student press law center
report
Winter 1990-91 Vol. XII, No. 1

Congress Helps Tame the Beast

The SPLC Report

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

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CONTENTS

The Tide Turns on Campus Crime

The battle for information about campus crime by the college student news media has been a frequent topic in past issues of the *Report*. The three to five college journalists that call us each week because they are being denied access to campus incident reports and police logs have made it disturbingly clear how widespread the effort to cover up campus crime is and how few schools are acting to remedy the problem.

From California to New York, college editors have described to the Student Press Law Center incidents of rape on campus they hear second hand and rumors of assaults committed by star athletes who never get punished. But without access to campus police reports, their efforts to effectively report on these crimes is frustrated.

The extent and the seriousness of the problem prompted the SPLC to begin a new effort to help you tell your colleges and universities that the coverup of campus crime must stop.

Our **Access to Campus Crime Reports Project** can help the college news media and others concerned about violent crime on college campuses fight for campus police and security reports that are concealed by school officials.

The project, which began operation on October 15, was announced at a press conference at the Society of Professional Journalists National Convention. The project is sponsored in part by the Society of Professional Journalists Legal Defense Fund with other financial support coming from the Associated Collegiate Press and College Media Advisers Inc.

The project includes:

1) an "800" number hot line, (800) 488-5242, for college editors, reporters and others seeking access to campus police and security reports to get free legal advice, practical suggestions and referrals to local attorneys who can help them pursue their requests;

2) a 24-page booklet called *Access to Campus Crime Reports*, a step-by-step guide to using open records laws and public pressure to open up campus police and security reports; and

3) a resource bank of court decisions, legal documents and other materials for attorneys pursuing cases for access to campus police reports around the nation.

Our goal is to give you the resources you need to help make your campus a safer place.

Those other than the student press and the victims of campus crime are beginning to take notice of the problem. *People* magazine recently published a cover story on campus rape. *USA Today published* a week-long series on campus crime as part of its ongoing coverage of the topic.

And as our cover story in this issue reports, Congress has now legally required colleges and universities to provide statistics about crime on campus. The law is an important first step in requiring schools to place more importance on student safety than on the institution's image. But problems created by the federal law commonly referred to as the Buckley Amendment, which is being used by schools in their coverup effort, remain.

The battles for campus crime information are far from over. But it appears that the student news media may now have the winning momentum on its side.

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High School Student Journalist Can Win Trip to Boston

The Secondary Education Division of the Association for Education in Journalism and Mass Communication has announced a First Amendment editorial and column writing competition for high school journalists. The national winner in the competition and his or her adviser will receive an expense-paid trip to Boston for the organization's national convention in August 1991.

For further information and an entry form, contact Professor James Tidwell, Department of Journalism, Eastern Illinois University, Charleston, IL 61920. The deadline for entries is March 1, 1991.■

The *Report* Staff

Jim Stallard received his masters degree in December 1990 from the University of Missouri School of Journalism and has an undergraduate degree from Stanford University. He plans to find a job writing and editing at a magazine until he accepts a position in two years as *The New Yorker's* senior editor. Maybe three years.

Marni Jae Taradash is a July 1990 graduate of the University of California at Santa Cruz with a degree in U.S. history. Following a cross-country road trip this spring, she plans to get her masters in journalism. She intends to write for a national news magazine and have a view of the ocean from her bedroom.

Peter Schlossman is a second-year student at the National Law Center of George Washington University. Before law school, he worked as a reporter and researcher for Washington, D.C., area news organizations. He grew up in Newton, Mass., and earned his undergraduate degree from Wesleyan College in Middletown, Conn.

Crime Statistics Bill Passes Congress

Parents' Private Tragedy Finally Leads to Public Victory

WASHINGTON, D.C. — More than four years after their daughter was murdered on a college campus, Howard and Connie Clery's personal tragedy may prevent the occurence of others.

With help from members of Congress, the Clerys led a national campaign for a law requiring colleges to publicly report crime statistics. The "Student Right-to-Know and Campus Security Act of 1990," which also requires colleges to report graduation rates for all students and for athletes, passed the House and Senate in late October and was signed into law by President Bush on Nov. 8.

In a public statement, the Clerys said: "We and other victims of campus crime are delighted that students now will know the extent of crime and danger on their campus. Prospective students now can make informed choices regarding safe campuses."

Under the law, colleges and universities will have to make crime statistics available to prospective students and employees on request. Schools that do not comply would lose federal funding. The educational institutions will have to begin collecting the statistics on Sept. 1, 1991, and providing them in 1992.

The law also allows colleges and universities to disclose the results of campus disciplinary hearings against students accused of crimes to the victims of those crimes.

According to the bill, only 352 of the 8,000 colleges and universities receiving federal aid now voluntarily provide the FBI with crime statistics for their campus. Other schools allow access to statistic reports, but there is no consistency in how the crimes are classified.

Lawmakers said rising tuition costs and federal aid to schools and students created legitimate government interests. Supporters of the measure have labeled it a "consumer guide" to educational institutions.

The American Council on Education, the principal umbrella group for accredited colleges and universities, supported the reporting of athletes but was concerned that some of the crime statistics might be misleading because of the difficulty of defining a campus.

The Clery's began the movement for such a bill soon after their daughter's death in April 1986. They founded Security on Campus Inc., a nonprofit clearinghouse for information and advice, and contacted others who had suffered from crime on campus.

Beginning with Pennsylvania in May 1988, they successfully lobbied 11 state legislatures to require colleges and universities to release crime statistics. In the fall of 1989, they persuaded Rep. William F. Goodling, R - Pa., to introduce campus crime-reporting bills in the House and Sen. Arlen Specter, R - Pa., to do so in the Senate.

> ***"We cannot rest with the passage of this legislation. The college papers must serve as watchdogs."***
>
> Susan Lamontagne
> Aide to Sen. Arlen Specter

Amended bills passed the House in June and the Senate in September, and a conference committee was appointed to iron out differences between the two versions. On Oct. 9, the committee approved what eventually became law.

Despite the bill's passage, the Clerys and many others are not satisfied with the situation on colleges campuses. The law does not oblige schools to report the statistics to a national agency and does not include crimes committed against students off campus.

In addition, it does not require colleges to allow access to current police reports. As a result, many student and commercial newspapers still will be unable to learn the details of campus crimes.

"This bill is not as strong as we would have liked," Specter aide Susan Lamontagne said in November at the national convention of the Associated Collegiate Press and College Media Advisers in Washington, D.C. "We cannot rest with the passage of this legislation. The college papers must serve as watchdogs."

The battle for access to crime reports continues, most notably at Southwest Missouri State University, where *The Standard* editor Traci Bauer sued for release of the campus crime incident reports. Student reporters argue that state freedom of information laws require the reports to be open, but college administrators contend they would lose federal aid for releasing the information. The schools point to the 1974 Family Educational Rights and Privacy Act, known as the Buckley Amendment, which says schools can lose federal funding if they disclose student education records.

Eleven states have passed laws requiring the release of campus crime statistics, and two other states — Massachusetts and New Jersey — appear close to doing so. Lynda Getchis, administrative assistant for Security on Campus, stressed the importance of these states pushing through the legislation even after the federal bill passed.

"For the safety of the students, it is important to continue this when they [the legislatures] come back next session," she said. "The state bills will take effect sooner than the federal bill."

Upon reaching their goal in Congress after four grueling years, the Clerys are taking time off to recooperate. Frank Carrington, who serves as Security on Campus' legal counsel will head the organization. But Security on Campus will keep battling for openness on college campuses.

"We're going to continue in the fight, and we hope you continue to clamp down on the abomination of the misuse of a law [the Buckley Amendment]," Howard Clery said at the convention.■

Cartoon by Mathew Decker. Reprinted with permission of the Southwest Missouri State University Standard.

Missouri Editor Wins Award

MISSOURI — A student journalist's efforts in leading the fight for access to campus crime reports has earned her the 1990 Scholastic Press Freedom Award.

Traci Bauer, a senior at Southwest Missouri State University and editor of *The Standard*, distinguished herself by taking legal action against the Springfield school when it refused to give her access to crime reports held by the campus security office.

The award, sponsored by the Student Press Law Center and the National Scholastic Press Association/Associated Collegiate Press, is given each year to the high school or college student or student news medium that has demonstrated outstanding support for the free press rights of students.

Bauer filed a lawsuit against school officials in January 1990, maintaining she cannot provide the readers of her newspaper the information they need when crime reports are kept secret. The university claims a federal law commonly referred to as the Buckley Amendment allowed them to cover up reports of crime on campus. The case, the first of its kind in the nation, is currently pending in federal court in Springfield.

Bauer has received a pledge of $5,000 from the Society of Professional Journalists Legal Defense Fund to support her lawsuit and a statement of support from the Ozark Press Association.

Douglas Greene, Bauer's attorney, said the judge had set a Nov. 30 deadline for filing a proposed findings of facts and conclusions of law for declaratory judgment. Greene said the judge had indicated he would act quickly once everything was in.

"Surprisingly, when you get down into it there isn't a whole lot of disagreement on what the facts are," Greene said. He expects a decision in the case by January.

The judge will also rule on the motion for a gag order filed by the university to prevent the *Standard* from publishing crime information it already possesses. Bauer said the *Standard* currently has about 100 copies of the official security reports that were obtained from confidential sources.

"School officials have attempted to suggest that Traci is the problem with her demand for security records," said Mark Goodman, executive director of the Student Press Law Center. "The reality is that Traci and all SMSU students are the victims of the school's short-sighted policy. Traci is a hero to journalists around the nation because she was willing to stand up to her school on this important issue."■

California Campus Crime Bill Effective Jan. 1, 1991

CALIFORNIA — Gov. George Deukmejian signed a campus crime bill in September that may give students access to incident reports.

Assembly bill 3918 requires officials of the University of California, the California State University, the California Community Colleges, private postsecondary educational and vocational institutions and certain independent colleges and universities throughout the state to compile records of all occurrences reported to police or campus authorities and all arrests that happen on campus and make them available to students, faculty, employees and applicants.

Officials at each campus are also required to prepare, post and copy for distribution a campus safety plan which sets forth locations of security personnel, plans and actions to increase campus security and established safeguards.

The bill does not define "records of all occurrences," suggesting that campus police or security incident reports could be covered. Students fighting for access to campus crime incident reports have been frustrated by school officials who claim the federal Family Educational Rights and Privacy Act, commonly referred to as the Buckley Amendment, prohibits their release.

Sponsored by Assemblyman Patrick Nolan, R - Glendale, the bill will not apply to community colleges until the legislature makes funds available for these purposes. A spokesperson for Nolan said funds are required for the community colleges because most do not have systems to compile and distribute campus safety information. The budget for the community colleges has not been decided.

The provisions of this bill also will not apply to the University of California Board of Regents nor Hastings College of the Law Board of Directors until these bodies adopt a resolution to make the provisions of the bill applicable. It is not known at this time whether resolutions will be passed by those boards.

continued on page 6

continued from page 5

A spokesperson at the governor's office said the August 1990 University of Florida Gainesville murders influenced the passing of this bill.

Deukmejian previously vetoed a similar bill which required the same institutions to annually report specified crime statistics to the Department of Justice. Deukmejian said that this bill did not pass because it was too costly for California taxpayers and was "not an effective means by which to achieve [the goal of campus safety]," a letter to members of the California senate said.■

Security Bill Aims to Prevent Sexual Assaults on Campus

NEW YORK - The high incidence of date rape on college campuses spawned strong support for the passage of a two-part campus security bill focusing on prevention of sexual assault at schools in New York state.

