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Student Press Law Center Report

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* Organizations for purposes of identification only
SPLC legal requests increase — again

For the fourth consecutive year since the Supreme Court’s 1988 Hazelwood v. Kuhlmeier decision that made it much easier for school officials to censor high school student publications, legal requests received by the Student Press Law Center rose dramatically.

In 1991, the SPLC documented a record 1,376 legal requests from high school and college student journalists and advisers seeking free legal assistance. Requests came from all 50 states. This number represents a 48 percent increase from the 929 requests received in 1990. The SPLC received 615 requests in 1989 and 548 requests in 1988.}

Don’t Be Fooled
America risks losing touch with the idea upon which it was founded

America began with a great idea. A government of the people, by the people, for the people. A democracy, it was called, and it was a something special, revolutionary actually. And those who put this grand and novel plan down on paper drew from their experience for guidance. They drafted laws to ensure that the mistakes made by those who preceded them were not repeated. One of these laws was the First Amendment. In the Old Country, those who offended the king or his policies could be tried for sedition and severely punished.

Our idea was different. Under the American plan, there would be no king; the governed were also the governors. And government officials — whose authority was limited to carrying out the will of the public — were to be held accountable to those who gave them their power. The government belonged to the people and the right of the people to know what their government was up to was presumed; the right to criticize protected by law. The Idea, in short, was this: our government was not supposed to assume the traditional role of “we against them” that had existed throughout history. American government was just “us.”

The Idea may have never been perfected back then, but it remained alive. It was, at least, respected as a goal worth striving for. But it appears things have changed.

Every day the Student Press Law Center receives telephone calls from student journalists and their advisers that provide examples of what can be best and most simply described as “The Attitude.” The Attitude is the mirror image of The Idea. It is the belief that the government, and those who exercise its power, are members of some all-knowing body, an exclusive club if you will. It is the belief that club members’ actions should not be questioned.

On the large scale we saw The Attitude when reporters were effectively prevented from independently monitoring the Gulf War and much of the public cheered. We saw it again when the press was made the culprit after raising questions about a Supreme Court nominee that government officials thought best to ignore. On a smaller — but more frequent and immediate scale — we see it when students call us after being denied access to campus police records because the police chief feels it is “none of their business.” We see it when a high school newspaper that criticizes a school district policy is censored because “it makes the school look bad.” And, most alarmingly, we see it when students and advisers and parents and the press fail to object to these actions. The Attitude, it seems, is gradually replacing The Idea.

The Attitude presents a dangerous and tragic lesson for our youngest citizens, a lesson that many government officials and judges, the club members, appear all too willing to encourage. But please do not be fooled. It is not, as many would have you believe, us against them — it is still just us. Respect for authority is one thing.Blind adherence to authority is the antithesis of what America stands for. We cannot let our government officials forget this. And, most importantly, we cannot let ourselves forget this. For while The Idea is unrealized — it is still the best idea around.

Attorney Referral Network fights for student press

Last fall, in response to an ever-increasing number of legal request calls, the Student Press Law Center launched an effort to expand its Attorney Referral Network. SPLC referral attorneys volunteer to handle cases on behalf of student journalists when a situation requires more than the legal assistance that can be provided by the SPLC legal staff out of its Washington, D.C. office.

The response to our request for volunteers has been remarkable. To date, we have signed up 72 attorneys representing 31 states and the District of Columbia. And already, the assistance offered by these volunteers has had an impact. In the past few months, SPLC referral attorneys have, for example, helped students in their ongoing battle for access to campus police records and worked with others to fight the shutdown of their student newspaper.

We wish to thank these volunteers for their generous offer of time and support. We also encourage other attorneys interested in joining the SPLC in its fight for student press rights to contact us.

The Report Staff

Neil Gallow is a May 1992 graduate of the University of Florida in Gainesville where he majored in public relations and minored in chemistry. This fall, he plans to attend law school.

Adam Gorlick will be a senior at Clark University in Worcester, Mass., where he is majoring in English. This fall, he will serve as associate editor of The Scarlet student newspaper.

Neil and Adam would like to thank Vincent "F. V." Theresa for his inspiration in compiling the Report.
Kansas joins the club
Sunflower state passes legislation to overcome Hazelwood decision

**Kansas**—“I’ve never been involved in a project that could be so consuming, yet so gratifying.”

The words of Ron Johnson, director of Student Publications, Inc., at Kansas State University are delivered with a clear tone of satisfaction after the Feb. 21 signing into law of Senate bill 62, protecting “liberty of the press in student publications” for Kansas students.

The bill was originally introduced by state Sen. Lana Oleen (R-Manhattan) and Representatives Steve Ward (D-Council Grove) and Gary Blumenthal (D-Merriam) in response to the Supreme Court’s 1988 decision in Hazelwood School District v. Kuhlmeier, which allowed high school administrators to censor stories about teen pregnancy and divorce from a student newspaper. The bill was actively supported by the students and teachers of the Kansas Scholastic Press Association.

“This was a real team effort,” says Johnson, who was the legislative committee chairman for the KSPA. “Students and teachers responded to the Hazelwood decision and were willing to fight it.”

Senate bill 62, which was signed by Gov. Joan Finney in a public ceremony, was filed last year and passed the Kansas Senate on March 13, 1991, and the House of Representatives on Feb. 7, 1992. The Kansas Scholastic Press Association began the process of drafting a bill and finding sponsors immediately after the Hazelwood decision in 1988.

The new Kansas law has seen its share of ups and downs through the legislative process. In the spring and summer of 1988, initial preparation was started for drafting a bill which requested that “the liberty of the press in student publications shall be protected,” and that “material shall not be suppressed solely because it involves political or controversial subject matter.”

During the spring of 1989, that bill was introduced by Rep. Gary Blumenthal (D-Merriam) and passed the House Education Committee and the House of Representatives with a 99-26 vote. The bill then stalled in the Senate Education Committee. However, lobbying continued through the summer and fall of that year.

In the spring of 1990, the bill went before the Senate Education Committee with only limited opposition. However, the full Senate did not take any action on it, and it died in the Senate Education Committee.

With the summer and fall of 1990 came continued lobbying from the Kansas Scholastic Press Association. Needing a new sponsor, the association contacted Sen. Oleen, who agreed to sponsor a new senate bill. Drafting of the bill entailed some changes from the language of its predecessor and resulted in Senate bill 62.

“I wish the language were stronger,” says John Hudnall, Secretary of the Kansas Scholastic Press Association. “The thing that bothered me was the statement (allowing administrative) prior review. The scary thing about a policy of prior review is that it can turn into prior restraint very easily. But it’s about as good as we’ll get it for now, and I’m very happy we have something.”

In regard to prior review, the law says “review of material prepared for student publications and encouragement of the expression of such material in a manner that is consistent with high standards of English and journalism shall not be deemed to be or construed as a restraint on publication of the material or an abridgement if the right to freedom of expression in student publications.”

The new law protects student expression except when it is “libelous, slanderous or obscene,” or when it “commands, requests, induces, encourages, commends or promotes conduct that is defined by law as a crime or conduct that constitutes a ground or grounds for the suspension or expulsion of students as enumerated [by Kansas law] which creates a material or substantial disruption of the normal school activity....”

In addition, the law assures “student editors of student publications are responsible for determining the news, opinion and advertising content of such pub-
Wisconsin bill one step away

Bill passes state legislature in March; awaits governor’s signature

WISCONSIN — After its second year in the legislature, the Wisconsin student free expression bill (AB 567) made its way to Governor Tommy Thompson’s desk in late March where it awaits ratification with his signature.

The bill was originally introduced in the 1991 legislative session and sponsored by Reps. Peter Bock (D-Milwaukee) and David Clarenbach (D-Madison).

“The bill received speedy committee action during the first session,” said Dave Zweifel, president of the Wisconsin Freedom of Information Council, which supported the bill. “It passed the Assembly by a vote of 87-10, but the Senate didn’t take any action by the time the [1991] legislature adjourned.”

The bill received tremendous support this year during the Assembly’s February hearing, said Zweifel.

“High school students came and testified for the bill in Assembly along with journalism teachers. That showed great support and helped push the bill,” said Zweifel.

The bill protects “official school publications” which are defined as “material produced by pupils in a newspaper or similar publication that is financed in whole or in part by the school district.”

Because the 1988 Hazelwood decision said that high school publications that are “public forums” are still entitled to extensive First Amendment protection, the Wisconsin bill states that an “official school publication does not include a publication that is a public forum because the school board or a school official, employee or agent has, by policy or practice, opened the publication for indiscriminate use for expression by pupils, the general public or a segment of the general public.”

According to Zweifel, opposition to the bill came from the Wisconsin School Board Association and the Wisconsin Education Association. Their concern, said Zweifel, was that “teachers would be held responsible for libel issues.”

As a result, an amendment was tacked on to the bill saying teachers would be shielded from responsibility for libel. The school board association continued to oppose the bill.

On Feb. 13, the Assembly passed the bill with a 64-35 vote. The bill then passed the Senate with a vote of 17-15 on March 24. However, the Senate sent the bill back to Assembly with three amendments.

The first two amendments prohibit an “official school publication that contains material advocating unlawful conduct,” and “material advocating harm or injury to the person or property of any pupil or any school district official, employee or agent or to school district property.”

The third amendment says a publication that “contains material advocating the election of any person to local, state or national public office or advocating a particular vote at a referendum does not constitute the expenditure of public funds for a prohibited or unauthorized purpose.”

The three amendments were accepted by the Assembly, and the bill was sent to Gov. Thompson, who was expected to sign the bill by late April.

“I am confident that Thompson will sign the bill,” said Zweifel. “He’s been strongly urged to [do so].”
The passage of the Kansas student publications act not only marks a time for celebration, it also calls attention to the continuing drive by other states to develop and ratify legislation that will counteract the 1988 Supreme Court decision in Hazelwood School District v. Kuhlmeier.

Kansas has joined the ranks of California, Colorado, Iowa and Massachusetts as a state that protects high school journalists' free press rights.

Assemblyman Anthony Impeveduto (D-Hudson) of New Jersey is optimistic about the passage of the newly reintroduced bill 575 this term. The bill replaces last term's bill 557 which passed the House, but was voted down in the Senate in January. The bill is in the Assembly Education Committee with no scheduled dates for action.

House bill 4565 in Michigan had a hearing in the House Judiciary Committee last November, but never came up for a vote and died. Rep. Lynn Jondahl (D-Okemos) continues to sponsor the student free expression bill which is back in the House Judiciary Committee with no scheduled dates for action.

Arizona introduced Senate bill 1307 on February 10, which passed in the full Senate on a 21-8 vote with one abstention in March. There is no scheduled action for the bill in the Senate, where it is sponsored by Reps. Catherine Eden (D-Phoenix) and John Kromko (D-Tucson). The major Senate sponsor is Stan Furman (D-Glendale).

The disappointing news came from Idaho, Indiana and Minnesota where student free speech bills died this term.

"We had a good first year," said Jim Bernard, project manager of the Minnesota High School Press Association, who played a key role in supporting the bill's introduction. "Our legislative drive was completely handled by the students, and that has shown everyone how important this issue is to them."

The Minnesota bill was drafted originally by a high school student, Tony Pupcza, as a class project. Other interested Minnesota students then helped to work on forming the bill. The draft was then translated into legislative form by the legal counsel for Sen. Allan Spear (D-Minneapolis), who is sponsoring the bill.

The bill worked its way through the Senate where it passed in March. No hearing was scheduled in the House and it died when the term ended later that month. However, the bill went a long way from Pupcza's class project.

Pupcza feels that the key to getting legislation passed is "having the right connections and making people familiar with the bill. Lobbying is very important, and finding the right people to lobby for you is essential."

Now that there is proven support for the bill, Pupcza and Bernard expect the bill to be reintroduced next session.

"We learned a great deal this term," said Pupcza. "We have a good chance of passing the Senate next year. Everything will go better next term."

The Indiana proposal to overturn the Hazelwood decision came as an amendment to House bill 179 which dealt with requiring student immunizations in the schools. The bill passed the House on Feb. 10 with a 77-21 vote. However, the president of the Senate threatened to kill the whole bill unless the amendment concerning student free expression was removed. The amendment was stripped Feb. 14, but a new student free expression bill will be reintroduced in January 1993, according to Dave Adams, co-chairman of the Indiana High School Press Association Legislative Committee.

An Idaho bill, introduced in January, passed out of the House Judiciary Committee in early March, but was defeated by the full House later that month with a 37-42 vote. Barbara Croshaw, who coordinated support for the bill on behalf of Idaho journalism teachers, says it will be reintroduced next session.

(See FREE PRESS, page 28)
Ever So Near

Armed with favorable court rulings, students still find the going tough in their fight for campus crime information.

Over the past year, the battle over access to campus crime reports has been won by students on many fronts. Sparked by a federal court ruling in Missouri, which forced Southwest Missouri State University to release security department reports to Traci Bauer, then editor in chief of the Southwest Standard, the effort to open crime information has gained momentum.

