

student press law center

report

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Editor KOs Crime Cover-up

CO-EDITORS

Genienne Mongno
Washington and Lee University

Amy Tischer
University of Wisconsin at Madison

WRITERS

Tom Breeden
Washington and Lee University
School of Law

Damian Marhefka
Stanford University

COVER ART

Jack Dickason

ART

Ed Barlow	Kay Engelmann	Stephen Rountree
Andrew Bates	Mark Fearling	Anthony Sansone
Ben Burgraff	Bryn Hendrickson	Ellen Stern
Essen Daley	Charles Murray	Ed Taylor
	Jennifer Nelson	

Student Press Law Center Report

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Fighting Crime and the Department of Education

In this issue of the *Report*, we cover two major court victories for college papers seeking information about campus crime. Editors Traci Bauer, at Southwest Missouri State University, and Rosa Jones and Shea Wilson at Southern Arkansas University, fought long and hard for the reports of their campus police and security departments. Their success will undoubtedly change the way colleges around the country make crime information available to the public. These student journalists are true heroes to all who want to make campuses safer places.

Despite these victories, a distressing turn in the battle for access to campus crime reports has come from the U.S. Department of Education. For reasons the department is unable or unwilling to provide, it has actively encouraged schools to cover up campus crime and even threatened the withdrawal of federal funding from some schools that do give public access to police reports. The expressions of dismay of the media community over these actions have been met with silence from the department. Education Secretary Lamar Alexander has yet to offer one public statement on his motivation for this interference.

The SPLC hopes that the Department of Education will soon realize that it has made a grave mistake in pursuing this misguided policy. Two courts have now made that point clear. As this issue of the *Report* goes to press, other college newspapers, with the support of the SPLC, are preparing to file suit against their schools for denying access to crime reports. The waste of this litigation, and

the ongoing threat to the safety of students on campuses where crime is covered up, rests squarely on the Education Department's shoulders.

Just say no to prior review

The Secondary Education Division of the Association for Education in Journalism and Mass Communication reports that three scholastic press associations in Ohio have decided to give special recognition in their competitions to those schools where administrators avoid prior review of student publications.

The Northeastern Ohio Scholastic Press Association, the Great Lakes Interscholastic Press Association and the Journalism Association of Ohio Schools, agreed at a joint meeting in January to take the step as a celebration of the 200th anniversary of the Bill of Rights. The groups agreed to ask each school entering annual contests to get the principal or superintendent to sign off on a form that stated that they would not review the newspaper or magazine prior to publication. Each would then give bonus points or would have a special commendation for those schools involved.

These associations deserve special commendation for coming up with a creative method of helping persuade school officials that prior review is bad business.

Yearbooks and the law

The SPLC is pleased to announce the publication of a new booklet created specifically to address the legal issues most often confronted by student yearbook journalists. *Rights, Restrictions &*

Responsibilities was written by Hinsdale (Ill.) Central High School yearbook adviser Linda Kennedy with SPLC Executive Director Mark Goodman. The publication was made possible through the contributions and efforts of the National Scholastic Press Association, Walsworth Publishing Company and Taylor Publishing Company. See the back cover of the *Report* for information about ordering the 19-page booklet.

Speaking of publications

The SPLC receives a significant number of calls from students and advisers about the publications we have available and how to get them. For our newest publications and our book *Law of the Student Press*, see the back of the *Report* for order information.

Two other SPLC publications:

IRS Form 990: A Public Record for the Private School Journalist — Our packet about how private school students can get and use the tax returns filed by their institution. A must for every publication that would like to have access to salaries of top administrators and for any reporter dealing with non-profit organizations. \$5 per copy.

Access to Campus Crime Reports — A "how to" description for getting access to the reports of campus police and security departments. Includes citations for each of the state open records and crime statistics laws and a sample freedom of information request letter. First copy free (with name of publication and school), additional copies \$5.

If you have an idea for a new SPLC publication, let us know.

The Report Staff

Genienne Mongno is a June 1990 graduate of Washington and Lee University. She will attend law school at the College of William & Mary in the fall. She plans on pursuing a career in law and strolling on Broadway in her spare time.

Amy Tischer is a junior at the University of Wisconsin at Madison. She will

be working in Kansas this summer as a copy editing intern at *The Wichita Eagle*. She wants to be a city editor when she grows up.

Damian Marhefka is a June 1991 graduate of Stanford University. He will enter the graduate school at the University of Washington in the fall. A Calvin and

Hobbes groupie, he is waiting for them to go on tour.

Tom Breeden is a May 1991 graduate of Washington and Lee School of Law in Lexington, Va. Prior to law school, he attended Cornell University. He plans to open his own law practice unless something better comes along.

Student Editors Win Access

Crime Reports Not 'Education Records,' Judges Say



State Sunshine Law Applies to Reports, Declares Missouri Federal Court Judge

MISSOURI — Student journalists and media groups hailed a federal court decision that opens access to campus crime records, but the tide of optimism temporarily ebbed when the U.S. Department of Education called on the court to reconsider its decision.

In his March 13 decision, U.S. District Court Judge Russell G. Clark ruled overwhelmingly in favor of student editor Traci Bauer in her suit against Southwest Missouri State University in Springfield. Campus security department incident reports are not education records, as defined by federal law, and are subject to the Missouri Sunshine Law, Clark said in his 49-page decision. He also declared that SMSU's failure to disclose the information is unconstitutional and awarded Bauer \$1 in damages. (See CRIME, p. 13.)

"This is not my victory but the victory of the students at Southwest Missouri State University," Bauer said. "I think they're the real winners." Others agreed, adding that the court's decision could be even more far-reaching.

"This is a precedent-setting case which could affect thousands of schools in Missouri and across the country," said Paul Kincaid, SMS director of university relations and a defendant in the case.

Bauer filed the suit in January 1990 after SMS refused to give the *Standard* information about an alleged rape involving a varsity basketball player. For the first time the university claimed it could not release security reports for fear of violating the Family Educational Rights and Privacy Act. Commonly

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Arkansas Circuit Court Adopts Findings in Missouri Case and 'Rules in Like Fashion'

ARKANSAS — The *Bauer v. Kincaid* decision played a key role in a ruling that ordered Southern Arkansas University in Magnolia to provide unconditional disclosure of its crime reports.

In an April 16 letter to the parties in the case, state Circuit Court Judge Harry F. Barnes stated that the facts in the Missouri decision and the case before him were very similar.

"This Court can substantially adopt the findings of that Court and rule in like fashion," he wrote. Judge Barnes then ruled that campus police incident reports are not education records, as defined by the Family Educational Rights and Privacy Act, and are subject to the Arkansas Freedom of Information Act.

Editor in chief Rosa Jones, who filed the suit, and her lawyer, Robert Depper, were "very pleased" with the ruling.

"The laws are stacked against the

school," Jones said. University officials were awaiting the signing of the court's order before making any decision about further action, said Roger Giles, SAU director of planning and personnel.

Paul McMasters, chairman of the Society of Professional Journalists' Freedom of Information Committee, hailed the decision as "fabulous news" for students' First Amendment and safety rights. The decision also strengthened the Missouri ruling by endorsing Judge Russell G. Clark's findings, he said.

Although the Missouri ruling was not legally binding in Arkansas, it was "persuasive authority" in the case, Depper said.

Jones and another editor of *The Bray* sued Southern Arkansas University in March 1990 for refusing to release university crime reports. The suit alleged

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Cartoon by Jeff Quire. Reprinted with permission of the Western Kentucky University College Heights Herald.

Survey: Funds Never Lost For Disclosing Reports

Education Department Letter Freezes Access to Uncensored Reports on Five Campuses

WASHINGTON, D.C. — In an effort to free the flow of crime information on campuses nationwide, the Student Press Law Center conducted a survey that inadvertently limited access to crime reports at five universities.

Twenty-four schools surveyed by the SPLC in January and February reported that they routinely provided the student media with access to comprehensive campus crime information and had never been threatened with loss of federal funding as a result.

Twenty-four schools surveyed by the SPLC in January and February reported that they routinely provided the student media with access to comprehensive campus crime information and had never been threatened with loss of federal funding as a result. SPLC Executive Director Mark Goodman presented the findings in federal court in February on behalf of student editor Traci Bauer in her suit against Southwest Missouri State University in Springfield. (See STATE SUNSHINE, p. 4.) SMSU released the information on 14 of the 24 schools surveyed to the Department of Education, which then sent an "advisory" letter to those schools, warning them that releasing campus crime records could result in the loss of federal funds. Five of the 14 schools notified by the department indicated that their access to campus police incident reports had changed as a result.

The purpose of the survey was to emphasize that many colleges and universities around the country do give access to campus police reports without any consequences under the Family Educational Rights and Privacy Act, commonly known as the Buckley Amendment. The Buckley Amendment was passed by Congress in 1974 to insure access by parents and students to

student "education records" and to prevent schools from revealing those records to others. The law allows the U.S. Department of Education to withdraw federal funding from schools that violate its provisions.

Some schools, including SMSU, had interpreted Buckley to include campus police reports that name students as education records. These schools denied the student media access to campus crime reports, claiming that they could lose federal funding as a result.

The federal district court in *Bauer v. Kincaid* ruled that Congress never intended the definition of education records to include crime reports.

The SPLC survey

Calls were made to student newspapers around the country that the SPLC had reason to believe had a good rapport with their campus police or security department. The survey sought to discover how much access the newspaper had to campus crime reports, how long it had such access and whether the institution had ever lost or been threatened with the loss of federal funding if crime information, including names of students, was disclosed. Of the 24 schools surveyed that were giving campus crime information, not one had ever been threatened by the U.S. Department of Education with the loss of federal funding for providing their student media access to campus police records. These findings were then confirmed by contacting a university official or the public safety

department at the school.

Nineteen newspapers reported receiving the reports for at least two years, and six papers reported having access since before the mid-'70s. One newspaper reported access since 1965.

DOE letters

LeRoy S. Rooker, director of the Family Policy Compliance Office at the Education Department, sent letters to the heads of 14 of the 24 schools that participated in the SPLC survey. In a letter addressed to Gordon P. Eaton, president of Iowa State University, Rooker maintained that "[a]ny co-mingling of records between the two records systems will subject all of the law enforcement records to the requirements and limitation of FERPA's provisions." He further said that disclosure could jeopardize the university's federal funding.

Goodman blasted the department's action.

"Apparently, your Department is now in league with those institutions that are more concerned about maintaining their image than in the safety of their students," Goodman wrote in a letter protesting the department's action.

Goodman also denounced the department's "deceptive" use of the SPLC survey.

"By using the name of the Student Press Law Center in the very first sentence of his letter, Mr. Rooker suggested that we had been acting as the Depart-

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Bauer *From page 4*

known as the Buckley Amendment, for its sponsor, former Sen. James L. Buckley, R-N.Y., the 1974 law allows the Education Department to pull federal funding of schools that release student education records.

"It was just an overnight thing," Bauer said of the decision by SMSU to close its crime records. She had requested the report in the spring of 1989.

The university board of regents voted unanimously not to appeal the decision. The board also agreed to follow the terms of the ruling and to pay Bauer up to \$8,000 for legal expenses.

"We certainly respect the court's opinion," SMSU attorney John Black said. "It bears careful study because of the important issues raised as to universities and students in Missouri and across the country."

Reactions to the decision

"I think Judge Clark has struck a real blow against crime on campus and I think potential student victims owe a debt of gratitude to Traci Bauer," said Paul McMasters, chairman of the Society of Professional Journalists' Freedom of Information Committee and deputy editorial director of *USA Today*.

"This is an important decision and makes a strong statement that students have the same right to know what is happening in their communities as other Americans," said SPJ President Frank Gibson. "We hope it sends a clear signal to college administrators that the Buckley Amendment was never intended to block the flow of information vital to public safety."

McMasters said that the organization had been searching for a case to be tried in federal court, where it would stand as a precedent, because campus crime is a problem everywhere. SPJ contributed \$5,000 to help cover Bauer's legal expenses.

"Traci Bauer has won an important battle for the college media and the public around the country. The Student Press Law Center is proud of the role we've played in supporting her case," said SPLC Executive Director Mark



Cartoon by Bob Palmer. Reprinted with permission of The Springfield News-Leader.

"I would think that the secretary of education could find a better way to utilize his time than to come here to the Ozarks and beat up on a little 22-year-old student editor."

Douglas Greene
Attorney for Traci Bauer

Goodman. Bauer contacted the SPLC during the spring of 1989 and received legal advice from the center until it found a lawyer to represent her without charge. Dan Dodson, Steve Garner and former Missouri appellate judge Douglas Greene represented Bauer.

The DOE steps in

The court spurned an attempt by the U.S. Department of Education to intervene in the case. The department had filed motions in federal court, two weeks after Judge Clark handed down his decision, asking that the ruling be modified or that the department be allowed to appeal the decision in place of SMSU. Judge Clark overstepped his jurisdiction when he ruled on the application of the Buckley Amendment, the motions claimed. The Education Department requested the court withdraw the part of the decision dealing with the federal law, arguing that it was "tangential" to the case. The department's request would have forced the issue of the public's right of access to campus police reports to go to court in each of the 50 states.

At the trial, Bauer's lawyers had reasoned that federal law was relevant because the Buckley Amendment was relied on by SMSU for its denial of access.

In his April 16 order, Judge Clark found that the department had acted too late to intervene in the case. Southwest Missouri State University had notified the Education Department of the specifics of the case in September 1990. The university then received a response in October stating, "[T]he Department is not inclined to file a brief with the Court in this matter."

At press time, the department had not decided whether or not to appeal the court's decision.

The Education Department declined to comment on either Judge Clark's decision or the move to intervene, opting instead to let the motions "speak for themselves," a department spokesman said.

"I would think that the secretary of education could find a better way to utilize his time than to come here to the Ozarks and beat up on a little 22-year-

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old student editor," said Bauer's attorney, Douglas Greene, of the department's motion to intervene. Greene further said that the department's position that crime reports are education records was "ridiculous," and applauded the court for recognizing it as such.

Shortly after the court denied the department's motions, the SPJ tried setting up a meeting with education officials to explain why the department's policy was not a good one and to discourage further action to close crime reports on campuses, according to McMasters.

"We would like to persuade the secretary of education that these court decisions are right and proper and protect students on campus," he said. "[There are] those in the Department of Education bureaucracy who view college officials as [their] constituents and not students or the public."

"The Education Department is now a co-conspirator in the effort to cover up campus crime," Goodman charged.

McMasters was disappointed in the Education Department for failing to tackle issues surrounding the Buckley Amendment for 17 years and then stepping in the Bauer case after the decision was handed down. It was a "remarkable waste of taxpayer's money to rehash the issue," he said of the department's motions to intervene.

McMasters said he is concerned that even though the court struck down the department's motions, the Education Department will take any action available to drag the issue out in order to "create as much doubt on campuses" as possible, leading many administrators to take the conservative approach and halt or limit the release of crime information.

"We will continue to fight this case wherever college officials or the Education Department take it," McMasters vowed. He also said that SPJ will continue to support student editors around the country.

The Education Department would be "surprised at the strength and conviction of the battle now," he said, predicting that a number of press and academic associations will pledge their support in light of the Missouri decision.

"We will continue to fight this case wherever college officials or the Education Department take it."

Paul McMasters
Chairman of the SPJ Freedom of Information Committee

"We've got an Administration that claims to be pro-education and anti-crime. To take a step like this shows how hollow their support for both of these issues is," Goodman said. He said that the SPLC would help other students file lawsuits if their schools refused to open campus police records.

The hearing

The March 13 ruling came several weeks after the court held an evidentiary hearing to determine some disputed facts of the case.

During the four-day trial that began on Feb. 20, the university sought to prove that its failure to release crime information was an attempt to protect the privacy of students, in compliance with the Buckley Amendment. SMSU also attempted to show that the Springfield police chief was satisfied with the cooperation between the campus and city police departments.

Bauer's attorneys charged that SMSU selectively withheld crime information in an effort to uphold the school's image.

"We will show SMS' response for what it is — a blatant attempt to censor and manage news in violation of the First Amendment," Greene said in his opening statements.

"The issue in this case is which way the balance falls: the public's right to know or the defendant's right to get money," Judge Clark said during the trial.

