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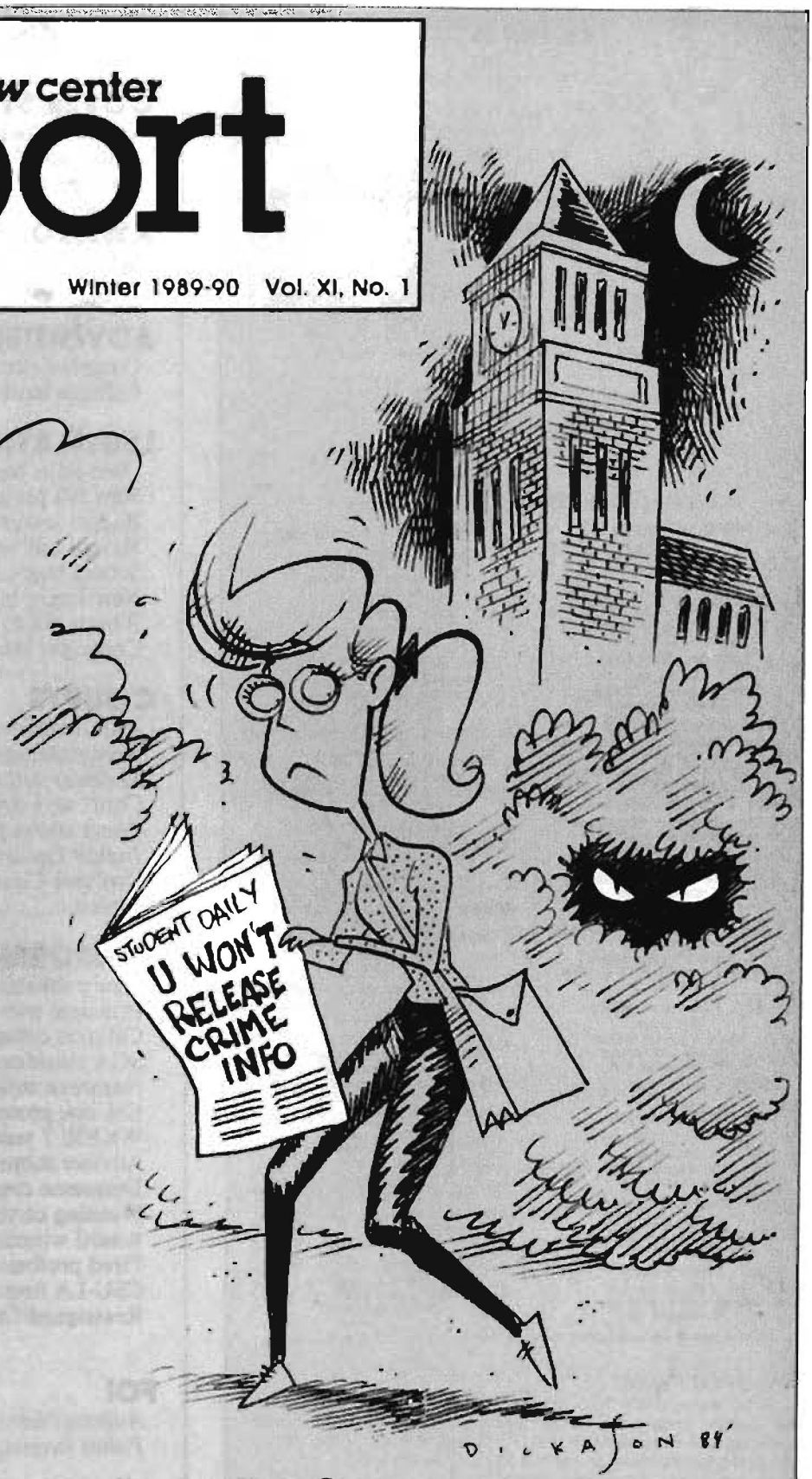

Students battle for access

While colleges protect their images

Typically, students begin their search for the perfect school on the glossy pages of college catalogs. The glistening photos of campus scenes make college look like a fun place to be.

Colleges are happy to display their offerings on athletic programs, social clubs and library facilities to prospective students. However, they are not always so eager to report about campus crime.

Jeanne Clery chose Lehigh University for its beautiful campus. Spread over 1,600 acres, Lehigh looked very safe and serene, she told her mother Connie.

Jeanne's freshman year tragically ended, however, when she was brutally beaten, raped and murdered in her Lehigh dorm room.

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The SPLC Report

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Crime prompts another battle for news media

The cover story in this issue of the *Report* focuses on one of the most troublesome issues facing the college media: access to information about campus crime. This past fall, the SPLC received an average of two calls a week from college editors and reporters who were being denied information by campus police or security officers. It seems that in the minds of some school officials, a college or university's image is more important than the safety of its students.

But once again, student journalists have indicated they are not going to give up on their efforts to report the information their campus needs without a fight. Several student newspapers are on the verge of going to court over access to police records and many others are supporting state and federal legislation that would help stop the cover-up of campus crime.

Like the high school students and advisers who have gone to their state legislatures to undo the Supreme Court's damaging *Hazelwood School District v. Kuhlmeir* decision that allowed more censorship of high school newspapers, the college student media believe a free and vital press is worth fighting for.

The Student Press Law Center commends the dedication of student journalists around the nation to this cause and offers our continuing support for your efforts. ■

Press freedom honor goes to former Duquesne news editor

WASHINGTON, D.C.—The former news editor of the student newspaper at Duquesne University in Pittsburgh, who led the fight against a student government shut-down of his publication, has been awarded the 1989 Scholastic Press Freedom Award.

The award, sponsored by the Student Press Law Center (SPLC) 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 free press rights of students.

Sean McNamara, a former Duquesne student who has since transferred to St. John Fisher College in Rochester, N.Y., was news editor of the *Duquesne Duke* when the Catholic university's student government association shut-down the paper in February. The newspaper staff believed the censorship was in retaliation for an advertisement they had published for a family planning service.

Several days after the shutdown, McNamara led the staff of the *Duke* in producing a four-page issue called *The Free Press* with the assistance of the student newspaper at Indiana University of Pennsylvania to let Duquesne students know what had happened to their publication.

During the controversy that followed the censorship incident, McNamara and the *Duke* staff continued their hard-hitting coverage of the student government and made their battle for press freedom one that reached the pages of the national news media, including the Society of Professional Journalists' magazine, *The Quill,* and *Editor and Publisher.* Before the school year was out, McNamara uncovered for the *Duke*'s readers the fact that the student government president behind the newspaper's shutdown had used university funds to have his car released from a city impound lot and sent in his law school applications using the university's Federal Express account number.

In selecting McNamara 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 attention, to demand press freedom for students.

"Attempts to control advertising in student publications are growing," said Goodman. "McNamara and the *Duke* stood up for the notion that censorship of advertising is no more tolerable than censorship of editorial content."

"Many students, commercial journalists and concerned citizens played a part in the battle at Duquesne," Goodman said. "But McNamara was the driving force in requiring the student government and the university to justify their role as censors to the student body and the nation."

The 1989 Scholastic Press Freedom Award was presented to McNamara in November at the Associated Collegiate Press/College Media Advisers national convention at the New Orleans Marriott Hotel.

Nominations for the Scholastic Press Freedom Award are accepted until August 1 of each year. A nominee should demonstrate a responsbile representation of press freedom through writing or actions and the ability to raise difficult and necessary issues in news coverage.

Previous winners of the Scholastic Press Freedom Award include the three high school students who took their battle for student press freedom to the Supreme Court in the case *Hazelwood School District v. Kuhlmeier.* ■

Campus tragedy prompts disclosure legislation

(continued from cover)

During the pre-trial hearings against Jeanne's assailant, the Clerys learned more about the Lehigh University security system.

"Lehigh had virtually no security on campus," Jeanne's father, Howard Clery, said.

He said that the university administration knew about chronic security problems on campus and had done nothing to rectify them.

The Clerys sued Lehigh University for negligance and were awarded an out-of-court settlement of $2 million dollars.

With their settlement, the Clerys founded the non-profit organization Security On Campus, dedicated to assisting other universities in improving campus security measures and to supporting legislation to require colleges to release campus crime information.

"Universities do not hold themselves responsible for campus crime and many will not release crime statistics to people who have a right to know," Mr. Clery said.

The Clerys have since traveled all over the country to voice their concerns and support legislation.

As a result of their efforts, several state legislatures have adopted and others are considering bills that would require colleges and universities to report campus crime statistics and disclose security practices.

The College and University Security Information Act, the first state law requiring schools to report crime statistics, was passed in Pennsylvania in May 1988. (See Fall 1989 SPLC *Report*). The law was passed after intensive lobbying by the Clerys.

Similar legislation has also been passed in Florida, Louisiana and Tennessee. New York, New Jersey, Massachusetts, Missouri, California, and Delaware are also considering campus crime legislation. The penalty for non-compliance to the legislation would be $10,000 in all states except for Tennessee and New York where the penalty would be $1,000.

An effort by the U.S. Congress to require colleges and universities to report campus crime statistics and security measures has also been introduced and may preempt the battle for those currently lobbying for such action in their states.

The federal legislation was introduced in September by Rep. William Goodling, R-Pa. Goodling said he intends to insure the uniformity and consistency in reporting campus crime statistics nationally.

Goodling said the federal bill owes its inception to the efforts of the Clerys. "There can be no more fitting memorial to their daughter, Jeanne, who was slain on campus, than a bill which seeks to prevent the reoccurrence of such tragic losses," he said.

Student Press Law Center Executive Director Mark Goodman said, "The bill will help student publications more readily uncover the information their readers need to protect their health and safety." He said that while this is a positive step in the right direction, it is not enough.

"Students are still being denied immediate access to campus police and security reports because of the shool officials' interest in avoiding negative publicity," he said.

The student media can play an important part in preventing campus crime by reporting it when it occurs, according to Goodman. However, several schools deny student reporters access to campus security records (see page 7).

For the Clerys, the battles for campus security reports are important ones.

"[W]hen your kids go off to school you have a wonderful feeling." Mr. Clery said. "Connie and I did the same in September 1985, and we bought into the medieval myth that most college campuses [are] safe. And, to our horror and sorrow we found out they [aren't]. It is for this reason that we feel it is very important that legislation be enacted." ■

Current Legislation

PENNSYLVANIA — The College and University Security Information Act in Pennsylvania was the first product of a nationwide crusade by the Clerys to improve campus security.

The state law requires all colleges and universities to supply on-campus crime data to the state police. The police are then responsible to give the data to the FBI where it is compiled in the Uniform Crime Report, an FBI document describing the nature, volume and extent of crime in a given area.

The law mandates that the federal reports describing campus security policies, procedures and

crime statistics must be provided to all admissions applicants and every new employee. Also, the information must be distributed annually to all current students and employees. ■

FLORIDA — The Florida Postsecondary Education Security Information Act was adopted in June 1989 to make campus crime statistics and campus security measures publicly available.

Joe Baker, legislative assistant to the bill's sponsor, Sen. Don Childers, D-Palm Beach City, said the Postsecondary Education Planning Commission and the department of education are currently working to develop guidelines to implement the legislation.

Baker said the penalty for noncompliance will be left up to the Department of Education. ■

LOUISIANA — Campus Crime Act 543 sponsored by Rep. Vincent Bella, R-Berwick, was adopted in July 1989.

The Louisiana legislation differs from the bills in other states because it gives control for developing a standard and enforcing the statute to a management board. The board regulates the various schools' policies and determines what the penalty for noncompliance will be.

According to a House Education staff member, the management board is an entity of the state constitution so it has the power to enforce state laws as they apply to state college and universities. ■

TENNESSEE — The College and University Security Act, enacted in Tennessee in July 1989, was the result of heavy lobbying by the parents of a sophomore at the University of Tennessee in Knoxville who was murdered in 1989.

Modeled after the Pennsylvania legislation, the Tennessee law makes crime statistics available upon request to all prospective employees and students and requires that all students be informed that the information is available to them upon request.

Failure to comply with the law is considered a misdemeanor. ■

Congress joins the FOI battle

Bill would preempt state legislation

WASHINGTON, D.C. — Representative William Gooding, D-Pa., introduced the Crime Awareness and Campus Security Act of 1989 in the House on September 26. The language of the bill is based on that of the Pennsylvania law.

While several state legislatures have adopted or are considering legislation to require schools to report campus crime statistics and campus security practices, Rep. Goodling said, "The bills are not uniform in their requirements and standards."

When he introduced the bill, Goodling said that the Act will insure the uniformity and consistency of reporting crimes on campus by requiring all colleges and universities that participate in federal student assistance programs to submit annual campus crime information for the FBI Uniform Crime Report.

He added that the bill would require timely reporting of campus crime by institutions of higher education and private and residential colleges and would require that they report crime statistics to state police on an annual basis for publication and dissemination to students and employees. The annual reports would describe campus security policies and regulations and campus crime statistics for the most recent three academic years. Interim reports would also be required.

The bill says colleges will be responsible for distributing these annual reports to all students, employees, prospective applicants and their parents.

In his proposal Goodling said, "While Congress ultimately cannot legislate the safety of young people at institutions of higher education, nor can it legislate sanctuaries free of the violence of a larger society, it can encourage those colleges and universities that benefit from federal student aid programs to establish effective security policies and to provide timely information about campus crime. The students and other members of the campus community can then make informed decisions about their own safety."

The bill is waiting to be heard in the House Committee on Education and Labor. A representative from Goodling's office said the bill is currently taking a back seat to several budgetary issues and probably will be heard soon. ■

MASSACHUSETTS — The Massachusetts legislation, sponsored by Rep. William Galvin, D-Allston-Brighton, will make colleges and universities report crime statistics annually to current and prospective students and employees.

Galvin said he introduced the bill because it will discourage attempts to conceal crimes and it will identify the methods by which students and residents can learn of campus crime.

Sue Cooper of the Massachusetts Department of Higher Education said House Bill 5010 was introduced in the House Ways and Means Committee in April. She said that due to a recent influx of calls she expects some action on the bill shortly. ■

NEW YORK — Senate Bill 1893 sponsored by Sen. Kenneth LaValle, R-Centereach, was introduced in 1989, but never went to a vote.

LaValle's assistant director of communications, Joann Scalia said that due to an increase in public interest, the bill is being amended.

"The portions of the bill addressing who the colleges will be required to disseminate the information to and the penalties are currently being reviewed for possible revision," she said.

Scalia said as it now stands, the bill would require colleges and

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universities to send campus crime information to college applicants and to the general public upon request. The penalty for failure to comply would be a $1,000 fine.

Scalia said the bill will be reintroduced in the Higher Education Committee in January 1990. ■

NEW JERSEY — Senate Bill 2932, sponsored by Sen. Raymond Zane, R-Goucester, Salem and Cumberland Counties, is currently being held up in the Assembly's Higher Education and Regulated Professions Committee.

A representative from Zane's office said the bill is extremely important to Zane. "He has put a lot into the bill, and it would be a crime if it doesn't pass," she said.

"The bill sailed through the Senate," she said, "but now we seem to have run into some kind of road block [in the Higher Education Committee]."

A spokesperson for Higher Education Committee Chairman Moran said the bill is currently being held up because of the upcoming elections in New Jersey. He said he does not foresee any opposition.

"Moran is an administrator himself and he thinks this is an important bill," the spokesperson said. ■

DELAWARE — House Bill 474 was introduced in the Delaware Education Committee in June, but never received a hearing. Rep. Katharine Jester, D-Southern New Castle County, sponsor of the bill, said she will reintroduce it in January 1990.

Director of Student and Local Government Relations at the University of Delaware Rick Armitage said he is working with Jester on the bill.

"We think the bill is good, we just want to make sure it is thorough." He said that there are loopholes in the bill that need to be addressed because it does not define who will oversee the format and production of the crime information to be released.

Armitage also explained that it is difficult to insure fair reporting of campus crime statistics across the board because each college has its own system for reporting campus crime. "If one college makes it easier for a student to report a crime their statistics might appear higher than others."

Jester said she would continue working with administrators at the University of Delaware, until the details can be worked out. ■

MISSOURI — House Bill 75 died in the Education Committee in Missouri. According to the bill's sponsor, Rep. Bonnie Sue Cooper, R-Kansas City, she will file the bill for the second time in January. Cooper said the first time around, Education Committee Chairman Ken Jacobs would not hear the bill.

"Jacobs is a representative in Columbia where the university is located," Cooper said. "[His] attitude is to protect the university. Up until now, the universities have been so good at finding ways to hide [crime] stats."

Jacobs did not deny that he is there to protect the interests of the university. "The university includes the administration, faculty and students. It is my job to protect both the students' security interests and the university's public relations image." Jacobs said that he would not compromise one for the other.

While Jacobs believes that campus crime information should be available to anyone who requests it, he said that the bill will not solve the security problem.

Cooper stressed the importance of the bill and said she will reintroduce it in the next session of the General Assembly starting in January 1990 and promised to work diligently toward its passage. ■

CALIFORNIA — Senate Bill 1358, also modeled after the Pennsylvania law, was introduced in March by Sen. Art Torres, D-Los Angeles County, and passed unanimously in the Senate and by an overwhelming majority (62-5) in the Assembly.

