student press law center
report
vol. V, no. 1  winter 1983-84

student press guidelines
FROM THE DIRECTOR:

The Student Press Law Center turns ten years old in October.

A decade is a long time.

The SPLC has seen its share of lean times in that decade. We've had seven Directors. We lost track of the addresses we've had a long time ago. We had two years when the magazine you now hold — the SPLC Report — did not get printed.

In all the shuffling, some of you may have forgotten SPLC. But we never forgot you. And through that decade we've been there all the time, helping over 3000 of you with your legal problems one-on-one.

We enjoy getting to know people all over the nation and help them with their fights for a free scholastic press. But as it was once said that the ultimate honor we can pay the unknown soldier is not to have any more like him in the foreseeable future, the ultimate honor that can be paid to the SPLC would be to not have any more censorship.

That's not going to happen until we can educate an entire generation of students, advisers, teachers and administrators at thousands of colleges and secondary schools in the United States. We can't do that one-on-one. We can make a good start with the Report. It is much more than a magazine; it is a preventive legal tool. It can tell you how to avoid trouble before it happens through responsible journalism, model publication guidelines, how-to lessons in copyright law and so much more. And one issue of the Report reaches more people than we can help personally over a period of years.

We have a lot to catch you up on, and we won't be able to do it all at once. We can't tell you about every case from the past two years here, and we won't try. We will let you know about the major trends in the law — and about the major cases — and we promise that we will be helping you for a long time to come.

You can help too. We need people in every state to let us know when censorship occurs. You can be our eyes and ears. Because we're not AP or UPI, we're one Director and a small band of interns. As much as those of us in Washington, DC, you are the SPLC. And we never forget that.

From Marc Abrams

The Student Press Law Center

The Student Press Law Center is the only national organization devoted exclusively to protecting the First Amendment rights of high school and college journalists. The Center is a national legal aid agency providing legal assistance and information to student journalists and faculty advisers experiencing censorship and other legal problems.
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\[\text{WINTER 1983-84} \quad \text{SPLC Report 3}\]
Student Editor Battles Howard U.

Howard University has had more than its share of controversy in the past, including a student takeover of the institution in the late sixties. So it does not seem strange that 1983 will go down as another year marred by conflict, as administrators and the student newspaper editor clashed over the issue: "First Amendment protection for whom?"

The difficulties experienced at Howard, a predominately black school located in Washington, D.C., have served as a focal point for debate over the extent of constitutional protection enjoyed by private school students. Ever since 1969, students attending public schools and state-chartered or state-funded colleges have been protected by the First and Fourteenth Amendments. However, since the guarantee of these freedoms serves as a limit on government interference, a finding of government or "state action" must be made by the court in order to bring an ostensibly private institution under the restrictions of the Bill of Rights. The courts thus far have been reluctant to find that the actions of Howard administrators are attributable to the State.

In a complicated chain of events beginning in October 1982, Hilltop editor Janice McKnight began publishing articles that detailed a sex discrimination complaint filed against Howard's general counsel by an attorney working in that office. McKnight said that she came under pressure from Howard President James Cheek and Vice President for Student Affairs Carl Anderson to stop covering the story because they felt that some of the accusations made by the attorney were "potentially libelous." Given Howard's private status, the school — as publisher of the paper — would be responsible for its contents, and therefore liable in any libel suit brought against the Hilltop.

The problems intensified late in January when the Board of Trustees issued "Policies and Procedures" for the Hilltop—one of which required the editor to submit "potentially defamatory material" for review by Howard's counsel. McKnight sharply criticized the order, saying it "infringed on the rights of the students to freedom of speech."

The controversy came to a head on February 1 when McKnight received a telegram informing her to withdraw from the University. School officials alleged that the editor had falsified her admission form by not stating that she had previously attended Syracuse University in New York. The administration maintained that its decision was not connected at all to her editorial practices and that it was common procedure to order withdrawal under these circumstances.

McKnight's expulsion set off angry protests on campus, as students called for her reinstatement and Cheek's resignation. To express their demands for "free speech at Howard," students marched on the administration building, conducted a sit-in and burned Cheek in effigy.

Meanwhile, McKnight took her case to D.C. Superior Court. Judge John Goodrich issued a temporary restraining order effectively reinstating her as both a student and editor until a hearing for a preliminary injunction could be held. Calling the dismissal a "mighty strange coincidence" in light of her articles, he ordered the administration to "cease and desist from interfering" with McKnight's "exercise of free press rights guaranteed by the First Amendment...and her contracts with Howard University."

Goodrich's mention of the First Amendment raised the expectations of press advocates who felt that Howard's receipt of substantial federal funding, coupled with the fact that the school was created by an Act of Congress, might lead to a finding that the University was a government instrumentality subject to the limitations of the Bill of Rights.

That excitement was damped two weeks later, however, when Judge Sylvia Bacon refused to issue a preliminary injunction which would have reinstated McKnight until a trial could be held. The judge stated that because of McKnight's "failure to disclose" on her college application, any contract with the University was voidable.

As to the free press claim, the court suggested that the First Amendment would not come into play in this case, since McKnight was "not persuasive in her allegation that Howard was a state agency."

Just a few hours after McKnight was denied the injunction, Cheek reinstated her as a student, saying only that "it was in the interest of all parties concerned." Two weeks later, the board that oversees publication of the Hilltop voted unanimously to reinstate her as editor.

But somehow it just didn't seem destined that McKnight and the Hilltop would live happily ever after. On March 22, the Hilltop board voted to suspend publication of the newspaper, citing an approximate deficit of $25,000 that could not be erased even if all advertising fees were collected. The board ordered the Hilltop to shut down immediately, pending an audit to determine the paper's financial status.

In fact, when the audit by an independent firm was completed, it showed that the Hilltop was actually running a surplus. At the next meeting of the Hilltop board, a quorum was not present, and thus a vote to restart publication could not be taken. The paper had been effectively suspended for the remainder of the school year. It is now back in operation.
The Eighth U.S. Circuit Court of Appeals, citing First Amendment considerations, reversed October 11 a lower-court ruling that permitted the University of Minnesota’s board of regents to withdraw mandatory student-fee support from one of its student publications.

Three former editors of the Minnesota Daily, the student newspaper of the university’s Minneapolis-St. Paul campus, had joined with one of the paper’s current editors in filing an appeal of the U.S. District Court decision by Judge Robert Renner. This decision accepted the withdrawal of the mandatory support as constitutional.

The three-judge circuit court panel ruled that the regents’ attorneys were unsuccessful in attempting to prove that the funding change was unmotivated by a controversial 1979 “humor issue” of the Daily Inquirer, contained satirical articles that offended on-and-off-campus readers, including several public officials.

Much of the protest focused on the pieces attacking religion, such as a “mock interview” with Jesus. A subsequent apology published by the Daily failed to diminish the controversy, and public concern by state legislators motivated the university to institute a new funding system for the paper in May 1980.

This system gave students the option of getting a refund of their share of the student activity fee money used in support of the Daily.

The circuit court judges ruled that, while the regents’ action may have been on legitimate concern, “it is clear that the First Amendment prohibits the regents from taking adverse action against the Daily because the contents of the paper are occasionally blasphemous or vulgar...We have here a case of mixed motives.”

The court pointed to student testimony at the District Court trial indicating that the regents had declined to apply the new funding system to all student publications at all campuses.

“If the regents had truly been motivated by the principle that a student ought not be forced to support a newspaper that espouses views the student opposes, then one would expect that they would have taken some action in regard to newspapers at the other campuses.”

The court also ruled that the District Court must rectify the damage done to the Daily’s finances. Marshall Tanick, attorney for the paper, stated that the Daily will seek not only the reinstatement of mandatory fee money, but also attorney’s fees and all money previously withheld under the current system. About $16,000 has been refunded.

The mandatory fee had previously contributed roughly 15 percent of the Daily’s support.

The timing and fact of the old system’s reinstatement depends on the lower court’s interpretation of “injunctive relief,” and on whether or not the regents decide to appeal the case to the Supreme Court. That decision has yet to be made, and most of the regents declined to comment on the court’s reversal.

University President C. Peter Magrath and Leonard Keyes, one of three lawyers for the regents, similarly declined to comment upon hearing of the decision.

However, Daily editor Victoria Sloan stated that the paper’s staff is “extremely gratified with the decision.” She believes that the issue needed to be decided in court, “because the protection of free speech and free press is essential not only for the Daily but for the academic community at the university as well.”

“It’s rare that a government body acts as flagrantly against a newspaper as the regents did in 1980,” said former Daily editor Kate Stanley, one of the plaintiffs in the case, along with former editors Jeff Goldberg and Christopher Ison, and current Daily editor Michael Douglas.

“But we must hope the appeals court decisions will keep something that extreme from happening again, both here and elsewhere,” she added.

The decision to appeal the District Court’s ruling was made on January 3 by the university’s Board of Student Publications, which had filed the original suit along with the Daily and the editors. Oral arguments were heard on June 14.

The Minnesota Civil Liberties Union and a group of 12 university professors each filed briefs in support of the Daily, which is officially published by the board rather than the university.