SPLC Executive Director Mark Goodman testified as an expert witness for Bauer. The U.S. Department of Education had never issued letters threatening an institution's federal funding for disclosing campus crime records, he testified. Goodman also presented the results of a survey conducted by the SPLC that showed 24 campuses regularly released crime information and had never been threatened with the loss of federal funding. (See SURVEY, p. 5.)

The university's case was further damaged by two other witnesses: SMSU Safety and Security Department Director Michael Batchelder and retired Springfield Police Major Bill Hensley.

Batchelder admitted blacking out the name of a top university official accused on an incident report. Evidence also pointed out that the equipment theft mentioned in the report was not referred to city police.

"I felt if that person's name wasn't blacked out it would bring about undue rumors," Batchelder said.

Batchelder also testified that Safety and Security Department reports were not educational records, contradicting claims by the university that disclosure of crime reports would violate terms of the Buckley Amendment, which bars the release of student education records.

In a February 1988 meeting with Jerry Patton, the SMSU vice president for administrative services, Hensley said he discovered that the university did not report nine sex crimes to city police. Patton said that SMSU wanted to cast a good image to recruit students and athletes and to convince lawmakers to approve a name change for the university, Hensley said.

The trial demonstrated that the "real agenda" of college officials is to hide embarrassing facts about the university and protect its image, not to protect the privacy rights of students, said McMasters of the SPJ.

"The First Amendment exists so selective concealment does not occur," said Garner, one of Bauer's lawyers, in the final day of the trial.

Voicing the appreciation of student journalists and media groups around the country, Bauer's lawyers thanked her for her unyielding commitment to freeing crime information on the nation's campuses.

"We admire you for fighting for your rights and for the rights of all the citizens of this country," Garner said. ■

CAMPUS CRIME

Rape Ed. Bill Could Limit Access to Assault Reports; Equal Opportunity Bill Would Boost Crime Stats Law

WASHINGTON D.C. — Legislation introduced by Sen. Joseph Biden, D-Del., that would encourage adoption of rape education and prevention programs on college campuses could also freeze disclosure of sexual assault reports.

A provision of the Violence Against Women Act of 1991, bill S15, would provide grants to schools demonstrating financial need in order to implement rape education and prevention programs.

The potential conflict with student free-press rights arises from the eligibility requirements outlined in the bill. Schools are required to have a written policy prohibiting all forms of sexual assault and to disclose the outcome of any investigation to the sexual assault victim, but the law would not "authorize disclosure to any person other than the victim."

The qualification was included in an effort not to counter the 1974 Family Educational Rights and Privacy Act, said a spokesman for Biden's office. That law, commonly known as the Buckley Amendment, allows the Department of Education to pull federal funding for disclosure of student education records.

The proposed provision could further stymie student journalists' access to campus crime reports.

The Crime Awareness and Campus Security Act of 1990 mandates the release and publication of campus crime statistics effective September 1992, but journalists are pressing the courts and state legislatures to force schools to make the

reports available on grounds of safety and First Amendment rights.

Some schools claim crime reports are education records and are reluctant to release the reports for fear of violating the terms of the Buckley Amendment.

The campus rape education bill was heard before the Judiciary Committee on April 9. Biden is chairman of the committee. The bill will most likely pass in committee uneventfully, a committee spokesman said.

In other legislative activity, Sen. Robert Dole, R-Kansas, has introduced legislation that would boost reporting requirements outlined in the federal campus crime statistics law.

Passage of the Women's Equal Opportunity Act of 1991, bill S472, would add sexual assaults or other abusive sexual conduct to the list of crimes schools must report to comply with the Crime Awareness and Campus Security Act. Passed last year, the law requires schools to annually gather and publish campus crime statistics and current campus security policies by those higher education institutions that receive federal funding. The proposed legislation would also require institutions to provide crime reports to parents or guardians of students and local police agencies as well as to students and employees.

The equal opportunity bill was ushered into the Senate Judiciary Committee in February, where it awaits further action. ■

Arkansas *From page 4*

that the university failed to release records in violation of the Arkansas FOI Act and publication guidelines stemming from a 1981 court settlement with the newspaper over a censorship issue.

The university claimed that to release the reports would jeopardize its federal funding, citing the Buckley Amendment.

The federal ruling in Missouri compounded by the Arkansas decision bodes well for the outcome of a case pending in Kentucky, according to the lawyer for the *Louisville Courier-Journal*.

The *Louisville Courier-Journal* — the first commercial newspaper to join the ranks of student journalists battling to gain access to campus crime reports — filed a suit against Murray State University in April 1990.

"Up to now there was very little case law on this point," said William Hollander, legal counsel for the *Courier-Journal*. "[The *Bauer* ruling] should be



very persuasive in our case."

Hollander predicted a ruling by summer. He was optimistic about the outcome of his case after submitting the

Bauer decision to the court. The strong, "well reasoned" decision will be a decisive factor in the upcoming judgment, Hollander said. ■

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Survey From page 5

ment of Education's secret policeman," Goodman said.

He also protested the "veiled threat" of pulling federal funds for disclosure of campus crime information that was included in the letter.

In a letter responding to the charges made by Goodman, the Education Department claimed that the survey was a matter of public record and had been provided by Southwest Missouri State University. Letters sent to the 14 schools were for "technical assistance," and "purely advisory in nature," the department claimed and did not require any follow-up action by the universities. The department also denied any effort to discredit the SPLC.

Impact of DOE letters

Of the 14 schools receiving letters from the Department of Education warning them that their federal funding could be withdrawn for releasing crime reports, five reported changes in crime reporting by campus police. Arizona State University, Colorado State University, James Madison University, the University of Kentucky and the University of Maryland claimed that students' names and any other identifying information were now omitted from reports.

The schools notified by the department that did not report changes in access to campus police reports were the University of Georgia, the University of Idaho, Illinois State University, Iowa State University, Louisiana State University, Memphis State University, Stanford University, Western Kentucky University and the University of North Carolina at Chapel Hill.

The federal court decision in the *Bauer* case that mandated the release of campus crime reports fell on deaf ears on the campuses that denied access. Although the ruling is only legally binding in Missouri, as the first decision to deal with the Buckley issue, the ruling serves as a strong precedent for similar battles for access to comprehensive crime information. Yet many schools seemed reluctant to implement the guidelines of the Missouri decision on their own campuses.

"The Department of Education has taken an unusual role to start interpreting the law and second-guessing the courts."

Wendy Warren
Editor, *The Breeze* at James Madison University

"If that opinion were some brilliantly reasoned, compelling document, it might convince us to rethink our position," said John Darsie, legal adviser for the University of Kentucky, one of the schools to limit access to crime reports. "As of this moment we have no plans to revise our policies just because of the Missouri opinion."

Keith Paul, managing editor of the *Diamondback*, at the University of Maryland, said that while trying to get information about a recent rape on campus, the security department refused to release the name of the victim and would not cite any reason. Paul said that the information had been available in the past. The *Diamondback*, as well as the student newspapers at four other schools denied information, is planning on protesting its loss of access to complete crime reports. Each student newspaper indicated that it was considering legal action, but was going to explore and exhaust other avenues first.

Wendy Warren, editor of *The Breeze* at James Madison University in Virginia, said that she was "furious" at the Education Department for the letter, and was "unsure" of what to do next. She said that the letter was "especially frustrating for us" because the paper and the campus police had enjoyed such a mutually beneficial and cooperative relationship in the past. Campus police took the letter to the deputy attorney general, who advised the university not to release students' names to either the student newspaper or the student affairs office, she said.

"The Department of Education has taken an unusual role to start interpreting the law and second-guessing the courts," Warren said.

The Breeze plans to raise the issue with the attorney general's office. The paper is also consulting with the Student Press Law Center and is considering

taking action against the Department of Education.

Although still receiving access to police incident reports, Western Kentucky University is nervously eyeing its campus security department. Since the University of Kentucky caved in to pressure exerted by the Education Department, the *College Heights Herald* is "leery" that Western Kentucky will soon follow suit, said editor in chief Chris Poore. The present disclosure policy is "up for review," he said. Poore expressed concern that the school would pull access during the summer when students would not be there to protest the action.

At Iowa State University, the student newspaper and the campus security department joined forces and found a way to continue access, bypassing the letter by the Education Department. Marietta Nelson, co-editor in chief of the *Iowa State Daily*, attributed the success to "pretty ingenious legal counsel." The university signed an agreement with the city that allows the campus police to become an arm of the city police and subject to their disclosure standards as outlined in the state open records law. Access was only interrupted for two weeks, one of which was spring break, Nelson said.

The schools allowing the student newspapers access to the crime reports explained that the primary reason for doing so was to increase awareness of campus crime. A number of police chiefs acknowledged that working with the newspaper was an extremely effective weapon for fighting campus crime and for keeping student awareness of campus crime high. At one college that publishes a weekly "police beat" column, the associate director of public safety felt that "campuses that don't allow the media access to their campus crime reports are the one's who should be fined, not the one's who do." ■

Harvard Student Masterminds Campus Security Bill

Proposed Legislation Would Force Schools to Maintain, Release Crime Incident Logs

MASSACHUSETTS — A Harvard University student is the main force behind a campus crime bill that would provide student journalists with access to campus security incident logs.

House bill 1575 is the brainchild of Josh Gerstein, a *Harvard Crimson* reporter. Gerstein not only drafted the bill, but also found a legislator willing to back it. Rep. Robert H. Marsh, R-Norfolk, filed the bill on Gerstein's behalf.

State laws and the federal Student-Right-to-Know and Campus Security Act typically require colleges to collect and publish campus crime statistics and security policies on an annual basis.

Under Gerstein's proposal, campus police would be ordered to keep incident logs, which would be made available to the media and the public. The logs would include crimes reported, names and addresses of persons arrested and the charges against those persons. If passed, the law would provide student journalists the same right of access to campus crime information that they have with local law enforcement agencies.

"College campuses are not immune from crime," Gerstein

said in his opening remarks at the committee hearing. "House Bill No. 1575 would give the college community the information it needs to protect itself against the dangers of campus crime."

"In short, [house bill] 1575 would give college students what other citizens already have: the right to make prudent decisions by learning about crimes and arrests soon after they occur," Gerstein concluded.

Gerstein also addressed the 1974 Family Educational Rights and Privacy Act, commonly known as the Buckley Amendment, that bars colleges from disclosing student education records for fear of losing federal funding. Gerstein maintained that many colleges have been releasing campus crime records, including names, for many years without loss of federal funds. He also cited the *Bauer v. Kincaid* decision in which a federal court judge ruled that campus crime reports are not education records. (See STATE SUNSHINE, p.4.)

Prospects for the bill are "up in the air," according to legislative aide Kate Moran. ■



Crime From page 10

The Texas bill would include all higher education institutions.

The bill was assigned to the House Public Safety Sub-Committee, where it received a favorable vote after a Feb. 6 committee hearing. There was no reported opposition to the bill at the hearing. The bill was ushered out of the house in a 144-0 vote.

"I don't see any opposition" in the senate, said legislative aid Art Nava, who predicted the bill will pass into law uneventfully.

The 12 states that have already enacted campus crime statistics laws are California, Connecticut, Delaware, Florida, Louisiana, Massachusetts, New York, Pennsylvania, Tennessee, Virginia, Washington and Wisconsin. ■

W. Va. to Try Systemwide Access Policy

WEST VIRGINIA — The West Virginia college and university systems are grappling with a policy that would give student newspapers access to crime reports.

The two independent systems have undertaken the task in order to coordinate school efforts to comply with state and federal laws that require the compilation and publication of campus crime statistics.

The state recently passed a law similar to one passed by Congress last year. Sen. Sondra Lucht, D-Berkeley, sponsored the Higher Education Report Card bill, which contained a number of mandatory reporting requirements — including crime statistics — for state colleges and universities.

The law was the product of a compromise forged between the house and

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CAMPUS CRIME



Policy *From page 11*

the senate over specific language in the bill. The bill passed unanimously in the final hours of the 60-day session. The first "report card" will be due in December of 1992.

The federal law instructs institutions receiving federal funding to collect and publish campus crime statistics. The Student-Right-to-Know and Campus Security Act of 1990 takes effect in September of 1992.

The two independent systems seek a "common format" for all state schools to follow, said Charles Manning, chancellor of the university system. A valid comparison of crime statistics can only be drawn if every institution has the same reporting methods, said Joanne Raines, a system public information officer. A uniform policy will "insure that apples are compared with apples," she said.

The two boards governing the university and college systems authorized Tony Serreno, legal counsel for the higher education system, to call a committee together to draft a disclosure policy. In an attempt to represent all interests involved, the nine people that comprise

the committee include students, lawyers, student affairs directors and a public safety director representing state colleges and universities.

"I believe that with the inclusion of students, public safety officials, student affairs directors and lawyers we can be responsive to the press' needs, compassionate and involved in the students' right to privacy, where appropriate, and also find a policy where law enforcement can still operate effectively," he said.

Kevin Lewis, the tentative student representative for the college system, said he supports opening access to campus security incident reports, but not necessarily the names of students. Unsure of the legalities surrounding the issue, Lewis conceded that he is not entirely decided on the issue.

"I don't know the intricacies of the arguments," he said. Lewis was confident that he would become educated about the issue while serving on the committee.

The first meeting is tentatively scheduled for the first week in May. Serreno voiced hopes that the committee will "have presented, adopted and promul-

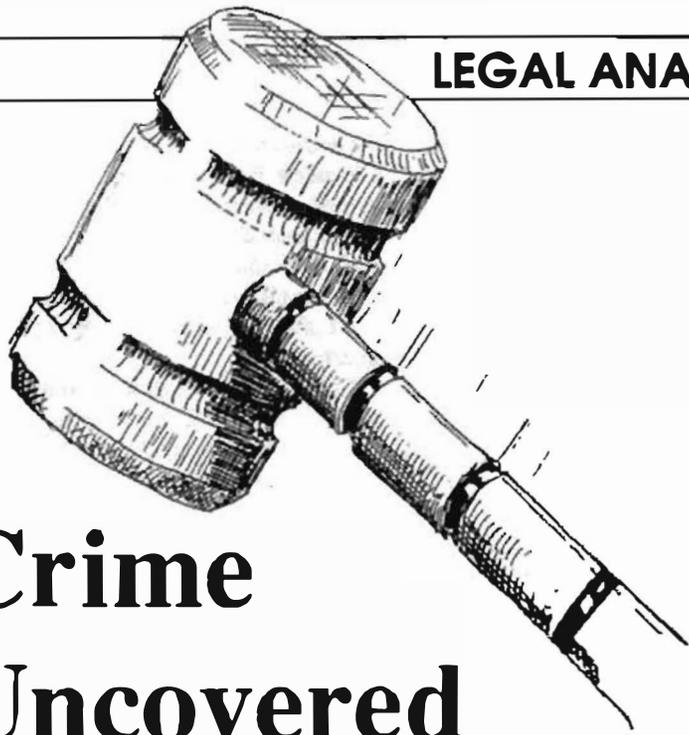
gated a recommendation to the board before the start of the fall semester."

Serreno said that the committee will consider the federal court decision in Missouri that ruled crime reports are not education records. U.S. District Court Judge Russell G. Clark also said in his decision that refusal to release crime records is unconstitutional.

"While compelling, the decision is not controlling," Serreno said. "In addition, we await the United States Department of Education response to that decision."

Until a systemwide disclosure policy is adopted, schools in each of the systems are operating under the interim policy issued after the federal campus crime statistics law was passed.

In a December letter addressed to state college system presidents, Chancellor Paul B. Marion directed schools to prepare daily incident reports. The reports were to include the nature of the incident, the place and context in which the incident occurred, whether or not the suspect is a student, the suspect's gender and whether an arrest was made. If an arrest was made and a suspect was taken into custody, then the name of the suspect could be included in the report. ■



Crime Uncovered

The Bauer v. Kincaid Decision Explains Your Right to Know

Judge Russell G. Clark of the U.S. District Court for the Western District of Missouri issued his decision Wednesday, March 13, 1991, in the case filed by student newspaper editor Traci Bauer against her school, Southwest Missouri State University, for access to campus security department incident reports.

Judge Clark found in favor of Bauer and ordered the following relief:

1) A declaratory judgment stating that criminal investigation and incident reports are not education records as set forth in the Family Educational Rights and Privacy Act (FERPA),¹ commonly referred to as the Buckley Amendment, and Buckley is not a justification for violating the terms of the Missouri Sunshine Law.