In May 1991, a state court in Arkansas handed down a similar ruling to the one in Bauer's case that forced Southern Arkansas University to make its campus police reports public.

In November 1991, after an ongoing effort by the Department of Education to frustrate the decision in Bauer, a U.S. District Court judge temporarily halted the U.S. Department of Education from using the Buckley Amendment to withdraw or threaten to withdraw federal funds from schools that disclose campus crime information. The court order in that case, SPLC v. Alexander, has allowed more college newspapers than ever before to gain access to campus crime records.

And finally, in March 1992, bills passed the House and Senate that would amend the Buckley Amendment. These bills would clarify that campus crime records are not a part of the "education records" that Buckley says schools should not make public.

Add to these victories the federal and state crime statistics laws that have been enacted in the last few years, and the outlook for the campus media appears promising. But there are still several hurdles to be cleared before complete access to campus crime information is achieved.

William E. Whitman, director of the Campus Safety and Security Institute, a consulting group for colleges and universities focusing on campus security issues, says colleges are still reluctant to disclose campus police information despite recent laws and court rulings.

"There is still a massive cover-up going on," Whitman said in a speech to campus administrators at the Sixth National Conference on Campus Violence held in Baltimore in February. "Thirty-two percent [of schools] look to hide their crime statistics through the campus judiciary system. It's pervasive, and it's really a shame."

Whitman's organization surveyed police and security personnel at 336 colleges and universities. They were asked about the effects of new state and federal laws requiring institutions of higher education to disclose statistics of crime on campus and various security policies.

Whitman said campus law enforcement administrators have been coerced by university administrators to continue to publicly downplay crime. He said survey respondents reported that some law enforcement officials in Pennsylvania and New York had been fired in disputes over the honest reporting of crime statistics.

Police officers, said Whitman, are motivated by training to educate the public about crime, but they also want to follow the orders of superiors. Those two motivations can conflict when administrators become excessively worried about the image conveyed by public reporting of campus crime.

Key developments in the next few months will occur on the legislative front that could help end the lengthy battle for complete access to campus crime information.

HR 3553, which passed the U.S. House Representatives in March, contained an amendment sponsored by Rep. Jim Ramstad (R-Minn.) that could affect the way sexual offenses are reported. It recommends that schools support the rights of victims to report crimes against them to off-campus law enforcement authorities where information may be more accessible to the media and would require that victims have the right to be notified of the outcome of a campus disciplinary proceedings against their assailants, which would be free to pass on to the campus media.
The Death of the

In the war over access to crime records, at some schools the times are a changin’

The federal district court ruling in SPLC v. Alexander allowed more college newspapers than ever to gain access to campus crime records. U.S. District Judge Stanley Harris in November temporarily halted the U.S. Department of Education from using the Family Educational Rights and Privacy Act, commonly referred to as the Buckley Amendment, to withdraw or threaten to withdraw federal funds from schools that disclose campus crime information.

The SPLC joined students from the University of Tennessee at Knoxville and Colorado State University at Fort Collins in a fight to release campus crime reports.

University of Tennessee officials said the injunction has eased their fears and they are now releasing complete crime reports.

"The university may now treat student law enforcement records like all other law enforcement records without jeopardizing federal funding," officials aid in a prepared statement.

Colorado State University has also resumed the release of campus crime reports. The school began denying access in 1991, after the Department of Education sent a letter to the university threatening to withdraw federal funding.

Brian A. Snow, the university’s general counsel, said that schools were in an awkward situation of having to determine whether to follow a federal agency’s directives or the state open records law.

"We were caught between two orders that collided like freight trains," he said.

In January, officials at the University of Nevada at Reno, decided to release campus crime records that name individual students after pressure from the student newspaper, Sagebrush.

University officials said they were only withholding information in the interest of protecting the students. But Sagebrush crime reporter Warren Harris said it has never been easy gaining access to campus crime reports. He also laughed at the fact that president Crowley stated in the letter to Conlin that “[the university] arrange[d] a process whereby Sagebrush reporters, through one extra phone call, could get the names of arrested students from the sheriff’s department.”

“He [president Crowley] doesn’t know what he is talking about,” Harris said. “There was never any process in effect. The only process was that I had to do an end-around the campus administration to get anything I wanted.”

Harris also said that until 1988-89, administrators had withheld all names, both student and non-student, and that was only changed because Sagebrush pressed the issue.

The administration at the University of New Mexico ruled in early January that the names of arrested students from campus police reports will no longer be withheld from the news media, university counsel Nick Estes said.

The new policy was enacted after a request by the New Mexico Foundation for Open Government. The Foundation based its request on the SPLC and the Bauer v. Kincaid court decisions.

The school’s administration in a statement said, “The University of New Mexico is no longer under the threat of withdrawal of federal financial assistance for release of information identifying students, our standard practice is now to make campus police reports available, without deletions, from our office of Public Affairs.”

Foundation Executive Director Robert Johnson had made an earlier request that campus police reports be available free from omissions. But after reviewing the request, the university initially said that it would continue to withhold...
Despite the SPLC v. Alexander ruling, the battle for full disclosure of campus crime records rages on. Many schools continue to use the Buckley Amendment as their justification for denying access to the records. Others give no reason at all.

Police at Jacksonville State University in Alabama refused to release the names of two students arrested on rape charges in October 1991.

"Officers went too far to protect student privacy," said Eric Mackey, editor of Jacksonville State University's student newspaper, The Chanticleer. "Releasing the names lets the students know what's happening on-campus and lets them know who was involved. It helps them protect themselves."

The school's legal counsel, Randy Woodrow, referred to the Department of Education's threats to withhold funding from any university that violates the Buckley Amendment, although the university has never even received a warning letter from the Department for releasing crime reports.

In November 1991, Woodrow said in an Associated Press report that he "welcome[d] a court order that says we have to release those names. If [a ruling in favor of the SPLC] happens, obviously we would change our mind."

But when Mackey presented him with the decision in SPLC v. Alexander, he continued to recommend the school's denial of access to campus crime records.

Student journalists at the University of Central Arkansas continue to fight for release of uncensored campus crime reports.

Staff reporter Lynda Wilson said despite the favorable SPLC ruling, the administration has made little effort to release complete campus crime reports. "We now receive some of the police reports with the names blotted out, which is a little better than before," Wilson said. "But the problem of complete disclosure still remains and the administration has given no legal justification for censoring the records."

University of Central Arkansas policy will not change according to Julie McDonald, university legal counsel.

"The [SPLC] injunction has no impact," McDonald said. "There will be no change in the way the [university police] reports are released."

She said the campus police reports were considered part of a student's academic record and that as a result, the school was exempt from the ruling.

Reporters from the student newspaper at the University of Hawaii, Kal Leo, have been repeatedly denied access to campus crime records, editor in chief Susan Miller said.

"Kal Leo has been denied access and cannot publish the University of Hawaii Campus Security's incident reports because the administration continues to falsely consider them educational records," Miller said.

The university's response has been simple and in violation of the SPLC court ruling, Miller said.

"Because Campus Security shares records with me, that makes them education records," said Dean of Students Tom Gething. "If it fits the definition of an education record, then it is protected."

Jana Studelska, a staff reporter for the Northern Student at Bemidji State University in Minnesota, said she does not believe her school will open its records without a legal battle.

"It has become painfully apparent that Bemidji is not going to initiate changes in open records policy or its conduct system without legal urging," Studelska said. "My attempts at prod­ding cooperation have been met with hedging and empty promises."

In addition to Bemidji State University, Studelska said that student newspapers at other schools in Minnesota have encountered similar difficulties in getting access to campus police reports. Among them are: Mankato State, Winona State, St. Cloud State, Southwest State and Moorhead State.

The University Police Department at Sam Houston State University in Texas, has continually denied access to campus law enforcement records to not only the student newspaper, The Houstonian, but also a Huntsville commercial newspaper, The Huntsville Item.

(See NO ACCESS, page 11)
DOE fights SPLC injunction

WASHINGTON, D.C.—Student Press Law Center Executive Director Mark Goodman has accused the U.S. Department of Education and Education Secretary Lamar Alexander of continuing to frustrate the effort to open up information about crime on college campuses.

The Department of Education filed papers on Jan. 17, in which it urged U.S. District Court Judge Stanley Harris to dismiss a case filed by the SPLC and three student journalists. The case, SPLC v. Alexander, stopped the Department from using the Family Educational Rights and Privacy Act, commonly known as the Buckley Amendment, to threaten the withdrawal of federal funding from schools that release campus crime reports.

In the motion to dismiss, attorneys for the Department claimed that the restriction on access to the names of students arrested by campus law enforcement officials was justified by concern about the "limited expertise of many campus police departments" and their difficulty in "appreciating the potential ill effects of an unprovoked or premature disclosure" of information.

Goodman said the Department of Education's most recent court filing demonstrates again that it is more interested in placing roadblocks in the way of those who want crime reports than in opening up the information students need to protect their safety at school.

"Secretary Lamar Alexander and his Department have given lip service to the notion that they care about campus safety and want to end federal support for the cover-up of crime information," said Goodman. "If that is the case, why are they fighting this lawsuit, and spending thousands of taxpayers dollars in the process, every step of the way?"

"Moreover," said Goodman, "they've... (See SPLC SUIT, page 11)

College editor honored by National Press Club, AP

MISSOURI — Traci Bauer, former editor of the Standard at Southwest Missouri State University in Springfield, has received three unique honors in 1992.

In March, the National Press Club in Washington D.C., awarded Bauer its Freedom of Press Award. The award, given to only one journalist in the country each year, was presented for her courage and conviction in defending her First Amendment rights.

The other recognition came from readers who responded to a write-in survey from the Springfield News-Leader and from the Associated Press in Missouri. In the News-Leader, Bauer's role in the landmark ruling Bauer v. Kincaid was voted 1991's most popular story. The AP picked Bauer's victory over Southwest Missouri State as number eight in the top ten stories in Missouri in 1991.

Bauer, who successfully sued her school in March 1991 for access to campus crime records, spoke modestly of her achievement.

"I'm really honored to be named among those people who have done things I thought were most important," Bauer told the AP. "I'm really surprised at how well-known this case was."

Bauer sued SMSU in federal court, where Judge Russell G. Clark ruled in March 1991 that campus security department incident reports are not educational records, as defined by federal law. He also declared that SMSU's failure to disclose the information was unconstitutional.

Bauer is also involved in a project that could bring her victory to a much wider audience. A Los Angeles company, MWG Productions, has purchased the films rights to Bauer's story and is working on a script for a television movie. Bauer said MWG hopes to have the production ready for a network television broadcast this fall.
Access
(Continued from page 8)

names from police reports because the Department of Education had threatened to withhold funding from schools that released student crime reports.

At Nicholls State University in Louisiana, university lawyer Winston DeCuir told school officials that according to a Louisiana statute concerning criminal records, initial reports of police departments are considered public records and must be furnished upon request. He added that the SPLC ruling prohibited schools from using the Buckley Amendment as a reason for denial of records requests.

As a result of DeCuir's interpretation of the situation, Nicholls State officials have opened for public inspection all initial incident reports filed since Dec. 6.

Other schools making university police incident reports available to the public since the SPLC decision are Southeastern Louisiana University and McNeese State University in Louisiana.

No Access
(Continued from page 9)

Karen Hargrave, former student editor of The Houstonian, said despite repeated attempts to gain access to the daily incident logs, she was unable to make any headway.

"On [only] one occasion I was reading information off the front page of an incident report by UPD Chief Charles Tackett," Hargrave told The Huntsville Item. "All future attempts proved futile and I simply gave up."

One of the main problems Hargrave encountered was being unable to get through to Tackett.

"Maybe after I called him five or six times he called back," Hargrave said.

Bob Marks, Sam Houston vice president for academic affairs and student services, said he would not open campus police logs to the public.

The decision to open records by other state universities was "wrong, and I disagree," Marks said. "Whether the law [Buckley Amendment] existed or not...[the daily logs] are simply not open records."

Other schools continuing to deny student newspapers access to some or all campus incident reports, all in Pennsylvania, are Temple University, Community College of Philadelphia, West Chester University and Harrisburg Area Community College.

At Harrisburg Area Community College, policies regulating access by the newspaper have prompted a campus-wide debate over censorship and freedom of the press.

Editor Jason A. Smith said the regulations stifle the paper's attempt to cover news occurring on campus.

"The worst [part of this restriction] is that the administration can basically control what we are writing," Smith said.

SPLC suit
(Continued from page 10)

insulted the integrity of the many outstanding campus police departments around the country that are doing their best to keep their campuses safe and that want to provide detailed information about campus crime to the public."

Attorneys for the SPLC and the college journalists have filed a response to the defendants' motion to dismiss. They are waiting on a ruling from the judge on the motion.