The bill was introduced in the state senate by Kenneth LaValle, R - Centereach, and signed in July by Gov. Mario Cuomo.

The first part, which went into effect Sept. 1, 1990, intends to reduce the incidence of sexual assault by educating students. Each school is required to provide information to incoming students on laws and penalties for sex offenses, support services for victims of sexual assault and the nature and circumstances relating to sex offenses on college campuses. Colleges must annually file a report with the Commissioner of Education stating its compliance with these requirements.

The second part, effective Jan. 1, 1991, requires the president of each public school to appoint an advisory committee on campus security. Comprised of faculty, students and administrators, this group will review current campus security policies and make recommendations for their improvement.

The committee shall report at least once each academic year, to the college president or chief administrative officer. These reports will be available to the college community upon request.■

ISU Newspaper Denied Access

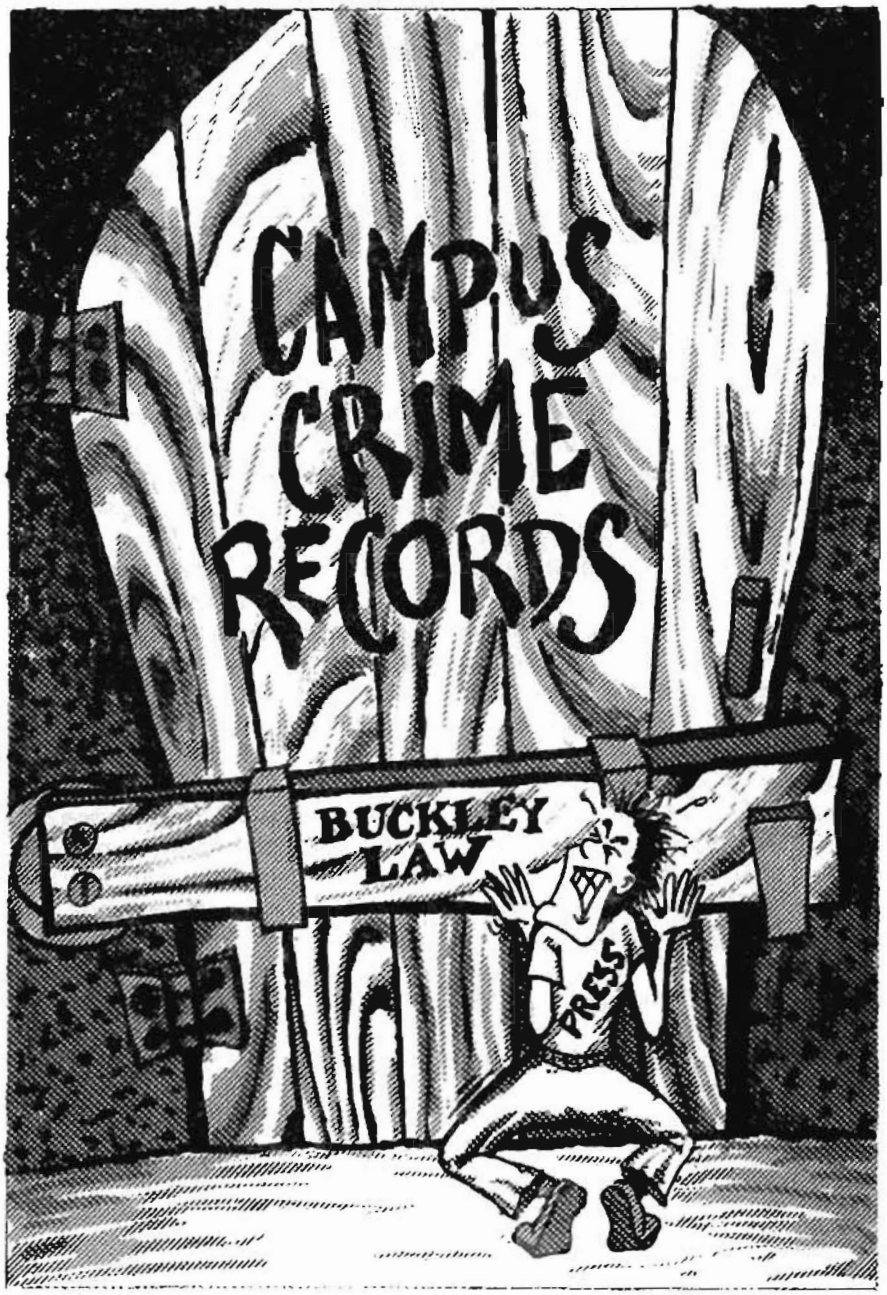
Crime Reports, President Are Behind Closed Doors

INDIANA — Indiana State University's student newspaper, *The Statesman*, was denied access to both campus crime reports and ISU President Richard Landini this fall.

The Statesman's efforts to gain access to the Terre Haute university's safety and security reports were thwarted during their investigation of an alleged sexual assault between an ISU football player and a visiting high school student.

The university Office of Alumni and Public Affairs said that because the security report identifies the ISU student, it is an educational record and must therefore remain confidential under the Buckley Amendment.

The alleged incident took place on campus in mid-June and was immedi-



ately investigated by university police. It was during this time that *The Statesman* heard about the incident through the grapevine and started its own investigation.

Chris Lester, director of Safety and Security, acknowledged to *The Statesman* that an incident had taken place but would not comment on the situation. John Newton, the assistant vice president of Alumni and Public Affairs, was quoted in *The Statesman* as saying the alleged victim "came from the wrong side of the tracks and may have made up the whole thing."

The girl who made the complaint was participating in Upward Bound, a summer program in which high school students daily attend university classes for six weeks while living in on-campus dormitories.

While a local television station reporter was able to obtain a security report about the alleged incident, *The Statesman* was merely given a police blotter. According to *Statesman* editor in chief Derrill Swick, "the blotter we saw had nothing to do with the incident." Swick and *The Statesman* staff are concerned the university could cover other things up as well.

The Statesman also attempted to interview the teen-age girl involved with the incident, but neither she nor her friends would talk about it. Upward Bound counselors were also silent. *The Statesman* quoted an anonymous counselor as saying, "I was told that if I said anything about the incident that I would be fired."

The county prosecuting attorney said that not enough evidence had been produced to warrant any legal action against the ISU football player, and neither the university nor city prosecutor are conducting active investigations at this time. Swick said the football player is still playing football.

In addition to being denied access to security police department reports, *The Statesman* has also been denied access to President Landini. In September Landini said he would no longer grant interviews to *The Statesman* because in his opinion the paper is a "poor reflection of the thought and the culture and the quality of the institution."

Landni told the *Indianapolis Star* that "he does not believe [that *The Statesman*'s] editors' and mentors' intentions are 'forthright, honorable and above the board.'" The quote was picked up by other Indiana newspapers.

Elizabeth Calman, director of student publications, said it was not a fair comment because Landini has never had direct contact with her or Swick. Calman is not sure how Landini knows "what our intentions are. I feel that *The Statesman* makes an honest effort. With only 57 journalism majors [in the university], it's a monumental task to put out a daily paper."

Calman admits grammatical errors in *Statesman* issues and points out that typos can be found in any newspaper. Swick feels *The Statesman* is being harassed in response to published articles about the alleged sexual assault. "I have the impression that the administration believes we're muckraking," said Swick.

Calman says President Landini made his point and is now stepping back to see what *The Statesman* will do. The student newspaper has since approached Landini for quotes, and he has complied.■

Survey Shows Many Schools Lack Records Policy

MISSOURI—Student newspapers may be gaining access to campus crime reports, but few publications have access to all records, according to a survey conducted by a journalism professor.

Dr. Tom Dickson of Southwest Missouri State University sent a 26-question survey to approximately 600 members of College Media Advisers in mid-February 1990. Upon analyzing the responses of the 214 who completed and returned the questionnaire, Dickson found some surprises.

Contrary to what he expected, most institutions did not have a stated policy concerning access to security records. However, those policies that did exist tended to restrict access to the records.

The survey also revealed that the larger the institution, the more likely it was to have an official state policy concerning access to security records. Larger schools were also more likely to provide crime information to both the local police and the campus newspaper. A possible explanation for this is that security forces at four-year institutions have dealt with more offenses and are more used to working with the media.

Dickson also found that institutions with a security force that had arrest power were more likely to provide access than those institutions where security personnel could not make arrests.

Interest in security records seems more prevalent at public schools. Newspapers at these institutions were much more likely to have sought these records, and public schools were somewhat more likely to provide access to the records. As might be expected, public institutions were more likely than private ones to cite the federal Family Educations Right and Privacy Act, often referred to as the Buckley Amendment, when denying access to security records.

The Buckley Amendment, passed in 1974, provides that no federal funding will be made available to those institutions that reveal student records to anyone other than the students themselves and their parents. No court has ever applied the law to campus police or security records.

Dickson said he was a bit surprised to find that public institutions were no more likely than private ones to provide access to security records or even to have a stated policy concerning access.

Many student newspapers may be unaware of their rights because the Buckley Amendment's wording lends itself to confusion, Dickson said.

"I'm surprised the federal government hasn't tried to clear it up, or that the Department of Education hasn't made it clear to the schools whether they will lose federal funding [for allowing access]," Dickson said.■

Student Paper Wins Fight for Access

Eleventh-Hour Settlement Opens Crime Reports at Oakland U.

MICHIGAN — Bolstered by support from the local commercial press, the Oakland University student paper won a settlement forcing the school to allow access to campus crime records.

The Oakland Post had filed a lawsuit against the university in July alleging that the school's safety department had refused to turn over a rape report in violation of the Michigan Freedom of Information Act.

Public Safety Department Director Dick Leonard had said he could not release the report under the Buckley Amendment, a 1974 law that says schools can lose federal funding if they disclose student records. But on the night before both sides were to appear in a hearing, Oakland University conceded there was an exception under the Buckley Act in the case of police reports.

The lawsuit was filed by Jane Briggs-Bunting, an attorney and faculty adviser to the student weekly. The Oakland campus police, she argued, were deputized and had an affirmative, fiduciary duty to pursue crimes. The *Post*'s position was that Michigan's strong freedom of information law mandated disclosure of the records.

The conflict was resolved after John DeCarlo, the school's general counsel and vice president for governmental affairs, contacted Briggs-Bunting and *Post* Editor Margaret O'Brien and suggested they try to come to an agreement out of court.

"It's amazing what a court date can do to speed things up," O'Brien said. "Around here, if you're not loud and squeaky you're not going to get anyoil."

Under the agreement, the University will make campus crime information available through four outlets: the crime reports themselves; news releases; discussions between public safety officials and reporters; and reports released in response to freedom of information requests.

Briggs-Bunting said support from larger newspapers in the area helped the *Post* immeasurably. In addition to giving publicity to the *Post*'s cause, the *Oakland Press* of Pontiac and other local papers made formal requests for the rape report as well.

"A lot of the local media got on the bandwagon," Briggs-Bunting said. "It wasn't just the little student nespaper; it was the big guys, too. It changes the whole dynamics."

O'Brien and Briggs-Bunting said the *Post* now gets all crime reports except those relating to an ongoing investigation. For a few weeks after the settlement the situation was actually worse, due to a misunderstanding between the

campus police and the school's counsel. But O'Brien said everything was cleared up and now "we actually get the reports in pretty decent shape."

O'Brien has lingering suspicions that the crime reports made available to the public are not all-inclusive. She said past editors of the *Post* heard about crimes that were not listed on the official report, which led her to suspect the campus police were keeping two sets.

"We've been trying to track it," she said. "We haven't been able to prove anything yet."

The *Post* is trying to keep crime awareness high. Every issue now contains a crimewatch column that lists all incidents occurring during the previous week. The *Post* also offers a $10 reward for the "crime tip of the week."