On Oct. 2, much to Torres' surprise and dismay, Gov. George Deukmejian vetoed the bill. While the Governor said he supports the intention of the bill to improve campus safety, Duekmejian said he is concerned that it would be too costly, estimating the bill would cost the state school system $450,000 annually.

"The governor's estimate is negligible," countered Sen. Torres' press secretary Peter Blackman. "Schools could publish the campus crime information in a course catalog or any other public medium."

"The bill passed through the Assembly Ways and Means Committee and that is usually where a fiscal hold-up would occur," he said.

"When we learned of the governor's veto, we couldn't understand it. We were flabbergasted."

Blackman said Sen. Torres will either attempt to override the governor's veto or reintroduce the bill in January 1990. ■

Critics argue against campus crime legislation

Not everyone supports the new and proposed campus crime legislation. Several arguments have been raised about the content of the bills.

Clare Cotton, president of the Association of Independent Colleges and Universities, opposes the legislation because he said the statistics will do nothing to help crime. Cotton said there is a lot of room for inaccuracy and misinterpretation.

"Under the new legislation, colleges and universities are required to report crimes to state police, who in turn report them to the FBI." Cotton said that many colleges have different systems for reporting campus crimes, so they are not always accurate.

Connie Clery admits that the state legislation cannot stand alone. She said, "Federal legislation will help because [it says] if schools do not send in a report, they will not get federal funding."

Cotton also said it is difficult to report crime accurately due to the confidentiality often requested by victims of crimes. He said, "If a victim chooses not to press charges, the crime goes unreported."

Student Press Law Center Executive Director Mark Goodman rejected this claim.

"A crime victim doesn't have to press charges for there to be an incident report. More importantly, underreporting is no justification for not reporting campus crime at all," Goodman said.

Cotton also said there are problems in interpreting the statistics. "While the FBI Uniform Crime Report (UCR) gives a nationwide view of crime based on statistics contributed by state and local law enforcement agencies, population size is the only correlation of crime utilized in the publication of statistics."

These statistics are certainly better than nothing at all, Mrs. Clery said. "Students have a right to know about crime that exists at their school." ■

Students may challenge Buckley Amendment

Despite laws requiring colleges to release campus security information, many institutions are refusing to open their police and security records to student journalists.

In denying access to security records, colleges often cite the Family Education Rights and Privacy Act (FERPA), also known as the Buckley Amendment. Enacted in 1974, the Buckley Amendment was aimed at protecting the privacy of students. The act states that a school may not release any "education record" that would identify an individual student.

There is disagreement as to whether public release of campus law enforcement records violates the Buckley Amendment. The Buckley Amendment as it applies to campus security records has never been tested in court.

At Memphis State University, *The Daily Helmsman* recently won a battle with administrators over immediate access to the security department's daily offense reports.

On Sept. 8, the university implemented a policy in which it could take several days before the press or individuals could gain access to the records.

The *Daily Helmsman* sent a letter on Sept. 20 to the security director asking the department to provide the reports on a daily basis, arguing that the records are classified as public according to Tennessee law. Security replied one day later, saying the reports would be available every weekday.

The university's prompt acquiescence may have been triggered by a similar incident a year earlier. At that time, the State Board of Regents' chief legal counsel informed the university that a policy restricting access to security records violated state open records law.

Daily Helmsman general manager Ken Garland said, "I hope the Buckley Amendment can be clarified at some time. Until then, I think administrators will hide behind it to keep student and professional journalists from getting the news."

At Southwest Missouri State University, the student press and administrators are still tangled in a controversy surrounding the release of security office records.

The university administration is refusing to release the records, saying they are exempt from state open records law. In a letter to SMSU's Student Publications Advisory Board, University Relations Director Paul Kincaid stated, "Security office records, like other educational records, are protected under FERPA. Educational records, as defined by FERPA, are exempted from the Missouri Sunshine Law." Missouri's Sunshine Law, like others, provides public access to many government records and meetings.

Kincaid stated that the university's policy requires any information regarding the security office to be released through him.

The Southwest Standard, SMSU's student newspaper, opposes the policy. Editor Traci Bauer claims the policy is a "direct conflict of interest," because as part of his job duties, Kincaid also oversees publication of the paper.

Bauer said the university is able to withhold the records because nobody has taken the issue to court. "We're going all the way. Robert Ellis Smith, publisher of *Privacy Journal,* an independent monthly that covers intrusions of privacy, said security records by and large are not regarded as student information. ■

Federal lawmakers threaten news media

May restrict alcohol advertisements in college publications

Editors' note: As the Report *went to press, a conference committee of the House and Senate excluded legislation that would have urged limitations on alcohol advertising in college publications from Congress' anti-drug bill. Sen. Bingaman, who initially proposed the language, had not yet indicated whether he planned to reintroduce a similar bill when Congress reconvenes in 1990.*

WASHINGTON, D.C.—For the first time in history, Congress has considered limiting the free speech of student publications by threatening to withhold federal funding from colleges and universities that allow alcohol advertising in student newspapers.

The Senate unanimously approved an amendment to its anti-drug bill in October which would require schools to limit alcohol advertising and promotions on their campuses.

The action in the Senate was a direct response to Surgeon General C. Everett Koop's December 1988 conference on drunk driving after which he proposed a sweeping campaign against alcohol abuse. Among the recommendations was the "eliminat[ion of] alcohol advertising and promotions on college campuses where a high proportion of the audience reached is under the legal drinking age."

On Sept. 27, Sen. Phil Gramm, D-Texas, responding to the surgeon general's recommendations, proposed an amendment to the anti-drug bill which would have required all colleges and universities to adopt and implement a comprehensive anti-drug and alcohol abuse strategy. The amendment, adopted by the Senate Education and Labor Committee, said "any institution of higher education that fails to implement such a plan will be ineligible for any federal programs including federally funded or guaranteed student loan programs."

On the evening of Oct. 3, Sen. Jeff Bingaman, D-N.M., testified before the Senate, "I believe we must take Gramm's proposals one step further." Bingaman proposed an amendment that would have required all colleges and universities to adopt a set of policies governing alcoholic beverage marketing, advertising and consumption. The policy was to include a restriction on campus newspapers to "limit the contents of [alcohol] advertising to price and product identification." Thus, a student publication could run an ad from a convenience store for a particular beer at a certain price, but not a brewery ad that was part of a general advertising campaign like Anheuser-Busch's use of "Spuds Mackenzie" to promote their Budweiser products.

> *[Educational institutions shall adopt] a policy that encourages such institution's newspapers and other publications to reject advertisements promoting irresponsible or illegal consumption of alcoholic beverages.*
>
> Amendment to U.S. Senate Anti-drug bill

Responding to Bingaman's amendment, members of the advertising and liquor industries joined together in loud protest criticizing Sen. Bingaman's measure for being far too broad and possibly unconstitutional.

Dan Jaffe, executive vice-president of the Association of National Advertisers said in *The Wall Street Journal*, "It makes us wonder if [Bingaman] was fully aware of the reach of this legislation."

College student publications editors, business managers and advisers also voiced strong opposition to the bill.

The overwhelming opposition to Bingaman's amendment from college student publications and beer industry representatives prompted the introduction of a new amendment to the already amended anti-drug bill.

The additional amendment, introduced Oct. 5 by Sen. Herbert Kohl and co-sponsored by Sen. Bingaman, lessend the original bill's restrictive provisions. The new amendment only required colleges and universities to adopt policies that "encourage institutions of higher education's newspapers and other publications to reject advertisements promoting irresponsible or illegal consumption of alcoholic beverages." It also called for schools to create policies that "restrict distribution on campus of any promotional material that encourages consumption of alcoholic beverages by persons under the state's legal drinking age."

Sen. Kohl said in *The Wall Street Journal* that he proposed the amendment because "Senator Bingaman's initial measure does not focus on what I see as the real problem—illegal and irresponsible use of alcohol." He said that the language of the original amendment may have prevented beer companies from placing an ad encouraging responsible drinking in college newspapers because that would go beyond the limitations of price and product identification. The surgeon general also suggested in his workshop that alcohol companies use advertising to promote responsible drinking.

The Senate adopted Kohl's amendment and the issue moved to the House Committee on Education and Labor, which refused to approve similar provisions in

its anti-drug bill.

Opposition to the bill remains strong, according to Bingaman aide Linda Scott. She said that Bingaman had a meeting with the opposition including representatives from the ACLU and advertising and beer industries to discuss the possibility of coming up with new language for the bill that they could all agree upon.

Scott said her understanding is that the opposition has questions about the language of the bill. "They say it is too vague."

She said when the two sides meet again, they hope to define what "promotes illegal and irresponsible alcohol consumption." However, Scott said she does not know if anything will come out of these talks, but that Bingaman is willing to work out a compromise.

When asked about the issue of the bill interfering with freedom of speech, Scott said, "The bill is not related to commercial speech, it is intended to limit sponsorship and not First Amendment Rights."

Student Press Law Center Executive Director Mark Goodman expressed his concern about the effects the bill may have on student publications.

"College and university administrators will use the law as justification for harassing or actually censoring student publications," despite the language of the bill, he said. "Such harassment and censorship is very real today at many colleges, even without a congressional mandate."

Keenan Peck, counsel to Sen. Kohl added, that there is legitimate concern that using federal funding as a penalty is too stringent and that it will promote so strong a fear in the college administrators that they will stifle even legitimate speech.

He went on to say that Sen. Kohl would not have any problem with legislation that would specifically target underage drinking, but at this time Kohl wants to distance himself from the issue.

"People seem to think that Kohl is responsible for the ad restrictions, but that's not the case; he is the one who loosened them. He introduced the second amendment as a compromise," Peck said.

John Fithian, an attorney and member of the Freedom to Advertise Coalition agreed, "[the bill] does violate First Amendment Rights and allows Congress to overstep its boundaries as defined in the constitution."

While he recognized that a large portion of the student population is under 21, Fithian said there is also a large portion that is not.

"There are a large number of graduate students, alumni and faculty that also read student publications. You cannot restrict advertising presuming that it might reach some illegal customers. If that were the case, there would be no advertising for cars, cigarettes or any other product that may be illegal to a portion of the population."

Executive Vice President of the American Association of Advertisers Agency Hal Shoop said "We are also concerned with infringements of First Amendment rights."

"Fundamentally," Shoop said, "the answers lie in providing more information about the problem rather than restricing the flow of information." He went on to say that while Bingaman is surely not against the free flow of information, "the amendment is nonetheless restricting on that flow of information."

"Also," he said, "the language is too vague, and it will be difficult to interpret and enforce."

"Threatening to withdraw federal funds from colleges and universities for failure to comply will create a chilling effect, further limiting the free flow of speech," he added.

Shoop also countered Peck's suggestion to outlaw advertising directed at students under 21. He said, "The Supreme Court has ruled in several cases that you cannot limit the level of advertising to that of children."

ACLU legislative counsel Barry W. Lynn expressed his concern about the broad language of the bill that says colleges and universities should not encourage illegal or irresponsible alcohol consumption. "The question is," he said "what is prohibited?"

Ron Johnson, Director of Student Publications, Inc. said he thinks the goal of reducing alcohol abuse has been lost. He said, "They are carrying the battle of substance abuse over freedom of speech." He continued, "[Legislators] should be turning to education. There has been so much energy expended, and everyone seems to have lost sight of the problem."

The House version of the anti-drug bill passed on Nov. 13, according to Richard Jerue, staff director of the House Subcommittee on Post-Secondary Education. He said that the House members did not approve of the alcohol ad restrictions, therefore, they were not included in the bill.

If this legislation is passed in the House, it may leave the door wide open for Congress to place other limitations on the free speech of the student press. ■

Ad restrictions are already affecting colleges

No matter what Congress does, state laws and college administrators across the country are attempting to restrict alcohol advertising in student publications.

In his 1988 Drunk Driving workshop, Surgeon General C. Everett Koop recommended that the alcohol industry voluntarily cease alcohol advertising in student publications by September 1989. If that goal was not reached by September 1990, Koop suggested that legal or economic sanctions be developed against the alcohol industry and possibly against universities.

While legislators and industry representatives battle over fair language to effectively reduce drunk driving and alcohol abuse among college students, administrators have been devising their own policies to restrict alcohol advertising.

In August 1988, James Bryan, vice president of student affairs at the University of Scranton in Pennsylvania, formed a committee to review the school's policy on advertising promotions.

"When I came to the university last year, I took a look at the policy on alcohol promotions and decided it needed to be revised for the entire university community," said Bryan.

According to Bryan, in August 1989, the committee came up with a revised policy including, among other provisions, a ban on alcohol advertising in the student newspaper, *Aquinas*.

"We need a policy that deals with the issue now," he said, "so subsequent editors will have guidelines to go by."

Aquinas Managing Editor Keith Lanigan said, "After the sixth issue [of the year], the administration came in and [told us that we can no longer] run alcohol ads."

Lanigan said the students contested the policy and scheduled a meeting with Bryan for Nov. 7.

At the meeting, Bryan agreed to give the *Aquinas* staff a moratorium to come up with their own policy to promote responsible alcohol advertising in the paper.

When Lanigan told Bryan that he was concerned how the lost revenues would affect the size and quality of the newspaper, Bryan said he would try to help the students make up the lost revenues by teaching them how to be more aggressive in securing new accounts.

Lanigan said he thinks the school introduced the restriction because it is concerned with its reputation as a party school.

Bryan denied those allegations saying, "We just want to promote responsible advertising that does not condone drinking for students under 21."

But, according to Dave Christiansen at the university's treasury department, the University of Scranton holds 16,000 shares of The Phillip Morris Co., owner of Miller Brewing Co., and 600 shares of Anheuser-Busch, Inc.

When asked if he thinks there is an inconsistency in the university trying to downplay alcohol consumption while having investments in the alcohol industry, Bryan said he does not think it is an issue.

As the *Report* went to press, the students were working on a new advertising policy.

Across the country, president of California State University--Chico Robin Wilson found a different way to achieve similar goals.

Wilson responded to the surgeon general's 1988 recommendations by writing letters to beer distributors and asking them "to voluntarily cease alcohol advertising on college campuses."

Among those addressed by Wilson were Adolph Coors Co. and Anheuser-Busch, Inc.

Wilson said he chose this tactic because, "I think that creating legislation [to] place limitations on the press goes against First Amendment rights.

"I encourage the free press as an instrument of education," he said. "I do not want to place limitations on the press, so I am playing a game of persuasion."

Perry Quinn, business manager at the Chico State *Orion* expressed his concern about lost revenues.

"Financially we [have felt the impact of Wilson's letters] because beer distributors are major contributors." He said that beer advertising revenues equal about $5,000 per semester for each of the four distributors that advertise

in the *Orion*. "That's a big chunk of what we make each semester," he said.

"Last year," Quinn said, "we ran plenty of alcohol ads, but this year Wilson seems to have scared the distributors into not advertising. All of the distributors are at a stand-off, waiting to see what the other guy is going to do."

Quinn also said that he thinks Wilson is concerned with Chico State being labeled the "number one party school" in the country, and he is trying to change that image.

As the *Report* went to press, a newspaper advertising policy was going back and forth between the *Orion* adviser and Wilson.

"Wilson is very persistent," Quinn said. "When he wants something, he gets it because he intimidates the students into thinking, 'Oh, I'll only be here for a few more years and it'll probably take too long, so they lose interest.' "

On yet another front, student publications in some states are living with liquor laws that are mandated by state-run agencies.

For example, the Utah Liquor Control Commission has blanket restrictions on alcohol promotions including a ban on alcohol advertising in student publications. The Utah law, however, is not enforced through the student publications. It applies to the businesses that hold state-issued liquor licenses, according to Neil Cohen, a liquor compliance investigator for the commission.

"The compliance division monitors student publications occasionally to be sure no alcohol ads are run," Cohen said. "If a licensee runs an ad in a student publication, [they] will first be issued a warning, and if they still fail to comply, they will be called for a hearing where the commission can revoke their liquor license."

Robert McOmber, business manager of the student newspaper at the University of Utah, Salt Lake City, the *Daily Utah Chronicle*, said, "If someone wants to run a beer ad, we warn them about the commission's [policy]. Sometimes they choose to run the ad anyway."

McOmber said that if the commission catches the advertisers they threaten to revoke their license, so they stop advertising.

According to McOmber, alcohol ads make up only about four percent of the *Chronicle's* revenue.

Jay Wamsley, a newspaper faculty adviser at Utah State University in Logan, said that about eight years ago a student on the publications staff tried to take the issue to court. "But, one state agency cannot sue another state agency in Utah so the case was thrown out," he said.

"I would like to see the [law] challenged," Wamsley added. "While I understand the state's position in wanting to keep underage students from being exposed to alcohol ads, the issue needs to be re-examined in terms of free speech."

Virginia alcohol advertising is also state-regulated.

On November 24, 1988, The Virginia Alcoholic Beverage Control Board created a restriction that said, "Advertisements of beer, wine and mixed beverages are not allowed in student publications unless in reference to a dining establishment."

