and opinions comprising the community of scholars in which we are a part. . ."

Arnett's battle is not the first time that TJC officials, including President Philips, have been confronted with controversy about a having a student newspaper. In 1971, *Horizon* was started by the state school. It functioned as a student newspaper until 1976, when an editorial that disgreed with an administration position triggered a two-year debate about the publication.

"We feel that 16,000 students need some kind of communication. We are not fighting for porno in America; we are fighting for a newspaper."

—David Arnett

The debate reached the Oklahoma governor's office when former Gov. David Boren said Philips' policy banning criticism of public officials was a "grievous error."

Despite Boren's criticism and several articles in Tulsa newspapers, Philips did not change his position and for several years the controversy ceased being a public issue.

A month after Arnett was fired, Dana Mitchell became the second student editor booted out by college officials when she allegedly "questioned policy." Mitchell said she never got a clear statement from officials about what policy she had questioned.

Mitchell, who was once *Horizon's* copy editor, was promoted to the position of editor after Arnett's dismissal. In her third issue as editor, Mitchell said that as "a silent protest" against Arnett's dismissal she left her name off the listing of "editor-in-chief."

"I left that position blank and I assumed the copy editor title," said Mitchell. Later she found out that someone at the TJC Communications Services Division, which oversees the publication of the *Horizon*, had blotted out the entire "editor-in-chief" line before the newspaper was printed.

She asked Terry Manning, head of the Communications Services Division, about the physical changes that had occurred on the layout copy. Subsequently, she was informed that she was fired for questioning policy.

Manning was unavailable for comment.

"It was such a little thing . . . this censorship is against my principles," said Mitchell. "They want to have control over everything. What I have seen is so ridiculous." ■

Wisconsin

Rivalry precipitates takeover attempt

Reminiscent of the days when newspaper competition was fierce and takeover attempts were frequent, two rival newspapers at the University of Wisconsin at Madison are in the midst of a newspaper war that has left some students asking whether both papers are strong enough to survive.

The two newspapers, the *Badger Herald* and the *Daily Cardinal*, have different viewpoints and loyal readers.

The liberal *Daily Cardinal* has been on campus for 96 years and has long been considered the traditional campus newspaper. The *Badger Herald*, which began as a conservative weekly in the late 1960s, became a daily last November to compete with the *Daily Cardinal*.

The latest chapter in the rivalry unfolded in early March when Richard Ausman, publisher of the *Badger Herald*, made an unsuccessful attempt to takeover the *Daily Cardinal*.

On March 3, 1987, David Atkins, a friend of Ausman and president of the *Daily Cardinal*'s publications board, called a meeting in order to study the financial situation of the newspaper.

Atkins said that he was alarmed that the *Daily Cardinal* had lost $43,000 since the beginning of the year, and he wanted the paper's editors to account for the large losses.

On the agenda for the special meeting was a proposal to dissolve the *Daily Cardinal*. Atkins later said that he was not advocating the dissolution of the *Daily Cardinal*, but instead, wanted to make sure that representatives from the *Daily Cardinal* came to the meeting.

When the proposal to dissolve the newspaper was defeated, Atkins moved to fire editor-in-chief John Kete and business manager Tim Carroll because he said they were not properly informing the publication board of the paper's financial situation. Atkins' motion passed by one vote. Atkins then made a motion that *Badger Herald* publisher Ausman take over as business manager and Brian Beneker, become the new editor-in-chief. The motion again passed by one vote.

"[Atkins] pulled out one newspaper and said that there weren't enough ads in it so they fired me," Carroll said. "They did not give any evidence that I was doing a bad job."

Carroll and Kete refused to resign their posts. Later, during a confrontation with Atkins, Ausman and Beneker at the *Daily Cardinal*, they refused to move out of their offices. Campus police were called but would not get involved in the dispute.

Carroll accused Ausman of masterminding his removal so that he could merge the *Daily Cardinal* and the *Badger Herald*. He said Ausman knew that the *Badger Herald* could not sustain its own losses much longer.

Kete and Carroll, through articles and editorials in the *Daily Cardinal*, lashed out at Ausman, Atkins and the takeover attempt.

They claimed that the March 3 meeting was illegal and the decision to fire them was invalid. They said that the three members of the publication board that voted to oust them were members of a political coalition that had strong ties to the *Badger Herald*.

The *Badger Herald* maintained that they had no prior knowledge of the takeover attempt and that Ausman acted in his own behalf when he tried to gain control of the *Daily Cardinal*.

A week after the firings, Atkins called the publication board together again to announce that Ausman and Beneker had decided to decline their appointments to the *Daily Cardinal*.

"Realizing that we had gotten a lot of bad press, I asked those two to decline the positions," Atkins said.

"I feel that I acted in the best interest of the students. It was not a political move or a move that would stymie the press. It was entirely a financial move."

Atkins said the publication board was only getting partial financial statements from the editor and business manager and that he was concered with inconsistencies in the statements that they were receiving.

"One month's photo supplies cost $5,000 and the next month's cost only $250. That just isn't right," he said.

Daily Cardinal editors said that Atkins was trying to disguise the takeover by making assertions of fiscal mismanagment.

The newspaper said its losses were closer to $35,000 than to $43,000. They said the loss was due to an increase in production costs.

"We had to put out a bigger paper in order to compete with the *Badger Herald*," Carroll said. He said the *Daily Cardinal* is no longer losing money.

Ausman said that it was the *Daily Cardinal*'s financial situation that made him try to gain control of the newspaper.

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"The *Daily Cardinal* lost $43,000 during the previous semester and not even one of their board of directors raised an eyebrow about this loss," Ausman said. "They [the publications board] had not seen any financial statements from the newspaper for over three months."

Ausman said that he told his advertising staff on March 2, the day before Kete and Carroll were fired, to prepare to take over the advertising accounts of the *Daily Cardinal*.

He said that he wanted to take the newspaper over, assess its financial situation and combine the two newspapers.

Ausman said he misjudged the *Daily Cardinal*'s reaction and underestimated the staff determination to keep Kete and Carroll.

"No one is going to say what happened was good," he said. "It got so highly politicized that we lost the upper hand."

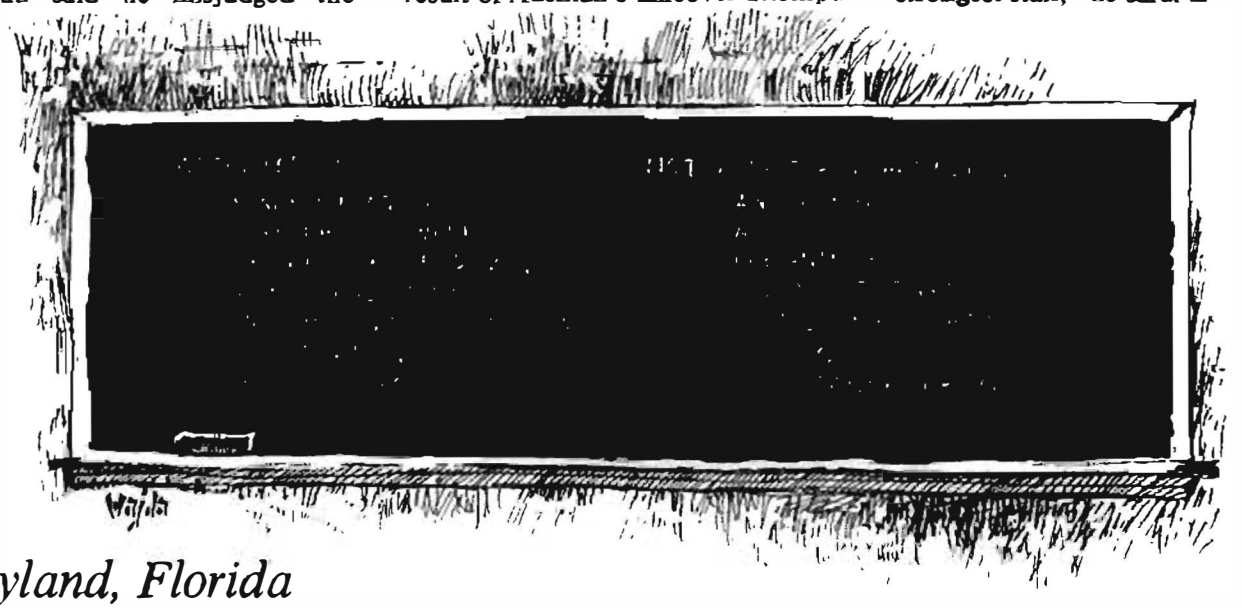
Although Ausman and Beneker declined their positions on the *Daily Cardinal*, the newspaper is still sponsoring a petition drive to get 6,200 signatures to force a recall election for the three students on the publication board who voted to fire Kete and Carroll.

The *Daily Cardinal*, the *Badger Herald* and a University of Wisconsin spokesman all said that they did not expect any lawsuits to be filed as a result of Ausman's takeover attempt.

The newspaper rivalry has many people asking if both papers will be around next fall. Some people on campus think that with limited advertising revenue, both newspapers will not be able to continue.

"It is going to be difficult for this community to sustain two campus newspapers," said Roger Howard, associate dean of students. "Madison already has two daily newspapers plus a weekly paper and, with the two campus dailies, there doesn't seem to be enough advertising revenue to sustain all the papers."

"If the folks are right that say that only one newspaper will survive, it will be the paper that gets the advertising and the newspaper that has the strongest staff," he said. ■



Maryland, Florida

Sex survey and article causes concern

Two high school student newspapers that attempted to focus on teenage sex issues became the centers of controversy this spring in Maryland and Florida.

In Maryland's Howard County School District, a principal at Atholton High School barred a group of high school journalism students from surveying their classmates' attitudes about sexual behavior.

The newspaper staff of the *Raider Review* distributed the voluntary survey to all second-period classes before Principal William Chestnutt halted its further distribution. The newspaper wanted to use the survey results as part of an upcoming issue on teenagers' sexual behavior and attitude.

The principal said he was concerned with the right to privacy of students and their parents because of the survey's questions, which included, "Where did you learn about sex?" and "Do you engage in heavy petting and/or oral sex?"

Howard County school administrators, who upheld the principals's orders, contended that the survey could be construed as an invasion of privacy and that it violated the county department of education's policy prohibiting questions relating to a student's home and family.

The students and their newspaper adviser are attempting to work with school administrators to develope a policy in regard to survey distribution.

In Inverness, Fla., staff members of Lecanto High School's *Panther Prowl* were blocked from printing a series of articles dealing with sex issues.

Staff members had wanted to run a series of articles on permartial sex, teen pregnancy and AIDS because they felt students were not getting enough information on sex. But Principal Mike Fox said that those subjects were taught to students in mandatory "life-management classes" and rejected the stories.

As part of the series, *Panther Prowl* had wanted to run a particular article that suggested condoms be made available to male students in places like the school gym, but Fox barred the story because he felt it was inappropriate.■

New York

School returns confiscated film to student

In an out-of-court settlement, Ithaca High School officials in New York have agreed to return film that had previously been confiscated from a student photographer.

The school has agreed to establish a policy as part of its students handbook concerning the taking of photographs on school grounds.