Although the *Post* won its battle for access, Briggs-Bunting said it is conceivable the school could reverse its decision in the future. Similar cases filed by newspapers against Southwest Missouri State University, Southern Arkansas University and Murray State University in Kentucky might have unfavorable outcomes that, while not legally binding, could influence the Oakland administrators.

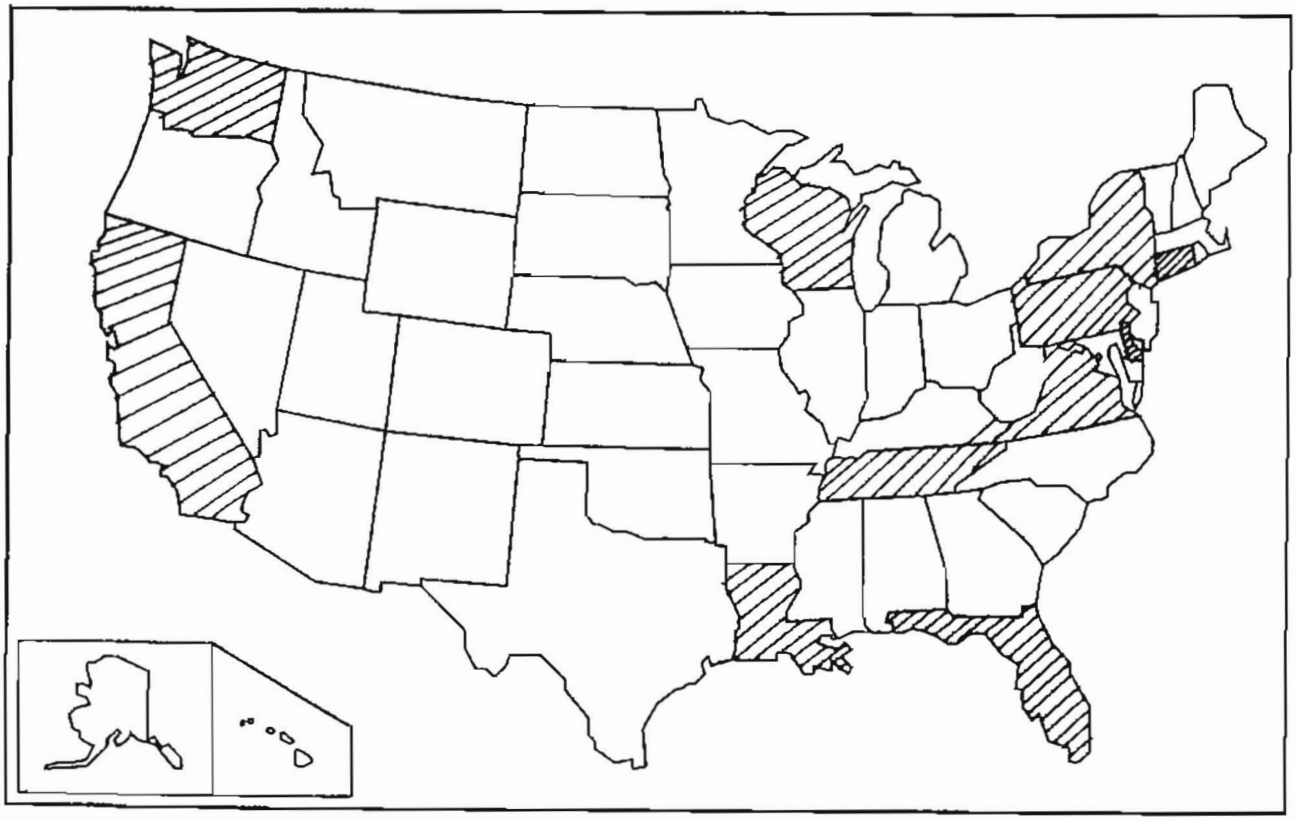
"What I've discussed with our legal counsel is, 'Why don't we wait and let the other states litigate this?" she said. "If O.U. changes its position, I'll be back in court."■

"It's amazing what a court date can do to speed things up. Around here, if you're not loud and squeaky, you're not going to get any oil."

Margaret O'Brien
Oakland Post Editor

STATE CRIME STATISTICS LAWS

At press time, 11 states (shaded) had passed laws requiring educational institutions to reportcrime statistics: Connecticut, Delaware, Florida, Louisiana, Pennsylvania, Tennessee, Virginia, Washington, Wisconsin, and most recently, California and NewYork.



D.U. Journalists Find School has the Last Laugh

90-Year-Old Newspaper Shut Down After Publishing "Sexist" Jokes

COLORADO — The University of Denver's 90-year-old student newspaper, *The Clarion*, was indefinitely shut down in June in response to back-page sexist jokes.

Some jokes included: "How many men does it take to screw in a light bulb? None. That's a woman's job."

"You've come a long way baby. (Now go back where you belong.)"

"They've found something to do the work of five men. Thirty women."

The Clarion's back page had become an area for satire and jokes in recent issues.

The Student Media Board, a committee devoid of communications majors, fired *The Clarion*'s editor and 13 staff members and apologized to the university for the remarks.

Chairman of the board Michael Moberg said the decision had "nothing to do with censorship."

Ricardo Chavira, however, feels "the net effect is censorship," and the board was unfair to *The Clarion* staff. Chavira, *The Clarion*'s former editor in chief who was responsible for publishing the jokes, defended them as satire.

Closing the paper was unwarranted, Chavira says. He doubts the media board knows what goes into the making of a paper or what effect its absence will have on the Denver campus.

"They're shutting down the only newspaper that gives students the opportunity to voice opinions," Chavira said.

While shutting down the paper was a response to criticism of the jokes, Moberg, a finance major, later claimed that "mainly the financial problem was the basis for the decision to stop publishing."

Moberg said *The Clarion* had accumulated $100,000 in debts over the last three years because it had not received enough revenue from advertisements. In addition, about $30,000 was needed to replace the typesetting equipment.

The newspaper's sudden death did not elicit concern among D.U. faculty.

Michael Wirth, head of the Communications Department did not protest the decision to close the paper. He said it was not a free press issue because the jokes were a "case of total irresponsibility. . .it would get a government official fired."

Mike Smith, university-appointed adviser to the media board, supported the closing.

Vice Chancellor Joe Sanders also supported the decision. He said students had been feeling *The Clarion* was focusing too much on world news, satire and parodies and not enough attention to campus events.

"Every reaction I encountered on campus from males and females," Sanders said, "was that they do not want their newspaper carrying this kind of humor, period."

When the doors of the private university opened this fall, *The Clarion*'s future was still unresolved. A spokesman for the media board said they have been trying to set a new direction for the publication.

The board has since declared *The Clarion* a "traditional student newspaper," covering campus events, student government and the Denver University community.

The board expects to have it running by January.■

Study Shows Censorship Has Become More Common Following Hazelwood

Censorship in high schools seems to be on the rise since the Supreme Court handed down its decision in *Hazelwood v. Kuhlmeier* three years ago, says Jim Patten, a University of Arizona journalism professor.

A national survey Patten conducted in 1989 of 350 high school journalism advisers showed that both students and teachers are beginning to accept the standards imposed on them by *Hazelwood.*

The survey, reported in the September/October issue of *Columbia Journalism Review*, found that nearly 23 percent of the teachers say their students are less likely to report on controversial matters than before the decision. More than 17 percent say their students are less likely to write editorials critical of school policies. And 12 percent of the teachers reported prior review where none had existed since *Hazelwood.*

Hazelwood, handed down by the Supreme Court in 1988, upheld the right of public school administrators to censor student expression when it is part of the school's curriculum and the decision to censor is "reasonably related to legitimate pedagogical concerns."

Mark Goodman, executive director of the Student Press Law Center, told Patten that high school journalism has reached a critical stage, "poised to go one direction or the other — that is, back to the point that I think it was 15 to 20 years ago, when censorship was really not only common but just the normally expected way of life for producing a high school publication."

Although almost 80 percent of those polled described their administrators as supportive of student press rights and a similar percentage agreed that "nothing much has changed," as a result of the Hazelwood decision, Patten pointed out that this statistic is only mildly comforting. Censorship of high school papers was rampant even before the decision, he said.

The survey also revealed that more than 41 percent of the teachers think their students are becoming more accepting of *Hazelwood's* standards with the passage of time. More than 42 percent believe Hazelwood will lead to an increase in underground high school papers, and about half agreed that the professional press does not understand *Hazelwood.*■

West Virginia Paper Battles Athletic Department

Free Football Edition Seen as Competing with $3 Programs

WEST VIRGINIA — The West Virginia University *Daily Athenaeum* scuffled with the school's athletic department over the distribution of its *Saturday Extra* at home football games this fall.

The *Extra* contains team rosters and related information and is handed out near stadium entrances and parking lots free to spectators at the WVU stadium, Mountaineer Field. *The Daily Athenaeum's* general manager said the athletic department perceived the free *Extra* as direct competition with the athletic department's high gloss program, *Mountaineer Illustrated.* While the athletic department's program contains basically the same information as the *Saturday Extra*, it costs three dollars.

In banning *Saturday Extras* from distribution sites in parking lots and around the stadium in September, the athletic department said the papers cluttered the stadium and posed a safety hazard.

Athenaeum managing editor Dawn Miller said the athletic department was making excuses to get rid of the *Saturday Extra.* "The fact is," Miller said, "that the *Saturday Extras* are interfering with the sales of *Mountaineer Illustrated.*"

The student newspaper staff held firm in the belief that they had a right to distribute *Saturday Extras* at the stadium and that the education of journalism students on the staff of the *Athenaeum* should not be compromised for the athletic department's profits.

Two local newspapers wrote articles backing *The Daily Athenaeum* and a state legislator sent a letter to WVU President Neil Bucklew expressing his support for the student newspaper.

The school backed down in September following a meeting between *Athenaeum* general manager Alan Waters and athletic department officials.

The agreement assigned distribution locations for the *Saturday Extra* inside

continued on page 12

continued from page 11

the stadium at student and faculty entrances and in front of the stadium along walkways. The *Athenaeum* agreed it would no longer have distributors roaming the parking lots around Mountaineer Field as they have since 1983. Distribution sites off the stadium grounds remain unchanged.

Miller said this was an important victory for the *Daily Athenaeum* because education defeated profits.

She confirmed that there have been no further complaints since the new distribution plan went into effect.■

Principal Steers Paper Away from "Politics"

INDIANA — Principal Gary Kiger of Seeger Memorial High School in West Lebanon censored articles in the student newspaper about an upcoming school board election because he did not "want to get into politics."

Patriot Pride staff writers covered an open forum for school board candidates last April. While two challengers were present, two incumbents were absent. The students wrote articles about the candidates in attendance.

Principal Kiger made his decision to eliminate the stories after they had been published in the student newspaper. Before that edition of *Patriot Pride* was distributed, a new version of the paper was published without the articles. He said his decision was a political issue not a censorship issue. In his opinion the articles were unfair to the incumbents by appearing to promote the challengers.

Patriot Pride adviser Rod Andrews felt the paper was covering the event, not endorsing any candidate.

"I assigned the students to go to the open forum," Andrews said, "and they felt cheated that the articles weren't published. I didn't agree with the principal, but I didn't argue with him."

Patriot Pride's student editor obtained an uncensored issue and circulated copies throughout the community.

Andrews said Kiger has not censored anything else before or since.■

Papers Destroyed for Political Ad

LOUISIANA — A student paper in New Orleans was collected and thrown away by university officials in October for including a political advertisement.