Key developments in the next few months may occur on the legislative front that could not only end the SPLC v. Alexander lawsuit, but also many of the battles for access to campus crime records.

The Higher Education Amendments of 1992 (HR 3553, S 1150) passed the Senate and House in February and March respectively. The bills, which contain the language necessary to clarify that the Buckley Amendment does not apply to campus law enforcement records, went to a House/Senate conference committee in April and could go to the President by midsummer.
State bills hold key to access

Georgia law requires student names, W. Virginia law allows police delay

Preparations to comply with the Student Right-to-Know and Campus Security Act of 1990, which will require schools to report crime statistics beginning in the fall, are underway. But state legislatures have taken the initiative to broaden the scope of public information beyond that federal law.

Most have attempted to give the public and the student press even more access to data by requiring more frequent and specific reports of crimes on campus. Pending legislation would not only require schools to release campus crime information, but in some states denial to that information could result in a civil action for damages.

Increased openness is not the trend in every state, however. The state legislature in West Virginia has passed a law that would restrict access to crime information.

In Georgia, Gov. Zell Miller signed House bill 1296 into law in April. The bill, sponsored by state Rep. Larry Walker (D-Macon), was the state's first campus crime bill. It will require all incident or complaint report forms of campus and local law enforcement officials to include the identification of any victim who is a student and the name of the school he/she attends. The bill, when used in conjunction with Georgia open records laws, should let student journalists gain access to crime information involving students.

Assemblyman Pat Nolan (D-Glendale) introduced in February Assembly bill 3739, which would require officials at colleges and universities across the state of California to compile records of all criminal occurrences reported to police or campus authorities. Officials would also have to make these records available daily on the request of any student, campus employee or the media.

The bill contains an enforcement provision that would allow anyone denied information to maintain a civil action for damages against the school. Money could be awarded for each day that the requested information was not made available. At press time, the bill was scheduled for a hearing in the Senate Ways and Means Committee for the end of April.

Ginny McReynolds, president of the Journalism Association of Community Colleges, has offered her organization's support for the bill. "Without access to the information gathered by the campus police, there is no way that we can make complete reports," McReynolds said in a prepared statement. "The bottom line is that the community that each newspaper serves has a right to know what is happening in that community."

On March 30, West Virginia Gov. Gaston Caperton signed Senate bill 409 into law, which may make campus crime information harder to obtain. The bill, sponsored by state Sen. Sondra Lucht (D-Martinsburg), will require disclosure of reports of criminal acts on the state's college and university campuses only if an investigating official determines a crime has occurred. The provision will allow law enforcement officials at the state's colleges and universities to withhold campus crime information for up to ten days. It will also allow officials to withhold any personally identifiable information in those reports.

Senate bill 1378, introduced by Pennsylvania state Sen. Richard Tilghman (R-Bryn Mawr) in October 1991, remains in the Senate Education Committee. It would require college and university police departments to keep police logs and open those logs to the public.

"We need to make students aware of criminal activity," Tilghman said in a newsletter to constituents. "[By making police logs public record], the necessary steps may be taken to limit their chances of becoming victims."

Maryland state Sen. Christopher J. McCabe (R-Montgomery), in response to the escalation of rape and sexual assault on college campuses, introduced Senate bill 438 in January requiring the state's colleges to implement a sexual assault victims' bill of rights. The bill parallels federal legislation pending in Congress.

The bill specifically states that the victim would have the right to be notified of the outcome of a judicial proceeding against the person she accuses. She could then report that outcome to the media. The bill will be heard by the Judicial Proceedings Committee. No date has been set for the hearing.

"I support the mission of our schools and I am hopeful that most campuses have already implemented much of what this bill requires," says McCabe.

Crime statistics bills in two states have died recently.

In New Jersey, Senate bill 1778 died in January. The sponsor, Sen. Raymond Zane (D-Salem City), said he would not try to reintroduce the bill until the federal crime statistics law goes into effect.

In Missouri, Senate bill 425, which would have required schools to separate education records from crime records, died because time ran out in the 1991 legislative session. Sen. Patricia Danner (D-Smithville) says she has no plans to reintroduce the bill.
The Access Game

Student journalists should feel that open records and open meetings laws are becoming increasingly easier to use. After all, access to records is as easy as making a request and receiving the information, right?

Wrong! Many student journalists still believe they are not getting all the information they are entitled to under the law. Other students just do not know how to use open records and open meetings laws to gain access to the information they need.

Harry Hammitt, editor of Access Reports, a bi-weekly newsletter on freedom of information issues, believes that access to government information has made tremendous strides in recent years.

"Access to campus records, and most all public records, has had a relative breakthrough," Hammitt said. "But the battle to have complete public disclosure is not over by any means."

Hammitt said the biggest problem student journalists have in using state and federal open records and meetings laws is knowing how to use them.

"Overall, the Freedom of Information Act (FOIA) is an incredibly useful tool when used correctly," Hammitt said. "Although Hammitt feels progress has been made, many students have not seen that progress yet."

Sean Halloran, managing editor for The Flyer News at the University of Dayton in Ohio, was repeatedly denied access to student disciplinary judicial proceedings because of the Family Education Rights and Privacy Act, commonly known as the Buckley Amendment. Under Buckley, the Department of Education can threaten to withdraw federal funding from schools that release "education records" to the public.

"I have filed numerous open records requests on behalf of the newspaper," Halloran said. "I have been denied every time."

John Hart, director of legal affairs for the university, said that the school used the Buckley Amendment to close hearings to avoid disruptions like those that had occurred in the past.

"A number of times open meetings have resulted in disruption within the meeting itself," Hart said. "The trend has been to close the hearings in order to avoid such situations."

He said the university has the right to close the meetings for two reasons.

"One reason is the Buckley Amendment, the other is because there is no requirement that the university keep the meetings open [under the state open records law]."

Editor Brad Nichols at Southeastern Oklahoma State University was ejected from a student senate meeting in February.

Under Oklahoma statute, student senators in the state's university system are "public bodies" and must abide by the Oklahoma Open Meetings Act, said Nichols.

"The removal of Brad Nichols was done as a joke," said Senate President Alan Dickerson. "He was reinstated immediately. It wasn't a question of trying to keep the press out, because a reporter was still present."

Nichols, who was not amused, said although the Senate allowed him to return, his removal was still of great concern to him.

On the state legislative front, a Pennsylvania open records bill that would require public universities to open all financial records for public inspection is in the Senate Education Committee.


In March, Gov. Robert Casey endorsed the legislation.

"Quite simply, the state's taxpayers who provide over a billion dollars for these institutions have a right to know how their money is being spent," Casey said in a news release. "It should be our goal to ensure that this information be readily accessible to all members of the public."

He said he wanted public access to information about things such as salaries, travel expenses and equipment costs.

Federal and state open records laws can be an indispensable tool for reporters. Although each state's law is different, most allow student journalists access to a wide range of documents held by public agencies including public schools. The key for gaining access to these records is knowledge and cooperation from school officials. Sounds easy, right?"
Georgia newspaper gets access to records but not hearings

GEORGIA — A county superior court in Atlanta ruled in late February that the University of Georgia student newspaper, The Red & Black, should have access to records of the organization court of the student judiciary but not to its meetings.

Former Red & Black editor in chief Jennifer Squillante filed suit in May 1991 after reporters from the newspaper were denied access to hearings on hazing charges against two University of Georgia fraternities. The school argued that the federal Family Educational Rights and Privacy Act, commonly called the Buckley Amendment, justified their denial of access to the meetings and records and that the law says schools that reveal “education records” that identify individual students can lose their federal funding.

Judge Frank Hull ruled in Red & Black Publishing Co. v. Board of Regents, No. D-90899 (Ga. Super Ct. Fulton County) (Feb. 20, 1992), that the Buckley Amendment did not allow the school to keep the judicial body’s records sealed because it exempted records that are opened as a result of a court order. The judge also said the “hazing” documents were disciplinary records, not “education records” protected by Buckley.

“The documents at issue here involve hazing charges against social fraternities,” Hull ruled. “The information in the Organization Court proceedings here are not data reflecting the status of a student in an academic setting, such as grades, tests and aptitude scores.”

“In fact, the Organization Court records are maintained at the Office of Judicial Programs, while educational records are maintained at the Registrar’s Office,” Hull said.

The judge did not allow the newspaper access to actual disciplinary board hearings, however, because she said the board is not a governmental body as defined by state law.

Red & Black attorney Anthony E. DiResta said the paper plans to appeal Hull’s finding that the organization court hearings are not public meetings.

Squillante said the battle is too significant to stop now.

“The issue is too important to leave at this,” she said. “Although it’s great to have access to records, you can’t tell anything about the process by which you’ve arrived at these things on paper. It’s the job of the press to monitor these processes.”

William Bracewell, Director of the Office of Judicial Programs at the university and co-defendant in the suit, said lawyers for the school are still discussing the decision.

“I’m glad the decision is here, and we will all have the opportunity to study it and act accordingly,” Bracewell said. He declined further comment.

Mark Goodman, executive director of the SPLC, praised the ruling.

“This should send a message, if not to campus officials, to state legislators — it’s time to make a move toward openness,” Goodman said. “The court made it clear to the University of Georgia that they won’t have to worry about Buckley if they open these proceedings. I’d challenge them to open them out of fairness to the offenders in the case and the University of Georgia community as well.”

Alleged rape victim denied access to crime records

ARKANSAS — In Arkansas, a 34-year-old woman who claims she was raped by several University of Arkansas athletes lost an appeal in her request for crime records with the U.S. Court of Appeals for the Eighth Circuit.

The suit, filed by Fayetteville attorney Doug Norwood, had asked a lower court to force the university to comply with his request for copies of police reports regarding alleged sexual assaults and crimes involving athletes on campus during the past five years.

Norwood said the university cited the Buckley Amendment as the reason it could not release full reports.

U.S. District Court Judge Franklin Waters ruled in August 1991 that he could not rule on the matter because of “lack of federal jurisdiction.” The Appellate Court affirmed the lower courts decision.

Norwood said he might try to take the case for access to a state court.
Buckley opens college admission sheets
Campaign organized to get files opened on several campuses

MASSACHUSETTS — The Harvard University Admissions Office now must allow students to review their application "summary sheets" — which include admissions officers’ comments about them — because of a Department of Education ruling that says the documents are accessible under federal law.

The Family Educational Rights and Privacy Act (FERPA), better known as the Buckley Amendment, is commonly used by schools to deny access to campus crime and other records. However, Buckley also requires that current and former students be allowed to inspect their educational records. The law applies to all schools that receive federal funding.

"The [Harvard] decision was based on an interpretation of the regulations and the law," a DOE spokesman said.

Joshua Gerstein, a 1991 graduate of Harvard University and former editor of the Crimson, used FERPA to request access to his summary sheets in January 1991. Harvard officials denied the request, saying "[the university] had no legal obligation to make it available to [him]," and that FERPA did not apply to admissions summary sheets.

Gerstein then filed an appeal with the DOE alleging that the university violated FERPA when it denied his request.

Harvard had argued that the summary sheets contained comments based on high school teacher and counselor recommendations, which many students, including Gerstein, waived the right to see.

In August 1991, Leroy S. Rooker, director of the Family Policy Compliance Office ruled that students should have access to the documents. In a letter to university President Neil L. Rudenstine, Rooker stated that Harvard must allow students to "inspect and review" their summary sheets, but could remove any confidential information, including any information from recommendations that students had waived their right to see.

The admissions office had considered shredding the summary sheets after using them, Harvard attorney Marianna Pierce said.

"[The admissions office] has considered simply destroying the sheets after their use," Pierce stated. "It has not yet done so because the summary sheets are useful in explaining our processes in the case of review initiated by an outside agency."

Dean of Admissions and Financial Aid William Fitzsimmons said that Harvard will destroy the summary sheets in the future.

Fitzsimmons said that the admissions office will "obviously comply with the request," but that because all confidential information on the summary sheets will be removed the federal decision would not have a major impact.

Gerstein said that students having the right to know was the main objective.

Directions:  "I really was not all that interested in seeing what they wrote about me," said Gerstein. "I just feel that the students should have a right to look at [the summary sheets]."

Gerstein also felt that the new open summary sheet policy might reveal new information.

"Students have finally gotten to look inside a Harvard policy that was a completely sealed process," Gerstein said. "When you turn over a rock that has been sitting for a long while, many things crawl out from under it. That's what we're hoping for."

Other students at Harvard, Northwestern, Rice and Stanford have made similar requests pursuant to the outcome of Gerstein's request.

"Some students have been told their files have been destroyed," said Gerstein. "But other students have been as successful as I have in getting the release of their summary sheets."

Court says secret search for university president is illegal

MICHIGAN — The board of regents of the University of Michigan violated state law when they secretly conducted a presidential search that led to the hiring of the school's current chief executive James J. Duderstadt, Judge Kathleen Jansen said in a January decision.

