student press law center

report

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The SPLC Report

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

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October 13: the student press's turn

Hazelwood case is heard by the Supreme Court

October 13 was not an ordinary Tuesday afternoon — at least, not for the people it brought to the Supreme Court building. Outside, some 2,000 gay and lesbian rights activists participated in peaceful demonstrations, civil disobedience and protests on the building steps. Inside, a more formal protest was being staged.

The protest was against the censorship of a high school publication. *Hazelwood School District v. Kuhlmeier* became the first school-sponsored student newspaper First Amendment case ever to be heard by the Supreme Court.

The case did not arrive at the capital overnight. Rather, it took four years of decisions, litigation and more decisions to bring it before the nation's highest court.

The first decision was made by three students at Hazelwood East High School, in Hazelwood, Mo., to run articles about pregnancy, birth control, runaways, divorce and delinquency in their school newspaper back in the spring of 1983. Information for the articles was collected through questionnaires and interviews, which were distributed to and completed by Hazelwood students, including pregnant students and students whose parents were divorced. The subjects were aware that the information would be used for the *Spectrum*, and gave their consent. Students were also given pseudonymns.

The deadline for the issue of the *Spectrum* in which these articles were to appear was set for May. But the day before the paper was to be printed, the newly appointed adviser, Howard Emerson, took the proofs to school principal Robert E. Reynolds for his approval. Reynolds ordered Emerson to cut the spread from the newspaper, changing it from a 6-page paper to a 4-page one. None of the *Spectrum* staff members were notified of the changes.

Reynolds claimed that the articles were deleted because he thought they were too "sensitive" for a high school student audience, and should not be in a student newspaper. He later raised concerns that although some of the subjects were given pseudonymns or were unnamed, they still might be identifiable to other students. Reynolds also claimed that the articles did not tell the parents' sides of the story.

With the help of the American Civil Liberties Union, *Spectrum* layout editor Cathy Kuhlmeier, and reporters Leslie Smart and Lee Ann Tippett filed a lawsuit in U.S. District Court for the Eastern District of Missouri in mid-August. The lawsuit asked for a mandatory injunction requiring the school district to permit publication of the censored stories and a declaration that the school district had infringed upon the students' First Amendment rights.

For a third time, the arguments were to center around whether the student journalists were entitled to First Amendment protection despite the fact that the newspaper was produced as part of a class in the school curriculum.

Attorneys Leslie Edwards and Steve Miller represented the students in court on November 26, 1984. Miller argued that the student newspaper was a public forum for student expression and that the school administrators did not have the authority to censor materials that were not obscene, libelous or potentially disruptive to classroom activities.

The school district countered his argument, saying that the students who produced the publication were enrolled in a journalism class and that the class was part of the school's teaching process. Textbooks had been issued to the students to teach journalistic concepts, and grades and credit were also awarded upon completion of the class.

In May of 1985, the court handed down a ruling in favor of the school district, which said that the *Spectrum* was an integral part of the school's curriculum and not a public forum; therefore, it was not entitled to extensive First Amendment protection.

That ruling was appealed by the students who brought the case back to court on January 16, 1987. Again, the arguments centered around whether the *Spectrum* was a public forum for student expression.

On July 7, 1986, the U.S. Court of Appeals for the Eighth Circuit reversed the district court's decision and decided in favor of the students.

"Spectrum was not just a class exercise in which students learned to prepare papers and hone writing skills, it was a public forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the United States Constitution and their state constitution," it said.

However, that decision did not settle the controversy. In November 1986, the Hazelwood School District asked the U.S. Supreme Court to review the appellate court's decision. On January 20, 1987, the U.S. Supreme Court granted the case a hearing.

For a third time, the arguments were to center around whether the student journalists were entitled to First Amendment protection despite the fact that the newspaper was produced as part of a class in the school curriculum. Also to be argued was whether school authorities could act to prevent invasions of the rights of others by a school-sponsored newspaper only when failure to do so would subject the school to liability.

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When the time came for the court hearing on October 13, the students did not enter the court alone. Thirty-two organizations of civil rights activists, professional journalists and journalism educators, including the Student Press Law Center, had filed briefs in support of them, and representatives from many of those organizations were present at the hearing. Kuhlmeier was unable to attend.

The hearing opened with a presentation from the school district's attorney, Robert P. Baine, who repeatedly stressed that the *Spectrum* was produced as a part of Hazelwood East's Publications II class. He told the Court that since the articles were part of a lab exercise and the newspaper was not intended to be a public forum for student expression, the principal had the power to censor.

Baine had barely begun in his argument when he was interrupted by questions from the Justices.

Of Baine's opinion that the principal had the power to censor, Associate Justice William J. Brennan Jr. said, "That really adds up to no First Amendment protection."

Justice John Paul Stevens added that a rule that allowed principals the power to censor would also permit officials to censor all articles promoting a particular political party or viewpoint with which they did not agree.

Baine continued to tell the court that Reynolds had a better reason than merely exercising his power as a principal to censor the articles. Baine said Reynolds thought he knew who some of the unnamed students in the articles were, and he figured that others within the school would also know the identity of the anonymous students. He added that the parents of some of the quoted students did not have an opportunity to respond to what their children had said.

Furthermore, Baine told the court that a part of the purpose of the journalism classes was to teach students "good taste and community standards," and that if the articles were printed in the school newspaper, it would "appear the school condoned the activity of young girls becoming pregnant."

When Chief Justice William H. Rehnquist asked the attorney if the students' First Amendment rights would be violated if the district adopted a policy granting the newspaper's adviser absolute authority to censor, Baine responded, "I think you could do that, but I object to your use of the word 'censor.' What the adviser did in this case was edit."

"That's a fine point. What some might call editing, others might call censorship," responded the Chief Justice.

Edwards, in arguing the students' case, did not escape the careful questioning of the Justices either. She told the court that "viewpoint neutral" editing by the school adviser was appropriate, but that the principal should not interfere with that editing process. She said that it was wrong for the principal to exercise censorship control based solely on the content of an article.

To that, Rehnquist said, "I'm puzzled that you would have the First Amendment issue turn upon how far up the educational hierarchy the decision is made."

Edwards emphasized the reason behind exercising control by saying, "It's not so much who makes the decision, but the basis for the decision. You can exercise control so long as it's not viewpoint-based."

Edwards suggested that in the *Hazelwood* case, the principal was exercising viewpoint-based control. She said that in 1977, the school had allowed an article in the student newspaper that described teenage pregnancy as "horrible." On the other hand, one of the articles that was censored in 1983 indicated that some teenage students were happy with their pregnancies.

Justice Antonin Scalia seemed concerned that without some control, there was potential for the students to publish articles that were offensive to the community. He said, "Well, let's say that the students decide to print that 'Hitler was right.' The community is not going to like that piece, and there's a school-bond issue coming up. What's a principal to do?"

Edwards again emphasized that there could be some degree of control in the editorial process, but that the school principal did not have the authority to exercise that control. She also stated that the students should be involved in the decision-making process in relation to deciding what material might be considered offensive to the community.

Although Edwards explained to Justice John Paul Stevens that the adviser has the right to exercise an "editorial function" for reasons of journalistic standards, such as editing poor grammar or spelling, Justice Scalia insisted, "You leave us with a terrible choice: either no papers or papers that are unrestricted in their content."

Washington, D.C.

Reception held in honor of hearing

It took more than three students brave enough to face up to their school administration and demand their First Amendment rights to make the *Hazelwood School District v. Kuhlmeier* case the first school-sponsored newspaper censorship case ever to be heard by the Supreme Court. On the eve of the hearing by the nation's highest court, the *Los Angeles Times* Washington bureau and the Student Press Law Center hosted a reception in honor of the students, the people who supported them and the five years of hard work that have resulted in the most important student press case ever.

When the hearing ended after an hour, there still seemed to be unsettled frustration on both sides of the case, but until the decision is made, the issue of control will be a disputed one.

"The question is, are student publications and students protected by the First Amendment? Are students going to be allowed to make their own content decisions or are the schools going to be allowed to censor things they don't like?" asked Mark Goodman, executive director of the Student Press Law Center.

The superindendent of the Hazelwood School District, Francis Huss, also wanted to know the answer to that question. "It's important to establish who's going to run the school," he said. "The newspaper is part of our curriculum and if we can't decide what's in our curriculum, then we won't have it . . . They can put out a newspaper as an extracurricular activity."

Because of Justice Powell's retirement, only eight Justices will decide the Hazelwood case. Should the Justices be equally divided on the issue, the court of appeals decision would be upheld. It is likely that a decision in the case will remain up in the air until sometime in the spring of 1988.

Until then, student journalists and journalism educators from around the country will have to cross their fingers and wait.■

Although layout editor Cathy Kuhlmeier was unable to attend, the two student reporters involved in the case, Leslie Smart and Lee Ann Tippett, were the heart of the event. Tippett admitted feeling both "excited and scared," about the pending hearing. Smart said she felt nervous. Although Smart is now a college senior and Tippett a nurse, both women pursued the case, encouraged by the willingness of their attorneys to see it through. The two repeatedly acknowledged the time and energy that Leslie Edwards, the attorney who argued their case before the Supreme Court, and Steve Miller, another attorney who represented them in earlier proceedings, devoted to the case. "If Leslie can go this far, so can we," said Tippett.

Jack Nelson, Washington bureau chief of the *Los Angeles Times* and former student sports reporter for Notre Dame High School, in Biloxi, Miss., knows well the problems student journalists face. Nelson wrote *Captive Voices*, a report and analysis of the findings of the 1974 Commission of Inquiry into High School Journalism, which first shed light on the censorship problems student journalists face. At the reception, he observed that there is no other way to teach students journalistic responsibility save freeing them from censorship, and added that he felt a moral obligation to support the students in their fight.

Gary Dickey of Columbia, S.C., who in 1967, brought to court one of the first student press censorship cases ever, also felt that he had a personal interest in the case. "I think it's great," he said. "I've been waiting [for a student press case to go to the Supreme Court] for 20 years. It's long overdue." He sympathized with the students, he said, because he knew what it was like to face the establishment. As a student editor at Troy State University, Dickey had filed a lawsuit against the Alabama State Board of Education after he was removed from his position because of an article he wrote that criticized state officials.

Jeffry Trachtman of New York City, also involved in an important press censorship case as a high school student, and now an attorney, filed a brief in support of the Hazelwood students with the Supreme Court. He said he felt that this is a "crucial time" for student press rights, and wrote the brief free of charge on behalf of People for the American Way. Trachtman brought a lawsuit in 1976 against his high school when school officials stopped him from distributing a sex survey to fellow students.

Richard Johns, executive secretary of the Quill and Scroll Society, the national high school journalism honorary society, felt assured of the high level of responsibility exemplified by the articles which were censored from the *Spectrum*. "If I feel confident with any [student's right case going to the Supreme Court], it is with this one. These were not laughable articles, but responsible ones," Johns said.

John Bowen, Vice President of the Journalism Association of Ohio Schools and a journalism instructor in Lakewood, Ohio, said that he thought it was hypocritical to teach students their First Amendment rights in history class, but to then deny them those rights in their school publications class. A student of his, Naomi Annandale, lends proof to his theory that if schools allow students more freedom in decision-making in their publications, they will become better journalists. Through the Washington based Youth News Service and with the help of Bowen, Annandale became the first teenager ever to receive press credentials for a Supreme Court case hearing.

In all, some 50 journalism educators, attorneys and professional journalists attended the gathering, all expressing their interest in and support for the students in the case that may change the future of scholastic journalism.■

Missouri

Point Blank case shot between the eyes

To the disappointment of three Belton High School students, the U.S. District Court for the Western District of Missouri ruled in favor of the Belton School District this October, upholding its unauthorized newspaper policy.

The students, Christopher Clark, Steven Hann and Susan Thompson, had filed a suit against the school district last March after they were prohibited from handing out copies of an underground newspaper, *Point Blank*. The first issue of the paper was distributed in October 1986, and contained an article about the school's principal and his allegedly illegal search of students in a particular class. Other articles centered on military recruiting on campus and the egos of some members of the football team.

When Principal Michael St. Louis learned of *Point Blank*, he acted under the advice of Superintendent Gordon Sunderland and confiscated the undistributed copies of the publication. He told two of the plaintiffs, Clark and Hann, never to distribute anything like it again.

The students complained to the school board, which adopted a new policy in December 1986 governing unauthorized student publications. Among the provisions included in the policy was one that said advance notice must be given to the principal prior to distribution. The new policy also restricted hand-to-hand distribution of unauthorized publications. The policy did not authorize the principal to demand a copy of the student publication prior to distribution.

Karen Schneider, a Kansas City lawyer representing the students on behalf of the American Civil Liberties Union, said that the policy is not specific enough and is unconstitutional on its face. She argued that by commanding students to register with the school before distributing their paper, the policy hinders students from commenting anonymously on school problems. She also objected to the limitation on hand-to-hand distribution.

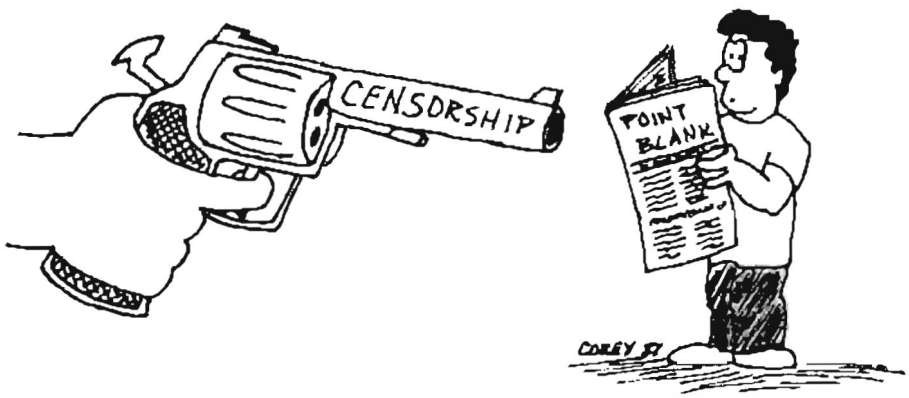
In a complaint to the court, Schneider wrote, "The overbreadth of the regulations violates the First Amendment since the present regulations unreasonably restrict the distribution by a student of virtually any publication, of whatever kind, on school grounds."

The attorney representing Belton School District, Elvin Douglas, Jr., said that the policy is neither overly restrictive, nor is it a prior restraint policy, because it forbids principals from demanding copies of the publication. He also thought that the chances of a disruption occurring would be increased if the students were allowed to pass out the newspapers — which might contain critical articles — face to face.

The court's decision in the case *Clark v. Board of Education, Belton High School*, handed down on October 9, denied the students' claims for relief, which included a permanent injunction against the school district that would have prohibited the school from enforcing the publications policy and a fine of $30 in damages to cover the cost of the papers that were allegedly destroyed by St. Louis.

The court relied heavily on a similar decision by the U.S. Court of Appeals for the Eighth Circuit, *Bystrom v. Fridley High School*, (see story this issue) in making its conclusions. The students' in the *Bystrom* case were required to get prepublication approval of their alternative newspaper before distribution.

The ruling for the Belton students' case read, "In summary, the court upholds the Belton policy on student distributions with the exception of section 12.K.3." Section 12.K.3. of the publications policy banned material that was an "invasion of another's right to privacy." It said that the invasion of another's right to privacy includes "publication of acts which place another in a false light (i.e., attributes to him views that he does not hold or actions that he did not take), and which would be objectionable to a reasonable person under the circumstances." Because Missouri courts have rejected false light invasion of privacy claims, the court rejected the provision.



The court cautioned, however, that it decided only that the policy was not unconstitutional on its face. It left open the possibility that the policy could be unconstitutional in a future situation.

Douglas said that the court's decision would not have a significant impact on students' desire to print an underground publication.

Schneider disagreed. "I think it will have a chilling effect on students' desire to publish an unofficial publication," she said.

She added that she and the students decided in November not to appeal the decision. "We felt that a court that approved prior review [in the *Bystrom* case] wasn't going to be too sympathetic to our situation."■

Nevada

Court says schools must accept ad

In southern Nevada, Planned Parenthood "proclaimed victory" after a federal judge's decision this summer. The court's opinion upheld Planned Parenthood's right to publish advertisements for its services in high school newspapers.

Planned Parenthood of Southern Nevada (PPSN) first brought a lawsuit against the Clark County School District (CCSD) in December 1984, two months after the school district proposed a regulation that would prohibit student publications from printing certain advertisements. The unacceptable ads would include those for birth control products, gambling aids, tobacco products, drug look-a-likes, liquor products, and "items which may not be legally possessed by students less than 18 years of age."

The proposal, not formally approved by the school district, was sent to all CCSD secondary school principals, in order for them to decide the policy that would affect the student publications at their schools. Every school but one — Clark High School — refused to print PPSN's birth control and pregnancy testing ads. *The Clark Charger* had carried the Planned Parenthood advertisement listing its services and address for three years before the case went to court.

In its complaint, PPSN claimed the district's policy violated the First and Fourteenth Amendments because it allowed high school principals to censor advertising "without establishing narrow, objective and definite standards to guide their conduct." There was no evidence that student editors had made the decisions to reject the ads. Other court decisions, including *Sinn v. Daily Nebraskan* (see story this issue) indicate that a student editor has the right to reject advertisements.