The Rev. Thomas Chambers, president of Our Lady of Holy Cross University, ordered the disposal of 1,000 copies of the *Hurricane Watch* after learning they contained an advertisement for unsuccessful Senate candidate David Duke. Chambers said the school and the Archdiocese of New Orleans both have a policy prohibiting political ads.

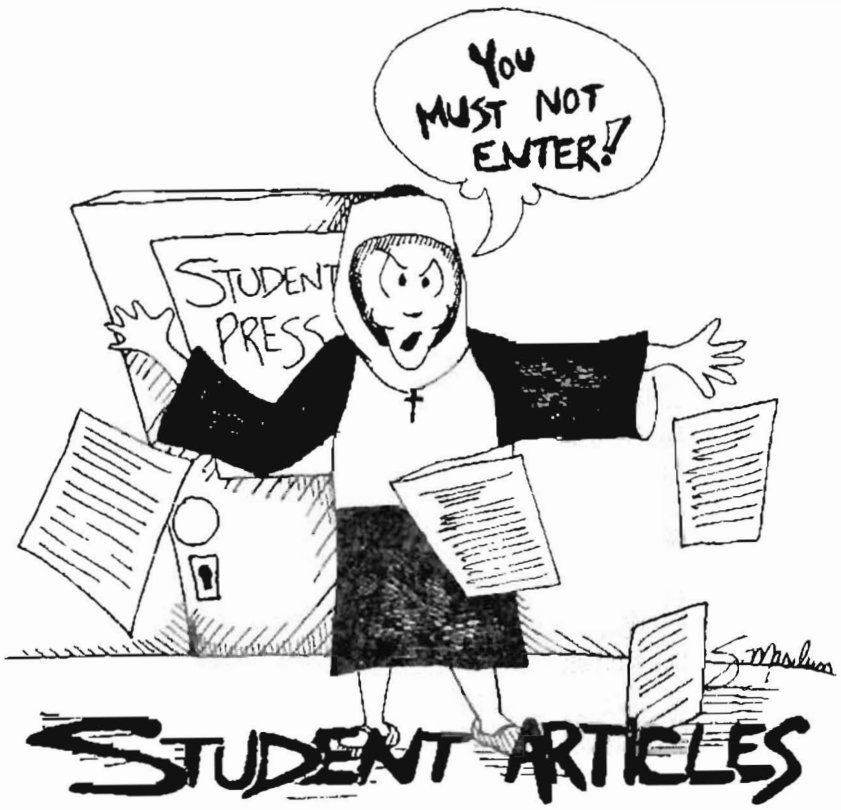
Charlene Green, editor of the *Hurricane Watch*, said no one on her staff was told of the policy until after the papers were confiscated. She thought political ads were acceptable because the *Hurricane Watch* had run several the year before for New Orleans mayoral candidate Donald Mintz. The newspaper's advertising representative offered ads toall the politicians in the area, but only Duke agreed to buy one.

Chambers told the *Hurricane Watch* the Archdiocese had issued the policy to all pastors and administrators in late August. During a meeting with the newspaper staff soon after the papers were confiscated, Chambers said his failure to inform them of the policy was an "oversight."

Holy Cross student affairs director Steven Bays told the New Orleans *Times-Picayune* that although the *Hurricane Watch* is not sponsored by the archdiocese, the school "endorses and follows the archdiocese and the Catholic tradition."

Green said she will not contest the regulation because she is unsure of the standing of the *Hurricane Watch* in relation to the school.

"Right now, I'm kind of leery about anything that goes in because of what happened," he said. "We don't know what to do anymore. Maybe he [Chambers] is the editor-in-chief of the paper."■



Cal Poly Adviser Regains His Position

Dean Apologizes for "Inappropriate" Action Against Professor

CALIFORNIA — The adviser of a university newspaper in Pomona who was fired after writing a critical editorial has been offered his job back along with an apology.

Dr. David Henley, a tenured associate professor at California State Polytechnic University, received a letter from Dean James H. Williams in which Williams admitted his action in removing Henley was "inappropriate and one I must correct."

Henley had been relieved of his job as adviser a few weeks after his editorial in a May issue of the *Poly Post* accused the administration of censorship efforts. Henley angrily responded by filing a grievance against the school in which he sought reinstatement and a "full public apology."

Henley declined the offer for the 1990-91 academic year because the university had already selected someone to take his place. But he plans to resume his advisory position in September 1991. During the controversy he has retained his faculty position in the department of communications.

In the letter, Williams said he had spent several weeks talking to faculty, students and others about Henley's teaching and concluded he made a mistake. Williams claimed that the dismissal was "in no way meant to reflect negatively" on Henley.

"I very much regret that my action has been misinterpreted and subject to public and private speculation reflecting poorly on both of us," he added.

Henley said his loss of position was retaliation for the *Poly Post*'s aggressive and sometimes critical coverage of students, faculty, staff and administrators.

"It was a classic, textbook case of killing the messenger," he said. "It's been going on ever since they had a student press."

In July, Henley wrote to Williams asking him to give the reasons for his dismissal. In his reply, Williams cited "turmoil that plagued the paper" during the 1989-90 academic year and added that Henley's May editorial "did not convey the kind of leadership that I expect from a media faculty member who has many students under his tutelege."

"I would fight tooth and nail to allow Dr. Henley to publish whatever he likes," Williams told *Editor and Publisher* magazine. "But the *Poly Post* is a learning opportunity and I had concerns on how the students were being taught."

Henley called Williams's reasons for his dismissal "specious and beneath contempt." Henley and *Poly Post* staffers contend that the only "turmoil" was that caused by solid, investigative journalism. Lynda Lemly, the *Poly Post*'s 1989-90 editor in chief, said the paper became aggressive only recently, but once it started raising troublesome issues the staff members found themselves under fire.

"People were getting mad at *Poly Post* reporters because we were doing stories about racism on campus, the actions of the campus police department and people who were being fired who shouldn't have been," she said.

Scott Butki, the current editor, said administrators became angry the previous year when he wrote critical articles about the system's chancellor and the unpopularity of the president. Butki said Henley remained supportive through it all.

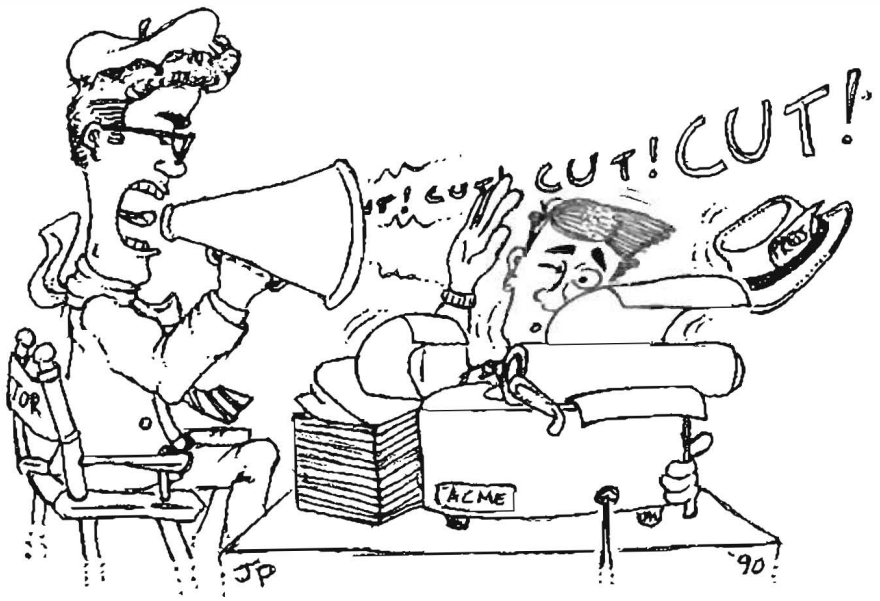
"He was a good adviser," Butki said. "We'd ask him what he thought of an article and he would usually say it was good. But he always said the editor has the final decision."

In addition to holding a faculty position in the department of communications, Henley also is owner and publisher of a daily paper in Nevada and was the 1988 president of the Nevada Press Association. He also is a former reporter and Washington-based columnist for the defunct *Los Angeles Examiner*.

"He had an answer to every question," Lemly said. "He was just a wealth of information, and he was very easy to work with."

Henley said he was pleased that he got the reinstatement and apology but called the episode "distressing" nonetheless.

"There will always be people who want to curtail the press," he said. "They've always had fire, and they're always going to have a fire department."■



Christian School Doesn't Forgive and Forget

Wheaton College Disciplines Staff of Underground Newspaper for "Obscenity"

ILLINOIS — The staff of an underground newspaper learned the hard way that religious schools do not look kindly on provocative articles.

Wheaton College dismissed one student, suspended two others and placed five on probation in May for their involvement in an underground newspaper that campus administrators considered obscene.

The disciplinary action was taken after consecutive issues of *The Ice Cream Socialist* included a poem with strong sexual imagery and a short story that ended with a student defecating on an instructor's religious textbook.

College administrators claimed the students had violated the Christian college's "statement of responsibilities," a contract of behavior students must sign before enrolling. One form of behavior forbidden by the contract is circulating "obscenity."

Wheaton College, a Christian liberal arts college with 2,500 students outside Chicago, is home to the archives and a branch of the evangelistic offices of Billy Graham, who did his graduate work there.

"There are limits to what we will have on our campus," Wheaton College President J. Richard Chase said at a press conference. "We believe there are biblical standards. We believe in a civil society."

Many students and faculty disagreed, arguing that administrators had overreacted. About 200 of the school's 2,500 students protested against the action, and several faculty members publicly questioned the prudence of limiting free expressions of creativity.

Staff members of *The Ice Cream Socialist* said the controversy was not simply a case of censorship, as many observers believed. The supposedly obscene poem was written by someone who was not on the newspaper, and the short story was contributed by someone who just joined.

Longtime staff members felt most of the public mistakenly believed the *The Ice Cream Socialist* was out to ridicule the ideals of the college.

"A lot of flak we got was from people who were misinformed," said Irene Wong, the only senior to be disciplined. "People didn't bother to find out what the paper was about."

The four-page newspaper was printed at students' expense and distributed by hand on campus. The students printed 700 copies of each edition and passed them out after chapel on Fridays, said staff member Steve Smith. Eight issues, mostly compilations of student essays and poems, had been published when Wheaton disciplined the students.

The poem, written by David Vanderveen, appeared in the seventh issue of *The Ice Cream Socialist.* Entitled "Surfing, of Course," it used veiled sexual imagery to describe surfing. According to students, it was widely talked about on campus and eventually reached administrators, who reportedly told the staff to be more careful in the future. Then, in the next issue, the short story appeared and the fur went flying.

Because of miscommunication, staff members never voted on whether the short story should run. Gerilynn Baumblat said she and other staff members were so concerned when they saw the piece that they threw away 300 copies of the newspaper. But administrators saw the issue nonetheless and took action against the eight students.

> ***"A lot of flak we got was from people who were misinformed."***
>
> Irene Wong
> *Ice Cream Socialist* staff

When Vanderveen heard the school was going to discipline him he called a press conference to protest suppression of his First Amendment rights. But some regular staffers resented Vanderveen's action as mere grandstanding.

"He basically used the paper as kind of a soapbox," said staff member Irene Wong. "We were never really sure what Vanderveen's intentions were. We never really wanted to associate ourselves with what he was doing."

Gerilynn Baumblat, another staffer, said Vanderveen had been in trouble with school administrators before and that the poem was merely "the straw that broke the camel's back."

"David Vanderveen made it seem like he was being kicked out because of a poem," she said. "He didn't seem too concerned about what would happen after calling the press in. He was being kind of dishonest himself about what he was doing."