The Michigan Court of Appeals called the secret search process illegal and ordered the university to obey the Michigan Open Meetings Act in future searches.

The court also ruled it was clear the regents intentionally worked around the open meetings laws by meeting in small groups that did not make up the required quorum, flew across the country to "visit" candidates rather than interview them and made decisions by telephone rather than in a public setting.

The process was a "blatant attempt to avoid the Open Meetings Act," Jansen wrote in Booth Newspapers, Inc. v. The Board of Regents of the University of Michigan, Nos. 120478; 120543 (Mich. Ct. App.)(January 21, 1992). "There is a real and imminent danger of irreparable injury when governmental bodies meet and act in secret."

The decision does not affect Duderstadt's standing as the UM's president, said Rowe.

The 1988 suit alleging the regents ducked the open meetings act was filed by the Ann Arbor News, which soon was joined by the Detroit Free Press.

UM General Counsel Elsa Cole said the court order will make it difficult for regents to find a qualified president in the future because candidates will not apply for the job if it means undergoing public scrutiny.

(See REGENTS, page 24)
Just Do It!

High school students are trying to move their schools out of the shadow of Hazelwood; some have succeeded but many have not

If you want a job done, sometimes you have to just do it yourself.

High school students are adopting this philosophy when it comes to defending their free speech rights against administrative censorship. Taking the initiative to defend themselves in the post-Hazelwood era, high school students in Minnesota drafted a free expression bill to overcome the 1988 Hazelwood decision and submitted it to legislature (See PRESSING ON, page 6.)

The bill was written by Toni Pupeza, a 17-year-old student at Armstrong High School in Plymouth, Minn., as a class project. Jim Bernard, project manager of the Minnesota High School Press Association, worked with Pupeza and other members of the association's student advisory board to propose the bill to Sen. Allan Spear (D-Minneapolis), who sponsored it after it was translated into legislative form.

Although the bill did not pass this term, Pupeza is proud of her efforts and those of her fellow students.

"I think we went really far, considering it sometimes takes years to get a bill passed" said Pupeza. "I'm disappointed the bill didn't pass all the way, but everyone has the energy to get it passed next term."

Fighting to preserve their free expression rights with considerably less cooperation were Eric Ferrero and Sage Romano, former editors of the student newspaper at Morro Bay High School in Morro Bay, Calif. (See CONTROL, page 21). After composing an issue of their newspaper that had its content and format dictated by the paper's adviser, Romano and Ferrero filed for a restraining order that would have prohibited the paper from going to print with the students' names on it.

"When we filed for the restraining order," said Romano, "the school realized we were serious about not wanting the issue to be published, and we wouldn't stop at anything to prevent it."

The incident at Morro Bay High School attracted much local media attention. For the most part, Ferrero said, the local press was supportive of his and Romano's efforts.

"I think it's ironic that the media and the school looked at us so differently," said Ferrero. "The school always told us that in the real world we have all these rights guaranteed by the constitution. Then they go against that by censoring us."

In defense of their free expression rights, the Minnesota and Morro Bay students have learned more about their constitutional and journalistic rights than they could have in a classroom lecture. In addition to doing homework and many other school activities, these students have spent their afternoons learning through experience what it takes to preserve press freedom.
Student gets ‘Wacked’

Senior given “suspended expulsion” for distributing underground newspaper at Beverly Hills High School

CALIFORNIA — Matthew Roberts probably wishes they had just washed his mouth out with soap and been done with it.

Instead, Roberts, a senior at Beverly Hills High School, was given a “suspended expulsion” by the Beverly Hills Unified School District Board of Education for his part in the February production and on-campus distribution of the underground newspaper, Wacked, which the board said was obscene.

Roberts has admitted to being one of several authors of stories and letters contained within Wacked, which called itself “a privately run opinionated fact oriented bulletin for the kids, by the kids, & of the kids of Beverly Hills.” He has refused school officials’ demands to disclose the names of the other students who worked on or contributed to the newspaper.

According to Jeri Okamoto, Roberts attorney, the students pooled their money to print about 200 copies. They planned to distribute the papers off school grounds but Roberts admitted to passing out two or three copies of Wacked to students on the Beverly Hills High School campus.

The newspaper consisted of five pages containing various articles and a “Personal” page. The lead article, entitled “State of the Union in A Dress,” coarsely criticized America’s economic decline in the world and contained numerous racial slurs against Japanese people. Other articles addressed sports, senior ditch day, drug use, dress styles and Beverly Hills High School faculty. Most of the articles contained profanity and “earthly” words, some with sexual overtones.

The school board ruled 3-2 at a hearing in March that Roberts violated section 48900(i) and (k) of the California Education Code that allows for the suspension or expulsion of a student who has either “committed an obscene act or engaged in habitual profanity or vulgarity,” or has “disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.”

“This is an institution of learning,” said School Board President Dana Tomarken. “We must create a positive environment that’s free of racial slurs, intolerances and attacks.”

Okamoto argued that the school board’s application of section 48900(i) and (k) was wrong. She claimed that the material contained in Wacked was protected by California Education Code section 48907, the California Constitution and the First Amendment.

Section 48907 states that the rights of students to exercise their free speech and press rights in school can only be prohibited where the speech is determined to be obscene, libelous or slanderous, incites students to commit unlawful acts on school premises or creates a substantial disruption of school operations. Okamoto argued that Wacked did not fall in any of those categories.

Further, Okamoto said, Wacked, as a non-school-sponsored publication, is not subject to the same limitations imposed on a school’s official newspaper. She pointed out that the Supreme Court’s 1988 Hazelwood decision drew a clear distinction between school-sponsored and non-school-sponsored, or underground, student newspapers — a distinction, Okamoto said, school officials in this case simply ignored.

“It doesn’t matter that this was an underground newspaper. What matters is that he circulated it on campus,” said Eric Bothen, attorney for the Los Angeles County School Board.

During the school board hearing, Roberts apologized for the contents in Wacked. He said the paper was created by the students in order to express discontent with the school administration and to discuss other student issues without fear of being censored. But Roberts admitted they went too far.

“I’m sorry. It was wrong... The way we did the paper up, the meaning was lost. That was our fault, and I’ll take the punishment for it,” he said.

On the advice of his attorney, Roberts declined further comment until the legal proceedings are concluded.

Roberts was suspended on February 1992 (See BEVERLY HILLS, page 32)

Desilets braves the storm

NEW JERSEY — The eye of a hurricane provides only a tempestary calm before destructive winds start raging again.

Brien Desilets has endured the first wave of the hurricane being blown by Clearview Regional Junior High School after the school censored two movie reviews he had written for the student newspaper in 1989.

He enjoyed the calm of the storm after successfully suing Clearview Regional. State superior court Judge Robert E. Francis ruled in May 1991 that the school had violated Desilets’ rights under the New Jersey constitution’s free expression provision, article 1, section 6. This decision marks a first-of-its-kind ruling that a state’s constitution provides more protection for a student journalist than the federal constitution.

Desilets is now bracing for the second coming of the storm as the school board has appealed the decision to the New Jersey Court of Appeals.

The school officials pulled Desilets’ movie reviews of Mississippi Burning and Rainman because they felt it was inappropriate for a minor to read a review of an R-rated movie. When Desilets wrote the reviews, he was 13 years old.

William Buckman, Desilets’ attorney, based his argument on the fact that his clients’ articles were benign and posed no threat to discipline. Furthermore, Buckman maintained that students had access to reviews of the same movies in the school library.

The school board began the appeal process early this year, and a hearing was expected to be set for this summer.
CENSORSHIP

Something stinks in Maine

Student questions underground newspaper review

MAINE — Principal James Stephenson’s confiscation of an underground newspaper at Massabesic High School in Waterboro last January prompted a debate over the school board’s policy of prior review of “unauthorized” student publications.

Stephenson confiscated editions of Horsepoop on campus because of the school board’s policy on underground newspapers, which states that the school principal must review such publications before they are distributed.

The confiscated issues of Horsepoop, which takes its name from the school’s official student publication, the Hoofbeat, ran articles criticizing school policies and administrative attitudes.

“It didn’t meet the prior review school board policy,” said Stephenson. “I learned that the newspaper was being circulated on campus, and I confiscated the issues. It had nothing to do with the content of the paper. I was required to see it and I didn’t, so I had to follow the school board policy.”

After Horsepoop editor Clay Conally went to discuss the paper’s confiscation with Stephenson, the debate of the underground publication’s rights sprouted.

According to Conally, “the school board voted to suspend the [prior review] policy” until the district’s policy committee could draft an official proposal to ban the rule of prior review for underground papers.

The policy committee, which is a subcommittee of the school board, submitted a proposal overturning the mandate for prior review on March 26. The proposal would still prohibit some student material from being distributed, such as obscenity or pornography, libelous articles or indecent or vulgar material. If these guidelines are violated, Conally said, the principal would decide what disciplinary measures to take.

The school board was scheduled to vote on the subcommittee’s proposal in April.

“I have no problem with whatever the school board decides,” said Stephenson. “Having prior review puts a greater responsibility on the school and may offer students some measure of protection, as many of them are not familiar with the legal aspects of journalism. With prior review, the school would take responsibility for anything that would be libelous, for example.”

“On the other hand, without any prior review, the students have a greater responsibility, and there would be greater encouragement for kids to explore opportunities and issues under the First Amendment. I have no problem with either policy — I sit on the fence. I want the kids to have the best of both worlds — encouragement and protection.”

Conally feels confident that the new policy would definitely benefit him as well as future editors and writers of underground papers.

“Some of the guidelines are ridiculous and unnecessary,” Conally said of the proposal. “But if it gets passed, at least we’ll be allowed to distribute the paper on campus and not have to worry about any prior review.”

J-teacher settles out of court after being removed

CALIFORNIA — Deciding he did not want to teach journalism any longer, Don Sheets settled out of court last year with the school district for back pay equaling about $7,000.

After being relieved of his position as adviser for Hoover High School’s newspaper, the Hoover Heritage, Sheets filed suit against the Fresno school in 1989. The California State Teachers Association funded the lawsuit to reinstate Sheets.

Reasons for Sheets’ dismissal as adviser revolved around the annually published school satire newspaper, which was found “degrading” and “offensive” by Hoover High School principal, John Shropshire.
CENSORSHIP

School newspaper seized three times in one year

Officials to allow distribution after initiating prior review policy

CALIFORNIA — For the third time in one year, high school administrators disrupted distribution of The Tiger Times, the student newspaper of Elsinore High School.

The students were stopped from passing out all 1,800 copies on Dec. 20 when school principal Edward Brand objected to what he called a distasteful photograph. The photograph showed a male student with "92" written in black ink on the back of his white underwear. The student flashed his shorts while performing in front of fellow students during a lip sync assembly.

It was the third time that the newspaper had been withheld and distributed at a later date because of what school officials deemed inappropriate material.

"There was a picture in there I considered obscene and vulgar," said Brand.

We have an image to protect in the community. I am very proud of our student newspaper, but in this case I think this photograph was inappropriate and in bad taste."

Judy Stewart, an English teacher and newspaper adviser, said she reviewed the photograph in question before it was printed and did not find it obscene or vulgar.

"Absolutely not. I feel bad for the kids [on the newspaper staff]," Stewart said.

"They worked extremely hard to get [the] newspaper out."

Rene Allison, California Newspaper Publishers Association legal counsel also agreed that the photograph was not obscene.

"I think there is no question that this photograph is not obscene and that the First Amendment rights of the students were violated when the newspaper was confiscated," Allison said.

Following a meeting with the newspaper adviser and the superintendent of schools, Brand said he released the Dec. 20 issue in early January.

"Everyone recognizes what the parameters are now," said Brand. "When in doubt, they'll ask us ahead of time and not afterward."

Stewart said she does not fully approve of the prior review policy, but feels she must abide by the rules the school has set.

"Every single paper, photo and caption has to be approved by an administrator before going to press," Stewart said. "The policy has to be followed until otherwise changed."

In April 1991, an April Fool's Day parody issue was distributed but heavily criticized by administrators because it contained, among other things an article that described two male students as the "Couple of the Month." The issue, which consisted solely of fabricated stories including one that said the school had gone to a four-day week to conserve water, said the two high school wrestlers were in love and planned to marry.

The April incident prompted the removal of newspaper adviser Scott Olpin. He was reassigned to the district office and has since moved out of California.

Afterward, the district required each issue to be read by the adviser and an administrator before it was printed.

The furor also led to a new appeals procedure for students to follow should administrators prevent distribution. That included the creation of a publication board to hear appeals.

In January, attorney J. Scott Bennett filed suit on behalf of Elsinore High School graduate Christopher Zerchot with the Riverside County Superior Court in reaction to the April 1991 parody issue. Zerchot was one of the subjects of the "Couple of the Month" article.

"I don't know why those kids wanted to cause him [Zerchot] any harm, but they did," Bennett said. "It was malicious and published with intent to hurt."

