

student press law center

# report



Winter, 1984-85  
Vol. 6 No. 1

**EDITOR**  
Teri L. Firmiss  
University of Wisconsin

**WRITERS**

S. Mark Goodman Duke University School of Law  
Cornelia Grumman Duke University

J. Marc Abrams Student Press Law Center

**ART**

Aaron B. Cole  
Jack Dickason  
Steve Skelton  
Bruce Young

**COVER**

Jack Dickason

*director*  
J. Marc Abrams

*Corporate Board of Directors*

J. Marc Abrams SPLC	Dr. Robert Knight Columbia, MO
Patricia Bleicher Women in Communications, Inc.	Dr. Lilian Lodge Kopenhaver Florida International University
Dr. Dorothy Bowles William Allen White School of Journalism University of Kansas	Jack Landau Reporters Committee for Freedom of the Press
Dr. Regis L. Boyle College of Journalism University of Maryland	Bob Lewis Newhouse Newspapers
Dr. Dorothy J. Cline Dept. of Journalism and Mass Communications South Dakota State University	Judy Lynch, Esq. School of Journalism University of California, Berkeley
Christopher Fager, Esq. Fager & Singer Washington, DC	Dorothy McPhillips Journalism Education Association
Nancy Green Texas Student Publications University of Texas at Austin	Tom Rolnicki National Scholastic Press Association
David Hackett Youth Policy Institute	Albert Scroggins College of Journalism University of South Carolina
Carol Ann Hall School of Journalism Ohio State University	Michael D. Simpson, Esq. National Education Association
Dr. Louis E. Ingelhart Dept. of Journalism Ball State University	Edmund J. Sullivan Columbia Scholastic Press Association
Richard Johns Quillana Scroll Society	Robert Trager, Esq. Pierson, Bell & Dowd
	Craig Trygstad Youth Communication
	Ben Van Zante West High School Iowa City, IO

Organizations are listed for purposes of identification only

**The SPLC Report**

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

The SPLC seeks student-produced drawings or photographs to illustrate the SPLC Report. Please send copies of your materials to the SPLC office.

Student Press Law Center Report, Vol. VI, No. 1, Winter 1984-85, is published by the Student Press Law Center, Suite 300, 800 18th Street, NW, Washington, DC 20006 (202) 466-5242. Copyright © 1985, Student Press Law Center. All rights reserved. Yearly subscriptions to the SPLC Report are \$10.00. All other contributions are tax deductible. A subscription order form appears on page 39.

Student Press Law Center welcomes submissions of articles, drawings, cartoons and news tips. Please help the SPLC inform the scholastic journalism community by contributing your skills to the SPLC Report.

# Contents

## Cover Story ..... 31

Obscenity: an analysis of court rulings and their effects on the student press

## Ethics ..... 3

Ethics and Language

## Courts

- Colo. Supreme Court denies right of access to university documents ..... 5
- Alligator given access to NCAA documents ..... 7
- Adviser wins right to file 1st Amendment claim ..... 8
- Expelled editor settles out-of-court ..... 10

## Libel

- Mich firm's libel suit still pending ..... 11
- Cadaver awaits Ga. Supreme Court decision ..... 11
- \$9 million libel suit dismissed ..... 11
- Board members suit not yet to trial ..... 12
- Daily appealing award for word misuse ..... 12
- Article strikes sour note with prof ..... 12
- Basketball fan calls a foul ..... 13

## Censorship

- Editor challenging prior restraint ..... 13
- Board adopts improved guidelines ..... 14
- Adviser fired after policy fight ..... 17
- Policy revision stalled ..... 17
- Hazelwood case delayed again ..... 18
- Demoted adviser files lawsuit ..... 20
- Students fight abortion ad ban ..... 21
- Publicity results in improved policy ..... 23

## Administration

- Lubbock dawdles over policy ..... 22
- NIU press wars continue ..... 24
- Paper's frozen funding thaws ..... 25
- Student board, mag fight for control ..... 26
- Edit review board rejected ..... 27
- Paper retains funding, adviser ..... 29
- Are student government meetings open? ..... 30

## Legal Analysis ..... 36

Open meetings: can student journalists enforce the laws?

*Defining reality for readers*

# Ethics and Language

By Deni Elliott

Ask any journalist to give you examples of important ethical issues, and you're sure to receive a list of such problems as conflicts of interest, deceptive journalistic practices, and intrusions into the private lives and private moments of people in the news. It's unlikely that "language" will be offered as an issue. Yet, language categorizes a unique and important set of ethical questions for journalists.

The most obvious ethical question involves the transmission of others' language through quotes. Should the journalist clean up the language of a source? If so, how extensive should that restructuring be? Should the journalist remove objectionable words from a quote? Is correcting grammar an appropriate journalistic move?

The direct quote issue usually becomes an ethical problem when the news organization has not set a policy. On a student publication, lack of policy may mean that student-sources' quotes are corrected, but that when a faculty member or administrator makes a grammatical error, the quote is reported with the error intact. Unless the quote is directly related to the story, such as an English teacher praising the students in her

It is not necessarily wrong to change a "dem" to "them" when quoting a source for publication, but the staff should be fair in setting a policy.

grammar class by saying, "The students learned the material real good," selectively fixing grammatical errors shows a bias on the part of the news staff and creates a skewed sense of reality for the readers. It is not necessarily wrong to change a "dem" to "them" when quoting a source for publication, but the staff should be fair in setting a policy that either all those quoted warrant grammatical help or that none do.

Just what is quoted for publication raises another ethical problem. Anyone can be hung by a partial quote. In trying to be concise for publication, journalists should be careful that the speaker's meaning is not lost in the cutting.

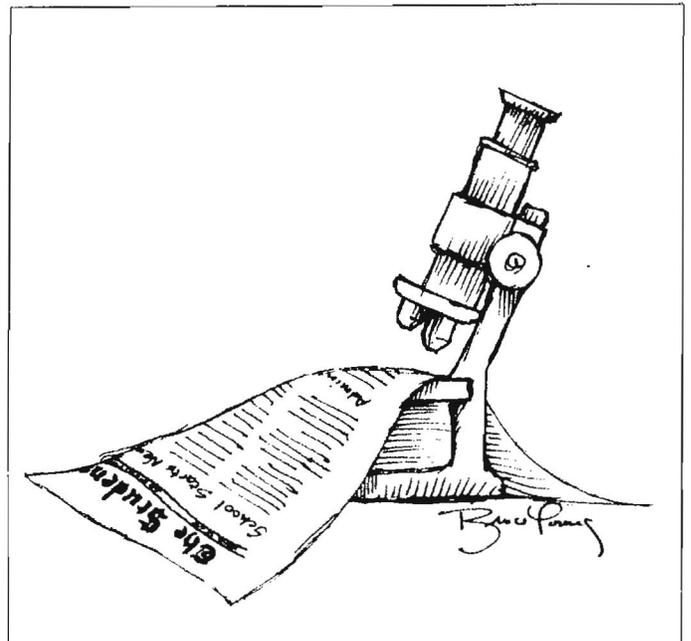
## Descriptions interpret reality

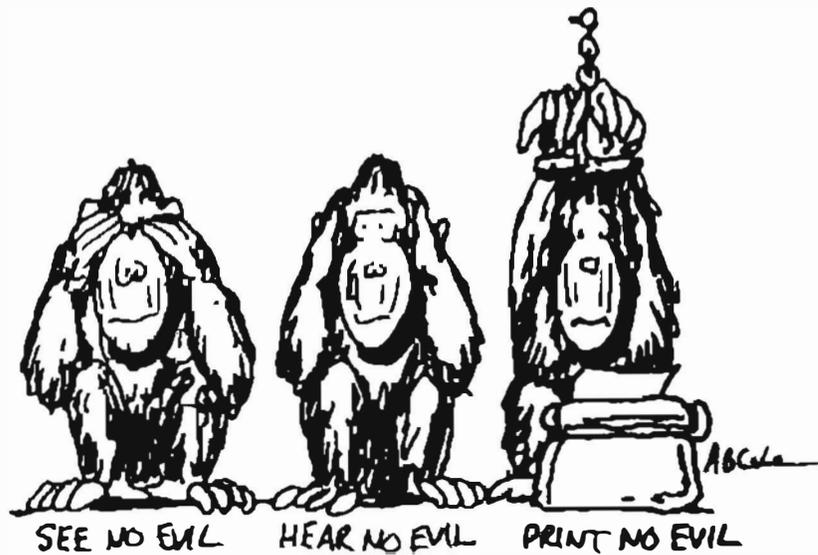
Descriptions of people in the news constitute a more serious language problem. Descriptions tell the reader how to think about the person being discussed. A classic example of how descriptive words change the reader's perception surfaces in a now old, but still important, case of journalistic coverage. In 1969, Cath-

rine Genovese was stabbed to death in New York City. Genovese's murder commanded national attention because she was killed within the sight and hearing of more than 30 neighbors. How individual news organizations initially reported the incident raises an interesting set of ethical questions. According to the *New York Times*, Genovese was a 28-year-old woman and the manager of the Hollis bar. According to the *Herald Tribune*, she was a pretty, diminutive, brunette girl. According to the *New York Daily News*, Genovese was a barmaid who traveled in a "fast crowd." Readers of the various papers necessarily developed different beliefs about the murdered woman. Descriptive words and phrases in printed articles tell readers how they should regard individual persons and can reinforce erroneous stereotypes as well.

Today, most news organizations have policies concerning the reporting of gender and race. Most news organizations do not mention the race of a person in the news unless the person's race is directly relevant to what is being reported. Women and men are now usually identified in equal ways. Emphasis in the story on a woman's physical appearance no longer occurs in most mass market publications. I would like to think that journalistic stereotyping or labeling is a problem of the past, but recently, I read the following paragraph on the front page of my local daily concerning a victory parade for the World Series winning Detroit Tigers:

"The fans may need until the end of next season to recover from this one — the executives in pin-striped, three-piece suits who stood on Woodward and sipped from cans of beer, the schoolchildren who played hooky for a glimpse of their heroes, the secretaries squealing





with barely concealed ecstasy at the approach of Kirk Gibson."

I assume the reporter identified the "secretaries" by classifying them as any female person who was not wearing a pin-striped suit and drinking a beer.

Media language creates the readers' reality. It's impossible to lift a scene and give readers the same eyewitness accounts they would perceive if they were attending the event. Even the photographer's lens only captures a slice of reality. Words, the medium of the print journalist, are interpretive. The journalist is not a collector and giver of events and issues; (s)he is an interpreter and evaluator. All information is filtered through the reporter's personal screen and that interpretation of events and evaluation of importance and relevance is the best that the reporter can provide.

But, in offering the reporter's interpretation of an event, (s)he must be careful of the words that are used in shaping the readers' perception of the scene. Consider two different headlines for the same event: "Joyous Fans Hoist Goal Post as Trophy," and "Unruly Mob Destroys School Property." Which is true? It's obvious how different headlines and corresponding stories shape different ideas of reality for the readers.

**Saying what you mean**

If the sharp differences in the readers' perception created by the different choices of language is a problem, a greater one occurs when journalists use language that obscures meaning. Euphemistic speech, language that hides the emotional importance of the subject being discussed, creates a danger in giving the reader little sense of the situation being discussed. For example, I recently read an article concerning the transportation of "spent fuel" which I understand is euphemistic for "nuclear waste"... and I'm still not sure what "nuclear waste" is euphemistic for, but I'm sure that it isn't something I want driven through my town. "Spent fuel" doesn't frighten me nearly as much as it should.

When I read that President Reagan has said that "there is no sound alternative to constructive development in relations" with the Soviet Union, it takes me a long while to realize that he is saying that if we don't want armed conflict (war) with the Soviets, we better start negotiating (talking with one another). Removing the emotional meaning from events by choosing euphemistic words keeps readers from responding and

**If the words used obscure the fact that there is an issue to be discussed, the readers are unlikely to respond.**

even from knowing that their attention is needed.

Euphemistic language is an ethical issue because the use or reporting of such language gets in the way of the press's primary duty in a democracy, that of furthering public discussion on important issues of the day. If the words used obscure the fact that there is an issue to be discussed, the readers are unlikely to respond.

**Muddling through obscurity**

Journalists can't hide behind a claim that they are only reporting what is said, that governmental officials are responsible for the vagueness and obscurity that muddles the meaning of the message. The U.S. press learned some 30 years ago in covering the unsubstantiated and harmful attacks by U.S. Senator Joseph McCarthy that responsible journalism means more than simply repeating what a public official has to say. Sometimes responsible reporting means putting an issue or statement in perspective for the reader.

Yet, doesn't the reporter illegitimately shape the reader's perception of the world when the press takes it upon itself to put an issue or statement in context? Isn't

Ethics and Language —continued

this journalistic interpretation something more akin to editorial writing than it is to the writing of straight news?

These last difficult questions highlight the need for more attention to the ethical issues associated with journalistic language. While solutions to the problems noted here are formulated, rejected, and re-formulated,

journalists will become more sensitive to the issue and will develop a heightened sense of responsibility for the words they use.



*Editor's note: Deni Elliott recently completed her doctoral work at Harvard University with a dissertation on the teaching of journalism ethics. She is now teaching philosophy at Wayne State University.*

Colorado

# Colo. Supreme Court denies right of access to university documents

The Colorado Supreme Court has ruled 5-2 that the state's Open Records Act does not apply to the University of Colorado. The decision was handed down on Aug. 27, just one week after the same court had issued a press-supportive decision giving newspaper advisers the right to file lawsuits on behalf of their students. (see story this issue)

The case arose when Mahinder S. Uberoi, an aerospace engineering professor at the university, request-

ed documents to support allegations in a discrimination lawsuit he had filed against the university in 1982.

The Open Records Act states that "all public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law."

ed documents to support allegations in a discrimination lawsuit he had filed against the university in 1982.

Although university officials granted substantial portions of Uberoi's requests, many of his requests were denied. Among the withheld documents are minutes of committee meetings concerning him, salary recommendation correspondence, faculty member travel records, appointment forms for aerospace engineering teaching assistants, evaluations of his work, and records of university expenditures.

Uberoi filed a second suit against the university later in 1982, claiming that his rights under the Open Records Act had been denied. District court Judge Richard McLean agreed with the university's contention that the Open Records Act did

not apply to the school and ruled that the university had shown "sufficient cause" for refusing to permit inspection of the requested material.

Uberoi appealed, but the Colorado Supreme Court upheld the lower court's decision. In the majority opinion, the court noted that the University of Colorado was established and structured by constitutional and statutory provisions which granted "broad discretion to

the regents as a governing board" and "specific and particular powers" to operate the university.

The court applied the reasoning of its decision in *Associated Students v. Regents*, 189 Colo. 482 (1975), which held that the Open Meetings Law of the Colorado Sunshine Act did not apply to meetings of the regents at the University of Colorado.

In that case, the court overturned the trial court's ruling because its "interpretation of the applicability of the Sunshine Act if upheld would invalidate a law which the regents are duly authorized to enact . . . [such as] a section of the Law of the Regents permitting closed meetings of the board of regents in certain circumstances." This power would clearly "both limit and infringe upon the regents'

authority to govern the university," the court said.

The court held that the Sunshine Act was a "general law, not a specific one" and that it would have to repeal two sections of the Colorado Constitution in order to apply to regent meetings. Such a repeal would have to be expressly written in the Sunshine Act to be valid, the court held, and "the act contains no such language."

The court likewise held that the Open Records Act was a general law, and, as noted in *Associated Students*, that "statutory repeal by implication is not favored in Colorado, nor will a general statute be interpreted to repeal a conflicting special provision 'unless the intent to do so is clear and unmistakable.'" The supervisory control of the regents could, thus, only be divested by an expressly written legislative enactment in the Open Records Act.

The Open Records Act states that "all public records shall be open for inspection by any person at reasonable times, except . . . as otherwise provided by law . . ."

Uberoi had claimed that the definition of "public records" in the Open Records Act applied to records at the university. According to the definition, public records include "all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof" for specified uses.