The regents’ controversial decision to change the method of the paper’s funding came about after the “humor issue” debate resulted in investigations conducted by committees from both houses of the Minnesota Legislature. Initially, the regents only passed a resolution criticizing the humor issue after its publication.

However, on June 25, 1979, the state Senate Committee on Education met to discuss the issue, and on November 14 of that year, the Higher Education Division of the state House Education Committee followed suit. In addition, a group of university students began to work towards the repeal of the Daily’s mandatory student-fee funding.

Finally, despite a 99-7 vote by a student-faculty governing body to keep the mandatory funding, the regents voted 8-3 on May 9, 1980 to institute the refundable fee system on a one-year trial basis. The following June 30, the Board of Publications voted to file suit with the four editors against the regents and Magrath, charging that free expression and equal protection under the law were violated.

In issuing his judgement for the District Court on Dec. 28, 1982 in favor of the regents and Magrath, Renner stated that the refundable fee system helped to preserve “the delicate balance between plaintiffs’ First Amendment rights and the rights of the dissenters who help finance the Daily.”

Although the impact of the ruling is uncertain and the University says it will appeal, in conjunction with a similar decision involving the student paper at the University of North Carolina — Kania v. Fordham, 51 USLW 2554 (4th Cir., 1983) — it appears that the “delicate balance” has shifted away from those who would use funding control as a mechanism to censor the scholastic press.
Illini Editors Resign Early Over ‘Pledge’

The Daily Illini, the newspaper at the University of Illinois, lost 18 staffers this spring in a controversy which they say involves freedom of the press but the parent corporation says is just a matter of trying to keep students running a student newspaper.

The 18 staffers — almost all senior editors — resigned March 25 after refusing to sign forms required by the Illini Publishing Co. which would certify that the staffer was a currently enrolled student at the University of Illinois, maintaining at least a C average and taking at least 12 hours of classes. The Illini staffers who resigned in protest included the editor-in-chief and the managing editor, and left the paper without its most seasoned veterans.

Jean Franczyk, the editor-in-chief who resigned, said that she viewed the requirement to sign the pledge as something which “allowed professors to bring interests of the classroom into the boardroom.” The Illini Publishing Co. Board, which also oversees the campus radio station and yearbook, has four professors on its eight-member board.

But IPC General Manager Meyer Maloney, Jr. said that the eligibility rule had been in effect for a year at the time of the resignations; only the requirement that a pledge be signed was a change from the honor system that had existed.

Maloney said that the change came about when several board members got upset because they heard that many students were simply ignoring the honor code, and that many of the staff — who under IPC rules must be members of the student community — were in fact not enrolled in the university at all and in some cases had not been for some time.

IPC Board Chairman Gene Gilmore said that the purpose in requiring a signed pledge was “To get rid of people who look upon the Illini as sort of a clubhouse and spend a great deal of time there. The way they do this is sign up for 12 hours of classes, but at the last minute they drop a class. It keeps younger staff from moving up.”

As a result of the resignations, the younger staff moved up somewhat quicker than expected, and, according to Maloney, the transition was a rough one.

But according to 1983-84 editor-in-chief Lisa Friedman, “There’s always a little drop when the new editors take over.”

Friedman and most of the current editors and staffers have signed the pledge, although Maloney said that the IPC is back to using an honor system.

“I think that is really what the Board prefers,” he said. “But at the time they had really felt something stronger was needed.”

Maloney said that the entire IPC by-laws are being reviewed this fall with an eye towards revision, and that is one reason the Board returned to the honor system.

“It didn’t feel right to ask students to sign a statement when the rule might or might not be around in two months,” he said.

The Daily Illini is one of the largest university newspapers in the nation. It has an editorial staff of over 150, and a total staff between 300 and 400. Students are employees, and are paid for their efforts.

Maloney said that the requirements were no more or less than many similar employee agreements used by newspapers across the nation.

Other disagreed. The Reporters’ Committee for Freedom of the Press got interested in the case.

“We first heard about the situation when a reporter on the DI (Daily Illini) staff contacted our Director, Jack Landau,” explained Julie Wurth. Wurth is herself a former editor-in-chief of the DI.

The Reporters' Committee arranged to have University of Illinois Law professor Ronald Rotunda represent the editors who resigned.

To date, however, the main impact seems to have been that the new editors had a rougher rite of passage than would otherwise have been the case, though Friedman says there is no bitterness between those who left and those who stayed.

Chimes Muted in Michigan

The Chimes doesn’t ring as loudly anymore on the campus of ultra-conservative Calvin College in Grand Rapids, Michigan.

Last March, staffers investigated claims that a college chaplain or counselor was revealing information given him in confidence. But when they tried to get the facts, they “found a lot of hesitation on the part of the administration to discuss it,” according to former Associate Editor Keith Eussenburg.

The Chimes' editor, Ron Ludema, then wrote an editorial asking “Why had we been stonewalled?”

College president Anthony Diekema instructed Ludema not to run either the editorial or the stories, but after a 7-to-5 vote by Chimes staffers, the article, the editorial and an “open letter to the President” ran in the March 4 issue.

Calvin College’s communications board then voted to suspend publication of the newspaper altogether and to replace the editors and reporters involved in the story. Those editors and reporters were fined $50 each, although Eussenburg is appealing his fine to the college’s judiciary board to protest the way in which the case was handled.

When the newspaper next appeared on campus, most of the names on the masthead were new. According to one former staffer, the current editors are “a lot more compliant. The paper pretty much prints what the administration wants.”

Although the college may have gotten its way with The Chimes, there is one happy outcome. Editor Ron Ludema is now a stringer for the highly respected Grand Rapids Press.
BYU Bans 7th East Press

For more than a year and a half, Brigham Young University's independent student newspaper, the 7th East Press, published without restrictions from the school which is owned by the Church of Jesus Christ of Latter Day Saints, and located in Provo, Utah.

The publication was originally granted the privilege to be sold in the campus bookstore and newsstands, but when an interview with Sterling M. McMurrin, a University of Utah professor and a Mormon, was printed in the January 11, 1983 issue of the Press, that privilege was taken away.

McMurrin repeated in that interview his oft-quoted doubts about the validity of the Book of Mormon, the keystone scripture of Mormonism.

At a February 9 meeting, Paul Richards, BYU director of public communications, told 7th East Press managing editor Dean Huffaker that the paper would be banned from campus within one week. All copies were to be taken from the bookstore and the newsstands were to be removed from university property.

That week's Daily Universe, the official student newspaper, quoted Richards as saying, "The 7th East Press has published several articles relating to the church that cause us to feel we have no obligation to provide university facilities as an avenue for distributing the paper."

Richards cited BYU's ownership by the Mormon Church as justification for the ban. What the school was saying to the student newspaper, Richards said, was "Why should we hold your coat while you punch us in the nose?"

The 7th East Press first appeared in the fall of 1981. The brainchild of students Elbert Peck and Ron Priddis, it was BYU's only alternative to the school-run Daily Universe.

Although journalistically the quality of the paper was questionable, the newspaper distinguished itself from its sanctioned counterpart by advocating causes and printing stories the editors felt were being ignored by the Universe.

"They did a good job with features, but they were sometimes inaccurate with their news," said Lisa Mote, president of the BYU chapter of the Society of Professional Journalists, Sigma Delta Chi.

What aroused the most controversy, however, was the regular appearance in the Press of articles—both historic and current—relating to the Mormon Church. Many were written in a critical or questioning tone, on topics ranging from the Mormon practice of polygamy in the 1800's to Mormon Apostle Boyd K. Packer's direction that church historians write history in a "faith promoting" manner.

Such "intellectual inquiry," as the Press termed it, or criticism, as the school termed it, hit nerves both at the school and at church headquarters in Salt Lake City.

Though church and school authorities remained tight-lipped about where the ban came from, administration officials said anonymously that Ezra Taft Benson, president of the church's Council of the Twelve and next in line to become president of the church, was responsible for the action.

Reaction to the ban from student journalists was generally negative. Officers of the student Society of Professional Journalists chapter—all employees of the Universe—responded with a letter to university president Jeffrey R. Holland asking him to reconsider the ban.

"The purpose of a university, as we understand it, is to promote the free exchange of ideas and to train students to develop the ability to discern truth from error," the letter said.

"It seems to us this church, which is founded on truth, should not be afraid to have its members exposed to a variety of ideas," the letter continued. "A mere knowledge of the truth is not sufficient. All ideas need to be contrasted to opposing ideas to become firmly established."

Some student journalists took exception to the officers' letter, maintaining that BYU was not only within its legal rights, but also correct in principle.

Soon after the ban, Denver Post-Managing Editor Tim Kelly, who was scheduled to serve as BYU's editor-in-residence for several days in early March, cancelled his previous acceptance.

"The action (of banning the Press) is a blatant attempt to suppress dissent and a violation of First Amendment rights," wrote Kelly, who also said that for him to come to BYU would serve to sanction the college's action.

After the ban, the 7th East Press staff sought to distribute the next issue directly to the off-campus student apartments where most BYU students live.