School officials also refused to distribute a January 1991 issue. The Tiger Times was confiscated by former principal Dennis Price because school officials were concerned that a story about tension between Hispanic and black students would irritate the student body and that there were racial overtones in two other segments of the publication.
A Matter of Race' prompts censorship
Principal demands prior review after paper quotes bathroom graffiti

FLORIDA — Sometimes all it takes is a word to spark a controversy. That is a fact Broward county residents discovered after Coconut Creek High School’s student newspaper, The Harbinger, printed the word “nigger” in an article addressing racism.

The article, entitled “A Matter of Race?,” suggested that campus violence was caused by racial tensions. It referred to graffiti scratched in the high school’s girls’ restroom that read “KKK is getting bigger, aren’t you sorry you’re a nigger,” as evidence of racial tensions existing on campus.

The controversy over the article caused Coconut Creek’s principal to implement a policy of prior review after maintaining a 10-year “hands off” attitude towards the school’s award winning journalistic endeavors.

The issue has pitted the high school journalists and their faculty adviser, Sandra Scaffetti, against principal Ronald J. Wilhoit, a local chapter of the NAACP, a number of other faculty members and some parents as well.

The printing of the quotation raised questions among some community members about Wilhoit’s job as principal and general overseer of the school’s activities.

“We had a situation where parents, the NAACP and teachers got upset and asked if I had a committee which saw everything before it was printed in the paper,” said Wilhoit. “I told them I had no established committee, and they wanted to know why not. So I set up a committee with my vice principal and two teachers.”

Scaffetti criticized Wilhoit’s committee, saying “the problem is that he doesn’t see the difference between censorship and editing.”

Recognizing Wilhoit’s predicament of being perceived as responsible for the Harbinger by some community members, Scaffetti said, “I don’t believe that principal Wilhoit wants to do this. I think he is being pressured. I think that pressure is coming from the NAACP. The things they were saying implied that he didn’t have control over his school and control over me. He doesn’t want a reprimand on his file.”

Wilhoit reinstated the practice of prior review permitted under Broward County’s School Board Policy that he has not enforced for the past 10 years. The policy states, “Considerable latitude shall be given to permit the schools to plan and develop individualistic publications. All school publications should be in good taste. They should contain nothing to cause embarrassment to anyone at any time.”

In a compromise, Wilhoit agreed that Scaffetti will be responsible for letting the review committee see only the titles of articles prior to publication. If a title is found to raise a “sensitive issue,” then the article itself is subject to review by the committee.

“We’ve tried to work it out so it’s not a confrontation,” explained Wilhoit. Scaffetti agrees that Wilhoit has treated the situation diplomatically, being aware of the opinions of all involved parties.

“I don’t believe in censorship,” claimed Wilhoit. “That’s why I never paid attention to it. I don’t think this is censorship, but it’s a step towards it. If something shows up that the committee can’t decide on, and they ask me for my input, which is the final say, I might have to censor it. Before I did that though, I would take the issue to the school board lawyer and give him my reasons for wanting to censor it. I can’t just say that in my opinion, something is in poor taste. I need to justify it. And that justification would have to hold up in court.”

The first issue reviewed by Wilhoit’s appointed committee was an article on teenage sexuality. The committee found nothing offensive or objectionable in the articles. Although relieved with this, there is still great concern over the danger a policy of prior review holds.

“There are no problems now,” said Kristin McCoy, editor in chief of the Harbinger. “But what about the future? What will happen if there is an article which they want to censor? The principal says that prior review is not censorship, and I don’t agree with that.”

In an attempt to overthrow Wilhoit’s policy, McCoy, as a director of the Broward Association of Student Journalists, is campaigning to change Broward County’s treatment of student publications.

“We’re trying to get all the schools in the county together and overturn Mr. Wilhoit’s decision,” said

(See COCONUT CREEK, page 28)
CENSORSHIP

CONTROL

Editors and administrators clash; ordeal ends in 11th hour showdown inside California courthouse

CALIFORNIA — In a state that guarantees student editors final say over their student newspapers' content, the dark cloud of the Supreme Court decision in Hazelwood School District v. Kuhlmeier still looms over the Golden State.

Sage Romano and Eric Ferrero, editors of the Spyglass at Morro Bay High School during the first semester of the 1991-92 school year, took matters into their own hands to battle editorial guidelines imposed by their adviser.

Rick Behrmann, adviser to The Spyglass, gave each staff writer an assignment sheet delegating specific story ideas, which prohibited writers from choosing their own stories. In addition, Behrmann designed the production of the January 1992 issue of the newspaper as a final exam, instructing the writers how to cover their assigned topics and what viewpoints to assume while writing them.

According to Behrmann, "this never should have been an issue. At the start of the class, I tried to make it understood that the final edition of the Spyglass would be constructed like a final exam, and it never had to be published. But the kids wanted to do an issue and publish. They waited until the last minute before they protested."

In response, Eric Ferrero, who served as the Spyglass managing editor says, "We all must have been absent when he said that. If we had known the final paper was going to be like a final exam from the beginning, there would have been protest right away, but it didn't become an issue until right before winter break."

"We started the semester with a lot of assumptions that were completely false," says Sage Romano, the former Spyglass editor in chief.

Greg Halfman, principal of Morro Bay High School, admits that he cannot confirm the newspaper adviser's claim of informing the students they would not have to publish the last issue of the Spyglass and acknowledges the fact that advertising was sold for the final issue.

Halfman supports Behrmann's stance on the issue, "The way I see it," he says, "is that Rick bent over backwards for the students. Sage and Eric came to my office a week before publication of the paper and explained that they didn't pick the stories and wanted their names withdrawn from the paper. I talked to Rick about the situation and he said it wouldn't be a problem to oblige the students."

Ferrero and Romano worked with attorney Timothy Wilkerson and the Student Press Law Center to halt publication of the January Spyglass, which Ferrero condemned as being "just a compilation of student writing." and "not a newspaper."

Taking action against Behrmann's "final exam," Ferrero and Romano made up forms for the other writers to sign saying that they wanted their names stricken from the Spyglass. Seven of the 11 staff writers signed the forms.

"Sage and I went to court to file for a restraining order so we could postpone publication of the issue," Ferrero says. "Going to file for the restraining order was a cornerstone in this entire issue for making [Behrmann and Halfman] listen to us," says Romano. "We applied for the restraining order and were waiting for the hearing when Greg Halfman and his attorney came to the courthouse and said we could go talk about it again."

Ferrero and Romano agreed to discuss the issue with Behrmann and Halfman, and withdrew their application for the restraining order.

Although they did not prevent the newspaper's publication, Romano, Ferrero, and seven of the 11 other staff writers did have their bylines withheld from their individual stories, as well as from appearing on the paper's masthead.

Behrmann saw the desire of the other writers to have their names removed from the newspaper as an act of manipulation on the part of Ferrero. "Eric mounted a campaign and coerced people to remove their names from the paper. Some of the students were pleased with the writing they had done and had expressed to me problems they found with Eric's techniques."

Contradicting Behrmann's statement, Ferrero said, "We did not coerce anybody. Sage and I were accused of forging student signatures on the forms we made up. Our point with the forms was not to coerce anybody; we only wanted to extend them the opportunity. The administration has had a problem all along understanding that students can think for themselves."

In addition to having their names removed from the publication, Ferrero and Romano demanded that a disclaimer be published in the edition of the Spyglass. The disclaimer was allowed, and read "This issue of the Spyglass represents a major component of the final grade for students in the newspaper class. Articles, layout and editorial decisions represent assigned material."

The battle between journalistic integrity and editorial dictation at Morro Bay High School has come to a resolve, although it produced a rebellious off-spring. Romano and Ferrero stepped down from their editorial positions on the Spyglass, but continued their journalistic endeavors spending the last semester of their senior year producing an independent newspaper with a 25 member staff.

"I'm glad it's over," says Romano. "It was a needless hassle over something that should have been so obvious to the school."
ILINOIS — The controversy over abortion has ignited more than a debate over pro-life and pro-choice morality. At Fremd High School in Palatine, the topic has drawn attention to another prevalent issue of the times — censorship.

The 1991 publication of the high school's literary magazine, *Burn the Image Backward*, included among the more traditional contents of the publication, a handful of award-winning short stories and poems depicting abortions, both clinically successful and manually botched, as well as pieces on child molestation and incest.

And following the circulation of the magazine and the controversy that surrounded it came the censor stamp of the high school administration. The stamp was that of principal Thomas Howard and it read "controversial issues — discontinued." In light of complaints from teachers, parents and some students, Howard demanded the fall 1991 cancellation of the literary magazine.

Howard, who initially told the SPLC Report "I don't know what you're referring to when you speak of *Burn the Image Backward*," later said "the literary magazine of Fremd High School was not discontinued. It was put on hold until the sponsors and the administration agreed that the magazine would give the high school a positive image and not look like something you would read in *Hustler Magazine*.

Kevin Brewner, who has been the literary magazine adviser for the past three years, said that there have never been any guidelines for the literary magazine "other than not being allowed to use the F-Word."

"I was told that there were a lot of complaints from parents about the pieces," said Brewner. "I asked that the complaints be directed right to me, and I received only two."

The literary magazine of Fremd High School has been reinstated under a new adviser, Linda Cannon, after Brewner was discharged from the position. Cannon said her goal is to produce a literary magazine that is "in good taste."

"There is no expression in a four letter word," stated Cannon, a teacher for 21 years. "And there is a difference between good taste and a temper tantrum on paper."

Explaining the administration's lack of understanding and embarrassment over a few stories in *Burn the Image Backward*, Brewner said "the biggest problem with this situation is that they [the school board] expect to read things that show a positive image of the school all of the time."

DANGER DOWN FOR THE COUNT

NEW YORK — In his battle for admission to the National Honor Society, Justin Dangler has lost the war.

Dangler filed suit against Yorktown High School in Westchester County after he was denied membership in the National Honor Society. A federal jury found the high school did not violate Dangler's First Amendment rights after he accused the school of penalizing him for writing a story in the school newspaper on racism.

After a federal jury decided the case against Dangler, he was prepared to appeal the decision, but reached a sealed settlement agreement with the school district on November 18, 1991. Three days after the agreement, the school district successfully sued the Dangler family for $60,000 in legal fees.

In a final attempt to benefit from his losing situation, Dangler applied one more time for membership to the National Honor Society, and was once again rejected.
CENSORSHIP

Principal pressured to ax story about AIDS rally

IDAHO — The student newspaper at Meridian High School was prohibited from running a story on a student rally protesting the lack of AIDS education in the school last December, according to the newspaper’s advisor.

The rally was held in response to the administration’s imposition of a gag order preventing all employees of the school district from discussing AIDS or sexually related material in the school. The gag order was issued by the school district office after a nurse at the high school held a question and answer session and talked about safe sex and the use of condoms.

Laura Thomson, adviser to the Meridian High School student paper, the Warwhoop, says the gag order was issued in part because of pressure from the Citizens for Excellence in Education, a conservative organization of parents and community members who believe sex education and other controversial issues should not be taught in the schools without parental consent.

According to Thomson, the Citizens for Excellence in Education pressured the school district with threats of legal action, and in order to avoid a legal conflict, the school district felt the gag order would settle the issue.

Robert Aldridge, attorney for the Citizens for Excellence in Education confirmed that “if the school administration did not start an investigation into the matter, we would have taken legal action.”

Howard Foley, attorney for Meridian High School, cites the Committee for Excellence in Education as “the first people to complain” that sexually related material was being discussed in the school.

Idaho has a state statute that allows parents to participate in deciding what the public school’s curriculum will consist of.

“The Committee for Excellence in Education felt as if that statute was violated (by the nurse’s talk),” said Foley.

The administration decided that the nurse did not violate the statute, and she was not punished.

Contrary to its objective of silencing discussion, the gag order resulted in a rally organized and held by students. The rally was held on Dec. 13 at a nearby mall during the school’s lunch time.

The student journalists of the Warwhoop planned to cover the rally in the Dec. 20 issue of the newspaper. However, according to Thomson, Meridian High School principal Gil Koga prevented the front page article from running.

“Rather than running another story [in place of the censored one],” explained Thomson, “we decided to run a blank space with a cutline saying that there was something that was supposed to be here.”

The cutline did not make any specific reference to the article on the rally.

“I have no idea why there was just a blank space on the front page,” said Koga, who maintains that he did not censor an article on the AIDS rally. “I was shocked.”

“[Koga] honestly believed if the school paper ran the article covering the rally, it would have instigated students to have another rally,” said Thomson.

According to Koga, Thomson did discuss with him running a story on the AIDS rally.

“My recommendation to her,” Koga said, “was to wait on running the article until a clear story could be written, and she said that was okay.”

Thomson recalls her discussion with Koga differently.

“As soon as the rally happened,” she said, “I asked him [Koga] if the students could run a story on it. He said there could be absolutely no mention of it in the newspaper.”