Although the court noted that the Colorado Constitution refers to the university as a "state institution

continued on p.6

## Colorado —continued

of higher education" and that statutes establishing the structure of the university also refer to it as an "institution," the majority did not believe that "the definition of public records to include writings kept by a state institution demonstrates legislative intent to make the Open Records Act applicable" to the university.

The court noted that the university has a policy procedure for examination of university records included in its General Procedures Manual, although it did not consider whether that policy would make the records open or closed. The court did hold, however, that invalidation of these procedures by a legislative enactment would limit the regents' supervisory powers.

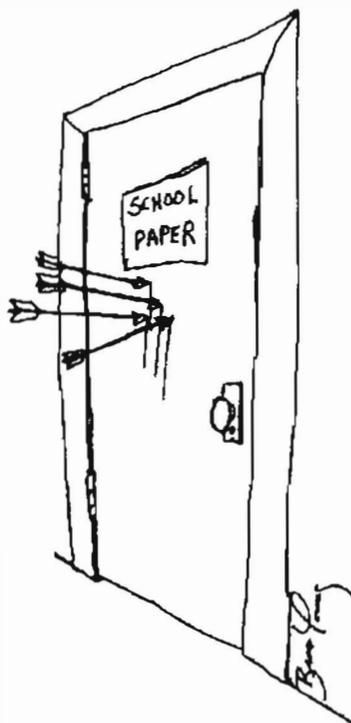
"The Open Records Act contains no clear expression of legislative intent to impose such a limitation on the regents and we will not infer such intent where it is not unmistakably expressed," the court said.

Justices Dubofsky and Neighbors dissented. They noted that the definition of "agency," referred to in *Associated Students*, now reads: "any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and *except state educational institutions . . .*" [emphasis added]

Uberoi's case is distinguishable from *Associated Students*, Dubofsky wrote, because the "Open Record Act's specific reference to institutions . . . would be redundant if the act were not applied to educational institutions, since all other institutions are covered by that section's use of the term 'agency.'"

They would reverse the district court's decision because the "plain language of the Open Records Act clearly includes the records of state institutions such as the University of Colorado within its scope," Dubofsky wrote. "To require the General Assembly to express its intent even more explicitly is . . . an interference in the legislative process unjustified by the Colorado Constitution or significant policy concerns."

"It's a terrible case that sends



openness in government back to the dark ages," said Elaine English, Director of the FOI Service Center. "It's going to have an unfortunate effect on not only the students' ability to get records from the school, but also on the public's in general."

Tim Lange, editor-in-chief of the *Colorado Daily*, the school's student newspaper, is concerned about the decision because his staff members have "constantly" had trouble getting documents from the university.

Staffers made a "very vigorous attempt" to obtain information about the discretionary funds of President Arnold R. Weber, according to Lange. The funds were drawn from a variety of accounts, Lange said, and included some interest money from accounts containing mandatory student fees. Staffers wanted to learn what was being done with the surplus money that had been earned when interest rates had been very high.

It took staffers five months to acquire the information, although they were "subsequently told that the records were open," Lange said.

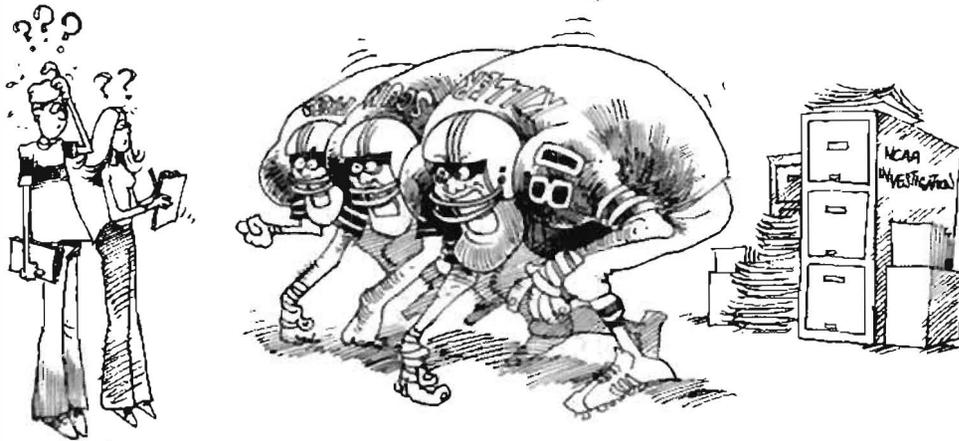
Lange also said that reporters had tried to get information about the university's donations, many of

which go through non-profit organizations whose records are not open. "The records are very difficult to come by unless you're good at picking locks," Lange said.

Although university officials "continue to say that they'll keep records open and that this was a special case," Lange is concerned that the court's decision now gives officials the authority to say, "We'll give you what we want to give you."

At this point, it is unclear whether the court's decision will apply to all the public universities in the state. Richard Tharp, the university's attorney in the case, said "the argument could be made that the decision is applicable to other colleges." Although he was not trying to prove that point in his case, Tharp added, "I suspect the principles [in applying the decision to other colleges] would be the same."

Tharp said that the "issue is not dead" because Uberoi is still requesting many of the documents in the course of his other lawsuit against the university. But now he will have to try to get the documents through the rules of discovery proceedings rather than through the Open Records Act. ■



Florida

# Alligator given access to NCAA documents

A timely Florida Supreme Court case has helped the University of Florida reach an out-of-court settlement with six state newspapers, resulting in the release of documents from a National Collegiate Athletic Association investigation of the school's football program.

The controversy began in late August when the *Miami Herald*, the *St. Petersburg Times*, and the *Independent Florida Alligator*, the student newspaper, requested the release of all documents from the NCAA probe, which began in December 1982. The undisclosed findings had already led to the resignation of football coach Charley Pell, who was later fired before his resignation took effect.

The university responded to the request by filing a lawsuit against the three papers the morning of Sept. 4. School officials sought to have the courts decide which documents, if any, would have to be released. That same afternoon, the newspapers countered by filing their own lawsuit against the university. Three other Florida papers joined them in their fight.

The papers claimed that the university, a public institution, had no right to withhold the information.

Early in September, however, university President Marshall Criser said that the university's suit was necessary to protect "privileged student and personnel records." The unlawful release of records without students' permission could result in severe penalties for the university, Criser said.

The suit also sought to protect those individuals "who will never be named in formal charges filed by the NCAA because information included in the preliminary inquiry files has been found to be erroneous, unfounded rumor, or totally uncorroborated and thus not a part of an official charge or allegation subject to being released," Criser said.

Attorneys for the university and the newspapers met to discuss a settlement on Sept. 11. The meeting took place just two days before circuit court Judge Theron Yawn was scheduled to rule on what NCAA documents should be made public.

During the meeting, university attorneys and officials announced their decision to release all the documents, but with students' names deleted. That decision was made because of a Florida Supreme Court opinion in an unrelated case, *Tribune Co. v. Vanella*, handed down on Sept. 6. The court's unanimous ruling held that the only exemptions from the Public Records Act are statutory. Because no statutory exemptions were at issue in this case, the court's decision confirmed the newspapers' contention that the NCAA documents were open.

But although some of the names in the documents have been revealed, many of the students' names have been deleted, according to Don Middlebrooks, attorney for the newspapers.

Middlebrooks said that he has made no further efforts in court to get those names disclosed and that the newspapers are unlikely to take court action at all unless reporters and editors determine that further disclosure is necessary.

Middlebrooks noted that although the names have been deleted, the facts themselves sometimes reveal the students' identities. The paper cannot print the undisclosed names, but in many cases "the name is not crucial to the reporting," Middlebrooks said.

The university is, however, cooperating with the newspapers in trying to get the students to agree to having their names disclosed. "The university had agreed to seek permission from the students to release the names," Middlebrooks said, "and, to some extent, they've done that." ■

Colorado

# Advisor wins right to file 1st Amendment claim

In a landmark decision, the Colorado Supreme Court has held that a college's newspaper adviser can sue for infringement of First Amendment rights on behalf of her students.

The 4-2 ruling in *Olson v. State Board for Community Colleges and Occupation Education*, Case No. 82SC271 Slip Op. (Colo. August 20, 1984) was handed down Aug. 20, nine months after it was argued before the court. The case will not only become law in Colorado, but will also be persuasive precedent in cases around the country where a publication adviser may be the only person able to pursue a lawsuit to its finish.

The State Board for Community Colleges appealed the appellate court's decision to the Colorado Supreme Court, which reversed the judgment of the court of appeals. That judgment had said that a funding cutoff for the *Pikes Peak News*, the student newspaper, abridged the constitutional rights of Judith Olson, the paper's adviser, but failed to answer whether Olson could assert the First Amendment rights of her students.

The majority held that Olson had demonstrated "an actual injury sufficient to guarantee adverseness" and that she could assert the rights of third parties not before the court if at least one of the following factors was present: "the presence of a substantial relationship between the plaintiff and the third party; the difficulty or improbability of these third parties in asserting an alleged deprivation of their own rights; or the existence of some need to avoid dilution of third party rights in the event standing is not permitted."

The decision noted that the U.S. Supreme Court has been lenient in applying these rules in First Amendment cases to avoid inhibiting freedom of speech.

In assessing Olson's third party claim, the court said that "Olson's role as faculty adviser to the *News* gave rise to a substantial relationship between herself and the student members of the *News* staff" and that this relationship "renders Olson as effective a proponent of the First Amendment rights of the students as the students them-

to assert the rights of the students."

In assessing the third consideration, the court noted that enforcement of the funding cutoff could inhibit students from exercising their speech and associational rights in a student newspaper. Olson, therefore, met this consideration because, the court said, "Providing a judicial forum for the vindication

RMCPA Award Winning Newspaper

## PIKES PEAK NEWS

Pikes Peak Community College, Colorado Springs

Volume 2, Number 9

April 9, 1979

selves."

This factor alone could give Olson the power to assert the rights of the students, according to the stipulation that only one consideration of the test need be satisfied. The court, however, also assessed Olson's standing in relation to the other two parts of the test.

The court held that Olson met the second consideration as well because the students faced obstacles in asserting their rights themselves. Because Pikes Peak College is a two-year school, students "have but a brief tenure in which to initiate and bring to a conclusion a lawsuit challenging the cutoff," the court said. As demonstrated by the district court's entry of summary judgment against two of the student plaintiffs, which dismissed their case before it went to trial, "graduation poses the risk of mootness," the court added.

Although the court said this obstacle is not insurmountable, in that newly admitted students could be substituted as plaintiffs, it held that "there is little lost in terms of effective advocacy by allowing Olson as teacher and faculty adviser

of these constitutional interests prevents their dilution through student sufferance."

Justice Rovira and Chief Justice Erickson dissented from this part of the opinion because, in their view, no obstacles prevented students on the *News* staff from asserting their own rights and because there would be no dilution of their rights if third party standing was not permitted. They could not concur with the majority opinion in granting Olson the power to assert the students' rights, Rovira wrote, because all three considerations had not been sufficiently established.

■ ■ ■

Olson had testified in her deposition that the funding cutoff "had rather severe implications for students as well as the program" and that "I don't think I can separate myself and what was done from the students because the program and the publication [were] interrelated [and] I don't think they are two separate things."

*continued on p.9*

Olson —continued

She had also stated that the *Pikes Peak Fuse*, a lower-cost news magazine that replaced the newspaper after the funding cut, was a poor substitute for the *News* because it contained 90 percent less content than the *News*. Olson also had to change her newspaper design class to a magazine design class to utilize the *Fuse* in instruction. She claimed that newspaper design skills were more beneficial to students planning a career in journalism.

The court, therefore, held that Olson had "sufficiently demonstrated, at least for the purpose of third party standing, that the administrative decision to terminate funding of the *News* has a chilling impact on the free speech of the students."

The court ruled 5-1, however, that these facts alone did not give Olson the standing to file a lawsuit on her own behalf.

The court recognized that a teacher in a public school has a "constitutionally protected First Amendment interest in choosing a particular pedagogical method for presenting the idea-content of a course, as long as the course is part of the official curriculum of the educational institution and the teaching method serves a demonstrable educational purpose."

But the court also said that administrators should be allowed broad discretion in deciding "how the limited resources of an institution can best be used to achieve the goal of educating students."

Olson's claim centered on her "alleged entitlement" to use the student newspaper to teach newspaper design and layout and to aid in advising her students on libel, obscenity, and financing issues. Although Olson classified the paper as a "cocurricular" activity, the paper was a student activity funded by the student senate and "ancillary to the formal education process at the school," the opinion said.

Her constitutional rights as a teacher were not abridged, the court held, because "whether the newspaper is published or not, Olson's freedom to choose an appropriate method for classroom presentation

of the idea-content of her journalism courses remains unfettered, as does her ability to select those ideas and principles that she believes will enrich the educational experience of her students."

The court further held that the First Amendment does not give a teacher the right to require the school to allocate funds to a particular student activity when it is not a part of the official school curriculum, is managed by the students, and only advised by the teacher.

Justice Lohr dissented from this part of the opinion.

He noted that stories in Olson's reporting classes were frequently printed in the paper and that the work design class students did on

**"The administrative decision to terminate funding of the *News* has a chilling impact on the free speech of the students."**

the layout of the paper, during class, was usually accepted without change by the paper's editorial staff.

The majority's opinion that the right to choose "a particular method" is limited to the "official curriculum," Lohr wrote, "fails to give full scope to rights guaranteed by the First Amendment."

The paper was financed by mandatory student fees allocated by the student senate, was a critically important tool in teaching newspaper layout, and was significantly developed in Olson's classrooms, Lohr said.

"Under these circumstances, I would hold that Olson has made a showing of a legally protected First Amendment interest sufficient to establish standing . . .," Lohr said.

Despite the two dissents on the standing question, Larry Hobbs, Olson's attorney, called the opinion "a very good decision."

Hobbs also considered the court's stance on academic freedom to be a good sign for Colorado educators, even though that stance did not help Olson's case.

"We're delighted," Olson said.

Colorado Assistant Attorney General Bruce Pech, an attorney for the State Board for Community Colleges, said he was "not at all" surprised by the court's decision, but added that he and the majority have "a different view of what the law is or ought to be" in the area of third party claims.

"I had hoped they would see it my way, but, unfortunately, they didn't," Pech said.

Pech said that parties do not have the right to litigate for other parties, as a general rule, but noted that there are "enumerable exceptions . . . [that] don't hang together in a nice, coherent framework."

"In this particular instance, the position the majority took really reflected their view that it would be very difficult for students to assert their own rights, given the constraint of . . . mootness," Pech said.

The dissents were issued, Pech felt, because the majority gave too much weight to the burden on the students.

The case will now go back to the district court level, with Olson representing her students, to determine if the funding cutoff violated the students' rights.

Hobbs is confident that the court will decide in Olson's favor. "I think we'll whip them this time," he said.

Hobbs added that it will probably be a year or more before the case goes to trial.



The case arose after the student government at Pikes Peak Community College voted in June 1979 to end the school newspaper's \$12,400 subsidy, cutting the paper's budget by two-thirds. Student senate members stated in their depositions that the funds were cut because the *News* was biased, inaccurate, no longer representative of the students, and because it never printed any "happy news."

*continued on p.10*

## COURTS

Olson—continued

The paper subsequently folded and was replaced during the school year by an alternative publication, the *Fuse*. The *Fuse* was funded entirely by advertising revenues and a \$950 allocation from the

the funding at \$12,400.

The district court, however, granted the defendants' motion for summary judgment on the grounds that the plaintiffs lacked standing to challenge the funding cut. The court held that Olson had no constitutional right to use the paper as a teaching tool or to assert the rights

Student senate members stated that the funds were cut because the *News* was biased, inaccurate and because it never printed any "happy news."

school's operation budget.

In August 1979, Olson and three student reporters filed a complaint in Colorado district court, claiming that the senate terminated the paper's funding because it disapproved of the paper's content and editorial policies.

Because the paper provided opportunities for practical application of classroom theory and a forum for student expression, Olson and the students claimed the funding cutoff violated their press rights as guaranteed by the First and Fourteenth Amendments.

They asked for an injunction to prohibit the cutoff and to restore

of students at the school, and therefore had no right to sue.