The trustees of the 7th East Press, Inc. have put the newspaper under new management rather than fold the publication. The paper will be renamed The University Post and will follow a more traditional journalistic style.
Paper Survives Furor Over Edit

Most members of the North Dakota State University community would like to forget about it. The new editor of the student newspaper doesn't want to follow up on it. But a lot of people still want to know the story behind it.

"It" was an editorial printed in the NDSU paper, the Spectrum, in January of this year. Written by graduating editor Dave Haakenson, the story attacked the grading practices of Donald Myrold, an associate professor of business and economics. Haakenson wrote that Myrold and other instructors "consciously and willfully cheat students out of grades and give away grades." The editor also stated that Myrold had a policy that "if a student smiles at him...or is generally friendly to him," the student would receive a higher letter grade.

To many, such accusations would not constitute earth-shattering news. But two days after the editorial appeared, and just minutes after administration officials ordered the professor to stop his unfair practices outlined in the story, Donald Myrold died of a heart attack. The campus was hurled into a state of chaos as some faculty members blamed Haakenson for the 52-year-old professor's death, despite the fact that Myrold had long suffered from a serious heart condition.

An investigation into the matter was conducted and Haakenson presented written statements of students who confirmed Myrold's unusual grading system. Although there were minor inaccuracies in the editorial, H. Ray Hoops, vice president of academic affairs, concluded that the "thrust" of the accusations were true.

As the controversy continued, concern was expressed that the incident would be used as a vehicle for prior review and censorship of the paper, especially of articles critical of the faculty. Some professors argued that student criticism of a teacher should first be processed through administrative channels before being allowed to appear in the Spectrum adviser, countered that while one should go through the established procedures, that should not preclude students from expressing their opinions in a public forum such as the newspaper. And Spectrum staff members say that no restrictions have in fact been placed on them, nor do they expect any prior restraints in the future.

In February, the Board of Student Publications voted 3-2 not to reprimand Haakenson, and the issue was apparently laid to rest. As Board member Hoops explained, "One does not die from an editorial. One dies from a heart condition."

James Madison U.

Advertisers Sue Humor Mag

When Rick DeJarnette, a student at James Madison University in Virginia, published his humor magazine, he thought he might run into trouble trying to distribute the publication on campus. What he didn't foresee was that some of his advertisers would go to court to prevent him from distributing it at all.

DeJarnette printed his first issue of the Humorist Manifesto in mid-March and sought assistance from an on-campus organization to hand out the magazine. The James Madison student paper, The Breeze, caught wind of the contents of the Manifesto and contacted the Student Press Law Center to find out about the First Amendment rights of underground newspapers, thinking some type of controversy might develop because of the magazine's use of "four letter words" and sexually explicit comics. When The Breeze article appeared, a number of advertisers who had bought substantial space in the Manifesto refused to pay until a hearing for a preliminary injunction could be held.

The companies maintained that when they bought their ads, they were told by DeJarnette that the magazine would be much like a traditional student paper such as The Breeze. They stated that they "did not subscribe to or support" this type of publication, and that they were misled by the editor. If the Manifesto were distributed, the advertisers claimed, their businesses would suffer irreparable harm because of their connection with an "obscene" and "pornographic" magazine.

DeJarnette contended that he informed all the advertisers that the publication would be a "humor issue" — hence the magazine's title — and he speculates that James Madison University administrators may have persuaded the businesses to go to court so that distribution would be effectively halted without the administration resorting to some form of censorship.

Rather than endure a long court battle, DeJarnette and the advertisers decided to negotiate. The conflict was settled when Shoney's, Dod and Coors agreed to pay for the ad space, and to partially defray the cost of reprinting.

As for the future of the Manifesto, DeJarnette says now that the issue has received so much publicity, a number of advertisers have decided to pull out. Rather than relying solely on advertising for the next issue, DeJarnette is considering selling the Manifesto to pay for production costs.
Portland State Opens Meetings

Portland State University apparently believes students do not have the right to know how the University decides to spend mandatory student fees. The University has closed meetings of the Incidental Fees Committee to student reporters. This student board dispensed $1.6 million in mandatory fees last year.

Reporters of the Portland State Vanguard have made numerous requests to attend the meetings. The University’s Assistant to the President for Legal Affairs, Michael A. Corn, claims that the meetings are not subject to the Oregon Public Meetings Law.

“We felt it best to leave it to the good judgment of the chairpersons and the committees to decide who should attend their meetings,” Corn said. “Committees have made judgments as to whether their work would be helped or hampered by attendance by other persons.”

Vanguard editor, Carla Kelly, contends the Meetings Law gives reporters the right to attend Incidental Fee Committee meetings.

“Oregon’s Open Meeting Law has granted the news media a qualified statutory right of access,” Kelly said. “We merely wish to take advantage of this right, and fully inform the student body of PSU of decisions being made concerning student money.”

The Vanguard’s year-long dispute with the University has been a costly one for the paper. Former Vanguard Editor, Steve Mayes, sought the help of a Portland law firm to present the Vanguard’s case to the University. Unaware of an Oregon law requiring Attorney General approval before obtaining outside counsel, Mayes retained the firm. The paper now has a $750 legal bill.

Kelly contends the University was fully aware that Vanguard was seeking legal aid but at no time informed the paper of the law. Kelly said that outside counsel is needed to present the paper’s position.

“We can only reach a reasoned and responsible conclusion to this dispute if we can act with the benefit of outside legal counsel,” she said.

The Student Press Law Center has contacted the University and informed it of the “purpose and spirit of the law.” The University has yet to comment.

(Editor’s Note: The Student Press Law Center was notified on November 23rd, in a letter from W.T. Lemman, the Vice Chancellor for Administration of the Oregon Department of Higher Education, that meetings of the Incidental Fees Committee are now open to the public.)

Washington State:

Editor Fired Over Paper’s Politics

It took a lawsuit filed in U.S. District Court by the ACLU, but administrators at North Seattle Community College are finally talking to Michael Cosgrove.

Cosgrove was fired as editor of the student newspaper Polaris on November 9, 1982 by the student-faculty Board of Publications after printing a Veterans’ Day story with headlines and graphics depicting the “Horrors of War and Those Who Waged It.” The illustrations showed the figure of Death standing over a field of dead bodies.

The Board of Publications said that Cosgrove was relieved of his position for violating the Code of Ethics of the American Society of Newspaper Editors. In addition to being upset over the Veterans’ Day article, the Board of Publications was also angered by an editorial cartoon in the same issue which depicted the Polaris’ adviser as a censor.

Cosgrove feels that the Board fired him because of his politics. He views the Board as being too conservative for the viewpoints he expressed.

“If my politics had been similarly rightist, there would have been no problem,” he said.

Cosgrove is not asking to be reinstated as editor of the Polaris, but he is demanding back pay changes in the relationship between the Board of Publications and the Polaris so that editor, of the paper will have more independence. Cosgrove also is asking for $5,000 in general damages and $25,000 in punitive damages in his suit.

Before the suit was filed, little progress was made towards resolving the problems at the Polaris. Since the March 30, 1983 filing, however, representatives of the college have been meeting with Cosgrove and his ACLU lawyer, and, according to Kathleen Taylor, Executive Director of the ACLU of Washington, the case probably will not have to go to trial.
Advisers Uphold Free Press Rights

In what may become an important ruling for many high school newspapers, the U.S. 9th Circuit Court of Appeals has asserted that a principal's prior review of "a number of sensitive articles for accuracy," does not infringe upon adviser's First Amendment right to protect the free speech of his students.

Don Patrick Nicholson, a journalism teacher and adviser of the school newspaper at California's Torrance High School from 1968-1970, lost his appeal in a suit against the school board that did not renew his contract. The court ruled that Nicholson failed to prove both that his press-related activities constituted a "substantial factor" in the nonrenewal decision, and more significantly, that those activities were constitutionally protected.

The school's paper, the Torrance News Torch, had published a number of articles on controversial topics, including minority unrest in the community, student relations with local police, and the school's treatment of student Fifth Amendment rights. Members of the faculty and administration reportedly were displeased with some newspaper content, and Nicholson was told that future articles were to be submitted for review by the school's principal, Dr. Ahee.

Nicholson claimed he was dismissed because he objected to the principal's request that he submit student journalists' work for prior screening, and adhere to the Rotary International "Four-Way-Test" of evaluating expression on the bases of "truth," "fairness," "good will," and "benefit."

Thus, Nicholson argued, the school's decision not to renew his teaching contract was unlawful because it was based on actions protected by the First and Fourteenth Amendments. The U.S. Supreme Court has ruled that a decision not to rehire an individual is improper if it is made by reason of that person's exercise of constitutionally protected rights.

The local school board continued that the action was based on a number of independent grounds, including Nicholson's "failure to follow school rules...carelessness in not acquainting himself with school procedures...and total disregard for the principal's instructions." Apparently, Nicholson previously failed to comply with school record-keeping requirements, and had not enforced various other school rules.

The appellate court's ruling upheld a lower court decision which found that the school board had acted within the proper bounds of its authority, and that "first amendment considerations did not motivate the decision not to rehire the appellant."

In its 12-page opinion, the 9th Circuit Court observed that the constitutional rights of high school students "are not coextensive with those of adults and may be modified or curtailed by school policies that are reasonably designed to adjust those rights to the needs of the school environment."