“Even after the event made the local papers, he still said no. He thought it would create another rally. He told us not to mention the rally in the paper until the issue was settled and died down.”

“I think the students have a right to know what is going on,” said Warwhoop editor in chief Tina Gregory. “The school isn’t comfortable when we cover issues that are too controversial, but our job is to report what is going on at the school.”

Meridian High School has a policy of prior review, which entitles Koga to have final say over the content of the Warwhoop. Although the issue of the paper covering the AIDS rally is in the past, the sword of censorship still hangs over the head of the Warwhoop, as all “controversial” issues must be submitted to the principal for review before publication, said Thomson.
School officials shoot the messengers

Students videotape drug use; suspended for violation of state law

CALIFORNIA — Three students were suspended at Norwalk High School last January after a videotape they had made showing what appeared to be drug use in a classroom was aired on Los Angeles television station KCBS.

The two students who were filmed while rolling and smoking what appeared to be marijuana cigarettes were suspended for five days for smoking on school premises. The narration over the film claimed that they were smoking oregano rather than marijuana in the cigarettes, but pointed out how easy it was to smoke in class without being noticed.

Edgar Llamas, Selvin Engleton and Henry Bravo, the three students who filmed their classmates smoking were suspended for five days for the unauthorized use of an electronic recording device in a classroom without a teacher’s permission, which school officials claim is prohibited under section 51512 of the California Education Code.

Ironically, California has a law which was enacted before the Hazelwood Supreme Court decision protecting high school students’ free expression rights. As stated in California Education Code section 48907, “Students of the public schools shall have the right to exercise freedom of speech and of the press....”

According to this section, the only prohibited material is that which is “obscene, libelous or slanderous,” or that which creates “a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations or the substantial disruption of the orderly operation of the school.”

The existence of the videotape was not known by the administration until after it was aired on KCBS, for which the student video makers were paid $750 by the television station.

The students have served their five day suspensions and have since resumed their normal school schedules with no intent to contest their punishment.

Regents

(Continued from page 15)

“...The decision would prevent us from attracting the best candidates for the presidency of our university,” Cole said.

Cole also said that she was truly disappointed with the decision, and that in February, the regents filed a petition of appeal to the Michigan Supreme Court. They expect a ruling in a few months.

Regent Paul Brown said he believes the board did not break the law when it went through the process of finding a new university president.

“I think it’s a bad decision,” said Brown. Brown, an attorney, led the search committee.

The decision was hailed by the newspapers and their attorneys as a victory because it maintains the public’s right to see government officials operate in the open.

“The Court of Appeals labeled [the process] for what it is: a sham,” said Ann Arbor News attorney Jonathan D. Rowe.

Ann Arbor News editor Ed Petykiewicz also applauded the ruling. He said it left no doubt that the UM regents broke the law.

“The court has sent a strong message to all governmental bodies as well as lower courts around Michigan that the public’s business must be conducted in public. That is a principle that is fundamental to the way we govern ourselves,” Petykiewicz said. “It is a principle that provides accountability between elected officials and the voters.”
The Private School Press

Winning free expression rights when the First Amendment isn't enough

Do students at a private high school or college have to check their free speech rights at the campus gate when they walk to class each morning?

The answer to that question is a resounding maybe. It is true that many of the rights public school students take for granted do not exist on the private campus. Of particular interest to student journalists are the First Amendment guarantees of free speech and press. Many believe that journalists at private schools don't have to worry about those rights: they don't have them. Because the First Amendment says, "Congress shall make no law...," courts hold that it prevents only the government and those acting on its behalf from denying a person their free speech rights. Private institutions, therefore, are not generally subject to limitations imposed by the First Amendment.

Unfortunately, this has allowed some private campus officials to routinely censor those stories they don't like and punish those students who refuse to comply with their censorship demands.

Contrary to popular opinion and belief, however, all is not lost on the private school campus. The First Amendment is not the only weapon available to defenders of free expression. There are valid legal theories, along with strong policy arguments, to help the private school journalist confronted with threats and acts of censorship.

Policy Arguments
The most powerful arguments against administrative censorship at private schools often have little to do with the law. The following suggested policy arguments against censorship are ones that private school student journalists can present to school officials to help convince them that censorship is — above all else — simply a bad practice.

First, even though a court may not be able to prevent censorship at a private school, this alone does not make it right.

This is the nation where Thomas Jefferson said, "...[W]ere it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter!" Any official censorship of a newspaper, whether by a private school administrator or a government official seems patently un-American. If a private school believes that its ultimate function is to turn students into valuable citizens, a basic understanding of and experience with the workings of a democratic society is a requirement. A student journalist who experienced censorship and prior restraint throughout his academic career is going to approach the realities of journalism and its role in American society with a warped perspective. Democracies require a marketplace of ideas to flourish. Free expression is, after all, what separates America from the totalitarian nations that we condemn.

Second, a private school that actively...
Private Schools
(Continued from page 23)

seeks to stifle the expression of its students is not only violating fundamental democratic concepts, it is also retarding one of the basic necessities of the learning process — the unfettered free flow of ideas. Minds need new ideas and means of expression to grow. When censored, the students of a private school receive a lesser education than their counterparts in public schools.

Third, because many private schools are church affiliated, a special affinity for the First Amendment should create a common bond with journalists and their free expression rights. If it were not for the First Amendment and its protections for the free exercise of religion, many of the schools themselves might not exist. It would seem incumbent upon church schools to advocate the guarantees that protect journalists as much as themselves within the same amendment.

When this kind of reasoning does not work, there remains the possibility that public and political pressure may lessen an administrator's desire to censor students. Organized groups of students, parents, faculty and alumni publicly expressing their grievances to the regular, local press sometimes get results that internal discussion does not. While administrators might be able to ignore a student's philosophical arguments that censorship is an unsound educational practice, they often find it more difficult to ignore the bad public relations that accompanies being labeled a censor. Administrators have been known to have a change of heart when it appears that their decision to censor student expression might have a negative impact on next year's enrollment figures or fundraising totals.

Ultimately, however, there is the possibility of going to court, seeking legal redress for the wrongs done, even when those wrongs are committed by a private institution. While in some cases the chances for relief may be slim, there are at least four legal theories that certainly could, given the right circumstances, gain a favorable hearing from a court in a case involving censorship of a private school's student media.

Contract Rights/ Law of Associations

In the right situation, the legalremedy most likely to protect the student journalist in a private school is a claim based on a breach of the guidelines or rules established by the private school itself.

Those catalogs, student handbooks and recruiting brochures distributed by schools usually contain pages of policies, regulations and rules. Many court have ruled that distribution of these documents and the offer of admission to the school, both of which include explicit and implicit promises, and an acceptance and payment of tuition by a student creates a contractual relationship. Other courts have found that the law of promises, rather than strict contract law is more appropriate to the student/private school relationship. The law of associations has been applied to private schools, churches, civic groups and other private organizations to address situations where contract rights, property rights and other personal right merge. While the legal theories vary slightly, the general notion is the same: where a private school voluntarily establishes a set of guidelines or rules, it must adhere to them. Otherwise, there exists a breach of a legally enforceable promise for which a student may take court action.

For example, a private university is not legally required to provide a procedure that gives a student the opportunity to respond when the school wants to take action against him, such as a hearing to answer a charge that could result in a student's expulsion. With no government rules to guide it, a private school can expel a student for no reason. However, when that school has a written policy outlining the procedures to be followed in a student disciplinary action, those procedures must be followed. If not, there is a breach of contract or associational promise and the student may seek damages or reinstatement. This "due process" does not need to meet the standards of the federal Constitution, but it does need to meet the standards specified in the student handbook, catalog or other policy statement.

While this legal theory has mainly come up in the context of students being expelled or denied diplomas, there is no reason that this rationale should not be extended to cover other promises made by a college or university. Indeed, in a case involving the Dartmouth Review, a conservative student publication at Dartmouth College, a New Hampshire state court judge, in addressing promises made by the school in the Dartmouth Student Handbook, ruled that "(a) private college is equally obliged not to violate any of the contractual rights of its students ..." (emphasis added).

While the judge limited his ruling to a section of the Handbook that dealt with student disciplinary proceedings, the language above indicated that other promises made in the Handbook had to be kept as well. Prior to the ruling, lawyers for the students had submitted arguments to the judge that pointed out sections in the Handbook that guaranteed Dartmouth student the right to express themselves freely.

The bottom line seems to be that if a private school states, for example, in its student handbook, recruitment brochures or videos, student Bill of Rights, policies or regulations that its students have the right to openly express their viewpoints or that student publications will be free of administrative interference with final editorial control, the students, any action contrary to that policy is a breach of a promise for which a court could presumably, give relief. Students should check to see if such a policy exists at their school, and if not, encourage the adoption of one.

State Action

Regardless of whether a contract or other legal relationship exists, a court will exercise its jurisdiction and protect free expression rights if it is shown that the private university is really taking what amounts to governmental action when it censors the student press. This so-called "state action" doctrine comes in three forms, each rare and difficult to demonstrate. The first is proof that the private school and the state have developed an interdependent, symbiotic relationship. This is possible when the school is heavily dependent on the state for its existence, relying on infusions of public money, financing and other visible means of support. In return, the state depends on the private school to perform a part of its function.

Initially it might seem that practically all private schools might fall into this category because of the massive amounts of money the state and federal governments provide for the support of education and students. However, this is not the case. In several instances, courts
have ruled that financial support is not enough. Only in Pennsylvania has this interdependent relationship been recognized. The state not only provided money to the schools in question, it also had designated representatives on the boards of trustees. In addition, there existed state statutes creating and defining the role the private schools were to play in the state university system. Even the names of the schools had been changed to demonstrate this role. With statutes to support them, the courts ruled that the schools were, in effect, part of the public university system, making them subject to restrictions on government action.8

State action might also be found without this dependent relationship if the private school is only doing what the government tells it to do. This is called the "close nexus" test, where a citizen is being deprived of his rights because a private institution is adhering to a government regulation.9 Under this rule, a student journalist would receive First Amendment protection if a government regulation was forcing the private school to exercise censorship or prior restraint. Such a scenario is unlikely, however.

Finally, state action may be found if the private institution is performing duties and functions that have traditionally been done exclusively by the government.10 This public function doctrine developed from a case in which a company-owned town was performing all the functions traditionally done by local government. Because the company was doing all these activities, the court ruled that it had to abide by the same federal guidelines as a government. The key to this legal doctrine is its exclusivity. Courts have found that a private entity is performing a public function only when that function has been done exclusively by the government in the past.11 An example is police protection. Education, which has a private as well as public history, would probably not fit this standard.

**State Constitutions**

One means of gaining legal relief being explored by the courts relies on use of individual state constitutions and their free expression guarantees. Unlike the federal constitution, which only prohibits government interference with free speech, the constitutions of 44 states have language that affirmatively protects free expression. The wording of the Pennsylvania Constitution, Article I, Section 7, is typical of these types of provisions: "The free communication of thoughts and opinions is one of the invaluable rights of man and every citizen may freely speak, write or print on any subject, being responsible for abuse of that liberty."

This wording sounds like the government has a duty to stop anyone, private or public, from depriving someone else of his right of free speech.

In 1980, the U.S. Supreme Court said that states are free to provide protection beyond that of the federal Constitution in their own constitutions.12 The Court said that states may provide greater, even affirmative, protection for free speech on private property provided the value of the property was not diminished and the purpose for which it was used was not disrupted.13

At least three states, Colorado, California and Washington, have used their constitutions to allow the exercise of free speech, with reasonable restriction, in privately owned shopping centers.14 In addition, Massachusetts, Pennsylvania and New Jersey have ruled that distribution of political materials must be allowed on private school campuses.15 To date, there has been no ruling on whether a state constitution, with an affirmative right of free speech and press, protects the student media at private schools from censorship.

For a court to make such a ruling, it first would have to hold that the private school had created a forum for student expression. Such a forum exists when the students are given editorial control of their publication. This usually is demonstrated through the appointment of students to editorial positions and the publication of student news, editorials or letters to the editor. Practically, almost every student newspaper could be considered a forum for student expression.

**Incorporation**

Even in law, the best defense is often a good offense. And rather than trying to formulate after-the-fact arguments as to why an administrator's act of censorship is illegal, many schools have found it more effective to take away the means by which those administrators can censor in the first place. To forestall administrative control of private school student journalism, a publication can separate itself from the school by becoming a separate corporation. The provisions separating control of the paper from the school's grasp must be explicit in the articles of incorporation, however. Many incorporated papers handle this by requiring that a majority of the board of directors positions be filled by students or other individuals who are not school officials.

Incorporation is practical for only a few papers. An incorporated newspaper at a private school should not expect any financial or material support from its school if it wants to guarantee its freedom from censorship. Because of the ongoing costs involved, typically only

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Private Schools
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the largest college newspapers have found incorporation a realistic alternative.