Two of the student plaintiffs also lacked standing, the court ruled, because they had graduated in June 1979. The court also held that the third student had suffered no injury because she could exercise her First Amendment rights through the "substitute forum" of the *Fuse*.

Olson appealed the decision, but the three students did not. The Colorado Court of Appeals ruled in May 1982 that Olson did have standing to challenge the funding cut on her own behalf because her activities with the paper qualified as a constitutionally protected in-



terest. The court applied a test of "legal standing" which required a plaintiff to have suffered "injury in fact to an interest protected by statutory or constitutional considerations."

The appellate court did not, however, consider whether Olson could assert the rights of her students. ■

Washington, D.C.

# Expelled editor settles out-of-court

A student at Howard University (Washington, D.C.), who had been expelled and dismissed as editor of the *Hilltop*, the school paper, has reached an out-of-court settlement with the university.

Janice McKnight had claimed the school violated her rights of due process and freedom of the press. McKnight was expelled without a prior hearing and dismissed as editor in February 1983, after she had published a series of articles detailing a sex discrimination complaint filed against Howard's general counsel by an attorney working in that office.

Howard President James Cheek and Vice President for Student Affairs Carl Anderson had pressured McKnight to stop covering the story because some of the accusations made by the attorney were "potentially libelous," McKnight claimed.

School officials maintained that the expulsion was not related to McKnight's decision to pursue the discrimination story. They claimed she was expelled because she had falsified her admission form by not stating that she had previously attended Syracuse University in New York. She had left Syracuse in bad academic standing, school officials said, and would not

have been admitted to Howard if that information had been revealed.

District of Columbia Superior Court Judge Syliva Bacon upheld the expulsion by refusing to issue a preliminary injunction which would have reinstated McKnight as a student until a trial could be held.

The judge also held that McKnight's First Amendment claim was invalid because she hadn't been persuasive in her allegation that Howard, a private university, was using governmental power in restricting her speech. "State action" is a requirement for finding a violation of the First Amendment.

Cheek, however, reinstated McKnight as a student only hours after the injunction was denied, saying that "it was in the interest of all parties concerned." Howard students had held demonstrations, conducted a sit-in, and burned Cheek in effigy to protest the expulsion. McKnight was later reinstated to her position as editor.

McKnight had been suing the school for \$100,000. Although none of the parties will discuss the terms of the agreement, McKnight has said she is pleased with the settlement. ■

## Michigan

## Mich. firm's libel suit still pending

Attornies have yet to file briefs in a libel suit brought against two *Michigan State News* reporters by Eco Tech, Inc., an environmental monitoring and data management firm in East Lansing, Mich. (See Vol. 5, No. II)

Robert H. Boling, Jr., president of Eco-Tech, filed a complaint in Michigan circuit court in December 1983, after the Michigan State University paper printed stories detailing the paper's inquiry into a \$227,000 university contract with the firm. The stories said the

The stories said the paper had uncovered some "highly questionable" expenditures, including purchases of "beer and munchies."

paper had uncovered some "highly questionable" expenditures of the money, including purchases of "beer and munchies."

Boling claims the allegations in the stories are false and misleading and that the paper continued to print the defamatory material after Boling had informed them of their errors, in writing, and demanded a retraction. Two other professional papers which also ran the story printed retractions, but the *State News* did not.

Although briefs for the case have been drafted, they are not yet in their final form, according to Karen Fowler, an attorney for the reporters. A senior partner at the firm will have to approve the draft before the briefs are filed, Fowler said. ■

## Prof appeals

## \$9 million libel suit dismissed

A journalism professor at William Rainey Harper College (Ill.) is appealing the dismissal of a libel suit he had brought against the *Harbinger*, Harper's student newspaper.

Last May, senior Mike McCarthy wrote an editorial for the paper reflecting on changes that had occurred on campus while he was a student, citing problems he saw at the school, and criticizing Professor Henry Roepkin.

In response, Roepkin filed a libel suit in the 19th Judicial Circuit against McCarthy, who was not a member of the *Harbinger* staff, the paper's editor and adviser, two school administrators, and Harper's Board of Trustees. Roepkin asked for over \$9.1 million in

## Georgia

## Cadaver awaits Ga. Supreme Court decision

The Georgia Supreme Court has yet to decide whether a nursing student at Medical College of Georgia was defamed by a satirical response to her letter to the editor in the school's humor magazine. (See Vol. 5, No. I)

The case, *Brooks v. Stone*, 10 Med. L. Rptr. 1517 (Ga. Ct. App. 1984), arose in November 1982, when Susan Brooks wrote a letter to the editors asking the *Cadaver* to upgrade its style of humor.

The editors' response stated, "Our style of humor is really out of control... Our mothers were German Shepherds; our fathers were Camels, so naturally we love to hump bitches in the heat. Say Ms. Brooks, when do you come in season?"

Last March, the Georgia Court of Appeals reversed a state trial court decision which favored the editors, saying that the editors' response constituted a cause of action for defamation. The Supreme Court granted the defendants' request for an appeal and heard the case in July.

At the hearing, the editors argued that the magazine and the response were "clear satire" and that the reply was protected by the First Amendment because it was clearly an opinion. They also claimed that by calling the *Cadaver* "sick" and "for the bottom of bird cages," Brooks instigated the exchange of words. ■

damages.

In his editorial, McCarthy, who has since graduated, included a paragraph calling Roepkin "very foul-mouthed" and "the most disgusting, hard-headed, and stingy instructor I know." The paragraph ended, "as the saying goes, if you can't teach."

Roepkin's complaint stated that the remarks in the editorial were defamatory and were calculated to cause great injury to his personal and professional reputation.

Roepkin appealed the decision at the end of August, on the last day he could legally do so, according to Director of Student Affairs Jeanne Pankanin.

"It'll probably be another six months before it's resolved," Pankanin said. ■

Rhode Island

## Board member's suit not yet to trial

A libel suit filed by a school committee member against Cumberland (R.I.) High School editor Colin Murphy has yet to go to court. William O'Coin filed suit last January after Murphy wrote an editorial for the *Clipper Courier* criticizing O'Coin's absentee rate at committee meetings. (See Vol. 5, No. II)

Murphy based the editorial on an article he read in a local newspaper. The article, which reported the 1983 attendance statistics for teachers and committee members, contained quotes from O'Coin blasting teacher absentee rates.

The editorial stated that O'Coin had irresponsibly misrepresented



teacher absentee rates and that "he seemed to be enjoying the unseasonably warm weather during the month of June . . . when his attendance rate was a mere 25 percent." Murphy also questioned whether O'Coin was "worthy of the fringe benefits that he receives as a school committeeman."

O'Coin is asking for \$1 million in damages for "severe adverse and irreparable harm to his professional reputation and integrity."

Murphy, who claimed O'Coin only filed the suit to intimidate him, is hoping the superior court judge will grant summary judgment, thereby dismissing the case before it goes to trial. ■

Iowa

## Daily appealing award for word misuse

Lawyers have not yet finished filing briefs in the appeal of a \$9,000 libel award against the *Iowa State Daily* for an article which incorrectly reported a "rape." (See Vol. 5 No. II)

Both sides have filed initial briefs, but the paper has yet to file a response brief, according to James Brewer, the paper's attorney.

The case arose in February 1982, after the paper reported that a female bartender at the local American Legion Hall had been raped.

Laurie Hovey, the victim of the attack, filed the suit because although she had been sexually assaulted, there was no sexual penetration, and, therefore, she had not been raped. Hovey claimed she was identified by the article because she was the only female bartender working during the hours the rape was reported to occur.

Patrick Brooks, Hovey's attorney, had argued that a rape has a more negative connotation than sexual abuse and that Hovey was forced to relive the incident every time she had to explain that she had not, in fact, been raped.

Brewer said briefs will be filed and a trial date set in early 1985.

New Hampshire

## Article strikes sour note with prof

A libel suit brought by a music professor against the *Dartmouth Review* is still pending in Vermont district court. (See Vol. 5, No. I)

William Cole, music professor and chairman of the music department at Dartmouth College, filed the suit in March 1983, after the paper printed an article critical of his teaching methods.

The article, entitled "Prof. Bill Cole's Song and

The article called Cole's class "the most outrageous gut course on campus, home of the thicknecks."

Dance Routine," called Cole's class "the most outrageous gut course on campus, home of the thicknecks," and said, "Nothing worries Bill Cole. Not students, not regulations, not teaching. Nothing."

Cole claims he was libeled with actual malice by statements in the article. He is asking for \$2.4 million in compensatory and punitive damages. ■

California

## Basketball fan calls a foul

A trial date has not yet been set in a libel suit filed against a University of Santa Clara literary magazine by a basketball fan accused of unethical support for a rival California team. (See Vol. 5 No. III)

J. Luis Zabala filed the suit in October 1983, after the *Owl* published an article accusing him of paying a University of San Francisco basketball player for a non-existent summer job. In the article, staffer Christine Long called Zabala a "wealthy and crooked alumnus" who "exemplifies the narrow mindedness that results from over-

emphasizing athletics."

Zabala denies paying Quentin Dailey, now with the Chicago Bulls, for a non-existent job.

Zabala, who is asking for \$80 million in damages, claims the article libeled him, invaded his privacy, and was published with actual malice. His complaint states that Long and *Owl* editor Leander James could have easily ascertained the allegations were false. Zabala also claims the statements were published with the intention of disgracing, defaming, and injuring his reputation in the community. ■

## CENSORSHIP

California

## Editor challenging prior restraint

The editor of the Rancho Alamitos (Calif.) High School student newspaper is taking his principal and school district to court, claiming that a state statute and district regulation which permit prior restraint at his school are unconstitutional.

The case arose last spring when Principal James Delong halted distribution of the April Fools' edition of *La Voz del Vaquero* after journalism adviser Ed Surek had approved the paper's content. Delong said the paper contained some material which "might be libelous."

In particular, Delong objected to an announcement that *Playboy Magazine* was accepting applications for a photo spread to be titled "Girls of Rancho" and an accompanying photo of five female students captioned "Prospective playmates..." The students reportedly were unaware of how their picture would be used in the humor edition.

Editor David Leeb appealed the decision to Garden Grove Assistant Superintendent Frank Starnes, who upheld Delong's decision citing a state education code and a school district regulation which explicitly provided for prior restraint of offi-



cial school publications where material "may be obscene, libelous, or slanderous."

Leeb subsequently went to the American Civil Liberties Union and filed a complaint in California Superior Court, claiming that the halted distribution of the paper violated "the right to speak freely and the right to freedom of the

press" and that the statute and regulation violated the California Constitution and the First Amendment.

But in June, Superior Court Judge Robert Polis upheld the administration's decision, saying that Leeb had violated a very important trust because the student newspaper was a monopoly of the media at the school. Polis would not consider the validity of the statute and regulation at the same time, according to ACLU attorney Gary Williams.

Williams has since filed complaints in both state court, on the state constitution question, and federal court, on the First Amendment question. Williams wanted to pursue the California constitutional claim in state court because "state constitution free speech provisions are broader" and he didn't want the federal courts to limit them. A motion for summary judgment, to dismiss the case in Leeb's favor before it goes to trial, is currently pending in federal court.

The motion states that the statute and regulation teach the students that the principles of freedom

*continued on p. 14*

Rancho —continued

of speech and freedom of the press are "mere platitudes which can be abrogated at any time in the discretion of a school principal" and asks the court to find them unconstitutional. The motion cites as persuasive precedent the decision *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972), which held that any system of prior restraint in a high school setting is unconstitutional.

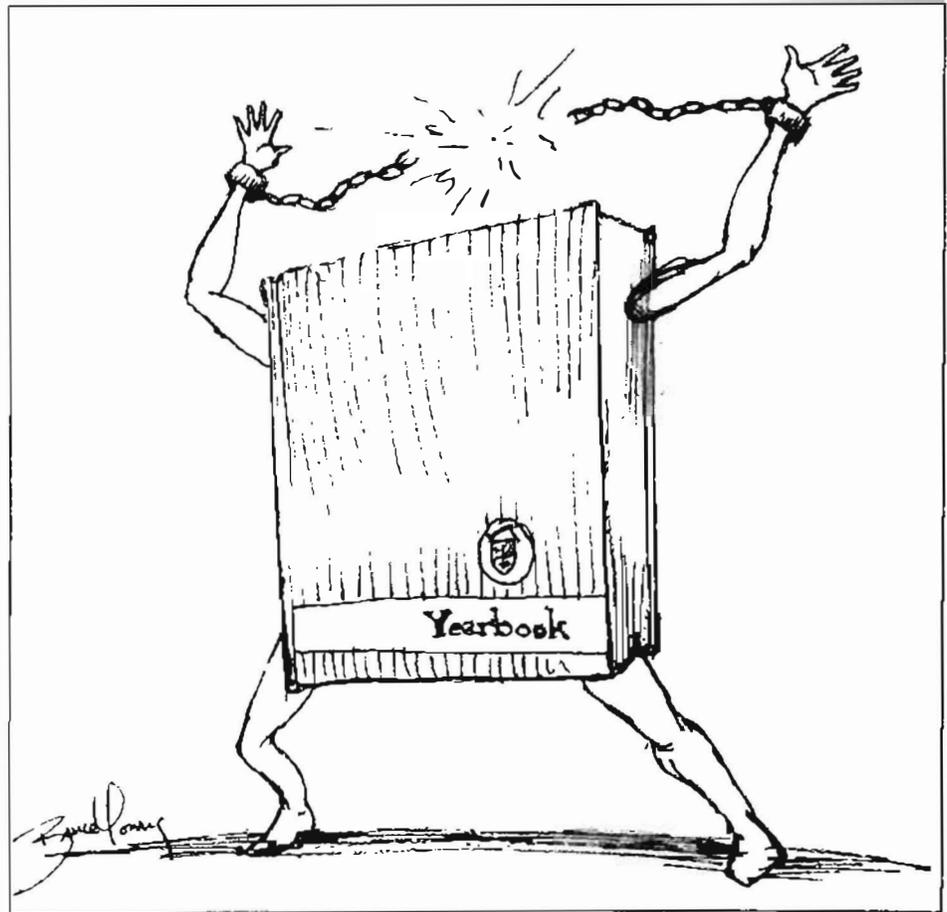
The motion notes that even if the court adopts the view of other federal circuits, which have held that prior restraint is permissible, the statute and regulation are still unconstitutional. At the very minimum, the motion says, these circuits have held that such systems "must have clear and precise standards defining prohibited material, a specific set of procedural safeguards, specific short time frames for the rendition of administrative decisions, and provide for expeditious judicial review."

The constitutional flaws of the statute and regulation are thus "readily apparent," according to the motion. The statute contains no time limits, "stating merely that school officials shall show justification for the imposition of prior restraint 'without undue delay.'" The statute doesn't establish any appeals procedure for review of adverse decisions or for judicial review of adverse decisions. Finally, the statute prohibits material which is "libelous, obscene or slanderous," without providing definitions of those terms to guide administrators and students.

Because the statute and the regulation are "unconstitutional under either standard of review," Williams is asking for the court to declare both measures void and to enjoin school officials from enforcing their provisions.

"We filed the case because we were hoping for . . . a good California law case on the invalidation of the statute," Williams said. "The resolution of state law issues is important." ■

Maryland



*Censored ad spurs revision*

## Board adopts improved guidelines

Students in Montgomery County (Md.) schools will more easily be able to exercise their First Amendment rights since the Board of Education has approved a new, far more press-protective publications policy.

The original policy, adopted in 1975, was revised three times before it was approved on Aug. 7. The revision process was prompted by efforts of the Student Press Law Center and the American Civil Liberties Union.

The inadequacies of the original policy became apparent after a high school adviser and principal

attempted to censor a group of controversial student ads from the *Windup*, the Walter Johnson High School yearbook. The ads included pictures of students drinking beer and a drawing of four tombstones, one containing a line from a song by the Grateful Dead "Riding that train high on cocaine."

The Board of Education and school administrators claimed the ads encouraged use of alcohol and cocaine, a violation of the guidelines, and that because the yearbook was a forum of instruction, censorship of the ads was

*continued on p. 15*

## CENSORSHIP

### Policy —continued

acceptable. The school board did allow the ads to be published after the SPLC and ACLU filed a lawsuit on behalf of the students. The decision was made the night before the case was to be heard in the U.S. District Court for Maryland.