Liz Oxford, office manager of the *Breeze* at James Madison University in Virginia, said they have definitely felt the effects in terms of lost revenue.

"We have lost five major accounts from convenience stores that were regularly weekly accounts," she said.

President of the College Newspaper Business and Advertisers Managers Gloria Freeland said the alcohol industry has a right to promote their product since the product is legal.

"[Schools and states] shouldn't try to legislate morality or responsibility," she added.

A spokesperson for Distilled Spirits Council of U.S. Inc., Lynne Strang, agreed that putting emphasis on [restrictions] alone is not effective.

"A more comprehensive approach would be much more effective," she said.

Strang suggested that more time be devoted to treatment and education.■

Iowa senator receives JEA award

MISSOURI — Iowa state senator Richard J. Varn received a Special Citation Award from the National Journalism Education Association for his efforts in promoting student press freedom by introducing a state law to protect it.

The JEA honored Varn at its national convention in St. Louis in November.

Varn, D-Solon, was the principal sponsor of the Iowa legislation passed in 1989 that recognizes the free expression rights of student journalists. Iowa's legislation was the first state law drafted and passed specifically in response to *Hazelwood*. Varn first proposed the legislation in 1988, but the bill died in the House Education Committee. He reintroduced the bill in 1989.

Republican Gov. Terry Branstad signed the bill in May.

"I am honored that an issue in which I have deep personal and legislative interest, student freedom of expression, coincides with the agenda of your association," Varn told the JEA.

"Writing controversy and getting heat and flack and creating discussion is education," he continued. "If students are taught they can't cover controversial subjects in school because they might offend people, what kind of lesson is that for later in life?"

In its 50 years of existence, the JEA, a national organization for high school journalism teachers and advisers, has only awarded its Special Citation to five other individuals or organizations. ■

Anti-*Hazelwood* forces growing

Several states rally to reclaim students' free speech rights

OHIO — Another state has joined the effort to promote student press rights through legislation aimed at getting around *Hazelwood*.

Ohio Rep. Judy Sheerer, D-Shaker Heights, introduced a bill in the state's House of Representatives Sept. 12 that follows the SPLC model legislation, "Freedom of Expression for Students."

The bill will arise as the House begins a new session Jan. 1. Sheerer's aide, Grace Moran said she hopes the bill will go to the floor for a vote some time in March 1990.

The bill was introduced with the backing of the Cleveland area chapter of the American Civil Liberties Union. Director Eileen Roberts said the ACLU has been working on the legislation since *Hazelwood*, and the outlook for passage is good.

"This is really positive," she said of the bill's introduction. "Sheerer is the majority leader, and with a bit of luck, we may get something akin to California." California was the first state to pass student freedom of expression legislation.

Another major supporter of the bill is the Ohio Coalition for First Amendment Rights, a statewide organization of educators, students and professional journalists formed in response to *Hazelwood*. John Bowen, a coalition member and adviser of the Lakewood High School newspaper, said he thinks the bill will pass "if we can get the message across that we're not trying to take power away from the school board."

Moran said, "Ohio has the opportunity to make great strides" in the student freedom of expression area, adding that even if the bill is not well-received, Sheerer will remain persistent.■

WASHINGTON — Student freedom of expression legislation will be introduced in Washington state for the first time in 1990.

Sen. Phil Talmadge will introduce the legislation in January at the beginning of the legislature's 60-day session, according to Talmadge's legislative aide Donna Salcado.

Salcado said the legislation, which is modeled after the Student Press Law Center Model Legislation and the California student expression law, is currently being drafted into bill form.

"It will all boil down to a well-organized lobbying effort," Salcado said, adding "Most of our legislators have no idea of what the *Hazelwood* decision is."

The Washington Journalism Education Association is a major supporter of the bill. Kari Averill, chair of the JEA's task force for student freedom of expression, said the general attitude in the journalism community is "it's about time."

"So far," she continued, "I think we've been very successful because we've answered opposing arguments."

Averill said that the Washington state constitution is supportive of student rights, but like the U.S. Constitution as interpreted in *Hazelwood*, is not "specific enough."

Salcado said Talmadge will work hard to get the bill passed, saying "He has a reputation for taking on issues courageously." ■

WYOMING — A Wyoming representative plans to reintroduce a student press rights bill in the state's budget session, but says she is not hopeful that it will pass.

Nyla Murphy, R-Natoma County, said she will introduce the legislation in the 1990 budget session. During a budget session, only bills pertaining to the state budget are supposed to be heard. However, Murphy said she will introduce the legislation anyway.

"Never let a year go past when you've got a bill that's important. Any time you have your constitutional rights in jeopardy, it's a major issue."

Since the last time she introduced the bill, Murphy said she has "sent letters to practically every high school journalism teacher in the state. On the whole, I got more people in favor of it than against it."

However, she added, due in part to Wyoming's conservative climate, "I have little hope for it in budget session."

Murphy said she must also try to get the bill on the floor for a vote so the press will pick up on it and discuss it. ■

KANSAS — A student freedom of expression bill that passed the state House of Representatives last year and received hearings in the Senate is still alive and has gained the backing of the state school board lobby.

As time ran out toward the end of the last session, supporters decided to table the bill rather than force a vote. As long as the language of the bill does not change, it can be reconsidered in January.

Plans to push the bill through are "alive and active," according to Jackie Engel, executive secretary of the Kansas Scholastic Press Association.

Engel said she is optimistic that the bill will pass in the Senate. "I'm very pleased. We can approach the Senate and tell them we've got the help of the school board, rather than two opposing sides."

Cindy Kelly, deputy general counsel for the Kansas Association of School Boards, said the association's attorneys helped draft the language of the bill.

"We didn't back the bill originally proposed," she said. "We helped draft a new bill we all could agree on." She said the new bill will apply the *Tinker* standard, a 1969 Supreme Court ruling that was the standard until the *Hazelwood* decision. The *Tinker* standard is less restrictive of student expression rights than *Hazelwood*. ■

HAWAII — After passing both houses of the state legislature by wide margins only to be vetoed by the governor, a student freedom of expression bill in Hawaii may be on its way for a second try.

Senator Norman Mizuguchi said he is "leaning toward" reintroducing a modified bill in 1990, one he hopes the governor will approve.

The original bill passed the senate in March by a 22-3 vote and the House of Representatives in April by a 47-4 margin. Mizuguchi said it was sent to Governor John Waihee on the last day of the session, so there was not time for a vote to override the veto.

Mizuguchi said he feels the bill will pass "if we can come into a common understanding with the governor and get high school students involved."

In a written statement to the legislature, Waihee stated, "Because I am confident that existing department of education policies sufficiently protect students' rights of expression, I believe school officials should be given the benefit of the *Hazelwood* decision."

Stafford Nagatani, administrative assistant to the superindendent of the Hawaii Department of Education, said the department supported and testified for the bill. He added, however, that he did not feel the bill was a necessity to insure students' rights, because the department's policies already protect those rights.

"The bottom line is, it's not necessary. I think it's a general agreement." ■

NEW JERSEY — A student freedom of expression bill in New Jersey is expected to sail through the State Assembly, but it may still be a matter of time before it comes up for a vote.

The bill, which needs only 41 votes to pass, has 43 co-sponsors, including three of the five members of the judiciary committee where it's sitting.

However, it will not be voted on until the house speaker decides to post it, meaning to bring it to the floor for a vote. "Most of the assemblymen are enthusiastic about the bill," according to chief sponsor, Assemblyman Anthony Impreveduto. In addition, due to upcoming elections the bill may not see any action until after the first of the year.

Impreveduto expressed confidence that the bill will be well-accepted, even if the elections change the makeup of the legislature and the governor's seat.

Introduced in late 1988, the bill was due to the initiative of the Garden State Scholastic Press Association, according to its president, John Tagliareni.

"I'm hopeful that this year we'll get the steam rolling and get this passed," he said, describing the bill as "not just a students' rights issue, it's a teachers' rights issue."

The next step after the House, if the bill is passed, will be the Senate. If it survives the Senate, it will be sent to the governor. ■

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RHODE ISLAND — A Rhode Island state senator plans to reintroduce a student freedom of expression bill that has died in the legislature twice already, saying in order to pass it, "we need to see participation on the part of students, teachers and parents."

Sen. Sean Coffey, D-Providence, said that after the bill's first try, "resistance by school authorities" and "nothing from the students" have made the legislation difficult to pass.

The Rhode Island chapter of the National Education Association is supporting the bill. President Harvey Press said although he has not received calls from students or teachers about censorship, the NEA is "testifying on behalf of the legislation and working with the chairman of the judiciary committee to see that it's passed."

The state chapter of the American Civil Liberties Union is also backing the bill. ACLU executive director Stephen Brown said passing the bill "is going to take a lot of work—a massive lobbying effort."

The Rhode Island Department of Education opposed the bills in the past. According to its legislative liaison, Tony Carcieri, "We thought the language was too broad. It didn't allow administrators to control some areas [where] we thought they should have that authority. We went on the advice of our legal counsel."

Department legal counsel Forrest Avila said the bill is poorly drafted, providing no remedy for libel or slander that may occur in student publications. "The bill tried to exempt administrators from whatever lawsuits may arise, but not school districts or advisers."

The bill was first introduced in 1988 where it passed the Senate, but died in the House. In 1989, rather than facing a vote on the Senate floor, it was sent back to the Senate Judiciary Committee where it died. ■

ILLINOIS — Although a student press rights bill died in committee here in 1989, it is about to be introduced once again.

Rep. Ellis Levin, D-Church, plans to introduce the bill some time after January 1, according to an aide.

Candace Perkins, legislative committee chair of the Illinois Journalism Education Association, said the bill failed last year because the legislature had such a large backlog of bills toward the end of its last session. She added that this time around, an effort would be made to obtain additional sponsors for the bill. She also expressed hope of more backing from the professional press community.

"We're beginning to make some progress," Perkins said, "We're beginning to break down some walls." ■

Colleges face copyright laws

WASHINGTON, D.C. — A bill that would make colleges vulnerable to copyright-infringement lawsuits was unanimously approved in October by the House Judiciary Committee and is currently pending in the Senate.

The bill would guarantee that states and state entities be vulnerable to copyright lawsuits. In March 1989, Sen. Dennis Deconcini, D-Ariz., introduced his version of the bill in the Senate Judiciary Committee.

Deconcini testified that the bill is important because a recent federal court decision held that states cannot be sued in federal court for infringement of copyright laws. "That," he said, "is contrary to what I believe was the clear intent of Congress when they enacted the Copyright Act of 1976.

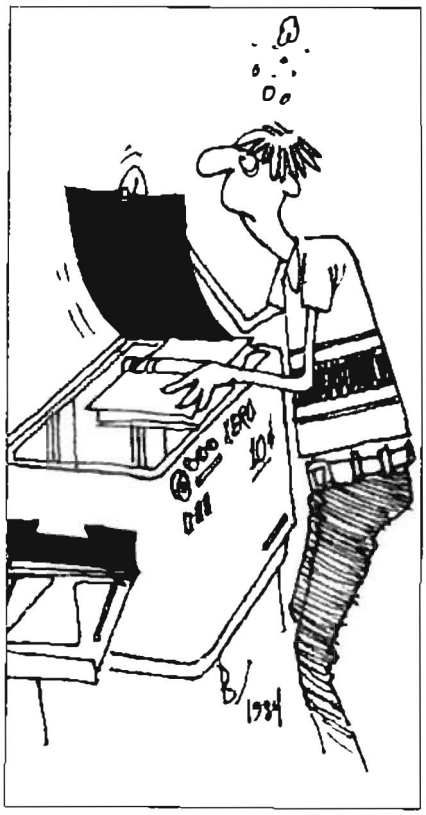
He argued that Congress provides copyright protection to promote the progress of science and art by insuring exclusive rights to authors and inventors for their respective writings and discoveries.

On Oct. 9, 1988, a U.S. Court of Appeals interpreted the copyright law to say that states and their instrumentalities, including state colleges and universities, are immune to damage suits for copyright infringement.

Educational publishers, whose principal markets are state colleges, would be particularly vulnerable if state colleges are immune to the law. Publishers would have no legal protection from having their work duplicated.

He argued that this lack of protection for American copyrighted material cannot be allowed to continue. "The act must be amended to make clear that states *are* subject to suit in federal district courts for claims of copyright infringement." he said.

The House version of the bill was unanimously approved in October, and the Senate bill was expected to be voted on in the Senate Judiciary Committee by the end of 1989.



No opposition to the bill has been expressed at this time. ■

Court decision calls anti-harassment policies unconstitutional

A growing number of colleges across the country are instituting anti-harassment policies, many of which have drawn criticism for their potential to inhibit free speech.

But while many institutions are strengthening their anti-harassment measures, others have revoked their plans or are facing lawsuits on grounds that such policies infringe First Amendment rights.

The policies generally discipline students who use discriminatory words or actions to harass others. School officials often maintain that the regulations would not extend to college media.

The University of Michigan last year instituted its own anti-harassment policy, and the American Civil Liberties Union took it to court where in September a federal district judge found the plan unconstitutional. The ACLU of Wisconsin is planning a lawsuit against the University of Wisconsin's new anti-harassment policy.

Federal District Judge Avern Cohn said in his opinion Michigan's measure was "broad" and "overly vague."

"However laudable or appropriate an effort this may have been, the court found that the policy swept within its scope a significant amount of 'verbal conduct' or 'verbal behavior' which is unquestionably protected speech under the First Amendment," the decision stated.

Paul Denenfeld, Legal director of the ACLU of Michigan and an attorney in the lawsuit, said that from a legal standpoint, the decision "was a total victory." He said he did not feel the issue directly affects the press, because the policy concerned only individual speech.

Joseph Owsley, director of news and information services at Michigan, said the university now has an interim policy that is "more narrow and focused," which will remain in place while a new policy is being drafted.

Owsley said, "Rightfully so, there's concern about protecting freedom of speech," but added that the policy does not extend to the student media. He said the policy is intended to protect both freedom of speech and the right to pursue an education without being harassed.

Denefeld also described the interim policy as more narrowly drawn, but said he is "troubled" by it. He said if any students feel the interim policy is infringing upon their rights, the ACLU will not hesitate to bring an action against it in court.

Before Michigan adopted its policy, the campus radio station and the university had some conflicts concerning alleged racism.

Brad Heavner, general manager of Michigan's Campus Broadcasting Network, said WJJX-AM aired a racial joke that a listener called in, and "the university got really angry," thinking the station was condoning the joke.

The other incident, Heavner said, involved a WCBN-FM disc jockey who played an "allegedly racist" song without giving a disclaimer saying the station did not condone the song. Heavner said the station's board of directors applied pressure to force the station to fire the disc jockey, which it did. He said that because the university's board of regents holds the license for the station they can exercise control over it.

Heavner said he feels "the nondiscrimination policy was not aimed at us."

"The constitutional rights of free speech are always threatened, especially in the university environment, which is being run more and more from an authoritarian stance," he said.

At the University of Wisconsin, the board of regents adopted rules to regulate behavior directed at individuals intended to "demean and to create a hostile environment."

Examples of punishable behavior include remarks directed toward an individual such as name calling, racial slurs or ethnic jokes. The rule states that "a student would not be in violation if, during a class discussion, he or she expressed a derogatory opinion concerning a racial or ethnic group."

Disciplinary measures listed in the ruling include possible probation, resignation, suspension and expulsion.

Board of Regents secretary Judith Temby said the rule came about as a small part of a much broader plan to promote recruitment and retention of minorities on campus. "It's been drawn narrowly to protect freedom of speech and exchange of ideas."

"The rule is too broad," countered Gretchen Miller, an attorney for the Wisconsin chapter of the ACLU. Miller said the ACLU is preparing a lawsuit that will try to order the university not to enforce the rule.

"We recognize the good motives of the university," she said, but added that the rule "prohibits expression of ideas, rather than limits harassive conduct." She maintained that under the current rule, it would be hard to predict what actions could be deemed punishable.

Members of the *Daily Cardinal* and the *Badger Herald*, Wisconsin student newspapers, said they have not felt any effects from the policy.

The proposal went to the Committee on Higher Education in the Wisconsin Senate. The committee had 30 days to hold hearings and vote on the measure. Hearings were held, but the policy never received a vote, so it automatically went into effect Sept. 1.

The issues of anti-harassment and free speech are competing interests in these cases.

In his decision finding Michigan's policy unconstitutional, Judge Cohn stated, "While the court is sympathetic to the university's obligation to ensure equal education opportunities for all of its students, such efforts must not be at the expense of free speech." ■

Lodestar suit ends in out-of-court settlement

CONNECTICUT — The first high school student press suit filed in federal court since the 1988 *Hazelwood* decision has ended in an out-of-court settlement, with both sides claiming victory.

In May 1988, the editor and adviser of Ridgefield High School's literary publication, *Lodestar*, charged the school's board of education with violating students' First and 14th Amendment rights by trying to control the magazine's content.

Staff members said the school board tried to control content in reaction to a story in the 1987 issue titled "Round Trips." The story was written by faculty adviser Stephen Blumenthal and included the word "fuck" several times.

On July 18, 1989, following a temporary court order issued in March against the censorship, the two sides reached an agreement.