Michael Heath, a student photographer, filed a lawsuit in March 1986 after Ithaca High School Principal John Caren confiscated his film. Heath had photographed Caren escorting a student from his office who had been suspended for distributing an underground newspaper.

Caren claimed that taking pictures of the incident was disruptive and an invasion of the student's privacy. However, the suspended student and his father signed papers allowing Heath to develop the film. Caren still refused to return the film.

The newly adopted school policy says that the school district "recognizes that the taking of photographs is an expressive activity protected by the federal and state constitutions."

Of the new policy, Elizabeth Bixler, Heath's attorney, said "It was definitely a compromise from what we had orginally wanted." Efforts to contact Caren were unsuccessful.

The policy forbids students from taking photographs of people in restrooms, locker rooms, the nurse's office or any private Ithaca High School office such as the principal's office, the vice principal's office, the department offices or the guidance offices or any other place where a "reasonable expectation of privacy exists."

Bixler said that the "hardest part to swallow" was a section in the policy that says: "Students are otherwise free to take photographs throughout the Ithaca High School campus so long as they do not substantially interfere with the orderly operation of the school."

"It's very subjective," said Bixler. "You must recognize a school's necessity to be able to run, but there is a lot of room for subjective interpretation [in the policy]."

The policy also says that "students may be required to surrender film used and/or photographs taken but only when surrender is deemed necessary to protect the rights of others or to insure the orderly operation of the school." When this occurs a school hearing must be held within 48 hours.■

Montana

Student gov't reinstitutes adviser's pay, mends ties to paper

A University of Montana student newspaper faculty adviser who worked last fall for no salary, did receive a partial salary from the school's student government this semester.

This spring *Montana Kaimin* adviser Carol Van Valkenburg received $350 a month from the student government, which allocated the newspaper a symbolic $1 for its operations in February 1985 because of a dispute.

The decision to pay Van Valkenburg a salary is part of the continuing process of mending relations between the once disputing student government and newspaper. Last year the government body, with different office's from those in 1985, increased the *Kaimin's* budget to $10,000.

"The *Kaimin* staff had wanted to reduce its own staff salaries so that it could pay me a token salary. Instead the central board [student body] agreed to pay me for the spring semester," said Van Valkenburg.

The adviser said that she is committed to staying with the *Kaimin* next school year. She said she has agreed to work for the $10,000 next year, which is $5,000 less than she was receiving before the 1985 dispute erupted. The dispute involved a student government president who felt that the newspaper was too critical of his administration. He managed to reduce the newspaper's budget to $1.

Van Valkenburg said that there is no question the *Kaimin* wants a paid adviser, but the newspaper must go through the budget process each year.

"The reason for the paid adviser position is that we saw a need for a professional adviser to provide continuity from year to year," said Van Valkenburg. "There's nothing you can do about it, but fight the battle every year with each new budget process and new student administration." ■

Kansas

College student sues utility company for questioning his reporting ability

A University of Kansas journalism student has filed a libel suit against a Kansas utility company after the company's attorney accused him of intentionally using misleading and untrue statements in two stories he wrote as a free-lance outdoor reporter.

The lawsuit, *Knudsen v. Kansas Gas and Electric Co.*, No. 86C10778 (Johnson County, Kan., Dist. Ct. filed Nov. 20, 1986) accuses Kansas Gas and Electric and its attorney, J. Michael Peters, of maliciously and unjustly raising doubts about the abilities of Kerry Knudsen to work as a journalist and recklessly attacking his truthfulness.

The lawsuit claims that as a result of the company's attacks on his reputation, Knudsen will find it difficult to gain employment as a reporter when he graduates.

The lawsuit was filed in November 1986 after the utility company wrote a letter to the publisher of the *Olathe Daily News* claiming that Knudsen "ignored known facts" in a story he had written about the company.

The letter was sent to the newspaper two weeks after it printed Knudsen's two-part article that criticized the utility for not giving Kansas fishermen access to the cooling lake at the company's nuclear power plant.

The article said that the Kansas Fish and Game Commission had stocked the lake with exotic game fish with the understanding that it would be open to the public.

Knudsen alleged that the lake was being developed as a "private retreat" for company utility executives and their families.

"Mr Knudsen ignored known facts in an attempt to create a story which would arouse public indignation against Kansas Gas and Electric," the company's attorney J. Michael Peters wrote in the letter. The letter suggested that the *Olathe Daily News* print another story containing accurate information.

Knudsen's attorney, Robert Eye, said that the Kansas Gas and Electric company's letter was intended to ruin Knudsen's credibility in the eyes of his employer.

"The suit is important because Knudsen feels that his reputation is in question," Eye said. "If you take away a journalist's credibility, his days are numbered."

Eye said that the utility company is making overtures to an out-of-court settlement. If a settlement is not reached, he expects the case to go to trial early in 1988.

The suit asks for "in excess" of $10,000 in damages. ■

Arizona

Cutline costs school $4,500

A high school student in Arizona received $4,500 from an insurance company for the Glendale Union High School District after he, along with four other students, was identified as a quitter in a yearbook picture of the wrestling team.

Frank Gagliardi received the settlement in November after his lawyer sent the school district a letter asking for $10,000 in damages. Gagliardi was the only one of the five students to ask for damages.

The picture of the junior varsity wrestling team appeared in Moon Valley High School's 1985-86 yearbook. It listed the names of all the team members except the five who had "a quitter" written in place of their names.

Bruce Florence, director of communications for the school district, and Bill Sim, claims superviser for the insurance company, declined to comment on the settlement.

Gagliardi said that a sprained neck had prevented him from attending practices during the season and when he was able to return to practice, he was given the impression that he had been removed from the team.

The letter written by Gagliardi's attorney said that the student was "shocked" and "humiliated" by the quitter caption.

"In addition to the present adverse consequence of the reputation, Frank will never be able to look back fondly on the yearbook of his junior year in high school without being reminded of this unfortunate incident," the letter said.

The adviser of Moon Valley's yearbook called the caption an "unfortunate mistake." ■

New Jersey

School's insuror pays libel suit settlement

A New Jersey teenager who filed a libel suit against her school district in 1984 after a picture of her was published beside an article about school romance has agreed to accept an out-of-court settlement with the insurance carriers for the school.

Danielle Romano agreed to drop her libel suit against the Madison Borough School District on April 10 in exchange for an undisclosed cash settlement with the school's insuror, the Insurance Company of North America.

Lawyers involved with the case would not discuss specific aspects of the settlement, but said that no one admitted wrongdoing.

Although the settlement ends a libel suit that has plagued the Madison Borough School District for three years, the superintendent of Madison's schools said that he was not happy that a settlement was offered.

"Throughout this matter, the board of education has asserted that it, as well as its staff and students, were not liable to the Romanos in any respect," Superintendent Lawrence Feinfod said after the settlement was announced.

"Such a settlement, even for a nominal or minimal amount was bad because it precluded the board from being ultimately vindicated in this litigation."

Feinfod said because of the terms of the school district's policy, the insurance company, not the school, had the ultimate authority to offer a settlement.

Discussion of a possible settlement began shortly after Romano filed her libel suit in December 1984.

In that lawsuit, Romano claimed that a picture published in the June 8, 1984, issue of the student newspaper, the *Dodger*, showing her "embracing" another student at school was printed "maliciously and with the intent to injure [her]."

The picture ran beside a story quoting the different reactions students had when they saw other students holding hands or kissing in school hallways between classes. A headline, "Student romance give hallway 'R' rating," ran above the story. The picture of Romano and a male friend was partially under that headline.

Romano claimed that she had suffered humiliation, ridicule, and emotional and physical injury as a result of the *Dodger* article. Her father, Louis, claimed that the publication caused him embarrassment and had "brought [him] into public disgrace and infamy amongst his neighbors and in his community."

He said he believed readers would automatically associate his daughter with the subject of the article.

"The picture didn't bother me, and the article didn't bother me," he said. "It's placing the picture under the article that bothered me."

David Rand, the school district's attorney, called the lawsuit "ridiculous."

"It has been blown utterly out of proportion," he said. "I have absolutely no belief that there is any basis for those allegations in fact."

Superintendent Feinfod said he felt the school district would have won the case if it had gone to court.

Even though the school district felt it was in a strong position to win the case, a spokesman for the Insurance Company of North America said it was economically more feasible to offer a settlement instead of going to court.

Potentially high legal fees and the chance that the case could be appealed played a major role in the decision to offer a settlement, he said.

Louis Chiarolanza, Romano's attorney, said that his client was satisfied with the settlement.■

Georgia

Libel suit ends when editor pays $8000

A former student at the Medical College of Georgia who claimed that she had been libeled in a 1982 issue of the school's newspaper, *The Cadaver*, has agreed to an $8,000 out-of-court settlement.

Susan Brooks said she agreed to the settlement with John Jarman, the last defendant in the case, because she said she was tired of dealing with the lawsuit. The settlement and legal expenses were paid by Jarman's insurance company.

The dispute between Brooks and the student editors of *The Cadaver* began four years ago when Brooks was a nursing student at the medical college. She sent a letter to the satirical newspaper criticizing its content. The letter said that if the editors upgraded the newspaper maybe it would "be in the hands of the students more and — the bottoms of bird cages less."

The letter spurned a response from Jarman and Brian Stone who wrote, "You are obviously a sensitive, caring member of society. We appreciate that, we really do, and certainly with your God given sensitivity you should try to understand how and why those less fortunate members of our society deviate from acceptable forms of behavior. . . .We have backgrounds different from the rest of you. Our mothers were German shepards; our fathers were camels, so naturally we love to hump bitches in heat. Say, Ms. Brooks, when do you come in season?"

A trial court agreed with the editors

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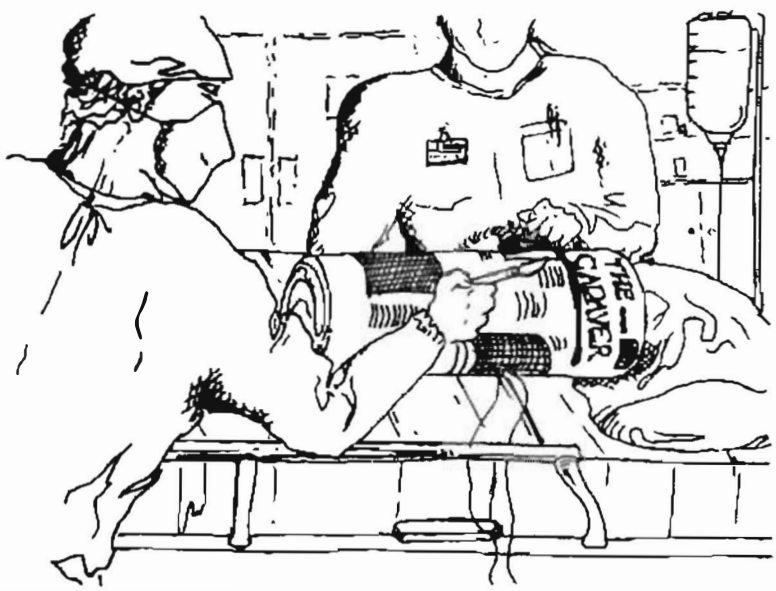
that their response did not constitute libel because it was provoked. But both the appellate court and the state supreme court reversed that earlier decision. They ruled that Brooks' letter did not constitute provocation for libel. The Georgia Supreme Court sent the case back for a new trial to determine whether the editors' response was libelous.