"The publications guidelines were so poorly written—there were so many gaps—that our attorneys guaranteed us we would have lost the case," said board member James Cronin.

For guidelines to be legally sufficient, they must: offer clear examples of what is considered disruptive, obscene, or defamatory; offer definitions of all key terms, including "disruption," "obscenity," "defamation," and "distribution"; detail how an administrator could reasonably predict the occurrence of substantial disruption; direct where the guidelines would go and how they would be made available to students; state to whom the material should be submitted, if reviewed; allow the students to appear before the decision maker to present arguments for distribution; set a precise, reasonable time limit for review, and include a speedy procedure for appealing a censorship decision.

The first set of proposed guidelines, formulated by a policy committee and distributed in ear-

ly June, "failed to conform to even the minimal standards mandated time and again by the courts," according to SPLC Director Marc Abrams.

The proposed guidelines also placed bans on several forms of legal speech. One section, which would have banned material that "encourages, promotes or glamorizes actions which endanger the health and safety of students," was too vague to be valid. Likewise, the section which prohibited material that "villifies any individual solely on the basis of age, sex, race, creed, national origin or handicapping condition" was inadequate. Such wording could allow administrators to suppress a story containing the phrase "old people stink," according to Abrams.

The policy committee presented a second draft of the guidelines at a June 25 board meeting. The draft clarified definitions and detailed administrative review and appeal processes, but still included the passage forbidding speech encouraging, promoting or glamorizing unlawful activity and the passage forbidding the vilification of individuals.

Both Liz Symonds of the ACLU and Abrams spoke at the meeting, encouraging the board to make further revisions before approving the guidelines. Board members voted unanimously to defer adop-

tion of the guidelines until objectionable parts of the policy could be discussed with an attorney and revised.

The third and final draft of the guidelines was distributed and approved at a board meeting on Aug. 7. The draft, incorporating many of the SPLC recommendations, instituted the three-prong test for defining obscenity and removed the section that would have prohibited material that vilifies individuals. Abrams had written the board that there was "no way to attain the intent of this passage while preserving the limits of free speech granted by the courts."

The policy committee also made some changes in the section that would have prohibited material encouraging actions that endanger students. Abrams had suggested changing the prohibition to: any "material... (that) advocates imminent unlawful actions and is directed to and imminently likely to incite or produce such harm."

He also recommended that the section not be interpreted to prevent editorial discussion of such issues or to prevent the use of pro-and-con formats. As previously written, the policy could prevent a pro-and-con article on cigarette smoking, for example, because the "pro" side advocates the use of tobacco.

Although the policy committee ignored the recommendation that only advocacy likely to incite unlawful action be prohibited, it did incorporate the section allowing debate of such issues.

The committee ignored other SPLC suggestions as well. The advertising guidelines in the final draft are "overly restrictive" in requiring ads to be labeled as advertising and names of the sponsors to appear in the ads, according to Abrams. The draft also prohibits the distribution of anonymously published materials. Abrams suggested that the prohibition be deleted. In addition, the committee ignored Abrams' suggestion that the definition of "distribution" should exclude the times immediately before and after school hours. Abrams had said that those time

*continued on p.16*



Students replaced their original ad with this photo and a caption reading, "This space is hereby dedicated to the Defenders of the First Amendment."

MARGULIES  
©1984 THE JOURNAL

THE YEARBOOK CONTROVERSY  
OVER COCAINE AND BEER HAS  
STOLEN THE HEADLINES  
FROM THE SELECTION OF  
THE YEARBOOK EDITOR  
AS 'BEST DRESSED':



Courtesy Jimmy Margulies, Houston Post

This cartoon, published in the Montgomery Journal, illustrated the viewpoint that the types of ads the students sought to publish did not merit a fight for press freedom.

Policy —continued

limits were unnecessary in maintaining a proper school environment.

"While there are still several small aspects of the guidelines that I would like to see changed, overall, the Board of Education has done an excellent job in drafting the document, which protects the students in virtually all critical circumstances," Abrams said. "If it is applied correctly, the students of Montgomery County will finally enjoy a reasonable level of freedom of the press. I welcome them to the 20th century."

Abrams considers the revision especially significant since Montgomery County is the eighth largest school district in the country.

"I think we did a really good job," said Edward Shirley, administrative assistant to the deputy superintendent of schools and a member of the policy committee. "We were trying like crazy to come up with something fair."

Shirley noted that a major problem in revising the guidelines was considering all the "what if" questions. "If you try to write a policy that will prevent pictures of students drinking beer, for example, are you preventing editorial comment... closing the door on other issues?"

In evaluating the revisions, board members also had to consider community standards. "We have a public which expects us to do more in what we control than legally we can do," said Board of Education Vice President Robert Shoenberg. "We wanted guidelines within the law that would allow... faculty to exercise an amount of control the community expects... and try to get something clearer than we had before."

One board member, Suzanne Peyser, objected to the new policy and was the only member to vote against the final draft. "I don't think we need the guidelines," Peyser said. "The principal and the school have the responsibility to say what is appropriate for chil-

dren."

In particular, Peyser objected to the three-prong test for obscenity. "The definition of obscenity allows almost anything. It may be fine for adults, but not for children," she said.

Cronin had a minor objection of his own. He disliked the phrase "The teacher-adviser shall provide direction and guidance on grammar, format, suitability of materials and literary taste" because "the concept of 'direction' seemed to apply more rigid control than I would like. We should provide guidance if it's to be a learning experience for the students," he said.

Yet Cronin has hope that the new guidelines will help alleviate publications disputes between students and administrators because the "gap areas" of the old guidelines have been clarified.

"Now the principles are clear," he said. "If the students want to print the yearbook upside-down and backwards, they should be able to. It's theirs." ■

Private school dilemma

# Adviser fired after policy fight

In recent years, U.S. courts have recognized that all students have the First Amendment right to publish stories covering all areas of student interest, including topics about which there may be dissent or controversy. All students, that is, who attend *public* schools. In a case which illustrates the plight of students and advisers at *private* schools, a journalism adviser at an episcopal high school in Upper Marlboro, Md., has been fired because he stood up for his students' rights to write about controversial issues.

In early November, Robert C. Weller, the adviser at Queen Anne's School, was dismissed on charges of insubordination. He had taught at the school for nine

**“The adviser may not censor or require adjustment of ideas, content, or opinion.”**

years and sponsored the *Spectrum*, the school's news magazine, since its inception eight years ago. Under his guidance, the *Spectrum* had won first place honors in the Maryland Scholastic Press Association magazine competition for the 1982-83 and 1983-84 academic years.

Weller's problems began when English department Chairman Jimmie Gorski asked Weller to draw up a set of guidelines for the *Spectrum*. Pressure to implement a publication policy had been building since editors of the *Coeur de Lion*, the school's yearbook, published a page of satirical photos and captions last year. The caption under one photo of an obelisk read, "Upper Marlboro's 200 year old erection," according to Weller.

Although he was not the yearbook adviser, "the whole issue kind of fell to me as a journalism teacher . . . to establish [standards of] taste and propriety," Weller said. Weller noted, however, that the *Spectrum* had never breached the standards of good taste.

Weller subsequently drew up a policy for discussion purposes, based on Student Press Law Center Model Guidelines, which was revised into a packet of materials for the students. Both Gorski and Headmaster Thomas N. Southard objected to Rule 20 of the guidelines, which said that vulgar words could be used in the magazine if they served a legitimate purpose.

Weller said they "would not look at the entire set of guidelines" although he had included "two essays defining propriety and ethics in the student press as an attempt . . . to solve the problem."

Weller said Southard was convinced that the headmaster was ultimately responsible for everything printed in the magazine.

Illinois

## Policy revision stalled

Efforts to revise the existing publications guidelines to prevent prior review and censorship of the student paper at Richards High School (Ill.) have come to a standstill. (See Vol. 5, No. II)

Former *Herald* editor Robin Gareiss and her adviser Bob Jason had presented the proposed revision to the school board last spring. In May, the board sent the policy to the Illinois Board of Education to get their comments.

But school officials have not yet received any comments from the board and have taken no further action on the policy, according to school district attorney Alan Mullins.

The conflict over the guidelines began in the fall of 1983, when Richards Principal Wayne Erck assigned another administrator, Robert Guenzler, to review all material before it was printed.

Newspaper editors and Jason protested at a school board meeting and were told that no prior review would be exercised until a new policy was adopted. But, the new policy, instituted nearly a year later, also included prior review.

A second problem arose this fall when the students wanted to write stories about an upcoming accrediting committee visit to the school. The students were concerned that Southard "would not talk to the evaluators about the real problems at the school," Weller said.

Weller subsequently told Southard that, although he disapproved, the students were planning to run a cover illustration of the headmaster "sweeping dirt under the carpet."

When Southard asked him to change their minds, Weller said that his responsibility as adviser was only to guide the students. The section of Weller's policy relating to the adviser's role states: "The adviser . . . may not censor or require adjustment of ideas, content, or opinions. The adviser may advise students of ramifications of allegedly controversial material, but he may not exercise prior restraint."

Weller's efforts to revise the guidelines to a standard acceptable to Southard and Gorski were suppressed, and efforts to further discuss the censorship issue were rebuffed, according to Weller. Southard subsequently told Weller he was insubordinate and fired him on Nov. 9.

Weller consulted the SPLC and the American Civil Liberties Union for help, but his options were limited by Queen Anne's status as a private school. Court decisions affirming the First Amendment rights of students and advisers can only be applied to public schools. However, the SPLC sent a letter to Southard on Weller's behalf and the ACLU is "monitoring the process with concern," according to Weller.

*continued on p. 18*

## CENSORSHIP

Adviser —continued

"I can't tell you how large a brouhaha this has created," he said. As a result of his dismissal, Weller's students have been wearing black to school, "mourning for press rights."

Weller also noted that the controversy "has raised the consciousness of the entire community to press issues."

With "hints of prior restraint" in the air, Weller said that his students are unsure whether they should "limp along" with the *Spectrum* and a system that refuses to recognize their press rights or whether they should all resign and start an underground paper.

Weller joined the ranks of the unemployed as of Thanksgiving, although he will receive his salary through the end of the year. He said his only recourse is to "seek a position elsewhere." ■



Missouri

# Hazelwood case delayed again

Can the legal system aid a high school principal in censoring a group of controversial articles from the student newspaper by delaying and further delaying a trial?

Three former news editors at Hazelwood East High School are still waiting for an answer. Their case, originally filed in August 1983, has been delayed, for the third time, until Nov. 5. The jury trial is expected to last a week.

The trial was postponed because a key witness for the defense was a delegate to the National Republican Convention, according to American Civil Liberties Union attorney Steve Miller. The trial had been

scheduled for Aug. 20.

"It's a case that will not die," Miller said.

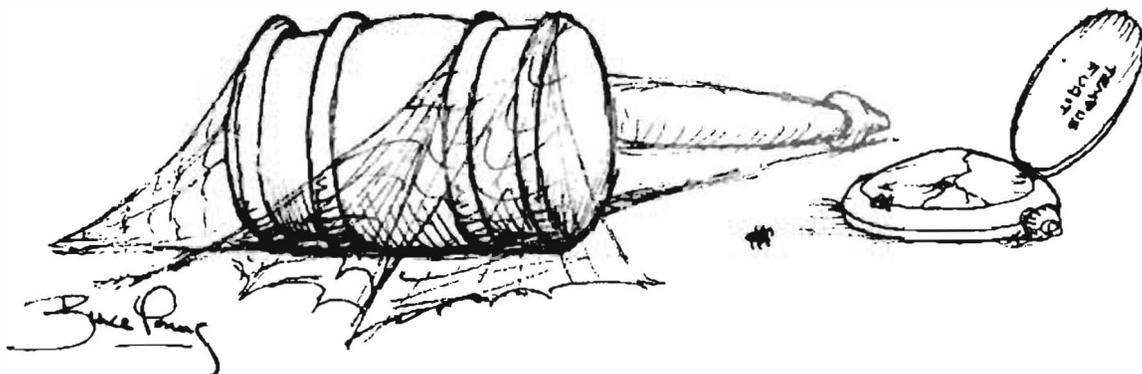
The controversy began when students sought to publish a series of stories dealing with various social problems faced by teenagers. The articles focused on teen sex, pregnancy, divorce, runaways, and delinquency. School principal Robert Reynolds censored the two-page spread from a May 1983 issue of the *Spectrum* because the material in the stories was "inappropriate" and "too sensitive."

The three students, Cathy Kuhlmeier, Leslie Smart, and Leanne Tippett, then went to the ACLU

and filed a lawsuit against the school district. The district filed a motion to dismiss the suit, but District Judge John Nangle ruled last February that the students had sufficient claim to challenge the censorship.

The trial was first set for Feb. 6, but was postponed due to a death in a school board member's family. The trial was reset for Apr. 2, but was again postponed because the judge didn't have enough time on his jury docket to hear the case. Miller said he was led to believe that the case would be tried in June. Instead, the trial was post-

continued on p. 19



## Hazelwood —continued

poned until Aug. 20, when once again it was delayed.

The school district has since filed another motion to dismiss "on the grounds that the plaintiffs have all graduated," Miller said. That motion is still pending and might not be decided until right before the case is scheduled to go to trial, according to Miller.

"We don't believe the case is

moot. I'm still optimistic," Miller said.

The school district is also claiming that the stories were cut because the newspaper was over budget for the school year, and the spread would have increased the *Spectrum* to six pages rather than its regular four.

The plaintiffs counter that the school district shows no budgetary reasons why the stories at issue were cut and that the \$200 cost

involved in printing the extra pages is "insignificant when compared to the \$4668.50 in printing expenses ultimately paid for *Spectrum* during the 1982-83 academic year."

Miller is asking for a mandatory injunction requiring the school district to permit publication of the censored stories. In addition, he is seeking \$25,000 in punitive damages and \$10,000 in actual damages for each student. ■

## ... but students receive award



The National Scholastic Press Association/Associated Collegiate Press and the Student Press Law Center have presented the first Scholastic Press Freedom Award to Cathy Kuhlmeier, Leslie Smart, and Leanne Tippett, former news editors at Hazelwood East High School (Mo.).

SPLC Director Marc Abrams announced the winners Nov. 11 at the Journalism Education Association/National Scholastic Press Association convention in Little Rock, Ark.

The three winners were chosen for their efforts to publish a series of controversial stories in the student paper, demonstrating "the ability to raise difficult and necessary issues in news coverage."

"The plaques which the National Scholastic Press Association will be sending you shortly are only a small reminder that what you have done really has made a difference already," Abrams told the former editors. "At the least, you provide an example for your fellow journalists; at most, you may provide them with a valuable tool for their fights." ■

Wyoming

# Demoted adviser files lawsuit

A high school journalism teacher is taking the Campbell County (Wyo.) school district to court, claiming it removed her from the sponsorship of the school paper and yearbook because she was outspoken in her criticism of the district's student publication policy and attempted to change it.

Former adviser Judy Worth claimed the district willfully retaliated against her for protesting against censorship of the paper and charging that the publication policy was unconstitutional.

The Wyoming Education Association filed the complaint Aug. 31 on Worth's behalf after putting out a formal public release denouncing censorship in the paper, according to Patrick Hacker, Worth's attorney. At the Cheyenne news conference, WEA President Linda Stowers said the incident has been a "good way of teaching children bad citizenship and showing them their rights as citizens are no longer the same as everybody else's."

Worth had pushed for the implementation of a legally sound policy after school principal Jay Cason censored a cartoon critical of the Moral Majority from a December 1983 issue of *Camel Tracks*, the school paper. Students wanted to print the syndicated cartoon to protest the efforts of a group of citizens to ban Steven King's *The Shining* from the library.

Cason said he banned the cartoon because it "ridicules the conservative viewpoint," violating an existing policy that prohibited material which "subjects any person to hatred, ridicule, contempt or injury of reputation."