The settlement states that "The advisers of *Lodestar* magazine will not be requested to edit the magazine other than to exclude material which is obscene, libelous or disruptive." However, it goes on to state, "material which is not obscene, libelous or disruptive may nevertheless be restrained or censored ... under *Hazelwood School District v. Kuhlmeier.*"

But if administrators decide to censor "offending material," the agreement states, "the editors of *Lodestar* magazine may print and/or disseminate the material in *Lodestar* nonetheless." If this is done, it says, the school then has a right to withdraw its portion of the funding for the magazine.

Both the attorney and the adviser of *Lodestar* say that if the board did withdraw its funding, the magazine would have no problem raising the money necessary to continue publishing.

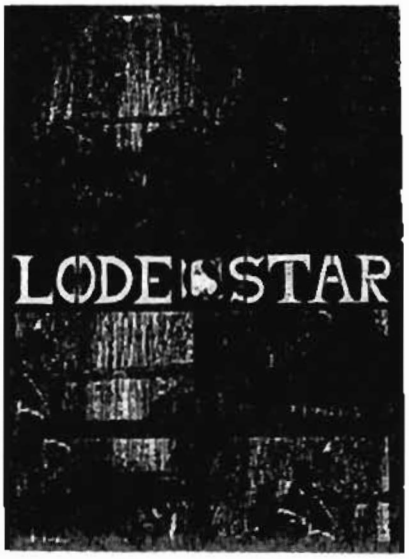
Under the settlement, if the administration chooses to censor, objections must be written, and the magazine staff or editorial board has the right to appeal the objection to a panel of school board members. The panel is to include one board member chosen by the board, one chosen by student editors and one chosen by the first two panel members or drawn in a lottery. *Lodestar* attorney Bill Laviano called this process one in which the school board must subject itself to public scrutiny.

The settlement also states that it is "the board's intention to retain to itself the full extent of regulatory authority [permitted] under federal and Connecticut law."

School board attorney Robert Mitchell said, "We're very happy" about the settlement. "They've accepted *Hazelwood.*"

"We've accepted *Hazelwood* in no way," countered Laviano," We do not agree [the publication] is curricular. There's no classroom credit. *Lodestar* is a public forum."

The settlement states that both sides agree that the main purpose of the magazine is to include literary works from students, faculty members and alumni, and that alumni contributions should make up no more than 10 percent of an issue. The school board had attempted to exclude alumni contribution. Laviano said *Lodestar* has never published more than 10 percent alumni contributions.



Laviano called the settlement a victory. "By court injunction, we had the 1988 and 1989 editions of *Lodestar* published. *Lodestar* has continued from that moment without any interference by administrators."

Suzanne Reike, former editor of *Lodestar* and a plaintiff in the suit, said she is happy with the settlement. "It doesn't come to a complete victory. But the settlement is allowing *Lodestar* to do what it always did, which is a victory."

Laviano said the lawsuit was settled because of how much it was costing. Cost estimates from both sides total nearly $1 million.

The magazine's adviser, Robert Cox, agreed.

"All this had to come out of the town coffers," he said, "I'm very confident we would have won. *Lodestar* is as free as it ever was."

School board chairperson Mary Ann Baldwin and superintendent David Larsen have both left their positions since the beginning of the matter.

Joseph Sweeney, a school board member, said he thinks everyone is happy there is a settlement.

"It was a very divisive case. Both sides made a lot of mistakes. In the future, both sides have to sit down and talk. There's a real issue involved here. These things don't go away.

"Trying to run a school system without depriving rights to expression and keeping a sense of control is a real balancing act."

In addition to the initial court order against censorship, *Lodestar* also won two Freedom of Information requests during the litigation. One forced the school board to cancel a vote relating to the case they reached during an illegal executive session, and the other required the board to disclose its attorneys fees.

Lodestar has also asked the court to require the school board to pay for *Lodestar's* attorney fees. The judge has yet to rule on the matter. ■

Dowling College wins libel lawsuit

NEW YORK — While students enjoyed their vacation last summer, a New York court decision chalked up a victory for their "free expression of ideas."

The victory came on June 8, when the state appellate court dismissed a libel suit against Dowling College in *Epstein v. Board of Trustees of Dowling College*, 543 N.Y.S.2d 691 (App. Div. 1989).

The case began when Jerome Epstein, a professor at the college, filed a libel suit against the board of trustees and Thomas E. Tornquist, the faculty adviser to the school newspaper, *The Lion's Voice*. Epstein alleged that two items published in the paper defamed him and hurt his chances of getting his contract renewed.

The items in question were a letter to the editor and an editor's reply both criticizing Epstein's teaching methods at Dowling.

Dowling administrators asked the court for a summary judgment saying that the administration is not to be held responsible for what goes into the paper because all contents are determined by the students and because both of the pieces were clearly statements of opinion.

Summary judgment was granted to Dowling by a New York trial court in 1987 on the grounds that neither the letter nor the reply were libelous because they were "constitutionally protected as expressions of opinion." The court, however, did not deal with the issue of Dowling's responsibility for the paper's actions.

Epstein's attorney Joseph Pierini appealed the decision, attesting that the statements were defamatory accusations that were not supported by any facts, therefore, they could not be considered an expression of opinion. Additionally, Pierini said he did not have adequate time to finish his fact-finding.

In the decision, the appellate court said "an expression of 'opinion' is not actionable because of the constitutional protection accorded to free expression of ideas."

Based on a prior decision in New York, the court said Epstein "may not recover [from Dowling students] simply for expressing their opinion of his performance, no matter how unreasonable, extreme or erroneous those opinions might be."

The court ruled that the statements in both letters were opinions, not facts, and should be protected as such.

Epstein said he is disappointed with the decision, but not surprised. He said it seems that the courts tend to favor the press in cases like this. He added, "There should be some protection when someone's reputation is torn down, especially when the facts are incorrect."

"I still believe it was a case of irresponsible journalism and the administration should bear the responsibility," Epstein added.

Charles Bennett, vice president of academic affairs, said, "Printing the letters was a decision the editor made. We [the administrators] are not in the position to tell [the students] what should and should not go in the paper."

"The newspaper is wholly independent of the college and the administration has never attempted to interfere. We're glad the courts have recognized this relationship," he added.

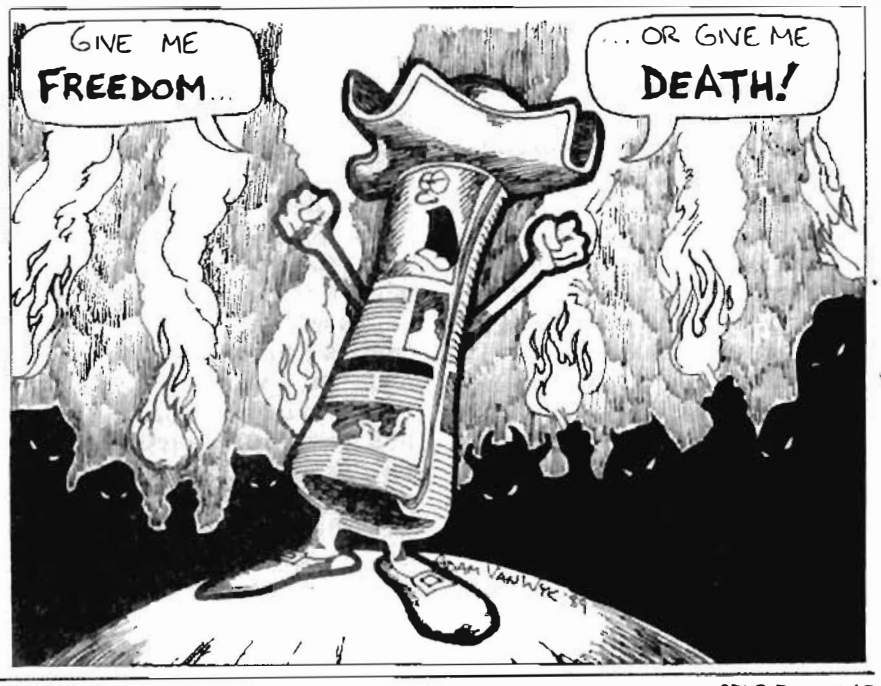
"The newspaper did publish letters expressing opposing views to the criticism of Epstein's teaching," Bennett continued. "It seemed clear that the editors were trying to exercise responsible journalism in presenting both views in the matter."

Bennett said he is pleased with the decision and that any other decision could have created a "chilling effect" detrimental to student press freedom.

He added that the decision will give students more confidence.

Jacqueline Misson, business manager at *The Lion's Voice*, agreed that the decision has lifted a little weight from the shoulders of the reporters and editors. She said that the newspaper staff members are encouraged, knowing that their constitutional rights will stand up in court.

Misson added, "We'll continue reporting anything that touches the students and community as long as we can back it with solid facts." ■



Court rules against high school policy

Decision upholds students' right to free religious expression

COLORADO—A federal court has declared unconstitutional La Junta High School's policy preventing the distribution of religious material on school grounds.

The U.S. District Court of Colorado issued a partial summary judgment against the school in September, declaring the school's policy for distribution of literature in the East Otero School District an infringement of First Amendment rights.

The case began when three students were suspended for passing out the newspaper, *Issues and Answers*, a monthly Christian newspaper published by Student Action for Christ, on school property. Despite warnings to stop, the three students continued to distribute copies of the newspaper.

According to the complaint filed in the lawsuit, the students were denied permission to give out the material because the school superintendent claimed that the paper's Christian viewpoint on current issues attempted to convert students to that view. Under the school's policy, distribution of "material that proselytizes a particular religious or political belief" is prohibited.

David French, lead counsel for the students, said *Issues and Answers* is a newspaper of interest to students.

"The students had a constitutional right to pass out the material," French added.

The school board claimed that it suspended the students for willful disobedience in violation of school policy, not for exercising their constitutional rights.

The students filed suit against the school district in July 1987.

In April 1988, the students' attorney asked the court to rule the school's policy unconstitutional on its face and as it specifically applies to the newspaper.

The school argued that freedom for students to communicate with other students on religious and

political subjects was incompatible with the "mission of the school."

In rejecting the claim, the court said, "That argument is patently frivolous," and explained that the mission of public education is preparation for citizenship, thus, students must develop their own set of values and beliefs.

"A school policy completely preventing students from engaging other students in open discussion on issues they deem important, cripples them as contributing citizens," the opinion said.

The court ruled that the restriction for student expression, in this case, would not advance any legitimate governmental interest, and said, "the [school district's] argument is perilously close to a claim that suppression of lawful speech is legitimate when it is convenient."

Crain said he was pleased with the ruling. "This is some of the strongest language [by a court] denouncing restrictions on student secular and non-secular speech," he said.

The school district also asserted that its policy was justified because of the interest in avoiding violation of the First Amendment provision that "Congress shall make no law respecting the establishment of religion...." The school district said restricting material that promotes a particular religious belief is necessary to protect the separation between church and state. The court explained that a governmental decision to remain uninvolved in religious matters by not interfering with distribution of materials does not result in governmental advancement of religion.

The decision said the mere fact that student speech occurs on school property does not make it government supported.

"Such a policy [restricting any religious activity] would result in hopeless entanglements of religious controversies. The school would have to develop procedures to determine whether a student wearing a cross, a fish pin or a star were sending religious messages."

The court found that because students have a right to engage in political activities and religious speech, the school district's ban on material that promotes religious or political belief is unlawful.

"Every application of the [policy] creates an impermissible risk of suppression of ideas," the court said.

The court also ruled the policy further invalid because it gives school officials unfettered discretion to apply it to whatever speech they choose, while failing to give students fair warning of what is prohibited. Since religion and politics are not self-defining terms, school officials could interpret

them to mean virtually whatever they wanted, the court said.

Also the policy gave school authorities the power to extinguish the right of students to speak through inaction and delay. While the policy provided for an initial review by the superintendent, it imposed no time limitation on how quickly the superintendent had to reply. A disappointed applicant could have had to wait two months just to present his argument to the school board with no guarantees that a decision would be reached, the court said.

The portion of policy that prohibited "[m]aterial that proselytizes a particular religious or political belief" was declared unconstitutional. Likewise, the provision in the policy that required prior approval was also declared unconstitutional, although the court said it need not rule on whether all prior review policies would be unconstitutional on their face.

Donald White, superintendent of the East Otero School District, said the policy has been revised according to the judge's order and said he was unable to comment further on the case.

A status conference was held on October 19 to decide the remaining issue: If the students had acted in a disruptive manner when distributing *Issues and Answers.* The court ruled that the students were reprimanded for being in violation of the school's policy, not for being disruptive. Accordingly, the court said the students cannot be reprimanded for not complying with the policy because the policy has been ruled invalid.

A trial date was set for December 1989 on the issue of damages and attorneys fees. ■

Haskell's *Indian Leader* publishing once again

Students proclaim victory as they regain editorial independence

KANSAS — Haskell Indian Junior College and its student journalists have agreed on a settlement that will allow the student newspaper to publish free of prior restraint or censorship.

Members of The Indian Leader Association, publisher of *The Indian Leader,* filed suit in March 1989 alleging First Amendment violations by Haskell, a liberal arts college operated by the Bureau of Indian Affairs, which is part of the U.S. Department of Interior.

Problems started in the fall of 1988 when the *Leader* published an account of alledgedly unethical conduct by the school's then-president, Gerald Gipp. Following that publication, Haskell administrators temporarily shut down the paper.

Another problem arose in March when James Hill, a Haskell electronics instructor with a degree in English literature, took over as adviser of the paper. Hill brought in his son, a recent journalism graduate unconnected to Haskell, for assistance. Students charged that the Hills took over editorial control of the *Leader* and obtained a temporary restraining order prohibiting publication of the paper put together by the Hills.

A settlement between the Indian Leader Association and Haskell was finally reach Sept. 18, 1989. The agreement states that the students will exercise editorial control and that "no officer, agent, instructor or employee of Haskell shall censor, edit or modify the contents of *The Indian Leader.*"

"A settlement had to be reached," said Harvey Ross, a student journalist and an Indian Leader Association officer.

Ross said the staff and adviser Hannes Combest have agreed on Combest's role. "Prior to [the *Leader*] being printed, she's not going to see it," Ross said.

He added that all of the students are happy with the settlement. "We anticipated it. Everyone was just relieved. We're moving forward."

The Indian Leader Association may use its funds as it sees fit and may use funds to secure off-campus publication, according to association attorney Patrick R. Nichols.

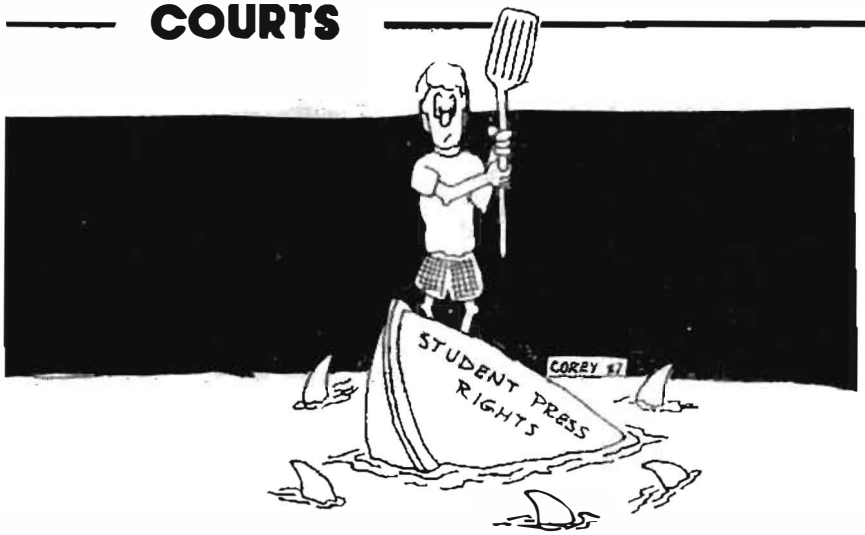
"Therefore, the agreement not only guarantees absolute freedom from prior restraint, censorship, or control," Nichols said, "[but] it provides a built-in mechanism to overcome such efforts."

The agreement also states, "Sole legal responsibiliity for the contents of *The Indian Leader* shall rest with individual members of the Indian Leader Association."

Former president Gill was relocated to Washington, D.C., and replaced by Bob Martin. Martin left Haskell for the summer, and in his absence, acting president Jim Baker signed the settlement.

Since returning to Haskell, Martin said, "I think it was great we finally reached an agreement to have *The Indian Leader* again."

Haskell is open only to American Indian students. In its 106-year history, the institution has trained many of the leaders of Native American tribes. ■



Decision restricts expression

Court ruling limits commercial speech

NEW YORK — Members of the college press may find that a recent Supreme Court ruling on commercial speech could affect advertising in student publications.

By a 6 to 3 majority, the Court held that colleges and universities may prohibit commercial solicitation on campus.

The right of state colleges and universities to control the use of their premises was at issue in the case *Board of Trustees of the State of New York v. Fox, 109 S. Ct. 3028 (1989).* The Court reversed a ruling by the U.S. Court of Appeals for the Second Circuit, which had held that the State University of New York's regulation governing commercial soliciations and sales in dormitories as unconstitutional because it failed to employ the least restrictive means of regulating commercial speech in SUNY's residence halls.