Because Brooks had earlier agreed to an out-of-court settlement with co-defendant Brian Stone for $2250 and had dropped the Georgia Board of Regents from the suit, Jarman was the only remaining defendant in the case. A jury was scheduled to hear arguments in the case in mid-January.

Thomas Tucker, Jarman's attorney, said that the out-of-court settlement was not an indication of any wrong doing on the part of Jarman, but it was offered to avoid mounting legal fees in the case.

Tucker said that Jarman had a strong case, but he was concerned that Brooks might get a sympathetic jury that would rule against him.



"I don't think that there is any way in the world that [Brooks] would win at the appellate level," Tucker said. He added that the legal fees would be substantial if they were to appeal the case again.

Victor Hawk, Brooks' attorney, said the prospect of several more years in court was a factor in deciding to accept the settlement.

Brooks said that she was pleased with the final outcome of her suit.

"They [journalists] should know that they just can't go around and say anything about people. I think the editors of the paper learned that." ■

Tennessee

Newspaper sues to see university audit

Rumors of fund misuse within the athletic department at Middle Tennessee State University precipitated a confrontation between student journalists and university officials over access to an uncompleted audit.

Reporters for the *Sideline*, the campus student newpaper, had heard rumors around campus last fall that a track coach was misusing athletic department money. The rumors, which had been persistant throughout the semester, continued to get worse so the newspaper decided to start an investigation.

The newspaper's inquires led nowhere until a reporter received a tip that the university had begun an internal audit of the athletic department.

University President Sam Ingram confirmed on November 19, 1986, that an audit was occuring when *Sideline* reporters questioned him, but he refused to answer any other questions about it.

Editors of the newspaper then formally requested access to the audit under the Tennessee Open Records Law. For two weeks the editors made five requests to university officials to see the audit. Each of those times the newspaper was told that the audit was in its preliminary stages and that it would be given to the newspaper when it was completed.

Attorneys for the Board of Regents advised Ingram not to release the audit because it was a "rough draft" and its findings might be edited or changed. They told the newspaper that an uncompleted audit could be interpreted inaccurately if it was released before it was finished.

In frustration, the students filed a petition on December 2, 1986, in state court asking university officials to explain to a judge why they would not release the audit. The students argued that all state documents were available to the public for investigation unless they were exempted by law.

In Tennessee, there is no exemption for preliminary audit findings, the students said.

Ingram said that when he heard of the lawsuit, he instructed the university's auditor to "work around the clock" to finish the investigation. Two days after the petition was filed, Ingram gave the finished audit to the newspaper.

The audit revealed that the women's track coach had falsified travel claims, had made several questionable long-distance phone calls and had exhibited poor judgement in awarding scholarships and making purchases.

Jackie Solomon, *Sideline* adviser, said that as the controversy continued, the information contained in the audit became a secondary motive.

"The students were pretty sure that they were not going to find out anything new from the audit, but they pursued the case because they felt that they had every right to see it."

Solomon confirmed that the lawsuit was dropped when the newspaper received the audit. She said that the university and the newspaper were still at odds about whether an audit in the preliminary stages is considered an open record.

"The school still believes that uncompleted documents are not open record material, we believe that they are," she said. ■

Colorado

Paper won't release information

For ten years, Sean Gallagher had been trying to find evidence to prove that members of the Sigma Alpha Epsilon fraternity at the University of Northern Colorado had been intentionally harassing him and his family.

He thought he found his evidence last October when the university's newspaper, the *Mirror*, reported that it had obtained evidence that the fraternity had been printing "disparaging profanity" about him and two other neighbors of the fraternity for several years.

Gallagher, whose home is located behind the fraternity house, asked the newspaper to give him a copy of the evidence it cited in its story. When his request was denied, he made a written request to the university saying that the state's open records law included information gathered by the *Mirror*.

Gallagher argued that the *Mirror* received part of its money from the state and therefore should have to make its records available to the public.

Gallagher's request was denied by the university. The school's legal counsel, David Figuli, argued that releasing the information would have a "chilling effect" on First Amendment rights.

On March 3, a Colorado judge said the *Board of Trustees v. Gallagher*, No. 86-CV-1143 (Weld County, Colo, Dist. Ct. March 3, 1987) that the *Mirror* did not have to release copies of its evidence to Gallagher.

The judge's decision was made, in part, because Gallagher did not fight the case in court.

"This would have been an interesting case if it had been contested," said Figuli. "It would have questioned whether a newspaper's documents could be considered public records because the newspaper received public funds."

When Gallagher made a written request to the university on October 15, 1986, the university, under state law, had to give him the information or go to court.

Figuli and the attorney general's office filed a petition in state court a week later asking that Gallagher's request be denied.

The university later asked for a default ruling because Gallagher did not respond to the university's petition.

The judge, by entering a default ruling, agreed with the university's assertion that the information that Gallagher requested was not covered under the open records law.

"Gallagher will find it very hard to pursue this case any further," said Lee Combs, first assistant attorney general in Colorado.

Chad Blair, the editor-in-chief of the *Mirror*, was pleased with the outcome of the case. Blair said that the evidence Gallagher wanted was a copy of the SAE fraternity's pledge program that he got from a confidential source in September.

A section of the pledge program listed the current house officers plus Gallagher and two other neighbors, Blair said. Offensive comments were written by the neighbors' names.

Members of the fraternity said that the neighbors were listed as a harmless "joke" but admitted that they had been part of the pledge program for 10 years.

Gallagher, who has complained for several years that fraternity members have harassed his family and damaged his property, said when he filed his request for the pledge program that he was not trying to compromise the First Amendment.

"I stated that I did not want to know the source [of their information]," Gallagher said. "I think [the First Amendment is] a right that should be protected. I just want to know what they're writing about me. I think it might improve the situation if these hoodlums were exposed."

Blair said that after Gallagher requested a copy of the pledge program, the local police department and the assistant vice president for student affairs also requested the information from the paper.

Neither of those requests were written so unless they pursue the matter, no action will be taken in reference to them, he said. ■

FREEDOM OF INFORMATION

South Carolina

FOI request prompts new laws

A University of South Carolina student journalist's request for information for a free-lance article he was writing caused a controversy that eventually will lead to sweeping changes in the state's freedom of information laws.

Paul Perkins, a USC senior journalism major, was writing an article on USC President James Holderman's campaign of attracting distinquished professors and guests, such as the widow of Egyptian leader Anwar Sadat, to the university in hopes of the school gaining international recognition.

Last June, a four-month war began when Perkins submitted to the university a freedom of information request that sought the terms under which Holderman had hired Jihan Sadat.

The university responded to the request by providing copies of three letters of appointment Holderman had written Sadat but not supplying Perkins with her salary.

The school claimed that an exemption in the state freedom of information act allowed them not to disclose the salaries of employees below the level of department head.

When university officials blocked the release of records, which later showed that they had spent more than $313,000 in three semesters for Mrs. Sadat to teach the course, Perkins and his wife Cheryl, an attorney, filed a freedom of information suit, *Perkins v. University of South Carolina*, 86-CP-40-3405, (County Ct. of Common Pleas, S.C., Oct. 27, 1986) in Columbia.

"We had a lot of famous people coming to our university and basically all we did was ask one question: Were we as students paying for these famous people to visit our university?" said Perkins. In the past, the university had paid distinquished guests such as Bill Cosby, Henry Kissinger, Lyn Nofziger, Gale Sayers and others to visit the campus.

Attorneys for the school argued that the release of certain information could present a security risk for Sadat and violate her privacy.

In an Oct. 27 ruling Judge James E. Moore rejected the university's arguments and said, "To permit public funds to be expended secretly creates an even greater potential harm and lack of accountability." Prior to the ruling, Sadat quit her university teaching position because she was concerned that her presence in South Carolina might embarrass the school.

Perkins said his success in receiving access to the information would not have been easy if his wife wasn't an attorney. "The average citizen couldn't have done this because of the enormous legal fees involved," said Perkins.

"Our case caused people to look closer at our state's freedom of information act, which was a 15-year-old act," said Perkins. "What was discovered was that we had one of the weakest acts, if not the weakest, in the country."

As a result, this spring the state legislature began revamping the freedom of information act in South Carolina. The new act would open more government records and subject them to public scrutiny. One of the key provisions being considered includes a requirement for public bodies to disclose all tax-paid salaries above $30,000, plus those salary figures of department and agency heads.

The school's board of trustees, which didn't know how much the president was paying to employ Sadat and others, also passed a policy allowing a maximum salary of $50,000 for visiting distinquished professors.■

UNDERGROUND NEWSPAPERS

Florida

Subscription method causes vandalism

A Miami high school student's fight to keep his controversial underground newspaper alive resulted in adminstrators agreeing to allow the continuance of the publication.

Editor Matthew Hurtgen calls his Palmetto High School underground newspaper *El Marko*, named after a brand of felt-tip marker. The publication has been distributed in school lockers seven times since it made its appearance last October.

In November, Hurtgen instructed students who wanted a subscription to write, paint or embed an E on the front of their lockers.

As if the legend of Zorro had struck again, a flood of school lockers, doors and walls soon had E's on them.

School officials ordered Hurtgen and his three assistants to stop the distribution of the newspaper, but Hurtgen insisted that he would continue with his publication.

A recent issue of *El Marko* contained a column titled "Jap Fashion" satirizing clothing styles and commentary called "Commode Commotion" on the school's girls bathrooms.

In past issues, the newspaper has satirized the official school newspaper, *The Panther*, along with a student who makes the morning announcements and athletes who patrol school parking lots.

In an editorial, *The Panther* supported the underground newspaper's efforts, but suggested its content was moving from cleverness to libel.

The school district's attorney Frank Howard said that "the problem had been worked out between the student, parents and principal." Principal Pete Bucholtz had threatened earlier to punish the students if they refused to halt publication.

"There is no threat of a crisis or confrontation," said Howard. "The students agreed to re-do and repaint the lockers and the principal has agreed to let the students keep publishing."■

Missouri

Lawsuit challenges distribution regulations

Three high school students have filed a lawsuit against a Missouri school district claiming that a school policy regulating the distribution of their underground newspaper is unconstitutional.

The students filed the lawsuit in state court on March 25 saying that the publications policy of the Belton School District violated their First Amendment rights. The policy requires them to notify school authorities a day before they distribute their newspaper and prevents them from personally handing it out.

The suit is the result of a dispute last fall between Principal Michael St. Louis and three students over distribution of the underground newspaper *Point Blank*. St. Louis confiscated the paper saying that the students did not give him proper warning that the newspaper would be passed out at school.

The paper contained articles about the school football team's losing ways, an allegedly illegal search of students by the principal and military recruiting on the high school campus.

The students complained to the school board about St. Louis' actions and on December 9, 1986, the school board adopted a new publications policy governing unauthorized student publications. The policy included the advance notice provision and restrictions prohibiting hand-to-hand distribution.

A spokesman for the school board said that they drafted their new policy from court interpretations of student press rights and from publications policies at other school districts.

But Karen Schneider, an American Civil Liberties Union lawyer representing the students, said that the policy is unconstitutional.