CCSD attorney Tom Moore did not think the high school newspapers were forums open to the public, and said that the school district has the right to determine what advertising is published under its name.

The school district also claimed that the Planned Parenthood advertisement conflicted with the school district's policy on sex education. Under this policy, only the instructors who are approved by the Board of School Trustees are allowed to present material relating to the human reproductive system to secondary school students. Instructional materials must also be inspected and approved before being distributed.

However, on July 23, the federal district court in Nevada ruled in *Planned Parenthood of Southern Nevada v. Clark County School District*, "CCSD's senior high school publications are limited public fora; [and] that the sex education curriculum is outside of the ambit of the limited public fora defined by CCSD for its senior high school publications."

The court continued by ordering, "The parties are directed to confer and agree if possible on the text of PPSN's advertisements to be published by senior high school publications . . . keeping in mind that in the view of this Court the tendered PPSN's advertisement in this record must be accepted and published in all senior high school publications."

"So why are they [Clark County School District] keeping information out of the news that might address a critical problem?"

Mark Brandenburg
Attorney
Planned Parenthood

According to Hannon, as a result of the court's ruling, Planned Parenthood proposed four alternative advertisements to the Clark County School District Board of Trustees for consideration. The Board refused to accept any of them for publication. "They refuse to negotiate," said Hannon, "And in the meantime, Nevada continues to have the highest teen pregnancy rate in the United States."

Mark Brandenburg, the attorney for Planned Parenthood, was also upset by the school district's response to the ruling. He commented on the social rather than the legal implication of the school board's reaction, "We are frustrated to no end, because it seems that no one is happy with unplanned teenage pregnancy — Planned Parenthood isn't happy with it, and neither is the school district. So why are they keeping information out of the news that might address a critical problem?"

Planned Parenthood has indicated that it will now try to instead have its advertisements printed in the school district's high school yearbooks.

Although Moore would not comment for certain whether or not the school district would appeal the case, Brandenberg said that it has made several indications that it would.■

Nebraska

Court protects editorial rejection of ads

The U.S. Court of Appeals for the Eighth Circuit affirmed on September 25 that a student newspaper at the University of Nebraska could legitimately refuse to publish certain "roommate wanted" advertisements.

The court's decision ended a three-year dispute between the *Daily Nebraskan* and two members of the University of Nebraska community, Michael Sinn and Pam Pearn.

The controversy began in 1984, when the editor of the *Daily Nebraskan* refused to accept an advertisement for a roommate from Pearn, in which she had indicated that she was seeking a lesbian roommate. At the time, there was nothing in the publications policy that specifically barred Pearn's advertisement, but there was an articulated policy which barred "objectionable advertising." According to the *Nebraskan's* Business Manager Dan Shattil, the policy is aimed at ensuring that the *Nebraskan* is not a "vehicle of discrimination," and it says that the newspaper will not accept advertisements which make distinctions on the basis of race, religion, sex or national origin. Shortly after Pearn submitted her ad, the Publications Board revised the policy to prohibit "sexual orientation" in advertisements.

In early 1985, she tried to submit another ad in which she instead identified herself as being a lesbian woman. That ad, and one by Sinn which read, "Gay male seeks roommate," was also refused by the paper. The two filed a suit in federal court, claiming that the advertising policy of the paper was a violation of the First Amendment. They said they had a right of access to the state school's student newspaper.

In June of 1986, the court decided that "the campus newspaper of a state supported university is entitled to the constitutional protections afforded the 'press,' including freedom of expression for the editors."

The ruling continued, "The degree of discretion which editors utilize in rejecting advertisements is not distinguishable, under the First Amendment analysis, from that exercised over any other submitted matter."

Therefore, the court added, "Rejection of an advertisement is constitutionally protected editorial decision."

Jerry Soucie, the Nebraska Civil Liberties Union attorney representing Pearn and Sinn, appealed the decision to the nation's second highest court. The case was argued last May, and the decision was handed down in September.

In the decision, *Sinn v. Daily Nebraskan,* 829 F.2d 662 (8th Cir. 1987), the court ruled in favor of the paper because "state action was not present in the editorial decision at issue in this case," and therefore no First Amendment infringements were found.

The ruling also stated, "We reject [Sinn and Pearn's] argument, which appears to approach a per se rule at the other extreme: that state action is always present in the editorial choices of such a newspaper."

John Wiltse, the attorney representing the newspaper, was pleased with the opinion. "I see the overriding significance as being that the courts totally objected to the First Amendment rights argument of the plantiffs and agreed with me that the newspaper has First Amendment rights of its own."

Although Soucie didn't see it quite the same way, he said that he was not that upset with the ruling, "all things considered." Soucie indicated that Sinn and Pearn would not appeal the case another time.

The present editor for the *Daily Nebraskan,* Mike Reilley, wished that the case would have been taken to the Supreme Court, so that the ruling could have a geographically broader impact on student press rights. Nevertheless, he concluded that the decision has been "quite a victory for freedom of expression, free from state influence." ■

Minnesota

High school newspaper loses case

The U.S. Court of Appeals for the Eighth Circuit stood by its opinion that schools have a right to review even unofficial student papers before distribution, and the censored students and their attorneys decided not to take the case to the Supreme Court.

In August, the full court of appeals refused to rehear the case *Bystrom v. Fridley High School,* 882 F.2d 747 (8th Cir. 1987), brought by the student editors of the underground paper *Tour de Farce* distributed at Fridley High School in suburban Minneapolis. A three judge panel of the court ruled in June that prior review by school administrators of alternative student papers did not constitute an abridgement of students' First Amendment rights. The decision was the first court of appeals decision ever to approve an existing policy of prior restraint.

The students had argued in their request for rehearing that the cases the court had relied on in deciding their case all dealt with official school publications and assemblies. *Tour de Farce* was different, they argued, because it was not school sponsored or endorsed. The court, apparently, disagreed.

Debbie Mancheski, assistant executive director of the Minnesota Civil Liberties Union, said the case was not appealed further because "Our chances of making bad law were so much greater than our slim chance of winning."

New Jersey

Incredible libel suit filed by administrator

Whoreline
Have a problem?
Want to Rap?
Call Whoreline
at 687-SEXY
ANYTIME
for good phone sex
Featuring:
Janice Murray
Ann Walko
Steve Gullman
Matt Lynch

The ad in question

Journalists all over New Jersey may gain increased protection from libel lawsuits as a result of a suit filed by college administrator Ann Walko against the Kean College *Independent's* annual spoof issue.

The student newspaper's 1985 parody issue, called the *Incredible,* included a satirical advertisement for a phone fantasy service and listed Walko, Assistant Dean of the School of Education, and other school officials among the sex staffers. Walko filed a $1.7 million lawsuit in state court for libel, invasion of privacy and intentional infliction of emotional distress.

In their defense, the students claimed that because the issue was a spoof, the ad could not be considered a false statement of fact, a prerequisite for proving libel. No reasonable person, they asserted, could possibly have taken the ad seriously, so the lawsuit is unwarranted. Proof of this, the students said, was the fact that Walko could find no witnesses to say that they thought less of her as a result of the ad.

This is the first time New Jersey courts have examined a satire-libel case. It is also the first time they have considered a student newspaper case. David Mack, the attorney for *Independent* editor Nannette Strehl, said he is concerned that New Jersey state law may not provide for the establishment of a spoof privilege in the courts. The spoof privilege was obviously the most applicable one to the case, he commented, but that did not mean it would be used by the New Jersey court.

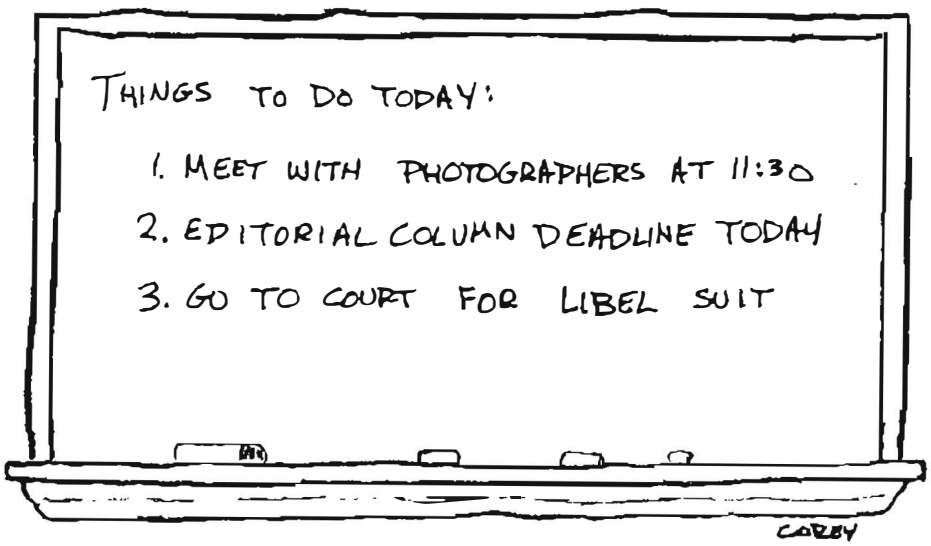
The "chilling effect" the lawsuit has had on the newspaper concerns both Mack and Kathy Burns, attorney for the student group that funded the spoof issue. Burns said that the Council for Part-Time Students, whom she represents, has refused to fund an issue since the suit was filed. "The students are paying dearly . . . to defend something that is frivolous," Mack said. He argued that the student paper would have a hard time attracting journalists because the threat of libel suits would limit subject areas the paper felt it could discuss. A spoof, he said, "is something a college paper is entitled to do. . . . This takes away something important." Ann Walko's attorney could not be reached for comment.

Burns and Mack were both quick to note that the *Independent* had printed an apology concerning the phone fantasy ad in the issue following the spoof.

Mack said he expected a decision in December on the students' motion to have the case dismissed. Terry Rose, a paralegal working on the case, said Walko is expected to appeal if she loses. "We're not quite sure what her motivation is," Rose said.■

She added that the vast majority of experts consulted by the MCLU advised against pushing the case any further. The American Civil Liberties Union attorney who had been monitoring the *Hazelwood School District v. Kuhlmeier* case said, according to Mancheski, that the demeanor of the Supreme Court was very much against student press rights.

Mancheski said she was also told that several similar cases with circumstances more favorable than those at Fridley High could soon come before the Supreme Court. In the end, Mancheski said, they decided to limit the damage of bad law to the Eighth Circuit.■



New York

Journalist subpoenaed, but does not testify: testimony not needed after dispute settled

Although he said that he was anticipating the experience as a learning one, a Broome Community College student was relieved from testifying in a labor practice hearing late last summer.

Thomas M. Frisk, student editor-in-chief of the *The Fulcrum* during the spring semester of 1987, was issued a subpoena in late June by Broome County assistant attorney Harvey Mervis. Frisk was scheduled to testify at a Public Employee Relations Board hearing on July 23. At least 16 others — all faculty members — were also subpoenaed for the hearing.

Broome County officials believed that faculty members reduced their office hours at the start of the spring semester as part of a contract dispute in violation of state law which says that employees cannot refuse to perform services during contract negotiations. According to Mervis, Frisk was subpoenaed to testify about several articles he had written for *The Fulcrum* which contained information about a work slow-down that was "damning." Mervis referred in particular to articles by Frisk that attributed quotes to Margaret Wingate, president of the faculty association.

The teachers at Broome Community College, a two-year school in Binghampton, N.Y., had been without contracts for the 1986-87 academic year. When contract talks broke down in February, Frisk began to report on proposals and views of some of the faculty members, including Wingate. Frisk claims that the articles were factual, accurate and noncontroversial.

The New York state shield law, which protects professional journalists from having to reveal confidential sources or information in court proceedings, would probably not cover a student journalist like Frisk. A Nassau County, N.Y., state court judge ruled in May 1986 that a student journalist was not covered because his newspaper did not meet the requirements of a newspaper as defined by the shield law. That definition requires that in order for a publication to be considered a newspaper, it must be printed at least once a week, and have a paid circulation. *The Fulcrum* is published bimonthly during the school year and has a free circulation.

Furthermore, Mervis has added that the shield law only protects journalists who attribute quotes to unnamed sources. Therefore, even if he had been a professional journalist,

Frisk would not have been protected under the shield law, because he named Margaret Wingate specifically. Anita Knopp Doll, adviser of *The Fulcrum*, protested the involvement of a student journalist in the hearing, saying, "I can't believe the county's case against the teachers hinges on the testimony of a neophyte journalist writing in a student publication. Whatever benefit Tom can provide to Mr. Mervis can't outweigh the long-term damage it will cause within the campus community."

Mark Goodman, executive director of the Student Press Law Center, agreed. He said, "Considering the 17 subpoenas that the county attorney has reportedly issued for similar information in this case, the subpoena of Thomas Frisk seems unnecessary and suggests a belittlement of the position of the student journalists involved."

The assistant county attorney saw it differently. Because Frisk had written articles which said that faculty members planned to cut office hours to a minimum after spring break, Mervis thought the subpoena was necessary. He said that he was not at all concerned about the public's perception of the involvement of a student journalist in the hearing. "We had to balance that risk [the public's reaction] with the risk on the other side — that the professors were possibly considering cutting off services during negotiations. It was the interest of one student [or] the interest of all," he said.

However, the July 23 hearing never took place. Shortly before it was scheduled, contract negotiations resumed. The hearing was postponed, and a tentative agreement was reached. By early August, the agreement was ratified and signed, and the testimony of Thomas Frisk was no longer needed, the county attorney said.

Although Anita Knopp Doll concluded that there had been pressure from the community to settle the contract negotiations, she suggested that the public's protest of the issuing of the subpoena to a student journalist might have had a small effect on the quick resumption and settlement of the negotiations. At least, she said, there was a recognition that tactically, it was not a good move to bring a student journalist into the dispute.■

Maryland

Staff surrenders negatives

The students on the staff of Westminster high school's newspaper, *The Owl*, recognized what they considered to be an opportunity to help somebody out when they turned in photographic negatives of a Ku Klux Klan rally to the Carroll County, Md., state's attorney's office.

The rally, held on September 12, near Manchester, was also covered by a local newspaper, *The Carroll County Times*. Because Maryland Grand Dragon of the Ku Klux Klan's Invisible Empire, Roger Kelly, faces one count of burning a cross or another religious symbol illegally at the rally, State's Attorney Thomas Hickman issued an administrative summons for the pictures. However, *The Carroll County Times* refused to comply.

According to Cathy Berry, adviser for *The Owl*, the students on the staff discussed *The Times'* decision. "We, as a class, talked about our rights as American citizens. We, as a staff, felt that if we as citizens had something to show to help somebody we would. We felt our First Amendment rights would not be violated," she said.

Berry added that the staff had decided, in part, to turn in the negatives because they did not want to be issued an administrative summons, should there be a federal investigation. Even so, she emphasized that the students did not feel at all pressured, and that the decision to hand over the negatives was a voluntary and a democratic one — the vote to do so was unanimous.

Owl staff members were unavailable for comment. The assistant principal, George Phillips, said that the student who photographed the rally was under age, and did not have parental permission to discuss the incident with a reporter. However, Berry insisted that it wasn't a matter of not being "allowed" to talk. She said that the students themselves had chosen not to comment. Berry also claimed that the students have not verbalized any concern that *The Owl* might be seen as an arm of the government, now that it has forfeited its negatives.

On the other hand, Gene Bracken, editor of *The Carroll County Times*, said that for his paper, the concern of being viewed as an arm of the state's attorney was one of the very reasons *The Times* refused to obey the summons.

"Some institutions should be able to call them as they see them — such as the unbridled free press. The press still has responsibilities, though, and we do our best to exercise those responsibilities. I don't write frivolously, and I don't expect the state's attorney to issue summons frivolously."

Gene Bracken
Editor
Carroll County Times

"It's hard," he said. "I won't be real critical of high school [students]. I wouldn't have done it, no. It was an infringement." He went on to say that if the state's attorney's office had wanted photographs, it could have hired someone to cover the rally. By issuing a summons, Bracken said the state's attorney was exercising his power unjudiciously.

"I don't like the Klan," said Bracken. "But the issue has nothing to do with that. Some institutions should be able to call them as they see them — such as the unbridled free press. The press still has responsibilities, though, and we do our best to exercise those responsibilities. I don't write frivolously, and I don't expect the state's attorney to issue summons frivolously."

However, Bracken concluded that he does not foresee any future action occuring in relation to this incident.■

California

Condom ad ban leads to policy change

The dust is finally settling in Glendale, Calif., after a five-month battle between school officials and high school journalism advisers over students' attempt to print a condom ad in their school newspaper and the new publications policy the ad provoked.

"I never expected it to cause such an uproar," said Diane Bell, adviser to the Hoover High School *Purple Press*. Her students wanted to print an amended version of a Planned Parenthood ad advising the use of condoms to prevent the spread of AIDS in an issue that came out the week before the prom. She told her principal their intentions and he okayed the ad. Then the local media learned of the ad, and the publicity that ensued sparked a controversy. Before the paper came out, the ad had been nixed by district superintendent Robert Sanchis who claimed that it advocated sex between minors, a violation of California's statutory rape law. The law says that engaging in sex with a woman under the age of eighteen is rape, regardless of the circumstances.