The case arose in October 1982 when a representative of American Future Systems Inc. had been invited by students to sell cookware in the Cortland SUNY dormitory. After refusing to leave the dormitory, as requested by university security, the representative was arrested for trespassing.

The representative was arrested on grounds that she violated a SUNY regulation that prohibits private commercial enterprises the authority to operate on any university property.

American Future Systems and some students sued the university.

A federal district court, concluding that SUNY's dorms are not public forums, held that in light of the purpose of the dormitory, the university's rule to prohibit sales in the building was a reasonable regulation on the "time, place and manner of speech."

American Future Systems then dropped out of the case and the students brought the case to appellate court in hopes of having the court review the case strictly in terms of student-requested commercial speech, rather than a question of American Future System's right to freedom of speech.

But the Court of Appeals for the Second Circuit reversed the lower court's decision because SUNY could not provide sufficient evidence to demonstrate that the ban on sales was the least restrictive means available.

In a decision that could have implications for all commercial speech cases, the Supreme Court altered the previous First Amendment standard in the area. The Court said that the government will now only have to prove that a restriction on commercial speech is a "reasonable" method for achieving the objective the government raises, rather than requiring that it be the least restrictive method available.

Under the Court's decision, "reasonable" is described as "a means narrowly tailored to achieve the desired objective." Within those bounds, the courts then leave it up to the governmental decision makers to judge what manner of regulation may best be employed.

The majority opinion held that if the regulation of commercial speech literally required the least restrictive means possible to accomplish the university's purposes, it effectively would have eliminated the ability of colleges and universities to regulate commercial transactions on campus "because any modestly creative lawyer or judge could suggest a slightly less restrictive way to regulate than the measure already taken."

While the ruling does not apply to limits on non-commercial speech such as political demonstrations, Justice Harry A. Balckmun, in the dissenting opinion, questioned aspects of the SUNY policy, expressing concern that some non-commercial speech might also be covered by the prohibitions. But, the court did not rule on that issue, saying it did not have all the necessary facts to do so. It sent the case back to district court for a trial on that issue.

Student organizations criticized the rulings as giving the university too much power to control dormitory activities.

"This is a setback for students' rights. The University should not have the right to bar people who the students let in." said Brian Obach, a spokesman for the Student Association of the State University of New York.

"When you live in a dorm, it's like renting a room from a landlord. The people renting should have the right to choose who they let in and who they don't let in."

No cases applying the decision to advertising restrictions placed on college publications have arisen since the June ruling.

But student Press Law Center Executive Director Mark Goodman said. "[The Ruling] could make [advertising] restrictions more difficult for student journalists to legally contest. ■

Award-winning newspaper faces prior review

MISSOURI—This year, the award-winning Park Hill High School *Trojan* may not be able to report on some of the subjects it has tackled in the past, such as weighted grades, attendance policies and communication between administrators and faculty.

A new publishing board has been established to review stories in the student newspaper.

Last year, *The Trojan* won the title of All-American Publication from the National Scholastic Press Association and Medalist from the Columbia Scholastic Press Association. Its adviser, Marcia Johnson, was named the 1987 Missouri Journalism Teacher of the Year.

Johnson said that principal Barton Albright met with her during the summer, and over her "strenuous objections" they came to an agreement that a publications board will be in place for one year.

The board, consisting of administrators, teachers, student editors and a parent, will review all stories pertaining to the school's administration and its policies, Johnson said. She added that Albright plans to review all stories himself.

"It's blatant prior review," Johnson said, "the move has attempted to silence the student press. We have all the mechanisms [for censorship] in place." She maintained that it is important for the students to continue writing like they always have. "They have to learn to deal with controversial issues. We can't make the news."

Roger Wohletz, *Trojan* editor, said when he heard about the publications board, "I was speechless. I couldn't believe something like this was happening at our high school."

"We thought the publications board would be a big compromise," he said. "We thought it would solve [the principal's concerns]."

Wohletz said that Albright has reviewed the paper, but as yet has not censored anything.

Albright said he had no comment on the matter, referring questions to the school's attorney, Larry Maher. Maher could not be reached for comment. ■

Administrators demand review of magazine

NEW JERSEY—Controversy surrounding a nude painting pictured in a high school literary magazine has led to prior review.

Last spring, the principal of Abraham Clark High School in Roselle allowed a nude painting to be displayed at a county arts festival. When a photo of the painting ran in the school's literary and art magazine, *Reflections*, it was another story.

After copies of the magazine had already circulated, administrators confiscated the copies and a few days later students held a walkout in protest. After the walkout, students gathered to ask superintendent Peter Carter why the photo was not allowed in the paper when it was allowed at the festival.

According to adviser Nancy Lubarsky, following that meeting, "The board of education opted to allow the magazine to be distributed." The magazine later received a first place rating from the Columbia Scholastic Press Association, with specific praise for the picture, she said.

Lubarsky said she allowed the art to run, under the assumption that it had already been approved. Now all publications must be reviewed by an administrator, she said, adding, "No one besides me ever reviewed it before."

She continued, "I figured if it was okay for a public forum, it would be okay for an in-house publication."

Reflections is a literary and arts magazine published once a year, containing about 50 pages. It is not tied to a course, but all of its funding comes from the school.

Lubarsky said that already this year, when advertisements were posted asking students for submissions on the theme "Strange Things in the Night," principal Oliver Young said the subject had to be changed.

She said she did not fight that particular issue, but that she would consider action when issues more important to her are challenged.

Melanie Condran, editor of last year's *Reflections*, said, "I'm sure they're going to censor it like crazy."

Current *Reflections* editor Joanne Burns said the students are upset and are worrying about which topics to cover.

Young could not be reached for comment. ■

This controversial artwork appeared in *Reflections*.

Catholic college censors student newspaper

Revokes student bill of rights including freedom of the press

PENNSYLVANIA — As Alvernia College students returned to their small campus in Reading last fall, there was a change from the year before that many did not even notice.

The student handbook of the private Catholic college run by the Bernadine Sisters had two significant changes in it: The student bill of rights had been removed and *The Alvernian* had been changed from the "student newspaper " to the "official campus newspaper."

The student bill of rights included passages that stated, "All student publications shall be entitled to freedom of the press," and "Students shall have the right to freedom of expression without prejudice."

The changes made by Alvernia College administrators followed a controversy surrounding a censored *Alvernian* news story written by two students who have since transferred to other schools. Eileen Saumell and Scott Rakowicz wrote an article examining the non-reappointment of a professor who said he had been treated unfairly by the school. Officials would not allow the story to run, and the two complained of unfair censorship.

Both say censorship is the main reason they transferred. Saumell, who now attends Merrimack College in Massachusetts, said, "I lost a lot of respect for faculty who wouldn't talk about [the censorship]. They supported me, but wouldn't take any action."

Rakowicz, now at the State University of New York at Stony Brook, said most students now at Alvernia probably do not even know of the changes in the catalog. "There's a lot of apathy on campus."

Alvernia's director of public relations, Joseph Swope, said the changes in the catalog "may have been triggered" by the censorship incident.

"I don't really see any implications. It's still the same *Alvernian*. It's mission hasn't changed."

Swope said the paper has broader purposes than most college publications. "We believe in freedom of the press and freedom of speech. Alvernia College is the publisher of the newspaper. Because *The Alvernian* is so closely linked to the college, it has a greater responsibility to represent the college as a whole."

According to Swope, the paper's funding comes in part from the school's publications budget and from subscriptions from various convents in the Bernadine Order.

As for prior review, Swope said "Generally, there is no prior review. It has happened only a few times." He pointed out that the adviser, Donna Martin, reviews everything that goes into the paper, because there hasn't been a student editor in two years. "No student has stepped forward to do it."

Martin had no comment on the matter.

Alvernia senior Paul Barringer is on *The Alvernian* staff for his fourth year. Barringer said he is acting editor, but cannot become editor because he is not an English or communication major. He agreed that most students probably do not know of the changes in the catalog. Barringer said the paper, which is published twice a semester, "is not run the way it should be" and has consistently gotten smaller and been published less often over the last few years. He attributed this more to students' attitudes than the administration, saying "the attitude among the students has gradually become 'we don't care.' "

Barringer said he was not angry that the story Saumell and Rakowicz wrote was censored, but would have liked to have seen it printed.

Saumell and Rakowicz also said they had difficulty getting information from school officials. Rakowicz said "It was like fighting city hall. We set up so many appointments. We never even got a written response."

Swope disagreed, saying, "[Y]ou have to understand how they went about it. They often would not make appointments. Their approach was very confrontational."

Saumell found the censorship of her story ironic because one of the school's stated missions is to promote critical thinking, and that, in part, was what she felt the article was doing.

Swope said, "Somebody should look up the definition of critical thinking. Part of critical thinking includes no bias. Their first draft was biased, as well as potentially libelous. It also means not to be so narrow-minded to think your idea is the absolutely right one." He added, "Hopefully, everyone has learned from this."

Saumell agreed that "it's been a real learning experience."

"It's not just the newspaper, the atmosphere of the whole college is oppressive. We didn't just leave because of the article. We took a lot of abuse. I'm glad I left." ■

Tennessee students impeach SGA president for denied access

TENNESSEE—A student government association president at East Tennessee State was impeached last spring, following the SGA's attempt to ban campus newspaper reporters from attending government meetings.

The controversy began in February when student government president Jason Eagle introduced a bill closing senate meetings to non-members. Under the proposal, the SGA could vote to admit non-members.

Responding to the bill, students and reporters at the school banded together to form VOIS, the Voice of Indignant Students committee. The organization's goal was to insure that SGA meetings remain open to all students in the future.

Eagle said that he proposed the bill in an effort to inhibit unfair reporting by *East Tennessean* reporters. He said stories written by the newspaper's staff were "downright fiction" and that any positive action taken by the SGA was ignored by the campus newspaper.

VOIS member Francine Nave argued, "We should never have to [rely on a vote to attend] a meeting of the people we elected in the first place."

VOIS members said when they heard of the bill, they decided to seek Eagle's impeachment.

Members of the SGA's executive branch then retracted the bill proposing the student senate meetings be closed.

Eagle asserts that all the SGA ever wanted was a fair story. He added, "They say they're the watchdog, but who's their watchdog? The bill was proposed to show the *East Tennessean* staff that the SGA was serious about getting fairer press coverage."

East Tennessean reporter Amy Wilder, who was covering the SGA at the time, said the student senate had no qualms about her reporting until she began writing about controversial issues.

"They said I had lost all reporting and journalistic ethics." She added, "If the stories reflected poorly on the SGA, that wasn't a problem with reporting, it was a problem with their organization."

The *East Tennessean* staff has agreed to send two reporters to each SGA meeting in order to protect themselves against any charges of inaccuracy.

Eagles's impeachment was the result of a combination of problems *including* conflicts with the student press and other government members, according to Candy Naff, a staff member of the paper.

"This year there are no problems between the SGA and the newspaper; [the senate] much easier to get along with now," Naff said. ■

Administration rejects, withholds Nazarene college yearbooks

CALIFORNIA—"But They Don't Dance Here" was the theme of the 1988-89 Point Loma Nazarene College yearbook. The Nazarene religion does not permit its members to dance, and college administrators are not permitting the yearbooks to be distributed until some changes are made.

About 2,000 copies of the *Mariner* were printed and about 500 were distributed on Sept. 20, according to Howard Esterline, the yearbook's editor. Officials began confiscating copies Sept. 21.

Esterline said the book was modeled after the *Church of the Nazarine Manual*, a document published every four years following an assembly of church delegates from all over the world. The *Manual* contains the history, constitution, government and ritual of the Nazarene faith.

Esterline said he "heard it through the grapevine" that the books were being confiscated. "They never consulted me," he said, "I was very confused."

Esterline said he took the "But They Don't Dance Here" theme to the school's publications board, and though the board never saw the page proofs, the idea was neither approved nor prohibited.

The college's Associated Student Body drafted a resolution Sept. 21, which stated, "The *Mariner* does not accurately represent the overall student attitude nor does its theme represent the constitutional objective of the Associated student body."

"I think it very much represents the year." said Esterline, who is studying to become a Nazarene minister. "We included as many of the students and the activities as we could."

"Definitely, people misunderstood it," he continued, "The book is presented from a pro-Nazarene and pro-college stance.

The student body resolution also stated that the school's publications board will review its own policies "to assure this does not happen again."

A publications board member said the board decided to establish a subcommittee to "monitor and review" changes in last year's *Mariner*. He added that as far as he knows, the board will review production of this year's edition.

He said the school's administrative cabinet decided that a revised edition of the yearbook will be produced, and they will pick up "a very high level" of the cost, since "we feel somewhat responsible because the system didn't work."

The *Mariner* is largely supported by school and student funds, Esterline said. ■

California law protects rights, students choose their topics

CALIFORNIA—Last year when students at Potrero Hill Middle school contributed stories and poems to the first edition of their magazine, the *Potrero Hill Beat*, they wrote about fantasy, science fiction and pancakes. They also wrote about AIDS, drugs and suicide.

When the magazine came out, administrators confiscated the 700 copies, saying the contents were inappropriate. Following protests from teachers and legal experts, however, administrators allowed distribution less than a week later. Since then, only one more edition of the *Beat* has been published, and its future is uncertain.

The magazine's first edition included a story about prostitutes contracting AIDS, an essay entitled "Gangs and Drugs" and a short story about drugs and suicide.

Sam Rodriguiz, who was principal at the time, has since left the school. When the magazine came out, he was quoted in the *San Francisco Examiner* as saying, "I know drug dealing is going on and my own kids know it's going on. But they don't have to write about it."

Judy Dellamonica, president of the San Francisco Classroom Teachers Association, said the association filed a grievance against school administrators on behalf of the teachers who worked with the magazine. "Our intent was to make sure we were covering the students' concerns," she said, "which include academic freedom and students' rights to freedom of expression."

Elaine Elinson, with the Northern California American Civil Liberties Union, said the administrators did not have a legal right to prevent distribution. "When we voiced our objections, we pointed to the state education code that gives expansive rights to students." California has had a state law protecting student freedom of expression since 1976.

In less than a week, San Francisco Superintendent of Schools Ramon Cortines allowed distribution of the magazine, which cost $2,800 to print. He later declined comment on the matter.

Cori Forzano, a teacher who edited the second edition of the *Beat*, said though nothing was censored, administrators practiced "not only prior review, but editing," Though she termed the first two editions very successful, Forzano said "I'll never do it again."

She said there is no telling whether the magazine will be published again, noting lack of funds and general pressures. ■

WKPX radio: Optimistic about new FCC licensing

FLORIDA — There may be a light at the end of the tunnel for students awaiting a broadcast license for their radio station at Sunrise's Piper High School.

The controversy surrounding the delay in licensing for the "progressive rock" FM station has dragged on for nearly seven years.

WKPX, the student-run station, is currently operating under a construction permit, the first step to becoming a Federal Communication Commission-licensed station. The permit is valid until the FCC either grants or denies the radio station a broadcast license.

The problem with licensing began when Piper was first granted the construction permit seven years ago. The owner of the channel 6 television station in Miami began complaining to the FCC about interference from the radio station.

Peter Gutmann, the school's attorney, said it seemed that all the interference problems were resolved then, and things were quiet for the next six years.

Then in January 1987, CBS purchased channel 6, and the controversy resurfaced as CBS complained to the FCC about interference with their Miami television affiliate, WCIX-TV.

According to Allen Shaklan, vice president and general manager of WCIX, some viewers could receive the right picture, but were only able to hear the sounds from the radio station.

The first ray of hope in a long while came in April 1989, when CBS installed a UHF translater.

"To our minds, this action by CBS suggests that they have conceded that a long term solution is necessary, regardless of an FCC decision on licensing," Gutmann said.

Shaklan made clear that CBS definitely did not install the translator station for the purpose of alleviating the interference problem.

"We installed the station so we can better reach the viewers who could not receive our broadcast because of their locations," he said.

According to Gutmann, there is a natural interference between the two stations.

"Anyone who knows anything about broadcasting should know that since the transmitter in Holmstead, Fla., is located so far south, it transmits a weak signal in the northern most part of the Miami market. [CBS] should have known when they purchased channel 6 that these problems of interference would exist."

He said that CBS was looking for a bargain when they bought channel 6, so they probably overlooked this problem.

"You could clear out the entire FM band and there would still be interference," he continued. "Actually, there should have been a buffer zone when the FCC originally set up the broadcasting bands."

In order to promote the new UHF station, CBS ran a full-page ad in the *Miami Herald* giving out free UHF antennas to people in that area.

"CBS also hopes to install another translator station that will increase their broadcasting areas," Shaklan said.

"But," he said, "we would never stand in the way of the licensing of the student radio station."

He added that if the problem does cease to exist, he will encourage the licensing of WKPX.

Gutmann said, "There is no question, WKPX will eventually get the license. It just doesn't seem to be a high priority for the FCC."