2) An order that SMSU's withholding of criminal investigation and incident reports is unconstitutional under the Fifth Amendment due process clause and the First Amendment.

3) An order that the school pay Bauer nominal damages of \$1 for the violation of her constitutional rights.

In its findings of fact, the court noted that SMSU had a security department on campus that was not a commissioned law enforcement agency whose policies were ultimately determined by the board of regents of the university. The court found that this department did collect information about suspected or reported crimes, which was placed in "incident

reports," and that some students did make their initial report of criminal activity to the security department instead of to the city police department or the county sheriff's office.

What the Decision Said

In making its conclusions of law in the case, the court first interpreted the application of the Missouri Sunshine Law to campus security reports. It then interpreted the Buckley Amendment as it applies to those reports. And finally, the court looked at Buckley to determine its constitutionality under both the due process clause of the Fifth Amendment and the free speech and free press clauses of the First Amendment.

The Missouri Sunshine Law

The court ruled that the criminal investigation and incident reports of the SMSU Safety and Security Department are "public records retained by a public body" and thus are covered by the Missouri Sunshine Law.²

The court said that none of the exemptions to the sunshine law justified denial of access to these reports. The court said that the presence of exemptions for student academic and disciplinary records in the law³ "suggest that the legislature did not intend to exempt records maintained by university police departments for law enforcement purposes."⁴ The court cited in its support the decision of a Florida Circuit Court in a case filed by the *Independent Florida Alligator* against the University of Florida. In that case, *Campus Communications v. Criser*,⁵ the court ruled that campus police reports are not educational records.

"An individual's enrollment at a state university does not entitle him or her to any greater privacy rights than members of the general public when it comes to reporting criminal activity," the *Bauer* decision noted in describing the Florida decision.⁶

SMSU had claimed that the exemption to the Missouri Sunshine Law for records "which are protected from disclosure by law"⁷ justified denial because of the application of the federal Buckley

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LEGAL ANALYSIS

Decision From page 13

Amendment. The court ruled that "FERPA is not a law which prohibits disclosure of educational records. It is a provision which imposes a penalty [loss of federal funding] for the disclosure of educational records."⁸ But more importantly, the court ruled that FERPA did not apply to these campus police and security reports (see discussion below).

The Family Educational Rights and Privacy Act

The court said in no uncertain terms that the Buckley Amendment did not justify denial of access to campus police and security reports.

"The limited legislative history available demonstrates that FERPA seeks to deter schools from indiscriminately releasing student educational records. Nothing in the legislative history of FERPA refers to a policy or intent to protect campus law enforcement unit records which contain student names or other personally identifiable information."⁹

"It is reasonable to assume that criminal investigation and incident reports are not educational records [which are protected by FERPA] because, although they may contain names and other personally identifiable information, such records relate in no way whatsoever to the type of records which FERPA expressly protects; i.e., records relating to individual student academic performance, financial aid or scholastic probation which are kept in individual student files," the court's decision said.¹⁰

"The language of the statute which protects 'educational records' demonstrates that the legislature did not intend to include records maintained by a university police department for law enforcement purposes. The Court will not assume that the legislature intended a result which in no way furthers the plain purpose of the statute. The function of the statute is to protect educationally related information."¹¹

Constitutionality under the Fifth Amendment

Bauer claimed that she was being denied the equal protection of the law

"FERPA is not a law which prohibits disclosure of educational records. It is a provision which imposes a penalty [loss of federal funding] for the disclosure of educational records."

Judge Russell G. Clark
Bauer v. Kincaid decision

because the general public is given greater access to police reports that affect them (those of the city and county police departments) than she receives as a student concerning similar reports that affect her (those of her campus security department). The court noted that the Buckley Amendment is a law of the federal government, and that the due process clause of the Fifth Amendment to the U.S. Constitution guarantees that people who are similarly situated will be treated similarly by the federal government.¹²

The court thus found that Bauer's Fifth Amendment due process rights had been infringed because there was no rational reason that students and non-students should be treated differently as far as their access to crime information that affects them.

"If, as the Department of Education asserts, FERPA operates to impose a penalty the result of which treats similarly situated individuals [students and non-students] dissimilarly and has no conceivable rational basis, the statute is unconstitutional under the due process clause of the Fifth Amendment," the court ruled.¹³

Constitutionality under the First Amendment

The court noted that one of the purposes of the First Amendment is to "enable the public to scrutinize the actions of the government through access to government information."¹⁴ Citing

the decision of a Texas court in *Houston Chronicle Publishing Co. v. Houston*,¹⁵ as well as Supreme Court decisions such as *Richmond Newspapers v. Virginia*¹⁶ and *Branzburg v. Hayes*,¹⁷ the court indicated Bauer had a First Amendment right of access to the security reports in question.

"This court agrees that it is our duty to foster the fundamental philosophy of the American constitutional form of representative government which holds that government is the servant of the people and the public is entitled to full and complete information regarding the affairs of government and the official acts of those who represent them," the court said.¹⁸

On that basis the court said the school officials' actions in withholding the criminal investigation and incident reports that contained names and other identifiable information was unconstitutional under the First Amendment.¹⁹

Bauer had presented no evidence of actual damages for the violation of her constitutional rights. Thus the court awarded nominal damages of \$1.

The summary by the court of its decision reads as follows: "In conclusion, the criminal investigation and incident reports are not exempt from disclosure under the Missouri Sunshine Law or protected as educational records by FERPA. If FERPA is interpreted otherwise, to impose a penalty for disclosure of the criminal investigation and incident reports, it is unconstitutional. Lastly, plaintiff is, and always has been, at liberty to publish information which she has obtained from collateral sources which directly relates to a student."²⁰

The Significance of the Decision

The *Bauer* decision will undoubtedly have an impact far beyond the Southwest Missouri State University campus for several important reasons. Although the decision is only precedent for courts in the western half of Missouri, it will be a guide for judges around the state and the nation in deciding cases that involve similar issues. The school announced on March 15 that it would not appeal the decision.

For Missouri residents, the decision makes clear that police incident reports

LEGAL ANALYSIS

are covered by the state sunshine law as are all records of public colleges and universities not specifically exempted by the law. It is the first case in the state to apply the sunshine law to records of an administrative department within a state university. Student journalists in Missouri should be able to get access to a significantly greater amount of information from their schools as a result.

For student journalists and others battling the Buckley Amendment, the decision clarifies the scope of "education records" that schools could lose their federal funding for revealing. Campus police and security reports, even if they name individual students, are not "education records." In addition, the court gave a much narrower definition of what will be considered education records under FERPA than the U.S. Department of Education has given: "[R]ecords relating to individual student academic performance, financial aid or scholastic probation which are kept in individual student files. These records are quite appropriately required to be kept confidential," the court said.²¹

Thus, while the Buckley Amendment no longer applies to campus police and security reports, it also may not apply to other records that do not fit within the definition of the court enumerated above. For example, schools may not be able to deny access to records relating to disciplinary proceedings against fraternities or sororities simply because students are named in them or to records of students kept in an employment file when they work for their school.

Given that the federal courts have the ultimate authority to interpret federal law, the *Bauer* decision should force the Department of Education to change the way it has been interpreting the Buckley Amendment. This part of the decision was unrelated to the Missouri Sunshine Law, thus it should have significance to schools around the country. On March 27, 1991, two weeks after the decision was announced, the Department of Education filed a motion in the court in Missouri attempting to intervene in the case. For reasons the department refuses to provide, it asked Judge Clark to modify his decision in a way that would force students in each state to go to court

for access to campus police reports rather than allow this decision to settle the matter of the interpretation of FERPA once and for all. The court denied the motion to intervene on April 16. As of April 24, the DOE had offered no word on whether it intended to appeal that decision.

Also significant is the court's holding that the First and Fifth Amendments to the U.S. Constitution prohibit a school from using FERPA to deny access to police or security reports. Now any school, public or private, that attempts to use FERPA to cover up campus crime can be sued by students for infringing their constitutional rights.

For all who seek access to crime records, the court established a First Amendment right of access to some crime information. Only a handful of other courts in the nation have done this. This part of the ruling could be significant to journalists or members of the public who want police reports from any law enforcement agency. Future cases that find a First Amendment right of access to any government proceeding or document will likely cite the *Bauer* case's statement that "the public is entitled to full and complete information regarding the affairs of government and the official acts of those who represent them."²²

A Plan of Action

Student journalists should give their school the time to digest this new decision. Then, if school officials continue to deny access to campus police or security reports, the student media should make a serious threat of a lawsuit. The Student Press Law Center will be glad to help students pursue these cases if their schools do not comply with the requirements of their state open records law.

If you would like a complete copy of the *Bauer v. Kincaid* decision, send \$6 to the SPLC.

- ¹ 20 U.S.C. sec. 1232g.
- ² Mo. Rev. Stat. sec. 610.
- ³ Mo. Rev. Stat. sec. 610.021(6).
- ⁴ Slip op. at 27.
- ⁵ 13 Med. L. Rptr. 1398 (Fla. Cir. Ct. 1986).
- ⁶ Slip op. at 28.
- ⁷ Mo. Rev. Stat. sec. 610.021(14).
- ⁸ Slip op. at 34.
- ⁹ Slip op. at 38.
- ¹⁰ Slip op. at 38-39.
- ¹¹ Slip op. at 39.
- ¹² Slip op. at 40-41.
- ¹³ Slip op. at 44.
- ¹⁴ Slip op. at 46.
- ¹⁵ 531 S.W.2d 177 (Tex. Civ. App. 1975).
- ¹⁶ 448 U.S. 555 (1980).
- ¹⁷ 408 U.S. 665 (1972).
- ¹⁸ Slip op. at 47.
- ¹⁹ Slip op. at 47-48.
- ²⁰ Slip op. at 48.
- ²¹ Slip op. at 39.
- ²² Slip op. at 47.



Cartoon by Bob Palmer. Reprinted with permission of The Springfield News-Leader.

Hangin' Tough

States Still Pushing Free Expression Bills

Just half of the six states that introduced student free expression bills this term still hold out hope that they will soon join the four states where students' press and speech rights are legally protected.

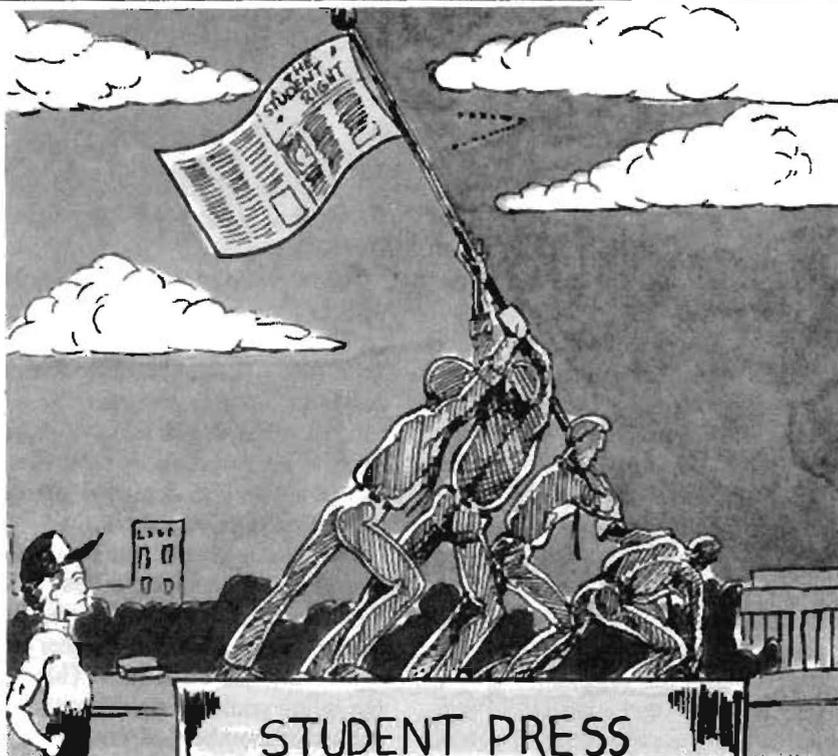
Currently only California, Colorado, Iowa and Massachusetts have laws that effectively counteract the Supreme Court's 1988 *Hazelwood* decision, which gave high school administrators greater latitude to censor school-sponsored publications.

Supporters of the Student Free Expression Act in Indiana are extremely optimistic that their bill will pass through the Senate before the end of the legislative session, said Executive Director of the Indiana High School Press Association Terry Vander Heyden.

"I'm hesitant to say too much, but right now it seems like a sure thing," said Vander Heyden.

The Indiana House of Representatives passed the bill on Feb. 11 by a vote of 84-16. If the bill passes through the Senate, it would need only to be signed by Gov. Evan Bayh before Indiana would become the fifth state to have a student free expression law.

The bill requires all school corpora-



tions to adopt written policies governing "official school publications" that would provide adequate free expression and protection to the student press.

Like the student free expression bills in other states, the Indiana bill states that "material may not be suppressed solely because it involves political or controversial subject matter."

In addition, a section providing immunity for school administrators from civil liability for student expression was added to the bill in response to concerns voiced by the Indiana School Boards Association.

The bill is being sponsored in the Senate by Sen. John Sinks, R-Fort Wayne, and Sen. Tony Maidenberg, D-

Marion. Rep. Hurley Goodall, D-Muncie, was the bill's chief sponsor in the House.

After nearly a year of waiting and reworking in the Assembly Education Committee, the New Jersey bill passed out of committee on April 8 and is on its way to the full Assembly.

The bill, which is sponsored by Assemblyman Anthony Impreveduto, D-Hudson, initially encountered strong opposition from the New Jersey Education Association, said president of the Garden State Scholastic Press Association John Taglierini.

The teachers wanted a clause added to the bill that would prevent them from

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Censorship Threat Hovers Despite Law

COLORADO — When Colorado became the fourth state to pass a high school freedom of expression bill last June, high school newspaper editors and advisers thought they had won the fight for control of their student publications.

But now the battle may begin again as some school districts try to implement publications codes that would give administrators more editorial control than they had before the law passed.

The Colorado law, which was intended to counteract the Supreme Court's 1988 *Hazelwood* decision, requires that the board of education in each school district adopt a "written publications code" that is consistent with the law. The code is to be written and posted by the beginning of the 1991-92 school year.

According to Fran Henry, a publication adviser from the Castle Rock school district, a compromise policy "was

hammered out" in her district after a dispute caused by the school board's extremely restrictive original proposal, which, "went so far as to permit prior restraint."

The disputed Castle Rock proposal stated that "the principal shall also have the authority independently to review any or all materials submitted for publication and to make decisions as to the

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LEGISLATION

Free Press From page 16

being harassed or disciplined if their students published controversial material, he said, adding that the clause has been inserted.

There are 50 co-sponsors of the bill, said Taglierini. In addition, he said, the New Jersey Press Club and the *Asbury Park Press* have voiced their support for the bill.

The bill passed out of the Senate Higher Education Committee by a vote of 3-2, according to a spokeswoman from *Imprevuduto's* office. She said there is no word on when the bill will be heard by the full Assembly.

The Michigan bill appears to be the third and last bill with a possibility for passage this legislative session.

The bill, which was introduced in March by Rep. H. Lynn Jondahl, D-Ingham, was referred to a committee in late March but because of the legislative spring break, no action was taken on the bill before press time.

In Kansas, initial optimism turned to disappointment when its bill swept through the Senate in March but was tabled by the House due to lack of time in the session, said chairman of the Kansas Scholastic Press Association's legislation committee Ron Johnson.

"We're on the back burner for another year," said Johnson. "We have a good bill, we simply ran out of time."

Johnson said he was encouraged, however, because this time around the bill was pursued in "the spirit of compromise." The original version of the Kansas bill died in the Senate Education Committee in March 1990.

"We are compromising yet our principles are still intact," he said.

The amended bill covers both high school and college publications. Under its terms, press freedom is guaranteed for student publications. Faculty members would be allowed to review materials to "ensure they are consistent with high standards of English and journalism."

The Senate passed the bill by a vote of 37-2, said Johnson. He added that the Senate vote of confidence would allow the bills supporters to focus next year's lobbying efforts on the House.



The bill was sponsored by Sen. Lana Oleen, R-Manhattan, a former high school journalism teacher as well as editor of her college yearbook. Ten of the 40 senators signed on as co-sponsors, Johnson said.