"For the most part, they did a fairly good job drafting the policy," she said. "My complaint is that it is not specific enough."

Schneider said that by making students register with the school before the distribute their newspaper, the school prohibits the students from commenting anonymously on school problems. This causes students to have second thoughts about criticizing school authorities for fear of retribution, she said.

"If a student wants to write some thing critical about a school administrator or teacher, the student should be able to do this without having to worry about possibily getting a lower grade in a class," she said.

Elvin Douglas Jr., attorney for the Belton School District, does not think that the policy is overly restrictive.

"The school district's policy is not a prior restraint policy," he said. "Students are required to give the administrators notice that they are going to distribute the material, but school personnel are not authorized to review any of the material before hand."

Douglas said if the school district did not know who wrote the newspaper, school authorities would have difficult time contacting the publisher if an article or editorial was libelous or obsecene.

Schneider is also challenging a provision in the policy prohibiting hand-to-hand distribution. The current policy allows students to distribute newspaper only from tables within the school.

Schneider said that the students should have the right to hand out copies of their newspaper to whomever they want.

Douglas, however, said that problems would result if the district permitted hand-to-hand distribution.

"First, it creates a congestive problem. If a student is handing out the newspaper then very likely there is a chance that people will be crowding around him."

"Secondly, there is an increased likelihood of disruption that could occur when students are handing out newspapers face to face. The students handing out critical stories could very easily get involved in a fight or scuffle," he said.

Schneider said that allowing students to pass out their own newspaper would not cause a disruption.

Both Schneider and Douglas will make further agruments in the case later this spring when a judge will decide whether to grant a permanent injunction against the school district, preventing it from enforcing the publications policy. The judge turned down a request for a temporary restraining order on March 25.

In addition to the injunction, the three students are also seeking $30, the cost of the newspapers allegedly destroyed by St. Louis, in damages.

Both Schneider and Douglas expect to win the case.■

Washington

Judge says prior review acceptable; Bad Astra editors appeal decision

Five student are appealing a federal court ruling in Washington that upholds an adminstrators right to review material published in an underground newspaper before it is distributed in a public high school.

The appeal, filed February 9 in the Ninth Circuit Court of Appeals, will effect student journalists in nine western states from Alaska to Arizona.

The American Civil Liberties Union filed the appeal on behalf of the students after Judge Carolyn Dimmick ruled in *Burch v. Barker*, 651 F. Supp. 1149 (W.D. Wash. 1987), on January 9 that prior review of an underground newspaper is constitutional as long as school administrators implement certain safeguards that will protect students from random censorship.

"Although the court finds the prior approval requirement constitutional in the instant case, school officials school follow this maxim: 'When in doubt, do not censor,' " Dimmick wrote in her opinion.

Dimmick said that the point of prior review of underground newspapers was to give school authorities the opportunity to identify libelous or obscene content that students might not recognize.

"It is more likely that the average teenager would misjudge the potential harm of distribution of his or her written work within the school than would an adult," Dimmick wrote.

Dimmick's decision is similar to appellate rulings in three other circuits that have said prior review is constitutional.

In her 20-page decision, Dimmick spent three pages noting inadequacies in the school district's policy labeling several provisions "impermissably vague."

Dimmick said that the school district could not try to regulate the distribution of unauthorized material in areas away from the school even if the material is passed out in a manner in which it will end up at school.

A section of the district's policy said that it had the authority to prohibit material from being distributed if it is done "in a manner reasonably calculated to arrive on school premises."

"School officials have no authority to control distribution of student written material off school premises," Dimmick wrote in her opinion.

She also took issue with the wording in another section of the district's policy that listed reasons why an underground newspaper could be banned.

"School officials should follow this maxim: 'When in doubt, do not censor.' "

—Judge Carolyn Dimmick

The district's policy stated that a newspaper could be banned if it "encouraged actions which endanger the health and safety of students."

Dimmick said the policy could be interperated to pertain to almost any type of writing and needed to be changed. She suggested that the district modify the section so it permits the banning of material only when that material encourages activities that will cause "substantial disruption" that may result in "injury or damage to persons or property."

The only exception to a "substantial disruption" policy, she said, would be if the written material advocated an illegal activity.

Even though Dimmick noted these faults in the district's policy, she found the policy "substantially constitutional."

Several First Amendment advocates were critical of that wording.

"Judge Dimmick bent over as far as possible to give the school board a ruling as favorable as possible to them," said Kenneth Davidson, an ACLU lawyer representing the students. "She went out of her way to turn the facts around so that they would be favorable to the school board."

Davidson said that the process of prior review intimidated students who wanted to express their opinions. He said that the district's policy kept many students from speaking out.

"The nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection," he said.

Judge Dimmick's decision came three and a half years after Alan Burch, Mark Hoben, David Martin, Kevin Osborn and David Wittman were disciplined by Principal Brain Barker for distributing 350 copies of the newspaper *Bad Astra* during a senior picnic at Lindbergh High School.

The four-page newspaper included articles critical of school policies, poetry and a poll that critically rated the school's faculty. The five students did not get permission to distribute the newspaper and used pseudonyms for the authors of all the stories. On the last page of the newspaper they told why they printed the paper.

"Noting the absence of any and all forms of student publications, *Bad Astra* is an attempt by several innovative writers to convey their thoughts and ideas to the Lindbergh High School community," the newspaper said. "Compulsion to exercise our First Amendment rights, and the not-so-subtle censorship message broad-

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cast by the Renton School District provide the impetus for this journal."

The newspaper contained no obscene or profane language.

Several days after *Bad Astra* had been distributed, principal Barker found out that the five students printed the paper.

Baker said that several faculty members and students were upset about the content of the newspaper, particularly the poll that rated faculty members.

He maintains, however, that he punished the students because they intentionally violated school policy by not allowing him to see a copy of the newspaper before it was distributed and by using pseudonyms.

That punishment consisted of placing a letter of reprimand in each of the student's school files, assigning them six hours of school service, and making them write an assignment on the First Amendment in lieu of a short-term suspension.

The students appealed the punishment to Gary Kohlwes, superintendent of the Renton School District, but he was not sympathetic to their arguments.

"Judge Dimmick bent over as far as possible to give the school board a ruling as favorable as possible to them."

—Kenneth Davidson

Judge Dimmick noted in her opinion that the students encouraged the school district to adopt a policy drafted by the Student Press Law Center. The district subsequently adopted a new policy of their own creation.

On April 29, 1986, three years after the superintendent rejected their appeal, the students filed suit in federal court.

The lawsuit contended that the school district's publications policy in existence at the time *Bad Astra* was published as well as a subsequent policy were unconstitutional. The central element in both policies that the students objected to was a prior review clause.

"The District's restrictions on the distribution of written materials has limited and chilled the aspiring student authors and other students in the exercise of their right to communicate ideas and opinions within the District's schools," the lawsuit said.

The suit pointed out that, "the policy contains no process for appeal or review of a refusal by a principal to allow distribution of written material a student seeks to distribute."

In defending its policies, the school district said that prior review had been ruled constitutional in recent court decisions and that the question of whether the old publication policy was constitutional was moot because it had been amended and changed.

Mary Ellen Hanley, the school district's lawyer, also argued that the students did not file their lawsuit before the statue of limitations ran out.

Attorneys for the students feel confident they have a strong case in their appeal. Davidson predicts the appeal will be heard sometime in October with a decision from the court in early 1988.

Obtaining a favorable appeal ruling on the prior review issue, however, could be difficult.

The Second, Fourth and Fifth Circuit Courts of Appeal have said that in theory, prior review of newspapers published off school premises is within the parameters of the Constitution. Only the Seventh Circuit Court of Appeals in *Fujishima v. Board of Education*, 460 F.2d 1355, 1357 (7th Cir. 1972), has said that prior review of an unofficial student publication is an infringement of the First Amendment. However, no court has ever found a specific prior review policy that was constitutionally adequate.

The Eight Circuit Court of Appeals is currently deliberating a similar case from Minnesota, *Bystrom v. Fridley High School*, No. 3-85-911 (D. Minn. March 5), *appeal docketed*, No. 86-5140 (8th Cir. April 7, 1986).).

The case began after a school administrator threatened to suspend students who failed to have their newspaper reviewed before it was distributed. A decision on the appeal is expected any day. ■

New York

County newspaper receives $43,000

A youth newspaper in New York has received a $43,000 out-of-court settlement from Nassau County administrators who withdrew funding of the newspaper after several members of their community complained about the content of the newspaper.

The settlement, reached in December, marked the end of a nine-month dispute during which the newspaper, *Teen to Teen*, claimed that its First Amendment rights had been violated by the county.

The conflict began in February 1986 when the Nassau County Board of Supervisors pledged $75,000 to begin *Teen to Teen*, a monthly newspaper intended to open communication between students in Nassau County's 55 high schools. County officials were told at the time that stories for the newspaper would be written by high school students from various schools in the county and that the newspaper would deal with potentially controversial issues like teenage pregnancy and drug abuse.

A month after the funding was approved, *Teen to Teen* printed its first issue, which was distributed free to students in Nassau County's schools. County officials said that they immediately received complaints from people in the community about the content of the publication.

Most of the complaints centered around a Planned Parenthood advertisement which listed birth-control and pregnancy testing services and 18 personal ads which had varying degrees of sexual innuendo.

Two classified ads in particular were criticized as being objectionable. They were, "Sexy, seductive lady seeking fly guy between the ages of 18-20," and "Hot hunk who loves all types of excitement. Do you fit the position?"

Shortly after the first issue was distributed, the Nassau County Youth Board, which oversees all county youth projects, voted to recommend