Jim Crutchfield, Supervisory Communication Industry Analyst at the FCC, explained, "Our engineers have been running several studies, and are still trying to find an alternative to solve the interference problem."

"The students at Piper High school would like to have this matter cleared up so they don't have to be worried about it any more," Gutmann said. ■

Adviser submits to prior review policy

VIRGINIA—Since a story on abortion was banned from Stonewall Jackson High School's student newspaper, the adviser voluntarily submits the paper to review by the principal.

Adviser Marguerite Lee and principal Michael Campbell of the Manassas school agree that the process has improved communication between them.

The reviewing first began last April when reporter Kristin Young wrote an article about abortion for the February edition of the *Jackson Journal*. Lee presented the abortion story and others to Campbell shortly before deadline.

Campbell pulled the article, saying "it was not germane in the way it was presented." He said he had no problem with the topic, only the approach.

When Young learned that her story was not going to run, she said, "I was very upset because I didn't understand his reasons. When he told me them. I didn't agree."

The *Journal* was published with a blank page where Young's story would have appeared. With revisions, the story ran in April's edition.

Lee said of bringing the stories to Campbell's attention, "I did it as a courtesy," adding that "since then, I've instituted regular visits with him."

"The immediate cry was censorship," she continued, "It wasn't. It was partly my doing."

Campbell said the abortion article was the first time he had ever reviewed the paper. "As far as any prior review, that's a courtesy [Lee] pays to me. I never asked for that."

Lee said that since then, communication between herself, the staff and Campbell has improved.

Campbell agreed, saying communication has improved "without a doubt. I try to maintain an open line with students, faculty and parents."

The *Journal* is produced as part of a class, and is funded mostly by the school board with some revenue from advertising and sales.

Lee said there have not been many effects from the reviewing. "I'm more cautious, but it hasn't really changed our procedures."

Young also said she has not seen any effects. "If it would have been truly censored, there would have been more about it."

Campbell expressed his concern for student press rights. "Surely, we're all concerned about this as a national issue," he said, "I'm not one for censoring newspapers."

Lee said she is happy with the situation, but would like to see the students more defensive of their rights. "The kids need to be a little more aggressive in the way they respond to [Campbell]. I think they'll get that way toward the end of the year." ■

University devises new publications board for *Duquesne Duke*

PENNSYLVANIA—Conflict between the student newspaper and student government at Duquesne University has prompted the creation of a publications board.

In February 1989, the Catholic university's student government association suspended the *Duquesne Duke's* constitution and locked the newspaper's office doors. The shut-down lasted three days, and editor-in-chief Rebecca Drumm was permanently suspended from her position.

University president John Murray Jr. appointed the publications board shortly after the shut-down. The board is made up of faculty, students and a professional journalist. Murray said the board will work to resolve future conflicts if necessary. "The idea is to make the board as independent as possible."

Murray said the board does not have the authority to shut down the paper.

According to the SGA, the controversy that led to the shut-down was over alleged misconduct by Drumm. But *Duke* staff members charged that the SGA was responding to an advertisement in the paper for a family planning service.

The ad stated, "[W]e'll help you to choose the contraceptive method that best suits your body and your lifestyle." It had run twice when then-SGA president Harold "Happy" Meltzer wrote a letter to Drumm which stated, "The ad should not reappear." The ad ran once more, with a disclaimer stating, "The following advertisement does not necessarily reflect the views of Duquesne University." The shut-down occurred three days later.

This year's editor-in-chief Dennis Callaghan said from now on, the publications board will control the school's portion of funding for the paper. He added that according to policy, the students exercise editorial control.

Callaghan said that although the administration did not like the family planning ad, they did not pull it.

He said the *Duke* decided not to run the ad this year, mostly to avoid continuing controversy while the paper is still financially dependent.

Sean McNamara, who was news editor of the *Duke* last year, has since transferred to St. John Fisher College in Rochester, N.Y. He said the publications board is a good idea because the SGA will no longer control school funds allotted to the paper.

McNamara admitted, "The paper was ripe for this to happen. It was mismanaged. The power of the purse can be used when finances aren't clean."

The administration, in addition to implementing the publications board, has also purchased a new desktop publishing system for the *Duke* and hired a new adviser, Clark Edwards, who students say will be taking on a more active role than past advisers.

McNamara said the university bought the publishing system with an "unspoken agreement" that the paper is not to print anything like the contraception ad again. "You can't shut the paper down," he said, "but you can buy them."

Editor Callaghan said, "I think [Murray] is trying to keep us happy."

Murray said the paper needed the computer system. He added that there are no strings attached, and that the *Duke* does not have to repay the university.

Callaghan said, "We don't have to pay it back. Eventually we will to take that bargaining chip away."

He continued, "Eventually, I see the paper as becoming self-supporting in advertisements [and] completely independent of the university." ■

The *Duquesne Duke* ran this controversial ad with a disclaimer.

Who's Next?

Award-winning student cartoon stirs criticism

WISCONSIN — Students at Eisenhower High School are devising a publications policy for their student newspaper following a threat of censorship last year.

Peter Barry, co-editor of *The Paper Lion* at the New Berlin school, created a cartoon characterizing the board of education as a bandit about to knock off elective classes and sports programs. It also depicted teachers and classes as caskets with a caption asking "Who's next?"

Barry said he created the cartoon in response to the board of education's decision to lay off 19 teachers.

The cartoon was scheduled to run in the March 23 issue of *The Paper Lion*. However, the editorial staff was asked to hold the cartoon because it would come out just before the Board of Education elections in April.

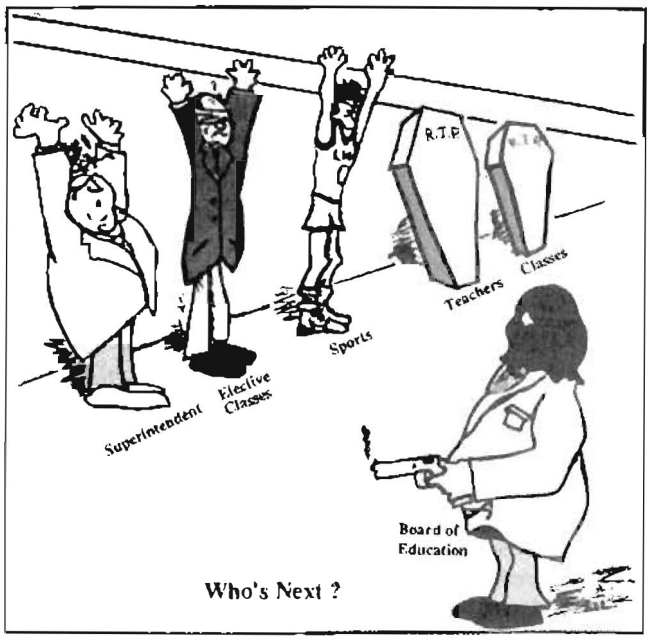
Just who was responsible for pulling the cartoon remains unclear.

Newspaper adviser Eileen Khonke explained the events.

Khonke said she was in a meeting with principal Ted Ortel when he said he wanted to see the cartoon. Khonke said that she does not know how Ortel even knew the cartoon existed.

When she showed it to Ortel, she said he took the cartoon from her and said that she should not put it in the paper because it would be unfair with the upcoming board election.

When Ortel took the cartoon from her, Khonke said she was shocked and responded by arranging a meeting between herself, School Board President Gail DeVeau and Ortel to discuss the cartoon. According to Khonke, at the meeting DeVeau said that she thought it would not be "journalistically sound" to run the cartoon because the opposition would not have an opportunity to respond before the election. Khonke said that DeVeau was concerned the cartoon would create too much controversy with the potential for an influx of angry letters. DeVeau also told Khonke that she did not believe in censorship and suggested that Khonke consult a professional journalist for more insight, leaving the final decision up to her.



This is the award-winning cartoon that prompted criticism

Khonke then contacted Robert Wills, managing editor of the *Milwaukee Sentinel*, and asked him if he thought running the cartoon would be in poor taste. Wills said and still maintains, "On the editorial page, you can print whatever you damn well please!"

Khonke said that she later explained the situation to the students and left the decision up to them. The students chose to include the cartoon in the March 23 issue of *The Paper Lion*.

The members of the newspaper staff said they were pleased with DeVeau for upholding their freedom of speech by allowing them to make the decision on their own.

"This is my twenty-second year advising the school paper," Khonke said. "In all those years no one ever told me what can and cannot go in the paper."

Ortel, on the other hand, described the situation differently.

He said that President DeVeau asked for the meeting with the newspaper staff to discuss the cartoon. And, that DeVeau asked the students to consider the fact that the cartoon might be an influence in the election. Ortel said he had nothing to do with the situation.

"We don't censor and never have," Ortel said.

At the beginning of the 1989-90 school year, Khonke said that she was still not sure how the students would react to the incident.

"Following the controversy last year," she said, "I devoted a few weeks to discussing media law with my journalism students and explained to them that they cannot let fear of censorship alter their editorial decisions."

Barry said there was no repose to the cartoon when it ran on March 23, and he was very disappointed that the cartoon did not change anything.

He said that there have been some 50 classes cut from the curriculum because the board said they needed to save money.

The editors of *The Paper Lion* are presently working to create a publication policy to submit to the board of education in order to prevent similar problems in the future.

Barry later submitted the same cartoon to the Wisconsin Associated Press Writing Contest, where he won an honorable mention in the single frame cartoon category. ■

Former Ben Davis adviser continues fight

INDIANA—Marilyn Athmann calls it a "little irony." After she was removed as yearbook adviser at her Indianapolis high school, she won the state's Journalism Teacher of the Year Award. She now hopes to go to court to settle the matter.

Athmann was reassigned from her position as adviser of the Ben Davis High School *Keyhole* on the last day of classes last school year.

She said principal James Mifflin reassigned her because she and her students refused to allow the school's athletic department to control yearbook coverage of the football team.

Superintendent Edward L. Bowes overturned the decision to allow the athletic department editorial control. He has said that Athmann's removal was not related to censorship.

The school board agreed to review the matter and announced its decision not to reinstate Athmann only a week before school started in the fall. She is still at Ben Davis, teaching remedial English.

"Justice needs to be done," said Athmann, whose yearbooks have received numerous awards from the National Scholastic Press Association and two of her last three have been named the best in Indiana.

Athmann appealed to the Indiana Civil Liberties Union, which decided not to directly represent her in a lawsuit, but ICLU attorney Richard Wegel said they may file a friend-of-the court brief.

At press time, Athmann was waiting to hear about representation from the Indiana State Teachers Association. If they will not take her case, Athmann must decide whether to retain a private attorney.

"It's a dilemma," she said, because of the cost.

Athmann said she will continue to look for representation. "I'm doing it one step at a time." ■

Professor seeks reinstatement and a clean slate

TEXAS—More than a job was at stake when a newspaper adviser was demoted from his position at West Texas State University in 1987.

Philip Isett, then associate professor of journalism at West Texas State University, learned in July of that year that he had been removed from his position as adviser of *The Prairie* and had lost his position as head of the journalism department. A year later Isett was denied tenure.

Isett is suing the West Texas administration for being denied a promotion and tenure without due process.

According to the school's policy, personnel decisions should include input from the department head and the dean. Isett testified in an April 1989 grievance committee hearing that he was replaced as adviser without the approval of his department head.

The grievance committee, made up of five faculty members, agreed that the demotion may have affected Isett's ability to prove his qualifications for tenure and promotion.

Isett said that the real reason they demoted him was because of his "proper and unrestrained" exercise of free speech in his position as newspaper adviser.

"The controversy began about three years ago when I started feeling pressure [from the administration] to run non-controversial stories and omit controversial letters to the editor," Isett said.

Then the administration told him to hire someone to assist him in running the newspaper and yearbook, so Isett said that he began interviewing people for the position. He added that the then vice-president of academic affairs told him that university president Ed Roach wanted to meet with any prospective applicants so he could be ultimately responsible for any choices made.

Roach then hired someone to replace Isett in all of his positions.

Isett claims that the university hired the new adviser to use the newspaper as public relations tool. As a result, he said that the journalism students have not learned good journalistic abilities and have probably been stifled creatively.

"It seems that the students have really suffered from the university's attempts to promote the college through the newspaper," he said.

According to Isett, the following year when he came up for tenure, it was denied.

Following the grievance committee hearing in April, the Texas Faculty Association appointed an attorney for Isett and agreed to pay his attorney fees.

Isett's attorney argued in his petition that a failure by the court to acknowledge the allegations against the school will have a chilling effect on the rights of the other professors and employees of West Texas State.

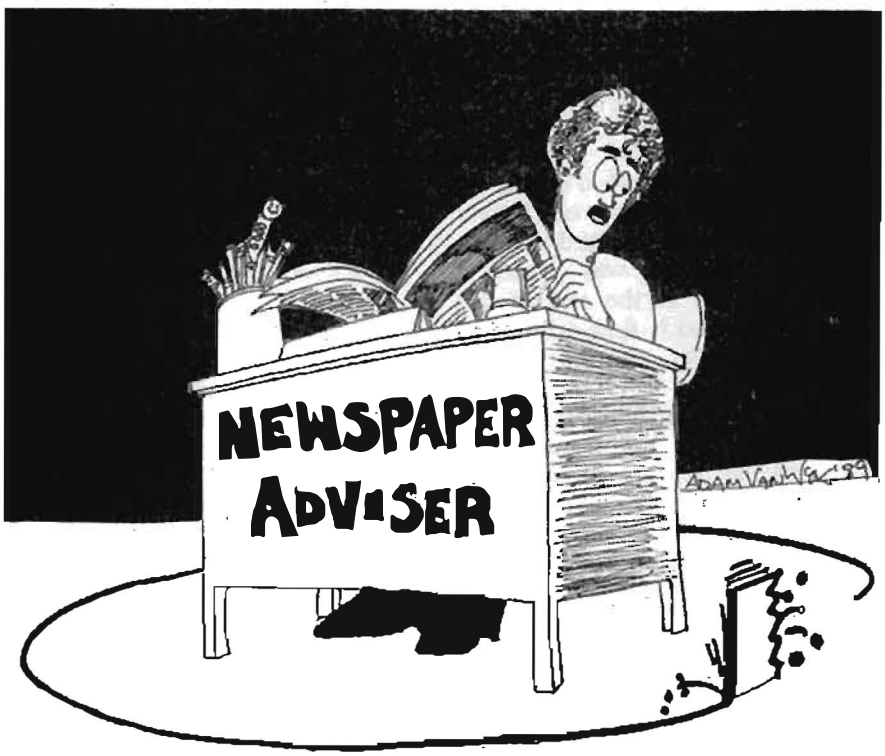
The suit claims damage to Isett's personal and professional reputation and calls for reinstatement to his positions at West Texas and removal of all references to his termination from his personnel files.

No trial date has been set. ■

Fired adviser wants justice, may go to court

Asks for retraction of damaging statements, claims defamation

CALIFORNIA—A former publications manager says he may be forced to file suit against university officials for defamation of character if they do not retract statements they have made about him.



The reporters are quite possibly afraid to write critical stories.

fired adviser Marc Haefele

According to Marc Haefele, California State University-Los Angeles administrators made defamatory statements about him to the *Los Angeles Times.*

Haefele said shortly after he was fired from his position at the *University Times* in April 1989, Charles Simmons, the newspaper's faculty adviser and Haefele's supervisor both told the *Los Angeles Times* that Haefele was dismissed as publications manager for "unsatisfactory job performance." According to the April 11 article, they said that Haefele allowed "too many errors - such as misspellings and poor headlines - to appear in the newspaper."

"They imputed my professional standards as reasons for discharge," Haefele said.

"However," he said, "Like my predecessor, Joan Zyda, I believe I was dismissed because of conflicts with administrative officials over negative articles I assigned to reporters about campus activities."

Haefele said the conflict was apparent when then-chairman of the communications department Keith Henning complained about a story he wrote for the paper about Zyda, the former *University Times* adviser who had been fired in the heat of similar controversy only one year before.

He said he also felt pressure from the administration when the student paper published other critical stories. For example, he said one story discussed the university president's two-month absence with no formal leave of absence, and another told of the continuing drop in enrollment at CSU-LA.

Haefele said acting head of university personnel Marilyn Plummer has since admitted that the comments made about Haefele in the *Los Angeles Times* were false and agreed to retract the statements.

In August, Haefele attended a meeting with Plummer and a union representative where he said an agreement was reached to compensate him for the false statements.

He said the settlement included the promise of a public retraction by administrators for the defamatory statements along with two months back pay and provision for Haefele to be hired back to CSU for a few months to complete a project to develop a style manual for the *University Times.*

Plummer said she was unable to comment because negotiations with Haefele are still pending.

Haefele went on to say that the university failed to meet the August deadline. And when he finally sent the union representative to the university to find out why they failed to meet the deadline, he was given a letter stating that the college declined to follow through on the settlement.

Haefele said he had given the administration until late November, no agreement could be reached at that time, he was prepared to file suit for defamation of character and damage to his professional reputation.

"The newspaper has gone downhill over the years [as a result of the controversy]," Haefele said. "*University Times* reporters have become quite uncritical of the administration.