Student press supporters in Washington and Montana also introduced bills this session. In both states the bills passed through the House of Representatives but met with opposition in the Senate.

Pat Sullivan of the Washington Journalism Education Association said the Republican majority in the Senate Rules Committee voted its bill down on party lines. Sen. Nita Rinehart, D-Seattle and Sen. Phil Talmadge, D-Seattle, co-sponsored the bill, which according to Sullivan, was closely patterned on the Colorado student free expression law.

In 1990 a free press bill sponsored by Talmadge died in the Senate Committee on Education after one hearing.

Although disappointed by the bill's defeat, Sullivan said she was encouraged by the progress made. "We got a lot further this year," she said, adding that both students and schools were very supportive.

Sullivan said supporters of the bill would like to reintroduce next session. She said they would concentrate lobbying efforts on the districts of rules committee members.

"We think next year we can get a more

bipartisan sponsorship in the Senate," said Sullivan.

The Montana bill, which was introduced by Rep. Ben Cohen, D-Whitefish, passed in the House on Feb. 20. According to Cohen aide Ben Darrow, the bill was then voted down by a Senate Committee. The next regular legislative session is not until 1993.

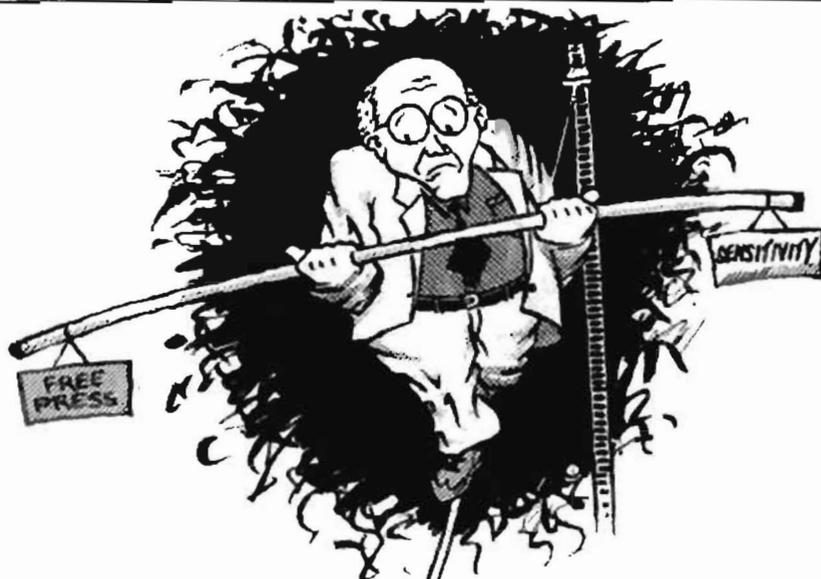
Student free press bills have been drafted, but not introduced in Idaho and Wisconsin.

In Idaho the campaign is being led by high school teacher Barbara Croshaw from Pocatello. Idaho Falls journalism adviser Ron Bennett said they want to make sure the bill is solid before it is introduced.

Brad Kelly, an aide to Wisconsin Assemblyman Peter Bock, said Bock had definite plans to reintroduce this session, but the bill's drafting was delayed because of budget hearings.

Kelly said Bock's office had been working with the American Civil Liberties Union on some language changes in the bill's religious freedom section. They are trying to make it "more palatable" to religious groups, he said.

Legislators in Illinois, Ohio and Wyoming, who introduced student free press bills that were killed last session, all decided not to reintroduce the legislation this year. ■



Colorado

From page 16

suitability thereof."

After this first policy was introduced, Associate Editor for the *Rocky Mountain News* Jean Otto wrote a letter to Henry in which she said the proposed code "not only allows but invites the very kind of censorship it was intended to prevent."

The Colorado free expression law specifically states that "no expression contained in a student publication, whether or not such publication is school sponsored, shall be subject to prior restraint."

Henry, who was also at the forefront of the push to get the free expression law passed, said although there are still some problems with the "compromise" code, it does "leave students firmly in control of content."

This proposal would shift responsibility for determining whether the students are within the law away from the principal and to the adviser, said Henry. "It is clearly a lot better [than the original proposal]," she said.

Henry still intends to work for changes in the code before it is finalized.

Jefferson County, Colorado's largest school district, is also having difficulty drafting an acceptable publications code, said journalism teacher Jim Bock.

According to Bock, a policy was presented to journalism teachers throughout the district. This policy, he said, "instituted a prior restraint and review system."

The policy allowed for the principal to

come in whenever he wanted and review the material before publication, said Bock. "It's vague enough to allow it to apply to anything."

After rejecting the district's proposal, a group of journalism teachers got together and drafted their own, said Bock. The "teacher policy" removes the prior restraint clause, but allows the principal to intervene if there is a problem involving the areas where students are restrained by the law.

These areas include: obscenity, libel, slander and defamation, and expression that creates a "clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the substantial disruption of the operation of school."

"I'm not sure I have a big problem with that," said Bock, referring to the limited review powers granted to the principal in the revised code. "I just want the language to be tighter," he said.

Bock said the code will be presented to the school board in May. He said he is confident a compromise can be reached similar to that in Castle Rock.

Executive Director of the Colorado High School Press Association Don Ridgeway said Jefferson County and Castle Rock are the only districts where he was aware of problems.

"The question is," he said, "How many school districts are conscious of the fact that they need to have [a policy written by next fall?]" ■

Bill Targets University Hate Speech Prohibitions

WASHINGTON, D.C. — In an effort to curb the growing trend among colleges and universities to adopt speech-restrictive disciplinary codes, U.S. Rep. Henry Hyde, R-Ill., introduced legislation in March that would give private school students the right to legally challenge these codes.

"Free speech is under siege in our country today in places where it ought to be nurtured, protected and enhanced, namely at our universities," Hyde said.

The bill titled, "The Collegiate Speech Protection Act of 1991," would amend the Civil Rights Act of 1964 to give students at private colleges the right to challenge in federal court university codes that contain penalties for so-called "hate speech." Students at public colleges and universities already receive protection from such codes under the First Amendment.

Specifically, the bill prohibits any college or university that receives federal funds from creating or enforcing "any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication protected from governmental restriction by the first article of amendment to the Constitution."

American Civil Liberties Union President Nadine Strossen endorsed the bill at a press conference with Hyde. She said although the ACLU opposes racism, sexism, homophobia and other biases on college campuses, it supported the bill because "efforts to combat such ills must not take the form of suppressing freedom of thought and expression."

"As society strives for a greater commitment to equal opportunity in academia it must not and need not relax its unequivocal commitment to free speech," said Strossen.

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Speech From page 18

A recent survey by the Carnegie Foundation for the Advancement of Teaching indicated that about 60 percent of colleges and universities have adopted student-conduct policies barring speech considered racist, sexist or derogatory toward ethnic or religious groups.

In January, a student at Brown University was expelled for shouting anti-black, anti-Semitic and anti-homosexual remarks in a university courtyard. The student is believed to be the first undergraduate at any institution to be dismissed for violating an anti-harassment code.

Students at the public University of Lowell in Massachusetts successfully challenged their school's speech code after administrators tried to punish them for publishing several cartoons that some perceived to be sexist and racist.

Massachusetts Board of Regents attorneys advised the college to drop the charges against the students saying legal action would probably be precluded by the First Amendment. (See FIRST AMENDMENT, p. 27.)

According to Hyde, the 1987 Civil Rights Restoration Act allows Congress to regulate any private college as long as "any of their constituent parts receive federal aid." Since most colleges receive some form of federal aid most schools will be covered by the new act, said Hyde.

"For so many years academic freedom was a hallmark of higher education. Now we are finding that there is so much ethnic, racial, religious and political sensitivity that some of the most bizarre things are happening because opinions are being expressed and comments are being made that offend one group of another," Hyde said.

Hyde's proposal exempts any school controlled by a religious organization where the bill's requirements "would not be consistent with the religious tenets" of the organization.

According to Hyde, this exemption is consistent with the Education Amendments Act of 1972. Before a school could qualify for the exemption it would

be required to submit a written statement identifying a conflict.

In addition, a school seeking exemption would have to meet one of three Department of Education conditions:

- 1) It must be a school or department of divinity; or
- 2) It must require its faculty, students or employees to be members of, or espouse a personal belief in, the controlling religious organization; or
- 3) Its charter and catalog, or other official publication, must contain an explicit statement that it is controlled by a particular religious organization that appoints its governing body and provides a significant amount of financial support.

The bill would also allow universities to punish students for speech "traditionally excluded from First Amendment protections."

This would include speech that is obscene, libelous or constitutes a "clear and present danger" to public safety. In addition, universities would be allowed to "impose time, place and manner restrictions on speech to the same extent as can any governmental entity."

"I think part of growing up is learning how to deal with opinions you hate," Hyde said. "Shooting the messenger is not a way to deal with bad news or unpopular opinions."

"I do not condone bigoted speech, but driving such sentiments underground through academic sanctions does not eliminate bigotry, it just makes it fester," he said. "Instead we should unleash the most effective weapon of a democratic society — more speech."

A spokesman from Hyde's office said they are hoping for a hearing on the bill sometime this summer. ■



Libel Decision Weighs Public or Private Status of D.C. Coach

Washington D.C. — The District of Columbia Court of Appeals has held that a coach at a public university is not a "public official" or a "public figure" for libel purposes.

The unanimous decision of the three-judge panel in the case *Moss v. Stockard*, 580 A.2d 1011 (D.C.App. 1990), decided in September, stated that the women's basketball coach of the University of the District of Columbia should be granted private figure status.

The libel suit was filed by Bessie Stockard, the former UDC women's basketball coach, after the university's athletic director, Orby Moss, explained the unexpected firing of the coach to the team in 1981 by stating that Stockard had been dismissed for "misappropriation of funds."

The university attempted to prove that Stockard was either a public official, because she was employed by a public university, or a limited-purpose public figure. If considered a public official or public figure, Stockard would have had to prove that Moss had made his statement with actual malice instead of only needing to prove simple negligence.

The Court of Appeals rejected both the university's claims. The court held that Stockard was not a "public figure" because she did not "shape or try to shape the outcome of a particular public controversy." The evidence presented at trial showed that Stockard made no attempt to turn the issue of her firing into a public controversy, and because of this she could in no way be seen as a "limited-purpose public figure."

The court also ruled that a teacher or coach at a public university does not meet the requirements of a "public official" as established in the Supreme Court

See COACH, page 20

Law Student Drops Suit Over Misquote

MINNESOTA — The dismissal of a \$20,000 libel suit stemming from an alleged misquote came as a relief to the student newspaper at the University of Minnesota in Minneapolis that had referred to the suit as a “nuisance.”

“We thought his case was almost nonexistent, and I guess he realized it, too,” said *Minnesota Daily* editor in chief Pat Mack.

Jordan Kushner, a third-year law student, lodged a libel and false light suit against reporter Laura Kroonje and editor Robin Trippel for an October story about a controversial speaker on campus that he claimed inflicted “severe emotional distress and anguish, damage to his reputation and career, and other harm.”

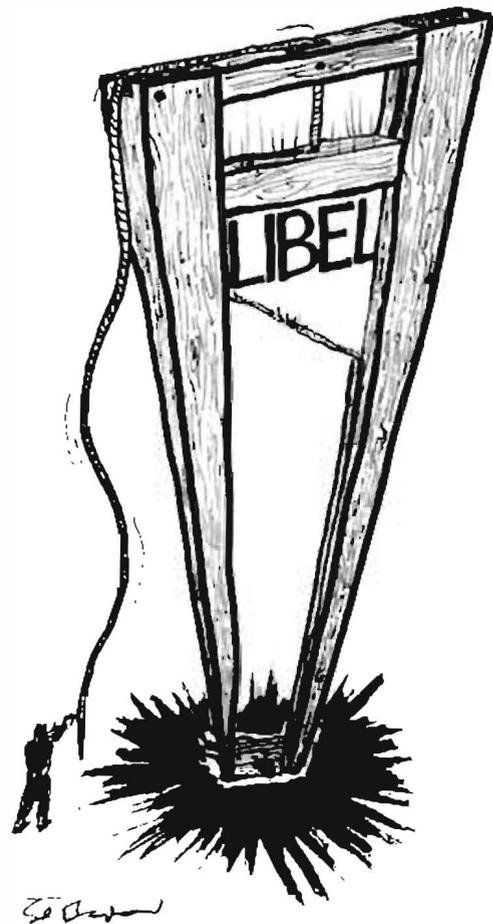
Kushner, who was representing himself, then dropped the suit because it “wasn’t worth the time and energy and cost,” he said. In addition damage could not be proven because the *Daily* does not enjoy that much credibility on campus, Kushner claimed.

Despite the fact that he dropped the suit, Kushner has not backed down from his assertion that he never said, “By supporting [Rabbi Meir] Kahane, the U endorses racism.”

Controversy clouded Kahane’s visit to the university for his view that supports the removal of Palestinians from Israel.

The “bogus” quote was the opposite of what was stated, Kushner contended. Kushner said that he “couldn’t stand” Kahane, but he supported the rabbi’s right to speak. Kushner also said he told the reporter that the protesters were not combatting racism by heckling Kahane and trying to bar him from speaking.

The quote, used in the last paragraph of a story about



Kahane’s speech on campus, was used to illustrate the balance between the university’s responsibility to keep racism from campus and its responsibility to uphold students’ free-speech rights.

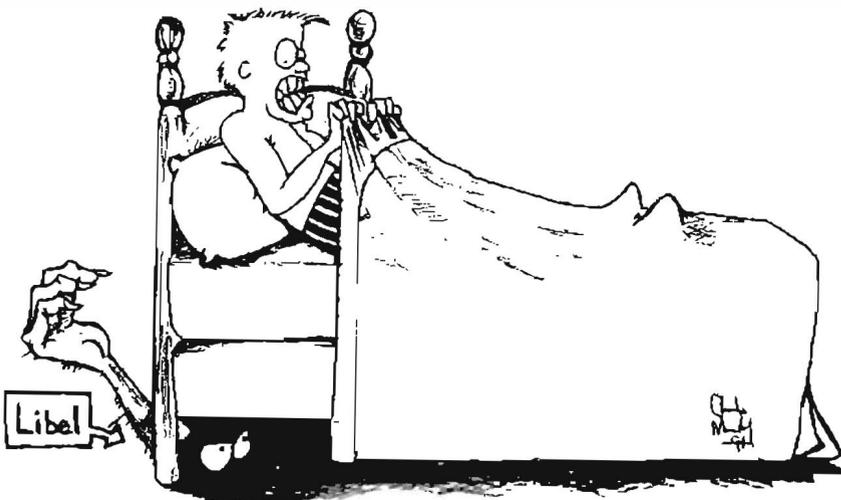
Rabbi Kahane was assassinated in November during a speaking engagement in New York City. ■

Coach From page 19

decision in *Rosenblatt v. Baer* (1966).

In *Rosenblatt*, the Court stated that public officials cannot “be thought to include all public employees,” so they limited the designation to those positions in which “the public has an independent interest in the qualification and performance of the person who holds it, beyond the general public interest in the qualification and importance of all government employees.”

The issue of whether or not teachers at public schools are public figures in libel cases continues to be an issue that splits state courts. The Supreme Court has made no ruling on the matter. ■



Court Dismisses \$1 Million Libel Suit

Published Student Comments Protected as Opinion, Judge Rules

CALIFORNIA — A state appellate court in November rejected an Amador Valley math teacher's claim that a student newspaper story, in which he was referred to as a "babbler" and "the worst teacher in school," was libelous.

In his \$1 million defamation suit, Foothill High School teacher Larry Moyer called the story, which appeared in a March 1988 issue of the FHS student newspaper, *InFlight*, "false and libelous." Moyer claimed he suffered "harm to his professional reputation" as well as "humiliation, mental anguish and mental distress" as a result of the article.

In upholding an earlier Alameda County Superior Court ruling, the appellate court ruled the terms "babbler" and "worst teacher," as they appeared in the context of the story, could not reasonably have been understood to be stating actual facts and therefore were not defamatory under the First Amendment.

Both of the comments in question appeared as quotes from an anonymous student in a news story reporting the explosion of a smoke bomb in Moyer's classroom. The student, referred to as The Shadow, said he supplied the smoke bomb used in the incident because, "Mr. Moyer is a babbler and babblers are annoying to me...he is the worst teacher at FHS."