"While appellant properly stressed the value of a free press," the opinion continued, "the school principal also was acting within appropriate bounds when he emphasized the concomitant need for a responsible press." Since administrative review in this case was declared not to be in violation of student First Amendment rights, Nicholson could not claim a derivative right to disobey the administration's instructions.

Additionally, the court addressed another important issue in its analysis of adviser First Amendment rights, saying that the question of whether a school teacher's speech is constitutionally protected requires a "balancing" of public and private interests.

The court consequently held that Nicholson did not have a personal right to encourage publication of controversial stories, saying "a teacher's expression might not be entitled to protection if it impeded the teacher's proper performance of his daily duties in the classroom," and that "the conduct for which appellant seeks protection did involve questions of supervisory discipline, loyalty and harmony among coworkers."

In reaching out to comment on the prior review issue, the 9th Circuit's statements suggest that it will follow the lead of a few other appellate courts which have upheld the practice of administrative screening. But these court decisions have usually allowed prior review only in a few specified circumstances, such as when the material is potentially obscene, libelous, or can be shown to be "substantially disruptive." In addition, the courts have typically stressed a need for schools to create proper guidelines for such screening to restrict the power of school administrators.

On the other hand, at least one circuit court has declared that administrative prior review of public school student publications -- like government review of commercial publications -- is unconstitutional.

Prior to the Nicholson case, the 9th Circuit had not definitively ruled on a public dispute involving prior review and a publication adviser's First Amendment rights.

Nicholson's attorney, Michael Simpson of the National Education Association, described the court's statements concerning prior review of high school newspapers as "unnecessary to the decision. The court misstated the facts; they said prior review for accuracy is permissible - but that principal reviewed articles because they were controversial. He wanted to implement his Rotary standards of 'good will'." Nevertheless, he said, "I think the decision may carry weight as a precedent for this circuit."

In another California case involving conflicts between a journalism adviser and school...
administration, the sponsor of the Redwood High School newspaper in Larkspur lost her suit in which she sought to have a letter of reprimand removed from her file.

The adviser, Sylvia Jones, received the reprimand when she approved of an investigation in which reporters from Redwood's student paper, aged 14 and 15 years attempted to buy wine and beer at 24 local liquor stores. Their experiment was designed to test the availability of alcohol to minors. Ten of the 24 sold alcohol to the undercover reporters; all of the purchases were turned over to Jones.

School officials believed that Jones showed poor judgment in approving the investigation, and ordered that in the future she submit all controversial articles to the principal's office for clearance.

Although the Federal District Court's ruling in December 1982 denied her damage claim against the Tamalpias School District, Jones was able to settle on a compromise letter with the school administration. But she feels the letter, which states that she must expose all material that may "possibly be illegal," violates First Amendment rights in forcing her to impose a prior restraint on student journalists.

Jones is not appealing the court's decision, but is unsure of her future involvement with Redwood's student paper, the Bark. "I am thoughtful about whether I care to continue in the adviser position under those kinds of circumstances," she said.

Recently, the staff of the high school publication the Yakima Herald (Wash.) conducted a similar investigation of local liquor stores, with adviser permission. The resulting article produced by the students was praised by the school and by the Yakima community.

Debates between newspaper advisers and school administrations over questions of prior review have not been limited to the 9th Circuit. In the course of an extended dispute involving censorship of a high school newspaper, Nancy Brown, an English teacher at Vanguard High School in Ocala Florida, was dismissed and, subsequently, reappointed as the public school's journalism adviser.

The school's principal, Dr. Henry Lambert, had suspended from publication the Dec. 17, 1982 issue of the student newspaper, the Knight Times, which contained student editorials about earlier censorship of one of the paper's advertisements.

Prior to blocking the issue, Lambert had instructed that a news story and editorial column on the topic of censorship be removed. The disputed advertisement, which was for the All Women's Health Center in Ocala and which mentioned birth control and pregnancy counseling, had already been removed from the newspaper.

The Knight Times was restrained pending an opinion by the school board attorney on the right of a principal to preview and select articles, Lambert said.

"Dr. Lambert told me that this issue of Knight Times was not going to be printed now or at any time and I was not going to be the journalism adviser for the second semester," Brown said. But according to Brown, Lambert was only acting under the order of Leon Rogers, school superintendent for Marion County.

After Brown's December dismissal and January reassignment, the school superintendent's office in February handed down a decision to replace Lambert as Vanguard's principal. Rogers stated that the decision was unrelated to the censorship issue, however Lambert, whose contract does not expire this year, is appealing his dismissal.

As of April 11, Brown was still awaiting a decision concerning renewal of her teaching contract. In the previous five years she has taught at Vanguard, Brown has never signed her renewal contract later than April 5.

The journalism adviser at Dickinson High School in Jersey City, New Jersey, was dismissed from her adviser position after an article on building maintenance appeared in the school's paper, the Dickensonian.

Susan Everett, who had served as adviser for three years, was told by the school's principal that she should have shown him the article before the paper went to press. The principal said Everett would be replaced the next day.

According to Everett, the school administration had not previously requested to screen materials, nor informed her of guidelines for prior review. She said the article in question did not appear to be a potentially libelous, obscene, or otherwise "disruptive" one, and that she was unaware of any major controversy surrounding the school's building maintenance.

During her term as advisor, Everett and the student staff worked to improve the quality of the Dickensonian and increase the number of issues circulated. Before she assumed her post the Dickensonian, which is financially self-supporting, was often distributed only once during the school year. Gradually, Everett said, the school had begun to take the newspaper seriously.

"I'm waiting to see if union grievance procedures can do anything, but it is beginning to look as if they can't, because the newspaper is extra-curricular and not mentioned in my contract," Everett said. "If they can't help, I'll have to pursue the case through another channel."

**Colorado:**

**Do Advisers Have Free Speech?**

The Colorado Court of Appeals has ruled that a college's newspaper adviser can sue for infringement of First Amendment rights, even though she did not lose her job or otherwise suffer "economic injury" after the school's student government cut the paper's funding and halted its publication. The May, 1982 ruling is on appeal to the Supreme Court of Colorado, which heard arguments in the case on November 15.

The case is the first in which a newspaper has challenged a subsidy cut-off by a student government. The Student Senate of Pikes Peaks Community College voted in June, 1980 to end the paper's $12,400 subsidy, stating in a resolution that the Pikes Peak News "projected negative content," was
Criticized Professor Brings Suit

In a libel action arising from a campus controversy last spring, a department chairman at Dartmouth College, in Hanover, New Hampshire, is suing the conservative Dartmouth Review over an article published criticizing his lecture course and teaching methods.

The complaint filed by William Cole, a professor and chairman of the Department of Music at Dartmouth for many years, alleges he was libeled and "held up to scorn, ridicule and disgrace" in the January article entitled, "Prof. Bill Cole's Song and Dance Routine."

The article was written by Laura Ingraham, a staff writer for the Review, who had attended the first two sessions of Cole's class "American Music in An Oral Tradition." Her article discussed the professor's behavior in class, quoting from both his lecture and course syllabus. She also noted that class began late, that Cole apparently had forgotten the course title, and that a disproportionate amount of time was devoted to Cole's comments on the "race question."

The article reported that Cole's class is "renowned to be the most outrageous gut course on campus, home of the thicknecks." Ingraham began by venturing the statement that "nothing worries Bill Cole" and concluded by suggesting the professor "should be careful about making gratuitous racial allusions in class," and "cultivate a more serious attitude toward reading and scholarship."

In between, Ingraham described Cole's subject as "rich, folksong music." She mentioned that his "tremendous interest in music" sustained him through
difficult years in college, and that he plays professionally for a "lively group" that has performed at a local music center.

Cole's complaint alleges, among other things, that the article charges he is incompetent and that Ingraham, the Review's chairman and its editor-in-chief "acted in a malicious, intentional, willful, wanton, reckless, scandalous, outrageous and defamatory manner." He seeks a total of $2.4 million in general and punitive damages.

Georgia:

Dog of a Suit

What three student editors at the Medical College of Georgia probably viewed as a sarcastic reply to a letter critical of their paper has turned into a $150,000 libel suit against them and the faculty adviser of the publication.

Susan Brooks, a graduate nursing student at MCG, wrote a letter to the school newspaper, the Cadaver, appealing to the staff to develop a sense of humor that wasn't "less sick." She also asked that the editors "make the Cadaver a paper that everyone can read."

Brooks' letter, along with a response from the editors, was printed under the headline, "Graduate Nursing Student Complains or 50 Way To Irritate The Editors."

Editors Brian Stone, Johnny Jarman and Stuart Caplan, stated in reply that their "style of humor is really out of our control." They went on to say that "We have backgrounds different from the rest of you. Our mothers were German Shepards; our fathers were camels, so naturally we love to hump bitches in heat. Say, Ms. Brooks, when do you come in season?"

Brooks filed suit in Georgia trial court, claiming that the response to her letter was libelous, malicious and personally degrading. Stone, Jarman, Caplan and Dr. Thomas S. McDonald, the adviser to the Cadaver, pleaded that the statements were merely satirical in nature, and constituted protected speech under the First and Fourteenth Amendments. The three student editors additionally counterclaimed that the suit was diverting them from their medical studies and requested $10,000 for the damage done to them.