Summary
Although official control of student journalists at many private schools remains a legal and practical reality, these students who find themselves victims of censorship and prior restraint should not give in quietly. Ideally, control of the press should be as repugnant to the school as it is to the student journalist. But where school administrators cannot be convinced of the reasons for a strong and viable campus press, private school students do have potentially strong legal arguments available to them. Whether there is state action, a contract or other enforceable promise or even a state constitution providing protection, press freedom on private campuses can realistically be fought for and won.


Free Press
(Continued from page 6)

Missouri and Ohio are moving slowly on their road to proposing free speech bills.

The American Civil Liberties Union has offered to help lobby for the Missouri bill. Dianne Boyle, chair of the Committee for Student Free Expression in Missouri said in March that the committee planned to vote sometime in late April to decide if they should accept the ACLU's help.

Ohio's Coalition for First Amendment Rights is trying to find a sponsor for their bill, says Angela Parks, the Coalition's co-chairman.

Lastly, South Carolina has entered the struggle in formulating a student free expression bill. According to South Carolina Scholastic Press Association director Bruce Konkle, "We have nothing in the works right now, but we're shooting for a bill proposal."

Coconut Creek
(Continued from page 20)

McCoy. "We want a policy like Dade County's."

Neighboring Dade County allows for student editors to have final say over the publication's content, and directs student journalists and faculty advisers who are in conflict to get legal advice.

As the Report went to press, Scaffetti had organized a group of faculty members and administrators to draft a proposal modeled after Dade County's.

"I feel positive about what's happening," said Scaffetti, "Everyone is recognizing that there is a need to change the [prior review] policy, because it just isn't feasible to read everything before it goes to print. Hopefully, everything will be in place by the start of the next school year."
Keep Your Hands Off!

College administrators monitor schools’ image through censorship

"Censorship has become the strategy of well-intentioned people reacting to views they find repugnant."

This statement by Dallas Morning News writer Burl Osborne reflects the reaction that many college administrators have when confronted with controversial material in student publications.

This spring, college officials felt it was their duty to control what is published by students on more than a handful of occasions. It seems that administrators, more than ever, want to play a bigger role in deciding the content of student publications.

In recent months, for example, a college president in Wisconsin rued an entire newspaper staff, including the adviser, because of articles about prophylactics. (See CAMPUS, page 31.) At a small woman’s college in New York, publication of the student newspaper was suspended because of articles about administrative loans to the student government. (See QUILL, page 30.) And in Pennsylvania, a group of college presidents and administrators have recommended in a state-wide report on alcohol and drugs that all advertisements relating to alcohol be banned from all school-sponsored student publications. (See THIS BUD’S, page 34.)

Some of those involved with administrators feel that censorship of student publications is no longer a major issue.

Sheldon Steinbach, general counsel for the American Council on Education, said that administrators are moving away from any desire to censor student expression.

"As we approach the 21st century," Steinbach said, "there is hardly any desire for administrators to censor the student press."

Steinbach also said censorship in college newspapers is so infrequent that the issue is not important anymore.

"Censorship [of the college press] is not the overriding point of view in most post-secondary institutions," he said. "It is close to a non-existent issue."

But many of those involved with student publications feel censorship is still a problem.

President of the College Media Advisers Laura Widmer said censorship of the student press is not decreasing.

"The issue is still out there," Widmer said. "The desire by school administrators to censor is far from over."

Widmer said that the only way for school officials and student journalists to come to an accord is to "have a healthy discussion of the issues."

But Widmer said that a "healthy discussion" is easier said than done.

"I know of many unsuccessful attempts by students to talk with school administrators," Widmer said. "I only hope there will be a day where both sides will agree."

Editor’s job threatened

Publications board tightens reigns; editor questions actual motive

MONTANA — For the past three years, Todd Mitchell has been editor in chief of the Retort, the student newspaper at East Montana College in Billings. For one week in March, he thought all that was going to end abruptly.

Mitchell began having problems with the school administration last year when the Retort published stories pertaining to violation of NCAA rules by their basketball program.

Among those problems was the administration’s sudden notice to the Retort that school policy required that the newspaper must be classified as an "official student organization" in order to occupy space in the student union.

And in order to be an "official student organization" a group must have a faculty or full-time staff sponsor or adviser.

"The Retort has not had an on-staff adviser in at least 15 years," Mitchell said. "Why should we have to start now? I am convinced that the effort by the administration to have an on-staff adviser for the paper is an attempt to control and monitor the newspaper’s editorial content."

Director of Student Activities Gordon Schell said that the Retort had followed student guidelines in the past, and that this year should be no different.

"The newspaper has registered officially for the past 20 years according to student government records," Schell said. "A problem did not arise until the newspaper did not register its organization by the deadline."

Schell also said that his office has no intention of monitoring the content of the newspaper. But he added that the newspaper should be responsible in choosing its own adviser so they both could learn from the experience.

"The role of the adviser is not to say..."
Retort
(Continued from page 29)
what goes in or out of the paper," Schell said. "But the newspaper should choose a knowledgeable and reasonable adviser so both sides can get the best experience possible."

To satisfy the university requirement of a "staff or faculty adviser," the Retort briefly appointed university staff janitor Dorothy Abril in January, Mitchell said. Abril said "it was kind of neat" being the Retort's new faculty adviser.

Because the board was not satisfied with the adviser Mitchell had chosen, they asked in February to have Mitchell removed. The motion to consider his removal passed by a 5-0 vote.

The publication board charged Mitchell with neglecting the newspaper by not choosing an "appropriate" adviser, failing to investigate a case of embezzlement by a newspaper staff member and using newspaper equipment and materials for personal election purposes, among other things, Mitchell said. The board set a March 11 hearing for him to respond to the charges in person.

By the end of February, Mitchell said he responded to the charges in writing and submitted the response to the publications board.

"I sent a letter to them which contained individual responses to each charge," Mitchell said.

The board's response to his letter brought an immediate sigh of relief, Mitchell said.

"I am happy to say that the board is no longer seeking my removal," Mitchell said. "The Retort has chosen Dr. George Benedict, a philosophy instructor as our new adviser. Everything is almost back to normal."

Mitchell said the selection of a new adviser helped ease the tension between himself and the publication board.

Mitchell also said that most everyone on the publications board is in favor of his remaining in his position and that his new relationship with the board is beneficial for both the college and the newspaper.

Quill plucked by student government
NEW YORK — The student newspaper at Russell Sage College in Troy is in the midst of trying to regain its right to publish after its editorial board was suspended by their school's student government in late February.

Heather Godlewski, editor-in-chief of The Quill, said the suspension is completely based on the content of the paper.

"We printed a story which uncovered some money discrepancies in student government," Godlewski said. "The executive board is concerned about our content."

The executive board of student government maintained that the suspension was due to improper elections of The Quill's editors. Maria Caceres, president of the board, said that the paper could continue publication if the previous editorial board, which served last year, were to return to the paper.

Maureen Bigness, spokeswoman for the school, said the administrators agreed with the executive board's decision to temporarily suspend publication of the newspaper because of improper procedure to elect a new editor.

"The executive board of the student government has the authority to confirm editors nominated by the newspaper's staff," Bigness said. "They [the newspaper] will start up again once an editor has been formally nominated."

The executive board, which controls the paper's budget, had not confirmed the new editor and therefore ordered the publication suspended, Bigness said. She further stated that "they [the newspaper] have not been permanently shut down."

Godlewski said the newspaper did follow proper editor-selection procedures. The new editors were elected in December, and student government was informed of the position changes in writing Feb. 9, she said.

(See SAGE, page 31)
Campus newspaper staff fired and rehired after ad, condom parody

WISCONSIN — The president of a private college that fired the entire staff of the campus newspaper in March, including their adviser, because of an edition that included an abortion clinic's counseling advertisements and parodies on the use of condoms, "invited" all 33-former staff members and the adviser to return to work under new supervision.

William Medland, president of Viterbo College in La Crosse, said in a March statement that the Lumen staff was fired because the newspaper "shocked the sensibilities of many students, faculty, staff and administrators."

"Such journalism will not be tolerated," he said in the statement. "It holds up to ridicule the Catholic nature of this institution."

Medland specifically attributed the firings to three violations of the "Policy Manual for Viterbo College Student Publications." The policy manual states that student publications must be "quality journalistic products," "must respect the Catholic character of the college" and that all contents must "be attributed to their authors."

Medland denied the crackdown on the Lumen was solely caused by an article published in February that endorsed the U.S. Supreme Court's constitutional protection of abortion. He said he had been concerned about unsigned articles and commentary in several issues.

The Feb. 24 issue was "the straw that broke the camel's back," said Medland, adding there were several disagreements over editorial policy in the last several months.

"The situation called for decisive action and I took it," Medland said. "Now we just want to move forward with a responsible student newspaper."

Medland also said he intends to distance himself from the newspaper's day-to-day operations.

"That has always been the policy," he said. "As president I am ultimately responsible for the paper but I won't be a part of the decision-making process."

An expanded student publications board will provide recommendations to students about content and report its actions to the college's academic vice president, Medland said in his statement.

In a March 16 meeting, most of the Lumen staff agreed to return under Medland's terms, editor Stephanie Klotzkie said. But she also said she was not completely satisfied with the new situation.

"He [Medland] did not apologize to my satisfaction although he was asked to do so," she said. "I expected a stronger apology. I am very disappointed in that respect."
Beverly Hills
(Continued from page 17)

19, and was not permitted to return to school until after the school board’s meeting on March 17.

Under the terms of the “suspended expulsion,” Roberts will — with the exception of one math class — be prohibited from returning to his regular classes at Beverly Hills, and, instead, will complete his senior year through an independent study program conducted at a special “continuation school.” He is required to write a personal apology to those individuals mentioned in Waked and submit an article on prejudice, racism and intolerance to the official student newspaper at Beverly Hills High School. He is also required to complete 50 hours of community service. If all of the conditions are met, the record of his expulsion will be expunged from his permanent record and he will be permitted to participate in all senior activities, including graduation.

Given Roberts’ previously unblemished school record, Okamoto said the penalty imposed by the board was entirely too harsh.

“There have been students caught with guns on campus whose suspensions were not only half as long as my client’s — they were also allowed to return to school,” she said. “I think the school was trying to use him to send a message to other students.”

Leonard Roberts, the student’s father, defended his son at the board hearing and vowed to stand by him.

“He has the right to voice his own opinion,” he said as he broke into tears. “This is my son and I’m not going to let you do this to him.”

Roberts has appealed the school board’s decision to the Los Angeles County Board of Education, which was scheduled to meet in late April.

‘Thanks, but no thanks’

Daily Orange declares financial independence

NEW YORK — Syracuse University’s student newspaper, the Daily Orange, declared itself financially independent by returning its subscription fee of about $80,000 to the school’s student government association in January.

The newspaper sought financial independence because the student government attempted, on more than one occasion, to pressure the paper about what stories it covered and what it printed, Daily Orange editor Kent Fischer said.

“I condemn the student government association for what it has attempted to do,” former editor Jodi Lamagna said.

“At this time, we can better serve the students’ needs — and those of a free press — by declaring our financial independence.”

The Daily Orange had been funded by a student referendum each year since it broke its official ties with the university in 1971, according to the Daily Orange News Service.

But the trouble in receiving the money by referendum became so great that the paper felt it should seize the opportunity to become independent.

“It was a pain in the butt to get the referendum passed each year,” Fischer said. “[The newspaper staff] had to pass out flyers, and basically spend very valuable time teaching the students how to vote because the wording of the referendum was sometimes confusing. We needed the time for better reporting.”

The newspaper found a number of ways to save money and become financially independent, Fischer said.

“The Daily Orange saved $120,000 alone by signing a new printing contract,” Fischer said. “We are now [printing the newspaper] on advertising revenue and limiting in-house expenses such as phone calls, travelling and reimbursement of staff through the college work study program.”

Dean of Student Relations Edward J. Golden said he appreciated “the spirit” of the newspaper and “strongly admired” the paper for its stance.

Most everyone involved with the newspaper feels financial independence is best for all.

“We thank the students for their unflagging support of The Daily Orange,” Fischer said. “But you can’t have a truly free press if you are getting money from the people you are covering.”
A joke nobody laughed at

Personal ad lands three staff members in hot water, triggers campus-wide debate

NEW HAMPSHIRE — It was only a small advertisement placed in the Plymouth State College newspaper, but it sparked campus-wide discussion on First Amendment rights, sexism and racism.

The advertisement was placed by three newspaper staff members in the Nov. 7, 1991, edition of The Clock. The ad read: "Three horny men looking to tag-team young Afro-American virgin," and gave their phone numbers.

The three staff members, editor in chief James Hamlin, sports editor Dave Cummings and layout coordinator/typographer Neil Snow, said the ad was meant as a joke.