The court dismissed the claim that Moyer's case should come under the protection of the recent U.S. Supreme Court decision in *Milkovich v. Lorain Journal*.

In *Milkovich*, the High Court rejected what it called, "the creation of an artificial dichotomy between 'opinion' and 'fact'."

The Court emphasized that "a false assertion of fact could be libelous even though couched as opinion."

In writing the three-judge appellate court panel's unanimous decision, Justice John T. Racanelli said although the Supreme Court held that there is no separate privilege for opinion, statements



"The crucial determination whether the statement was fact or opinion was held to be a question of law for the court Milkovich did not substantially change these principles."

Justice John Racanelli

Moyer v. Amador Valley Union High School District decision

that cannot be "reasonably interpreted as stating actual facts" are still entitled to constitutional protection.

Racanelli noted that in past decisions, California courts had used a "totality of circumstances test" to differentiate between fact and opinion. This test required that the court examine both the language and the context of a statement to determine if it could be considered defamatory, he said.

"The crucial determination whether the statement was fact or opinion was held to be a question of law for the court *Milkovich* did not substantially change these principles," Racanelli said.

The appellate court judges agreed that both the "babbler" and "worst teacher" comments were used as a form of "exag-

gerated expression conveying the student-speaker's disapproval of [Moyer's] teaching or speaking style." Neither comment, they said, could have been understood to be stating actual facts about Moyer.

The judges also contended that although the headline, which read "Students Terrorize Moyer," could imply a factual assertion, the word "terrorize" was an exaggeration of the actual event and therefore fell within the protected category of rhetorical hyperbole.

Moyer's attorney, Rita Rowland, said she believed the ruling was, "a real loss for teachers and a disservice to teachers in California."

She said the case will not be appealed to the state supreme court. ■

Stop the Presses *Principal Delays Distribution to Cut 'Offensive' Word*

FLORIDA — A high school principal said he was editing and not censoring the student newspaper when he stopped its distribution until an "offensive" anecdote was removed.

Craig Marlett, principal of Crystal River High School, decided to halt distribution of *The Pirates Log* when he came across an article listing five humiliating situations a student experienced during the day. One of the descriptions used the word "fart," which Marlett called "inappropriate."

Marlett also had a problem with the way the student chose to recount the incident.

"It was describing the event and how it went off next to someone and the smell," he said. "I just couldn't let that go by, by golly."

Newspaper sponsor Ken Reed said Marlett normally reviews the paper before it goes to print, but deadline pressure prevented students from getting the copy to Marlett in time. The paper's distribution was held until another issue could be printed without the "offensive" incident.

"I take responsibility because I let them bypass the procedure," Reed said.

According to Reed, students initially believed Marlett was

censoring the paper, but they understood his position better after contacting several local newspapers.

"The kids found out that the *St. Petersburg Times* couldn't use [the word fart] either," said Reed.

Calling Marlett a "pretty easy going guy," Reed said he believed the principal was considering the paper's readership when he pulled the story.

About a fourth of the 400 regular copies of the monthly paper go to parent subscribers and businesses that advertise in the publication.

Reed said he believed Marlett would have let the original piece run with only a slight language change if he had met with the students and discussed his concerns before the paper was published.

The editor of *The Pirates Log*, Sherri Johnson, 17, said she understood why the article was pulled. "I would say we didn't take into consideration our audience, but we've learned a lot from the experience," she said.

Marlett declined to comment further on the incident saying only, "Frankly, I consider the issue closed and I'd just rather not talk about it." ■

Free-Speech Marathon Draws Attention to Radio Censorship

CALIFORNIA — In an effort to go beyond 2 Live Crew to address the broader implications of censorship, 12 California college radio stations joined together on March 4 to broadcast an 18-hour free-speech marathon titled "Day of Decency."

The special — which ran from 6 a.m. to midnight on most of the participating stations — featured controversial music, interviews and spoken-word performances by an assortment of artists including poet Allen Ginsberg, performance artist/musician Laurie Anderson and former Dead Kennedys' founder Jello Biafra.

"Day of Decency," the brainchild of KUCI-FM music director Todd Sievers and promotions director Danielle Michaelis at the University of California, Irvine, was created originally to protest the 24-hour "indecent ban" imposed last year by the Federal Communications Commission.

According to Michaelis, the "Decency

Day" theme was expanded to explore the political, cultural and social elements of censorship and to show that "censorship goes beyond limiting the sale of 2 Live Crew albums to those 18 and over. It's an attack on First Amendment rights."

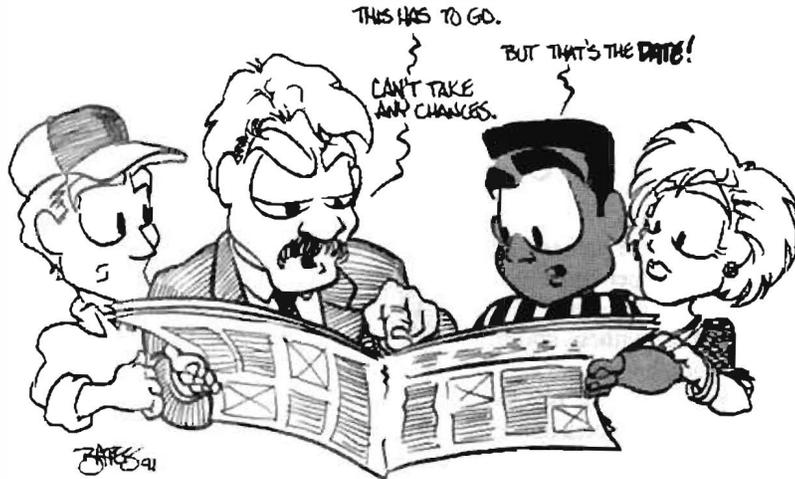
Michaelis said the day was "not intended to incite the people who want to induce censorship in any way, shape or form," but simply to educate the public to the problem and to offer some constructive ways of dealing with it. She said the listener response to the day was very good, although they had received no response from any "pro-censorship" groups.

"We created the 'Day of Decency' to inform the public about how bad things have gotten and to motivate them regarding what they can do to reverse the tide," Michaelis said.

The stations that participated in the statewide broadcast are all members of the University of California Radio Net-



work. They include: KUCI at UC Irvine, KALX at UC Berkeley, KCSB at UC Santa Barbara, KCPR at California Polytechnic State University in San Luis Obispo, KDVS at UC Davis, KSDT at UC San Diego, KUCR at UC Riverside, KZSC at UC Santa Cruz, KFJC at Foothill College in Los Altos Hills, KCSC at California State University in Chico, KLA at UCLA and KXLU at Loyola Marymount in Los Angeles. ■



Colleges not Free From Hazelwood

MISSOURI — The *Hazelwood v. Kuhlmeier* decision that gave public high school administrators greater rights to censor student publications has not muzzled the college press, a survey conducted at Stephens College in Columbia found, but college journalists may not be completely insulated from its effects either.

Graduate student Kristie Bunton Northington administered the survey in November of 1988 for her masters thesis. Two hundred twenty-one of the 797 college newspaper advisers known by the College Media Advisers, Inc., in the fall of 1988 responded. Northington was satisfied with the 28 percent response rate because she lacked funding for a follow-up letter and she had contacted all known college advisers, not just a select sampling, she said.

Northington uncovered a need to document the effects of *Hazelwood* on the college press while serving as adviser to the *Stephens Life*. Northington thought "spill-up efforts" to censor college publications "by misguided administrators" might result from the Jan. 13, 1988, Supreme Court ruling, she said.

The study found *Hazelwood*-related censorship of college newspapers more limited than Northington had anticipated. For example, 77 percent of faculty advisers from 221 colleges across the country claimed that the *Hazelwood* decision did not affect their newspapers.

Although the 15 percent that indicated the ruling had negatively affected their publications was significant, it was nowhere near what Northington had expected.

"Maybe I'm an optimist," she said. "But I think it's great."

In an effort to pinpoint what kind of publications were susceptible to censor-

See HAZELWOOD, page 24

Free Press Law Prevents Principal From Acting on Discipline Threats

IOWA — School administrators in Council Bluffs were unaware of the 1988 state law protecting the rights of student journalists when they threatened to suspend students for distributing an editorial banned from the student newspaper, said Superintendent Lee Wise.

Wise reversed a decision by Lewis Central High School administrators to discipline three seniors for handing out copies of the censored editorial during a school basketball game.

The article, which criticized Lewis Central's head basketball coach, had been pulled from the school paper because it "presented the school in a bad light," said Principal Harold Condra.

"I think our school newspaper should present a positive picture of the school," Condra said.

According to Wise, errors on the part of both the administrators and the students caused the controversy.

"We're both at fault and we need to make sure that the board policies are updated," he said.

Student newspaper editor and author of the editorial Josh Dirks disagreed.

"Everybody that has read the article is behind me. I tried very hard to present both sides. They couldn't believe the article was censored in the first place," said Dirks.

The Iowa student free expression law was intended to counteract the 1988 Supreme Court decision in *Hazelwood v. Kuhlmeier*, which gave high school officials greater latitude to censor school-sponsored student publications.

In addition to giving public school students the right to exercise "freedom of speech, including the right of expression in official school publications," the Iowa law requires every school to adopt a written publications code consistent with the law.

According to Mary Arnold, the executive secretary of the Iowa High School Press Association, the Iowa Department of Education has recently completed a model publications policy to aid schools in developing their individual codes. The model policy has been sent to all Iowa school superintendents as well as to high school journalism advisers throughout the state, said Arnold.

"Once this model policy is sent out and schools adopt their own policies that conform with the law, we should avert such situations," said Arnold in reference to the dispute at Lewis Central.

"For a law to work, all parties have to know about it and adhere to it," she said. ■

Student Reporter Provides Police With Notes From Censored Story Believing No Other Alternative

IOWA — A high school principal in West Des Moines stopped publication of a February edition of the school paper because it contained an interview with the girlfriend of an accused murderer.

In addition, the student reporter involved gave local police her story notes and a copy of the unpublished article. The reporter, Valley High School senior Anne Anderson, said she did not know she had the option to refuse to turn over the information.

Anderson's story, which was to have appeared in the Feb. 22 issue of the Valley High *Spotlight*, featured the freshman girlfriend of a former Valley High student charged with the Feb. 17 shooting of a teen-ager at a local shopping mall.

Valley High Principal Robert Brooks said he halted publication of the paper after receiving a note from the girl's mother asking that her

daughter not be quoted or named in the article. Because the paper had already gone to the printer, Brooks said he ordered the run stopped without consulting the student editors.

Anderson said police told her they needed the story and her notes because they thought they might contain information the police did not already have about the case.

According to Brooks, police told him a subpoena for the article was not necessary.

Because Iowa is one of only four states with a strict law protecting student journalists and state courts have recognized a qualified privilege for reporters to withhold unpublished story materials, experts believe Anderson was not compelled to turn over the information.

"Without knowing all the facts, it looks to me like they really put someone on the spot whose philosophies and views are only just developing," said Iowa State



University journalism department chairman Tom Emmerson.

Spotlight editor Tara Monson, 17, said she believed she and Anderson were misled by the detectives.

"Anne and I, at the time, didn't know we had the option to say no," Monson said.

A special edition of the *Spotlight* was issued a week after the incident. The issue included an explanation about why the paper was not published the week before.

Brooks told the paper's editors that they would be able to cover the case in the future. ■

Hazelwood From page 23

ship problems, Northington categorized the 221 schools and cross-tabulated them with their censorship responses.

She was surprised to find that censorship struck student newspapers in a random manner. According to her findings, generalizations could not be made between the responses of a public versus a private institution or an independent newspaper versus a laboratory newspaper produced for academic credit.

A clear majority of advisers — 81 percent — indicated that they were no more or less likely to advise students to use restraint in publishing, and 73 percent said administrators were no more or less likely to interfere in student publishing than in the past.

Some respondents even reported a

rise in active newsgathering by student journalists. A surprising 32 percent said that students were more aggressive in their reporting than in 1988.

Most advisers did not find the decision repressive for them but responded to the fact that it may be for others, Northington said.

Very few advisers reported direct tampering with their publications. Only 15 percent reported attempts at restraining their newspapers.

These advisers cited some practices employed by administrators in an effort to control the press, that included refusing to provide information, imposing restrictions on advertising practices, firing advisers and threatening to change the status of the paper.

The study found that administrators

flexing restrictive practices over student newspapers is the exception — not the rule — on most campuses. The 91 percent of respondents that claimed they were not threatened with loss of funds appeared to be the norm at colleges across the country, as were the 95 percent that said no moves were made to affiliate the newspaper with a supervised laboratory class.

Northington warned that results of the survey are only "tentative" because it was issued in the fall of 1988, less than one year after the ruling.

Student media officials voiced their reservations about the safety of college press freedom until a college press case reaches the courts.

Northington did not have plans for a follow-up survey. ■

Editorial Lands Students in Hot Water

Principal Shuts Down Paper After Editors Refuse to Repeat Apology

NEW HAMPSHIRE—Principal William Burns shut down the Central High School newspaper in Manchester in November after student editors refused to repeat a public apology for an editorial that criticized a teacher.

Burns said that he would not reinstate production of *The Little Green* until a faculty adviser could be found. The first two issues of the award-winning paper had been produced without an adviser after Constance Scully quit her six-year post citing "personal reasons."

Co-editors in chief Jeffrey Brodsky and Misbah Tahir and managing editor Justin Kudler were called to Burns' office after publication of the October editorial, "Just a Sham," which protested teacher and freshman adviser Salvatore Toscano's failure to disclose numerical results of the freshman class officer elections. Burns called for measures to "placate Mr. Toscano" and the faculty, according to Brodsky.

The editors presented Toscano with a letter apologizing "for any displeasure that this incident may have caused you," apologized over the school's public address system and agreed to run a clarification in the next issue of the paper, Brodsky said.

Burns demanded that the editors repeat the apology over the PA system the following morning since some students leave during the last period of the day. He warned that failure to comply would shut down the paper.

The editors initially yielded to Burns' request because it was "like having a gun to our heads," Tahir said.

But the editors decided not to repeat the apology because "to do any more would be humiliating to the paper," Brodsky explained. "There comes a certain point where you've got to stand up for principle."

At the end of the next school day Burns closed the newspaper office after editors failed to repeat the announcement.

"There was a contract made that they



would do it, and they just neglected to do it," Burns said of the students' refusal to take the last step.

Noncompliance is not the main issue, Brodsky said. "I know what we did was right," he said defending the editorial. Toscano was not singled out, he added. The focus of the editorial was on the freshman class, Brodsky said, therefore Toscano, as adviser to the freshman class, played a key role. Toscano was also contacted before the editorial was written, Brodsky said.

The editorial said in part that "[f]reedom of information is the backbone of a democracy, and when Toscano fails to release the percentage of votes, he undermines the basic form of government which he is supposed to be upholding.

"At a time when democracy is blossoming all over the world, Central High School's freshman class and adviser are taking a giant step backward."

Barring operation of the paper "has nothing to do with freedom of the press," Burns contended. It is a "knee-jerk reaction" to make it a free-press issue, he said. The student newspaper needs a faculty adviser just like any other student organization, he added.

When asked why the paper was allowed to run without an adviser for the first two issues, Burns responded, "A newspaper is a very fragile thing that requires continuity" in order to maintain its quality. He also said that the quality of the paper had dropped without the guidance of an adviser.

Little Green staff and editors demonstrated "dedication, motivation and initiative" to publish the first two issues without an adviser, Brodsky said. They also managed to make some major changes in the paper, he said, including going from tabloid-size to broadsheet and adding color photos.

The appointment of English teacher Wilfred Lloyd as faculty adviser to the paper enabled students to produce a December issue of the paper before Lloyd resigned for health reasons.

The Little Green was again out of business until teacher Rita Davis stepped in to take Lloyd's place.

I want "to direct them, to channel their exuberance in a more positive vein," Davis said, describing her relationship to the newspaper staff.

Brodsky also looked forward to a long, constructive relationship, calling Davis "very helpful." ■

'Blunder' Remedied

*Administrator Apologizes
for Threatening Letter
and Vows Not to Censor*

ILLINOIS — A public apology ended a dispute between a Monmouth College senior and a school administrator who called one of the student's poems "disgusting" and threatened to prevent similar works from appearing in the school's literary magazine.