The defendants were granted a summary judgment on the original claim by the trial court, but Brooks filed an appeal in early October.

Indiana:

Woman Sues Over 'Promotion' To Dean

In 1976, an alluring young woman appeared on the cover of the Indiana University-Purdue University at Indianapolis Sagamore, holding a wine glass in one hand and a taco in the other, to commemorate the annual dining guide to the city. No one complained. But when the IUPUI Sagamore used that picture in their 1983 April Fools issue, and stated that the lady in question was "Wanta Little, the new Dean of the School of Liberal Arts," the woman, Jan Beres, complained.

The Sagamore

Beres, who sat for the photo seven years ago, is now a professional model in Indianapolis. She has filed suit against the Sagamore, claiming that the use of the photo with the April Fools caption humiliated her.

When the photo was taken, no model's release was used and no contract detailing acceptable uses of the photo was entered into. The photo was discovered in the Sagamore's permanent photo file.

At the current time, the suit has not gone to court, and editors of the Sagamore say they worry more about getting their paper out than they do about the suit.

Getting the paper out at IUPUI does seem to be something of a major accomplishment at times. The Sagamore has had more than its share of problems in the past year. They have been entangled in arguments over their power to reject advertisements, and they faced a running argument between their publication adviser and the Dean of Student Services over operations of the paper. The adviser has left for a private sector publishing job, and the Sagamore currently operates without an official newspaper adviser; a journalism professor is acting as an "unofficial go-between" for the paper and the administration, according to 1983-84 Editor-In-Chief Bill Nolan.

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Economics & Advertising

Advertising Conflicts Proliferate

Can a high school or college paper decide what advertisements will run in its pages, or does the institution have the right to censor non-news sections of the publication? This question has been coming up more and more frequently across the nation in recent months. Not enough cases have gone to court to say with certainty what the rights of student editors are in the advertising realm. Questions that still need to be decided include whether a school can order the paper to exclude ads for legal products or activities and whether the editors themselves can limit access to the advertising pages.

While some commentators have argued that public school newspapers are public forums and thus have a duty to print ads that are not obscene, libelous or disruptive, the Fifth Circuit U.S. Court of Appeals has rejected this idea at least for college newspapers.

The staff of the Hawk Talk at Bozeman Senior High School in Bozeman, Montana, objected to the principal's censorship of an advertisement for a local family planning clinic in an October, 1982 issue of the paper.

After the Clinic of Family Planning of South Central Montana advertisement appeared in the October issue, Principal Lou Gappmayer issued a letter to the staff outlining new guidelines for advertisements.

Sheryl Murray, the newspaper's adviser, said the letter included the decision that any advertisement should be banned if it advocated that any student break a law or school rule, used profanity, offered alcohol, tobacco or illegal drugs, featured movies rated R or X, publicized adult bookstores, advocated a specific religion, or promoted family planning.

Gappmayer said that since the school superintendent delegated responsibility for the paper to him, he as principal takes on the role of publisher of the newspaper and could therefore prevent the ad from appearing.

"The principal bears the burden for the paper without any of the rights," he said.

Adviser Murray disagrees with the principal's reasoning. Referring to the 1973 School Board Policy Booklet's original regulations, she said, "There's nothing in the original guidelines that makes me or Mr. Gappmayer personally responsible.

"The students were threatened with suspension if they printed another ad." Murray said.

Murray said the principal came to her and said that he received calls from the public protesting the ad. But the adviser said the community response does not justify the power exerted over the paper and the staff.

The question of what is considered "proper" advertising in a high school newspaper was raised when a similar advertisement for a woman's health center offering pregnancy testing, birth control, and abortions appeared last October in three Gainesville, Florida high school newspapers.

After the appearance of the advertisement, area clergy, anti-abortion proponents, and parents protested that the ad was not appropriate for a high school newspaper's readers.

After meeting with the principals of Gainesville, Buchholz and Eastside high schools, whose papers printed the ad, and faculty sponsors of the newspapers, Superintendent Douglas Magann said, "There are guidelines (on newspaper content) that each school has developed. They do not exclude this kind of ad. There were no guidelines violated."

After three months of letters, phone calls and speeches at public meetings dealing with the pros and cons of allowing students to control the content of newspaper advertisements, the Alachua County School Board voted to allow abortion advertisements in student newspapers.

Magann said the new policy requires that students editors and faculty advisers exercise "good taste" in determining the content of published material. He said the new policy gives principals the right to restrain publication if articles or advertisements prove "disruptive."

The policy forbids publication of articles, editorials or advertisements that are illegal, obscene or libelous.

When the same advertisement for the All Women's Health Clinic ran in the newspaper of Vanguard High School in neighboring Ocala Florida, officials at Vanguard decided to discontinue the ad to "avoid the hassle altogether," said Nancy Brown, Vanguard's journalism adviser.

The adviser decided to run the advertisement anyway, just as it had been run for almost three years.

When Principal Henry Lambert reviewed the issue, Brown said, he removed the ad, as well as an editorial and over half the letters to the editor. He also advised Brown to move a front page article on censorship to a place in the back of the paper.

When Brown refused, the district superintendent ordered the publication of the issue halted and announced that Brown would not serve as journalism adviser the following term. Brown said that since the school had no policy regarding student editor rights and censorship, "This was inevitable."

The superintendent's decision was overruled and the issue released for publication when the school district's attorney stated that the First Amendment rights of the students were being violated and that the superintendent's objections were not sufficient to halt publication.

In a case involving Grossmont Union High School, in San Diego,
California, a federal judge ruled that student publications do not have the same rights to free expression that other publications enjoy.

Grossmont Union, whose paper gets most of its funding from running ads for the military, in March refused to print an advertisement for the Committee Against Registration and the Draft (CARD) because school district officials said it encouraged students to break the law.

Rick Jahnkow, a spokesman for CARD, accused the Grossmont Union High School District of censorship, saying that student editors' constitutional rights were violated.

Jahnkow said the advertisement read in part, "Don't let the draft blow you away. Know your rights. Know your choices." He said the ad promoted nothing illegal, it was merely intended to let students know their rights and alternatives to the draft. Jahnkow added that the ad had been accepted for publication in student newspapers at twelve other high schools in San Diego county.

Card appealed the district's decision, bringing it to court. On April 25, the federal judge trying the case rejected CARD's request on the grounds that the paper they wished to advertise in was a newspaper created for the students by the school district. The rights that normally apply for the free expression of opinion, said the judge, do not necessarily extend to the public when a scholastic publication is involved.

At Minnesota's Minneapolis Southwest High School, Jeff Robertson and Julia Risser, editor's of the Arrow were forbidden by the school's principal and Minneapolis Schools Assistant Superintendent Ken Northwick from accepting an advertisement from the Gay Pride Committee.

The Minnesota Civil Liberties Union (MCLU) filed a lawsuit on behalf of the student editors May 20 in U.S. District Court challenging the action by the school administrators as censorship in violation of the free speech and freedom of

(continued on p. 16)

Student Pols Abuse Funding Power

Telling a campus newspaper what they may or may not print is not the only form of censorship. In a growing number of instances, student papers are being told that they will lose some or all of their funding if they do not comply with the wishes of the administration or—more and more—the student government.

Demands by these 'higher authorities' for editorial review, space in the paper on a regular basis or logos informing readers who is responsible for funding the publication are becoming a way of dealing with student journalists who maintain an independent line.

Problems such as these have been the rule rather than the exception recently at Mankato State University in Minnesota. The Reporter was, for briefly threatened with accepting the Student Association as its publisher. They survived that scare only to be faced with a requirement this Spring that all student government-funded publications print a logo on their masthead indicating that they get student government funding. Reporter Editor-in-Chief Pete Takashiro said that the paper clearly states that it gets roughly one-quarter of its funding from the SA, but that the logo, not the SA, should determine how that information is displayed. The implicit threat, in the words of the SA committee responsible, is that failure to do so may result in a decrease in next year's allocations.

Some newspapers faced with student government demands or continuing problems in their relationship with campus politicians have decided to restructure their funding by becoming totally financed through advertising and subscription or by establishing funding by a formula that the student government cannot alter from year to year. One such newspaper is the South End at Wayne State University in Detroit. The WSU Student Council has voted to separate the South End budget from its own, and discussions on a funding formula continue.

Conflicts between student governments and student newspapers can be found in high schools as well. In San Francisco's Lowell H. S., the student government threatened to 'defund' the newspaper, The Lowell, if it did not allocate space for student government news. However, after some tense moments, the government and the paper agreed last May to send a survey to the student body. The results showed that the students were not displeased with the coverage provided by The Lowell, and the motion to strip the paper's funds was withdrawn.

Similar conflicts, again involving a demand by the student government that a logo indicating student senate funding be placed on the paper led the Northern Star at Northern Illinois University to be cut off from its allocation of $30,650. The Northern Star has been pressing for a system in which their funds would be granted independent of the student government.

In a referendum held last spring, the students at Northern Illinois voted two-to-one to grant the Northern Star a $45,000 per year bulk subscription which would return to the control of the student government.