Although much of their anger was directed at Vanderveen, Baumblat and Wong still objected to the way school officials handled the situation. Both said they and other staffers felt the administration took a paternalistic attitude toward them.

"They never gave us straight answers about what was going to happen to us," Baumblat said. "They wanted us to bring a note from our parents showing they knew about what happened. I felt like, 'We're not in second grade.'"

Many asked why the students were punished even though they had printed a formal apology in *The Record*, the student newspaper, and in written statements to the administration.

Chase said that not disciplining the students would have sent the message: "Do whatever you want, [then] send an apology."

Baumblat said she felt Chase was in a difficult situation, but she objected to how he handled it.

"He told us they wouldn't discipline us just to make people happy," she said. ■

Bitter Fallout at Hastings Law School

Student Editors Claim They Were Harassed for Critical Editorial

CALIFORNIA — A bitter dispute between Hastings Law School administrators and the student newspaper may finally have ended, but two former editors are still being affected by the fallout.

In August, officials at the San Francisco school temporarily locked the offices of the *Hastings Law News* because staff members had failed to turn in an audit of the newspaper's finances. The students responded by publishing an underground version of the paper that led to disciplinary proceedings from the school.

The standoff ended when an attorney for the students intervened and negotiated an agreement whereby the doors would be unlocked if the students promised to provide an audit by Sept 14. The audit, which was performed *pro bono* by an independent firm, was turned in on time and is being reviewed by school officials.

Hastings Law News staffers have maintained that the request for an audit was merely a retaliatory action taken by the school after the *News* published an editorial in March 1990 calling for the dismissal of the school's general counsel, Angele Khachadour. The audit request came one week after the editorial was published.

The school claimed it was required by law to audit the newspaper because the paper uses the Hastings name and shares its tax-exempt status. Administrators said the audit request was a routine one made to all groups.

The *Law News* refused to submit to an audit by a firm hired by the college, and the college in turn refused to pay the cost incurred by an independent firm. Eventually, BDO Seidman agreed to do the audit for free.

John Andrews, who was on the *Hastings Law News* editorial board last year and is now editor in chief, said the submission of the audit seemed to resolve the conflict between the school and the current staff. But he was certain the publication was targeted because it had angered someone in the administration. Andrews pointed out that other student organizations were not audited until after *Law News* staffers complained in mid-April about unfair treatment.

"Looking back now, it's pretty clear the newspaper was singled out for its actions," he said. "Several of the organizations didn't comply with [the audit request] and their leaders didn't have their record tainted."

Those saying they feel the taint are former *Hastings Law News* editors who graduated in June and are still waiting for the school to provide their good character certifications to the state bar. The students, James Ballantine and Christina Dalton, had been told by the school that the certifications would be withheld until the audit was submitted.

> ***"Looking back now, it's pretty clear the newspaper was singled out for its actions."***
>
> John Andrews
> Former editor,
> *Hastings Law News*

Ballantine said that after the Sept. 14 deadline the school informed him there were still questions that needed to be answered before the school would provide good character certifications for him and Dalton. Both took the California bar exam in July and are waiting for the results to be announced in December.

"This whole thing is very distressing — having to deal with this right before taking the bar," Ballantine said. "It's been very unfortunate. I don't want to leave the state until its clarified. I haven't sought employment yet."

Ballantine said the school had had ample time to review the audit. But Juliet Gee, a member of the general counsel's office for the school, said the version that was turned in on Sept. 14 was in draft form and needed to be revised.

"The audit did not comply with the requirements the school had set forth,"

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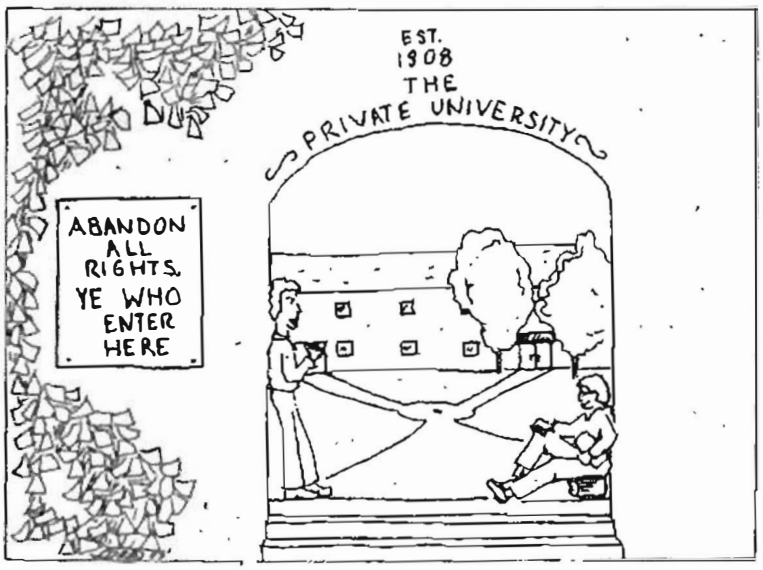

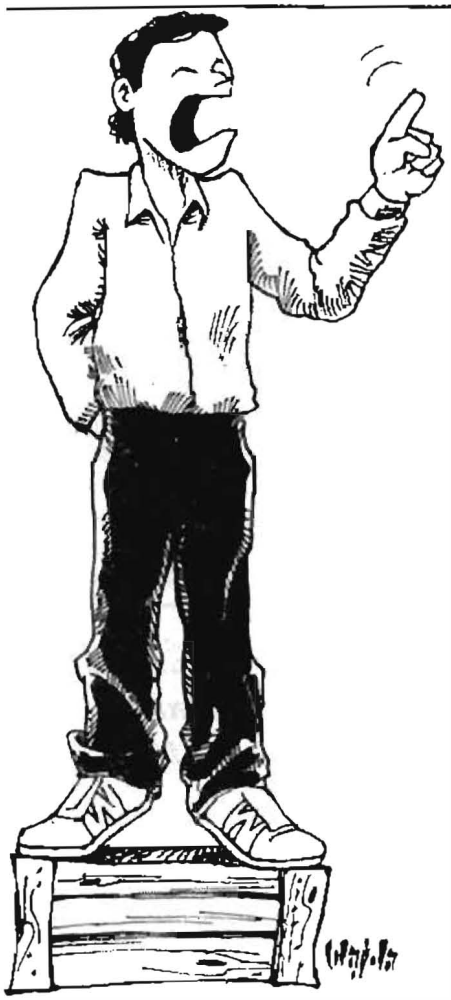

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Gee said. "We waited an awfully long time for this — since March. It's really not in our control right now. It's up to the auditors."

Gee said state privacy laws prevented her from commenting specifically on Ballantine's good character recommendation.

Ballantine said problems with the school continued over the summer. He claimed that when he tried to pick up his diploma at the registrar's office, he was told by a clerk it was being held "pursuant to orders of the general counsel." After Ballantine secured a letter from the clerk stating this in writing, the school released the diploma and said the whole delay was an "administrative mistake."

"I think the dean and the general counsel went on a systematic process of harassment of the editors, in direct conflict with the constitution of the U.S. and California," Ballantine said.■

Prior Review Policy Approved for K.C. Student Newspaper

MISSOURI — The shadow of *Hazelwood* loomed large when the school board approved a prior review policy for the student newspaper at Park Hill High School in Kansas City North.

Although the school's two new principals have said they will not use prior review, the knowledge that they could change their minds at any time has left staff members of *The Trojan* and their adviser, Marcia Johnson, feeling nervous.

"It's been affecting us in that sometimes we're walking on eggshells as far as the stories go," co-editor Dave Wilson said.

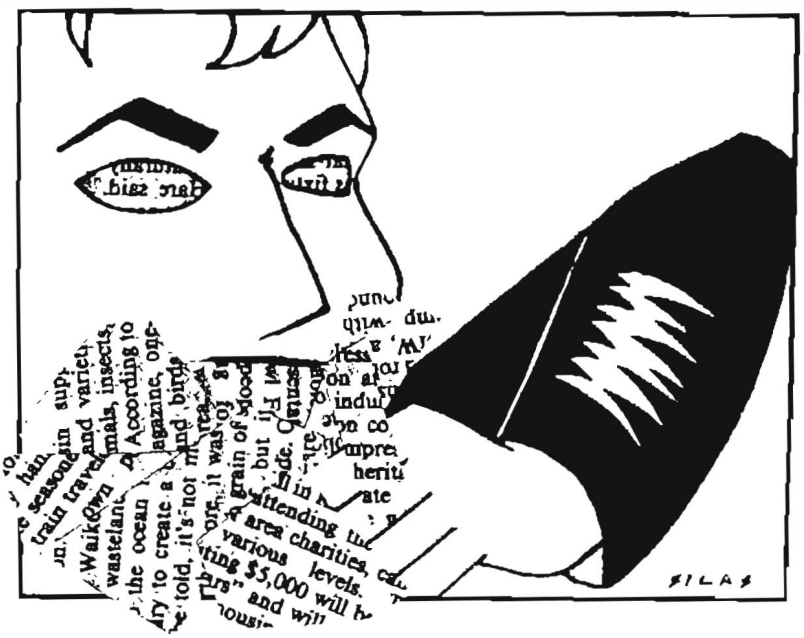
The school board approved a permanent prior review policy in August after *The Trojan* had worked under a tentative publication policy during the previous year. Under the temporary policy, then-principal Barton Albright was reviewing issues of *The Trojan* before publication. The practice was stopped in May 1990 by Park Hill Superintendent Harold Garde.

Dick Moody, one of the new principals, said Johnson uses her own discretion on what gets printed. If she has any questions, she informally consults him or Andy Hemphill, the other principal. Moody said there had been no problems through the first few months of school.

Wilson said members of *The Trojan* do not show their copy to the principals or assistant principal Rob Kingsbury before it goes to press. Kingsbury, who has the closest contact with the staff, has voiced mild disapproval over a few stories that were written, but Wilson termed his role "minimal."

> ***"We're sometimes walking on eggshells as far as the stories go."***
>
> Dave Wilson
> *Trojan* co-editor

Nonetheless, Wilson realizes the new policy puts *The Trojan* in a precarious position. "Even when we do go ahead and do stories that are controversial, we're afraid of what might happen," he said. "We're afraid of prior review being implemented."■



Principal Foils Investigative Reporting

Story Exposing Coach's Overcharging of Students is Censored

INDIANA — When Jeff Lovell began looking into the spring sports programs at Fort Wayne's Northrop High School, he could not believe what he found.

The tennis coach was apparently overcharging members of the girls team for use of tennis courts and pocketing some of the money. When Lovell told Wendy Kruger, his adviser, both were skeptical — it was not the kind of story high school newspapers are used to uncovering.

But as Lovell dug deeper, it became clear that Ron Barnes, the tennis coach, had collected almost $1,000 more for use of the courts than he was paying in court fees. With encouragement from Kruger and the consent of school administrators, Lovell, the editor of *What's Bruin*, verified his facts and wrote the story for a May 1990 issue. It never ran.

A spread was ready for the printer when Principal H. Douglass Williams had the story pulled. Williams said he objected to the article because it was an attack on an individual and would have damaged student-teacher relationships.

When the dust cleared, Barnes admitted he made a mistake and resigned as coach but remained as a health science teacher. He maintained that he had not done anything intentionally dishonest and was simply unaware of rules prohibiting what he did.

Soon after, Barnes filed his own lawsuit that charged school officials with defamation and accused them of hatching a conspiracy to harm his reputation.

The controversy was clouded by accusations of racism. Barnes said the school was singling him out because he is black. At the same time Lovell was investigating his story, there was talk going around that a Northrop basketball coach, also black, was about to be fired.