Bell felt that because of the controversy the ad's message reached many more people than it would have had the *Purple Press* printed it. She said it made the school board come to grips with the issue of AIDS education by posing the question, "If you won't let us run this ad, what are you going to do instead?" Sanchis said the condom ad was a "rather meek" attempt at AIDS education and that the district should have an AIDS education curriculum in place by the fall of 1988.

However, the controversy surrounding the ad also prompted the district to amend its policy on student publications and their distribution. The proposed policy, presented to the board for approval in late September, said that the primary purpose of the paper was educational and its secondary function was as an official vehicle for the school to communicate with students and their parents. The school's role was defined as publisher by the policy and it gave the principal the right to delete items from the paper without guaranteeing students the right to appeal.

The policy also prohibited students from distributing material anonymously, a provision retained from the old policy, and from endorsing political candidates. Criticism of the school, the policy said, had to be constructive. Journalism advisers had to send all "questionable material" to the principal's office for approval. "Questionable material" was not defined in the policy.

Journalism advisers had to send all "questionable material" to the principal's office for approval. "Questionable material" was not defined in the policy.

Material that threatened the "health and safety" of students was banned from the paper. This was a reference to the high failure rate of condoms in preventing the spread of AIDS, according to Vic Pallos, director of public information for the Glendale School District. The condom ad was expressly forbidden.

Pallos said the board was concerned with the possible lawsuits that could arise from the condom ad. No subject was expressly banned from discussion, he emphasized. He argued that the principal's approval was an important safety catch for student reporters "just learning the responsibilities of journalism and of life."

Judy Lind, journalism adviser at neighboring Glendale High School, agreed that the condom ad was inappropriate but objected to the ambiguity she perceived in the new policy. She said the board had created the policy as a way to increase control over journalism advisers. Sanchis said the policy was written to describe the appropriate role of the district in the student paper and, he hoped, simply defined the status quo.

Lind expressed special concern over the lack of an appeals process in the case of censorship by the principal. She said she did not object to the principal being involved in the paper but argued that his word should not be final. She also expressed dislike for the policy's definition of the paper's role as purely educational and offical. If it was purely educational, Lind noted, the administration could stop its publication, because it was possible to teach journalism without publishing a paper. An official vehicle of communication would not teach journalism, Lind argued.

Lind said she seriously considered resigning if the policy was passed in the proposed form. "It is an important battle to fight, but I do not believe it is my battle in life to fight," she said. Nevertheless, she wrote SPLC director Mark Goodman and asked for his help in defeating the proposed policy. "By bucking the board, I am committing career suicide," Lind observed. Meanwhile, the board tabled the policy for later consideration.

Goodman's analysis of the proposed policy was presented at a school board meeting in early October, and the superintendent sent it on to the attorney who had formulated the policy. On October 20, the policy was again presented to the board with four important revisions. An appeals process was guaranteed to students whose articles had been censored by a principal, and the language of the policy was softened so that the principal now reviewed "disputes over inclusion of material" rather than all "questionable material." Students' rights to endorse political candidates and distribute literature anonymously were restored. The board passed the policy that night with a promise to "leave the door open ... for further consider-

ation of people's concerns," according to Lind.

"It is an improvement, and I appreciate their willingness to reconsider," Lind said and added that she is no longer considering resigning. She still sees problems with the policy, however, especially in the fact that it doesn't mention that the paper's main source of funding is advertising. Lind said that could allow the school to stop production of the paper by denying it the right to accept advertising and cutting off its funding from school sources.

Many of the objections Goodman raised, including the extension of school authority implied in the "health and safety" clause and the policy's definitions of the proper role of the paper in the school were not addressed in the new policy. The board also added in the revision a requirement that all material to be distributed in the immediate vicinity of campus be submitted to the school for approval three days before the proposed distribution.

Sanchis said "only time will tell" if the students are sufficiently responsible to make the amended policy work.

Lind's journalism students, who produce the award winning Glendale High *Explosion*, also have their doubts about the new policy, although they admit they have not yet seen the latest revisions.

"A lot of things we accomplished I don't think we could accomplish [under the new policy]" said *Explosion* editor Mihran Berejikian. "We like to expose things." Under the old policy the administration couldn't tell the students not to print things, Berejikian explained, "now it must go through so many channels before it can be approved." He added, "It's not going to make the bad papers any better, but it will hurt the good ones." Berejikian said he would not have printed the condom ad because it was sensational and promoted teen sex. "I personally believe (an ad) won't help," he stated.

"Part of education is to explore issues," argued *Explosion* supplement editor Natalie Brunner. She said journalism students must learn to inform, so whether the purpose of the paper is educational or informational, the outcome should be the same.■

New York

Funding system blamed for paper's budget cuts

Staff members of a New York university newspaper, *The Torch*, are fuming over what they consider to be an unreasonable funding policy, and the flames surrounding the issue are not likely to be extinquished unless a change occurs.

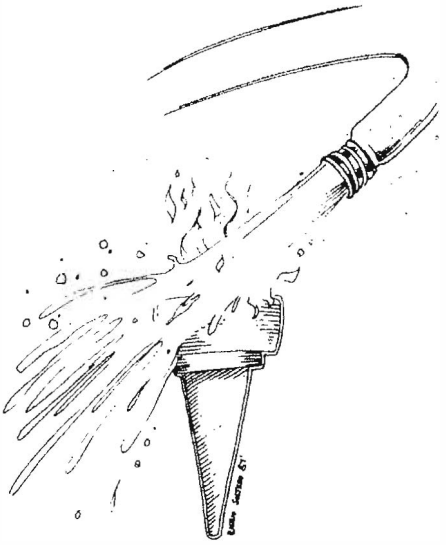
According to Lisa Jordan, editor-in-chief of the St. John's University student publication, the budget set-up is "archaic." Jordan explained that the president of the student government appoints a budget committee chair, who chooses other members to be on the committee. The candidates that the chair must choose from are supposed to be representatives from each category of the organizational groups on campus. In turn, the committee decides upon the allowances for the various organizations.

It's no mystery to Jordan that this year the *Torch's* budget was cut well below its usual $14-20,000 and that although the *Torch's* managing editor Cathryn Pascucci submitted a letter of nomination, there aren't any representatives from the *Torch* on the budget committee.

Jordan and last year's editor-in-chief, Tom NcNiff, claimed that the decrease is linked to the fact that the newspaper supported an opponent of the present governing executive board last spring.

Torch staff members said that they have not been issued a real budget this year, but what is called a "line of credit." They have contacted several banks concerning the terminology, and have concluded that "line of credit" is ultimately equivalent to a loan, and could include interest. Concerned that the paper ran the risk of having to repay the line of credit, Pascucci asked the student government president, Chris Orlando, for written confirmation that the government would not have to be reimbursed. She said Orlando never gave her the written statement she had asked for.

The *Torch* staff decided it would rather solicit advertisements than pay back a loan to the student government. As a result, the newspaper is 40-45 percent advertisements, and according to Pascucci, it looks like a "pennysaver."



Pascucci commented that the student government constitution does not give it the authority to issue a line of credit. Although the government can issue a loan, she said that the organization has to first apply for it.

Staff members have initiated meetings with the *Torch's* adviser, student government officials, the vice president of student development and the assistant to the vice president in an attempt to change the way the budget is determined for the newspaper.

Jordan said that it is difficult to be in the position of writing about the people who determine your budget, and vice versa. "We're not faulting the people," she said. "We're faulting the situation."

She and other staffers would like to see a set percentage of the student activities fee going straight toward a publications fee. She added that they'd also settle for the administration deciding beforehand on the amount received.

A result of one of the meetings is that a committee has been formed to look into the possibility of stable

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funding. The members of the committee have not been decided upon yet, but Pascucci has indicated that she, Jordan, and *Torch* news editor Scott Donaton intend to be on it.

Student Government President Chris Orlando preferred not to comment on the subject, as it is under discussion. The attorney for the student government was also unable to be reached for comment.

Pascucci doesn't see the issue as a matter of one party being totally right or totally wrong. "They're afraid of losing control over the money," she said, "And we're afraid of losing control over the newspaper."■

California

Vice ad ban suit dropped

A case in California involving banned alcohol and tobacco advertising at Mt. San Antonio College has been dismissed after three years of litigation.

Two students, their newspaper adviser and a private citizen filed suit in 1984 against Mt. San Antonio College President John Randall and the school's board of trustees because they had refused to amend the advertising policy of the school's newspaper, the *Mountaineer Weekly*. The students and adviser declared that the policy, which forbids the publication of advertisements for alcohol and tobacco products, is a form of prior restraint censorship and is unconstitutional. A preliminary injunction, which would have allowed the paper to accept such advertisements until the dispute was settled, was denied by a Los Angeles Superior Court judge in January 1985.

The policy will remain unchanged, however, and the ban will stand, because the students no longer attend the college and have decided not to pursue the suit. The current editors of the *Moutaineer Weekly* do not wish to challenge the policy in court.■

New York

Yearbooks recalled

"It was censorship, but censorship with a purpose," said student editor Renee Berman of the incident that occured last spring at Tuckahoe High School in Tuckahoe, N.Y.

In April, the 1987 edition of the school's yearbook, *The Stylus*, was distributed — and immediately recalled by school officials. The call back of the books was due to a page in the yearbook containing lines considered to be racist. The page was reprinted, minus the offensive lines, and the books were redistributed. Principal William Smith claimed that the decision to cut the lines was an editorial one.

The lines read: "Negro boys with long black coats, old beat up hats, black eyes, long fingers, sunglasses without lens, knives in hands. That's how we like them.

"Black — like our coffee. How do you like them? Vanilla dipped in chocolate — like our ice cream bars?"

Originally printed in a section of the yearbook set aside for students to insert messages to other students, the lines were anonymously written. However, some students claim that the first two lines of the quote were taken from a poem, which they could not identify.

Joseph Leary, *Stylus* staff member and co-editor of the school newspaper, *The Tiger's Roar*, said that the lines were somehow by-passed, and that "somewhere along the line, somebody had to have missed their job." Berman said, "We saw it, but we didn't think anything of it. We were looking for typos. It didn't occur to us that it was going to make such an uproar." Smith felt that the lines were intentionally slipped past the student editors.

Leary added that all but two of the yearbooks were recalled. Copies of the page were circulated within the community, which led to meetings between Superintendent of Schools Anthony Mazzullo and Tuckahoe residents. According to Leary, members of the community had threatened action if something wasn't done about the quote.

Although Smith stated that the collection of the books and the removal of the lines were not seen as censorship by either the students or the student editors, Leary disagreed. "It was definite censorship, but it was censorship done to help," he commented.

While Leary condoned the act, he expressed disapproval for the manner in which the situation was handled. "They did it abruptly. I agree that [the quote] should have been taken out, but the administration faced the school in the same way a parent scolds a child," he said.

Cathy Conrad, the co-editor of *The Tiger's Roar*, disagreed with the removal of the lines. She wrote in an editorial, "Gee, taking out the page, that's a good attitude, 'out of sight, out of mind.' " Her article also contained the quote that was just pulled.

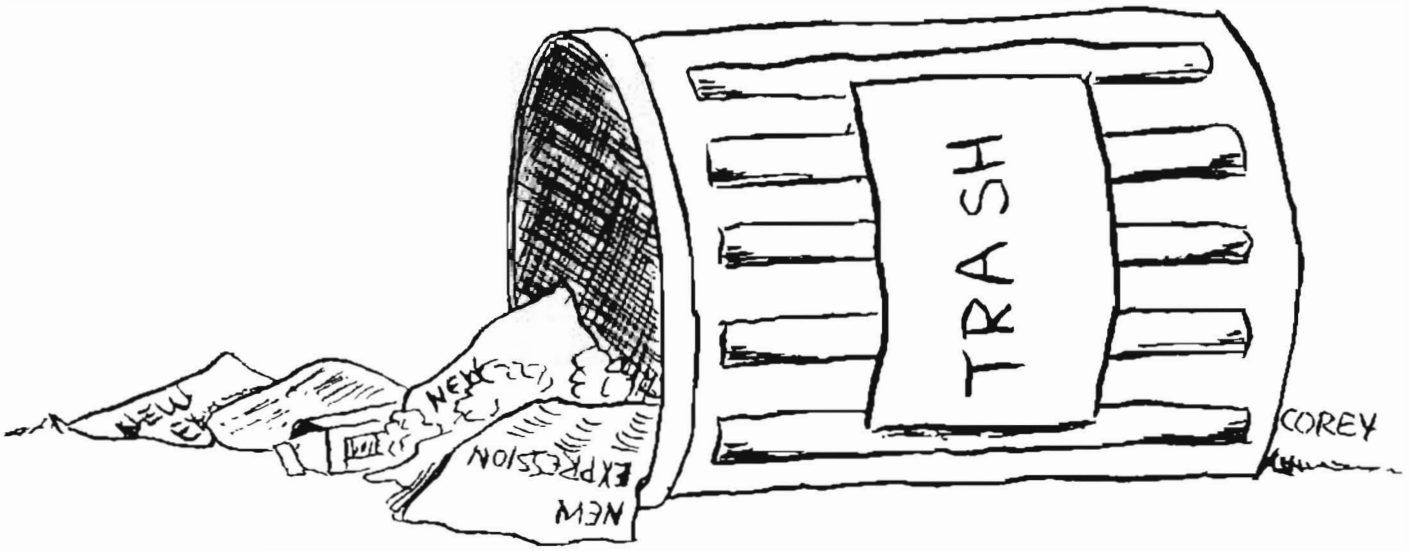
Conrad's editorial was printed in the paper, but never distributed. The article came to the attention of the superintendent and the principal, who met with the paper's editorial board, which included adviser Marsha Fox, English teacher Richard Gross, Conrad, and Leary. According to Leary, the board met in order to "help Conrad rewrite her editorial" in such a way that she wouldn't feel that her expression was being limited.

Leary said that Conrad's editorial was rewritten twice, neither time to the satisfaction of the administration. After the second revision, Leary said that Conrad left the school, thinking that her editorial was "fine." However, some of the remaining members of the editorial board, including him, still decided to pull the piece, and replaced it with an announcement reading, "Congratulations Seniors."

According to Principal Smith, "The whole incident overall has had a positive impact on the school and community, because it has made people much more sensitive to issues, communication and relationships."■

Illinois

Student publication is literature, not litter



A Chicago principal recently learned that a litter problem on campus is not reason enough to trash a student newspaper.

Maude Carson, principal of Lane Technical High School in Chicago, Ill., said she was concerned about the amount of newspapers that cluttered the school's campus. So in early June she issued a ban on the city-wide newspaper *New Expression*.

New Expression has published articles on controversial subjects such as date violence, teen sex and drug use. It is produced by Chicago-area students who work in the offices of Youth Communication, a not-for-profit organization. With a circulation of 120,000, *New Expression* is distributed in several private schools and all of Chicago's 64 public high schools.

Carson said that copies of the publication are often found littered outside the school building. "If they are in every other school in the city, I don't see why they have to be in Lane if our students are not reading it," she said.

Mark Goodman, executive director of the Student Press Law Center in Washington, D.C., disagreed with Carson's reasoning. "School officials can't prohibit students from distributing their newspaper during school hours," he said. "The litter rationale has been raised by school officials in the past and the courts have routinely said 'that's not a good enough reason.' "

The ban, however, didn't last long. The school board lawyers came to the same conclusion as Goodman. "There can't be a prohibition of distribution of a general interest publication," said board spokesperson Robert Saigh. By the end of August, the ban had been lifted.

Carolyn Hodge-West, the executive director of Youth Communication in Chicago, did not think that the ban was issued because of the controversial content of the publication. She said that Carson was merely misinformed about the unlawfulness of the ban. Had she been aware, said Carson, she would not have barred the publication. "She thinks the content of our paper is excellent — and she always has," said Hodge-West.

Adolfo Mendez, staff member of *New Expression*, and a student at Chicago's Kelvyn Park High School, was "glad, but not surprised" that the ban was lifted. He said that he felt confident about the issue, but also afraid that it would turn into a court battle.

"I didn't want conflict with Lane Tech," he said. "I just wanted students to be able to read *New Expression*.

Hodge West commented on behalf of students, saying that they were at no point concerned about the incident, because they knew they were right — that the paper could not be legally banned. The law just backed them up, she said, and as a result, they felt "quite accomplished."■

Arizona

Frat nabs paper

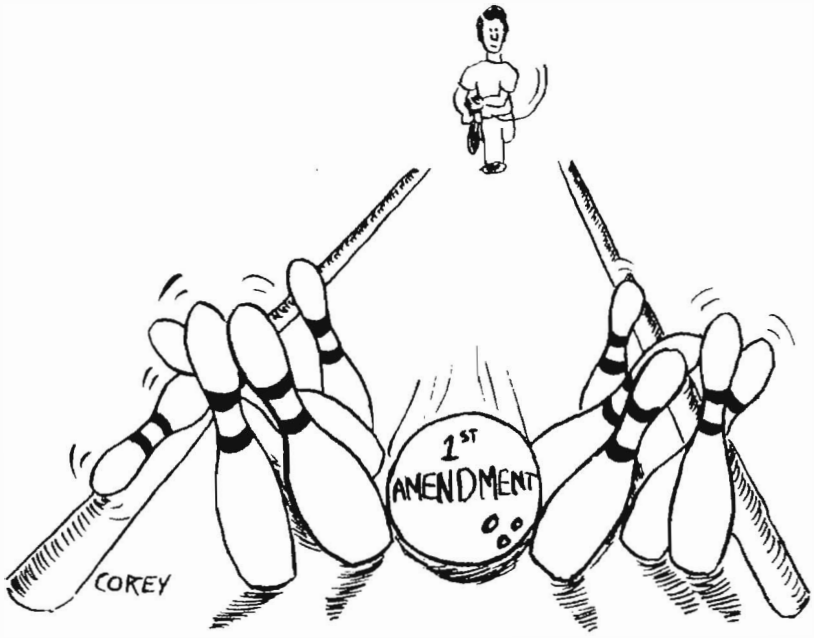
Staff members of the *Daily Wildcat* at the University of Arizona weren't laughing last spring at what they considered to be a practical joke that got out of hand. In fact, according to news editor Paul Allvin, they were "pretty outraged" by the incident.