However, under the system at Northern Illinois University, the results of the referendum had to be certified by a committee before being sent to the university's Board of Regents for final action. That board, with a large contingent of student government activists, failed to ratify the results. The Board of Regents never acted.

The Northern Star is still working with the university administration to obtain subscription support from fees which are not subject to student government control. The president of Northern Illinois University has been supportive of the Northern Star's efforts, and has said repeatedly that he believes the newspaper should be independently funded. For some years, the administration has paid $3,500 a year as a bulk subscription for faculty and staff who read the paper.
Advertising
(continued from p. 15)

the press provisions of the First Amendment.

The ad, which had been accepted by the student paper, gave the telephone number of a pre-recorded message listing Gay and Lesbian Pride Week activities and a volunteer line. The school board claimed that the ad was censored for two reasons: 1) that the ad was misleading in that it implied the availability of counseling or referral services and 2) that the ad encouraged minors to drink alcoholic beverages.

But the MCLU asserted, "The Gay Pride Committee ad is not misleading. It simply offers a number described as an information and volunteer line. Assuming that a student did misunderstand the ad to be for a counseling service and called the number offered, no irreparable harm would result. Any caller hearing the recorded message will immediately understand its meaning."

The MCLU also said, "The Ad does not encourage minors to drink alcoholic beverages. On its face, the ad simply offers a number to call for information.

Risser said that the student paper "has run ads from restaurants, from pizza places, all of which serve alcohol."

The school board's "concern about alcohol," Risser said, "is a selective one. It just seemed to the students that it wasn't applied equally."

On May 20, U.S. District Court Judge Miles Lord found that the decision by the school violated the First Amendment and issued a temporary restraining order and a preliminary injunction ordering school officials to permit the ad in the Arrow. The May edition of the Arrow carried the ad.

Collegian Inc., publisher of the student newspaper at Pennsylvania State University, is being sued for the publication of a classified ad in two issues of the The Daily Collegian in May, 1980.

The ad was placed by Dorlene Sharer, who falsely identified herself as Vicki Longe. The ad read: "SHY, GAY, desperately need to rap. Call Vicki 335-5018 after 5:30 p.m."

The telephone number belonged to Vicki Sweitzer, who brought suit against the Collegian, charging that the ad was defamatory and that the Collegian was negligent in not verifying whether the telephone number was correct.

The Collegian's classified ad policy at the time prohibited the use of a last name in "personals" and required that identification be checked only when the office representative considered the ad to be questionable.

"No amount of care can ensure that absolutely every ad published is absolutely legitimate in all respects," said Gerry Hamilton, general manager of Collegian, Inc. "The only policy that would absolutely prevent the placement of ads that are not legitimate is a policy that would prevent the publication of all advertising." Hamilton said. Hamilton said the Collegian is now negotiating for an out-of-court settlement.

High School

Michigan:

Principal Finds Yearbook Ratty

The photograph seemed innocuous enough: several smiling teachers assembled in a school storage area that was fondly known as "The Rat Room" around Willow Run High. "The most lovable rats around," ran the copy beneath.

That rather harmless insertion in "Beating the Odds," Willow Run's 1982 yearbook, sparked what adviser Roger Tillman has called an "open-and-shut case of censorship" by school officials.

Shortly before the publication was due to come out last year, Phyllis Brownlee, principal at Willow Run, issued a directive not to print the photo or to provide coverage of any other "cliques" in the Michigan high school. "That picture represents a group that, in my opinion, is not a positive representative of the faculty," said Brownlee, who had previously been engaged in a running feud with a number of instructors about their use of the "Rat Room" to eat lunch. According to the principal, only individual photos and pictures of recognized student/teacher activities should appear in the school's yearbook.

When "Beating the Odds" was distributed with the "controversial" picture and copy intact, Tillman received an official reprimand for disobeying Brownlee's order. After bringing the question of a principal's right of prior review up through administrative channels, Tillman had the written reprimand removed from his file. Nevertheless, school district officials gave the nod to administrative screening of student publications as a general matter, and warned Tillman that further disregard for principal directives could result in his suspension or dismissal.

In Tillman's view, the odd compromise reached in his case reflected a feeling on the part of administrative higher-ups that Brownlee was wrong in censoring the student yearbook without laying down guidelines and without informing Tillman about Willow Run's past practice of prior review. Although school authorities regularly screened the school newspaper, they apparently had never before interfered with the award-winning yearbook during Tillman's stint as advisor.

Although Tillman now sets aside time for Brownlee to read the yearbook copy, he said that he has changed his basic policies very little. "Just because Principal Brownlee comes and reads the copy does not mean I am going to change it on demand," he asserted.

Still, Tillman worries about the district officials' pronouncement in favor of administrative control of student publications. He has registered his protest against the prior
review policy with school superintendent Gilbert Dunn, lest his acceptance of the outcome in his individual case be viewed as tacit approval of principal censorship rights.

And he foresees trouble ahead when he takes on additional duties as student newspaper adviser in the fall of 1983. He says he hopes his staffers will be covering a number of controversial issues affecting Willow Run's student population, and insists that he will handle future orders to censor materials in the two school publications much like he handled the "Rat Room" controversy.

Tillman may well be in for future collisions with the Willow Run administration. Although Brownlee has not exercised her "right of review" since last year's conflict, she said she "reserves her right to keep the children from being exposed to things (she) feels will affect them negatively."

"I am paid to monitor the kinds of things the children are exposed to...I will continue to do my job and in the future I will censor anything I feel needs to be."

Florida:

'Tree' Creates Stir

Leon Thames never meant to cause a controversy, but by submitting a drawing to the North Miami High School literature and art magazine, Motif that is exactly what he produced.

The artwork, a tree trunk blossoming into a nude woman, was slated to appear in the first 1983 edition of Motif.

But then came the twist. Prior to 1983, Motif had been published on its own. As a cost cutting measure, however, editors of the Motif and the school yearbook Genesis decided to publish jointly. As part of the merger, Motif editors were told they would "adhere to the yearbook's editorial policy," according to principal Bessie Gibson. That policy gave officers of the Genesis the power to determine whether material was "questionable", and to exclude it from the joint publication if such a finding was made. Evelyn Aylward, the Genesis Editor-in-Chief found the treemaid questionable, as (continued on p. 18)

Montana:

Satire Draws Censorship

A case of censorship at Belgrade High School in Belgrade, Montana, last spring has prompted the school's principal to draft guidelines which spell out student rights at Belgrade's paper, the Rehtnap.

In April, 17-year-old Steve Olson was banned from writing editorials in the Rehtnap after an article he wrote was considered potentially libelous.

Belgrade principal Tom Fikani said that Olson had made a reference to an individual in his article which could have sparked a libel suit against the school.

Most of Olson's articles were satires which Fikani said use a "negative approach" but which Belgrade teacher Chris Small said "are humorous, controversial and they get people thinking."

In an article in the Bozeman Chronicle, Olson said that his editorials were not the only things that were censored at the school. "They (the administration) like to pretend problems don't exist. The school doesn't want any hassles. While there are drugs and drinking, these are things you aren't to mention in the school paper."

Olson said articles and surveys on drugs, drinking and sex within school had been banned. Olson's complaints were investigated by Tom Laceky, Montana representative for the Society of Professional Journalists' National Freedom of Information Committee.

Laceky discussed with Fikani guidelines for balancing student freedom of speech and administrative control. Prior to the guidelines drawn up by Fikani, the paper had no such written policy. Fikani contacted 15 Montana schools for copies of their guidelines and has proposed the teaching of basic journalism skills, and establishing a review committee including the Rehtnap adviser, students, Fikani himself, the assistant principal and a professional journalist.

The guidelines adopted by the school board have their good and bad sides. On the positive side, the documents states that "Students at Belgrade High School are protected in their exercise of freedom of expression by the First Amendment."

The guidelines also set up a detailed process for the resolution of problems in the publication process, including a requirement that speeds reconciliation by moving the dispute from one step in the appeals process to the next every five days.

However, the guidelines as adopted also state that "The Principal acts in the same capacity as a Managing Editor and may use his authority." The guidelines do not make clear whether this Managing Editor will review specific ideas or articles prior to publication. The staff of the Rehtnap is part of a scheduled class that meets five days per week. Students not enrolled in the class do not write for the paper.
Tree (continued from p. 17)

did Genesis advisor Carol Burger and Gibson.

"Basically, it is our belief that anything which might offend even one person would be considered questionable." said Burger.

Motif editors doubted that the decision to exclude Thames' drawing was made as an internal editorial decision. Suspecting administrative pressure, they charged the principal with censorship. Gibson denies this.

"I didn't make the decision, the editors of the yearbook made the decision," she said.

The Motif editors then inserted, in place of the drawing, a quote by John F. Kennedy and the statement, "The work of Leon Thames was removed because of editorial policies of the yearbook." The Genesis stated that this could be considered derogatory, and the statement did not run.

Ironically, since the Motif-Genesis controversy began, the "offensive" drawing appeared several times in the Miami News and the North Miami High School newspaper, the Quest. Thames' artwork finally appeared in the Spring issue of Motif, and the school now has clearly defined guidelines for publications which the adviser to Motif has described as "very protective, a very positive result."