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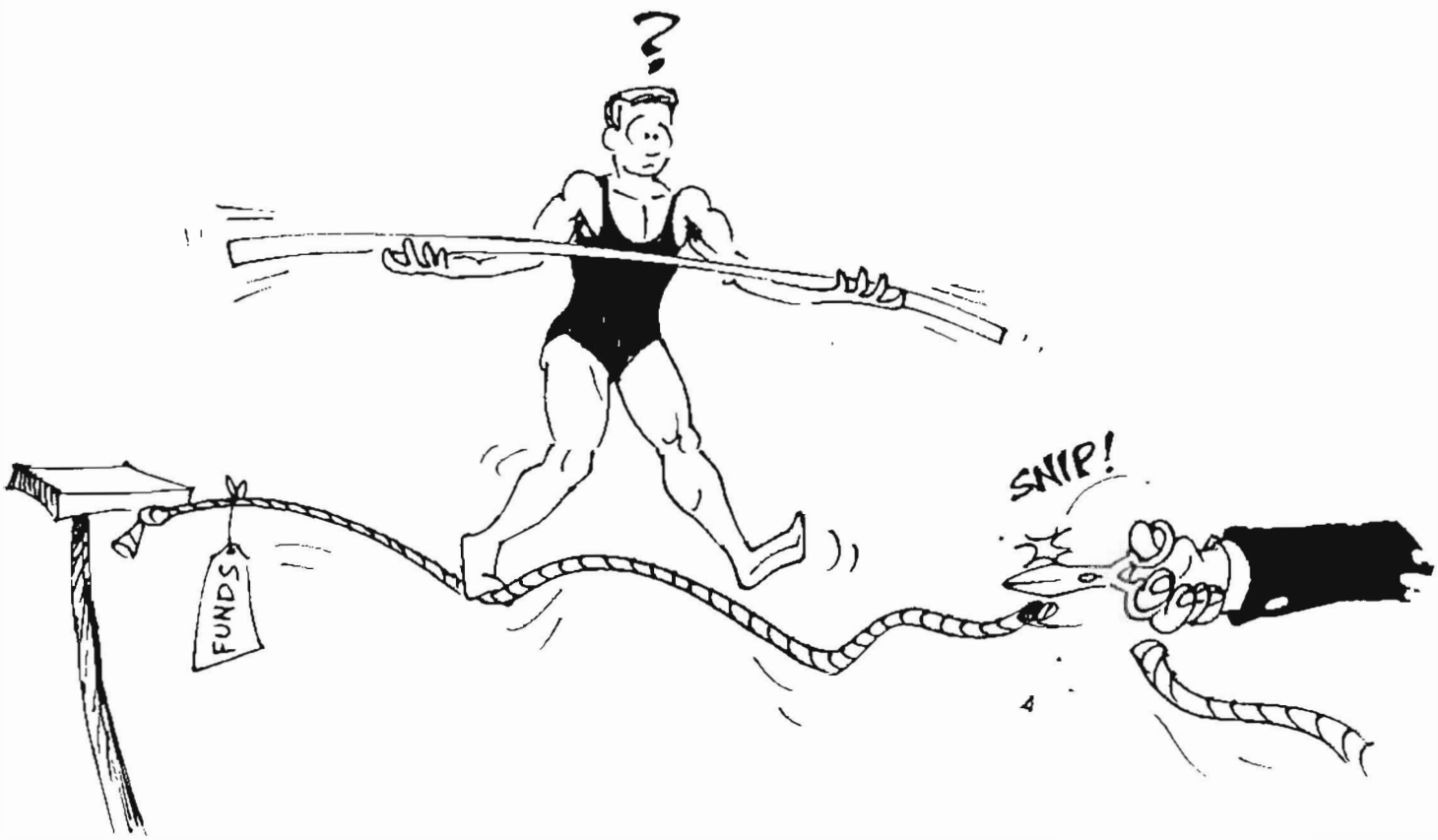

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to County Executive Francis Purcell that funding for the newspaper be stopped. Purcell agreed with the board's recommendation and on March 25 wrote a letter to Patricia Weiner, editor of *Teen to Teen,* notifying her that the county was withdrawing its pledge.

"[As] well intended and laudable the original concept may have been, the end product of this program has proven to be a newspaper which certain segments of the County populace have found objectionable," Purcell wrote. "It is the responsibility of this office to insure that no public funds be expended for any project which even a few might find offensive."

When the county withdrew funding only $35,000 of the $75,000 allocated for the newspaper by the county had been spent.

Teen to Teen, represented by the New York Civil Liberties Union, filed a lawsuit *Nassau Youth Connection Inc. v. Purcell,* No. CV 86-3415 (E.D.N.Y. filed Oct. 9, 1986) in October claiming that their First Amendment rights had been violated. The suit asked for $100,000 in damages.

The $43,000 settlement that the county agreed to is equal to the remaining amount of money the county had originally pledged to give the newspaper plus $3,000 for legal fees.

"The county didn't have a chance of winning in court and they knew it," said Stephen Hyman, the attorney representing *Teen to Teen.* "Their action was an outrageous abuse of power."

"Their admission of guilt can be seen in the fact that the county offered to fulfill its entire contract obligation with the newspaper," he said.

Edward O'Brien, Nassau county attorney, agreed that the county did not have a strong case.

"When you don't think that you are going to win, you start laying money out on the table for a settlement," he said.

Hyman said that the settlement sends a two-fold message to municipalities that are considering funding newspapers similar to *Teen to Teen.*

"First of all, [county governments] should give careful thought into what they are getting themselves into before they fund any type of newspaper. They need to know the potential conflicts that could arise because of their involvement with the newspaper and should be prepared to handle controversies that the newspaper creates," he said.

"Secondly, if city or county governments are going to get involved in this type of thing, they need to be very respectful of the First Amendment rights of the people involved."

Ann Irvin, executive director of the Nassau County Youth Board, the board that recommended that the county cut *Teen to Teen*'s funding, said the county had made a mistake in funding the newspaper.

"We wanted this conept to work and committed ourselves to it, but we did not realize how volatile the newspaper could be. No matter what was put in the paper, somebody was bound to be offended by it," she said.

"When the newspaper came out, we were immediately asked to play the role of censor from a number of people in the community who, for some reason or another, did not approve of the content of the newspaper," Irvin said.

Both O'Brien and Irvin said county officials were particularly sensitive to complaints from the public because they wanted to please all of their constituents and get re-elected.

Weiner said the settlement will allow *Teen to Teen* to continue publication. She said the newspaper will operate on advertising revenue and grants from the state and private foundations. ■

Idaho

Newspaper sued for refusing ad

The *Idaho Argonaut,* a student newspaper at the University of Idaho, did not abridge a student's right to free speech when it refused to run an advertisement critical of the local city council, a state court judge decided in January.

The judge's decision in *Owens v. Idaho Argonaut,* No. C-193 (Idaho Dist. Ct. Jan. 8, 1987, said that a student editor had the right to reject advertisements he felt were not suitable to print regardless of whether the advertisements were libelous.

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

The advertiser is appealing the decision.

The case began in September 1986 when editors of the *Idaho Argonaut* refused to print an advertisement offering special rental rates for paint pistols and paint pellets that are used during mock assassination games on college campuses.

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

The student who submitted the advertisement, Bill Owens, was contacted by the newspaper's advertising manager who told him that changes would have to be made before the ad could run. Owens agreed to omit the word "Moscow" and not print the word "yellow" in bold type.

The following day the advertising manager, still feeling uncomfortable with the ad, asked Owens to remove the entire sentence. The editor of the *Idaho Argonaut* said he told Owens that the advertisement would not run unless changes were made. Owen told the editors that he would sue if the ad was not printed.

Owens filed his suit a week later, claiming that the paper did not have the right to refuse to print a non-libelous advertisement and that the newspaper breached a contract when the advertisement was not printed.

He claimed that he lost $2,500 because the advertisement was not printed and asked the court to award him that amount plus attorney fees.

Owen's attorney, Clark Myers, said that because the advertisement criticized public officials, it was not libelous and therefore should have been printed.

"Bill Owens should have had reasonable access to the newspaper because it is an open forum for campus students," Myers said. He said that the newspaper's "censorship" of the advertisement violated Owen's right to comment on the political activities of public officials.

Charles Brown, attorney for the *Idaho Argonaut,* maintains that a college newspaper should not be required to print anything submitted to it.

"Implying that someone is a communist, without giving that person a

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chance for comment or rebuttal is potentially libelous and is definitely in bad taste," Brown said. "Regardless, the editor of the *Argonaut* has that prerogative [to reject advertisements he doesn't feel are suitable]".

Brown argued that the law is well settled that a newspaper has the right to reject an advertisement.

Myers also asked the court to award Owens damages because the newspaper breached an "inferred" contract when it did not print the ad. He argued that because the newspaper accepted money for the advertisement before it was printed, they had an obligation to print it.

"If you take the money and intend to keep it, then you accept the ad," Myers said. "The editor had an obligation to run the ad or make a timely notification so that Bill Owens could put another ad in the paper or get his message out in some other fashion." Myers said the *Idaho Argonaut* did neither.

Owen admitted that he was refunded the money he paid for the advertisement shortly after the ad was rejected.

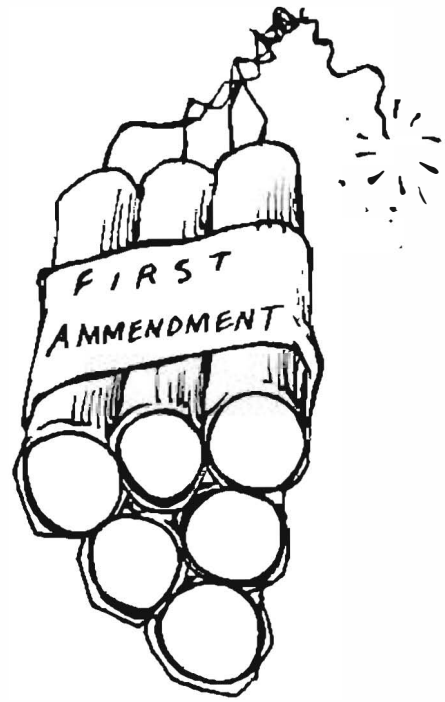
Brown said that the newspaper made it perfectly clear in information provided to all advertisers that all advertising is subject to acceptance by the *Idaho Argonaut*, which reserves the right to reject advertising at its discretion.

Owen is appealing the case and Myers says that he feels confident about his chances of overturning the state court decision.

"At this point we are conceeding that the newspaper had the right to critically look at advertising," he said. "Because of the costs in pursuing all of the constitutional issues we have decided not to appeal that part of the decision." He said that he will base his appeal on the contractual issue.

Brown called Owens' case frivolous, unreasonable and without foundation.

"I feel that the underlying legal basis upon which this lawsuit was brought was invalid, inadequately researched and poorly thought out," he said. ■



UNDERGROUND NEWSPAPERS

Texas

School barred from using vague policy

A Texas state court, issuing a temporary injunction in January on behalf of a brother and sister team, has barred a school district from enforcing vague phrases in its policy concerning alternative student newspapers.

The case, *Evans v. Texas Education Agency*, No. 409387 (Tex Dist. Ct. Jan. 28, 1987), involves former Bryan High School student Karl Evans, who was suspended in the fall of 1985 for distributing his alternative newspaper, *The Twisted Times*, without receiving prior approval of the Bryan Independent School District adminstration. The newspaper criticized school officials, including Bryan High School principal Jerry Kirby, who later decided to suspended Evans.

Evans appealed his suspension to the Texas Education Agency. The agency upheld the principal's decision to suspend Evans. However, the school district agreed to remove all references to the incident from Evan's permanent record.

Evans and his representative, the Texas Civil Liberties Union, continued to contest the constitutionally of the school's publication policy. Since Evans graduated in May 1986, his sister has become editor of the *The Twisted Times* to keep the case from becoming moot.

In issuing the injunction, presiding Judge Harley Clark said that school officials would be allowed to continue to review the newspaper before distribution. He also said that school officials could not in any way rely upon, enforce or utilize the phrases "connotes insubordination toward the staff, contains unreliable or inflammatory journalism" as part of the Bryan High School student publication policy.

"We agreed with the judge that those phrases weren't necessary," said Guy Gorden, Bryan Independent School District superintendent. "We agreed to take it off."

He said the school principal still has one day to approve or disapprove a publication. He said the school district's purpose in prior review is not to limit the topics in the publications because he feels that "kids are exposed to this everyday."

"Our concern if of a protective posture, not only for the students receiving the publication, but for those distributing them as to making sure no libelous or slanderous statements are included," said Gorden. "We don't want to censor; we only want to head off a problem before it occurs."

Barbara Mansfield of the Texas Civil Liberties Union said her organization felt that the phrases in question were "too vague." She said, "Anyone could change them and interpret them anyway they wanted."