Last April, when Kappa Sigma fraternity members realized that they had mistakenly printed an ad in the *Daily Wildcat* a week early, they schemed up a plan on how to retrieve the papers. Several members drove to the printer's, and, posing as replacements for the regular driver, they loaded up their cars with some 12,500 copies of the *Daily Wildcat*, hot off the press.

It didn't take long for the police to trace one of the cars to the Kappa Sigma fraternity house, where the papers were later photographed by a *Wildcat* staff member. The two Kappa Sigma fraternity brothers who were suspected of masterminding the plunderage were recommended for suspension and ordered to restitute $3,952 by the UA dean of students.■

Oklahoma

Paper re-established after an 11-year fight, but former editor says battle may not be over



Students at Tulsa Junior College in Oklahoma will finally have an official school newspaper to call their own next semester. And according to TJC student David Arnett, the 10-year battle for the paper has proven to be a valuable one.

In 1971, when the *Horizon* was first published, no written policy on how the newspaper was to function existed. Two years later, James Tidwell was hired as a journalism instructor/newspaper adviser. Under his supervision, the paper grew to a circulation of 4,000, until 1976, when it ran an editorial that endorsed a position conflicting with that of the administration. The editorial expressed support of the placement of a state correctional facility near the college's downtown campus.

Shortly afterward, the school created an official editorial and procedural policy regarding the *Horizon*, which asserted that the paper was a "laboratory exercise" in which "final decisions regarding content will continue to be made by the adviser." The policy also formally forbade the publication of letters-to-the-editor.

In 1985, the *Horizon's* circulation was limited to 200; by 1986, it had been supressed to 100, and copies of it could not officially leave the journalism classroom.

These restrictions incited then-editor David Arnett into action. Along with delivering a 20-page proposal for a student newspaper to the college's president, Arnett published an editorial also calling for a free student press. Shortly afterward, he was fired from his position as editor. The next editor, Dana Mitchell, was also fired after only a month for "questioning policy."

Rather than give up, Arnett publicized the situation in whatever way he could. He created the *Independent Student News*, a newspaper whose content focused mainly on the journalism situation at TJC. In discussions with members of organizations all over Tulsa, including the Jaycees club, the Kiwanis club, the Lion's club, and the Optimists, Arnett revealed the facts surrounding the issue. In addition, he attended every meeting of TJC's Board of Regents subsequent to his dismissal, petitioning for a school newspaper.

Although the members of the Tulsa organizations were supportive and encouraging, it was the Oklahoma Legislature who, in June, helped the cause in perhaps the biggest way by passing a resolution included in a higher education appropriation bill.

The non-binding resolution read: "It is the intent of the Legislature that institutions of higher education within the Oklahoma State System of Higher Education respect the First Amendment rights of the students of such institutions, especially with reference to the press of student newspapers."

The resolution continued to say, "The Oklahoma Legislature will not tolerate abridgement of such freedom."

Following the passing of the resolution, the TJC administration commissioned a survey of some 300 students. The results said that 90% of them favored a student newspaper, and on September 9, the TJC Board of Regents approved a plan for a student newspaper submitted by the school's Policy Committee.

The publication's funding will come primarily from a new student fee, which will add 25 to 50 cents more per credit hour, from advertising and from the regular TJC budget. A Publications Advisory Board will consist of a "faculty adviser, the editor, the chairperson of Communication Services Division on the campus where the newspaper office is located, the Provost for Student Services, the president of the Student Association from one of the campuses, the president of Phi Theta Kappa from one of the campuses, and a representative from the Faculty Association." It will create guidelines for production, which will be subject to the Board of Regent's approval.

However, Arnett says the battle is not necessarily over. "There are some holes (in the plan) which could allow for future administrative repression," he said. He added that in October, he wrote to the Board of Regents, requesting officially that

they consider changing the newspaper policy, but his request was ignored.

Arnett intends to continue publishing the *Independent Student News* at least until the end of the semester. He said that he doesn't intend to be in direct competition with the new TJC paper, but that he is left with little choice, as the regents would not consider his "helpful recommendations." If financial backing stabilizes by the semester's end, Arnett plans to expand the *Independent Student News*, making it into a publication that would be available to all college students in Tulsa.

His advice to students involved in similar struggles is optimistic, and indicates his pleasure in the outcome of the battle. "In retrospect," he said, "it is not often we have a chance to effect such change in the system. We ought to jump at it then. If you stand flat-footed on principles of justice, no one can ever defeat you — eventually."■

Arnett wins press freedom award

David Arnett, the former editor of the *Horizon* at Tulsa Junior College, has been awarded the 1987 Scholastic Press Freedom Award.

The award, sponsored by the Student Press Law Center and the National Scholastic Press Association/Associated Collegiate Press, is given each year to the high school or college student or student news medium that has demonstrated outstanding support for the First Amendment rights of students. The award was first given in 1984 to three high school students who recently took their battle for student press freedom to the Supreme Court in the case *Hazelwood School District v. Kuhlmeier*.

In selecting Arnett for the award, SPLC Executive Director Mark Goodman cited the tireless efforts of the student journalist in using wide-ranging public pressure, including local and national media coverage, to achieve press freedom for Tulsa Junior College students.

"Many students, faculty members and concerned Oklahomans had a part in this success story," Goodman said. "But David was the catalyst that prompted TJC officials to back down after a decade of fighting against a free press. And he did it all without going to court."

The 1987 Scholastic Press Freedom Award was presented to Arnett on November 1 at the Associated Collegiate Press/College Media Advisers national convention at the St. Louis Sheraton Hotel.

Goodman noted the high level of competition for the award this year. He mentioned other outstanding nominees included the yearbook staff at Montclair State College in New Jersey, who battled and defeated the creation of a review committee created by their school's student government, and the staff at the student newspaper *Sword and Shield* at South Plantation High School in Plantation, Fla., whose outstanding support for press freedom and coverage of controversial issues included a story on steriod use by high school students that was picked up by local and national media.

Nominations for the Scholastic Press Freedom Award are accepted until August 1 of each year. A nominee should demonstrate a responsible representation of press freedom through writing or actions and the ability to raise difficult and necessary issues in news coverage. Nominations of any individual, student newspaper, magazine, yearbook or broadcast station will be accepted.

Nominations should clearly explain why the nominee deserves the award and provide supporting materials. All nominations should be sent to:

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

California

Angry adviser ousted; claims harassment

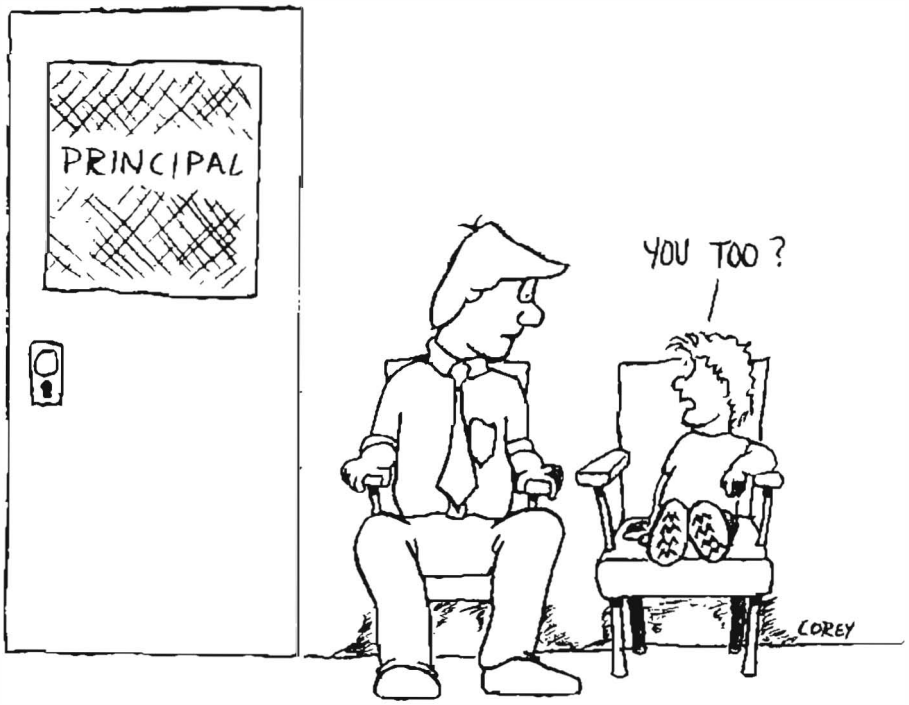
Gary Daloyan used to be the adviser for *The Lincolnian* at Lincoln High School in Stockton, Calif. He also used to teach journalism, English and typing. But for now, having first been reassigned and then fired, he does none of these things.

The controversy began during the 1979-80 school year with the development of problems between Daloyan and Principal Dean Welin concerning the use of space and facilities for school publications. It worsened in 1982, when Welin expressed displeasure with some of the content of the newspaper, and informed Daloyan that reassignment of the position of adviser was being considered.

Then, in the 1982-83 school year, Daloyan complained because no budget money had been alloted to the newspaper. Consequently, the funds were restored to 60 percent of their previous levels. That same year, Daloyan was told that he would be observed in the classroom four times, instead of the usual two times.

Feeling harassed, Daloyan filed grievances under the teachers' collective bargaining agreement, which the superintendent denied in May 1983. Daloyan appealed the denial to arbitration, and at the same time, was informed that he would be reassigned to Lincoln Senior Elementary School to teach English, typing and one period of journalism.

On May 12, 1987, a three member Commission on Professional Competence ruled that Daloyan should be removed as a permanent certified employee of the district. The Commission said it was "unfortunate that this situation was brought about by respondent's transfer from his journalism assignment and, without such transfer, respondent might have taught for many, many years without the kind of problems described, the Commission is convinced that even if respondent is victorious in his law suit, his disdain for the District and disillusion with the teaching profession will prevent him from regaining the proper perspective on his role as a teacher of young people."



In the meantime, in addition to filing a workers' compensation suit against the district for stress and physical injuries sustained on the job, Daloyan has also filed a $9 million civil rights suit against the district's trustees and administrators, which is expected to go to court sometime after the first of this year.

While he continues to patiently make his way through what he calls "the legal muck of court bureacracy," Daloyan is interviewing for college positions and free lance writing.■

Missouri

Brief

On July 15, just two hours before the close of the 1987 legislative session, the Missouri Legislature passed major revisions to its "Sunshine Law," which will not only affect professional journalists but student journalists as well. Signed by Gov. John Ashcroft on July 1, the new Missouri Open Meetings and Open Records law went into effect on September 28.

Among the revisions included by the new law is the expansion of the definition of "public governmental body" to include "any body, agency, board, bureau, council, commission, committee, board of regents or board of curators of any institution of higher education, supported in whole or in part from state funds." As a result of this change in the law, meetings, records, votes, actions and deliberations of public governmental bodies will be more accessible to students. Also, governmental bodies must now make public records available for copying for a reasonable fee. The fine for violating the law has increased from $100 to $300.

The revision of the law was lauded by Attorney General William L. Webster, who said, "This has been needed for a long time. . . . Those who believe in open government, accessible to all Missourians, should join with me in praising the Missouri General Assembly."■

Indiana

Former Ball State University reporter continues to fight for access to meetings

Students at Ball State University in Muncie, Ind., appear to have won a battle but are having a hard time continuing the war to gain access to a university committee's meetings.

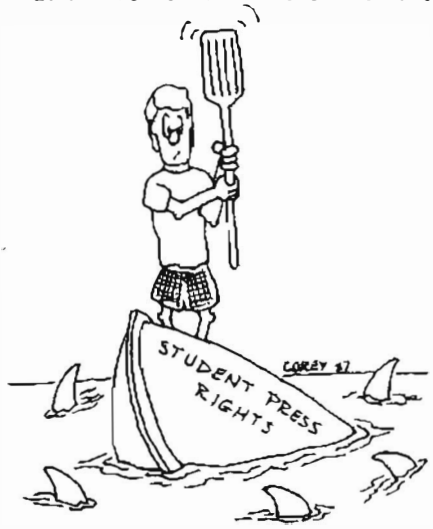
Bob Vitale and Diane Goudy, former student reporters for the Ball State University *Daily News*, sued the university in March of 1987 for barring them from Calendar Transition Committee meetings, which they claim were closed in violation of the Indiana Open Door Law. The Calendar Transition Committee was set up to recommend a plan for implementing the University Board of Trustees' decision to convert Ball State from a quarter system to a semester system. The school agreed when the suit was filed to postpone Calendar Committee meetings until the case was settled. The students also charged that the university wrongly denied them access to the names of candidates for several campus posts.

In July, a state court judge issued an opinion that the students had a right of access only to the names and records of employees of the university, not candidates, but agreed with the students that "there does not seem to be any public policy reason why the Calendar Transition Committee should not have open meetings."

Shortly after that decision, the students' attorney, who had taken the case on contingency basis, meaning that his fees would be paid by the university if the students won, announced that he could not continue with the case until his fees were paid. Even though the students were winning, they already owed the attorney $6,000, and the school was planning to appeal. The attorney explained that his caseload was too great to continue without pay.

Goudy, although she had graduated in May, began to search for another attorney to take the case. Meanwhile, she said, "The University was trying to rush the appeals process and we were kind of stalling for time to find some money — any money."

In October, Goudy took her case to the Indiana Civil Liberties Union. However, the attorney interested in taking her case had pneumonia, and she has had to wait for confirmation that the ICLU will take on her case.



She said she has every reason to believe they will.

The university, Goudy said, is now claiming the work of the Calendar Committee is done. She asserted that the committee was not nearly finished with its work when the two sides agreed all Calendar Committee meetings would be postponed. She said she thought the university had simply reassigned the work to other committees. Calendar Committee chairman Thomas Kaluzynski refused to comment.

Goudy said she refuses to drop her suit because of the wider implications a court decision will have. Observing that the school is a state university supported by state taxes, she said, "Any taxpayer ought to be able to get into those meetings — they certainly ought to be able to find out what happened." The people can't do that unless the press can get in, Goudy claimed.

The university closed the meetings, according to Goudy, so that people would not become "prematurely angry" at the committee's decisions. Jon Moll, the university's attorney, said it is just as valid to ask why a meeting should be open as why it should be closed. He pointed out that open committees were required by the Open Door Law to announce meetings and agendas 48 hours in advance. Opening all meetings, he said, would bog down the decision-making process. Moll also stated that the Open Door Law was intended to open governmental meetings and thus was not well-tailored to the university.

Goudy said she thinks the University is working to overturn an earlier decision, also involving Ball State, that expanded the types of meetings covered by the law. The school, she claims, recently lobbied the state legislature to defeat an amendment to the Open Door Law that would impose a $500 fine for violating the law and broaden the definition of committee meetings required to be open. Dr. Tim Perry, the university official in charge of monitoring prospective state legislation that would affect the university, claims that the school did not lobby for or against the bill, as such action is forbidden by state law. He said the university supported the version of the amendment which eventually passed.

Goudy said she was almost sure that she would win her case as long as she had a lawyer. The school, she said, plans to appeal the case to the state supreme court if it does not get a favorable decision. She explained that she had no idea when the case would actually be heard on appeal but that they might have to wait as long as a year.■

Texas

Final turn for *Twisted Times* is settlement

In Texas, neither the school superintendent, nor an attorney representing two high school students will say for certain what led to the settlement of their case this fall. Furthermore, all parties involved have agreed that the amount paid by the school to the students will be kept strictly confidential.

The settlement ends a controversy which began in the fall of 1985, after high school student Karl Evans was suspended by school principal Jerry Kirby for distributing his alternative paper at Bryan High School without receiving prior approval from the school administration. *The Twisted Times* criticized school officials, including the principal.

When Evans appealed his suspension to the Texas Education Agency, the suspension was upheld, although the school district agreed to remove all references to the incident from Evans' permanent record.

When Evans graduated in May 1986, his sister Veronica became the editor of the paper to keep the case from becoming moot.

In January 1987, the District Court of Travis, Texas, issued an injunction to the school, ordering that it could not enforce a ban on material that "connotes insubordination toward the staff." The court allowed the school officials to continue to review any alternative student newspaper prior to distribution.

The case was to be pursued in court by the students' attorney, James Harrington, in mid-July, at which time the validity of the school's publication policy was to be re-evaluated.

According to Superintendent Guy Gorden, the case didn't go back to court because an out of court settlement was made. The settlement includes an undisclosed payment to the students and the adoption of a new publications policy by the school.