"The ad, which seemed to be quite funny at 2 a.m. the morning of publication, was not intended as any sort of sexist, racial or personal slur against anyone, but instead as a joke," Hamlin said.

The only "silver lining [to the controversy]," Hamlin said, is that "campus apathy [at Plymouth State] gave way abruptly to unprecedented public debate of racial and sexual issues."

Initially, the paper's faculty adviser, Rev. Philip Hart, placed the three editors on probation. But on Nov. 22, the all-student editorial board, including two of the students who placed the ad, voted 4-0 to suspend the editors. One member of the board abstained.

The board also suspended publication of the newspaper because there was, "not enough staff remaining to do the amount of work needed to produce a newspaper," Hamlin said. The paper was halted for a week, until Cynthia Parisi, The Clock's entertainment editor, was appointed interim editor in chief.

On December 2, acting editor Parisi reinstituted the suspended editors to their previous positions. There have been no major objections to the return of the editors since their reinstatement, said Hamlin.

Plymouth State's seven-member media advisory board — which includes students, faculty and staff — held meetings this spring to address the matter and make recommendations to college President William Farrell.

Farrell met with the board to express his concerns.

"We in no way excuse or defend the actions of The Clock staffers who placed the ad," he said, "but they have been forthright in acknowledging their responsibility and accepting the burden of their actions."

Farrell also met with Rev. Hart and the three editors involved and pushed for their permanent resignation.

Hamlin said the editors would not step down because they had a constitutional right to place the ad under the First Amendment. Hamlin also felt any recommendation by the media advisory board would be unconstitutional.

"The media advisory board [as an entity] is absurd because they do not know the first thing about how to run a newspaper," Hamlin said. "[The board] is a form of censorship in itself."

The advisory board was to make its recommendation to President Farrell sometime this spring, but Hamlin said nothing should come from it.

"I don't really follow the media advisory board much," Hamlin said. "A recommendation will go on file with the president's office and I will choose whether or not to act upon it."

Spring 1992
State task force recommends ban on alcohol ads

Pennsylvania — In a statewide study of campus drug abuse, a task force of educators and administrators released a series of recommendations in February — including a proposed ban on alcohol advertising in college newspapers.

The 35-member task force was formed two years ago by the Pennsylvania Association of Colleges and Universities (PACU) to study drug and alcohol abuse on college campuses. The report specifically called for a ban on alcohol advertising in student newspapers and an end to brewery sponsorship of college athletic events.

The task force has no power to implement any of the recommendations in the report titled “Drugs on Campus at the Bimillennium,” said PACU president Gary Young.

“The report contains only long-range solutions that will promote a more healthy lifestyle and an all-around better environment,” Young said. “We are not promoting censorship. I hope the report is not seen as something inappropriate. We don’t approve of censorship either.”

Gary Young
PACU president

Ryzner said that he will not worry until school officials contact the newspaper.

“We haven’t heard anything official yet from the administration, and until we do, we will accept the appropriate ads,” Ryzner said. “The editorial board took a vote last year and decided to take the [alcohol] ads as long as they were in good taste.”

Students at Temple University expressed mixed reactions about the proposal to ban alcohol ads.

Senior Roman Hale told the Temple News they would “drink it whether [they] saw advertisements or not,” so the ads should not be banned. Greg Fink, a Temple freshman, said he endorsed the proposed ban.

“Personally, I’m opposed to any alcohol on campus,” Fink said.
Balancing on the Beam

College newspapers try to cope with the demand for 'political correctness'

"I disapprove of what you say, but will defend to the death your right to say it."
This statement from the French philosopher Voltaire was spoken some 200 years ago, but its force is still felt today on college campuses throughout America in debates over political correctness.

Recently, some college student publications have chosen a dedication to their sense of journalistic responsibility over what is perceived to be moral responsibility by their communities.

The Daily Collegian at Pennsylvania State University has firmly held its ground that it was well within its First Amendment rights when it published a column condemning all white people as "devils." The University's administration has made no attempt to directly censor or punish the newspaper, but they do view the editorial decision to run the column as a poor one. (See STUDENT'S CALL, page 36.)

The publication of the column produced two types of response: hostility, which came across in death threats against the column's author and the Collegian's editor in chief, and discussion of racism on the Penn State campus.

Community members at Penn State have questioned the Collegian's journalistic responsibility, although few questioned the paper's right under the First Amendment to publish the column.

Those who objected to the column contend that the Collegian did not take into consideration the audience it caters to. According to Isabel Melina, the Collegian's editor in chief, the purpose of running the editorial was to make students aware that these sentiments exist on what she calls a "campus which has always been segregated."

Similar to the column, advertisements appearing in some college newspapers claiming the Holocaust of World War II never existed continue to generate debates over doing the right thing. (See HOLOCAUST, page 37.)

Donald Kraft, adviser to the Hitler organization at Louisiana State University stated that when the Daily Reveille ran the ad in January the Jewish community "took the stance that the student newspaper had the legal right to run the ad, but it was a bad decision to do so."

The advertisement, which was placed by an organization called the Committee for Open Debate on the Holocaust (CODOH), was written by Bradley Smith, who is CODOH's sole member.

"When the ad ran," said Kraft, "I didn't want to make it a freedom of press issue, because Smith would scream censorship. What I want to do is say 'Smith—your facts are garbage.'"

As with the situation at Penn State, the Holocaust ad has offended many, yet brought issues of racism into public discussion.

"It's dangerous to squash offensive speech," said Barry Eriksen, general manager of Duke University's The Chronicle, which ran the advertisement last November.

"It's better to expose this speech so it can be aired and discussed within a community that can engage in debate, rather than let the issue smolder. Bigotry will always be around, but students will be better equipped to handle the situation later in life because they've been exposed to it in college."

The controversy over political correctness in campus newspapers boils down to a debate over what papers have a responsibility to publish or not to publish.

"I feel that the best interests of our readership are served by free speech," said Barry Eriksen.
**Student’s call to slay whites causes furor at Penn State University**

School officials criticize paper's judgement but stand behind right to editorial freedom

**Pennsylvania** — “White people have raped, murdered, plundered, deceived and tricked every race that they have ever come in contact with.”

Such is the opinion of Chino Wilson, a black student at Penn State University. His statement appeared in a racially charged column in the January 28 edition of Penn State's independent newspaper, *The Daily Collegian*, calling for black people to “unite, organize and execute” a plan of solidarity against whites. When confronted with violence from a “devilish” white person, Wilson told blacks to “send that person to the cemetery.”

The column, whose author is a regular sports reporter for the *Collegian*, created a division between the editorial board of the independent student newspaper and Penn State administrators over the notion of responsible journalism.

“We’ve said from the start,” states Bill Mahon, Penn State's university spokesman, “that an independent publication has every right to publish what they want to. But the column was dumb. It didn’t do anything, and was totally inappropriate.”

Isabel Melina, editor in chief of *The Daily Collegian*, sees the impact the column had in a different light. “[Wilson’s column] gave bigots enough reason to speak up, and there was dialogue on racism. That’s the most positive thing to come of this. For the first time there’s one-on-one discussion about racism. We’ve woken up a sleeping monster by kicking it hard enough.”

“That’s a cop out,” is Mahon’s reply to Melina’s assertion, as he stands by and supports Penn State’s various racial diversity workshops. “The issue of racism is discussed a great deal at this university.”

The campus’ response to the article was overwhelming. *The Collegian*’s office was flooded with phone calls from concerned students, parents and faculty members the day after the newspaper came out, Melina said. The attention Wilson has personally received has been negative. Death threats as well as angry comments from his fellow students and administrators have hounded him.

Although it is clearly understood by both the *Collegian* staff and the university’s administration that there will be no form of censorship imposed upon the newspaper, concern does exist in the *Collegian* camp with respect to the financial influence of Penn State University.

“We’re afraid that there may be a plan to punish us through advertising,” says Melina. Although Penn State does not fund the *Collegian*, they have a subscription contract with the newspaper until the year 2001 which accounts for 15 percent of the *Collegian*’s budget. The other 85 percent of the paper’s funds, according to Melina, comes from advertising.

Although there is no fear of the university breaching their subscription contract, Melina worries that the university may persuade local businesses to stop advertising.

Mahon insists that absolutely no course of action will be taken to hinder publication of the *Collegian*. “The paper has a wonderful history and has produced great journalists. This is a case of decisions made by one journalist and only a few editors. There’s no reason to shut the paper down, but there is a reason to question the paper’s judgement.”

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**Political Correctness Notes**

- Rep. Henry Hyde’s (R-Ill.) Collegiate Speech Protection bill is still awaiting a hearing. The bill proposes an amendment to the Civil Rights Act of 1964 which would give students at private universities the right to challenge school codes punishing “hate speech” in federal court.
- House bill 5059 in Michigan, sponsored by Rep. Stephen Dresch (R-Hancock), is currently in the Committee of Colleges and Universities. No activity is expected on the bill this term. The bill, much like the Hyde bill, would prevent colleges and universities from punishing students on the basis of speech. The bill applies to colleges receiving state aid or enrolling students who receive state financial aid.
- No settlement has been reached *Dartmouth Review v. Dartmouth College*, the case in which student journalists filed suit against Dartmouth after being suspended in 1988. The conservative student newspaper published a story in the campus newspaper that criticized a black music professor, William Cole. Cole charged that the reporter, Chris Baldwin and fellow *Review* staffers had harassed him and said the article was racially motivated.
- George Mason University is appealing a ruling from last August in *Sigma Chi v. George Mason University*, 773 F. Supp. 792 (E. D. Va. 1991), that held that the school wrongly suspended the fraternity on campus after a member wore blackface in an “ugly woman contest.” An oral hearing before the U.S. Court of Appeals for the Fourth Circuit was scheduled for the first week of May.
Holocaust ad sparks debate

U of Arizona, other schools, respond to controversy

Advertisements claiming that the Holocaust of World War II never happened continue to make their way into some college campus newspapers throughout the country.

Newspapers at the University of Georgia, Louisiana State University and Cornell University ran Bradley Smith's ad, entitled "The Holocaust Controversy: The Case for Open Debate," which claims the Holocaust is a myth perpetuated by "special interest groups." Ohio State University ran the ad as an editorial. The ads at these schools sparked controversy and debate over advertising rights and freedom of speech issues. However, there was no intervention or threats of punishment from these school administrators.

Administrative tangles have been encountered at the University of Arizona.

The University of Arizona's Arizona Daily Wildcat ran a variation on Smith's ad entitled "Holocaust Didn't Happen," placed by Bruce Friedemann in their March 9 issue. Friedemann is a Tucson free-lance journalist.

Along with the criticism of the ad from campus organizations came a request from Dr. Johnetta Brazzell, Associate Dean of Students, that the Director of Student Publications, Oro Bull, reject any future ads of such a controversial issue.

"I had a conversation with Dr. Brazzell," said Bull, "where she informed me to reject all ads like this one. We have no formal ad policy. The student sales manager has the right to reject any ads, and this is the first time university officials have stepped in."

Brazzell concurred with Bull's statement saying "my bottom line is that if I can, I'll say no to running these ads."

According to Bull and Brazzell, the ad was run under atypical procedures.

In a disclaimer on the editorial page of the March 11 Wildcat, the newspaper said "the advertisement passed through one sales representative who did not read it before it ran. Normally, the representative and a proofreader go through the advertisement. If it is of controversial nature, it is then passed on to the editor in chief. Unfortunately, these channels were not followed."

The disclaimer was published alongside letters to the editor bashing the Holocaust ad and criticizing the Wildcat for running it.

As of late March, no similar ads had been presented to the Wildcat. However, the university is investigating the legal rights they may have in controlling the paper's advertising. Brazzell said.

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Wisconsin tries again with hate speech code

University believes new rule is more focused; will pass constitutional muster

WISCONSIN — In a 9-6 vote last March, the University of Wisconsin's Board of Regents decided to approve a resolution that marks "the first step in considering a rule" that would institute a new hate-speech code for campuses in the system, said Judith Temby, secretary to the board.

The new rule is scheduled for a hearing by the Board of Regents in May, and will then be considered by a university committee, said Chris Ahmuty, assistant director for the Wisconsin American Civil Liberties Union.

The resolution was approved in response to a 1991 federal court ruling that declared a previous University of Wisconsin speech code unconstitutional. The Wisconsin ACLU had filed suit against the university on behalf of the students.

In that case, U.S. District Judge Robert Warren decided that the previous rule was "ambiguous since it fail[ed] to make clear whether the speaker must actually create a hostile educational environment or if he must merely intend to do so."

The new rule is more focused, in that students can be punished for using racist, sexist or age-related words, symbols or phrases that would provoke a hostile or violent situation, Temby said.

Albert Nicholas, vice president for the Board of Regents who voted against the resolution, told the Associated Press in March, "You just can't write rules and regulations for how people speak. I think this hate speech rule is totally uneven, unfair and it'll go to court again and it'll lose."
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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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