Lovell is considering a lawsuit of his own claiming his First Amendment rights were violated. Now a freshman at Hillsdale College in Michigan, Lovell said he was upset his story was censored after he took pains to verify all the facts. Lovell thought the administrators had backed off for the wrong reasons.

"Throughout my investigation, I had the administration's support," he said. "Then when it came time to print the story they said, 'This is accurate and well-written, but we can't let it run."

Lovell said school officials told him the story was held as part of an agreement with Barnes. If Barnes agreed to resign as coach, they said, the story would not run.

"I feel they used the school paper as a bargaining tool, which is intolerable," Lovell said.

Williams told the *Fort Wayne News-Sentinel* that pulling the article "wasn't necessarily part of the agreement."

"The original reason I pulled the article, which I still feel is important, was that it would have been divisive within the school," he said.

Williams said it was the first time in 11 years he had censored a story and that he did not intend to do it again. But Kruger argued that even one instance was damaging enough.

In a letter she wrote to Williams, Kruger asked, "Will stories which contain information which is uncomfortable never appear? What happens if 10 years from now a principal doesn't want stories on the girls basketball team to run because a losing record is an embarrassment?"

Kruger pointed out that when a custodian at another Fort Wayne High School was arrested for allegedly molesting two students, the student paper there ran a front-page story about it, even though it was undoubtedly embarrassing to many. And running Lovell's story, she maintained, would also have helped squelch some of the many rumors that were swirling around the school.

Lovell said he went ahead with writing the story even though he knew it would make some people unhappy. When Barnes got wind of the story, he angrily pulled Lovell out of class to question him about it. But Lovell wanted to follow through nonetheless.

"When I saw the discrepancy [in money charged for the courts], I felt like I needed to take a stand and continue to investigate this even though I knew it would be trouble," he said.

Lovell's story eventually did appear, although not in readable form. In October 1990, *What's Bruin* ran a story about the controversy that included a reduced picture of the spread.

"I still resent the fact that they censored the article," Lovell said.

Kruger said the situation may change soon. In October she met with Bill Coats, the school district's new superintendent, to discuss a publications policy. Kruger said a committee of students, teachers and administrators will formulate a policy and submit it to the school board.■

U.T. Newspaper Restricted to Building

Readership List Imposed on Latino Publication

TEXAS — A new policy at the University of Texas at Austin has restricted distribution of a Latino student newspaper to the Communications building, but private funds are keeping the paper circulating.

Tejas, a quarterly journalism-class publication, became the target of a right-wing student organization and the university administration last May after running an editorial that called for the resignation of an associate dean of the College of Liberal Arts.

Conservative student organization Students Advocating Valid Education (SAVE) brought the *Tejas* editorial to the attention of the UT administration. SAVE President Geoff Henley argued that it violated a state appropriations code provision banning the use of state money for publications that could influence politics or affect state workers.

Tejas' printing costs are financed with state money, not student fees, through the University Center for Mexican-American Studies.

Although university attorneys found the code not applicable, the controversy prompted university officials to examine *Tejas*' funding and the circulation of the unofficial student newspaper.

Coincidentally, school officials decided that distribution of *Tejas* had to be restricted, not because of its controversial editorial content, but because distribution was not part of the course's educational function.

Communications Dean Robert Jeffrey justified the university's decision, saying, "The goals of the class are to teach reporting, writing and editing and publishing, but distribution is not one of the educational objectives." He determined that the year-old paper can continue to receive UT funds and the student staff can direct *Tejas*' content, but distribution must be limited to the university imposed "approved readership list."

Professor de Uriartes said she was outraged by the limitation. She said that restricting *Tejas* to the Communications building interferes with a primary goal of the class - to attract minorities to the field of journalism.

"This is a publication written by Latino students for Latino students," she said. "We need to distribute off and around campus."

Tejas staff member Arnie Montemayor added, "It just undermines the whole function of the newspaper to have it stay in the classroom. How are we supposed to get editorial experience? Are people in the class going to send letters to the editor to each other?"

De Uriarte said the school did not take advantage of the opportunity to make a stand for freedom of the press and announce its support for multiculturalism. In an article she wrote for the *Austin-American Statesman* newspaper, she said of the imposed readership list, "such restrictions challenge freedom of expression and undermine the basic ethics of journalism."

"It just undermines the whole function of the newspaper to have it stay in the classroom. . . . Are people in the class going to send letters to the editor to each other?"

Arnie Montemayor
Tejas staff member

The readership list restricts the circulation of *Tejas* to the publication staff and members of the journalism faculty, a total of about 50 people, as compared to its circulation in spring 1990 of 5,000.

The paper is advised by Mercedes Lynn de Uriarte, an assistant professor of journalism who volunteers her time to the student newspaper. She and the *Tejas* staff feel the paper's editorial content prompted the university's action.

The problem could be resolved if the UT Board of Regents grants *Tejas* official student publication status. Other publications on campus are deemed official because unlike classroom publications they have direct connection with university offices — accounting, payroll, legal counsel — and budgets are part of the formal university budget.

Tejas has received praise from the National Hispanic Journalist Association, the Texas Higher Education Coordinating Board and other groups for providing Mexican-American students with a forum and a training ground, said de Uriarte.

Sen. Gonzalo Barrientos, D - Austin, wrote a resolution urging the UT Regents to make *Tejas* an official publication of the university. Part of the resolution read, "Closing the paper would represent a retreat from the legislature's attempts to promote multiculturalism in higher education."

The resolution was passed by the state senate in early June, but was not passed by the house before the legislative term ended.

Tejas is still not an official university newspaper. The staff raised private funds this fall to subsidize the difference of the publishing costs so that distribution could circulate beyond the doors of the Communications building. Professor de Uriartes said so far there are no major problems. "Yet given the First Amendment," she said, "this is very problematic."■

"[The university's] restrictions challenge freedom of expression and undermine the basic ethics of journalism."

Mercedes Lynn de Uriarte
Tejas adviser

Political Cartoon Draws Threats

Police Consider Action Against N.M. Paper

NEW MEXICO— Angry members of the Albuquerque Police Union met with staff members of the University of New Mexico's student newspaper in September to protest what they considered to be an inflammatory political cartoon.

The cartoon published in *The Daily Lobo* commented on recent fatal shootings by Albuquerque police officers. One incident involved a man who was shot by police after he threatened suicide and then reportedly pointed a gun at officers. The cartoon said, "APD the few, the proud, the trigger-happy."

John McDonald, president of the Albuquerque Police Officer Association, was offended by the satire and threatened to organize an advertiser boycott against *The Daily Lobo*.

However, the meeting of two police union members with *Daily Lobo* editors and staff only resulted in vague threats, said *Lobo* editor Geoff White. Despite McDonald's anger, the police union board did not pursue the boycott. Union board member John Brenna said such action would only draw attention to the cartoon.

White said he was expecting a written response from McDonald about the incident. "He told me he was going to send a letter to *The Daily Lobo*, *The Albuquerque Journal* and *The Albuquerque Tribune*, stating why he disagreed with the union board's final decision," said White in November, "but that was two months ago and I haven't received anything."

Cartoonist and *Daily Lobo* staff member James Martinez said he and the rest of the staff never felt threatened by the police. Martinez said he felt secure of his protection under the First Amendment.■

The cartoon published in* The Daily Lobo *commented on recent fatal shootings by Albuquerque police officers. The cartoon said "APD: The few, the proud, the trigger-happy."

Survey on Sexual Experience Confiscated

Principal Claims He Objected to Form, Not Content

WASHINGTON — Students at Moses Lake High School accused their principal of censorship after he confiscated the results of a survey they took regarding sexual experience.

The students who prepared the survey, Lisa Segura and Stacey Dennis, said Principal Larry Smith violated their First Amendment rights when he demanded they turn over results of a survey they were doing to supplement a story on teenage pregnancy for the April 1990 issue of *The Chief Events*, the student newspaper. The story ran without the survey results.

In the following issue of the paper, fellow staff member Frankey Plumage wrote an editorial that criticized Smith's actions and accused him of suppressing the survey simply because he did not like the subject matter.

Smith, however, insists he confiscated the survey because it was poorly done and was not cleared with the adviser before being distributed to the students. He said the survey was handwritten, vague and contained spelling errors.

Lynda Maraby, the adviser at the time, said the censorship dampened her students' enthusiasm for writing stories on delicate but important issues.

"It really demoralized the students," she said. "Here they had tried to do something different — and I had applauded their efforts — and the wind had been taken out of their sails."

Segura and Dennis wrote the survey, which contained seven specific questions about sexual experience. The two students made 100 photocopies and distributed it in a senior history class. Those filling out the survey were to place the questionnaire in a box to ensure the results would be anonymous.

Segura and Dennis collected the completed questionnaires, but the history teacher became concerned about the students' authority to conduct the survey and notified Smith.

"The principal, just livid, came stomping down to my room, called the girls out and gave them a tongue-lashing," Maraby said. "Then he called me into his office and told me he was holding me responsible."

Maraby said she wished the students had shown her the survey before distributing it, but she thinks the survey was appropriate and would have been a good addition to the resulting story.

A few weeks after the confiscation, Plumage attended the Journalism Education Association/National Scholastic Press Association national convention in Seattle and became convinced Smith's censorship of the survey was unfair. Plumage resolved to fight back in the next issue of *The Chief Events*.

In his editorial Plumage pointed out that the student newspaper at Newport High School in Bellevue had conducted more extensive sex surveys in 1987 and 1990 and had not faced censorship. "Is this the way schools teach students about their constitutional rights?" he wrote. "Why hide a problem or shelter the student body on a subject matter when discussing it in a responsible manner can educate them and keep them from making unfortunate choices that will affect the rest of their lives?"

> ***"If we're going to teach journalism in our schools, we've got to let kids have a moral voice."***
>
> Lynda Maraby
> Moses Lake adviser

Maraby, who started the paper in 1985, said it was not the first time *The Chief Events* had been censored. In 1989 Smith killed two editorials by a student suggesting world peace could be achieved if everybody went nude. Plumage told the *Columbia Basin Herald* he did not discuss his editorial about the survey censorship with Smith beforehand because he feared Smith would censor it as well.

Maraby has since resigned her position for unrelated reasons, but she said there were repercussions from the survey and the editorial. She said Smith began observing her classes and proceeded to write scathing reports about her teaching methods.

"I really believe that we did the right thing," Maraby said. "If we're going to teach journalism in our schools, we've got to let kids have a moral voice."■

Pennsylvania School District's Restrictions on Distribution Called Unconstitutional

PENNSYLVANIA — When it comes to freedom of religious expression, the Interboro School District both giveth and taketh away.

The Prospect Park school district has implemented a policy that allows the distribution of written materials by students on school grounds but forbids material that "proselytizes a particular religious or political belief."

The old policy had allowed distribution of material on only two days out of the school year, a restriction that prompted a lawsuit in federal district court by student Scott Slotterback. Slotterback claimed that his First Amendment rights were violated by the policy.

The new policy does not limit distribution to a specific number of days, but it requires students to submit material to the principal three days in advance so it may be reviewed and approved. It also requires that the distribution take place only "inside or outside the exit doors of the building."

The restriction on content and the provision for prior review make the new policy unconstitutional, said Michael Considine, Slotterback's attorney.

"There's no doubt in my mind that it's unconstitutional," Considine said. "They've basically excluded all religious speech. They've given too much discretion to local authorities."

Considine said he was debating whether Slotterback should even submit the material for prior review.

"We don't think they have a right to subject him to that policy," Considine said. "It's something that's really ripe for constitutional challenge. We're looking forward to challenging it."