In addition to other provisions, the new policy gives the principal the authority to prohibit distribution of publications "which advocate actual and material insubordination toward the school board or the Administration or advocate illegal action or disobedience to published rules on student conduct adopted by the school board."

Both Harrington and Gorden claim that the students are satisfied with the outcome of the settlement.■

Washington

Students appeal prior review in Ninth Circuit

The U.S. Court of Appeals for the Ninth Circuit will hear oral arguments on December 9 on the constitutionality of prior review by school officials of non-school sponsored publications distributed on school grounds.

The students of Lindbergh High School in Renton, Wash., appealed the case *Burch v. Baker* when a federal court judge, despite strongly criticizing the school's prior review policy, upheld in principle a school's right to preview material before it is distributed.

The school had disciplined five students for distributing an unreviewed underground newspaper at a 1983 senior picnic. The newspaper contained the results of a survey which had asked students to rate the teachers at the school, but contained none of the vulgar or profane language sometimes at issue in alternative publication cases. The students' stated purpose was a desire to exercise their First Amendment rights in the face of the "not-so-subtle censorship message broadcast by the Renton School District."

Court decisions in the area of prior review and restraint of student newspapers not published by the school are mixed. The Seventh Circuit Court of Appeals said such a policy is improper. The Second, Fourth and Fifth Circuit Courts have said a prior review policy could in theory be constitutional but rejected the specific policies presented to them. In the recent *Bystrom v. Fridley High School* case, the Eighth Circuit Court of Appeals became the first court of appeals to uphold an existing prior review policy.■

Colorado

Christian students sue La Junta High

School says allowing magazine is endorsing religion

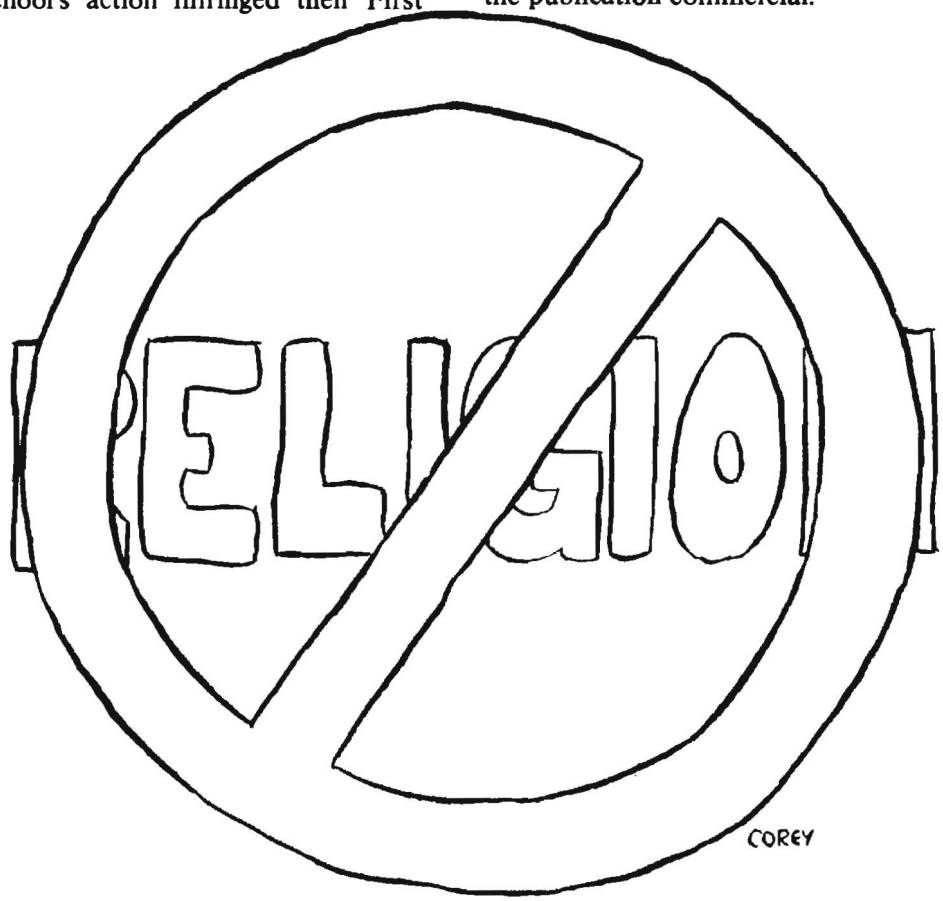
La Junta High School in La Junta, Colo., has become the third high school in country to be sued for limiting student distribution of the Christian oriented magazine *Issues and Answers* on their campus. Administrators at La Junta claim that the magazine is commercial and is intended to convert people to a certain religious viewpoint and have banned distribution of the paper.

The school suspended three students in February and March for distributing the magazine, and one official allegedly warned a fourth student that possession of the magazine was grounds for suspension. A teacher informed one of the students who had been suspended that distribution of the paper even off of school property would result in denial of an award as top student in her class, according to a complaint filed in federal court by the suspended students. The students claim that the school's action infringed their First Amendment rights and violated Colorado law.

The school board claims that it suspended students for "willful disobedience" in violating school policies, not for exercising their First Amendment rights.

According to the students, the school banned the paper in part because of a subscription offer included in the magazine, which was distributed to students at no cost. The school argues that the subscription offer made the magazine commercial in nature. Distribution of "material designed for commercial purposes" is forbidden by a school district policy.

David French, an attorney representing the students, disagrees. The magazine prints articles on current issues of interest to students, French argued and added that the single one-and-a-half by two inch subscription offer does not, in his view, make the publication commercial.



The school also says that the paper's Christian viewpoint on current issues attempts to convert students to that view. Distribution of material that proselytizes a particular religious or political belief is prohibited by district policy. However, that facet of the policy was formulated only after the controversy surrounding the students' right to distribute had already begun.

French says he believes this new policy was adopted in order to allow the school board to stop distribution of the paper on religious grounds. He says that such a policy oversteps the powers of the school board as stated by Colorado state law. French also claims these kinds of regulations don't agree with Supreme Court rulings which say religious speech is protected by the First Amendment.

The school board says it believes that the lawsuit is premature because the students have not yet completed the appeals process the school board policy provides for. The board claims it has not rendered a final decision about the students' objections.

Nonetheless, the school board argued that if it allowed distribution of the paper, it would appear to endorse the viewpoint in *Issues and Answers,* thus violating the constitutional ban on state establishment of religion. The board also notes that parents as well as students distributed the paper on school grounds.

French argues that the students have chosen voluntarily to distribute *Issues and Answers.* He says that to allow an activity the students have chosen could not be seen as endorsement by the school. By banning distribution of the paper, the school is placing itself in a position of judgment, according to French. Allowing distribution of anything that is not libelous, obscene or disruptive, he says, is "content neutral" regula-

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tion and is acceptable. French believes that *Issues and Answers* was banned for its religious content and in an improper exercise of school authority.

French describes La Junta's policy as "dangerous" because it excludes controversy from the school atmosphere. "The core of First Amendment values [is that] all things should be allowed in the public debate," French avers.

Steve Epstein, attorney for the school administration, refuses to comment on the issues involved, saying that "the press is not an appropriate forum for deciding some of these extremely important social issues." Epstein accuses French of using the press to promote the viewpoint of the Caleb Campaign, which prints *Issues and Answers* and of the Rutherford Institute, a legal group which deals with issues of freedom of religion and for which French works. Epstein says that he is very much behind the school board philosophically and that he will have "plenty to say" once the case is over.■

Pennsylvania, Illinois

Students want free religion, challenge publication policies

The religious magazine *Issues and Answers* is creating headaches for school administrators in Pennsylvania and Illinois who are trying to balance what they see as a conflict between the separation of church and state and the freedom of speech clause in the First Amendment. Students at Antietam Junior High School in Waynesboro, Penn., and Round Lake High School in Round Lake, Ill., have sued their schools for infringement of the students' First Amendment rights.

The students claim that allowing them to distribute *Issues and Answers*, a monthly magazine which addresses current issues from a Christian perspective, could not be construed as school advocacy of a particular religious point of view. The action is student initiated and the students want nothing more than to be let alone. They advocate a policy that would neutrally allow distribution of anything that is not obscene, libelous or disruptive.

For Antietam Junior High, the students' request to distribute the magazine is the first such request in 10 years. The school's policy of reviewing student materials before distribution, administrators argue, means that anything passed for distribution carries the school's stamp of approval.

The school also claims that students are a captive audience, required by law to be in school. The students argue that if they do not have the right to freely distribute *Issues and Answers*, the students are captive to "those particular points of view approved by the school system."

Antietam and Round Lake decided, despite their concerns about state advocacy of religion, to allow limited distribution of *Issues and Answers*. Antietam's attorney, Robert G. Hanna, said parents' groups probably would have sued the school had unrestricted distribution been allowed. Antietam permitted the students to distribute the magazine at any time before 7:50 a.m. in front of the school's front doors through which three quarters of the student body enter. The students had been distributing before school in the locker area. They object, however, to the time as well as the place restrictions. Round Lake High permitted distribution before and after school and during lunch in specified places around the campus.

Students at both schools felt the restrictions on distribution were arbitrary and unreasonable and violated the rules. They were suspended and Charlie Johnson, a student at Round Lake High, was allegedly shoved by his principal when the administrator attempted to confiscate Johnson's copies of the magazine. Johnson's record was later expunged of the suspension, but the students at Antietam still have the suspensions on their permanent records. Three Antietam students were suspended in May of 1986, Johnson in May of 1987.

The administration at Antietam claims that the students were suspended for "direct disobedience" and that students never tried to express their viewpoint in a less confrontational manner. However, Bryan Thompson, one of the students suspended, said that he felt "[p]resenting a copy of *Issues and Answers* to a friend at school is to me a proven, tactful way of sharing my religious faith with other students without forcing my views on others." Thompson claims to want to distribute the magazine in order to "lead people to the Lord." The school seems to imply that there are other ways for Thompson to express his viewpoint.

Round Lake High was accused in Johnson's lawsuit of creating a district policy specifically designed to prevent the distribution of the magazine. School board members, according to Johnson, met with knowledge of the problems at Round Lake and created the policy that limited the time and place of the distribution. Prior to that, Johnson claims, the principal administered an unwritten policy that varied from case to case. Robert Mesaros, principal at Antietam Junior High, also created special guidelines in response to the attempted *Issues and Answers* distribution. What is unclear is whether those policies were created for the specific purpose of curtailing

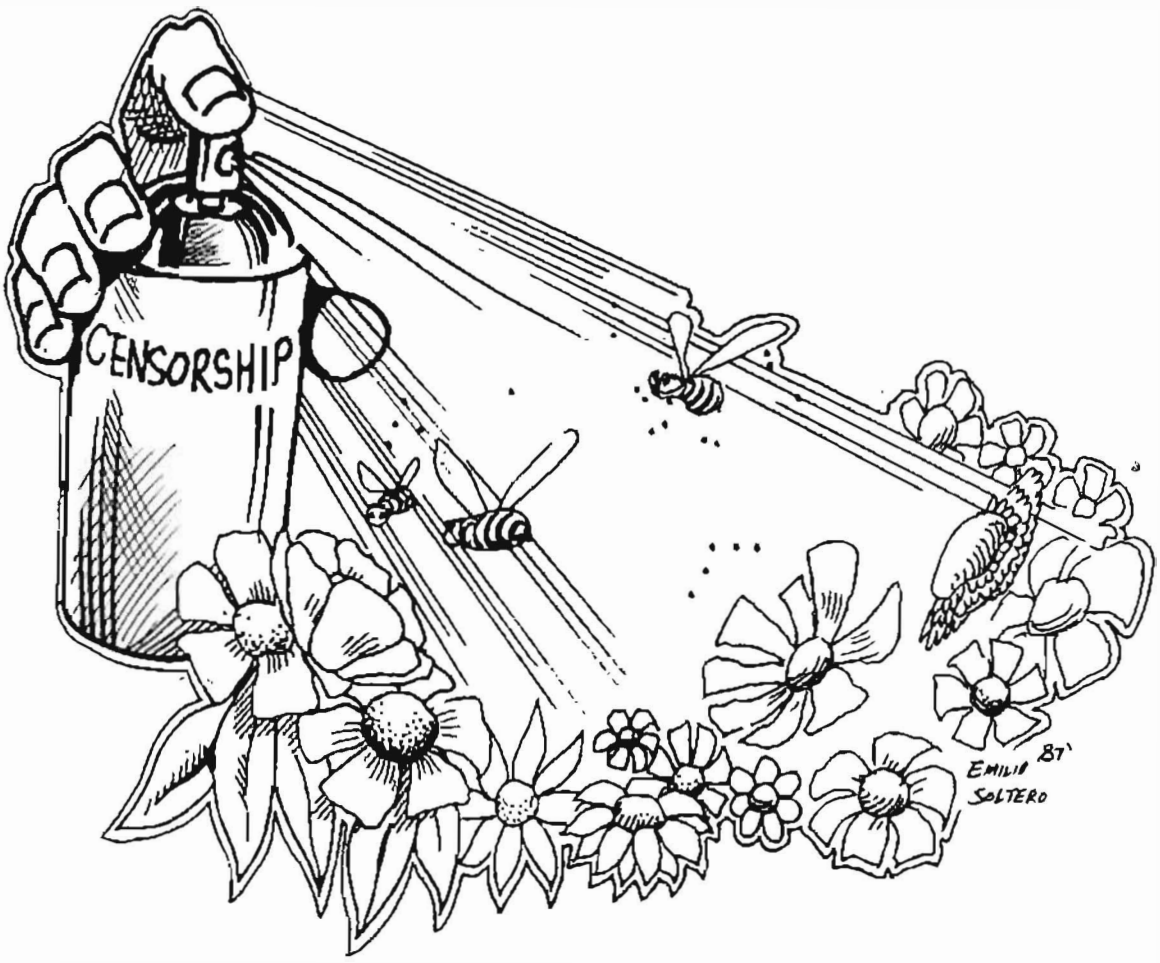
the distribution of a religiously oriented magazine or whether similar restrictions would have been created in response to the mass distribution of any type of non-school literature.

Both administrations expressed concern over the content of the magazine, but Antietam listed other concerns as well. Administrators cited previous problems with congestion and graffiti in the locker area where students wanted to distribute *Issues and Answers*. They said students were not allowed in that area without supervision in any case. Antietam also expressed concern that allowing distribution of *Issues and Answers* would lead to a large number of requests for access to the student audience by non-school groups. Antietam argues that its policy prohibited access to the school for any group wishing to distribute non-school sponsored materials, so the *Issues and Answers* policy is not discriminatory. This raises the question of whether allowing no one to distribute violates the First Amendment.

Students at Antietam claim that other distributions and solicitations similar to that of *Issues and Answers* occur at their school and cite specifically the distribution of their school paper, trading magazines in the halls, club meetings in classrooms after school, and selling tickets to rallies and sports events. The school says that none of these situations is similar. The school paper, rallies, and sports events are part of the school curriculum. Distributing magazines to the student body, they claim, is not similar to voluntary attendance at a club meeting. Trading magazines, according to the school, is not comparable to the mass distribution of *Issues and Answers*.

In response to the administration's concern that the mass distribution of the magazine may be a source of disruption significant enough to warrant limitations, Antietam students propose alternative distribution rules. They suggest that rather than limiting the times and places at which the magazine can be distributed, the school should limit the number of copies students may distribute in any one day. The students did not explain how this would be a lesser infringement on their First Amendment rights or how such a policy might be enforced.

Both parties in the Antietam case have moved for summary judgment, which means there will not be a trial if the motions are granted. A decision is expected soon. Both sides anticipate an appeal and suggest that the case could go all the way to the Supreme Court. The lawsuit against Round Lake High was filed in August of 1987, and the two parties are trying to reach an out-of-court settlement. If that fails, the lawsuit will continue with a decision expected some time early next year. Lengthy appeals are possible in either case, and it may be years before the balance is found.■



Religion and the student press:

Administrators suspend a high school student for handing out religious pamphlets in the hall. Another student is prevented from running a Bible quotation next to her name in the school yearbook. A college newspaper editor's authority to publish a regular religious column is questioned by readers and the school administration. Incidents like these have happened, or could happen, across the country. The current controversy over religious speech in the schools has students wondering — is it constitutional to ban religious writing from public high school and college campuses? When can schools restrict distribution of religious material in student publications on campus?

The short answers are no, and hardly ever. Religious writing, when it is initiated solely by students, is protected speech. The constitutional prohibitions against state establishment of or interference with religion should not be a concern for school officials who do not encourage religious writing or unfairly discriminate against theological expression.

THE FIRST AMENDMENT

The First Amendment states, in part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press." Protections for religious writing in public schools or colleges are derived from this clause. The First Amendment applies to states and public schools through the Fourteenth Amendment, which guarantees that those freedoms "implicit in the concept of ordered liberty" will be preserved against state as well as federal action.[1]"

This article will analyze first free speech and press rights. If the principle of free speech protects student publication of a particular point of view, then that protection applies to religious writing.

Second, the prohibition against any "law respecting an establishment of religion" will be considered. This clause, called the "establishment clause," requires government actors to maintain a neutral position with respect to religion. If they do so, the fact that religion is advanced by a private actor — the student writer — should not be considered a problem.