"The battle for an independent newspaper has been lost. The

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newspaper only prints what the administration wants to see," Haefele continued. Professor Gerhardt Brand, vice president of the faculty union, agreed with Haefele that *University Times* reporting has lost its aggressive edge.

Brand said he encountered a conflict with the newspaper when he sent the second of two letters to the editor expressing his anger over the administration's failure to make repairs on a faculty air conditioner in his and two other buildings on campus.

The editor-in-chief at the time refused to publish Brand's follow-up letter and instead printed a letter in the *University Times* expressing her rage at Brand's persistant nature.

Brand said that he was only trying to encourage hard-hitting journalistic stories about campus matters. He said, "Editors should look for these stories, but they tend to ignore them [at the *Times*]."

Haefele questioned, "What kind of journalistic norm is the university instilling in the reporters? ... after all of the recent controversy."

Managing editor of the *University Times* Geoff Fein said he thinks the paper is much more critical now.

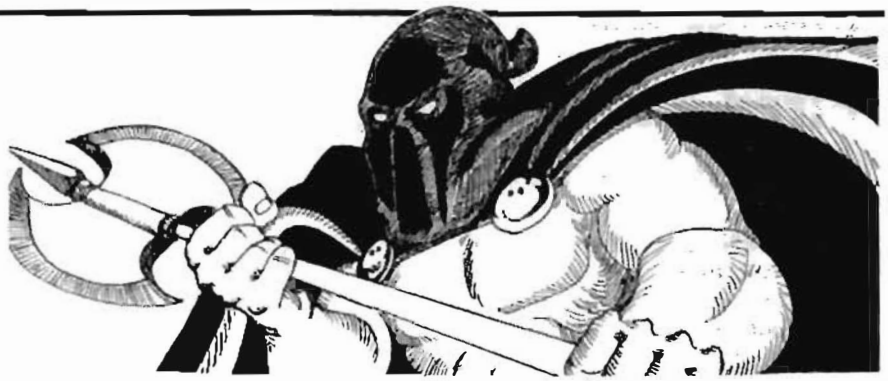
"The paper used to be largely made up of UPI stories, but we don't use UPI anymore," Fein said.

Fein said he and the editor-in-chief recently met with President Rosser.

According to Fein, although the paper does sometimes criticize him, Rosser said that he thinks the *University Times* staff is doing a "fine job."

Haefele is currently doing some freelance writing along with working as a part-time network radio stringer and as a police reporter.

He said that the administration's public criticism of his work has had negative repercussions for him in the Los Angeles job market. Where he once had a good reptuation, Haefele said he now has had difficulty finding work. ■



Adviser fired over prior review

CALIFORNIA—A high school newspaper adviser and his staff say he was reassigned last summer as part of a move by administrators to establish prior review. He is now taking his case to court.

Don Sheets, adviser of Hoover High School's award-winning *Hoover Heritage*, was removed from his post at the end of last school year and is now a full-time English teacher at the Fresno school.

Principal John Shropshire fired Sheets after the traditional spoof issue of the paper was published. Shropshire told *The Fresno Bee*, "I question the morals and the character of a teacher who repeatedly publishes degrading and offensive things about teachers and students."

Sheets said he was "shocked" when he was removed. "[Shropshire] didn't give me much explanation. He just called me and fired me," Sheets said he felt Shropshire reassigned him in order to establish prior review, and was using the spoof issue as an excuse.

Former *Heritage* editor Mi Young Pae said, "After a while, we all started realizing it wasn't the spoof issue."

In a letter to the editor of the *Bee*, Pae and three other student editors said, "The real issue, we recently found out, is that Mr. Shropshire does not like the way the Hoover journalism class is run under Mr. Sheets. He does not think high school journalists should be given the freedom to write about anything negative in the school which makes the school look bad."

Shropshire also told the *Bee*, "I am aware of all the Supreme Court cases involving student journalism, but I believe we should direct the students in a positive way to write positive information about the school as well as some of the other kinds of things."

Sheets said that after his requests to be reinstated were turned down, he decided to take legal action. The California State Teachers Association is funding a lawsuit challenging Sheets' reassignment.

Attorney Ernest Tuttle is handling the case, which he said he will file in federal or state court.

"We feel pretty good about it. We want to challenge *Hazelwood* in California." California has a state law that protects student free expression rights. Tuttle said it will most likely take several years for the case to make it to trial.

Last year the *Heritage* won numerous awards from regional and national journalism organizations. It was named all-valley publication from the San Joaquin Scholastic Press Association.

Sheets said students get class credit for the course, and the paper is supported mostly by advertising, plus some general student funds and some student body funds.

Pae said the students have learned a valuable lesson. "I didn't realize how much power we had with the written word." "I'm just sorry that a lesson had to be learned at the expense of Mr. Sheets, a man who has intended nothing but good in all the years that he has attempted to give us a positive exposure to journalism." ■

Auburn students ask court for access to administrative records

ALABAMA — *The Auburn Plainsman* and Auburn's chapter of the Society of Professional Journalists have joined forces with two other newspapers in asking a court to order Auburn University to release a university report.

The *Plainsman* and SPJ, as well as *The Montgomery Advertiser* and the *The Auburn Bulletin Eagle* filed a complaint Aug. 29 in an attempt to make the university release a report concerning an Auburn administrator who is facing allegations of ethics violations.

The college has refused to release the report, saying it is exempt from state open records law.

Plainsman editor Page Oliver said the paper is not as concerned with this particular report as it is with getting information in general.

"We've had a lot of problems in the past getting information from the university. This is the only way we could think of to make [the university] understand this information is important. We're the only functioning representative the students have in regard to First Amendment rights."

Plainsman attorney Dennis Bailey said his outlook on the case is good right now, but the case will depend on how the university's report is written.

In a written answer to the complaint, the university's counsel stated, "The requested report is not a 'public record' or a 'public writing,'" and continued, "The report is protected from disclosure by the attorney-client privilege, the work product privilege and other applicable privileges."

Bailey said it may be months before any more action is taken. ■

UCSB student's home searched for evidence

CALIFORNIA — In a unique case, police searched the home of a college student who was suspected of leaking confidential information to a student newspaper.

According to a Nov. 3 *Daily Nexus* report, sheriff's department detectives searched the home of Russell Tokle, a student at the University of California at Santa Barbara. They searched for evidence of information that Tokle allegedly obtained from his former employer, Santa Barbara County Health Care Services, and later leaked to the press.

Health officials sought the investigation and search of Tokle's home after a *Nexus* reporter began inquiring about alleged "patient dumping" by the county health care center, according to the *Nexus* report.

The student reporter was investigating reports that the health care center was transferring low-income patients to other counties because they could not afford to pay health care fees, according to Jason Spievak, *Nexus* managing editor.

Officially, the sheriff's department did not gain access to Tokle's home because he was suspected of leaking information to the press. The search was for computer disks which contained the information that Tokle had allegedly leaked to the *Nexus*. The county suspected that Tokle may have stolen the disks from his former office.

While sheriff's detective Tom Nelson would not officially comment on the case, he told the *Nexus* that the search was prompted by a California Code section that makes it a crime for any person to knowingly access, and without permission take copies or make use of, any data from a computer system or computer network.

Legal Counsel to the California Newspaper Publishers Association Terry Francke responded, "[I]t seems what actually provoked recourse by the authorities in the first place was the pointed questions by the reporter. While Tokle may have been suspected of theft, it was the alleged release of confidential information that set off the [health officials'] alarm.

"The wording of the California Code gives authorities the power to search someone's home if there is a remote possibility that the information could have been obtained from a computer source," Francke said.

"This is one sure way to clamp down on leakers. An example of this once in awhile may make people think thrice before leaking information."

Francke said he does not recall seeing any other example of a student having his home searched for allegedly leaking information to the student press. While this may be the first instance, he suggested there may be more of it in the future.

Tokle was suspected of leaking the information because he had access to a file about patient care and had placed phone calls from the health care center to the *Nexus* offices, according to detective Nelson.

The search for computer storage disks or printed transcripts of a meeting of county health officials discussing the quality of patient care ended with the seizure of dozens of computer disks.

According to a Nov. 4 *Los Angeles Times* report, Tokle said that he was never in possession of the documents in question and that the seized computer disks contained personal material.

Spievak said that he could neither confirm nor deny that Tokle had leaked any information to the newspaper.

Tokle, who was unavailable for comment, told the *Times* that he might seek court action for the return of the discs. ■

Student photographers subject to privacy law

Nine states have laws that say using hidden cameras is a crime

Suppose you learn from a reliable source that members of your high school football team have been taking "speed" before their games. Hoping to catch the alleged offenders in the act, you hide in the locker room and take pictures of your team's best players swallowing multi-colored pills. You plan to submit your photographs to your school newspaper. Could you go to jail for taking these photographs? Would your paper be free to print the photos without worrying about legal liability?

The answer to these questions depends in part on what state you are in. In most states, an individual can bring a civil lawsuit against someone for invasion of privacy by using a hidden camera or not obtaining consent to take a photograph in certain situations. A civil suit is usually based on either a state privacy statute or on state common law. Such a lawsuit can result in an award of substantial money damages.

In addition to recognizing civil claims for taking photos without consent, nine states have elected to make the unauthorized use of a camera to photograph people a crime. Alabama, Delaware, Georgia, Hawaii, Maine, Michigan, New Hampshire, South Dakota and Utah have all created criminal penalties for "hidden camera" activity. Although such statutes would be constitutionally suspect if applied to the news media, they remain on the books. The penalties range from a felony in Michigan, punishable by maximum imprisonment of up to 2 years or a maximum fine of $2,000 or both, to the majority of the states, which punish offenders with a misdemeanor conviction and a fine.

There have been few criminal court cases that actually involve hidden cameras violating these laws. Furthermore, in the nine states where it is a crime to use a hidden camera or in the many states that have civil invasion of privacy statutes, the law typically does not use the terms "hidden" or "camera." The Restatement (Second) of Torts section 652B, which provides the legal theory behind some common law tort claims for invasion of privacy, states the elements of a claim for intrusion of privacy:

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or

his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

The criminal laws often describe the prohibition against use of a device for photographing or intruding on people or events in a private place. The laws do not define exactly what is considered a private place, but the courts in each of the states and the Supreme Court of the United States have attempted to formulate a definition.

According to the United States Supreme Court in the case of *Katz v. United States*,[1] privacy rights apply to people, not things, and as a result, a place is considered private if a person in that place would reasonably expect to be free from surveillance or intrusion. Each of the nine states with criminal privacy statutes have applied the Supreme Court's definition as to what is a private place in various contexts.

In South Dakota for example, under *Katz*, a person's home was not considered a private place where the homeowner knowingly displayed marijuana plants in a window.[2] The court reasoned that an individual has no reasonable expectation of privacy even in his home or office when what he was seeking to conceal from public view was knowingly exposed in an area to which the public has access.[3] In this case the marijuana was observed by a passerby and did not involve trespass on the homeowner's property.

Michigan applied the *Katz* standard and stated that a private place is where a reasonable person would be safe from hostile or casual intrusion.[4] In the Michigan case, the defendant was prohibited from installing a two-way mirror in a womens restroom—a place the court had little trouble in classifying as private. Utah, in applying *Katz*, classifies a location as private by weighing the extent that the information gathered there is of a private concern (that is, it would involve shame, embarrassment or humiliation to the person it relates to) against the public's right to know.[5] Using this analysis, the Supreme Court of Utah determined that a student publication's right to free speech and free press outweighed any private concerns the college employees had in withholding a list of their names and gross salaries from the student journalists.[6]

A few of the states, Alabama, New Hampshire, Maine, and Hawaii, define a private place in their state by excluding those places to which the general public has access or a "substantial group of the public has access".[7] In Ala-

bama for example, a hotel lobby is not a private place while a hotel room is.[8] Additionally, Hawaii would consider a doctor's office a private place because the general public or a substantial group of the public does not have free access.[9]

There are a great number of court decisions that describe civil intrusion claims. For example, a television station installed a camera behind a two-way mirror and filmed a police investigation of a massage parlor.[10] The court did not consider the filming an intrusion in light of the public's interest in the investigation and on the grounds that the officer was a public official.[11] However, a "quack doctor" who was secretly recorded and photographed by *Life Magazine* reporters who posed as patients to gain entry into his home was allowed to bring a suit for intrusion invasion of privacy.[12]

The tests that the various state courts use to decide when a civil cause of action exists for an intrusion claim, or when a place is considered private in the criminal context, are not always clear. Nevertheless, the cases indicate that in a public school setting, the lobby or halls of the school building, an athletic field or parking lot would be considered public places, while locker rooms would be considered private places. Students present in the lobby of a school or in the halls are not likely to have a reasonable expectation that their activities will remain unobserved by other students or members of the public that happen to be in the school building. By contrast, students in locker rooms have a reasonable expectation that they will be afforded the privacy one would expect in a restroom.

Classrooms are locations that may fall in a "gray" area as to whether a court would consider them private. A classroom is a location where students are required to be present. It is mandatory that they be in the classroom for a set time period. Furthermore, members of the public generally do not have free access to classrooms during a class period. These factors may indicate that because students are constrained, they should be afforded privacy. On the other hand, students at a school that publishes a student newspaper may expect that student journalists will be taking pictures of their activities in areas such as a classroom or a gym. Arguably, therefore, students may not have a reasonable expectation of absolute privacy in a classroom, especially if they know photographs have been taken there in the past and could be taken again in the future.

In the states where the use of a hidden camera may carry criminal penalties and any place where one seeks to avoid civil suits for intrusion invasion of privacy, student photographers would be advised to obtain the consent of the person or persons in the location you intend to photograph unless it is clearly a public place. If you are unsure as to whether your photography would be in violation of criminal or civil privacy law and getting consent is not possible, your best route may be to avoid taking the photograph. ■

[1]389 U.S. 347, 351 (1957).
[2]*State v. Vogel*, 428 N.W. 2d 272 (S.D. 1988).
[3]*Id* at 277.
[4]*People v. Abate*, 306 N.W. 2d 476, 104 Mich. App. 274 (1981).
[5]*Redding v. Brady*, 606 P. 2d 1193 (Utah 1980).
[6]*Id.* at 1195-1196.
[7]Ala. Code Ann. Section 13A-11-32.
[8]*Id.*
[9]*State v. Lee*, 686 P. 2d 816 (Hawaii 1984).
[10]*Cassidy v. ABC*, 60 Ill. App. 3d 831, 3 Med. L. Rptr. 2449 (1st Div. 1978).
[11]*Id.*
[12]*Dietman v. Time, Inc.*, 449 F. 2d 245 (9th Cir. 1971).

Form 990 can save stories from back-burner

Suppose that you are a reporter on the student newspaper at your private school and you have just heard from a usually reliable source that the president of your school received a thirty percent pay raise last year. This seems a bit hard to believe given the fact that the last year also saw a ten percent tuition hike, a major cutback in school-sponsored financial aid, and the layoff of all non-essential faculty because of the president's warning that the school needed to dramatically tighten its belt. Your news radar is buzzing and you immediately seek out confirmation. Unfortunately, the president is still miffed about an earlier story you ran on slipping admission standards and he refuses to speak or cooperate with you in any way. Ditto for the rest of the administration. Your editor has decided he won't publish the story without something more. In years past this might have been the end of the story. This fortunately is not the case today as Congress has recently given student reporters a powerful tool that makes obtaining information such as that sought above as simple as a walk across campus.

Each year the Student Press Law Center receives a number of calls from students frustrated in their attempt to obtain information about the "inner-workings" of their school. Student reporters working on stories concerning school budgets, appropriations, investments (lately an especially "hot" topic in light of the South African divestiture movement occurring at many campuses across the country), hiring practices, faculty salaries, source of outside income (e.g., federal grants), etc. often find their requests for information falling on deaf administrative ears and legitimate, newswothy stories forced indefinitely on the back burner.

The problem is particularly acute at private institutions. Un-

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like public schools, private schools are not required to comply with so-called "Sunshine" or "Open Meeting" laws that require public governmental bodies to open certain meetings of agency officials to the general public. Neither are private schools required to comply with freedom of information or public records laws, which guarantee public access to the vast majority of government documents. These meetings and records can provide an invaluable source of information to reporters in their effort to keep tabs on what is going on within the school administrative hierarchy. While some private schools have voluntarily adopted policies allowing public access to at least some of their meetings or records, the practice is by no means universal.

Fortunately, there is an extremely valuable — though little known — alternative source of information that might save many stories from the "back-burner" fate.

By law, students have the right to inspect the informational tax returns filed by such tax-exempt institutions as private colleges, universities, secondary and grade schools (public institutions are generally not required to file). The IRS 990 discloses a wealth of information, much of which may be of interest to campus journalists. For example, among the information your school's Form 990 should provide you with:

— The amount of money the school has taken in each year (including grants), with a breakdown indicating the sources and amounts of that money;

— A comprehensive listing of where the money was spent, how much was spent and what the money was spent for;

— A detailed balance sheet indicating both the assests and liabilities of the school at the end of each fiscal year;

— Information on how the sale or purchase of the school's investments (e.g., stock portfolios, bonds, trusts, endowment funds, etc.) have fared each year;

— The identities of your school's officers, directors and trustees. Also included here will be their salaries (or any other compensation including expense accounts and other allowances) and the time they have devoted to school business.