In a letter sent to senior Dawn Kamadulski, which also appeared in the Feb. 11 issue of the student newspaper, vice president Gerald McBride apologized to Kamadulski for the "threatening way" in which he criticized her for her poem in the February issue of Monmouth's literary magazine *The Carillon*.

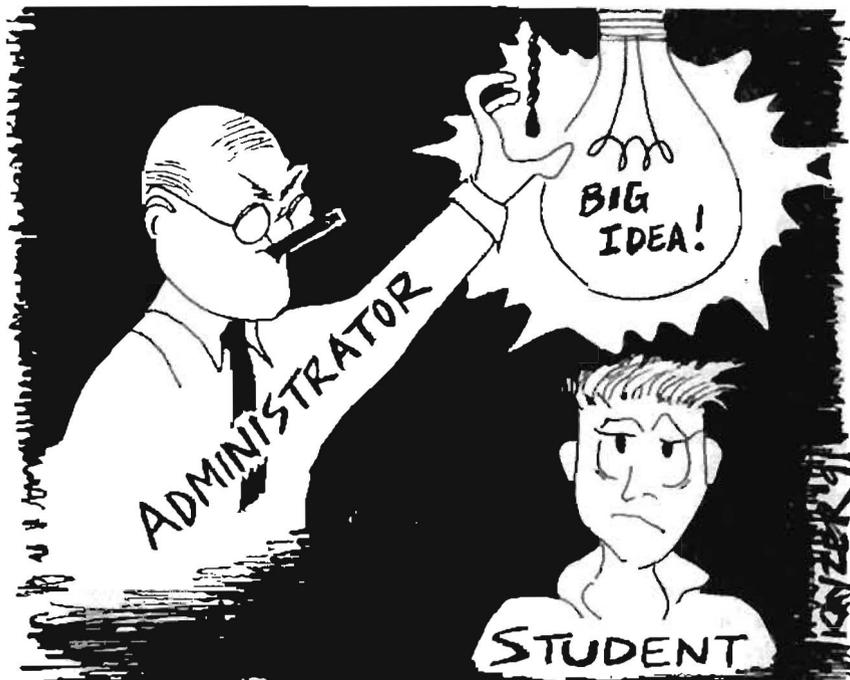
McBride was referring to a note he sent to Kamadulski on Feb. 7 after her poem "The Price You Pay" appeared in *The Carillon*. In the letter, McBride called the poem "disgusting," and said he would be "working to see that trash like this doesn't appear in this publication."

The controversial poem was written by Kamadulski two years before for an advanced creative writing course. McBride said he found the poem disturbing because of its "seemingly casual approach to the death of two infant boys."

"It is about a college-age woman who is afraid of getting pregnant, and it is about the fear that is always there if you are a sexually active college woman. There is nothing illegal or objectionable in the content of the poem," said Kamadulski in defense of her work.

McBride's apology came one week after Kamadulski, who is also the editor of *The Carillon*, filed a formal grievance with the academic dean against McBride claiming that McBride's letter criticizing her work was a form of harassment. In addition, she said she believed

See MONMOUTH, page 28



Principal Stands Behind Controversial Column

INDIANA—Administrators at Marion High School backed students' right to publish controversial articles about abortion and racism despite a flurry of opposition from the community.

Principal Marjorie Record withstood a barrage of threats, angry phone calls and letters following an October column supporting abortion rights, and chose not to discipline or censor the *Survey* or its staff.

"[Editor in chief J.R. Ross] is a young man trying to sort out what is right and wrong," Record said of the student's abortion column. "I did that when I was about 30. J.R. is only 17. I think we should praise him for it."

Faculty adviser Phyllis Knost attributed administrative support to their recognition of students' free speech rights, the fact that no one was libeled and that the column expressed an opinion.

According to Ross, the adviser has invited Record to view the paper before it goes to press since the incident.

A self-proclaimed "devil's advocate," Record allows the students to cover

topics they consider important, but she wants student journalists to "understand the ramifications and be ready to defend why they did what they did; that's what I consider responsible journalism."

"I do believe in censorship, because ultimately I take the heat. I got the death threats," Record said, but "I try to educate, not censor."

The column drew fire from students, parents and religious leaders for its abortion rights stance and for questioning the existence and character of God.

"In all reality, what right do they have to claim they are speaking for God and that only 'He' has the right to terminate life?" Ross wrote referring to anti-abortion activists. "For all we know, He, if there actually is a God, could be a long-haired hippie that smokes marijuana. He also could be pro-choice."

A special section on racism in a later *Survey* issue was also a subject of controversy. The section included a poll, a story and an editorial decrying racial stereotypes. Commonly held racial stere-

See SUPPORT, page 27

First Amendment Blocks Charges Stemming From Controversial Cartoon

MASSACHUSETTS — Saying the students' First Amendment rights prevented the school from pursuing legal action, University of Lowell officials have dropped all charges against student newspaper editors responsible for the publication of several controversial cartoons.

Editor of the University of Lowell *Connector* Patricia Janice and news editor Jeffrey Pahl were charged in December with violating the civil rights of women and minority students when the paper published several cartoons that some students and university officials called sexist and racist. University officials said the cartoons created a "hostile environment" on campus.

According to Assistant Dean of Students Thomas Taylor the administration believed it was justified in taking action against the students because *The Connector* receives more than half its \$130,000 budget from the university and therefore the university is ultimately responsible for the paper's content. Taylor said, however, that the university, which is a public school, decided to drop the charges after receiving a legal opinion from the Massachusetts Board of Regents.

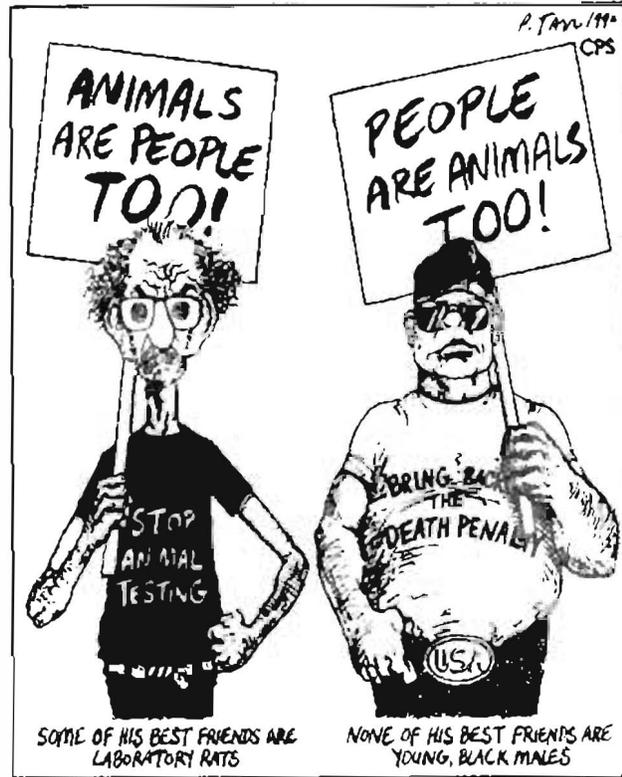
"The First Amendment is such that there really aren't any grounds for legal action [against the students]," said Taylor. He added that the university has had no further problems with *The Connector*.

Both Janice and Pahl said administrators were upset by several articles and cartoons that appeared in a November parody issue. They said, however, that they believe the university's official action was sparked by students' misinterpretation of a cartoon published in the Nov. 29 issue of *The Connector*.

Two students wrote letters to the editor complaining about the cartoon. One letter asserted that the caricature "very boldly compared black men to laboratory animals."

The letters were published in the *Connector* on Dec. 6. Janice wrote an accompanying editorial that said the students had missed the point of the cartoon, which was intended to ridicule the "ignorant, racist type of person."

On Dec. 11, Taylor sent registered letters to Janice, Pahl and the *Connector's* 13-member editorial board, requiring the



Cartoon that some students interpreted as racist.

students to meet with him "to discuss the charges and possible sanctions" against them. The students were given five days to respond to the university's complaint.

"Failure to respond ... will constitute an additional violation and result in your apprehension by the university police," Taylor wrote in the letters.

Taylor said the university's actions were not based solely on the controversial cartoon, but on a pattern of disregard by the *Connector* to the university's concerns.

"This is far more than a single incident. There are many areas where we found problems. In some cases it is a situation where very clear and explicit directives were given [by the administration] and ignored," said Taylor.

"It's appropriate for the school to be concerned about the educational environment as it pertains to racism and sexism," said John Reinstein, an attorney from the Massachusetts Civil Liberties Union who represented *The Connector*. "The university has an obligation to respond; however, their response should not be to silence those who are offensive." ■

Support From page 26

otypes drawn from a student poll were also printed, which some misconstrued as the staff's opinion, and led to allegations of racism.

"Students are more aware of the power

of the press," Knost concluded about the controversy.

Ross came away from the experience with a different lesson. "I think it's pretty pathetic that some in the community are so close-minded [about alternative views]," Ross said. Record agreed,

adding, "It is the wrong message to send to kids."

"I'm a strong supporter of freedom of speech, freedom of the press and freedom of religion, and if I tried to keep quiet it would destroy all I love about journalism," Ross said. ■

Dean of Students Apologizes For Trying to Act as Paper Adviser

WASHINGTON — The dean of students at South Seattle Community College formally apologized to two students after they filed a complaint that accused him of acting as both editor and adviser of the student newspaper.

In the five-count complaint, which was filed Oct. 15 in the college president's office, student newspaper editor John Salguero and business manager Cathy Miller claimed that Dean of Students Robert Logue met with journalism students on Sept. 10 to discuss the content and layout of *The Sentinel*. At that time, they said, Logue "assumed the role of editor and mandated articles and placement of articles within the paper."

In addition, Miller and Salguero said Logue assumed the role of adviser without proper procedure and in doing so "unfairly forced a qualified and gifted faculty member out of her job." *The Sentinel's* adviser resigned at the beginning of the fall semester.

The students also claimed that Logue did not follow proper procedures and regulations when he reorganized the student government in the summer of 1990.

In reviewing the complaint, the



ADMINISTRATION: "Appearances can be deceiving"

college's administration determined that Logue "did act beyond his authority in two of the five complaints," and recommended that he write a formal letter of apology to the students.

"Although I do not believe Dean Logue intended to censor the paper, his involvement in wanting certain articles in the paper and suggesting layout could be construed as censorship and were therefore improper," said school President Jerry Brockey in the resolution of the complaint.

In addition to the recommendation that Logue apologize, the president suggested that to avoid future problems the publications board should publish a list of its guidelines as well as a set of rules and procedures regarding the role

of the adviser.

"Although I acted with good intentions, it is obvious in retrospect that errors were made by me," said Logue in his apology letter.

Although Logue denied that he assumed the role of editor, he said he did offer to act as adviser for the purpose of developing an early edition of *The Sentinel*.

"Although there was never any intention to censor or control *The Sentinel*, I can see now that my actions in this regard were improper," he said.

"I want you to know that I am deeply committed to student rights and responsibilities and truly regret any activity on my part which would lessen that desirability." ■

Monmouth From page 26

McBride was threatening her free speech rights.

The Monmouth College Student Publications Board also filed a complaint against McBride. The publications board, which is headed by student Martha Muhlena is responsible for dealing with complaints made by student publications against any member of the college community.

"Being the Student Publications

Board, we felt that action needed to be taken to protect the editor, freedom of expression, and our right to no pre-approval of copy, which we felt was implicitly threatened in his letter," said Muhlena.

In his apology, McBride called his critical note "hastily written" and asked Kamadulski to "chalk this example of inappropriate behavior on my part off to the biggest blunder of my life."

"I want you to know that I will not be

working to restrict your freedom of speech or that of any member of the Monmouth College student body even though that is what I said I would do," said McBride.

Kamadulski said as far as she is concerned the issue is resolved and the charges against McBride will be suspended. "The letter and the things in it are what we asked for in the grievances, and the letter itself is more than I could have asked for," she said. ■

Former Law Student Editors Admitted to Bar Despite Dispute with School Over Paper Audit

CALIFORNIA — Two former *Law News* editors at the Hastings College of Law in San Francisco have been admitted to the state bar despite the college's refusal to provide them with good character certification.

James Ballantine and Christina Dalton graduated from Hastings last spring and were informed in September that the school would withhold their good character certification until it had finished reviewing a controversial audit of the *Hastings Law News*.

Both Ballantine and Dalton took and passed the California Bar Exam in July. According to Ballantine, the state bar notified them in November that, because of Hastings' reluctance to provide the certification, the bar would have to conduct a "moral character investigation" before admitting them.

Although the bar cleared both applications on Dec. 17, Ballantine and Dalton are still considering taking legal action against the school, Ballantine said.

The dispute between the Hastings administration and the *Law News* began in August 1990 when university officials locked the newspaper's offices because the previous year's staff had failed to turn in an audit of the newspaper's finances. Ballantine was the editor and Dalton was a copy editor and member of the paper's board during the 1989-90 academic year.

"The school has made statements about us that are still ticking in our bar files like timebombs."

Christina Dalton
Hastings Law School Graduate

Both former editors contend that the audit was in retaliation for the publication of several articles critical of the administration. They said they believed the school was particularly upset by an article calling for the resignation of the school's general counsel, Angele Khachadour.

The school said it was required by law to audit *The Law News* because the paper uses the Hastings name and shares its tax-exempt status. Administrators said the audit request was a routine one made to all student organizations.

The dispute was partially settled when the former editors agreed to provide an audit by Sept. 14. They said, however, that they would not use an accounting firm hired by the college. An independent firm completed the audit and it was turned in on time.

John Andrews, who was on the *Hastings Law News* editorial board last year and is now the editor in chief, said the audit seemed to resolve the conflict between the school and the current staff.

Ballantine said he believed the school had sufficient time to review the audit and provide the certification to the bar before the deadline. Instead, he said, the school sent the certification forms to the bar with an attached statement that indicated he and Dalton may have misused newspaper funds.

The certification forms and the additional statements submitted by the college remain in the former editors files even though they have been admitted to the bar. Ballantine said he and Dalton are considering legal action to compel Hastings to issue a statement acknowledging that it provided "false and misleading information" to the state bar.

"The school has made statements about us that are still ticking in our bar files like timebombs," Dalton said.

Both Ballantine and Dalton were recently honored by the Northern California Chapter of the Society of Professional Journalists for "their efforts in keeping the ideals of the free press alive as the editors of the *Hastings Law News*."

"It's a great honor to be given this award by the Society of Professional Journalists, an organization that protects and promotes important First Amendment freedoms," said Ballantine, who is working as a solo practitioner in Santa Barbara.

Dalton is now a criminal defense attorney in San Francisco. ■

School District Backs Paper's Self-Determination

MISSOURI — The calm in the eye of the storm, the Kirkwood School District gave its resounding support for the right of a high school newspaper to develop its own advertising policy, despite a thunder of protest by parents.

The controversy began when the Kirkwood High School newspaper decided to run Planned Parenthood and Birthright ads for eight of its 16 scheduled issues.

"It's not enough to 'just say no.' Say KNOW," the Planned Parenthood ad said in part. "Know what you're doing. Know the facts. If you don't know, find out. It's O.K. to ask questions. Call us."

The student newspaper then decided to accept advertising from Birthright after the organization wanted to run adver-

tising to counter Planned Parenthood's influence.

An excerpt from the Birthright ad said: "So make no mistake about it. The abortionist doesn't perform choice. He kills a baby."

Many local citizens claimed that the ads were not appropriate for a high school newspaper and called on Kirkwood High School Principal Franklin McCallie to have the ads removed. Although the 1988 *Hazelwood* ruling gave high school administrators broad censorship powers, McCallie expressed his reluctance to use them.

"I know I have those powers," he said. "And I'm not afraid of making decisions. I consciously chose to give the stu-

See KIRKWOOD, page 37

Student Journalist Pleads Not Guilty

Disorderly Conduct Charge was 'Semi-political,' Says Reporter Who is Considering Filing Suit

MICHIGAN—A student journalist at Wayne State University in Detroit pleaded not guilty to a disorderly conduct charge and claimed that his arrest was an attempt by police to “stifle the voice of the press.”