Finally, the "free exercise" clause, which protects religious parties from interference with their religious beliefs and practices, will be briefly discussed. Few students could claim that their religion requires them to write for the campus paper, but other activity, such as pamphleteering, might come under this heading. Courts balance the right to exercise one's religious beliefs against the state's interest in regulating a particular activity. If a student can show that his religion requires him to distribute religious writing, the school must justify a restriction on that activity.

FREE SPEECH

Religious speech, like all other forms of "pure" or message-conveying speech, is protected expression under the First Amendment. *Tinker v. Des Moines Independent Community School District* established the rule that students' right to free speech must not be abridged unless that speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."[2]

This rule applies whether or not school administrators agree with the ideas disseminated by that speech. Even if the writing is perceived as offensive or controversial the

right to publish and distribute remains. In *Stanley v. Magrath*,[3] for example, the Regents of the University of Minnesota instituted a fee refund plan after the school newspaper published an April Fools' Day "interview" with Jesus Christ. The Regent's action was determined to be unlawful content-based discrimination. And in *Shanley v. Northeast Independent School District*,[4] a high school case, student writers were suspended after they distributed an underground paper containing an article about birth control and an editorial advocating marijuana law reform. The court of appeals held that the school had not established reasonable guidelines which would enable a prediction of " 'substantial and material' disruption of school activities." The school's argument that the student newspaper contained "controversial" articles was not convincing: "[I]n a democracy 'controversy' is, as a matter of constitutional law, never sufficient in and of itself to stifle the views of any citizen."

Shanley indicates that just as administrators cannot interfere with an official student publication because it does not meet campus "standards" for subject matter, unofficial, or "underground," publications may not be discriminated against because of their status. Religious pamphlets are entitled to this protection as well. The

The right to free expression protects religious writing

Supreme Court has consistently recognized pampleteering as a form of speech. *Heffron v. International Society for Krishna Consciousness, Inc.* (1981)[5] and *Murdock v. Pennsylvania* (1943)[6] are just two of the cases to which the Court applied First Amendment/free speech analysis to distribution of religious pamphlets. Student press cases follow the same logic.

Brubaker v. Moelchert[7] applied free speech principles to pamphleteers on a state college campus, striking down rules which discriminated against "outsiders" by giving an administrator power to decide who could or could not pamphlet on campus. "Advocates of ideas not popular enough to obtain invitation from an established organization to speak in a public place are those who most need their First Amendment rights." *Baughman v. Freienmuth*[8]

declared that a rule allowing a high school principal to preview published materials and to approve or deny distribution was void because it was unconstitutionally vague. That court explained, "The regulation complained of reaches the activity of pamphleteering which has often been recognized by the Supreme Court as a form of communication protected by the first amendment."

It stands to reason that religious writing may not be censored because of official disapproval with the subject matter, for the same reason that other ideas or forms of writing may not be prohibited. Similarly, the constitutional principles apply to religious pamphleteering that apply to distribution of unofficial publications on other subjects. Thus, in the unlikely event that newswriters and editors transformed a school paper into a pro-Christian, Moslem, or Jewish publication, or where an independently produced paper or pamphlet stridently proclaimed the value of one faith and the faults of another, to censor that publication because of its subject matter would be unconstitutional under the *Tinker* standard.

UNPROTECTED SPEECH

When the state interferes with free speech or free exercise of religion, it normally must pass the "strict scrutiny" test. Courts scrutinize rules that affect speech to determine if they are narrowly tailored to meet a compelling state interest and if they are one of the least restrictive methods of achieving that interest.

In the university setting, the Supreme Court has applied the "exacting scrutiny" it applies to the restriction of speech in any other public forum. Where students are prevented from speaking because of the subject matter of their discussion, and other similarly situated students have been allowed to speak, a school must justify its action.[9]

In secondary schools, the Court of late has appeared willing to give more weight to the determinations of school officials as to what, exactly, is of compelling state interest.[10] Nevertheless, the presumption of invalidity continues to apply to censorship at all levels. The Court has said that the "bare assertion" of an interest in separating church and state is insufficient to overcome the constitutional consideration raised by the interference with free speech.[11]

As the fountainhead of student press law, *Tinker* has been interpreted as justification for the prohibition of speech which poses the threat of immediate and substan-

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tial disruption. Also, speech which generally is unprotected for adults can be prohibited of students, and thus language which is libelous, obscene or invades privacy may be discouraged.

It is hard to conceive of a situation where religious content alone could justify censorship. Only in the unlikely event that religious speech would drive already disturbed or disruptive students into a frenzy, if the publication contains libelous attacks or if distribution was made in a disruptive fashion could the speech be prohibited or punished. Note, however, that college administrators do not have the right to preview publications, or to exercise prior restraint over their distribution.[12]

A school administrator might claim concern for the mental health of students as a justification for censorship, but support for that position is quite slim. In *Trachtman v. Anker*[13] a federal appeals court upheld the action of high school officials who refused to permit distribution of a questionnaire to students. The questionnaire asked about students' sexual practices, including masturbation and homosexuality. The school argued that students might be traumatized by the questioning, and the court, after considering expert testimony, let the school's judgment stand. The decision was rather arbitrary, since experts testified on both sides of the issue. *Trachtman*, while the only one of its kind, is a dark cloud on the horizon of student press law.

Only in the unlikely event that religious speech would drive already disturbed or disruptive students into a frenzy. . . could such speech be prohibited or punished.

Could this holding be extrapolated to justify prohibiting religious writing, because it might shake students' faith or cause them to fear damnation? The connection would certainly be tenuous, and the school would bear the burden of showing that their concern was more than an undifferentiated fear. This seems to be an area where before-the-fact conjectures would be difficult to justify; religious freedom and free speech are both cherished values.

There may be differences in the subject matter that can be censored in colleges and in high school and in the treatment of the question of prior review, but the justifications for prohibiting religious writing do not fit the rationale for treating, for example, sexually suggestive language differently in high school than in college. While government sponsorship of a religion or enforced religious activity is repugnant under our Constitution because of the value our society places on free thought and worship, the same values weigh for free religious expression when it is not supported or enforced by the state. There is no body of thought which supports a flat declaration that religious thought is disruptive or dangerous to students, so *Tinker* and its progeny, including *Trachtman*, do not lend support to its censorship.

TIME, PLACE AND MANNER RESTRICTIONS

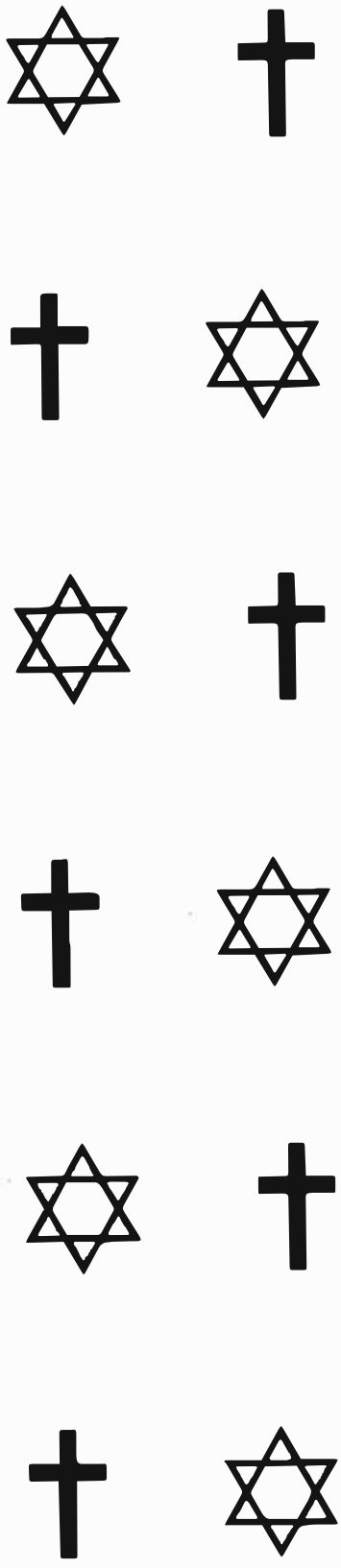
A school has the right to set out reasonable regulations on the time, place and manner in which a publication can be distributed, provided that these regulations don't strangle speech on campus. In *Heffron v. International Society for Krishna Consciousness* the Court found sufficent interest on the part of the operators of the Minnesota State Fair to justify a requirement that the Hare Krishnas pass out literature only in a designated location, even though that interfered, in a sense, with the Krishnas' religious ritual of soliciting converts and donations. As that case illustrates, time, place and manner regulations are reasonable if they have no relation to the content of the speech, if they fulfill a significant government interest and if they allow ample alternative channels for communication.

FREE SPEECH OR ESTABLISHMENT OF RELIGION?

Despite the clear First Amendment/free speech prohibition against content-based censorship in the schools, administrators continue to express reservations about religious speech — whether it is pamphleteering or publication. School administrators who attempt to prohibit religious speech on campus often argue that providing a forum for that speech violates the "establishment clause" of the Constitution.

The mingling of religion and the state in schools can be a matter of grave concern. Nevertheless, a distinction must be made between cases where a state has "established" religion and those where, in the process of fulfilling a secular objective (such as ensuring free speech), religious activity is "accomodated."

In *Widmar v. Vincent*, members of a religious student group argued that a university regulation which prohibited them from using the facilities for religious discussion and



worship violated their right to free speech because it denied them equal access to a public forum, impinged on their free exercise of religion and violated the establishment clause as an "unjustifiable hostility" to religion. The campus had been generally available for the use of student groups. The Supreme Court asked whether, in that situation, the school could close its facilities to a registered group that happened to be religious. The answer, of course, was no.

The *Widmar* Court applied "forum" analysis to the case. It found that the university had established its campus as a "generally open" forum for student use, and that therefore the Constitution forbade the school from excluding expression of a religious viewpoint without meeting the "heavy burden of justification."[14] The Court emphatically categorized religious "worship and discussion" as speech "protected by the First Amendment," and based its holding on the rights of free speech and association. In its decision, the Court drew on the reasoning of two seminal school free-speech cases: *Tinker v. Des Moines Independent Community School District*, which upheld the right of secondary school students to engage in political expression,[15] and *Healy v. James*,[16] which held that a college could not forbid speech on campus either because it disagreed with a left-wing organization's philosophy or because of an unsupported fear of disruption. Thus, the Court drew on the pre-existing body of First Amendment law which had been applied to the schools. It is apparent from the Court's reasoning that religious speech may not be discriminated against because of its particular content any more easily than other types of expression.

In *Widmar*, the Supreme Court applied a straightforward free-speech-in-a-public-forum test, but the setting was a public *university*. The Court stated, "University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University's policy is one of neutrality toward religion." It is not certain that the court would apply the same test in a public secondary school setting, but signs point to that conclusion. In *Bender v. Williamsport Area School District*[17] the Supreme Court dismissed a challenge to a religious group's right to meet in a high school for lack of standing. However, four justices would have considered the case on its merits, and on the basis of *Widmar*, held for protected free speech rights in the discussion of religious concepts.

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While *Widmar* and *Bender* don't deal directly with the student press, the principles they espouse on free speech apply equally to the written and the spoken word. The Court's reliance on the *Tinker* and *Healy* cases, often cited in student press cases, makes the connection clear: Content-based censorship of student publications will not be tolerated, whatever the subject.

In the final analysis, the constitutional prohibition against the establishment of religion is not very pertinent in the student speech context. As is pointed out above, the Supreme Court has typically analyzed religious expression as just that — expression, protected as speech, or under the right to associate, or to practice one's own religion. Only when state and religion become intertwined in ways that are unlikely in the setting of the student press does the establishment clause enter the analysis.

As the court in *Widmar* characterized the test: "a party will not offend the Establishment Clause if it can pass a three-pronged test: 'First the [governmental policy] must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . finally, the [policy] must not foster 'an excessive government entanglement with religion.' "[18]

Allowing any student to express her own thoughts and beliefs in a student publication does not violate the establishment clause if it results from the school providing a "neutral forum."

Lynch v. Donelly[19] illustrates the Supreme Court's intent to limit the circumstances in which the establishment clause would be called into play. The Court upheld the city of Pawtucket's right to place a nativity scene in a park, finding the city's action to be an acceptable government recognition of the role of religion in our nation's development and heritage. Thanksgiving, the Court said, and even the scene of the Ten Commandments in the Supreme Court Building are examples of this permissible "recognition" of religion.

Lynch characterized the establishment clause as affirmatively mandating "accomodation, not merely tolerance, of all religions," and as forbidding "hostility toward any." The Court went on to state that it invalidated such government action "only when . . . there was no question that the . . . activity was "motivated wholly" by religious considerations." Even "substantial" benefits to religion are permissible.

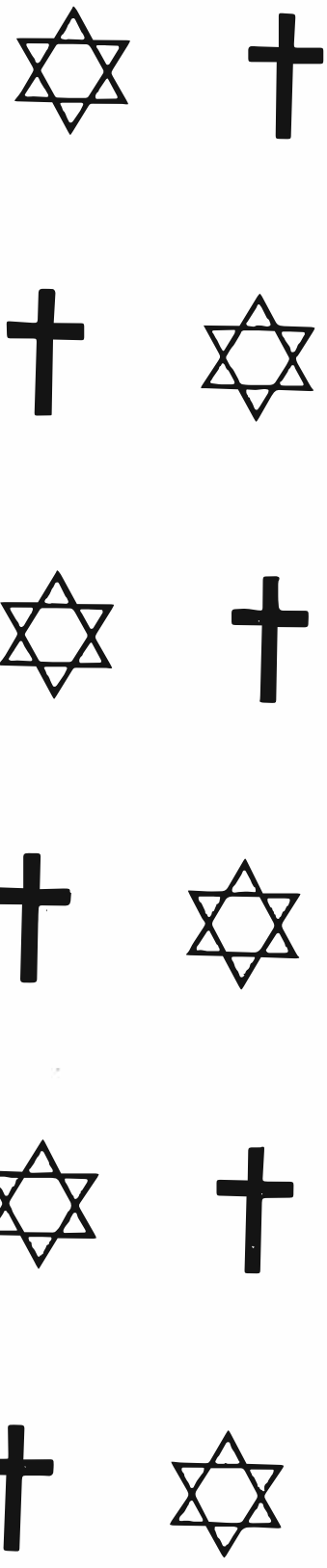
THE "FREE EXERCISE" OF RELIGION

Even though neutral regulations may interfere with a student's sincerely-held religious practice of proselytizing or soliciting donations, it is unlikely that a court would find that the student's desire to solicit contributions, for example, outweighed a school's interest in keeping students free of such pressures while on its grounds. *Heffron v. International Society for Krishna Consciousness*, in addition to supporting time, place and manner restrictions, appears to defeat a student's claim that such restrictions are unconstitutional because they interfere with the "free exercise" of religious beliefs. The language in *Heffron* supports this inference: "None of our cases suggest that . . . solicitation as part of a church ritual entitles church members to solicitation rights in a public forum . . . nor for present purposes do religious organizations enjoy rights to communicate, distribute and solicit- . . . superior to those of other organizations having . . . other messages."[20]

Still, an important distinction must be made between limitation of the time, place and manner of the conduct involved in soliciting funds and a total prohibition against distributing religious writings simply because they are sold or because they contain subscription forms or advertisements. Since the 1940's it has been settled that these factors will not justify prohibition of these publications. The Supreme Court recognized that financial support obtained from sales and subscriptions of advertising may be necessary in order to disseminate ideas in *Murdock v. Pennsylvania*: "Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way."[21] This truism is echoed in *Peterson v. Board of Education*,[22] a high school newspaper decision.

THE WORST-CASE SCENARIO

In a worst-case scenario, an abrasive religious group "takes over" a student paper and uses it to publish diatribes against other beliefs. This would not be a violation of the establishment clause, repugnant as the ideas expressed might be to the administration or some students. Why? Because, applying the test set out in



Widmar: 1. the school has not acted to foster religious growth — its purpose is not to encourage religious activity, but to allow a student paper to determine for itself what its editorial policies will be; 2. the primary effect is not to support religion, which is only incidentally aided, but to provide for free speech; and 3. there's no entanglement if the school avoids involvement.

Panarella v. Birnbaum,[23] a New York case, supports this view. In *Panarella*, officials at state-supported colleges were asked to suppress articles in student newspapers that some saw as offensive to religion. The court found that through student newspapers, "the colleges merely provided a neutral forum for debate, and did not evidence an intent to advance or destroy religious beliefs." The court noted that the establishment clause has been interpreted to prevent the government from becoming an "active participant" in religious affairs. When governmental activities have secular objectives, the Supreme Court has often sustained them, despite "incidental benefit or hindrance to religion." Allowing any student to express his or her thoughts in a student publication, even if this means a particular publication is dominated by religious thought, does not violate the establishment clause, then, if it results from the school providing a "neutral forum."

Sinn v. Daily Nebraskan[24] also established important precedent on this question. In that case, the court of appeals ruled that a college newspaper was entitled to exercise its editorial discretion to decide whose advertisements to run. The court held that the newspaper was not an arm of the state, and that its editorial decisions did not constitute "state action." *Sinn* refutes a school's argument that allowing religious writing in a student publication is state action in support of religion.