Worth and her students contacted the Student Press Law Center and the American Civil Liberties Union after the censorship incident in an effort to change the existing policy. They presented to the board of trustees a proposed revision of the policy based on SPLC guidelines. The board, however, formulated its own policy

draft, one it hoped would keep the district out of court. The draft was approved only three days before Worth filed her suit.

The complaint states that the new policy "contains essentially the same unconstitutional provisions as the former policy." Specifically, it claims that the policy: fails to provide criteria as to what is "disruptive," "obscene," "defamatory" or define "statements or innuendos that would subject any person to hatred, ridicule, contempt or injury of reputation"; fails to define "obscene" and "libelous" in legally acceptable terms; fails to define or provide guidelines for an administrator to predict disruption; fails to provide "the right to appeal personally and advocate distribution"; fails to adequately define the prohibition of material that would "endanger... the health, education, welfare, safety or morals of students"; and prohibits publication of anonymous material.

"The procedure as established and used amounts to a blanket grant of unfettered discretion to school administrators to make sub-

jective, personal and political judgments as to what students may publish and read," the complaint claims. "The actual purpose and application of the policy is to cast a pall of orthodoxy over student expression, suppressing expression deemed 'controversial' in light of the political and personal ideologies of school officials."

The complaint also states that Worth was "specifically chastised for 'not going through the chain of command'" in contacting the SPLC and ACLU.

"We're alleging a 'right of association' for Judy to contact the SPLC and ACLU," Hacker said. He contends that Worth has been subjected to "a lot of harassment" because of these contacts. He also said that school officials interviewed Worth's students to determine who had suggested contacting the SPLC and ACLU.

"They're trying to destroy Judy Worth's reputation," Hacker said. He cited an incident in which school officials told a local newspaper that the quality of the yearbook is poor. But Hacker contends the



Courtesy of Don Wright, Miami News

## CENSORSHIP

quality is no different than in other years and that Worth's "track record shows the yearbook and paper are well recognized in state competitions."

Hacker noted that a story in the Sept. 1 edition of the *Wyoming Eagle* states that Cason "admitted the controversy over the editorial cartoon and publication policy was a factor" in the decision to remove Worth from her position.

The school district's response, filed on Sept. 24, claims that many of Worth's complaints are not valid.

The school district denies it has a "censorship policy." Although the district "admits that an attorney purportedly representing some students provided the school district with legal precedent regarding the publication policy," it also "denies that this precedent demonstrated that the school district's policy was unconstitutional."

The district also said that the copy of the policy revision incorpo-

rated into Worth's complaint does not accurately reflect that policy and claims that her challenge to the "previous publication policy, which was in effect at the time of her reassignment, is moot in that a new policy was adopted" on Aug. 28.

The district is also claiming that Worth lacks standing to challenge the district's present policy. Hacker said he plans to counter that claim by citing persuasive precedent from the decision in *Olson v. State Board for Community Colleges and Occupation Education*, Case No. 82SC271 Slip Op. (Colo. August 20, 1984), which granted newspaper advisers the power to file a First Amendment grievance on behalf of their students. (See story this issue)

The school district denies it took "great exception" to Worth's consultations with SPLC and the ACLU, but admits that school officials conducted interviews with students "for the purpose, among other things, of ascertaining certain facts, including how these organiza-

tions were contacted."

The response further says that Worth was "reassigned for reasons independent... [and] regardless of her alleged First Amendment activity" and that any damage to Worth's reputation "was the result of her own conduct and statements," and was not caused by the school district.

Hacker said that the "school district isn't saying anything about the lawsuit" and that "they have been quiet on the issue of censorship."

He is asking that Worth be reinstated as adviser and that she be given back pay and general damages for emotional suffering and reputation injury.

Hacker is also asking for an injunction to "enjoin the school district from carrying out the revised policy and to develop one that meets legal standards.

"I want them to have a feeling that there's a risk in engaging in that kind of activity," Hacker said. ■

Louisiana

# Students fight abortion ad ban

Student journalists at Louisiana State University have filed a lawsuit against school administrators, claiming that a ban on pregnancy-related advertising in student publications is unconstitutional.

The American Civil Liberties Union filed the suit on behalf of the students on Nov. 13, after the advertising manager of *The Daily Reveille*, the student paper, received an administrative memo officially announcing the advertising ban. The ban, however, had been "enforced for a while before that," according to Martha J. Kegel, executive director of the Louisiana ACLU affiliate.

Administrators said they originally banned ads for abortion clinic services because "before getting an abortion, students should first get counselling from the university health service," according to Kegel. She said that the university was exhibiting a "paternalistic attitude" and that it "should acknowledge that students are mature enough to make those sorts of decisions on their own."

The university subsequently extended the ban to include all pregnancy-related advertising. Under the ban, ads for adoption services and right to life groups could not appear in the student paper or in the yellow pages of the student directory, Kegel said.

Kegel said the ban was a classic example of how limited forms of censorship can snowball. During the past few years that *The Reveille* and the directory have published pregnancy-related advertising, there had been

no incidents of prior censorship of the ads, Kegel added.

Past court decisions have indicated that advertising for lawful activities in a student publication cannot be regulated unless the school can prove that a material and substantial disruption of school activities is likely to occur. The fifth circuit in *Mississippi Gay Alliance v. Goudelock*, 536 F.2d 1073 (1976), also ruled that student editors have the power to accept and reject political advertising. That decision, which is binding in Louisiana, implies that students, not administrators, have control over which ads should be published.

The ACLU decided to file the lawsuit against LSU administrators "because students are the leaders of the future and we don't feel that they can be allowed to grow cynical of the First Amendment," Kegel said.

The case is scheduled to go to trial on Dec. 5, although the chances of an out of court settlement are good.

"The university appears to be backing down," Kegel said.

*Editor's note: The LSU administration dropped the ban in December. The school is still negotiating with the ACLU to set a new policy. For complete story, see next issue.* ■

Texas

# Lubbock dawdles over policy

High school journalism teachers and students in Lubbock, Texas are still waiting for administrative reaction to a proposed publication policy based on Student Press Law Center and other schools' guidelines.

A committee of journalism teachers from five high schools in the Lubbock Independent School District drafted the proposed guidelines and presented them to Wayne Dickey, the district's language arts consultant, last March. The guidelines will have to be approved by an "administrative council," made up of E.C. Leslie, district superintendent, and four assistant superintendents, before they go into effect. For the guidelines to become a "formal policy," they will also have to be approved by the school board, according to Jennifer Tomlinson, publications adviser at Monterey High School.

"They haven't brought the guidelines up for discussion yet... but they assure us something will happen this fall," Tomlinson said.

The teachers joined together after Kat DeWees, former Lubbock High School yearbook editor, and Shannon Kemp, former Lubbock High newspaper editor, tried to change the district's existing guidelines and

threatened the school board with a lawsuit.

The two editors discovered the inadequacies of the guidelines in February 1983, when two full-page advertisements for a church caused administrators to distribute a policy which forbade ads for religious activities, alcoholic beverages, and ads for any school ring manufacturer other than the one under contract to distribute the school's standardized ring.

The guidelines also said that articles should not deal with any subject "offensive to the taste and sensibilities of the community," and that editorials should "make constructive suggestions for improvements... in a positive fashion and must not hold up to ridicule, censure, or criticism any group or individual." The guidelines also gave the principal final authority over all student publications.

Tomlinson said that administrators had been "pretty fair" with the teachers so far and noted that Leslie, the new superintendent, may be more open to the teachers' suggestions, although he probably wouldn't agree with all their ideas.

"He's not in favor of some advertising changes," Tomlinson said. "We want a looser rein." ■

## LAW OF THE STUDENT PRESS

It's here! It's here!

The guidance you've been waiting for

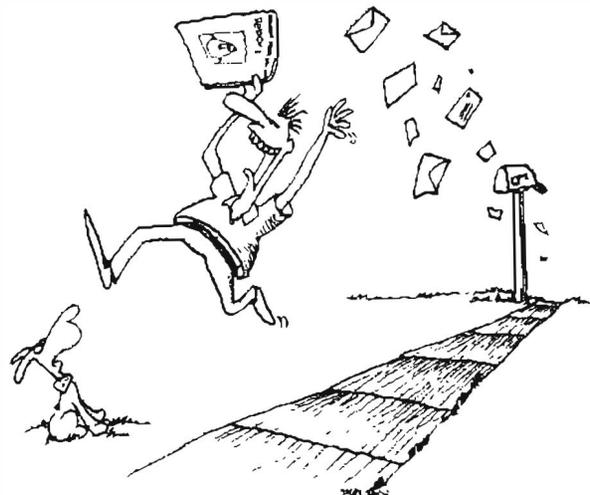
It's been eleven years since the last comprehensive look at high school press law was published and six since college press law was examined.

*Law of the Student Press*, a four year project of the Student Press Law Center, will be the first book ever to offer an examination of legal issues confronting America's student journalists, advisers and education administrators on both the high school and college levels.

The book is understandable and readable without giving up the essential material needed for an in-depth understanding of the legal relationships involved in the production of student newspapers, yearbooks and electronic media.

*Law of the Student Press* will be available this March, but you can order yours now. Copies are only \$5 each. To order, send a check for that amount, payable to "Quill and Scroll," to:

*Law of the Student Press*  
 Quill and Scroll  
 School of Journalism and Mass Communication  
 University of Iowa  
 Iowa City, IA 55242



Arkansas

# *Publicity results in improved policy*

A student publication policy giving principals in the North Little Rock (Ark.) school district editorial control over student journalists has been rejected by the school board in favor of a more press protective set of guidelines.

School District Superintendent Joe Austin submitted the original policy to the board for adoption on Sept. 27. He submitted the proposal in an effort to comply with a state regulation which required school districts to adopt student discipline policies by Oct. 1.

The school board, however, voted to defer action on the policy until revisions could be made. Board member Steve Morley had suggested the delay because he had felt "a lot of heat" from the community about the proposed policy and because unclear portions of the policy could more easily expose the district to lawsuits.

The provision which received the most criticism said that all student publications "shall be under the direction and control of the school administration and Board" and that each principal "shall assume editorial responsibility that will reflect the high ideals and expectations of the students, staff, and school patrons of the District."

The policy also forbade publication of "hate literature" and any criticism of teachers or school officials if there would be a "reasonable forecast" that the criticism would disrupt normal school operation.

Local newspapers printed stories and the student chapter of the Society of Professional Journalists at the University of Arkansas at Little Rock sent a letter to Austin supporting the students, according to Gail Hopkins, publications adviser at Northeast High School. "The first policy would have passed with no problem" without the support from the local press and the Student Press Law Center, Hopkins said.

At the meeting, board member Murry Witcher suggested the board consider portions of the SPLC model guidelines for adoption.

Hopkins also contacted SPLC Director Marc Abrams to get his opinion on the proposed guidelines. In his assessment, which was forwarded to Austin and the school board, Abrams noted that the proposal failed to include examples and definitions of key terms such as "defamation" and "obscenity," failed to detail how an administrator might forecast "substantial disruption," failed to specify to whom material would be submitted for approval, and lacked a procedure for students to appeal administrative decisions.

Abrams also said that the sections that would prevent criticism of teachers and "hate literature" were "vague beyond an acceptable standard" and would "prohibit speech which is not allowed to be banned."

Austin shrugged off Abrams' criticisms in an interview with the University of Arkansas at Little Rock's student paper. The article, published on Oct. 1, quotes

Austin calling Abrams "just another person from the media" and referring to the SPLC as a "special interest group."

Nonetheless, the school board approved a revision of the policy on Oct. 25. The policy was much-improved, in that it contained definitions of key terms, outlined an appeals procedure, and removed the section giving principals "editorial responsibility."

However, the policy still states that publications are "under the direction and control" of administrators, still bans "hate literature," and now contains overly restrictive distribution limitations, according to Abrams.

In addition, although the policy doesn't require

---

The provision said that each principal "shall assume editorial responsibility that will reflect the high ideals and expectations of the students, staff, and school patrons of the District."

---

materials to be submitted to the principal prior to publication, it is "strongly suggested . . . that if question exists by student editors or sponsors as to whether certain materials are in accordance with policy and procedures, that those materials be submitted to the principal for review . . ." The policy also states that if, after distribution, material that had not been submitted for prior review is found to be in violation of the policy, distribution would be stopped and disciplinary action would be taken. As such, the guidelines still empower prior restraint.

Although Hopkins still objects to some parts of the policy, she plans to "proceed as we've always done," and if the administration makes efforts to censor the paper, she will "take it from there."

In particular, Hopkins is concerned about the section of the policy linking criticism of teachers to a prediction of "disruption of normal school operation." She noted, however, that many teachers, parents, and students themselves don't think that students should have the right to make such criticisms.

Hopkins said her students took an active interest in the controversy and attended the board meetings. Although the students had "always been aware of their rights," Hopkins said, "they've really begun to appreciate the freedoms they have" and that they were "appalled that someone could . . . take away their First Amendment freedoms." ■

Illinois

## No. Illinois U. press wars continue

The student press at Northern Illinois University has been under siege for several years, but this fall, the *Northern Star's* battles have escalated and taken on several new fronts.

The press wars began two years ago when the school's Student Association voted to cut off \$30,000 in funding, 10 percent of the paper's budget, because the *Star* refused to print on the front page of every issue: "Funded by the Student Association" or "Partially Funded with Student Fees."

The paper has been able to survive without the SA funding by relying on \$7,500 in administrative subscriptions and its advertising revenues.

As the funding cutoff goes into its third year, the furor has abated. "It's kind of dead in the water right now," said *Star* adviser Jerry Thompson. Although staffers haven't given up trying to get the funding back, Thompson said they "don't really know what to do" at this point.

Thompson had considered taking legal action against the SA, but said, "In an informal pursuit, we received a mixed signal" about whether such an action would be successful. "It's still an option to hold open," he said.

Meanwhile, a controversy has been brewing over a reporter's rights to tape record public meetings at the university. On Sept. 6, Associate Provost Lida Barrett confiscated and erased a *Star* reporter's tape at a meeting of the school's Council on Instruction, saying that the recording could alter the discussion.

Her action had resulted in talk of filing a civil suit against the university and started negotiations between John Gallagher, the *Star's* attorney, and university attorney George Shur.

They hope to draft an agreement



acceptable to both groups which would control relations between the paper and the school at open meetings.

Although Barrett again prevented a reporter from taping an open meeting of the Admissions Policy and Academic Standards Committee on Sept. 18, Gallagher has since advised against suing Barrett. Cheryl Kroll, of the DeKalb News Service, noted that the statute of limitations for filing a civil suit has expired, and if the paper should reconsider suing Barrett, it would have to file a criminal suit.

In yet another controversy, approximately 60 members of the *Star* staff walked out in October in protest of what they considered unethical acts by editor Mark Bonne. Bonne had hired a political activist to write for the paper and been accused of giving free ads to the United Way Fund, of which he was a member.

Bonne and the paper's management board subsequently accused Thompson, who was at odds with the paper's management, of encouraging the strike. Thompson had

said that strikers could not be fired, according to Kroll.

During the strike, Bonne published an edition composed only of advertising and a front page editorial titled "Star Rape," which accused Thompson of taking power away from the student editors and management board.

NIU President John LaTourrette then announced that Irvan Kummerfeldt, the chairman of the journalism department, would be put in charge of all hiring and firing of *Star* staffers. Kummerfeldt then issued an ultimatum to the strikers: either return to their jobs or quit.

Although most of the staffers have since returned and Thompson has been put back in charge, the conflict still remains in that no policy for hiring and firing editors has been determined. Strikers wanted to revise the paper's policy to include a procedure for impeaching editors, while Bonne and the management board wanted the students to have more control over staffing decisions. ■

Massachusetts

# Paper's frozen funding thaws

Newspaper editors at Salem State College (Mass.) have obtained the funding for the 1984-85 school year that their student government had previously withheld.

Last April, the student government voted to freeze the *Log's* funding on the grounds that several grievances against the paper had to be addressed. Student Government President Gary Fravel said the paper was not abiding by the school's Constitution, was misusing funds, was not following a fair endorsement policy during campus political races, and was throwing out letters to the editor which differed from the staff's views.