At a trial in May, the court will be re-evaluating the validity of the school's publication policy. The Texas Civil Liberties Union will also be demanding about $2,5000 in damages because Evans, who is now a college student, lost potential scholarship money because of the suspension.■

California

FCC warns college radio station: *'Indecent' broadcasts have to stop*

The Federal Communications Commission adopted sweeping new restrictions on the broadcast of obscene and indecent material, warning several radio stations in April that if they continued to broadcast sexually explicit material, they could face high fines and the revocation of their broadcasting license.

One of the stations warned was KCSB-FM, a student-run radio station operated by the University of California at Santa Barbara. The warning came nine months after a disc jockey at the station played "Making Bacon," a song by a British punk rock group which described oral and anal bisexual intercourse. The song was played during a late-night radio show.

An offended listener complained about the broadcast to the Washington-based Parents' Music Resource Center (PMRC), who forwarded the complaint to the FCC. Shortly after the FCC received the complaint, they began an investigation into the incident.

In a letter to the PMRC, the offended listener complained, "if the use of a few expletives were all I had to contend with, then I wouldn't have bothered writing a letter. The problem is that a number of these tunes go far beyond the occasional obscenity."

"The increase in investigations is not due to a different philosophy but to an increase in complaints."

—Donna Searcy

In response to the complaint, the university said that the radio station's own review procedure had concluded that the lyrics in questions were not obscene.

Gary Morrison, general counsel for the university, said even if the song was indecent, it had been broadcast late enough in the evening when children would not be listening.

He pointed to a 1978 Supreme Court decision which said broadcasters could play more sexually explicit material without violating the law at times when children would not be listening.

In their decision, the Supreme Court did not set a definitive time at night when children would not be listening, but an unwritten industry guideline set 10 p.m. as a standard to follow.

Morrison said the song "Making Bacon" was aired after 10 p.m.

In deciding to issue a warning to KCSB-FM, the FCC said that it was not safe for broadcasters to think that children would not be listening to the

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radio after 10 p.m.

"Recent evidence indicates that at least on weekends, there is still a reasonable risk that children are in the listening audience at that hour," the FCC said.

The FCC also used a broader definition for indecency when they considered the complaint against KCSB-FM.

"The fact that the university sponsors, creates, or funds such expression gives it no power to censor."

—Gary Morrison

Instead of using the previously accepted definition of "indecent" which meant broadcasting the "seven dirty words" made famous by comedian George Carlin, the FCC decided that any broadcast which contained explicit, offensive descriptions of sexual or excretory activities was indecent.

Using the new definition, the FCC said the KCSB-FM broadcast made "several clearly discernible, patently offensive references to sexual organs and activities" which constituted "actionable indecency."

Instead of invoking a heavy fine against the station or stripping it of its broadcast license, the FCC gave the station a warning because it said the Commission had been "inconsistent" in its rulings in indecency cases in the past. However, the FCC warned broadcasters who plan to violate decency standards in the future that they will be dealt "severe sanctions."

The tougher standards that the FCC used against KCSB-FM are in sharp contrast to the deregulatory approach that the commission has taken over the past few years. Since 1979, it sought to relax virtually every rule affecting broadcasting.

Donna Searcy, an information specialist with the FCC, admitted that in the past, the FCC has taken a "hands-off" approach to obscenity complaints. She said that because the FCC was getting more complaints from people who are being more specific about what they heard, the FCC decided to take action against more stations.

"The increase in investigations is not due to a different philosophy but to an increase in complaints," Searcy said.

In addition to the warning, the FCC instructed its mass media bureau to begin an investigation into the control that officials at the University of California have over KCSB-FM.

Richard Bozzelli, special assistant to the general counsel at the FCC, said that the investigation into station control was begun because the commissioners were concered over who controlled the station—students or the university.

"When we made our inquiry about this case, the school said that it could not control what the students broadcast because of First Amendment rights," Bozzelli said.

The university, in responding to the indecency complaint last fall, told the FCC that it had "virtually no power" to censor the content of programming undertaken by students at the station.

"Under well established First Amendment legal principles, there is little that the university can do to control the content of student expression, whether in campus newspapers or on campus radio stations," attorney Morrison told the FCC. "The fact that the university sponsors, creates, or funds such expression gives it no power to censor."

"If our investigation shows that the university does not have adequate control, the the matter will go before the commission again."

—Richard Bozzelli

Bozzelli said that the university's denial of responsibility for KCSB's broadcasts concerned some FCC officials.

"[The FCC] issued a broadcast license to the university, and they feel that the university should have some control over what is broadcast," he said.

"If our invesitgation shows that the university does not have adequate control, then the matter will go before the commission again," he said.

A spokeswoman for the university said on the basis of the advice they were given by their attorneys, they feel they exerted the proper control over the station. ■

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

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

Send nominations to:

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

Methods of fighting censorship

An Adviser's Rights

When it comes to that proverbial space between a rock and a hard place, no one seems better able to find the position than the academic adviser to a student newspaper, magazine or yearbook.

On the one hand there is the rock: demands from a principal, superintendent or other school official that the student publication's content conform to school district policies and standards. But always confronting the rock is that hard place: federal and state court rulings that say students at public schools have First Amendment rights of freedom of speech and press that can be abridged only under the most narrow and restrictive of circumstances.

The situation often leaves a public school adviser in the untenable position of having to choose between violating the constitutional rights of student journalists or facing charges of insubordination from school superiors and being removed as adviser or fired from the school.

So what's an adviser to do?

Fortunately, an adviser who wants to protect his or her own job, as well as the First Amendment rights of student journalists, has several possible legal avenues to pursue.

One of the most recent and significant developments in the legal rights of advisers has occurred in Colorado, where the state supreme court ruled in 1984 that an adviser could bring suit for a violation of the First Amendment rights of her students. In that case, *Olson v. State Board of Community Colleges and Occupational Education,*[1] the court decided that special circumstances allow a person, such as a school newspaper adviser, to file a court action on behalf of a third person, such as a student journalist.

In *Olson,* funds for a student newspaper, the *Pikes Peak News,* were cut off by the community college's student senate because the senate decided the *News* was not representative of the views of the student body as a whole. The adviser, Judith Olson, then brought action on behalf of herself and her students.

The Colorado Supreme Court dismissed Olson's claim on behalf of herself, saying that no action had been taken directly against her, therefore her First Amendment rights had not been violated. However, the court did allow Olson to sue on behalf of her students. The court formulated a rule for similar cases, saying a person could bring an action for a third party if: 1) there is a substantial relationship between the person and the third party, 2) there is a difficulty or improbability of the third party in asserting a deprivation of his rights, and 3) there exists some need to avoid dilution of third party rights in the event the lawsuit is not permitted.

In *Olson,* the court said the requirements had been met because there was a substantial relationship between the adviser and her students; the brief tenure of the students at the two-year college was an obstacle in bringing a suit on a school-related action; and the risk of dilution of the student's constitutional rights was great if no one brings suit for them.

The practical effect of the ruling is that advisers are allowed to assert their students rights if it is difficult or impossible for them to do so themselves, particularly if other students will suffer in the future for lack of a suit to defend constitutional rights. While the ruling is binding law only in Colorado, it is the first of its kind in the nation from a state supreme court and should be persuasive in other jurisdictions when the issue arises.

Even though Olson's claim on behalf of herself was not allowed by the Colorado Supreme Court, an adviser may assert his or her own First Amendment claim when school officials take punitive against the adviser because of his method of advising. In *Olson,* no action was directed against the adviser; the newspaper's funds had merely been reduced.

Constitutional protection for teachers arises from the doctrine of academic freedom, which gives a teacher First Amendment protection to teach or advise in the classroom in the manner he chooses. The concept of academic freedom has been recognized by the U.S. Supreme Court, which said in 1957, "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."[2] Later, in 1967, the court said, "Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."[3]

To be protected by the doctrine of academic freedom, the method of teaching must not disrupt normal school activities.[4] But supression of academic freedom may be permitted only if the disruption takes place in the school. A federal trial court in Texas held that a teacher may use a method of teaching that contains a discussion of controversial topics, even though it causes a controversy in the community, but not in the school.[5] However, the teacher, as an agent of the state, may not abridge the students' First Amendment rights. Teachers may not force a particular ideology or method of writing characteristic of a certain viewpoint onto a student journalist.[6]

When an adviser believes he has been removed from his position or fired because of his refusal to censor the student newspaper, the adviser must have the burden of proving such a First Amendment violation occurred.[7]

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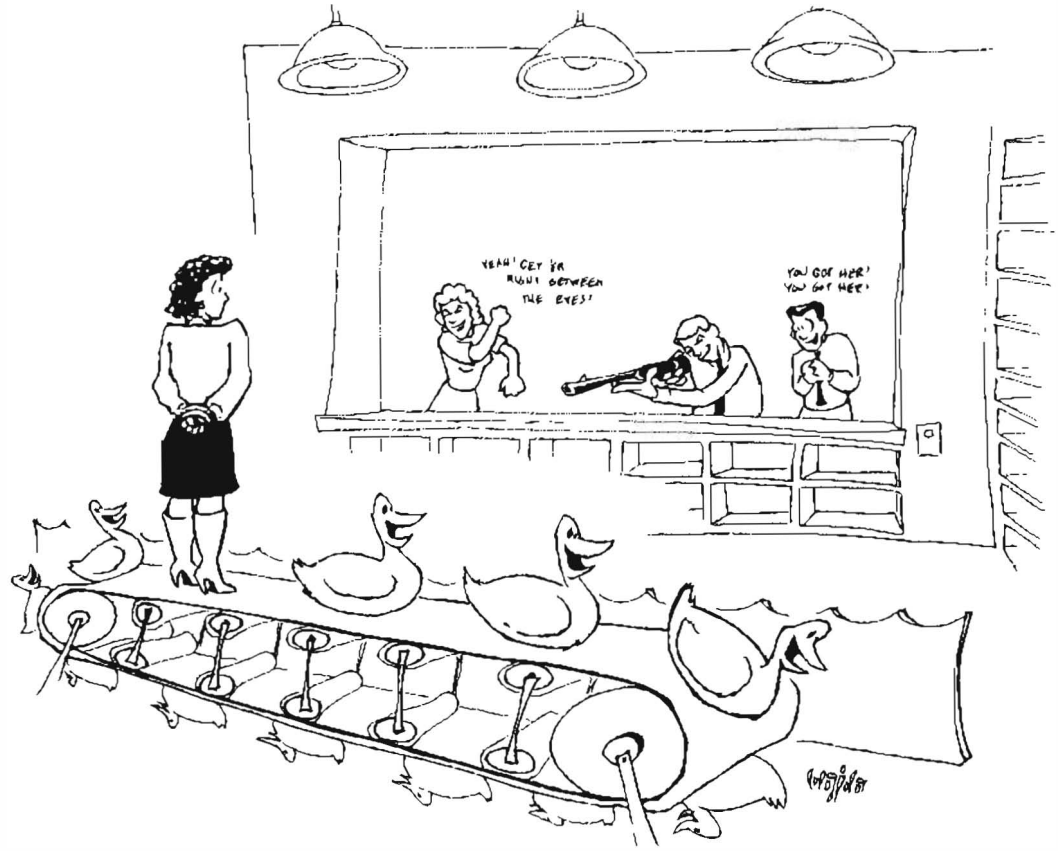

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Courts have consistently refused to perform the hiring or firing function of school administrators, and have held that a court should only decide constitutional claims, leaving other decisions up to school officials.[8] Also, the teacher must prove that an objection to the content of the student newspaper or the adviser's refusal to censor was a "substantial factor" in the decision not to rehire him, not just one of many reasons.[9] This means the school may indeed have been motivated by its displeasure with the content of the student newspaper, but if there were other reasons as well for taking action against a teacher, the school's decision may be upheld.