As the Supreme Court said in *Everson v. Board of Education*,[25] the establishment clause "requires the state to be neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."

In schools, the yearly turnover of student publication staffers provides for diversity of opinion. Where religion is concerned, administrators need to maintain objectivity. It's often argued today that "liberals" control the papers. Control by the religious does not justify censorship any more than that assertion could.

The worst-case of a student publication dominated by a religious faction has never happened and is not likely to happen. Most journalists take objectivity very seriously,

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and students prize intellectual openness. Even among completely private, non-student publications, the publisher that allows no comment other than that she advances is rare. For school administrators to pounce on the occasional religious writing or distribution as a violation of the establishment clause would be a great overreaction — and a violation of the First Amendment. ■

[1] E.g. *Palko v. Connecticut*, 302 U.S. 319 (1937) (discussion of Fourteenth Amendment's role).
[2] 393 U.S. 503, 513 (1969).
[3] 719 F.2d 279 (8th Cir. 1983).
[4] 462 F.2d 960 (5th Cir. 1972).
[5] 452 U.S. 640 (1981).
[6] 319 U.S. 105 (1943).
[7] 405 F.Supp. 837 (W.D.N.C. 1975).
[8] 478 F.2d 1345 (4th Cir. 1973).
[9] *Widmar v. Vincent*, 454 U.S. 263, 269-270 (1981); *See also Schiff v. Williams*, 519 F.2d 257, 261 (5th Cir. 1975).
[10] *See, e.g., Bethel School District No. 403 v. Fraser*, ___ U.S. ___ [106 S. Ct. 3159] (1986).
[11] *Widmar*, 454 U.S. at 276.
[12] *Antonelli v. Hammond*, 308 F.Supp. 1329, 1337-1338 (D. Mass, 1970).
[13] 563 F.2d 512 (2d Cir. 1977).
[14] *Widmar*, 454 U.S. at 268.
[15] *Tinker* also involved a religious element. The Tinker siblings, students who sued for violations of their free speech rights, came from a Quaker family. War was against their beliefs, and they felt an obligation to protest it. When they wore black armbands to school in protest of the Vietnam War, they were punished.
[16] 408 U.S. 169 (1972).
[17] 475 U.S. 534 (1986).
[18] The three-pronged test for violations of the establishment clause is not universally applied. The Court in *Lynch v. Donelly*, 465 U.S. 668 (1984) stated its "unwillingness to be confined to any single test or criterion . . . " *Id.* at 679.
[19] *Id.*
[20] 452 U.S. at 652.
[21] 319 U.S. at 111.
[22] 370 F.Supp. 1208 (D.Neb. 1973).
[23] 343 N.Y.S.2d 333 (App. Div. 1973).
[24] 829 F.2d 662 (8th Cir. 1987).
[25] 330 U.S. 1, 18 (1947).

Stolen words

Using the law to stop newspaper theft

Newspaper theft is a crude but effective way to censor the student press. Student editors at the State University of New York at Albany and the University of Florida recently reported to SPLC that large quantities of newspapers were stolen from their stands. "Basically, [our enemies] have tried to obliterate us," said John Cornelius, executive editor of the *Florida Review*.

Sometimes thieves disagree with the paper's political stance. After papers were taken from the SUNY Albany campus, an anonymous phone caller told the *Albany Student Press*, "We stole your issues and we'll do it again. You betrayed us with your bullshit propaganda." Papers may turn up missing after editors endorse candidates in student government elections or publish articles critical of special interest groups. There may be disagreement between newspaper personnel and others. At the conservative monthly *Florida Review*, thefts followed dissension over voting improprieties in the College Republican club elections. The thieves were not those who disagreed with the paper's politics, Cornelius said, but "a group whose immorality had been exposed."

I-LEGAL ANALYSIS

The first and possibly most difficult step involved in fighting back against paper theft is identifying the perpetrators. If thefts happen repeatedly, enlist the help of the

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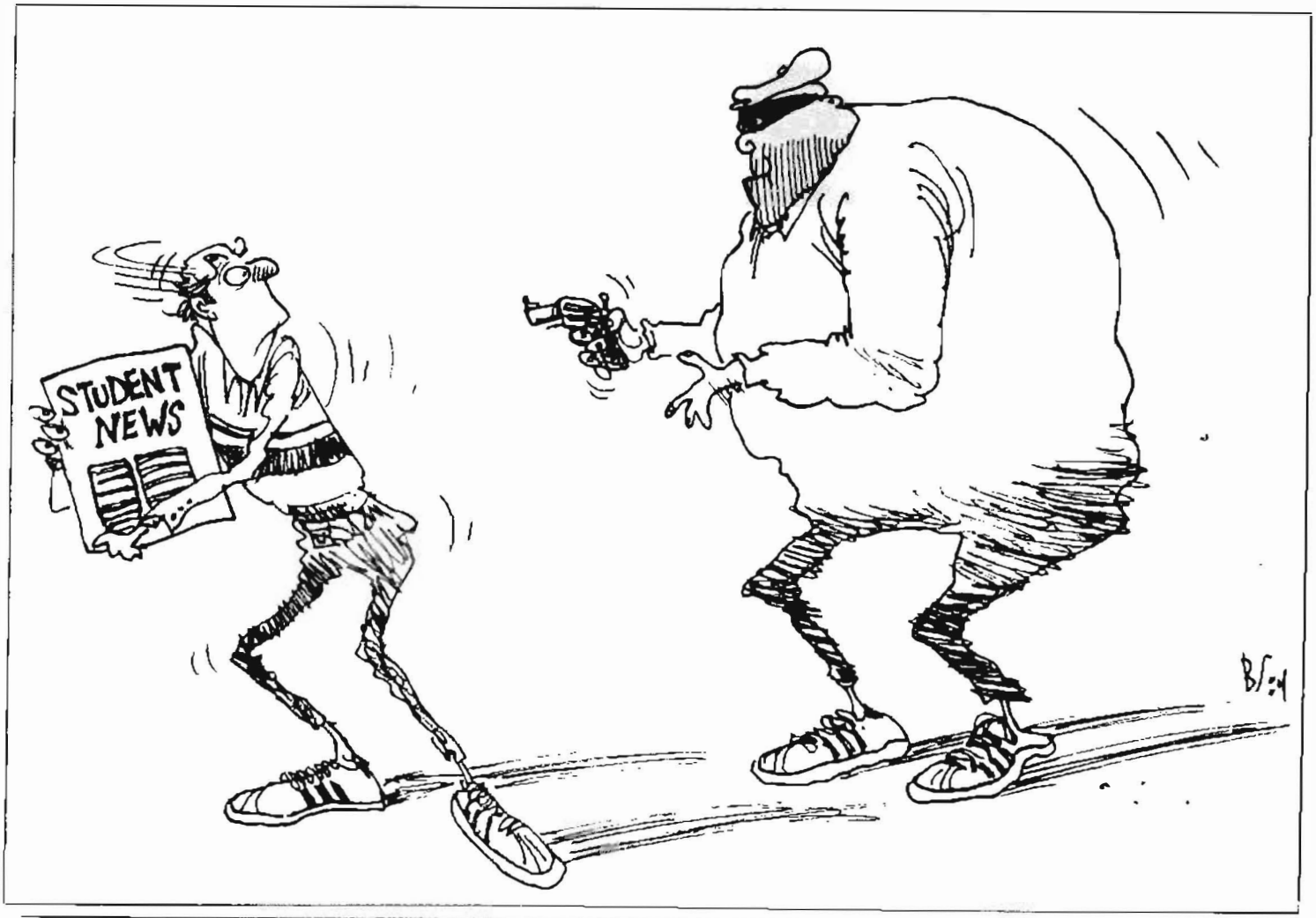

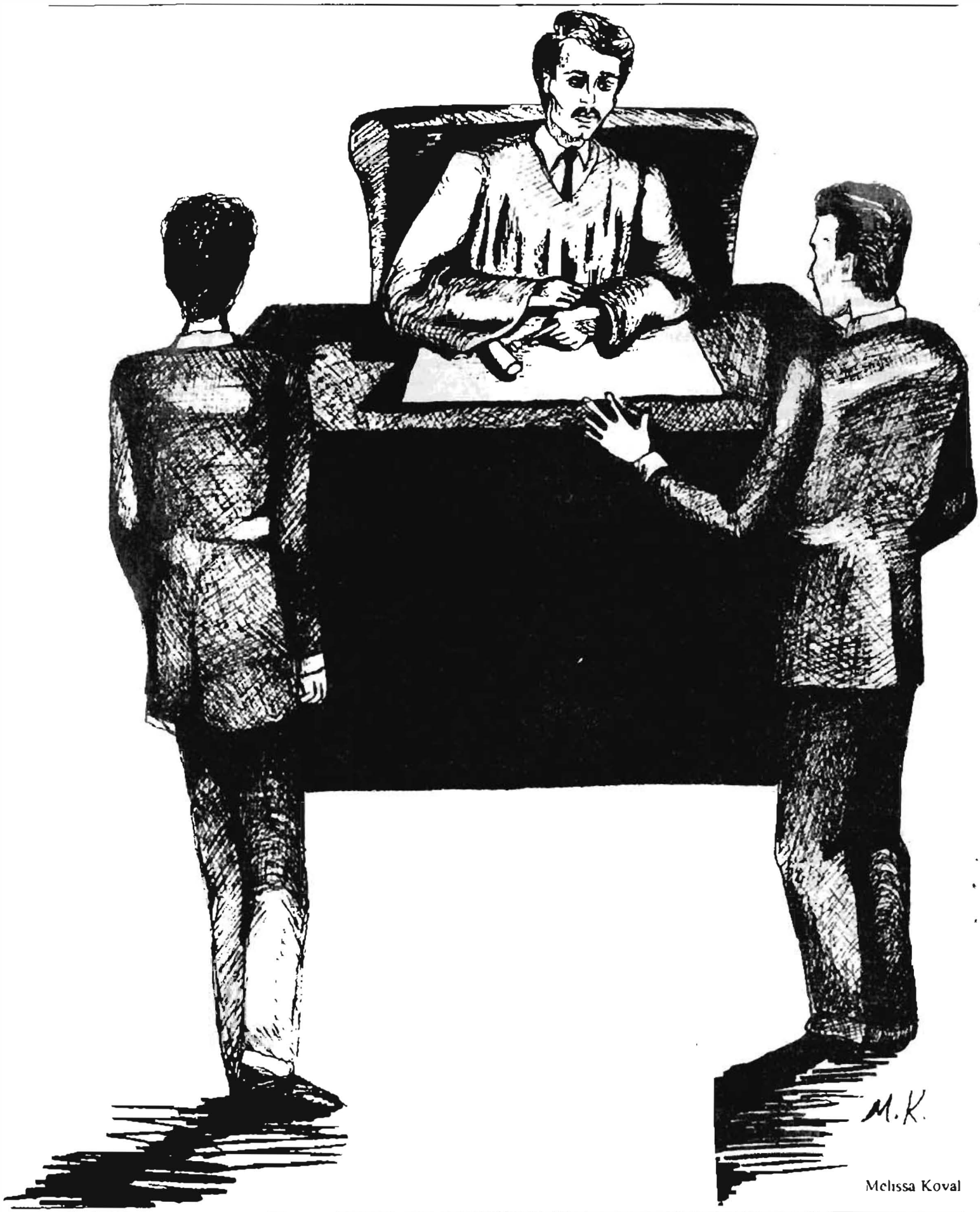

Melissa Koval

The press that finds itself victimized by theft may have the option of seeking campus discipline or criminal prosecution.

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campus security office. Its officers will probably be willing to keep an eye on sites where newspapers are distributed if they are made aware of the problem. Publication staffers might also try watching certain spots that seem to be favorite targets themselves. It would not be wise to wrestle with a thief or to wait in a dangerous area to try to catch one, but if it is possible to learn the identity of the people who are removing publications, legal action can then be considered.

Florida Review managing editor Paul Paffe and other staff members watched newsstands for thieves, and the effort paid off. In July, students were observed and photographed literally cleaning out boxes of the papers that had been set out hours before. Campus police turned the matter over to the university administration, and internal disciplinary proceedings followed. The university has kept results of those proceedings confidential.

Cornelius is not quite satisfied with that turn of events. He would have preferred a more public punishment, and he says thieves hit the paper again in September. He has contacted the State Attorney's Office about the possibility of a criminal prosecution.

The press that finds itself victimized by theft may have the option of seeking campus discipline or criminal prosecution. If a staff member finds that papers have been stolen, he or she may either report it to campus authorities, file a criminal complaint with the local police department setting out the facts as observed, or both. If there are witnesses to back up the accusation of paper theft, the chances for action on the matter are good.

The other option a student paper has against thieves is civil action. A "civil action" is a lawsuit seeking a remedy, typically money damages, for an action which is not necessarily a crime. In Florida through statute a criminal court has the power to substitute a damages remedy for criminal penalties. In other states, both actions might be appropriate.

Can "free" papers be stolen? Although the answer may be an obvious "yes" to some, there are no published court cases dealing with the issue. However, with a suitable case a publication might successfully both press criminal charges and file a civil claim against individuals who take large quantities of free distribution papers. John Stephenson, criminal prosecutor at the Florida State Attorney's office in Gainesville, agrees. He planned at press time to file criminal charges against students caught taking the *Florida Review* — and said that he would consider taking the case to an appeals court if it were not accepted at the trial level.

The crime of theft, or larceny, is typically defined as the unlawful, intentional taking of property belonging to another. Thus, in order to be found guilty of a crime, a person who took papers must be judged to have taken something (1) of at least a minimal value, (2) belonging to someone else and without the legal authority to do so, and (3) with the intent of depriving the owner of the value of the property.[1]

The traditional civil action to collect damages from theft is called "conversion." To file a cause in conversion a publication would have to show (1) a possessory interest in the papers, (2) that they were in fact taken (and thereby "converted") and (3) damages resulting from the taking.[2]

To pursue either a criminal or civil case, a court would have to be convinced that "free" papers are not really free — they do have value. Usually, advertisers and subscribers pay for them, and students may support the paper through their fees. If many papers are taken, the publication may have to refund an advertiser's money, or provide free advertising space, in order to preserve the value of the property. Attorney Stephenson told the *Report* that the Florida theft statute specifically included the deprivation of a "beneift" as grounds for prosecution. He characterized the advertising revenues from a free paper as a type of benefit that is stolen when large numbers of the newspaper are physically removed. Even a paper without advertising conveys a benefit to its publisher when the money and effort spent in printing it leads to its content reaching the desired readership.

Those who get caught trying to take away armfuls of free papers can be expected to argue that they had a perfect right to do so. After all, the papers are "free for the taking." Several arguments refute this claim. First, newspapers are logically the property of the publisher until they are taken by permission — inferentially, and by custom, one at a time.

A publisher has a "possessory interest" in the publication, that is, a legal right to claim the property even after the papers have been put out in their stands or at their regular distribution points. American Law Reports, an encyclopedia of American law, states that "a mere right of possession is generally regarded as an interest sufficient" to maintain a *civil* lawsuit for taking or interfering with

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Newspaper theft can harm morale and finances. It can also make an editor more cautious about creating controversy.

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another person's property.[3] It's likely that criminal courts, as well, would consider this right of the publisher superior to that of a person whose only reason for taking papers is to deprive the publisher, the readers and other supporters from the benefits of that product.

Imagine a newsgirl standing next to a stack of papers, yelling "Extra! Read all about it!" If a thug grabbed the newspapers and ran, that would be an obvious violation of the publisher's interest. Similarly, if the papers are in a newsbox the concept that they are in the publisher's "possession" is easy to visualize. But even if they are simply sitting on the floor in an authorized area, the press should still be considered to have the legal right to prevent this kind of taking, since a right to reclaim the papers before distribution exists.

But if papers are available for the taking, can anybody who takes an extra to line her bird cage or to show to his roommate be prosecuted? Certainly not. A difference exists between the student who takes a copy to pin an illustration on his wall and the thief who cleans out the stand and dumps them in the trash. That difference can be found in the intent of the person taking the newspaper.

In a criminal case, intent to steal must be shown. Intent could be inferred from a person's actions, but the nature of a criminal trial would likely require an obviously malicious act before a prosecution would be successful. A person could claim that she took 50 copies to pass them out at the night's party — but if she was seen putting them in the trash, that defense would not hold up.

The arguments outlined above would apply equally to a civil lawsuit, but the burden of proving intent — and "guilt" — is not so high in a civil as in a criminal case. In a civil action for conversion ill intent is not generally necessary. However, if the court wanted to be cautious about holding a civil defendent liable, it would likely inquire into intent.[4]

Assuming that the thieves have been caught red-handed, the concern at this point turns to the amount of damages that a paper can collect for the theft. The traditional measure of damages in this type of lawsuit is based on the commercial value of the property stolen. If papers were priced, thieves would be liable for that value. Most student papers are free, so other methods for valuation would have to be used. A paper might argue that a subscription price provides a measure, or that a fair commercial price, based on similar publications in the community, should be implied. The paper might also collect "special damages" — that is, any real damages which can be both proven and attributed to the theft. These would include costs resulting from reprinting, redistributing papers or reduced advertising values, among other things.