"We froze the funds entirely on a constitutional basis," Fravel said. "The *Log* had a contract to abide by."

The final student government budget, as a block sum, then went to college President James Amsler for approval. However, neither Amsler nor the Board of Trustees were willing to sign the budget the student

ing budget.

Also on campus, administrators have lifted a writing ban on former *Log* editor T.J. Cullinane and taken him off probation in an out-of-court settlement made with the aid of American Civil Liberty Union attorneys. Cullinane had been found guilty and sentenced for allegedly libeling Fravel on the front page of the paper's pre-election issue last spring.

Cullinane's troubles began on Mar. 28, when two unidentified people stole all 5,000 copies of the *Log* from the printer. Cullinane printed 5,000 additional copies later that day, but included a front page notice which described the theft and indicated that the probable culprits were "opponents" of candidate Don Powers, whom the *Log* had endorsed.

Fravel, whose name was not mentioned in the notice, claimed he was implicated by the word "opponent" and charged Cullinane with verbal and written harassment.

---

## The Salem State Log

---

Volume 58 Number 3      Student publication of Salem State College      September 26, 1984

---

government had set forth. Because the budgets for all the clubs had to be approved as a group, all the clubs were temporarily denied funding.

In a signed editorial, current editor-in-chief John Fitzgerald applauded Amsler "for his insight and fairness in this situation. He did not take sides, but created a situation in which the students would be forced to resolve this matter."

In July, *Log* lawyers threatened to sue the student government if an acceptable agenda for discussing a resolution was not given to them by July 6. The student government did present an acceptable agenda, according to former *Log* photography editor Scott Simmons.

Simmons said *Log* lawyers agreed to meet with student government lawyers later in July with the stipulation that they "could not discuss any First Amendment issues . . . but any non-First Amendment issues were negotiable."

At the meeting, the lawyers agreed to revise the Constitution by inserting the "canons of journalism," outlining some job descriptions, and inserting a non-discrimination clause that would make the paper open to all editorial opinions, assistant editor Karen Franz said. No editorial policy issues were discussed, according to Franz.

"We were never trying to dictate editorial policy," Fravel said. "We were just trying to ensure access to students and that financial obligations were met."

The *Log* is currently running on a temporary operat-

ing budget. Fravel won his suit in the student court, and as punishment, Cullinane was put on probation and forbidden to write for any student publications.

Last fall, on the advice of friends, Cullinane met with an ACLU lawyer who said that the charges on which Cullinane had been convicted would not stand up in court. That meeting "got the wheels of justice rolling," Cullinane said.

Cullinane's attorney wrote to the school, protesting that the decision had been unfair and warning that if a settlement could not be reached, Cullinane would file a lawsuit, claiming the writing ban violated his First Amendment right to free speech.

Lawyers were subsequently able to reach a compromise which resulted in the school dropping the charges against Cullinane. All records of the writing ban and probation will be removed from Cullinane's files.

"I made some mistakes . . . hurt some feelings, but I don't think I should have been banned from writing or put on probation," Cullinane said.

Yet now that the writing ban has been lifted, Cullinane, a junior, is unsure if he will return to the paper. "I can't seem to bring myself back," he said. "It left a bad taste in my mouth."

But although the libel suit was a "tough way to learn about the judicial system," Cullinane also called it a "good experience."

"It was a hell of a fight," he said. "I learned a lot." ■

New York

# Student board, mag fight for control

Either liberty or death for a magazine will be the likely result of a dispute between the student board at the State University of New York at Buffalo and the *Current*, the alternative news magazine at the school.

One of the parties involved, Sub-Board One, Inc., oversees 24 student organizations, including the *Current*. Sub-Board, a non-profit corporation under a charter to provide educational and social activities for students, is one of the few recognized student organizations on campus, although it can bestow that status on other groups. Members of those groups thereafter become employees of Sub-Board, according to Sub-Board Chairman David Hoffman.

Some members of the *Current* staff, however, disagree. The *Current* has been involved in disputes with Sub-Board in the past, and if it accepts Sub-Board's contention that the magazine is a wholly-owned subsidiary of the corporation, the *Current* could not challenge future Sub-Board actions in student court, according to David Guy, the magazine's attorney.

The dispute results in a kind of "Catch-22" for the magazine. If *Current* staff members accept their status as Sub-Board employees, they can no longer appeal griev-

ances with Sub-Board to the student court. However, if the *Current* claims it is independent, it is no longer an official student organization, and thus no longer entitled to campus office space, equipment, accounting services, and a \$17,000 subsidy, 15 percent of its 1983-84 budget, provided by Sub-Board, Hoffman said.

*Current* editor Kate Schuelke's refusal to accept Sub-Board's contention sparked off a series of actions and allegations which eventually led both groups from the student court to the New York Supreme Court, which is the state's trial court, and back again during August and September.

The dispute began last May when Sub-Board reinstated Eric Coppelino, executive editor of the *Current*, to his position after the magazine's editorial board had voted to oust him. Coppelino had been using the magazine's equipment to produce an underground spoof sheet, violating the magazine's charter. Schuelke claimed Sub-Board had no right to void the decision of the editorial board.

Sub-Board subsequently hired and fired the *Current*'s business and advertising managers, threatened to fire Schuelke on grounds of insubordination, requested that college administrators take back keys to

the *Current*'s offices, and, ultimately, threatened to shut down the magazine, Guy said.

Members of the *Current* staff took the case to the student court. On Aug. 23, the court issued a temporary restraining order to prevent Sub-Board from taking any action against the magazine. Sub-Board refused to recognize the restraining order, Guy said. He claims that some Sub-Board members removed floppy discs for the *Current*'s computer graphic typesetting equipment and some advertising and business files from the offices.

Schuelke and the *Current* subsequently took the case to the New York Supreme Court.

In his written opinion, issued on Sept. 3, Justice Vincent E. Doyle said the matter should be resolved by the student court because it "appears to be an intramural dispute among various student organizations and groups." He also said both sides should present their arguments about jurisdiction to the student court and that the temporary restraining order issued by the court should be obeyed in the interim.

Guy said he considered Doyle's decision "a clear victory for us."

On Sept. 6, the student court

OK., HEADS WE WIN - TAILS YOU LOSE!



## ADMINISTRATION

issued its decision, reprimanding Sub-Board for playing a "political game," but concluding that it did not have the authority to settle the dispute because the case was outside its jurisdiction.

That decision vacated the temporary restraining order.

Sub-Board has since moved all the *Current's* equipment into the hallway, stopping publication, Guy said. The *Current* has been officially replaced by a new Sub-Board magazine called *Generation*. Some former *Current* staffers are now working on the new publication. The magazine is receiving the *Current's* \$17,000 subsidy and is occupying its former office space,

according to Hoffman.

In the meantime, with some "poor alternative office space, and with the use of other typesetting equipment and a new printer, the *Current* is struggling to survive," Guy said. Guy noted that putting out the paper is "an immense expense" and that its ability to survive is questionable.

Guy said the *Current* may now have to appeal to the Office of the President or take the case back to the state supreme court. Guy is unsure, however, if the *Current* could afford the expense. He is also considering steps to establish the magazine as an independent student corporation.

Hoffman also suggested the *Cur-*

*rent* establish itself as an independent corporation, as the official school newspaper has done, but noted that it is a "tremendous expense . . . [that] takes time away from putting out a news magazine."

Hoffman said the student court ruled correctly in the jurisdiction question but added that it "doesn't understand the complexity of the situation." He said the court is mistaken in calling the situation a "political game" and in thinking that Sub-Board made its decisions solely because its members didn't like the *Current*.

"We just wanted to wash our hands of the responsibility for irresponsible conduct," Hoffman said. "There is no issue of censorship here." ■

Board to control financing

# Editorial review board rejected

The administration at Fort Hays (Kan.) State University has decided not to implement a new publications review board and instead plans to heed the suggestions of protesting journalists at the university.

The proposal for the review board, announced last spring, was greeted with dismay by members of the journalism department and the staffs of the *Leader*, the school newspaper, and the *Reveille*, the school yearbook. Their main objection, according to photography instructor Jack Jackson, was that the board would be composed entirely of non-journalism members with little or no knowledge of the First Amendment and journalism problems. The board would have had the power to select and dismiss editors and to prepare and approve publication budgets.

A policy group, with Jackson as its spokesman, voiced its objections to the proposed review board by presenting an alternative proposal in late July. "We requested the board be composed of journalism faculty with room for a couple others . . . and be a fiscal review board only," Jackson said.

Both Jackson and Vice President of Student Affairs Bill Jellison, who announced the original proposal, cited poor financial management in the past as a primary reason to institute some form of a review board.

"Last year they weren't collecting some of their ad money and some buying policies weren't prudent,"

journalism department were necessary," he said.

Although the publication adviser, editor, and business manager will be included, as the group proposed, only one communications faculty member will sit on the board. Jackson said the communications department will probably be responsible for choosing the fac-

---

"It is the newspaper which is the voice of the students, and it is the students who should have the choice of what timbre, pitch and volume that voice should have."

---

Jackson said. "It was a matter of poor management or a lack of management."

Under the alternative proposal, which was approved late in the fall semester, the board will help student publications work out fiscally sound procedures.

Jackson said that the administration accepted all the policy group's suggestions except for the proposed composition of the board. "They did not feel all the members of the

ulty representative. A student government member may be included on the board as well, according to Jackson.

But although the policy has been approved, Jackson expressed his concern that it has not yet been formally implemented. When the group put together their alternative proposal, they "had hoped it would be implemented early in the fall

*continued on p. 28*



---

# Review board vetoed

Board —continued

semester," Jackson said. "But this late in the semester, it is entirely possible that [the publications] could be headed for financial problems again which would be too late to correct."

Jackson had originally presented the alternative proposal to Jellison. Although Jellison "had no problems" with it, he wanted to talk to the newspaper adviser and president before making a final decision, Jackson said.

Despite the delays, Jackson sees

the approved policy as "a step forward."

The Student Press Law Center first learned of the original proposal from *Reveille* adviser Cynthia Danner. She requested a letter of support from SPLC Director Marc Abrams to help prevent the implementation of the publications review board.

In his response, Abrams objected to the proposal because it would give the board, rather than the publications themselves, the power to select editors. "It is the newspaper which is the voice of the students, and it is the students who

should have the choice of what timbre, pitch and volume that voice should have," Abrams wrote.

In addition, the proposal would require publications to avoid "stories which offend good taste, reflect unnecessarily on the standing of the university, or unjustly condemn an individual." This policy, if adopted by anyone other than the students themselves, would not hold up to constitutional scrutiny, according to Abrams.

Danner said the students had been "in an uproar" about the proposal. ■

South Dakota

# Paper retains funding, adviser

The staff of the *Exponent*, the Northern (S.D.) State College student newspaper, no longer has to worry about plans to freeze the paper's funding or to remove their adviser from his position.

A long overdue meeting between David L. Newquist, the paper's adviser, and college President Terence C. Brown has removed the threat of a funding freeze, reinstated Newquist to his position, improved the future outlook for the paper, and saved the college from a costly lawsuit.

The controversy began in December 1983, when the school's Student Association voted to freeze the paper's funding for the spring semester and urged the Student Activity Committee to do the same. In his recommendation, Student Association President Mike McCafferty cited personnel problems which had affected the quality of the paper, the negative tone of editorials, inaccurate quotes and information, typographical errors, inadequate coverage of campus events and state issues, and the inclusion of "inappropriate material" as reasons for the proposed funding freeze.

McCafferty also said that by stopping publication, the *Exponent's* impact on the campus could be measured. "If students miss it that much, hopefully it will stimulate some of them to participate in its production," he said. "If it is not missed, we will be saving the students approximately \$30,000 a year."

On Dec. 13, 1983, the Student Activity Committee also voted to recommend that funding be frozen. In an editorial, *Exponent* staffers complained that the vote had occurred "without providing any opportunity for a fair hearing at which the staff could come prepared to respond to specific allegations." They also said they had never been informed of the proposed freeze until after the Student Association issued its recommendation to the Student Activity Committee.

"I have come to believe the entire affair has been orchestrated by administrators and faculty who feel they are too much under scrutiny by our current staff members," Newquist said last February. "That's the only explanation I have as to why the alleged complaints have never been brought directly to the editors or anyone connected with the student media."

Later in December, Brown appointed an *ad hoc* committee to study the issue. Brown told the committee its charge was to "forge policies and procedures that will guarantee First Amendment rights for the student press and assure with equal vigor the responsibility of that press to the students who support it."

In its report, released in April, the *ad hoc* committee noted that courts have held that "public institutions may not intervene directly in the affairs of a student publication to prevent the dissemination of constitutionally protected material, nor may they intervene

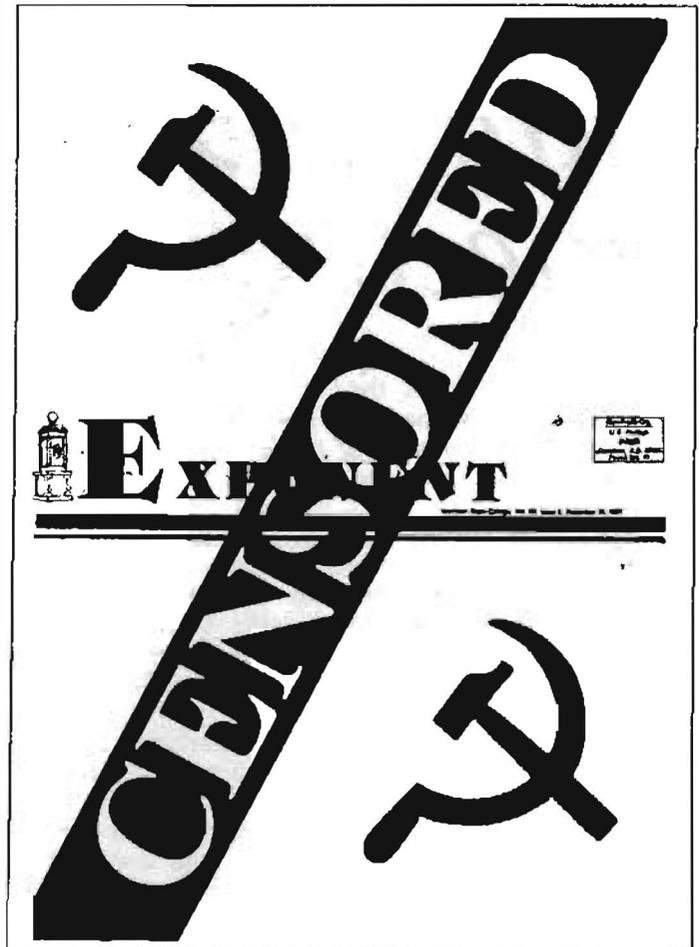
indirectly to control or to sanction the student press." Thus a content-based funding freeze would not stand up in court.

The committee recommended that the school's media board only provide guidance on operational matters and personnel disputes and that programs be devised to encourage more student participation in the media. "It was roundly acknowledged that the shortcomings of the *Exponent* stem from inadequate levels of staffing," the report said.

Brown subsequently wrote a letter to the student senate, saying he would not withhold funding, Newquist said.

At about the same time, Newquist found he had been assigned a full class load for the 1984-85 academic year, eliminating the three hours of released time per semester designated for advising student publications. When he received his contract in July, the special conditions specifying his duties as adviser had also been removed from the document.

*continued on p.30*



Exponent —continued

"It's obvious it happened because I was not carrying out the administration's wishes," Newquist said.

On Sept. 24, Newquist filed a formal grievance with the president. Newquist claimed the removal from his position as adviser altered a contractually binding assignment without consultation, that administrators failed to provide an opportunity to review and discuss Newquist's assignment with him, that administrators

Newquist called the dismissal "the culmination of a pattern of obstruction, exclusion and professional defamation."

failed to use specified procedures in dismissing him from a duty specified on his tenure contract, and that the action violated his academic freedom.

In his grievance, Newquist called the dismissal "the culmination of a pattern of obstruction, exclusion, and professional defamation which can be construed only as

a reprisal for insisting that standards of academic process be maintained and that First Amendment rights be guarded in dealing with student journalists." He also said that for two years administrators had chosen to ignore information and requests for consultation.