The controversy began in December 1989 when a teacher saw Slotterback distributing pamphlets in the hall and notified the principal, Nicholas Cianci. Cianci told Slotterback that school policy prohibited him from handing out religious material and threatened to expel Slotterback if he did not stop.

Slotterback told his mother, who in turn contacted Considine, an attorney with the Rutherford Institute of Pennsylvania. The Rutherford Institute, based in Charlottesville, Va., provides free legal representation to those who feel their religious freedoms have been infringed.

After Considine warned Cianci that such censorship was unconstitutional, the school adopted a policy that allowed students to distribute the tracts for two days during the school year.

Attorneys for the school district claimed that the hallways were a non-public forum, so the school had the right to regulate the time, place and manner of the distribution of non-public material.

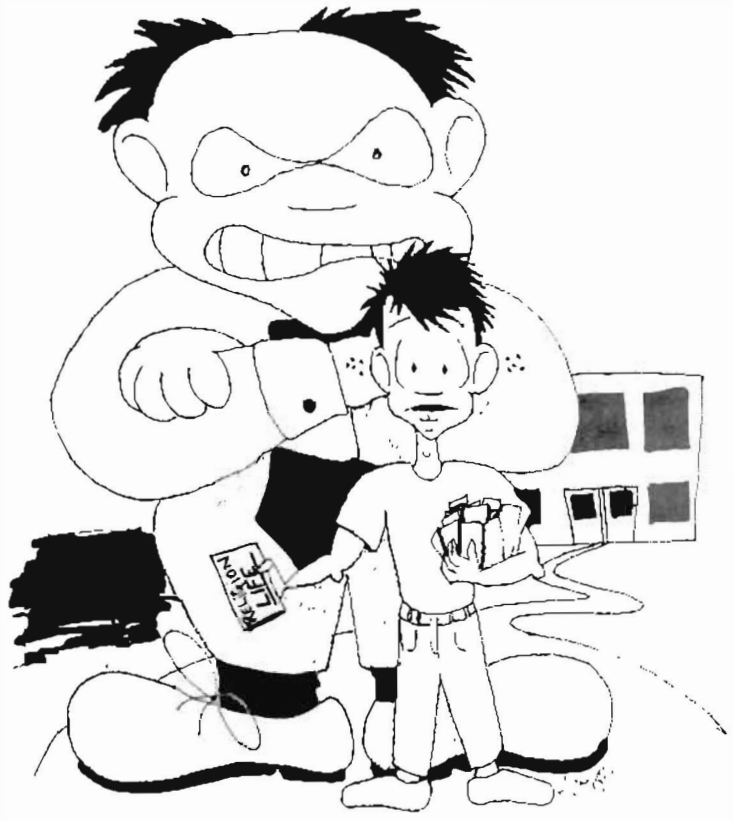
Slotterback said his distribution has always been peaceful and has never caused disruption in the school. The pamphlets, which are in comic-book form, are concerned with personal religious salvation.

"I wouldn't push it on them," he said. "They would ask me for it. I'd be walking down the hallway or waiting outside the room, and people would ask me if I had the books. I told them 'If you don't read them, throw them in the trash—don't leave them lying around.'"

Slotterback said he has continued to hand out the pamphlets this semester and has not been challenged by anyone. He said his relationship with Cianci is good and thought the principal was mainly worried about the reactions of certain parents.

Considine said the lawsuit is still pending, with Dec. 31, 1990, being the deadline for filing a motion for summary judgment. A ruling might not be handed down until spring. But Considine said the school's latest change of position may be more important.

"We consider this new policy a significant victory already, even if nothing happens in the case," he said.■



Push for Free Press Laws Continues

New Jersey, Ohio Appear Closest to Passage

After initial successes in Colorado, Massachusetts and Iowa, the effort to combat *Hazlewood* through student free press legislation lost momentum in other states in the last half of 1990.

At press time, only New Jersey and Ohio appeared to have a chance to pass such laws before the end of 1990. In both states, the bills were introduced in spring 1990 but encountered opposition and frustrating delays.

John Tagliareni, president of the Garden State Scholastic Press Association, said the New Jersey bill received a huge boost on Nov. 5 when Jim Florio, the New Jersey governor, announced his support of the bill at the association's annual conference.

"It's a very, very positive thing," Tagliareni said. "We're hoping word will get around and legislators will get behind it because they know the governor supports it."

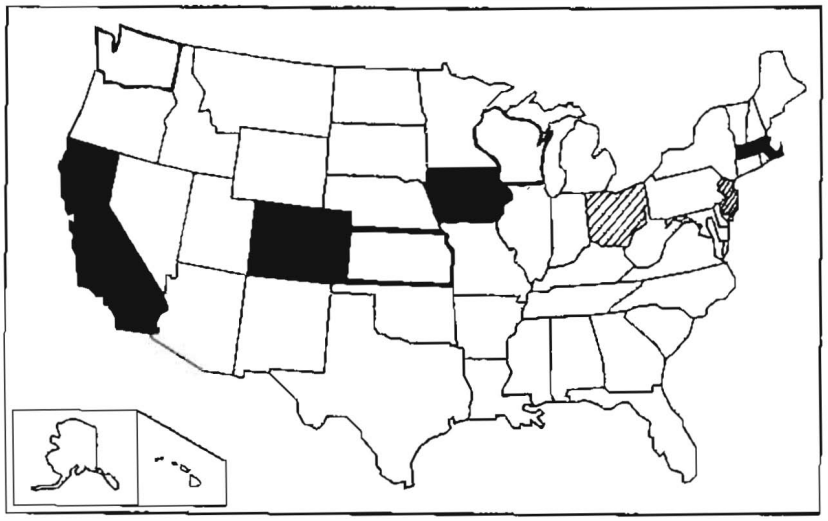
The bill had been bottled up in the Assembly Education Committee, mainly because the powerful teachers' union, the New Jersey Education Association, had serious reservations. Taglareni said the teachers wanted a clause in the bill freeing them from being harassed or disciplined if their students wrote controversial articles. The clause was inserted, and Tagliareni said it made for a better bill.

Another snag came when the New Jersey Press Association unanimously opposed the bill because its members thought it did not provide students enough protection. But the organization later withdrew its opposition and began seeking ways to change the wording.

Tagliareni said other organizations, such as the North Jersey Press Club and the *Asbury Park Press* have voiced their support for the bill. He was confident that language would be added to appease the teachers' union and the bill would move quickly.

"Once it gets out of committee it should pass as long as no other organizations oppose it," he said. "There are 50 cosponsors on the bill. Four of the five members of the [Education] committee are cosponsors."

LEGISLATION



At press time, four states (darkened) had "anti-Hazelwood" student free press legislation: California, Massachusetts, Iowa and Colorado. New Jersey and Ohio (shaded) appeared on the verge of passing their own laws and Kansas, Washington and Wisconsin (outlined) have a good chance of following sometime in 1991.

The **Ohio** bill was referred to the House Subcommittee on Education in early 1990 and languished there throughout the year, said Grace Moran, an aide to Rep. Judy Sheerer, D - Shaker Heights. Sheerer had introduced the bill in the fall of 1989.

Moran said committee chairman Wayne Jones was also given the chairmanship of an anti-drug committee, which did not allow him time to schedule a hearing on the free press bill. Several student free press groups had appealed to Jones to schedule a hearing sometime in the fall.

Angela Parks, co-chairman of the Ohio Coalition for First Amendment Rights, said her organization is considering whether to work with the committee on the present bill or introduce a revised one that has a better chance of passing.

Other free press legislation will have to wait to be introduced in January. Among them, Kansas, Washington and Wisconsin seem to have the brightest outlook as they try for passage of bills that failed the first time around.

In **Kansas**, student press organizations are hoping to rebound from disappointment suffered in March when the first version of a free press bill died in the Senate Education Committee despite having a great deal of support.

Ron Johnson, director of student publications at Kansas State University and chairman of the Kansas Scholastic Press Association's legislation committee, said Sen. Lana Oleen, R - Manhatten, plans to introduce a new bill in January.

"She and I will be sitting down to write new legislation that will encompass everything we want," he said. "Our concepts are the same; the packaging is just different."

The 1990 bill seemed to suffer most from bad luck and bad timing. Johnson said there was no spoken opposition to the bill, and the House was overwhelmingly supportive.

> ***"I think the problem is getting the message across properly. It's just putting in place what we had before* Hazelwood."**
>
> Pat Sullivan
> Washington Journalism
> Education Association

"We think our last bill was a victim of political squabbling. It became a political football," he said. "Senator Oleen will help us build a coalition of Democrats and Republicans."

In **Washington**, supporters of free press legislation are hoping the 1991 session brings them better luck than the last one did. In 1990, a free press bill introduced by Sen. Phil Talmadge, D - Seattle, died in the Senate Committee on Education after one hearing.

Pat Sullivan of the Washington Journalism Education Association said her organization has been working hard to muster support for the next session. Sullivan said they already have gotten Talmadge and Rep. Greg Fisher, D - Des Moines, to sponsor the new bill, and the free-press forces are well organized across the state.

"I think the problem is getting the message across properly," she said. "The only reason it didn't pass [last time] is that the people who tend to be against it don't understand it. It's just putting in place what we had before *Hazelwood*."

In **Wisconsin**, Assemblyman Peter Bock, D - Milwaukee, plans to reintroduce a free press bill in January. Last year, Bock's bill made it out of the Senate Education Committee but died on the senate floor when the legislative session ended in March. A similar bill introduced by Rep. Marsha Coggs, D - Milwaukee, died in a House committee.

Bock assistant Brad Kelly said the bill did not get proper attention last time because there was too much other legis-

continued on page 24

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lation.

"It was introduced fairly late last time," he said. "We're hoping we can get a better jump on it this time."

Three other states — Michigan, Missouri and Indiana — hope to have bills introduced for the first time next session. In **Michigan**, Cheryl Pell said legislation was drafted, assigned a number and given to a committee in early November. State Rep. Lynn Jondahl, D - Ingham, has agreed to sponsor the bill. Pell is optimistic but said supporters of the legislation want to make certain the proper steps are taken to disarm any opposition.

"I think the man who's introducing our legislation is very well-respected," she said. "I think our chances of getting some good co-sponsors is good."

"It was introduced fairly late last time. We're hoping we can get a better jump on it this time."

Peter Bock
Aide to Wis. Assemblyman
Brad Kelly

Missouri is in an even earlier stage. Diane Boyle, president of the Missouri Journalism Education Association, said a committee was scheduled to have met in late November to discuss the possibility of a free press bill and try to come up with a sponsor.

"I'm not even sure how to start this," Boyle said. "I'm not sure how something like this will go in Missouri."

Indiana free press supporters are confident a bill will be introduced in the next session there. Terry Vander Heyden, executive director of the Indiana High School Press Association, said those interested in a bill benefited from talking to other state organizations at the Journalism Education Association/National Scholastic Press Association national convention held in Indianapolis in October, to learn which strategies met with the best results. Vander Heyden said he and others will now start soliciting support from legislators, principals and teachers.■

Copyright Bill Becomes Law

State Schools Subject to Infringement Suits

WASHINGTON, D.C. — Your college professors may be tempting fate next time they hand out a photocopied story or article. Congress has passed a bill making state colleges and universities subject to copyright infringement lawsuits.

The bill is intended to discourage illegal use of copyrighted material by schools, colleges, prisons and other state agencies. Different versions of the bill passed the House and Senate before a conference committee met to iron out the differences. Both legislative bodies approved the conference report in October, and President Bush signed the bill into law in November.