The concept of academic freedom is also finding its way into the law of contracts, leading some commentators to argue that advisers, both in public and private schools, have an implied right of academic freedom in their contracts. The basic legal principle regarding implied provisions in contracts was stated in *Miller v. Independent School District,*[10] where the Oklahoma Supreme Court said that anything that is necessary for the persons to carry out the contract will be implied as part of the contract.

This has led some commentators to suggest that academic freedom is as necessary to performance of a teaching contract as classrooms, pens, paper, laboratories and libraries. Because of its necessity, academic freedom should automatically be implied in teaching contracts.[11] Therefore, abridgment of this freedom could result in breach of contract with the teacher.

In a non-academic setting, even without the protections of the academic freedom doctrine, the First Amendment does apply to an adviser's actions. Advising an unofficial newspaper outside the classroom is simply classic First Amendment activity. In Wyoming, a teacher encouraged the publication of a student underground newspaper but took no active part in its writing. Her contract was not renewed, the court determined, because of her advising of this publication. The court said, "It seems clear that activities connected with the newspaper publication could not be more eligible for protection of the [First Amendment] constitutional guarantee" and "her [the adviser's], acts of assistance and association with the publication are protected, although no writing of her own was involved."[12]

For an adviser who is not fired, but merely transferred to another teaching position, there is little judicial protection, unless that teacher can show that he or she was unjustly demoted. One court has defined demotion as any reassignment 1) under which the staff member receives less pay or has less responsibility than under the assignment he held previously, and 2) which requires a lesser degree of skill than did the assignment he held previously.[13]

Therefore, if a teacher has a contract stating that part of her job is advising the student newspaper, and the teacher is punished by abolishing the newspaper and her role as adviser, removing the paper clearly decreases the responsibility and degree of skill the adviser must use to fulfill her duties. Thus, such an action by a school may not be legally justified and the teacher may have an action for breach of contract.

Many times advisers are faced with discipline for the actions of the students, even though the advisers had no direct involvement in the student action and no authority to stop it. In this situation, the protections of the Constitution's Fourteenth Amendment arise. That amendment's due process clause protects citizens from punishment without personal guilt.[14] Because advisers at public schools

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for the most part cannot exercise editorial control over the publications they advise, they cannot be punished for what the publications print.[15]

The Fourteenth Amendment also protects advisers from punishment for conduct that is not prohibited by any rule or administrative direction. A federal trial court in Texas has ruled that so long as a teaching method serves a demonstrable educational purpose, the teacher may not be discharged for the use of that method if it is not prohibited by a school regulation or definitive administrative

action, and if the teacher has no notice that the action is prohibited.[16]

Under this rationale, if school officials suddenly take action against an adviser for allowing her students to criticize school officials, without previous warnings, the action would violate the adviser's due process rights. In short, "Cause for termination cannot be established by proof of the violation of standards that do not exist."[17]

Of course, teachers consider one of the ultimate protections from indiscriminate termination to be the tenure system. Tenure ensures greater job security than a series of one-year contracts. Because newspaper advisers are often subject to criticism from school officials displeased with the content of the newspaper, experienced advisers may have difficulty receiving tenure. A solution to this problem was offered by the U.S. Supreme Court in 1971, when it held that an express tenure provision is not required in order to get a hearing detailing the reasons why an instructor was not rehired when an instructor is led to believe he has been tenured. In that case, *Perry v. Sindermann*,[18] a junior college instructor had been led to believe he had tenure because his contract had been renewed for 10 years. A faculty guidebook stated the college had no tenure system, but added that a faculty member should feel he had permanent tenure as long as his teaching services were satisfactory and he displayed a cooperative attitude toward co-workers and superiors.

Though this case seems to involve special circumstances, renewed contracts plus reassuring statements about tenure, there is some additional protection for teachers found here. While not ensuring rehiring or a specific job, the teacher may use *Perry* to at least gain a hearing to better defend his position and protect himself against arbitrary decisions not to rehire.

In conclusion the courts have fashioned legal remedies that provide some lubricant for those journalism advisers caught between the rock and hard place. Not only can an adviser defend the First Amendment rights of her students in court, she can assert and find protection for constitutional, tenure and contract rights. No adviser should be punished for anything she or her students may say or do while legitimately exercising their rights of free speech. Advisers, just like the average citizen, are protected by the Constitution.

NOTES

[1] 687 P.2d 429 (Colo. 1984).

[2] *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

[3] *Keyshian v. Board of Regents of New York*, 385 U.S. 589, 603 (1967).

[4] *Adamian v. Lombardi*, 523 F.2d 929 (9th Cir. 1975).

[5] *Dean v. Timpson Independent School District*, 486 F. Supp. 302 (E.D. Tex. 1979).

[6] *Trujillo v. Love*, 322 F. Supp. 1266 (D. Colo. 1971).

[7] *Adams v. Campbell County School District*, 511 F.2d 1242 (10th Cir. 1975).

[8] *Cooper v. Ross*, 472 F. Supp. 802 (E.D. Ark. 1979).

[9] *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1976).

[10] 609 P.2d 756 (Okla. 1980).

[11] Malin and Ladenson, *University Faculty Members' Right to Dissent: Toward a Unified Theory of Contractual and Constitutional Protection*, 16 U.C.D.L. Rev. 933 (1983).

[12] *Bertot v. School District No. 1, Albany County, Wyoming*, 522 F.2d 1171 (10th Cir. 1975).

[13] *Johnson v. San Jacinto Junior College*, 498 F. Supp. 555 (S.D. Tex. 1980).

[14] *St. Ann v. Palisi*, 495 F.2d 423 (5th Cir. 1974).

[15] *Trujillo*, 322 F. Supp. at 1270. High school advisers in Illinois, Indiana and Wisconsin cannot censor student work before it is published and therefore cannot be held responsible for what is published. *Fujishima v. Board Education*, 460 F.2d 1355 (7th Cir. 1972). However, in public schools outside of Illinois, Indiana and Wisconsin, if an adviser is given authority in a written policy to censor for libel, obscenity or material that will create a substantial disruption of the school environment, she could be held responsible if she failed to do so. If the adviser is made responsible for censoring for this material through an otherwise constitutionally sound policy, there is no due process violation if the adviser is punished for failure to review and censor.

[16] *Sterzing v. Fort Bend Independent School District*, 376 F. Supp. 657 (S.D. Tex. 1972).

[17] *Board of Trustees v. Holso*, 584 P.2d 1009, 1015 (Wyo. 1978).

[18] 408 U.S. 593 (1971).

The Forum Theory

One protection for student journalists

Several years ago, the *Report* featured a story introducing the concept of the forum theory and discussing its application to student press law. Many courts confronting censorship of school-sponsored student newspapers have turned to the doctrine for their analysis. Forum doctrine advances the notion that once the government creates a "forum" for public debate and expression of views out of public property, it may not censor expression taking place within that forum.

Is a student newspaper of a public high school or college a "public forum" for purposes of the forum analysis developed over the past few decades by the United States Supreme Court? This question has yet to be answered by the High Court itself. The Court may apply the doctrine to school newspapers when it decides *Hazelwood School District v. Kuhlmeier*[1] next year. The Court has agreed to decide whether a school-sponsored high school student newspaper produced and published by a journalism class as part of a school-adopted curriculum is a "public forum" for purposes of the First Amendment.

Lower courts have frequently applied the doctrine to public school newspapers in controversies involving censorship by school officials. However, in a series of recent decisions, the Supreme Court has refashioned its own analysis of the public forum doctrine. Does the student press still fit within the new classifications outlined by the Court? Because the forum doctrine's applicability to the student press may determine the vitality of student journalist's First Amendment protections, the *Report* decided to update the doctrine for our readers.

Ironically, the most important student First Amendment case did not involve a public forum analysis. In *Tinker v. Des Moines Independent Community School District*[2] the Supreme Court confirmed that students do

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not "shed their constitutional rights to freedom of speech or expression at the school house gate."[3] In *Tinker*, elementary and high school students were suspended for wearing black armbands to school as a protest against United States policy in Vietnam. The Court found the suspensions violated the First Amendment guarantee of freedom of expression. It noted that public schools are arms of the state government and bound by all the guarantees of the U.S. Constitution. Thus expression by students within the school must be protected.

The Supreme Court could deal with student newspapers like it did the armbands in *Tinker*, without using the public forum doctrine. However, other federal courts have

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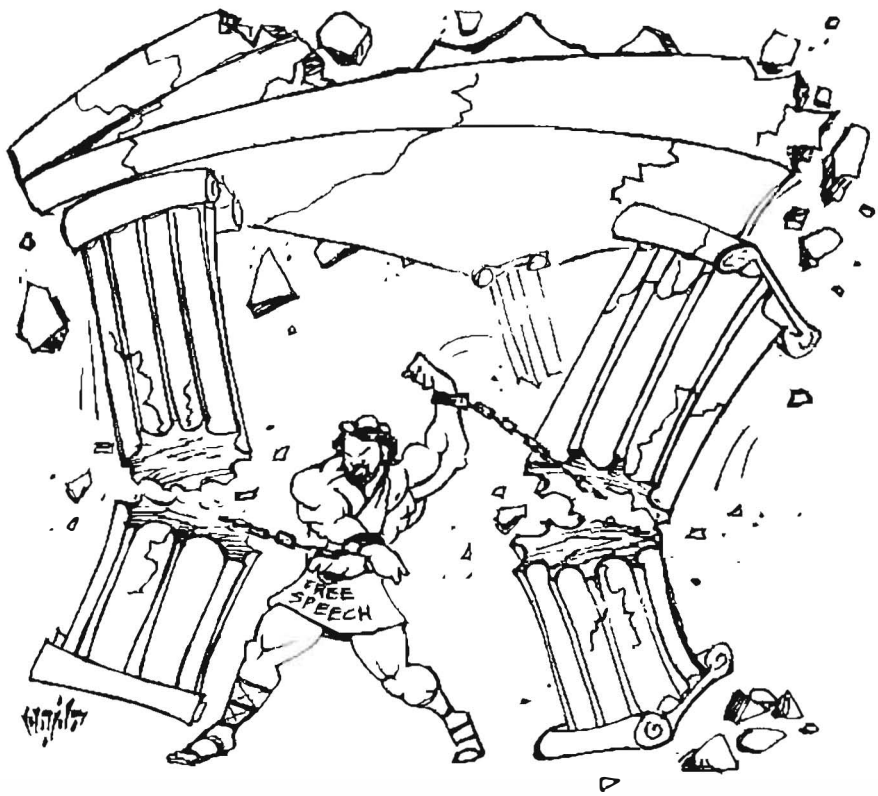
found the forum analysis useful in defining the protection of student journalists.