Newquist resolved his grievance in a long meeting with Brown. The president "had been given some bad information from other administrators" and hadn't realized that many of the issues involved First Amendment concerns, Newquist said. "He was anxious to have [the grievance] not go off campus."

During the meeting, Newquist also addressed some of the recommendations issued by the *ad hoc* committee. In addition to reinstating Newquist to an advisory role, Brown agreed "to carry forward plans to expand the curriculum support for the student publications by offering a minor in journalism and public communications, to reorganize the advisory board, and to bring the main advisory function under the academic program instead of the student services program," Newquist said.

Newquist had planned to take administrators to court if they were not willing to make a settlement. Instead, Newquist said he will now be watching the progress carefully and do all he can to assure the carrying forward of the agreement. ■

Connecticut and Virginia disagree

# Are student government meetings open?

In two recent decisions, the Connecticut Freedom of Information Commission and the Virginia attorney general have taken opposing stands as to whether student government meetings are subject to the Open Records Act.

College student governments are not public agencies, the Connecticut Freedom of Information Commission ruled this fall. The Commission denied a student newspaper editor's complaint that the University of Connecticut at Waterbury's Associated Student Government (ASG) violated state FOI laws by voting on a funding issue by secret paper ballot.

Paul Parker, former editor of the Waterbury paper, argued that because ASG received student fee money, collected by a state university, it was a public agency.

The FOI Commission ruled, however, that ASG does not receive direct government funding, and does not perform a government function, and therefore is not considered a state agency. Only state agencies are

subject to FOI laws.

The commission did, however, strongly recommend that ASG follow the FOI provisions to promote open government.

The paper ballot about which Parker filed the complaint concerned the funding of a student literary magazine.

In Virginia, however, the state's attorney general has ruled that student government meetings at Old Dominion University are subject to the state's FOI laws.

"Although a state university's student senate is not a governmental agency in the traditional sense, it does fall within the definition established by the General Assembly" because it uses public funds, State Attorney General Gerald Baliles said in the opinion.

The staff of the *Mace & Crow*, the school's student paper, had filed a complaint after the student senate closed a meeting last October and secretly elected a new senator. ■



Cover story:

# Obscenity:

*An analysis of court rulings and their effects on the student press*

Pinpointing a definition of obscenity has proven to be one of the most cumbersome tasks ever set before the Supreme Court. Over the years the Court has come up with a number of tests for obscenity, each a clarification or revision of the previous one. But interestingly, 27 years after the Court's first attempt at formulating a test, the constitutional problem of defining obscenity remains largely unsolved.

Material deemed obscene by American courts under such tests is said to fall outside the protection of the First Amendment, in spite of the Amendment's apparent absolute command that "Congress shall make no law . . . abridging the freedom of speech, or of the press."

## The Roth Test

The U.S. Supreme Court's first attempt at establishing a standard of obscenity came back in 1957 in the landmark case, *Roth v. U.S.*,

354 U.S. 476 (1957). The *Roth* test explicitly affirmed the right of the states to regulate obscenity but significantly failed to specify whose community standards (national, state, or local) were to be applied. The *Roth* test stated that for material to be obscene it must be established that "to the average

## I-LEGAL ANALYSIS

person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest."

As was clarified in subsequent rulings, the term "average person" excluded a particularly susceptible or sensitive person or a totally

insensitive person. The term "prurient interest" was defined as relating to material "having a tendency to excite lustful thoughts." Also important was consideration of the work as a whole. Such phrases were in accordance with the Court's notion that judging obscenity by the effect of isolated passages upon the most susceptible person is inappropriate.

One problem with the *Roth* decision was that nowhere in the opinion did the court adequately stress the notion that First Amendment values — such as literary, scientific, political and artistic merit — could deter a court from finding a work obscene *in spite of* isolated passages appealing to prurient interest.

One of the problems often encountered by the courts in applying *Roth* was well exemplified by *Jenkins v. Georgia*, 418 U.S. 153 (1974), when the Supreme Court held that it lacked the power to upset the Georgia Supreme Court

## OBSCENITY

verdict that the movie *Carnal Knowledge* was obscene. Confusion over whose "community standards" were to apply was clearly demonstrated in the Supreme Court's conclusion that while the film was not "patently offensive," it may still have been truly offensive to the community of Albany, Ga., where the movie was to be shown. However offensive the movie was to the people of Albany — which the Supreme Court admitted it had not the means to answer — the fact remained that the film obviously had serious artistic and literary merit. Yet if *Carnal Knowledge* could be suppressed by the courts, it followed that almost any recent movie could suffer the same fate.

The difficulty inherent in applying the *Roth* formula was evidenced in the decade after *Roth* by 13 Supreme Court obscenity cases yielding 55 separate opinions. Nowhere is the problem more candidly expressed than in the oft-quoted attempt by Justice Potter Stewart to describe obscenity: "I shall not today attempt further to define the kinds of material I understand to be ["hard-core pornography"], and perhaps I could never succeed in intelligibly doing so. But I know it when I see it." *Jacobellis v. Ohio*, 378 U.S. 184, at 197 (1964).

### The Memoirs Standard

The ambiguity of the *Roth* decision led to repeated attempts at clarifying the concept of obscenity. An important case in this development, *John Cleland's "Memoirs of a Woman of Pleasure" v. Massachusetts*, 383 U.S. 413 (1966), led the Supreme Court to formulate a new test embellishing rather than refuting the *Roth* test. In the case, a book, commonly known as *Fanny Hill*, which related the adventures of a young girl who became a prostitute, was held by the Massachusetts state court as obscene. In overturning the lower court conviction, the Supreme Court developed a new, three-pronged test for obscenity stating that:

- a) the dominant theme of the material as a whole must appeal to prurient interest in sex;
- b) the material must be patently offensive because it affronts

contemporary community standards relating to the description or representation of sexual matters; and

- c) the material must be utterly without redeeming social value.

### Students don't shed their constitutional rights at the schoolhouse gate.

Because a movie or magazine had to meet all three requirements before it could be proscribed as obscene, the *Memoirs* standard made sustaining obscenity convictions more difficult. The most important (and controversial) aspect of the *Memoirs* test was the part requiring obscenity to be "utterly without redeeming social value." This "social value" factor saved the book at issue along with many other works candidly dealing with sexual matters which were brought before the Court in later cases. This factor made it nearly impossible for a court to rule anything obscene since nearly every work can be found to have at least *some* social value.

The result of such lenient standards for obscenity was increased availability of pornography. This led to increased pressure on politicians to "halt the rising tide of smut" and what resulted was a campaign launched against the moral pollution created by "smut peddlers."

The Court answered these pleas with its 1973 ruling in *Miller v. California*, 413 U.S. 15 (1973), making it significantly easier for prosecutors to convict pornographers. Rather than repudiating the *Roth* and *Memoirs* tests, the *Miller* test elaborated and refined them. The test states:

- a) whether "the average person applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest;
- b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the

applicable state law; and

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

The term "patently offensive" has been equated by the Court with "hard-core" sexual conduct, and "contemporary community standards" has been defined to mean local or statewide community standards, but not national standards.<sup>1</sup>

The most significant change in the *Miller* test is from "utterly without redeeming social value" to "lacking in serious merit," [emphasis added]. While this alteration unmistakably weighs the scales away from the side of First Amendment values, some have argued that the reduced protection afforded by the *Miller* balance is defensible, given that pornography is not political speech in any meaningful sense.<sup>2</sup>

The definition of obscenity announced in *Miller* still holds today as the law of the land in both state and federal jurisdictions. As was already mentioned in *Jenkins*, applying local community standards to material distributed nationally caused great confusion. More unsophisticated communities could find certain materials obscene which other communities would not.

### Student Press Obscenity

In the student press, true obscenity has been rare. Material that is vulgar or otherwise "indecent," but not obscene, has been an issue in reported cases involving student publications and the broadcast media more than any other category of content. Both vulgarity and obscenity have often been targets of sanctions by high school and college administrators.

Nothing exists to prevent school officials from banning obscenity, as long as they do so with legally adequate procedures. In all but a very few cases, however, courts have found attempts by principals and administrators to restrain and punish unconstitutional. Both the Supreme Court and lower courts have used the obscenity law outlined in *Miller* as the chief criterion in measuring the legality of vulgar words and graphics in student press cases.

## OBSCENITY

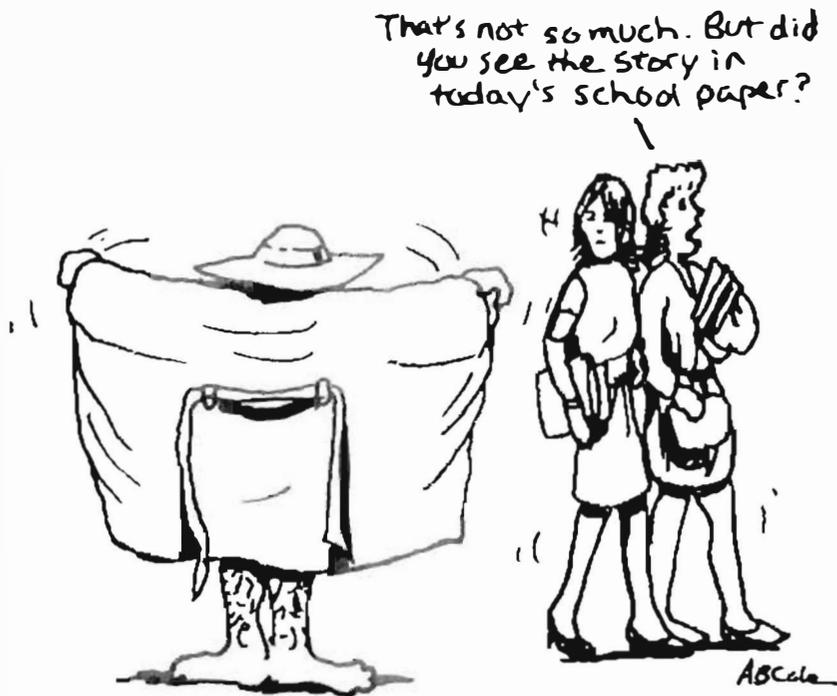
The most important student press case to date is the landmark Supreme Court decision, *Tinker v. Des Moines*, 89 S. Ct. 733 (1969). Under *Tinker*, the court recognized the right of all students to First Amendment protections, including those of free speech, press, and expression. This decision affirmed the right of a public high school student to wear a black arm band to school in protest of the continuation of the Vietnam War.

vulgarity for sexual intercourse — formerly recognized as the worst “obscenity” — is constitutionally protected under normal circumstances. This decision reversed the conviction of Paul Cohen, who wore a jacket bearing the words “Fuck the Draft” through a county courthouse within view of women and children.

For material to be ruled obscene, the court pointed out, it must be erotic, and as used on Cohen’s

### Broadcast Regulations

In the broadcast media, it is not always necessary for material to be erotic to be judged obscene. In 1973, WBAI-FM, a New York radio station owned and operated by the Pacifica Foundation, presented a discussion program on “The use of language in our society.” As part of the program, a 12-minute monologue by comic George Carlin entitled “Filthy Words” was aired. The



“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” said Justice Fortas, who delivered the 1969 opinion. Fortas’ statement was not absolute, however, as the Court added an independent justification for interference with First Amendment rights: a threat of substantial or material disruption to order within the schools from certain types of expression with the warning that “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.”

The principal ruling asserting that profanity is not obscene or punishable is the Supreme Court’s ruling in *Cohen v. California*, 403 U.S. 15 (1971), which held that the

jacket, the word was not erotic. The Court stated, “It cannot be plausibly maintained that this vulgar allusion to the Selective Service System would conjure up such psychic stimulation in anyone likely to be confronted with Cohen’s crudely defaced jacket.” Sometimes, the Court added, emotion is the most important part of the message sought to be communicated.<sup>4</sup>

A linguistics professor testified in the *Cohen* trial that the word “fuck” was not obscene in that context since it had not appealed to the prurient interest. He cited another phrase in which the word appears — “High School is fucked” — to demonstrate the word refers not to sex but instead means that the school “is in bad shape . . . in a pretty lousy state of affairs.”<sup>5</sup>

recording was a satirical mocking of the Federal Communications Commission’s prohibition against the use of “seven filthy words” — “words you couldn’t say” on the airwaves.” Carlin pronounces each word in turn, comments on them, and repeats them over and over in a variety of everyday idioms.

The record was played at 2 p.m. on a Tuesday afternoon. The station received no complaints on the broadcast until several weeks later, when a man wrote the FCC complaining that he had heard the program while driving with his young son.

The station management replied that the monologue had been played during a program about “contemporary society’s attitude toward language” and had been preceded with a warning that it

## OBSCEITY

contained "sensitive language" which some listeners might find offensive.

The FCC finds power to regulate indecent broadcasting in Section 1464 of Title 18 of the United States Code which states, "whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

The FCC characterized the concept of "indecent" as being "intimately connected with the exposure of children to language that describes, in patently offensive terms as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience." 56 F.C.C. 2d, at 98.

The Supreme Court ruled in 1978 that the FCC was warranted in determining the broadcast as patently offensive and "indecent," and therefore could be prohibited by 18 U.S.C. 1464.

First Amendment defenders opposed to such a ruling will argue that the full message of the political protester and the moral satirist is not accurately expressed in the words "the draft is evil" or "attitudes towards obscene words are silly."

### Printed obscenity

In one student press case, *Scoville v. Board of Education of Joliet Township*, 425 F.2d 10, 14 (1970), the Seventh Circuit said of the statement "oral sex may prevent tooth decay," simply that it was "shocking but legally accepted." In other cases, the holdings have been similar.

In *Vail v. Board of Education*, 35 F. Supp. 592 (D.N.H. 1973), for example, the Portsmouth school board objected to the use of profanity in the *Strawberry Grenade*, an unofficial student newspaper, and prohibited its distribution. The court ruled that suppression of the paper was unconstitutional and stated that the sort of profanity and vulgarities which appear in the magazine "however crude they may seem, do not compel a finding that the material is obscene. The words

that appear in that issue are not used to appeal to prurient sexual interests."

Likewise, in *Koppel v. Levine*, 347 F. Supp. 456 (E.D.N.Y. 1972), a high school principal seized the official student literary magazine containing several "four-letter words" and a description of a movie scene where a couple fell into bed because he felt it was obscene. The court, however, ruled the seizure unconstitutional and pointed

out that "the magazine contained no extended narrative tending to excite sexual desires or constituting a predominant appeal to prurient interest. The dialogue was the kind heard repeatedly by those who walk the streets of our cities, use public conveyances and deal with youth in an open manner."

## The dissemination of ideas on a state university campus may not be shut off in the name alone of "conventions of decency."

out that "the magazine contained no extended narrative tending to excite sexual desires or constituting a predominant appeal to prurient interest. The dialogue was the kind heard repeatedly by those who walk the streets of our cities, use public conveyances and deal with youth in an open manner."

In *Frasca v. Andrews*, 463 F. Supp. 1043 (E.D.N.Y. 1979), another high school principal seized the school newspaper and was sued by the editor and assistant editor for violating their First Amendment rights. The issue the principal sought to suppress contained a letter signed "Pissed Off" by the school lacrosse team and read: "We . . . would like to know why you do not have any sports articles in the *Chieftan*. We would like a formal apology in public or else we will kick your greasy ass." The letter was purportedly indecent and vulgar in using "ass" and "pissed off," the court ruled, but nevertheless "falls far short of the constitutional standard of obscenity."



Several reasons account for court protection of profanity in the student press.<sup>6</sup> In the case of newspapers, which are collections of a wide variety of items, courts are divided as to whether the word "whole" refers to the paper or the story. But regardless of which doctrine is applied, few vulgarities justify restraint or punishment.

A second reason for such protec-

tion has been that other publications containing the same language have been available on campus to students. The courts have usually held that the punishment of student publications or censorship for printing sensitive words or graphics constitutes a denial of equal protection of the law, guaranteed by the 14th Amendment.