Brian Bell, assistant news editor of *The South End*, was covering a Jan. 14 rally protesting U.S. involvement in the Persian Gulf at a military recruiting office when he was arrested for allegedly using profanity, blocking pedestrian and vehicular traffic and shouting, “Hell no, we won’t go!” The arrest ticket also included a felony charge of inciting a riot. Bell called the charges “pretty ridiculous.”

Bell was only formally charged with disorderly conduct, a misdemeanor offense carrying a maximum penalty of a \$100 fine and/or 90 days in jail.

At a pre-trial hearing Bell pleaded not guilty to the charge and requested a trial by jury. The prosecuting attorney refused to negotiate or drop charges despite several overtures by Bell’s attorney.

“To them I’m just another number in the system,” said Bell. Refusal to drop the charges is “not malicious at this point,” he said.

“[The arrest] was, in my opinion, an attempt to stifle the voice of the press. The First Amendment, in practice at least, is only worth the paper it’s written on. I’ll have my day in court,” Bell said in the editorial run in *The South End*.

Bell’s day in court was set for May 20, although the trial may be set back by a motion to be filed by his lawyer in an effort to get access to the police incident report.

Deputy Chief James Younger told the crowd of approximately 400 that the protest was illegal about an hour after picketing had begun. According to police officials, 10 officers dressed in riot gear, backed up by 25 more officers, were called in to make arrests when protesters began to block traffic. Fifteen people, including Bell, were arrested.

Bell said that he was following a group of officers, trying to get an interview, when “Younger turned and said, ‘Get over there,’ motioning to the other side of the street.”

“I said one word, ‘But,’ and Younger said, ‘That’s it, get on the bus,’” Bell said.

Bell said his arrest was “semi-political” in nature. “The city of Detroit is not very friendly to reporters,” Bell said. There have been at least three other instances where Detroit police have “detained” journalists while covering stories, said E.J. Mitchell II, assistant city editor of *The Detroit News*. *The Detroit News* has asked the police department to investigate



the incidents involving two of its reporters and a photographer, he added.

“Somewhere near the end of the protest, Deputy Chief James Younger of the Detroit Police Department ordered me arrested. He did this knowing I was a working member of the local media. Student journalist or professional, this sets [a] dangerous precedent for the press everywhere,” Bell warned in the editorial. Bell’s role as a reporter is the basis for his defense.

Bell has a strong case because he “was not part of the demonstration process,” said Bell’s counsel, Dan Penning. He was interviewing police and military officials and protesters. He had a notepad, pen, tape recorder and press credentials in his possession and had tried earlier to interview Younger, the officer that ordered his arrest, Penning said.

Penning was confident that he could prove Bell’s innocence. No reasonable person could find that Bell had engaged in illegal conduct beyond a reasonable doubt, he said.

The university Publications Board has approved \$750 toward Bell’s court fees. Although the funds will only be a “drop in the bucket” toward the estimated \$4,000 to \$5,000 court fees, the board recognizes its responsibility to protect reporters, said editor in chief Tom Golden.

Bell is considering civil action against the city of Detroit, but first wants to beat the criminal charges he faces. ■

Community Wages War on Newspaper

Political Cartoon Satirizing U.S. Soldiers May Jeopardize Status of College Paper

OREGON — Before hostilities broke out in the Persian Gulf War, the Central Oregon Community College newspaper faced heavy fallout from a political cartoon that had bombed in the Bend community.

The cartoon was a satirical takeoff on Dewar's Scotch ads that feature a "Dewar's Profile," a brief biographical description of a Dewar's drinker. The cartoon, drawn by Broadside staff cartoonist Jim Winkle, could threaten the independence of the student newspaper, according to editor in chief Todd Pittman.

Responding to the board of directors and angry Bend citizens, COCC president Robert Barber formed an ad-hoc committee to evaluate the relationship between the newspaper and the college. Two students and two community members comprise the committee that is considering different formats — institution-run or independent — for the student-run newspaper.

Editor in chief Todd Pittman was able to ward off efforts to institute a prior review policy. The publications board had drafted a recommendation

that would have opened staff editing sessions to the COCC student body and established an editorial board that would have included a student government-appointed representative, he said. Media lawyers assured him that the recommendation had no legal foundation. Pittman raised the issue of First Amendment rights with the board of directors, who then nixed the proposal.

Despite charges of practicing unethical journalism by critical Bend citizens, the publications board did not find *The Broadside* in violation of any journalism codes or ethics.

However, according to Pittman, the paper is not off the hook yet. He predicted that the publications board will consult a media expert and then develop another proposal.

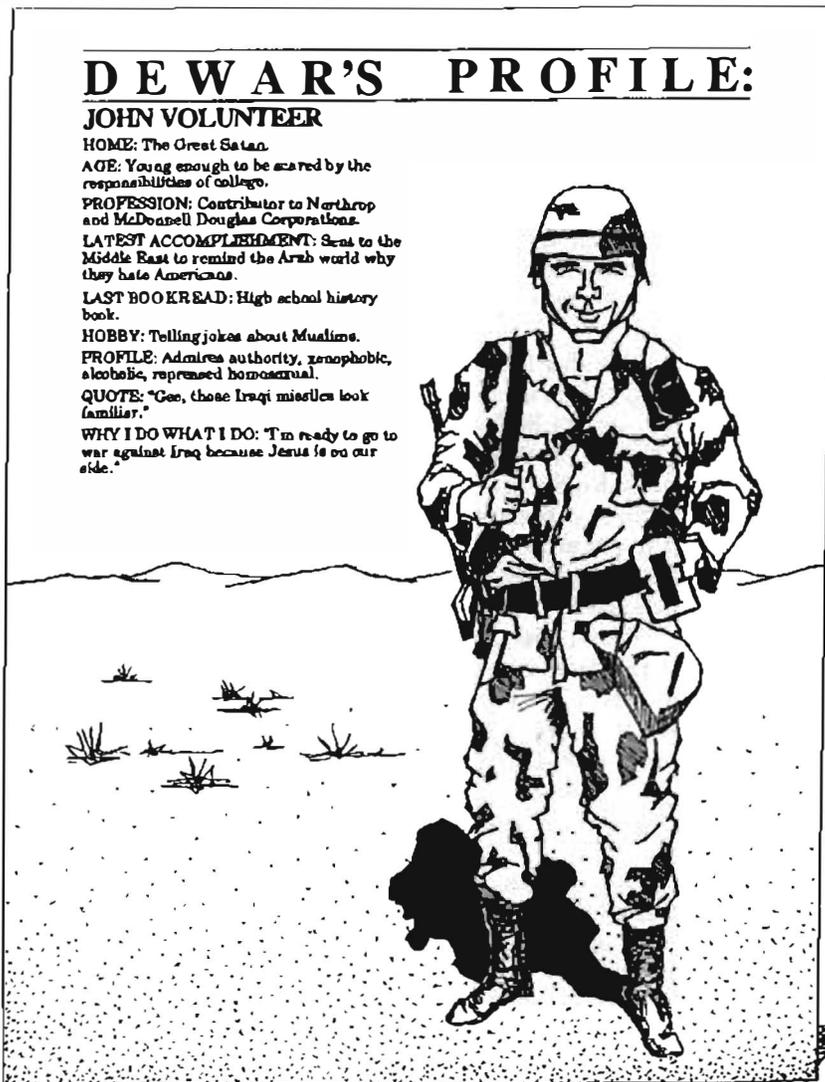
Pittman bowed to pressure from the community and advertisers and apologized in a special 4-page edition of the paper published to address the controversy. Threats to people's lives and to college funding provided strong incentives to reverse an earlier decision not to apologize, he said. The paper only apologized for the fact that people misinterpreted the cartoon and for the cartoon not expressing itself well, he said. *The Broadside* also apologized to Schenley Industries Inc. and Dewar's for "the inappropriate use of" its ad campaign. The artist also responded to criticism surrounding the political cartoon.

"The cartoon was not intended to degrade servicemen, but to hit home the danger of stereotyping," Winkle said in his apology published in *The Broadside*. "The cartoon was strictly a comment on the American media, not American soldiers."

Pittman said he was confident that what many deemed an offensive cartoon was a "matter of taste, not legalities" after talking with media lawyers.

In a full-page ad in the community paper, the *Bulletin*, college president Barber apologized to "men and women of our armed forces" for "the hurt you

See *CARTOON*, page 35



Political cartoon that stirred controversy, landed newspaper in trouble.

Parody Issue Gets Tears, Not Laughs

Campus up in arms over mock war paper

NEW YORK—An anti-war group at the State University of New York-Binghamton found the joke was on them after a parody issue of the student newspaper unexpectedly backfired.

Students for Peace in the Middle East was barraged with criticism following the production and distribution of a mock issue of the *Pipe Dream* with headlines proclaiming "US Invades Iraq" and "Drafting SUNY Community" on Dec. 5, more than one month before the actual invasion.

A disclaimer appeared in the fourth paragraph of the top story.

"The attack described above has not happened. Yet. But many analysts believe that such a scenario is by no means improbable given the current situation," the disclaimer read.

The student newspaper protested use of its masthead. "Using our name not only caused unnecessary panic and concern, but it damages the integrity and reputation of our newspaper," said editor in chief Robert Sanfiz.

Using the *Pipe Dream* masthead served two purposes, coalition member Steven Sherman said. The masthead insured wide readership because the *Pipe Dream* is the most widely read paper on campus. It also served a political purpose addressing "what we feel is *Pipe Dream's* abdication of its responsibilities and its failure to cover many other stories on campus," said Sherman.

Pipe Dream immediately took action to correct misuse of its name. Staff members roamed the campus gathering copies of the parody paper.

Administrators responded to a request by the paper and printed 4,000 flyers that read, "The United States did not



invade Iraq! *Pipe Dream* did not publish an issue today."

The Public Safety Department and the Student Association were notified of the incident. The safety department investigated *Pipe Dream's* complaint and delivered its findings to the Broom County District Attorney's office, which decided not to press charges, according to public safety director John Schwartz.

The anti-war group also escaped disciplinary action, but not reproach, from the student government.

"To deliberately mislead the student body in this way is highly unethical," read a joint statement issued by Student Association president Seth Jarrett and executive vice president Kit Kwok.

The SA rules committee determined at its hearing that there was not enough evidence to prove that a SA-chartered group had participated in production of the mock *Pipe Dream* issue. The only disciplinary action the Student Association has authority to impose is revocation of a group's charter. Because Students for Peace in the Middle East was not a chartered group, the Student Association was unable to take any action against it.

Managing editor Mathew Furman was "disappointed" that the group "just got away with it," but there was "universal condemnation, and that's good enough for us," he said.

The fact that any action was taken violated the group's free-speech rights, said John Till, a member of Students for Peace in the Middle East. "We're disap-

pointed in how little respect for freedom of speech there is on this campus," he said.

The episode brought to light a loophole in the rules that govern student groups on campus spurring the student government to pass a resolution that would revoke a group's charter if any member publishes something under another group's name.

The purpose of the parody was to "raise consciousness about imminent war in the Middle East," Till said. The medium was selected for its "shock value," which the group hoped would "stir debate" about the conflict in the Middle East, he said.

SUNY President Lois DeFleur blasted the parody issue calling it an "insensitive hoax."

"While we at this University are strongly in support of freedom of expression, we cannot condone any attempt to manipulate the power of the media in a way that deliberately misleads the public," DeFleur said in a letter to the editor published in the *Pipe Dream* the following day.

SA President Jarrett also condemned the hoax.

"As a student on this campus, I was outraged that any individuals or groups would manipulate the emotions of other students in this way," he said.

Despite widespread denunciation, Till does not feel that the parody issue missed its mark completely. The incident stirred up debate on campus and did not inhibit anti-war organizing, he said. ■

Student Charges Ad Regulation Discriminatory

Alcohol Board Called on to Rescind Policy; Tobacco Bill Planned

VIRGINIA—A student newspaper at James Madison University in Harrisonburg is trying to strike a state alcohol advertising policy that student journalists argue “unfairly and unlawfully discriminates against student publications.”

The existing Virginia Alcoholic Beverage Control Board regulation states that “Advertisements of beer, wine and mixed beverages are not allowed in student publications unless in reference to a dining establishment.”

Colleges and universities called on the ABC to define “student publication” at its 1990 board meeting. The board ruled that a student publication is a school-sanctioned publication run by students, which is distributed primarily to people under 21 years of age.

Many student newspapers protested the regulation, which they claimed unfairly discriminated against student publications. Some also claimed that the policy threatened the financial security of publications.

Since the ABC instituted the policy in 1988, *The Breeze* at James Madison University reported losing nearly \$10,000 annually in advertising revenue.

The ABC sent a letter notifying *The Breeze* of its April 18 deadline to “receive comments and suggestions concerning the adoption, amendment or repeal of Board regulations.”

Laurel Wissinger, former editor in chief of *The Breeze*, wrote a recommen-

dation on behalf of the paper. The recommendation called on the ABC to rescind its current advertising policy.

The fact that the board is willing to “compromise the First Amendment for the public’s best interests is kind of scary,” Wissinger said.

“This unfair singling out of specific publications is not legally viable under the 14th Amendment, which guarantees equal protection,” Wissinger said in her written appeal to the ABC Board. “The First Amendment is neither a sporadic nor uneven right.”

In addition, studies indicate that there is no correlation between exposure to advertising and alcohol consumption, Wissinger said. She further argued that barring alcohol advertising from student publications would not protect students from exposure to such advertising from other media.

“Restricting students’ exposure to alcohol advertising would require measures to remove such publications as *Time*, *Sports Illustrated* and *USA Today* from students’ hands as well,” Wissinger wrote.

The state of Washington Liquor Control Board unanimously rejected a proposal similar to Virginia’s existing regulation, Wissinger noted in her proposal. The board said that it was concerned the policy would have unconstitutionally infringed on commercial speech and that there was not enough evidence that alcohol advertising affects

underage drinking.

Wissinger suggested that “repealing the regulation would both remove illegal constraints on the college press and allow the Board to explore more effective ways of enforcing the minimum drinking age.”

Tobacco advertising

Student publications may also be affected by an attempt to institute a federal tobacco advertising policy. Rep. Henry A. Waxman, D-Calif., plans to reintroduce a bill that could pose health threats to commercial free speech and some student publications’ advertising revenue.

Although the bill did not pass last year, Waxman plans to reintroduce the bill, according to a spokesperson of the Subcommittee on Health and the Environment.

The Tobacco Product Education and Health Protection Act of 1990, introduced by Rep. Jim Bates, D-Calif., would have prohibited the publishing of tobacco ads in publications primarily directed “to those under 21 years of age, including school, college, or university media.” A publication would be considered directed toward minors if 5 percent of its readership is underage.

A committee spokesperson said that the new proposal will most likely mirror Bates’ bill. Although a “top priority” of the committee, no action on the bill was expected until mid-May. ■



Are Hallways a Forum?

Student Suits Claim First Amendment Right to Distribute Religious Pamphlets in School

COLORADO, FLORIDA — Federal lawsuits have been filed on behalf of four high school students in Colorado and Florida who are seeking the right to distribute religious literature on school property.

Two students at Wasson High School in Colorado Springs, Colo., and two at Tarpon Springs High School in Tarpon Springs, Fla., are claiming that their First Amendment rights were violated when school officials tried to prevent them from giving out free copies of the Christian newspaper *Issues and Answers* on school grounds.

Both suits were filed by attorneys working with Christian Advocates Serving Evangelism (CASE) — a law group that was closely involved with a Supreme Court case last January which upheld the right of students to have Christian clubs in their high schools.

In Colorado Springs, a district court judge in March denied the student's request for a preliminary injunction.

The lawsuit is the culmination of a year-long struggle by Wasson High students Tracy Henry and Kristi Jones to win the right to distribute *Issues and Answers*, said CASE general counsel Jim Henderson.

When they met with Principal George Houston for the first time in October 1989, Henry and Jones requested permission to distribute the newspaper on school grounds just before the school day began, said Henderson.

Houston denied the request saying that school policy prohibited the distribution of religious literature.

In the months following the initial request, Henry and Jones met several times with the principal and Associate Superintendent Paul Kemp, who told them that the school system's decision was made necessary by the separation of church and state.

Eventually, said Henderson, the school gave the students permission to distrib-

ute their materials at the entrance to the school at the beginning and end of the school day.

The students are now fighting for the right to distribute the paper in the hallways, he said.