Washington State:

'Bad Astra' BBQs School

A quiet high school in a suburb of Seattle, Washington became the site of a noisy and highly publicized battle over high school press freedoms this May when five students published and distributed an underground newspaper during Senior Day barbecue.

The five students, all seniors at Renton, Washington's Lindbergh High School, handed out a paper they called the Bad Astra. They did not seek the principal's permission to distribute the paper and they did not identify themselves within its pages, both of which were required under Renton School District policy.

"We're entitled to certain inalienable rights, and those rights can't be amended by the school," said Mark Hohen, one of the editors of the Bad Astra.

The five editors were told they must perform six hours of community service and prepare a debate of the First Amendment as punishment. All five also had disciplinary letters placed in their files.

The students published the Bad Astra because there is no school publication at Lindbergh high. The articles, which were by-lined "Don Quixote" and "Thomas Paine," were critical of the school's attendance policy and many of the teachers, but according to Principal Brian Barker, the students were not punished for the content of the Bad Astra, but for breaking the rules.

Area newspapers gave a large amount of coverage to the controversy, and the students enlisted the help of the Washington ACLU and the Student Press Law Center.

Despite the support the students received, the school district has stayed with its policies. Nor were their minds changed by a 23-page "brief" submitted by the students which included the SPLC Model Guidelines (reprinted in this issue).

The five students who started the Bad Astra have all graduated, but a new group of Lindbergh students intends to bring the paper out this year, and will continue to fight the policies which restrict the press in the Renton School District.

Missouri:

Spectrum Sues in Federal Court

Student newspapers are frequently subject to censorship by administrators who ask "Why can't these kids write something responsible?" At Hazelwood East Senior High School in St. Louis, MO, however, the complaint seems to be that the students working on the Spectrum did decide to tackle grown-up subjects instead of childish concerns.

At issue is censorship of a special two-page series of articles which was to have appeared in the May 13, 1983 issue of Spectrum. The articles dealt with the topics of teenage runaways, juvenile delinquency, teen pregnancy and last year's controversial federal regulation that required parental notification when a teenager sought birth control. The articles were prepared under faculty supervision and were the result of months of careful research and editing.

The articles were removed from the paper on the eve of publication by school authorities, and no notice was given to the paper's staff. Hazelwood East principal Robert Reynolds said that the articles were too 'sensitive' to be published. Reynolds further declared that Spectrum advisor Bob Stergos has allowed the students to work on the articles even though, according to Reynolds, Stergos knew that the articles would never be used. Reynolds had never before prevented publication of Spectrum articles.

With the help of the ACLU, three of the student who worked on the issue filed suit in federal district court on August 19. As the school year began, school officials and the students and parents involved in the case were far from a settlement. Former Spectrum advisor Stergos is no longer with the school, having accepted a better paying job in the private sector, but says he remains interested in high school journalism.
Pro and Con:

Guidelines: Protection or Trap?

by Lilian Lodge Kopenhaver

In a little more than a decade since the landmark Supreme Court ruling in Tinker (1969), decisions in cases relating to the scholastic press have been rather consistently on the side of the student publication and against administrative censorship.

These decisions have consistently reaffirmed that the same First Amendment freedoms of the press that apply to the professional press apply to the student press. However, as newspaper and journal headlines indicate, the constitutional rights of student editors and advisers are clearly and frequently being violated. School administrators still read copy themselves or require that advisers exercise prior review, with the result that many advisers do not give a second thought to rewriting and changing student copy because it is considered part of their job as adviser.

Liability for what is printed seems to be the major issue. The courts have held that school officials violate the constitutional rights of students if they practice prior review over content of publications. Therefore, if they may not exercise prior review, they are also not legally liable for what is printed.

Conversely, if school officials—and that includes advisers—do review copy, or are held responsible for doing so, they are placed in a position of liability for what is printed.

It is vitally important that administrators, advisers and students understand their roles and the rights and responsibilities surrounding those roles. A vehicle which can facilitate this educational process is a set of guidelines for student publications defining the roles of each and setting out standards of cooperation at the school level to ensure free, quality student publications. (continued on p. 20)

Editor's note: We would like to thank our two very knowledgeable authors for examining the advantages and problems of guidelines for student publications. Dr. Lilian Lodge Kopenhaver is Associate Chair of the Department of Communications at Florida International University and Dr. Tom Eveslage teaches at Temple University in Philadelphia.

by Tom Eveslage

The student media have a great deal of freedom—according to the courts. It is not absolute freedom. These publications also may be censored—again, according to the courts. Intimidation, fear, peer pressure, self-censorship...all have led too easily to suppression of high school publications.

But constitutional prior restraint is difficult. Courts continue to make the censor justify suppression, and in the schools encourage formal policies or review systems as ways to protect everyone's interests. Today, however, as scholastic journalists defend their freedom, they must see that one of their legal weapons is not turned against them.

Although judges insist that procedural safeguards must exist if school officials want to review newspaper copy before publication, courts from Texas to Vermont repeatedly have found particular guidelines outlining such procedures to be unconstitutional.

A prior review system that is constitutional must be specifically explained with precise definitions of what can be legally prohibited. It also must clearly state to whom the material will be submitted, how long it will be before a decision is made on the material, and what process for a prompt appeal exists to challenge a censorship ruling. Most courts have said that school officials may regulate only when, where and how materials may be distributed, and may otherwise restrict just that content which is clearly defined as libelous, obscene or likely to cause a substantial disruption of the educational process.

It would seem that the courts are telling publication staffs that they should support guidelines. There are, in fact, practical, positive reasons for drafting and adopting them:

Arbitrary censorship would be less likely. In a set of constitutional guidelines, all objectionable content would be clearly defined and legal procedures would be described. Ground rules would be set for both parties in advance.

*Better administration/staff relations should result. Mutual understanding of one another's position should make each side more sensitive and short-circuit confrontation, because guidelines often indicate boundaries for both parties.

*Evidence reveals that there is less censorship and there are fewer attempts to restrain the publication where guidelines exist. A set of guidelines seems to function as a watchdog on the student media to the extent that school officials feel less need to be vigilant.

*Finally, the burden remains on the censor. Whenever guidelines have been used in court to justify administrative suppression of the student press, they have been found defective. Thus, guidelines may protect publications more than legitimize censorship.

But there are dangers in adopting guidelines, too, threats that have encouraged some experienced advisors (continued on p. 20)
Kopenhaver (from p. 19)

Such guidelines should be specific as to protected and unprotected speech, freedom of expression for students and the legal responsibility for what is printed. Such a set of guidelines was adopted a year ago by the Dade County (Miami, FL) Public School System. The guidelines were the result of a year of work by a committee made up of high school journalism advisers on both the high school and junior high school level, student editors, principals and assistant principals, an area superintendent, a professional journalist and a university journalism professor, and chaired by the language arts coordinator of the school system.

The guidelines finally adopted were based on several documents: the legal definitions in the Model Guidelines of the Student Press Law Center, the Guidelines for the Scholastic Press adopted by the Florida Scholastic Press Association and the Code of Professional Standards of the National Council of College Publications Advisers.

The preamble reaffirms that student expression is protected by the First Amendment and that administrators have the responsibility to ensure a maximum of freedom of expression in student publications. The guidelines then delineate the responsibilities of students, advisers and school officials.

Student journalists should check and verify the accuracy of all facts and questions, provide space for rebuttal and opinion, and improve grammatical standards. They also determine the content of the student publication.

Advisers guide students to an understanding of the nature, function and ethics of a free press and of student publications, and will not act as censors.

Administrators will support the First Amendment rights of students and the efforts of advisers to guarantee those rights in their daily work with publications, and recognize that the final decision regarding content of student publications should be solely based upon its legality.

Finally, and significantly, the guidelines define in detail those classifications of speech not prohibited by law or not protected by the First Amendment: material which is libelous or "obscene as to minors" or which will cause "a material and substantial disruption of school activities," so that a reasonably intelligent student will know what he may write and what he may not write" (Basughman v. Freinmuth, 1973).

Guidelines such as these can be initiated in any school or school system. They can assist in providing a greater understanding and better working relationship among all concerned parties. Administrators are not ultimately responsible for the content of student publications, nor are they the publisher. At the same time, advisers cannot legally exercise prior review over copy, and students do not have total license to use their First Amendment right to freedom of expression without any thought to the responsibility of the student press.

These guidelines can establish parameters agreeable to all involved to ensure a free and responsible student press, the purposes of which are understood by all. And by students and advisers taking the initiative to set up such guidelines, they can prevent operational procedures from being formulated for them.

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to avoid such formal statements. Among the concerns that should be considered are these:

* An overwhelming majority of censorship incidents never go to court. You know it, your staff should know it, and you can be confident that the administration knows it. Challenging a set of unconstitutional guidelines in court would take much more time, effort, expense and anguish than most teachers and students want to give.

* To get a document that the administration will support may require too many compromises. The mistaken belief that any guidelines are better than none often results in the sacrifice of constitutional freedoms.