Said an analyst of student obscenity cases, "equal protection is a formidable barrier against

censorship of vulgarities because an attempt to avoid it would require a purge of libraries and bookstores, and that would mean disposing of much other constitutionally protected matter to get rid of a few vulgarities."

More restrictive regulation of sex-oriented materials for minors was upheld by the Supreme Court in *Ginsberg v. New York*, 390 U.S. 629 (1968). Sam Ginsberg, owner of Sam's Stationary and Luncheonette in Bellmore, N.Y., was convicted of selling "girlie" magazines to a 16-year-old boy. *Ginsberg* upheld a state statute banning as obscene materials for persons under 17 that were not obscene for adults. To convict Ginsberg, the trial court applied a modified version of the tests approved in *Memoirs* so as to apply to minors. Despite modifications of the *Memoirs* test in the subsequent *Miller* ruling for adults, the *Memoirs* version still holds as the valid test for minors. The modified version thus defines obscenity as any description or representation of nudity or sexual conduct which:

- a) predominantly appeals to the prurient, shameful, or morbid interest of minors;
  - b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - c) is utterly without redeeming social importance for minors.
- Very few obscenity cases have

## OBSCENITY

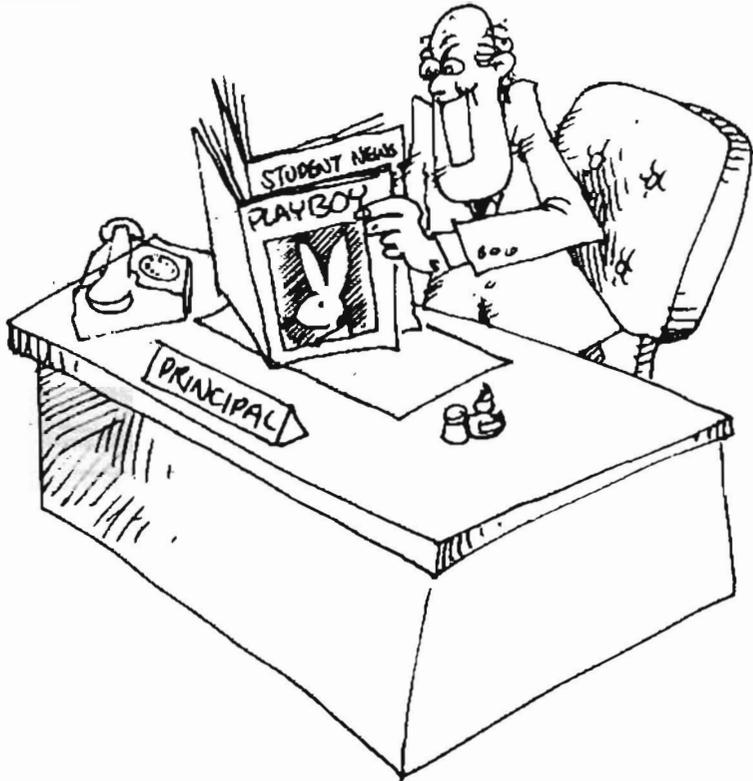
arisen at the college level. One of the most significant is *Papish v. Board of Curators*, 410 U.S. 667 (1973), where a student at the University of Missouri was expelled for distributing a student newspaper which school officials felt was obscene. The paper contained a political cartoon depicting policemen raping the Statue of Liberty and the Goddess of Justice, bearing the caption: "With Liberty and Justice for All." A story in the same issue was headlined, "Motherfucker Acquitted," and discussed the trial and acquittal of the leader of an organization called "The Motherfuckers." The Supreme Court held that the student's expulsion was unconstitutional and that neither the cartoon nor the article was obscene. The Court also said "the mere dissemination of ideas — no matter how offensive to good taste — on a state university campus may not be shut off in the name alone of 'conventions of decency.'"

**"A state university does not have the status of a private publisher with the right to choose what the paper can or cannot publish."**

Besides *Papish*, among the few college cases is one where the University of Mississippi chancellor held up publication of a campus literary magazine containing a story about a young man experiencing frustration which included use of two common vulgarities. The Fifth Circuit Court of Appeals said in *Bazaar v. Fortune*, 476 F.2d 570 (1970), that a state university does not have the status of a private publisher with the right to choose what the paper can or cannot publish, and that the vulgarities were not used in a sexual sense, nor were they inherently obscene.

### The Obscenity Outlook

It seems unlikely that, in the future, we will see increased num-



bers of student press decisions which, using the *Miller* test, find material obscene. This assumes that the scholastic press will continue to print the same sort of material it prints today. While vulgarities are frequently printed, student newspapers seldomly print patently offensive erotic material and even

more rarely engage in pandering (trying to titillate the prurient interest as a means to stimulate sales). As for printing profanity, it is doubtful that decisions even under *Miller* will often hold such words to cause or threaten such a degree of disruption to justify suppression and/or censorship.

### Footnotes

1. Schopler, "Supreme Court's Development, since *Roth v. United States*, of Standards and Principles Determining Concept of Obscenity in Context of Right of Free Speech and Press," 41 L. Ed.2d 1257, 1265 (1974).
2. Heck, "Justice Brennan and the Development of Obscenity Policy by the Supreme Court," 18

- Cal W. L. Rev 410-41 (1982).
3. 403 U.S. at 20 (1971).
4. *Id.*, at 26.
5. 333 F. Supp. at 1165 (1971).
6. Nichols, "Vulgarity and Obscenity in the Student Press," 10 *Journal of Law and Education* (April 1981), p. 211.
7. *Id.*



# Open meetings: *Can students, journalists enforce the laws?*

A representative government is dependent upon an informed electorate. This principle shaped our constitution at the nation's founding and is alive today in statute books across the country. Each of the 50 states plus the District of Columbia has an open meetings or "sunshine" law that gives the public a legal right of access to the proceedings of governmental bodies. Journalists, both student and professional, are finding that these statutes are an invaluable tool in helping to keep their audiences informed.

Open meetings laws vary from state to state on thousands of details. However, a statute's ultimate value to student journalists centers on two issues: 1) are student journalists specifically able to take advantage of and enforce the statute, and 2) does the law open up the meetings that high school and college students are most interested in attending.

## Enforcing the statute

A student journalist's ability to enforce the provisions of a statute will determine a law's real value. Nearly all states charge the attorney general with enforcing the statutes. But an open meetings law is most effective when a member of the public is allowed to take action. The laws in Alaska, Hawaii, Montana, North Dakota, Oklahoma, South Dakota and Wyoming give no private cause of action against groups that violate the open meeting statutes. Of the states that do allow individuals to seek enforcement in the courts, 19

require that the complaining party be a citizen, registered voter or taxpayer of the state.<sup>1</sup> Although the constitutionality of treating citizens and non-citizens differently when enforcing the law is questionable, a court might reject the claim of an out-of-state college student because she was not a citizen or taxpayer. The statutes in Massachusetts and New Mexico make private enforcement even more difficult. In Massachusetts, at least three registered voters must file a complaint, and in New Mexico, five or more citizens must petition



the court.<sup>2</sup>

A legal right of access to government meetings would be of little use if no one knows when the meetings are going to occur. In response to this concern, many of the state statutes contain notice provisions. A problem for student journalists arises when these provisions limit the members of the media that are entitled to notice. In Indiana, for example, notice is to be provided to all "news media." But the statute defines "news media" as all newspapers qualified to receive legal advertisements, all wire services and all licensed commercial or public

## LEGAL ANALYSIS

radio or television stations.<sup>3</sup> Because a student newspaper would usually not be qualified to receive legal advertisements, the statute suggests that a governmental body would not have to give it notice.

Similar distinctions are made concerning issues other than notice. In Wyoming, only "duly accredited" members of the press or other news media are allowed to

---

**Thirty-one states have said they will allow at least unobtrusive sound recording, and many allow live voice and sound broadcasting.**

---

remain in a meeting room that has been cleared because of a disturbance.<sup>4</sup> Oregon allows "representatives of the news media" to attend certain executive sessions of the public bodies while requiring that they keep certain information undisclosed. The state attorney general has said that this provision applies to a student reporter at a school board meeting just as it does to a professional reporter.<sup>5</sup>

Student journalists often wonder whether they can tape record or photograph an open meeting. Thirty-one states have said they will allow at least unobtrusive sound recording, and many allow live voice and sound broadcasting. However, at least one state has said that open meetings do not imply a right to record or broadcast. The Virginia Attorney General has said that counties and cities can adopt their own rules regarding these actions.<sup>6</sup>

### Which meetings are covered

Nearly all open meetings statutes apply to the top governing body of a high school or college. However, the meetings of subordinate groups, such as faculty or student councils, are often of equal or greater interest to the student journalist. Certain statutory language often will encompass many of these bodies.

"Committee," "delegated power" and "advisory authority" are important words to look for. Statutes that expressly cover subunits with power delegated from or advisory to their parent group will usually open the meetings of a faculty body or other committee that advises a school system governing board.

---

**Provisions that open meetings of any body that is supported by or spends the money of the state or its political subdivisions will often cover student governments.**

---

Washington's open meetings statute, for example, states that all meetings of the governing body of a public agency must be open to the public. "Public agency" is defined to include a state educational institution and its subagencies that are created by or pursuant to the statute, and "governing body" means the policy- or rule-making body of the public agency. The state supreme court has determined that because the University of Washington School of Law is a public agency, meetings of its faculty as the governing body of that

## AWARD

### Scholastic Press Freedom Award



In November, three young women who have been fighting their old high school for over a year for the right to publish articles relevant to the lives of their fellow students were awarded the first Scholastic Press Freedom Award.

Cathy Kuhlmeier, Leanne Tippet and Leslie Smart continued to fight for what they believed in—all the way to federal court—even though they had graduated from high school.

Each year, the Scholastic Press Freedom Award will be given to students or student media who, like Cathy, Leanne and Leslie, fight for the First Amendment rights of students. The award is given jointly by the Student Press Law Center and the National Scholastic Press Association/Associated Collegiate Press.

Nominees for the award should be a responsible representation of press freedom through writing or actions and the ability to raise difficult and necessary issues in news coverage.

Nominations of any person, student newspaper, student magazine, yearbook or student radio or television station will be accepted. Nominations should clearly explain why the nominee deserves the Scholastic Press Freedom Award.

Nominations must be received by August 1 of each year to be considered for that year's award.

Send nominations to:  
**Scholastic Press Freedom Award**  
**Student Press Law Center**  
**800 18th Street, N.W.**  
**Room 300**  
**Washington, D.C. 20006**

## LEGAL ANALYSIS

### Meetings —continued

agency are subject to the act.<sup>7</sup> The court held that "pursuant to" does not require direct authorization of a public agency in a statute, but rather only an enabling provision that implies such an agency could be created. It also said that a governing body is that body which actually makes the policy and rules of the agency, even though a higher agency has the rarely exercised capability to overrule such decisions.

Provisions that open the meetings of any body that is supported by or spends the money of the state or its political subdivisions will often cover student governments. Open meetings laws cover student senates and similar bodies in California, Louisiana, New York, Oklahoma, Virginia and Washington, but they have been specifically held not covered in Connecticut, Indiana and Kentucky. The Nevada statute requires the University of Nevada to establish its own open meetings rules for the student government that are equivalent to the state rules.<sup>8</sup>

### Obscenity in statutory language

Virtually every meeting that is made public by an open meetings law can also be closed by another provision of the same statute. Student journalists should be on the alert for the privacy exceptions that exist in many state's laws. Individual student discipline hearings or faculty evaluations will often be exempted because of these provisions. Those statutes that require the presence of a quorum before a meeting becomes public will also foil the opportunity to attend many meetings.

Imprecise statutory language can be translated in many ways. Court and state attorney general opinions are an integral step in making use of the open meeting

**Virtually every meeting that is made public by an open meetings law can be closed by another provision of the same statute.**

statutes. Although in most states attorney general opinions are not binding law, they do give a persuasive interpretation for the courts to follow.

In short, very few areas of the open meetings laws are without some obscurity. The law can change from month to month as new opinions are issued and the state legislatures review and alter their handiwork. A student journalist would be well advised to check his state's law frequently to determine what use it can be to the student publication.

### FOOTNOTES

1. Ark., Colo., Del., Fla., Ga., Idaho, Ill., Ind., Iowa, Ky., Mass., Miss., Mo., Neb., N.M., R.I., S.C., Tenn., W.Va.
2. Mass. Gen Laws Ann. ch. 301, sec. 11A1/2, ch. 34, sec. 9G, ch. 39, sec. 23B (1983 & Supp. 1984); N.M. Stat. Ann. sec. 10-15-3 (1983).
3. Ind. Code Ann. secs. 5-14-1.5-2, 5-14-1.5-5 (Burns 1983 & Supp. 1984).
4. Wyo. Stat. Ann. sec 16-4-406 (1982).
5. 39 Op. Att'y Gen. No. 7735 (Or. 1979).
6. Op. Att'y Gen. No. 457 (Va. 1973-74).
7. *Cathcart v. Anderson*, 85 Wash.2d 102, 530 P.2d 313 (1973).
8. Nev. Rev. Stat. sec. 241.040(7) (1983). ■

## FRIENDS OF SPLC

# Thanks to Friends of SPLC

SPLC gratefully acknowledges the generous support of the following institutions and people, without whom there might not be an SPLC, and without whose support defending the First Amendment rights of the student press would be a far more difficult task.

(July — December)

### BENEFACTORS (\$100 or more)

Journalism Education Association  
Washington Post (DC)  
AEJMC Newspaper Division  
Society of Collegiate Journalists

New York Times Co. Foundation (NY)  
Southern Methodist University Students' Publishing Co. (TX)  
Temple University School of Communications and Theatre (PA)  
Iowa High School Press Association (IA)  
The Newspaper Guild  
Idaho Journalism Advisers Association (ID)

### SUPPORTERS (\$50 to \$99)

Mary Ann Wymore (TX)  
Rebecca White & Glen Robinson (KS)  
Iowa City HS *Little Hawk* (IA)

Women in Communications — DC Chapter (DC)  
Stephen F. Austin HS *Maroon & Comet* (TX)  
Oregon Journalism Education Association (OR)  
Dorothy Bowles (KS)

### CONTRIBUTORS (\$25 to \$49)

Frank Kuenh (MT)  
Doug Warne (WA)  
Grosse Point South HS (MI)  
University of Minnesota (MN)  
David Weisberger (OH)  
Colorado High School Press Association (CO)  
Beverly Arrendell (TX)  
John Cutsinger (TX)  
Jackie McCallum (IL)

# What you don't know *can* hurt you...



## Your subscription supports the work of the Student Press Law Center

The Student Press Law Center is the only national organization devoted exclusively to protecting the First Amendment rights of this nation's high school and college journalists.

The Center serves as a national legal aid agency providing legal assistance and information to students and faculty advisers experiencing censorship or other legal problems.

Three times a year (Winter, Spring, and Fall), the Center publishes a comprehensive Report summarizing current controversies over student press rights. In addition, the Reports explain and analyze complex legal issues most often confronted by student journalists. Major court and legislative actions are highlighted.

Defending your rights isn't cheap. Subscription dollars form a large part of our budget.

Your subscription price will help us continue to serve as the national advocate for the rights of student journalists. Other contributions are tax-deductible.

### Note:

Beginning with Vol. 6 No. III, all members of the Journalism Education Association will be sent the SPLC Report as part of their JEA membership.

### Please enter my subscription to SPLC Reports:

1 year at \$10.00

Along with this blank I have enclosed a check or money order payable to:

Student Press Law Center  
800 18th St., NW  
Suite 300  
Washington, DC 20006

Name \_\_\_\_\_ (Please print)

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Please begin my subscription with Report \_\_\_\_\_

I wish to support the work of the Student Press Law Center with a contribution in the following amount: \_\_\_\_\_

The SPLC is interested in the titles or positions of its individual subscribers: \_\_\_\_\_  
title/position

**All orders must be pre-paid.**

**SPLC**

**STUDENT PRESS LAW CENTER**

Room 300 : 800 18th Street NW : Washington, D.C. 20006

non-profit org.  
us postage  
paid  
washington, dc  
permit no 4702

---

**ATTENTION: Student Publication**