At the preliminary injunction hearing the judge declared that, until the case is settled, the hallways would be considered a non-public forum and, therefore, a rule barring distribution there is legitimate.

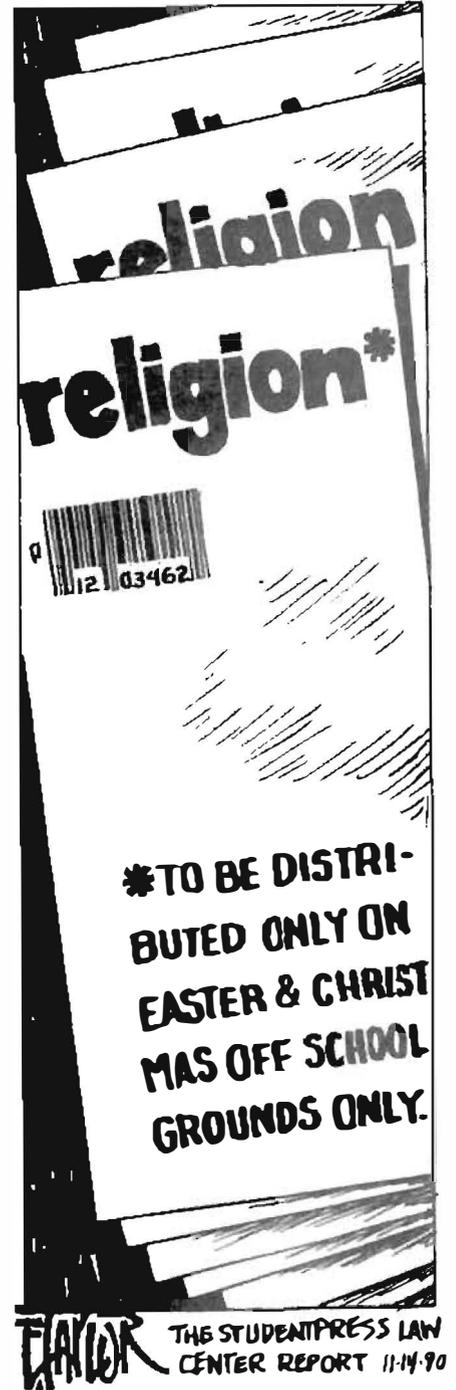
Henderson said he believes a trial — if one becomes necessary — will occur within the year. In the meantime, he said, Henry and Jones are continuing to distribute *Issues and Answers* outside the school.

At Tarpon Springs High School students Angela Byrd and James Harden filed suit on Dec. 17 against the Pinellas County School Board after the Board adopted a policy that has been interpreted as allowing distribution for only 15 minutes at the end of the school day, said Henderson.

The students had requested, and were denied, permission on Dec. 5 to distribute their copies of *Issues and Answers* during non-instructional times in the school day — before school, during breaks, at lunchtime and after school, said Henderson.

Byrd and Harden sought permission at a Jan. 8 temporary restraining order hearing to continue distributing the newspaper while the case is pending. The judge sent the students back to request permission under the newly adopted school board policy, said Henderson. The court went into recess without granting or denying the temporary restraining order, he said.

After being asked at a Feb. 13 school board meeting to clarify the board's distribution policy, Pinellas County School Board attorney Bruce Taylor said he believed that 15 minutes after school was the minimum standard. Principals



could grant students greater freedom as they saw fit, he said.

According to Henderson, a motion for summary judgement has been filed in the case, but no hearing date has been set. Byrd and Harden are currently permitted to distribute the newspapers before and after school but not during the lunch hour, he said ■

RELIGIOUS EXPRESSION

Jr. High Student Wins Partial Victory

Total Ban on Religious Materials 'Overbroad,' Door Open to Limited Restriction

ILLINOIS — A Wauconda junior high school's prohibition against distribution on school property of all "written material that is of a religious nature" was found to be unconstitutional by a federal court in January.

District Judge Paul Plunkett ruled that while the school could impose restrictions upon distribution of some religious material, applying the standard as a blanket prohibition against all religious material was "simply unconstitutionally overbroad."

According to court testimony, the case began on Nov. 2 when 13-year-old Megan Hedges decided to distribute copies of the Christian newspaper *Issues and Answers* on the sidewalk in front of Wauconda Junior High School.

Because Hedges, an eighth grader at the school, was not on school property at the time of distribution she was not reprimanded. She was informed, however, that a school policy enacted on Nov. 1 prohibited distribution of any written material of a religious nature while on school grounds.

Hedges filed the suit claiming the restriction was unconstitutional and sought a preliminary injunction prohibiting the school from enforcing the policy as it applies to religious literature.

Wauconda School District Superintendent Darrell Dick said the distribution restriction was consistent with the establishment clause of the First Amendment. The establishment clause has generally been interpreted by the courts as a mandate for the separation of church and state.

According to Dick, allowing junior high school children to distribute religious literature on school property would violate the establishment clause if "by reason of their immaturity and impressionability" the students assumed the school espoused the beliefs presented in the material.

The court granted Hedges' motion for a preliminary injunction saying that, although the school had "demonstrated a compelling state interest in the prohibition of the distribution of written religious materials to junior high school students," its policy was overbroad.

"We have closely examined a representative issue of *Issues*

and *Answers* and find that the school is correct to have establishment clause problems with it. However, that does not justify a policy that bans all written religious material," said Plunkett in his opinion.

The court ruled that the school could no longer enforce its current policy but expressed no opinion on "what potential policy language would be constitutionally 'narrowly tailored'."

"We simply note two things," said Plunkett, "first, that the current policy is overbroad and not narrowly tailored, and second, that some potential policy might properly prohibit a publication such as *Issues and Answers* from being distributed on school grounds." ■



Cartoon *From page 31*

have experienced from the political cartoon printed in the student paper." He also conceded that as a veteran he found the cartoon "personally offensive."

Barber explained how the episode will affect the role of the administration. "[O]ur job is to provide opportunities for students to use this free speech effectively and responsibly.

"The impact of the incident indicates

that we must provide more guidance to our students in this learning process," he wrote.

A local committee, Citizens In Support of The Troops, "recommended the editor either resign or be dismissed for malfeasance or nonfeasance," said Greg Walker, a committee leader. First-year adviser David Duran should be replaced by "a competent and knowledgeable adviser," he added. But some people

defended the free-speech rights of the *Broadside* cartoonist and editorial staff.

"We need to step back and remember what our loved ones are fighting for," said Rita Pearson, a community member and former COCC student, at the Feb. 5 meeting of the board of directors.

"The timing of the cartoon really stunk, but that's all water under the bridge, and we just need to go on from here," Pittman said. ■

Public Has Right to Sex Ed Materials

College Appeals Decision Claiming Chill of Academic Freedom

NEW YORK — A Long Island man's three-year battle for access to teaching materials used in a college sex education course will continue when an appellate court hears the case later this year.

Nassau County Supreme Court Justice George Murphy ruled in April 1990 that county resident Frank Russo did have a right of access under the New York Freedom of Information Law to the materials used in a Nassau Community College course titled, "Family Life and Human Sexuality."

The college filed an appeal in September and the New York Civil Liberties Union, the Long Island Coalition Against Censorship and the American Association of University Professors all filed briefs urging the court to reverse its earlier decision.

Russo filed his claim in June 1989 after college President Sean Fanelli denied Russo's repeated requests the year before to view the course material claiming that, because of the controversial nature of the materials, academic freedom would be "chilled" at the school if they were available for inspection by the general public.

In addition, the college claimed that, because they could be classified as "inter-agency or intra-agency" materials, course materials were exempt under the freedom of information statute.

Section 87 of the New York Freedom of Information Law states that all government agencies must make their records available for public inspection and copying. An agency may deny access to records that "are inter-agency or intra-agency materials which are not final agency policy or determinations."

In his April 1990 decision Murphy called the college's refusal to let Russo view the materials, "lamentable as incongruous, timid, suspect, groundless and totally unjustified."

"It appears to this court that the college, by viewing this statute as a threat to academic freedom, totally misreads, misunderstands and misapplies FOIL's high purpose, worthy objective and limited application," Murphy said.

Murphy also dismissed the college's claim that the materials were exempt under FOIL. Because the materials had been authorized by the college and used in the classroom for years, Murphy said, they "cannot possibly be pre-decisional

or deliberative in nature."

According to Russo's attorney Robert Van Der Waag, Russo wanted to view the materials because he was interested in what was being taught at the community college.

"If state supported colleges serve a public purpose, it beggars the imagination to believe that the First Amendment forbids the New York State Legislature from permitting members of the public to see the materials that are being used to achieve that public purpose," Van Der Waag said in a court brief supporting Russo.

Student Press Law Center Executive Director Mark Goodman expressed his support for Justice Murphy's decision and his disappointment in the organizations that are contesting the ruling.

"It's unfortunate that these groups that have traditionally been allies of the student press have taken a position that could do great damage to the rights of journalists to gather information," said Goodman. "They don't seem to understand the importance of the public's right to know."

Van Der Waag said no date has been set for the appellate court hearing. ■

State Law Protects Student Employees' Privacy

CONNECTICUT — The University of Connecticut does not have to reveal the identity of student employees of the school's public safety office, the state supreme court ruled in February.

The case began in 1987 when Karen Ali, a reporter for the student newspaper *The Daily Campus*, requested a list of the students who worked for the school's police department writing parking tickets, providing escort services for students and supplementing dormitory security.

The director of the department only gave her the names of 13 of the 55 student employees. The other 45 student workers said they objected to

having their names revealed to the newspaper.

The Daily Campus then filed a complaint with the Connecticut Freedom of Information Commission claiming that it was entitled to all 55 names. The commission ordered the university to reveal the information and the university appealed.

In its decision, *University of Connecticut v. Freedom of Information Commission*, 217 Conn. 322 (1991), the supreme court noted that the state open records law had a specific exemption that allowed the school to deny access to the information. That provision says, "Nothing ... shall be construed to require dis-

closure of ... names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed"

The student newspaper had argued, with the Freedom of Information Commission's support, that the provision only applied to students whose sole affiliation with the school was as students. Students who were hourly employees in jobs unrelated to their educational experience, they said, should not be covered by the exemption.

The court disagreed. It said there was no reason "to depart from the plain meaning of the statute." ■

Court Protects Source's Identity

Judge Upholds Reporters' Privilege by Withdrawing Order to Hand Over Notes

KANSAS — A student reporter won his battle to maintain a confidential source when a state district court judge upheld the reporter's qualified privilege against compelled disclosure of the source and other unpublished story materials.

The ruling came as a reversal of an earlier judgment that would have required Jeff Fast, a reporter for the Wichita State University *Sunflower*, to turn over his notes and drafts of a story for the judge's review.

In the initial ruling, which came on June 11, 1990, Judge M. Kay Royse ordered Fast to turn over his notes so she could determine if the source in his story was a defendant in the pending lawsuit. If it was determined that the source was a defendant, the judge ruled, Fast could not assert a privilege against giving a deposition.

"It is important that a journalist not be used by a defendant to circumvent appropriate discovery proceedings in this court. And if it is true that the alumnus who is the confidential informant is also a defendant in this lawsuit, then we have, I think, a serious problem," Royse said in her June 11 decision.

Fast was subpoenaed by James and Jane VanMilligan, who filed a \$2.1 million lawsuit accusing members of Wichita State's Kappa Sigma fraternity of trespassing,

harassment and conspiracy to inflict emotional damage.

The VanMilligans said they believed that while Fast was covering the story for the *Sunflower*, he acquired the name of a Kappa Sigma member who the VanMilligans say set fire to their Jeep in July 1987.

After the judge's order that Fast turn over his notes, Fast's attorney Pat Doran, filed a motion for reconsideration. At an Aug. 20 hearing Royse withdrew her order, saying that the VanMilligans had not shown enough evidence to overcome Fast's qualified privilege.

She said, however, that Fast still had to appear at a deposition, where he was advised not to answer any questions relating directly or indirectly to the source's identity.

In legal disputes, a reporter's privilege is balanced against a party's right to acquire evidence in order to have a fair trial.

Fast was also called as a witness when the case went to trial in January. Although Doran contended that Fast's testimony would be repetitious, Fast was required to testify. According to Doran, Fast took the stand with the understanding that none of the questions would involve the confidential source.

The VanMilligans chose not to file a motion to compel Fast to reveal his source during the testimony, said Doran. ■

Kirkwood From page 29

dents input into the process."

The issue was raised at a November school board meeting. McCallie announced that he would support the *Call* staff in making its own decision, in a written statement he prepared during the meeting.

"For myself and other staffers, this has been a real learning experience," said editor in chief Michael K. Griffin, a senior. "In order to be a good journalist, there has to be some controversy. If there isn't controversy, then a journalist isn't doing the job."

A month after the board meeting, the *Call* staff adopted a new advertising policy, but only after examining advertising policies from 45 professional and school publications.

The new policy states in part:

- the staff reserves the right to accept, reject, edit or cancel any ad;
- advertising shall be free of statements, illustrations, or implications that are

offensive to good taste or public decency based on the opinion of the staff;

- the staff will not accept ads that are racist, sexist, illegal for high school students or that violate other standard journalistic principles;

- and advertising that is accepted is not an endorsement from the staff, the adviser, or the administration.

The 27 *Call* staff members also decided to continue running the Planned Parenthood and Birthright ads.

The board of education approved the advertising policy drafted by the *Call* staff with the help of adviser H.L. Hall.

"I was extremely pleased with the ad policy and the breadth of the decision process," said Thomas Keating, superintendent of the board of education.

The decision by the board did not stop parents from pursuing the issue. A petition was circulated in January in an attempt to convince the school board to reconsider its position. Nearly 1,500 signatures were collected. Petitioners said that the board should not have let

the students decide whether or not to run the ads. They further claimed that by not involving parents in the decision-making process, the district had undermined parental authority.

Students countered the action by local residents with a petition of their own. They were able to garner more than 1,000 signatures backing the *Call* advertising policy.

After such strong attendance at both the February and March school board meetings by residents concerned about the issue surrounding the student newspaper's advertising policy at Kirkwood High School, the board called a special meeting in mid-March to try to resolve the issue once and for all. The school board once again rendered unanimous support for the self-determination of *The Call* to a cheering crowd estimated at 400 to 500 people.

"I'm ecstatic," Principal McCallie said. "I'm gratified that the Board of Education has supported the maturity of our students." ■

FRIENDS

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

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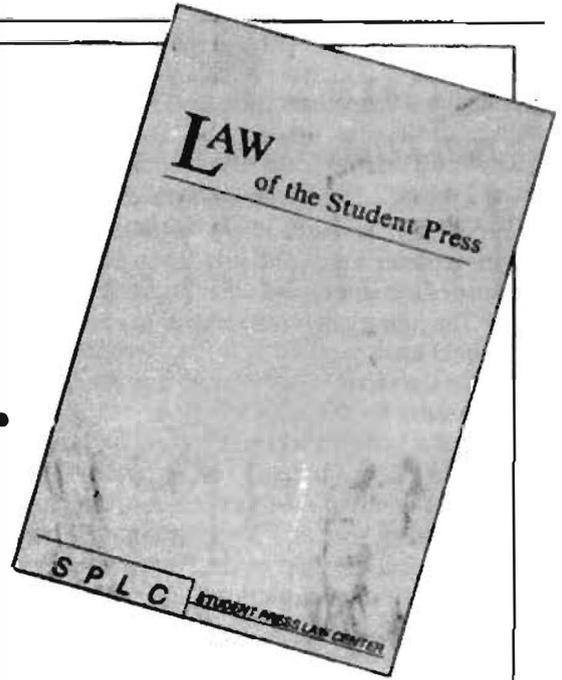
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Drawings, cartoons and news tips are welcome and needed by the *Report* staff. Help us inform the student journalism community by contributing your skills and information. Write or call us at:

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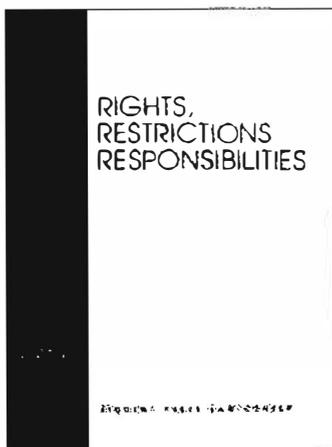
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