* Perhaps the greatest threat of all—and one that advisors today must guard against—is the tendency to let guidelines become "rules" or "laws" that are imposed by school officials. The danger is that the burden suddenly shifts to the student and publication staff. Several recent developments in the court suggest that school officials may be able to suppress expression using this tactic.

Courts are giving more discretionary power to administrators today. School officials still are told to protect students' rights, but because of the school's educational responsibilities and the students' relative immaturity, administrators have more flexibility in interpreting "student rights." A former editor of the student paper at Richwoods High School in Peoria, Ill., said that one justification his principal offered for censoring the newspaper when it criticized the administration was "that the editors had violated a written agreement to 'promote the school image.' "

The imposition of guidelines that resemble rules more than boundaries led 7-year veteran Patricia Kappmeyer to quit her advising job in Lytle, Texas. The school board, upset when the advisor asked the Student Press Law Center in Washington, D.C. for advice during a controversy over a newspaper column on religion, drafted a prior review policy as a means of controlling the newspaper.

No court has ever told a newspaper that an obligation to be responsible is required if a person wants to exercise his constitutional rights. Yet because of the way some guidelines are written, school officials may be able to make free speech contingent upon prescribed behavior.

This does not mean that one should avoid newspaper policy statements or publications guidelines. On the contrary, more evidence exists that they inhibit censorship than that they inspire it. But more care is needed to make sure that guidelines free the press rather than shackle it. Here are some suggestions:

First, work for local acceptance. Start with model guidelines. The Student Press Law Center has a detailed set. Modify them to fit your school, publication and staff. Guidelines that are personalized will garner more local support by staff members and school officials.

Second, be specific and focus on legal "do's" and "don'ts"—what you can and cannot do and what can and cannot be done to you and your staff. This includes definitions of prohibited content and an outline of the (continued on p. 21)
SPLC Model Guidelines For Student Publications

1. STATEMENT OF POLICY

It is undeniable that students are protected in their exercise of freedom of expression by the First Amendment to the Constitution of the United States. Accordingly, it is the responsibility of school officials to insure the maximum freedom of expression to all students.

It is the policy of the __________ Board of Education that _______ (newspaper), _______ (yearbook) and _______ (literary magazine) official school-sponsored publications of _______ High School have been established as forums for student expression. As a forum, each publication should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

It is the policy of the __________ Board of Education that student journalists shall have the ultimate and absolute right to determine the content of official student publications.

2. OFFICIAL SCHOOL PUBLICATIONS

A. Responsibilities of Student Journalists

Students who work on official student publications will:

1. Rewrite material, as required by the faculty advisors, to improve sentence structure, grammar, spelling and punctuation;

2. Check and verify all facts and verify the accuracy of all quotations;

3. In the case of editorials or letters to the editor concerning controversial issues, provide space for rebuttal comments and opinions;

4. Determine the content of the student publication.

B. Prohibited Material

1. Students cannot publish or distribute material which is “obscene as to minors”. Obscene as to minors is defined as:

(a) the average person, applying contemporary community standards, would find that the publication, taken as a whole, appeals to a minor’s prurient interest in sex; and

(b) the publication depicts or describes, in a patently offensive way, sexual conduct such as ultimate sexual acts (normal or perverted), masturbation, excretory functions, and lewd exhibition of the genitals; and

(c) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(d) “Minor” means any person under the age of eighteen.

2. Students cannot publish or distribute material which is “libelous”, defined as a false and unprivileged statement about a specific individual which injures the individual’s reputation in the community. If the allegedly libeled individual is a “public figure” or “public official” as defined below, then school officials must show that the false statement was published “with actual malice”, i.e., that the student journalists knew that the statement was false or that they published the statement with reckless disregard for the truth —without trying to verify the truthfulness of the statement.

(a) A public official is a person who holds an elected or appointed public office.

(b) A public figure is a person who either seeks the public’s attention or is well known because of his achievements.

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review and appeals procedures if your administration insists on prior review.

It is important that guidelines clearly distinguish between statements of responsible behavior, on one hand, and the enunciation of constitutional rights and limitations on the other. Constitutional rights are not predicated on responsible behavior in a legal sense—unless a set of guidelines is perceived as a single contract or agreement and failure to meet stated standards of responsible behavior is considered to be valid grounds for negating the entire document.

This means that if your guidelines include statements such as “News articles will be objective and will avoid editorial comment” or “All members of the student body will have access to our pages” or “Students will verify the accuracy of all quotations,” you may be making your protected rights contingent upon the performance of ethical or journalistic behavior.

All staff members should have specific duties and responsibilities, written and revised as students come and go and publications change. A code of ethics is valuable, too, and lets the staff and readers know that student journalists believe that obligations come with freedom.

But both a list of duties and a more general code of ethical behavior would be better as separate documents, distinct from guidelines that explain what the courts and law have said are acceptable behavior. The first two are subject more to personal interpretation. The third is akin to a legal document—based on what the courts have said and subject to a less flexible interpretation.

Most publications should profit from a set of guidelines. But what must come first are careful study of student press law, negotiations with the administration, assessment of the pros and cons of a formal document, and official support by the staff, school officials and school board. Any less effort may prove more a threat to a free press than a shield.

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(c) School employees are to be considered public officials or public figures in articles concerning their school-related activities.

(d) When an allegedly libelous statement concerns a private individual, school officials must show that the false statement was published willfully or negligently, i.e., the student journalist has failed to exercise the care that a reasonably prudent person would exercise.

(e) Under the “fair comment rule” a student is free to express an opinion on matters of public interest. Specifically, a student enjoys a privilege to criticize the performance of teachers, administrators, school officials and other school employees.

3. Students cannot publish or distribute material which will cause "a material and substantial disruption of school activities."

(a) Disruption is defined as student rioting; unlawful seizures of property; destruction of property; widespread shouting or boisterous conduct; or substantial student participation in a school boycott, sit-in, stand-in, walk-out or other related form of activity. Material that stimulates heated discussion or debate does not constitute the type of disruption prohibited.

(b) In order for a student publication to be considered disruptive, there must exist specific facts upon which it would be reasonable to forecast that a clear and present likelihood of an immediate, substantial material disruption to normal school activity would occur if the material were distributed. Mere undifferentiated fear or apprehension of disturbance is not enough. School administrators must be able to affirmatively show substantial facts which reasonably support a foreseen or likely disruption.

(c) In determining whether a student publication is disruptive, consideration must be given to the context of the distribution as well as the content of the material. In this regard, consideration should be given to past experience in the school with similar material, past experience in the school in dealing with and supervising the students in the subject school, current events influencing student attitudes and behavior, and whether or not there have been any instances of actual or threatened disruption prior to or contemporaneously with the dissemination of the student publication in question.

MODEL GUIDELINES

(d) School officials must act to protect the safety of advocates of unpopular viewpoints.

(e) "School activity" — means educational activity of students sponsored by the school and includes, by way of example and not by way of limitation, classroom work, library activities, physical education classes, individual decision time, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays, and scheduled in-school lunch periods.

C. Legal Advice

1. If, in the opinion of the student editor, student editorial staff or faculty advisor, material proposed for publication may be "obscene", "libelous", or "cause a substantial disruption of school activities", the legal opinion of a practicing attorney should be sought. It is recommended that the services of the attorney for the local newspaper be used.

2. Legal fees charged in connection with this consultation will be paid by the board of education.

3. The final decision of whether the material is to be published will be left to the student editor or student editorial staff.

III PROTECTED SPEECH

School officials cannot:

1. Ban the publication or distribution of birth control information in student publications;

2. Censor or punish the occasional use of vulgar or so-called "four-letter" words in student publications;

3. Prohibit criticism of school policies or practices;

4. Cut off funds to official student publications because of disagreement over editorial policy;

5. Ban speech which merely advocates illegal conduct without proving that such speech is directed toward and will actually cause imminent lawless action;

6. Ban the publication or distribution of material written by nonstudents;

7. Prohibit the school newspaper from accepting advertising.

IV. NONSCHOOL-SPONSORED PUBLICATIONS

School officials may not ban the distribution of nonschool-sponsored publications on school grounds. However, students who violate any rule listed under II.B. may be disciplined after distribution.

1. School officials may regulate the time, place and manner of distribution.

(a) Nonschool-sponsored publications will have the same rights of distribution as official school publications.

(b) “Distribution” — means dissemination of publication to students at a time and place of normal school activity, or immediately prior or subsequent thereto, by means of handing out free copies, selling or offering copies for sale, accepting donations for copies of the publication, or displaying the student publication in areas of the school which are generally frequented by students.

2. School officials cannot:

(a) Prohibit the distribution of anonymous literature or require that literature bear the name of the sponsoring organization or author;

(b) Ban the distribution of literature because it contains advertising;

(c) Ban the sale of literature.

V. ADVISER JOB SECURITY

No teacher who advises a student publication will be fired, transferred or removed from the advisement for failure to exercise editorial control over the student publication or to otherwise suppress the rights of free expression of student journalists.

VI. PRIOR RESTRAINT

No student publication, whether nonschool-sponsored or official, will be reviewed by school administrators prior to publication.

VII. CIRCULATION

These guidelines will be included in the handbook on student rights and responsibilities and circulated to all students in attendance.
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