Lower Courts Apply the Doctrine

Student publications have consistently been recognized as public forums by lower courts. In *Zucker v. Panitz*[4] a New York federal district court rejected a school district's claim that the student newspaper was primarily a curricular device. The court found that the newspaper was a vital forum for student expression as it was more than "a mere activity time and place sheet."[5] A student literary magazine produced by students but connected to a course in the curriculum and supervised by a faculty advisor was deemed a public forum by the Fifth Circuit in *Bazaar v. Fortune*.[6] In *Gambino v. Fairfax County School Board*,[7] a court of appeals affirmed a district court ruling that a newspaper on which staff members were enrolled in a journalism class and received academic credit was a public forum for student expression. The school paper was viewed as a publicly owned medium for the expression of student viewpoints on a variety of subjects. A high school yearbook that allowed students to include a short quotation next to their photograph was found by a Maine federal district court to be a public forum in *Stanton v. Brunswick School Department*.[8] The fact that school officials did not intend to create a school newspaper as a public forum does not mean that the newspaper has not become such a forum. "The state is not necessarily the unrestrained master of what it creates and fosters."[9] Labelling a student publication an "instructional tool" for a course will be irrelevant when the publication does in fact serve as a forum for student expression.[10] These courts say that once a student publication becomes a forum, it is afforded all the protections granted by the First Amendment.

Current Forum Theory: Recent Supreme Court Decisions

The current state of the public forum doctrine has been refashioned to some degree by three fairly recent Supreme Court cases.[11] Although these decisions do not provide a conclusive view of how the Court could classify the student press within the new doctrinal framework, the three opinions taken together shed some light on the current Court's definitional approaches to this question.

The Court has made clear that state ownership or control of a given facility does not by itself render that facility a public forum for expression. Similarly, the fact that the public has access to a government facility does not mean it is a public forum. In *Cornelius v. NAACP Legal Defense and Education Fund* and *Perry Education Association v. Perry Local Educator's Association*, the Court set out its classification of three types of public forums: 1) the quintessential public forum, 2) the limited public forum and 3) the nonpublic forum. Within each forum, the right of access by the public varies as does the degree of limitations the state may impose on that right.

The quintessential public forum includes streets, parks and places that have always been for the use of the public, and "time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."[12] In these sites, the state may not censor expression without showing that the censorship is necessary to serve a "compelling state interest" and that it is narrowly drawn to achieve that end. Time, place and manner regulations that do not affect the forum's content are permitted if they serve a significant government interest and leave open ample alternative channels of communication.

It is evident that a school newspaper is not a quintessential public forum. The state has opened up the forum only for a limited group of speakers — the student staff members. An attempt to classify a student newspaper as a forum for all purposes would open up the possibility of unrestricted access to the publication by students and non-students alike. Such a publication would be a bulletin board, not a newspaper.

Recognizing that forums exist for limited public uses, the Court has created a "limited public forum" or public forum by designation. This category consists of public property which the government has opened for use by the public as a place for expressive activity.

In *Widmar v. Vincent*, the Court held unconstitutional a regulation that prohibited the use of a public university's buildings or grounds for purposes of religious worship or religious teaching. The Court held that the prohibition was content-based discrimination against religious speech for

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which the state had no compelling justification. The Court noted that "through its policy of accomodating their meetings, the University has created a forum generally open for use by student groups."[13] Acknowledging that the school facilities constituted a limited public forum, the Court also made clear that "First Amendment rights must be analyzed 'in light of the special characteristics of the school environment'".[14] The forum described by the *Widmar* Court clearly does not dictate that a university must "make all of its facilities equally available to students and non-students alike." Like school meeting facilities, school newspapers are best viewed as public forums for a limited purpose and for the use of a limited group of people.

To identify a limited public forum the Court has "looked to the policy and practice of the government to ascertain whether it intended to [so] designate a place."[15] In determining the government's intent, the Court has focused on the nature of the property and its compatibility with expressive activity.

Once the state has created such a limited public forum, its ability to impose constraints on the expression taking place within that forum is quite restricted. While the state is not "required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum."[16]

The third type of forum recognized by the Court is that public property which is not by tradition or designation a forum for public expression. A charity drive aimed at federal employees in the federal workplace was found to be a nonpublic forum in *Cornelius*. In *Perry*, public school mailboxes were held by the Court to be a nonpublic forum. Expression within such a nonpublic forum does not receive the same level of protection as the two just discussed. The state may reserve such a forum for its intended purposes as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. The Supreme Court maintains that the right to make distinctions regarding access on the basis of subject matter and speaker identity are implicit in the concept of the nonpublic forum. These distinctions are necessary to limit the forum to expression compatible with the intended purpose of the property. Such forums are not created solely for expressive activity. Expressive activity is secondary to the purposes for which these forums were created.

In *San Diego Committee Against Registration and the Draft v. Governing Board*,[17] a federal court of appeals recently held that a public high school newspaper constitutes a limited public forum under the Supreme Court's analysis in *Cornelius*. Focusing on the state's intent, the court found that "the newspaper, like most other school papers, constitutes, at a minimum, a limited public forum of the type found in *Widmar*."[18] Similarly, in *Kuhlmeier*, the court of appeals found that the school newspaper, *Spectrum* was not merely part of the curriculum, but rather a forum for student expression. It is this decision that the Supreme Court has agreed to review next year.

Based on the tests enunciated in *Widmar*, *Perry* and *Cornelius*, a public school newspaper could be a limited public forum under the Court's analysis. The school's intent to create a forum for student expression is evident. A student newspaper is usually the sole vehicle for expression for students. The word "newspaper" implies news, opinion and other expressive activity. Even though school newspapers are often produced as part of the school's journalism curriculum, they serve a much larger purpose. They are a forum created by the school for students to express their views. The censorship of a school newspaper goes to the heart of the purpose for which the forum was created — uninhibited, robust and wide-open student commentary and debate. Most school newspapers are "conceived, established and operated as a conduit for student expression on a wide variety of topics."[19] These newspapers carry news items of interest to the entire student body.

If a school newspaper is classified as a limited public forum, school officials must justify their intrusion on student expression in this forum with a compelling state interest. In the schools, the Court has said that the compelling interest is in avoiding "material and substantial interference with school work or discipline. . . or the rights of others."[20] As the Court noted in *Tinker*, "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right of freedom of expression."[21] Few would argue that student journalists should be denied the freedom of expression guaranteed by the First Amendment. But whether that freedom will come through the public forum doctrine or some other legal principle, the Supreme Court may soon decide.■

NOTES

[1] 795 F.2d 1368 (8th Cir. 1986) *cert. granted*, 107 S. Ct. 926 (1987)

[2] 393 U.S. 503 (1969)

[3] *Id.* at 506

[4] 299 F. Supp. 102 (S.D.N.Y. 1969)

[5] *Id.* at 103

[6] 476 F.2d 570 *aff'd en banc per curium*, 489 F.2d 225 (5th Cir. 1973), *cert. denied*, 416 U.S. 995 (1974)

[7] 429 F. Supp. 731, *aff'd per curium*, 564 F.2d 157 (4th Cir. 1974)

[8] 577 F. Supp. 1560 (D. Me. 1984)

[9] *Antonelli v. Hammond*, 308 F. Supp. 1329, 1337 (D. Mass. 1970)

[10] *Trujillo v. Love*, 322 F. Supp. 1266, 1268 (D. Colo. 1971)

[11] *Cornelius v. NAACP Legal Defense and Education Fund*, 105 S. Ct. 3439 (1985); *Perry Education Assoc. v. Perry Local Educator's Assoc.*, 460 U.S. 37 (1983); *Widmar v. Vincent*, 454 U.S. 263 (1981).

[12] *Hague v. CIO*, 307 U.S. 496, 515 (1939)

[13] *Widmar*, 454 U.S. at 267

[14] *Id.* at 268 n. 5 (*quoting, Tinker*, 348 U.S. at 506)

[15] *Id.* (*citing, Perry*, 460 U.S. at 47)

[16] 105 S. Ct. at 3449

[17] 790 F.2d 1471 (9th Cir. 1986)

[18] *Id.* at 1476

[19] *Gambino*, 429 F. Supp. at 735

[20] *Tinker*, 393 U.S. at 511

[21] *Id.* at 508.

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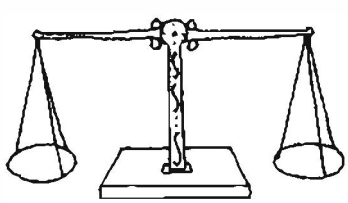

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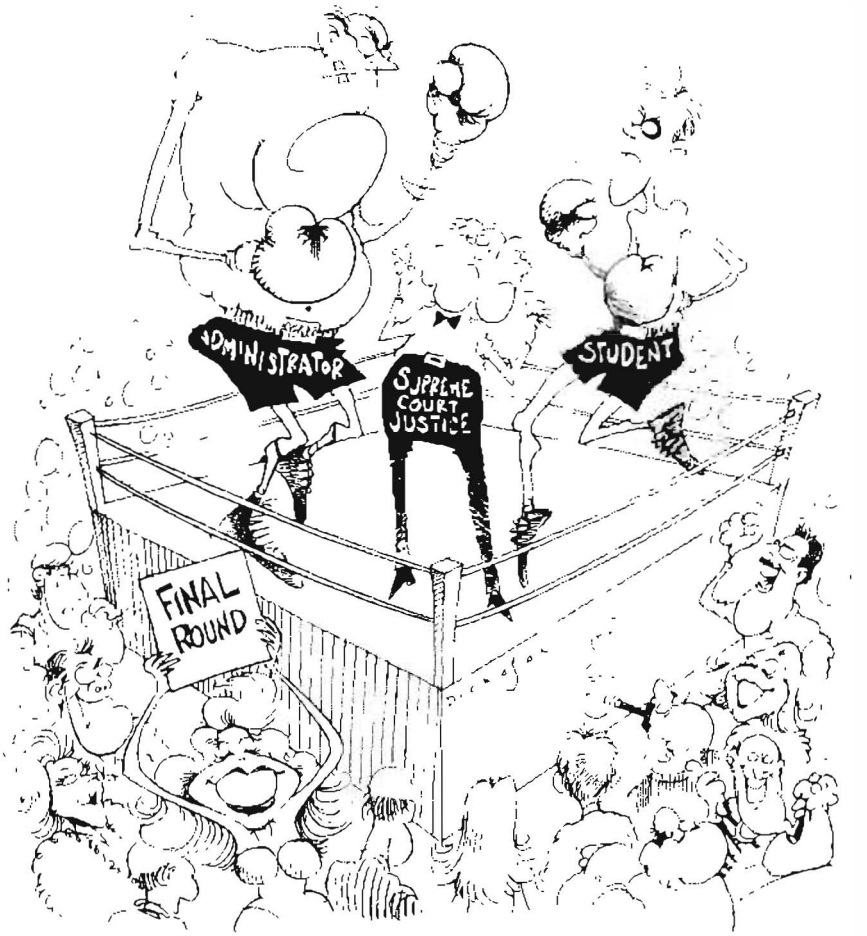

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