Finally, a paper may be able to win punitive damages. Where a thief acted with malice, or the will to do harm, a punitive award will punish that behavior, as well as compensate the publication for the extreme nature of the action committed.[5]

It should be recognized that the actual damages award might be low for a free newspaper — perhaps less than $100 for stealing 100 papers (this is undoubtedly one reason no cases can be found). Yet the motive for filing a lawsuit against a paper thief is not likely to be profit. Satisfaction can be gained from a legal victory over one's attackers, and a person who is found liable for taking papers in a court of law will probably think twice before he or she does anything like that again.

One fairly simple way to sue people known to have taken papers is through small claims court. The limit on the amount sued for in these court varies from jurisdiction to jurisdiction, but is usually less than $1000; the courts may not allow claims punitive damages either. People who sue in small claims court usually do not use and may be prohibited from using lawyers. They simply obtain the required forms from the court, fill them out, perhaps pay a filing fee, and then go to court and plead their case. Small claims courts, like other courts, do require evidence of the claimed wrong, so witnesses, photos or a record of criminal proceedings would need to be produced.

Until a court rules on the issue of newspaper theft, censors-who-would-be-thieves may not be convinced that they are subject to criminal or civil penalties for their actions. Nevertheless, the student press must be aware of its rights. Newspaper theft can harm morale and finances. It can also make an editor more cautious about creating a controversy.

"The important thing is that our readers get the information," said Bill Jacobs, editor of the *Albany Student Press*. No thieves should be allowed to interfere with that goal.■

[1] 50 American Law Reports (ALR) 2d, "Larceny," secs. 143 *et. seq.*, Lawyers Cooperation Publishing Co. 1970.
[2] 18 ALR 2d, "Conversion," secs. 1-3, 76, Lawyers Cooperative Publishing Co. 1985.
[3] *Id.*, sec. 3.
[4] *Id.*, sec. 75.
[5] *Id.*, secs. 105, 114.

New & Improved

For 14 years now, the Student Press Law Center has been providing legal information, advice and assistance to student journalists, their advisers and school officials. In 1987 alone, we will have responded to legal requests from over 600 of you.

Of all the information the SPLC provides, our Model Guidelines for Student Publications continue to be among the most requested. First published in the Winter 1978-79 *Report*, our guidelines have been adopted by high schools across the country as is or have been used as a basis for creating a new policy.

During the summer and fall of 1987, we decided that the time had come to update our guidelines in accordance with court decisions that have been handed down in recent years. With the input of many attorneys, college professors and high school journalism advisers, we have done just that. Our special thanks go to Dr. Tom Eveslage, chairman of the Department of Journalism at Temple University, and Marc Abrams, an attorney with the Philadelphia law firm of Schnader, Harrison, Segal & Lewis, for their coordination of the effort.

We hope that the "new and improved" Model Guidelines, which are very similar to the old version, will help you and your school create and support a positive educational environment that recognizes the First Amendment rights of the student press. Let us know if you adopt them for your student publications.

SPLC Model Guidelines for Student Publications

Preamble: The following guidelines are based on state and federal court decisions that have determined the First Amendment rights of students. These guidelines do *not* provide a legal basis for school officials or employees to exercise prior restraint or prior review of student publications. Additional safeguards, including specific examples of prohibited expression, a timely and impartial appeals process and distribution of the guidelines to all students, would be required for any valid pre-publication distribution action.

The Student Press Law Center cautions that court rulings indicate that policies which provide for prior review and restraint and meet constitutional requirements of precision, narrow scope and protection of speech are almost impossible to develop. In addition, schools that adopt a prior review and/or prior restraint policy assume legal liability for the content of the publications, whether they are school-sponsored or nonschool-sponsored. Court decisions indicate that a school likely will be protected from liability if by practice or written policy it rejects prior review and prior restraint.

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I. STATEMENT OF POLICY

It is undeniable that students are protected in their exercise of freedom of expression by the First Amendment to the Constitution of the United States. Accordingly, school officials are responsible for ensuring freedom of expression for all students.

It is the policy of the _____ Board of Education that (newspaper), (yearbook) and (literary magazine), the official, school-sponsored publications of _____ High School have been established as forums for student expression and as voices in the uninhibited, robust, free and open discussion of issues. Each publication should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

It is the policy of the _____ Board of Education that student journalists shall have the right to determine the content of official student publications. Accordingly, the following guidelines relate only to establishing grounds for disciplinary actions subsequent to publication.

II. OFFICIAL SCHOOL PUBLICATIONS

A. Responsibilities of Student Journalists

Students who work on official student publications determine the content of those publications and are responsible for that content. These students should:

1. Determine the content of the student publication;
2. Strive to produce a publication based upon professional standards of accuracy, objectivity and fair play;
3. Review material to improve sentence structure, grammar, spelling and punctuation;
4. Check and verify all facts and verify the accuracy of all quotations; and
5. In the case of editorials or letters to the editor concerning controversial issues, determine the need for rebuttal comments and opinions and provide space therefore if appropriate.

B. Prohibited Material

1. Students cannot publish or distribute material that is "obscene as to minors." "Minor" means any person under the age of 18. Obscene as to minors is defined as material that meets *all three* of the following requirements:
   (a) the average person, applying contemporary community standards, would find that the publication, taken as a whole, appeals to a minor's prurient interest in sex; and
   (b) the publication depicts or describes, in a patently offensive way, sexual conduct such as ultimate sexual acts (normal or perverted), masturbation and lewd exhibition of the genitals; and
   (c) the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

   Indecent or vulgar language is not obscene.

   [Note: Many statutes exist defining what is "obscene as to minors." If such a statute is in force in your state, it should be substituted in place of Section II (B)(1).]

2. Students cannot publish or distribute libelous material. Libelous statements are provably false and unprivileged statements that do demonstrated injury to an individual's or business's reputation in the community. If the allegedly libeled party is a "public figure" or "public official" as defined below, then school officials must show that the false statement was published "with actual malice," *i.e.*, that the student journalists knew that the statement was false or that they published it with reckless disregard for the truth — without trying to verify the truthfulness of the statement.
   (a) A public official is a person who holds an elected or appointed public office.
   (b) A public figure either seeks the public's attention or is well known because of personal achievements.
   (c) School employees are public officials or public figures in articles concerning their school-related activities.
   (d) When an allegedly libelous statement concerns a private individual, school officials must show that the false statement was published willfully or negligently, *i.e.*, the student journalist who wrote or published the statement has failed to exercise reasonably prudent care.
   (e) Under the "fair comment rule," a student is free to express an opinion on a matter of public interest. Specifically, a student may criticize school policy or the performance of teachers, administrators, school officials and other school employees.
3. Students cannot publish or distribute material that will cause "a material and substantial disruption of school activities."
   (a) Disruption is defined as student rioting; unlawful seizures of property; destruction of property; or substantial student participation in a school boycott, sit-in, walk-out or other related form of activity. Material such as racial, religious or ethnic slurs, however distasteful, are not in and of themselves disruptive under these guidelines. Threats of violence are not materially disruptive without some act in furtherance of that threat or a reasonable belief and expectation that the author of the threat has the capability and intent of carrying through on that threat in a fashion not permitting acts other than suppression of speech to mitigate the threat in a timely manner. *Material that stimulates heated discussion or debate does not constitute the type of disruption prohibited.*
   (b) For a student publication to be considered disruptive, specific facts must exist upon which one could reasonably forecast that a likelihood of immediate, substantial material disruption to normal school activity would occur if the material were further distributed or has occurred as a result of the material's distribution. Mere undifferentiated fear or apprehension of disturbance is not enough; school administrators must be able affirmatively to show subtantial facts that reasonably support a forecast of likely disruption.
   (c) In determining whether a student publication is disruptive, consideration must be given to the context of this distribution as well as the content of the material. In this regard, consideration should be given to past experience in the school with similar

material, past experience in the school in dealing with and supervising the students in the school, current events influencing student attitudes and behavior and whether there have been any instances of actual or threatened disruption prior to or contemporaneously with the dissemination of the student publication in question.

(d) School officials must protect advocates of unpopular viewpoints.

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

C. Legal Advice

1. If, in the opinion of student editor, student editorial staff or faculty adviser, material proposed for publication may be "obscene," "libelous" or would cause an "immediate, material and substantial disruption of school activities," the legal opinion of a practicing attorney should be sought. The services of the attorney for the local newspaper or the free legal services of the Student Press Law Center (202-466-5242) are recommended.

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

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

III. NONSCHOOL-SPONSORED PUBLICATIONS

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

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

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

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

2. School officials cannot:

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

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

(c) Ban the sale of literature; or

(d) Create regulations that discriminate against nonschool sponsored publications or interfere with the effective distribution of sponsored or non-sponsored publications.

IV. PROTECTED SPEECH

School officials cannot:

1. Ban speech solely because it is controversial, takes extreme, "fringe" or minority opinions, or is distasteful, unpopular or unpleasant;

2. Ban the publication or distribution of material relating to sexual issues including, but not limited to, virginity, birth control and sexually-transmitted diseases (including AIDS);

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

4. Prohibit criticism of the policies, practices or performance of teachers, school officials, the school itself or of any public officials;

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

6. Ban speech that merely advocates illegal conduct without proving that such speeh is directed toward and will actually cause imminent unlawful action;

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

8. Prohibit the school newspaper from accepting advertising; or

9. Prohibit the endorsement of candidates for student office or for public office at any level.

V. COMMERCIAL SPEECH

Advertising is constitutionally protected expression. School publications may accept advertising. Acceptance or rejection of advertising is within the purview of the publication staff, who may accept any ads except for those for products or services that are illegal for all students. Political ads may be accepted. The publication should not accept ads only on one side of an issue of election.

VI. ADVISER JOB SECURITY

The adviser is not a censor. No teacher who advises a student publication will be fired, transferred or removed from the advisership by reason of his or her refusal to exercise editorial control over the student publication or to otherwise suppress the protected free expression of student journalists.

VII. PRIOR RESTRAINT

No student publication, whether nonschool-sponsored or official, will be reviewed by school administrators prior to distribution or withheld from distribution. The school assumes no liability for the content of any student publication, and urges all student journalists to recognize that with editorial control comes responsibility, including the responsibility to follow professional journalism standards.

VIII. CIRCULATION

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

The Student Press Law Center is here when you need it. If you are facing a legal problem or have a question about your rights as a student journalist or faculty adviser, call our attorney at **(202) 466-5242**. All services are provided cost-free to students and teachers.

Internship opportunities with the SPLC are available during each school semester and the summer for college and law students with an interest in student journalism. Interns write and produce the SPLC *Report*, handle requests for information on student press rights and assist the Executive Director by providing research and paralegal support. Interested individuals are encouraged to write for more information.

Drawings, cartoons and news tips are welcome and needed. Help us inform the scholastic journalism community by contributing your skills and information to the SPLC *Report*.

Write or call us at:

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This SPLC *Report* was produced entirely by a team of student interns working out of offices in Washington, DC.

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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.

(Contributions from August 1 to November 30)

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- Secondary Education Division

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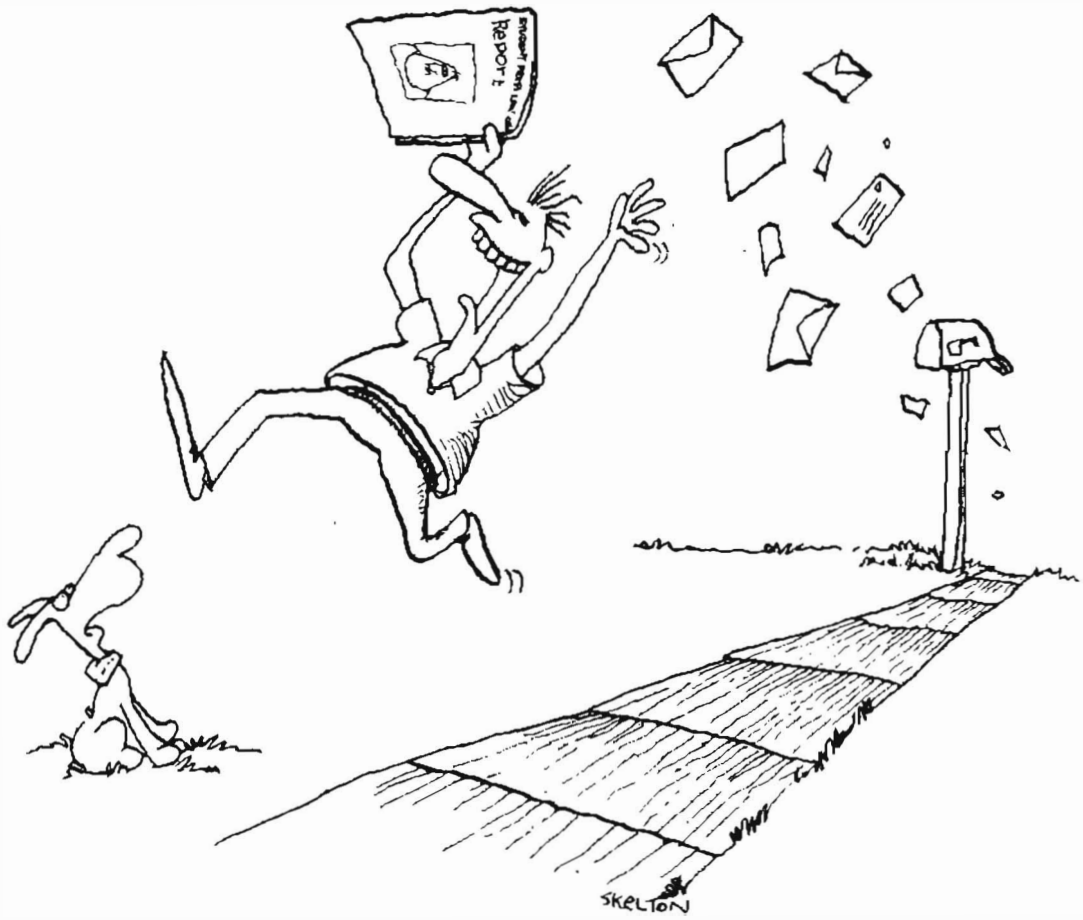

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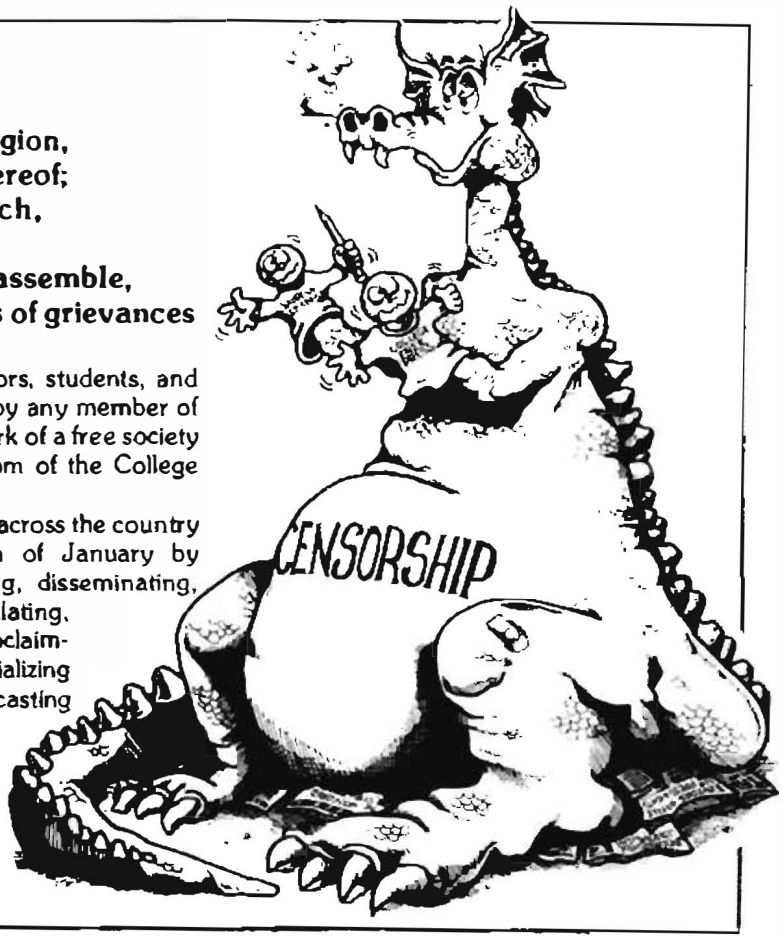
The First Amendment:

**Congress shall make no law
respecting an establishment of religion,
or prohibiting the free Exercise thereof;
or abridging the freedom of speech,
or of the press;
or the right of the people peaceably to assemble,
and to petition the government for a redress of grievances**



The first amendment guarantees to newspaper editors, students, and everybody else freedom from any form of censorship by any member of any branch of the government at any level. That bulwark of a free society will be the focus of the national celebration of Freedom of the College Press Day on January 19, 1988.

College Media Advisers urges college student media across the country to conduct that celebration throughout the month of January by spreading, explaining, discussing, sowing, distributing, disseminating, shouting, raving about, singing, signing, circulating, trumpeting, presenting, publicizing, promulgating, proclaiming, advertising, announcing, reporting, writing, editorializing about, and otherwise publishing and broadcasting the crucial message of the First Amendment.

Watch your mailbox for further details from the CMA Press Law Committee. If you can't wait, write to the committee at Student Publications, Eastern Illinois University, Charleston, Ill. 61920 (or call 217-581-6003).

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