— The identities and salaries of school employees making over $30,000 during the year;

— Any legal fees paid by the school.

In addition, the form provides many tidbits of miscellaneous information about an institution and its programs, much of it useful or at least interesting to student journalists.

Gaining access to your school's Form 990 has been made much easier thanks to recent legislation enacted by Congress. In the past, the form was available only through the IRS and only after an often frustrating, complicated and lengthy ordeal. Today, tax exempt organizations are required by law to make the Form 990 available, and it can be obtained either through the IRS or inspected on the institution's premises.

The American Association of University Professors has put together a "Form 990 Kit" to assist students in obtaining or inspecting their school's informational tax return. The kit, which includes excerpts from the 1987 federal law authorizing examination of Form 990's, a sample Form 990, a sample letter of request to examine the form, a listing of key IRS district offices, an IRS guidance statement, plus many practical hints to assist you in your request and use of the form, is available for $2 from AAUP by writing them at 1012 14th Street, NW, Suite 500, Washington, DC 20005.

Among the Suggestions made by the AAUP kit:

1. *Anyone* may see a copy of an institution's Form 990. No reason need be given.

2. The institution must allow you to inspect the form and take notes. It is not, however, required to provide you with a copy of the form, although it may choose to do so.

3. If your school will not give you a physical copy of its form one may always be obtained through the IRS. However, this can take approximately three months.

4. If you only want to inspect your school's form — or if time is short — begin your search in the school's business, budget, or comptroller's office and make your request. Because the law requiring public access to the Form 990 is relatively new, many administrators may not be aware of its requirements and may need to be educated. You might have better luck if you are able to cite the law itself: Budget Reconciliation Act, 26 U.S.C. Sections 6104, 6652, 6685 (1987); and to the IRS regulation about the law published at 1988-48 I.R.S. 10, November 28, 1988.

5. If you are refused access to the form, keep a careful written record of who turned you down and when and where it occurred. You might want to make another request to your school in writing, citing the law above and letting them know that the IRS can impose heavy penalties upon them for non-compliance. If you are still turned down, write a letter directly to the IRS, including all pertinent documentation of your unsuccessful attempts.

If you have other questions or problems in using this valuable source of information call the Student Press Law Center. ■

How state shield laws protect student reporters

A look at students' rights to protect their confidential sources

This is the third in a series of stories examining the rights of journalists to keep their sources and information to themselves. In this issue, the Report *continues a state-by-state examination of state shield laws and privileges that allow journalists to keep information obtained during the course of their newsgathering efforts confidential and discuss how such protections might apply to student journalists. As most states have never ruled on the confidentiality rights of student journalists, the analysis given here represents the SPLC's best judgment of how a court might rule on the issue. If your state is not listed here, check for it in past or future issues of the* Report *or contact the SPLC.*

ARKANSAS

Shield Law: Ark. Stat. Ann. Section 43-917 (1977 and Supp. 1988). Ark. Code Ann. title 16 section 16-85-510 (1986 and Supp. 1988).

Any "editor, reporter, or other writer for any newspaper, periodical, or radio station . . ." is protected from revealing his or her sources unless the party seeking disclosure can show that the article was written in "bad faith, with malice, and not in the interest of public welfare." Further, information obtained from the source must be "written, published or broadcast" to protect the identity of the source. The law does not specify whether the source must be promised confidentiality to be protected. In *Saxton v. Arkansas Gazette Co.*, 569 S.W.2d 115 (1978), the Arkansas Supreme Court held that the state's shield law applied to both civil and criminal proceedings. The *Saxton* court also stated that even where the bad faith/malice requirement is met the party seeking disclosure should also make a "reasonable effort" to obtain the information by alternative means. While the law itself does not specify whether information is also protected from disclosure, a federal district court has ruled that the law applies only to sources, and does not protect outtakes. *Williams v. ABC*, 96 F.R.D. 658 (W.D. Ark. 1983). There are no cases in which the Arkansas statute has been interpreted with student journalists in mind, however its language would seem to indicate that students are entitled to the same protection as other journalists.

There are no reported decisions in which a qualified privilege has been recognized in Arkansas.

DISTRICT OF COLUMBIA

Shield Law: None.

There is no reported case law in which District of Columbia courts have addressed the idea of a reporter's privilege.

The U.S. Court of Appeals (D.C. Cir.), however, has recognized a qualified reporter's privilege under the First Amendment in civil cases. In *Carey v. Hume*, 492 F.2d 631 (D.C. Cir. 1974), the court held that before a newsperson is required to reveal his sources, the court hearing the case must balance the journalist's claim against the public's right to know. The same court later ruled that the public's interest in disclosure must yield to the journalist's privilege "in all but the most exceptional cases." *Zerilli v. Smith*, 656 F.2d 705 (D.C. Cir. 1981).

In criminal cases, the D.C. Court of Appeals has recently ruled that a defendant may only obtain a subpoena against a third-party news organization where there exists more than the "mere hope" of finding relevant information. *CBS V. Arnold*, No.87-31 (D.C. Feb. 2, 1987).

HAWAII

Shield Law: None.

The Hawaii Supreme Court has refused to recognize a reporter's privilege to withhold the identity of his sources. In *re Goodfader's Appeal*, 367 P.2d 472 (1961).

The U.S. District Court in Hawaii, on the other hand, has recognized a qualified reporter's privilege to refuse to divulge confidential sources but has said that the privilege does not extend to libel suits. *DeRoburt v. Gannett*, 507 F. Supp. 880 (D. Haw. 1981).

KENTUCKY

Shield Law: Ky. Rev. Stat. 421.100. (1972 and Supp. 1988).

Kentucky's shield law provides reporters with very limited protection. While the law covers any person engaged in, employed by or connected with a newspaper, radio or television station it only protects the identity of sources and applies only when the information supplied by the source is actually published or broadcast. The law does not protect reporters' observations (e.g., witnessing a criminal act), material obtained through personal investigation or any other "information." *Lexington Herald-Leader v. Beard*, 11 Med. L. Rptr. 1376 (Ky. Sup. Ct. 1984); *Branzburg v. Pound*, 461 S.W.2d 345 (Ky. Ct. App. 1971) (as modified), *aff'd sub nom., Branzburg v. Hayes*, 408 U.S. 665 (1972). Also, the law does not protect a reporter from being subpoenaed to testify before a grand jury. *Branzburg v. Meigs*, 503 S.W.2d 748 (Ky. 1971), aff'd, 408 U.S. 665 (1972). Further, the Kentucky Supreme Court has recently rejected the idea of a reporter's common law privilege under both the First Amendment and the Kentucky Constitution. *Lexington Herald-Leader v. Beard*, 11 Med. L. Rptr. at 1376; *Branzburg v. Meigs*, 503 S.W.2d at 748.

The bottom line is that while Kentucky student journalists will probably be entitled to the same statutory protection available to other journalists, extreme caution must nevertheless be exercised when making promises of confidentiality due to the law's narrow scope.

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LOUISIANA

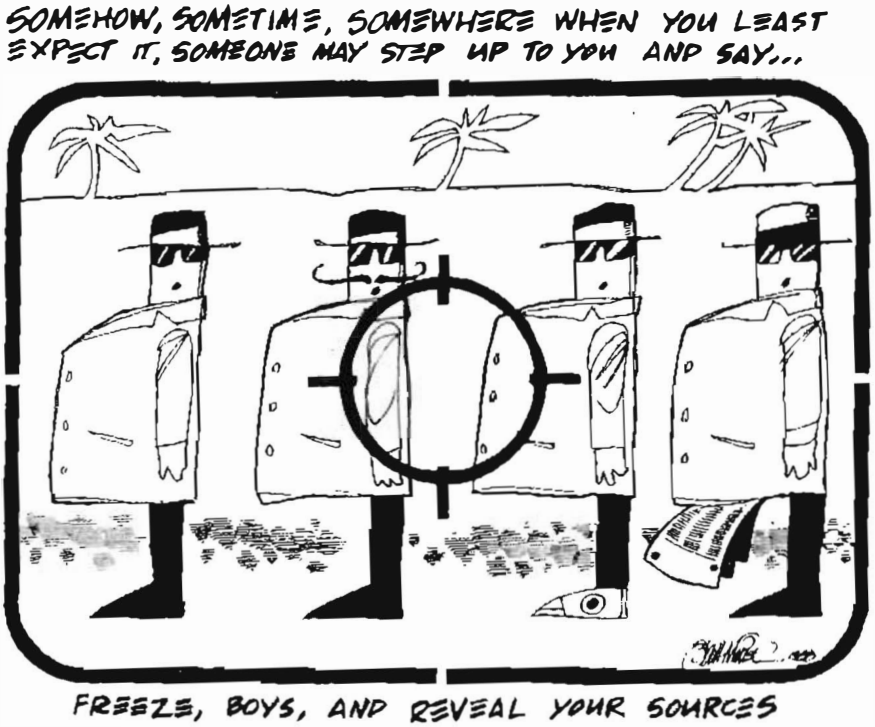
Shield Law: La. Rev. Stat. Ann. Section 45: 1451, 1452, 1453, 1454, 1455, 1456, 1457 and 1458 (West 1982 and Supp.).

The Louisiana law covers people regularly engaged in editorial activities of the news media. It defines news media to include radio, television, press associations, etc., and any newspaper or periodical issued at regular intervals and having a paid circulation. Unfortunately, there are no cases in which the law has been applied to student journalists, therefore it is unclear whether or not students would be afforded its protection. It could certainly be argued that student journalists are "regularly engaged" in editorial activities, however there is nothing to indicate how the courts would interpret that requirement. And though many student newspapers are distributed free on campus, which might seem to disqualify the paper because of the lack of a paid general circulation, it might conceivably be argued that student activity fees (or even tuition payments), which support the paper, are the equivalent of the subscription fee charged by other papers. In any event, the ambiguity of the law should make it clear that promises of confidentiality by student journalists should be given careful consideration.

If the Louisiana shield law does apply to student journalists, the Louisiana Court of Appeals has held that the law protects only sources. It also ruled that the information produced by the source need not be published to protect the source. *Dumez v. Houma Municipal Fire and Police Civil Service Board,* 341 So.2d 1206 (La. Ct. App.), *cert. denied,* 344 So. 2d 667 (1976). A later decision by a lower court seems to have expanded that protection by including not only the identity of the source but also any information that might reveal his identity. *In re Michael Burns,* 484 So.2d (La. 1986). The law does not specify whether or not the source must have been promised confidentiality for the law to be in effect.

In addition, there are certain limitations included in the law that must be kept in mind. First, in defamation cases the burden is on the reporter to prove that the material was obtained from a confidential source. R.S. 45:1454. Second, the party seeking disclosure may apply to the court for an order to revoke the statutory privilege. The order will only be granted upon a showing that the order is "essential to the public interest." R.S. 45:1453. In addition, a recent case has made it clear that the order will only be upheld where it is shown that the subpoena was issued in good faith and not simply to harass the journalist. *In re Ridennour,* 15 Med. L. Rptr. 1022 (La. 1988). Finally, the *Ridennour* case, in recognizing a reporter's qualified First Amendment privilege in addition to the statutory protection, held that such a privilege would not apply to criminal activity witnessed by the reporter. *In re Ridennour,* 15 Med. L. Rptr. at 1025.

Journalists should also be aware that the Louisiana statute includes a fairly detailed list of procedural requirements that must be adhered to by those subpoenaing the news media. R.S. 45:1455-1458. These requirements protect some of the interests of journalists and should be consulted immediately upon receipt of a subpoena.



MONTANA

Shield Law: Montana Code Ann. Sections 26-1-901, 902, and 903 (1987).

Montana newsgatherers are protected by one of the country's strongest shield laws. The law, known as the "Media Confidentiality Act," protects those persons "connected with or employed by" a news media organization from having to disclose any information — or the source of that information — in any legal proceeding provided the material was gathered in the course of the person's duties as a newsperson. The law extends to both published and unpublished material. The shield law's protection can be waived, however, if the journalist volunteers to testify before a judicial, administrative or legislative body about either the information or its

source. *Montana v. Louquet*, 7 Med. L. Rptr. 1410 (D. Mont. 1981).

Though there are no cases in which the law has been invoked by student journalists, the broad statutory language would seem to indicate that students are entitled to the same protection extended to other journalists.

NEBRASKA

Shield Law: Neb. Rev. Stat. Section 20-144, 145, 146 and 147 (1977).

Nebraska's shield law (a.k.a. "Free Flow of Information Act") recognizes that it is the policy of the state "to insure the free flow of news and information to the public" and that newsgatherers can only perform this function in a "free and unfettered atmosphere." The state has further recognized that compelling a reporter to involuntarily disclose information or its source is contrary to this goal. Accordingly, Nebraska reporters are guaranteed absolute protection from compelled disclosure of both unpublished and published (or broadcast) sources and information. The law does not specify whether or not a source must have been promised confidentiality for the privilege to be in effect.

While there are no cases in which the law has been interpreted in a student journalist context, both the language and the expressed intent of the statute suggest that students are entitled to the full extent of its protection.

NEVADA

Shield Law: Nev. Rev. Stat. Section 49.275 (1986).

It is unclear whether or not student journalists would be protected by Nevada's comprehensive shield law. The law, called the most protective in the country by one court, *Laxalt v. McClatchy*, 14 Med. L. Rptr. 1199 (D. Nev. 1987), provides absolute protection to reporters and editorial employees of both print and broadcast news media from having to disclose to any governmental body any published or unpublished information or its source (including the sources of a libel defendant, *Newton v. NBC*, 109 F.R.D. 522 (D. Nev. 1985)) if the material was obtained in the person's "professional capacity" as a newsgatherer. Unfortunately, the term "professional capacity" has never been defined by either the Nevada legislature or courts and there are no cases in which the law has been interpreted with student journalists in mind.

Even though the language might initially seem to preclude most student journalists, it is conceivable that some students — particularly those compensated in some way for their work (e.g., tuition reimbursement, scholarship funding, etc.) might be covered by the law.

In addition, even where the law is found to apply, state courts have ruled that the law's protection may be waived by voluntary disclosure to a third party of any significant part of the (privileged) matter. *Newburn v. Howard Hughes Medical Institute*, 95 Nev. 368, 594 P.2d 1146 (1979).

Nevada has never recognized a reporter's qualified privilege.

Given the law's ambiguity, it should be clear that promises of confidentiality must be thoughtfully considered by Nevada students.

TENNESSEE

Shield Law: Tenn. Code Ann. Section 24-1-208 (1980 and Supp. 1988).

The Tennessee shield law protects those either "connected with" the news media or press or those independently engaged in gathering information for publication or broadcast. Though there are no reported cases in which the law has been invoked by student journalists, the broad statutory language makes it likely that students would be entitled to its full protection.

The law protects both sources and information from compelled disclosure before almost all Tennessee governmental bodies. Further, the Tennessee Supreme Court has ruled that the shield law protects against disclosure in either civil or criminal litigation and that it protects both confidential and non-confidential sources. *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146 (Tenn. 1983).

While the shield law offers Tennessee journalists substantial protection, there are two very important limitations included in the law. First, the law's protections do not extend to defamation suits "where the defendant asserts a defense based on the source of such information." Second, any person seeking disclosure from a reporter protected by the law may apply to the Court of Appeals for an order divesting such protection. The order will be granted only where the party seeking disclosure clearly and convincingly (see *Tennessee v. Curriden*, 14 Med. L. Rptr. 1797 (Tenn. 1987), for an example of the Tennessee Supreme Court's literal interpretation of the "clear and convincing" requirement in which an application for divestment was denied) demonstrates that: (1) there is probable cause to believe that the reporter (or other person protected by the law) has evidence which is clearly relevant to a specific probable violation of the law, (2) the information sought cannot be reasonably obtained by alternative means and (3) there is a compelling and overriding public interest of the people of Tennessee in obtaining the information. If the order is granted, a reporter may take a direct appeal to the Tennessee Supreme Court.

There are no reported cases recognizing a reporter's common law privilege.

SOUTH CAROLINA

Shield Law: None.

While state legislators are reportedly considering a shield law, South Carolina journalists currently have no statutory guarantee or common law privilege protecting them from forced disclosure of sources or information.

SOUTH DAKOTA

Shield Law: None.

South Dakota journalists are advised to think twice before promising a source of confidentiality. In addition to there being no shield law, there is no reported case law recognizing a reporter's privilege to withhold confidential sources or information. ■

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The *Report* Staff

Kristi Miles is a third-year law student at the George Washington University National Law Center. Kristi graduated from Clarkson University in 1984 with a degree in Chemical Engineering. In her spare time Kristi keeps other people in shape teaching aerobics.

Mary Reed will graduate from Ohio University in the spring with a degree in journalism. Mary plans to enter the Peace Corps and travel Europe, then go on to graduate school to delay becoming a responsible member of society for as long as possible.

Pamela Topa will graduate with a journalism degree from Rutgers University in the spring. She plans to attend law school somewhere along the San Andreas Fault in California and vows not to let law school stifle her personality and creativity.

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