The legislation came as a response to several court decisions that states could not be sued under federal copyright law unless the law specifically said that it applied to states. Sen. Dennis Deconcini, D - Ariz., and others argued that this was not the intent of Congress when it enacted the Copyright Act of 1976. Supporters say the bill will protect copyright holders from unauthorized reproductions of materials by states and their agents.

Education lobbyists had opposed the bill, arguing that schools and colleges do not abuse copyright privileges. They also claim the bill would violate the states' 11th Amendment immunity from prosecution under federal laws.

"It will be litigated, I can guarantee it," said August Steinhilmer, general counsel to the National School Board Association. "The first time a state is sued, we will challenge the constitutionality of this particular act. The question is 'Does Congress have authority to abrogate state rights?'"■

Fed. Court of Appeals Rehears Case Involving Banned Advertisement

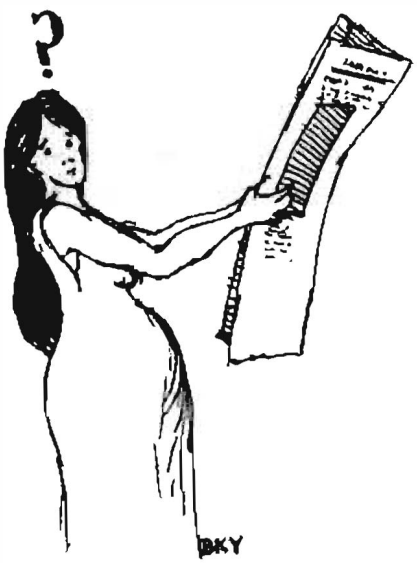
CALIFORNIA — A U.S. Court of Appeals agreed to rehear a case involving a school board's right to ban Planned Parenthood advertisements from high school publications.

The Ninth Circuit court allowed the Oct. 18 rehearing after Planned Parenthood attorneys argued that the court's decision, *Planned Parenthood of Southern Nevada v. Clark County School District*, 887 F.2d 935 (9th Cir. 1989), in favor of the Clark County, Nev., school board had not followed established procedure because it was made by a three-judge panel rather than a full "*en banc*" court of 11.

Planned Parenthood attorneys said the decision reversed an earlier Ninth Circuit ruling and pointed out that the circuit had a longstanding rule that law declared by one panel of the court cannot be overruled except by the court sitting *en banc*.

As a result, Planned Parenthood attorneys got another chance to argue that the school cannot ban the advertisements because the high school publications are a public forum.

"In essence, what you're telling [the judges] is that there's a significant legal issue at stake," said Mark Brandenburg, attorney for Planned Parenthood. "*En banc* reviews are highly unusual, so in that respect, we're pleased."



Still, the full court could simply rule against Planned Parenthood again. Brandenburg said the same three judges who were on the panel ended up on the *en banc* court. The Ninth Circuit has 27 active judges from which the 11 could be drawn.

"We had to assume we automatically had three votes against us," Brandenburg said.

In April 1988, the district court turned to the three-month-old *Hazelwood* decision to determine what control school administrators have over student publications. It ruled that *Hazelwood* allowed administrators to control content and advertising of school-sponsored student publications for legitimate educational concerns. In its decision, the court said that high school student newspapers and other school publications were not public forums.

In their petition for rehearing, Brandenburg and co-counsel Roger Evans said the Ninth Circuit's 1986 opinion in a similar case had reached a different conclusion. In that case, they argued, a three-judge panel had found that school newspaper advertising pages open to "members of the general public. . .[to advertise] goods, services, or vocational opportunities to students" are a limited public forum.■

Charges Against Student Journalist Dismissed

NEW YORK — Disorderly conduct charges were dismissed against David Galarza, a Long Island University student journalist who was arrested after taking photos of a scuffle between police and protestors.

Ronald Kuby, Galarza's attorney said the charges were dismissed by a judge in August in a court appearance that was "striking in its brevity." Kuby had said such charges are almost always dismissed.

"The criminal complaint as it was written failed to allege what he [Galarza] had done wrong," Kuby said.

Galarza said he benefitted from Kuby's reputation. Kuby works at the Center for Constitutional Rights under renowned constitutional rights attorney William Kuntsler.

"I was in and out in about 10 or 15 minutes," Galarza said. "They pretty much know Ronald Kuby."

In May 1990, Galarza, the editor of the *Seawanhaka* at Long Island University, had been covering a speech by controversial philosophy professor Michael Levin when protestors tried to storm the auditorium where Levin was speaking. As Galarza tried to photograph police battling the demonstrators, he was arrested and his film was exposed. Galarza ended up spending four hours in a detention center handcuffed to a wall before being released.

Galarza said he had a campus press pass that was visible to everyone, but police grabbed him by the shirt collar and flung him on a bench to prevent him from taking any more pictures. During the scuffle, Galarza's film was exposed and he lost his tape recorder and notepad.

Galarza, now a *Seawanhaka* contributing editor, said he has not planning to file a lawsuit against the city.

"I've been advised that actions against the city usually are very costly and time-consuming," he said.■

Princeton Reporters Disciplined After Covering Demonstration

NEW JERSEY— Two reporters at Princeton University learned their press rights were qualified when they were disciplined for their presence at an occupation of the president's office in the spring.

Juliet Eilperin and Norimitsu Onishi received dean's warnings along with 17 protesters despite being present at the sit-in only as reporters for *The Daily Princetonian*.

The occupation began the morning of April 24 when frustrated students entered President Harold Shapiro's office demanding that the university's rape center be given full autonomy and a second full-time counselor. Eilperin accompanied the protesters and remained with them throughout the day.

At 4 p.m. everyone in the group, Eilperin included, was told to leave the building or they would be disciplined, but many remained throughout the night. Eilperin was relieved the following morning by Onishi, who continued coverage of the sit-in until everyone dispersed at 6 p.m.

In October, Princeton's judiciary committee unanimously decided to give Dean's Warnings to the protesters, including Eilperin and Onishi. Although dean's warnings are the lightest penalty issued and do not go on a student's permanent record, the failure to distinguish between protesters and reporters had some observers upset.

"Since we weren't there as activists, I don't think it makes sense to penalize us for that," Onishi said. "I think the university needs to sit down with all student publications and set up guidelines for covering protests and sit-ins. I don't know if they've thought of the implications of penalizing reporters."

David Shipler, a former *New York Times* reporter teaching at Princeton, said the decision to give warnings to the reporters sends the wrong message to the community about the importance of the free press.

"Princeton University should not be a place where reporters are put in jeopardy for doing their job," he said. "The failure to differentiate between reporters and demonstrators muddies the waters and blurs the issue of the free press."

But Kathleen Deignan, acting dean of students, said university regulations allow reporters all the access they desire. Under a policy that Princeton arranged with the *Daily Princetonian* in 1980, reporters may cover demonstrations but first must get permission from either the vice president for public affairs or the director of communications.

Deignan said Princeton wants to retain the right to keep reporters out of dangerous situations and therefore does not grant them blanket immunity.

"More is being made out of this than it deserves," she said. "We understand that the university's interests are best served by allowing press the access it needs, and we would do nothing to hamper that."

Deignan said the students may have misunderstood Princeton's policy based on an incident that happened five years earlier, when a reporter covered a sit-in and was not punished. But Deignan said that reporter had secured the proper permission beforehand.

"I think we have a very generous policy that is in everybody's best interests," she said. "It would be incumbent on the university to say why a reporter can't go in [to cover something]. I can't imagine that these reporters wouldn't have been allowed to go in and out as often as they liked."

Shipler said he does not dispute the sentiments of Deignan or the university but feels the present regulations are inadequate because Princeton officials may grant or deny access using their own standard. The students, he claimed, had no set of rules they could point to and say to administrators "You're violating this principle."

Shipler said he has urged the *Daily Princetonian* staff take up the matter with the administration.■

Nassau Paper Wins Access

NEW YORK — The student press won a battle for access when the Faculty-Student Association at Nassau Community College finally agreed to open its student finance board meetings.

Staff members of the Nassau *Vignette* had been trying to attend the meetings for two years. Reporters were admitted to student senate meetings but not the finance board meetings, where important budget decisions were made.

In the fall of 1989, *Vignette* assistant news editor John Riegel asked the New York State Committee on Open Government to issue an advisory opinion in hopes of resolving the question. The committee's response in March 1990 supported the paper's right of access.

"I don't want to say now it's a dead issue, but it may be."

John Riegel
Vignette asst. news editor

Several months later, a Faculty-Student Association attorney drafted a legal opinion that also supported the right of access, but student government leaders interpreted it as requiring that *Vignette* editorial meetings be open to the public as well.

Now it appears the *Vignette* will have access without having to open its own meetings. Riegel said that at the beginning of the 1990-91 school year he heard rumors the student government might circumvent open meetings by eliminating the finance committee altogether, but that has not come to pass.

"The last I heard, they weren't going to eliminate it," Riegel said. "I hope they don't — I hope they make it nice and easy for us. I don't want to say now it's a dead issue, but it may be."■

Yearbook Companies Accused of Price Fixing

Top Three Publishers Pay More than $500,000 to Settle Claim

WASHINGTON — The nation's top three yearbook publishers have agreed to pay more than half a million dollars to settle legal claims that they conspired to fix prices for junior high and high schools in western Washington.

State officials brought a civil antitrust action against Herff-Jones of Indianapolis, Taylor Publishing of Dallas and Josten's of Minnesota after receiving information that the three publishers had secretly divided the yearbook market among themselves in about 80 school districts.

It was alleged that representatives from the companies would meet and decide which of the three would "win" a specific school district.

The claim, filed in a U.S. District Court, said the arrangement between the companies had the effect of stabilizing prices "at artificial and non-competitive levels" so that Washington residents were "denied the benefits of free and open competition among yearbook suppliers" and as a result paid more for yearbooks than they would have paid in a competitive market.

To settle the claim, the three companies agreed to pay $390,000 in damages and $130,000 in court costs and fees. Under the settlement, the companies made no admission of guilt.

In a prepared statement, Herff-Jones contended it has "faithfully served the educational community for over 70 years and has consistently followed a policy of maintaining a high level of ethical and legal standards in the conduct of its business."

Josten's spokesperson Mike Minich said the company was unaware of any problems securing contracts as a result of the allegations. Minich said Josten's denied any wrongdoing but decided to settle because litigation would have been too costly.

LeAnn McDonald, assistant attorney general for the state of Washington, said it was alleged that representatives from the companies would meet and decide which of the three would "win" a specific school district by offering a slightly lower bid. The others would agree not to offer a lower price or more services in exchange for winning their own school districts.

McDonald said that in 1984 her office got a tip from a school district saying the three yearbook companies all were increasing prices by the same amount. State officials secured bidding and publishing documents but lacked sufficient proof to take legal action.

Three years later, another yearbook publisher who had been squeezed out of the market by the three companies came to the attorney general's office and provided the names of two company representatives who had approached him to fix prices. One of those two representatives eventually became an informant to the office.

McDonald said a "tentative estimate" was that the alleged price fixing inflated the price about one or two dollars per yearbook.

The claim seems to have had little effect on the ability of the three companies to secure contracts with schools in Washington. A purchasing agent for Belleview School District, one of the districts that provided information for the attorney general's office, said the relationship with the companies was "business as usual."

Foster Searls, purchasing manager for the Lake Washington School District, said the schools continue their contracts with all three yearbook companies.

"We've not cancelled any contracts," he said. "In fact, we have a contract for next year already signed."

McDonald said the three companies have contracts with schools in other states, but she is not aware of any other lawsuits.■

Yearbook Adviser Keeps Position

MARYLAND — Bowie High School yearbook adviser Donald Watson kept his position after accepting a 10-day suspension and submitting a written apology for failing to catch remarks slipped into the publication that many found offensive and racist.

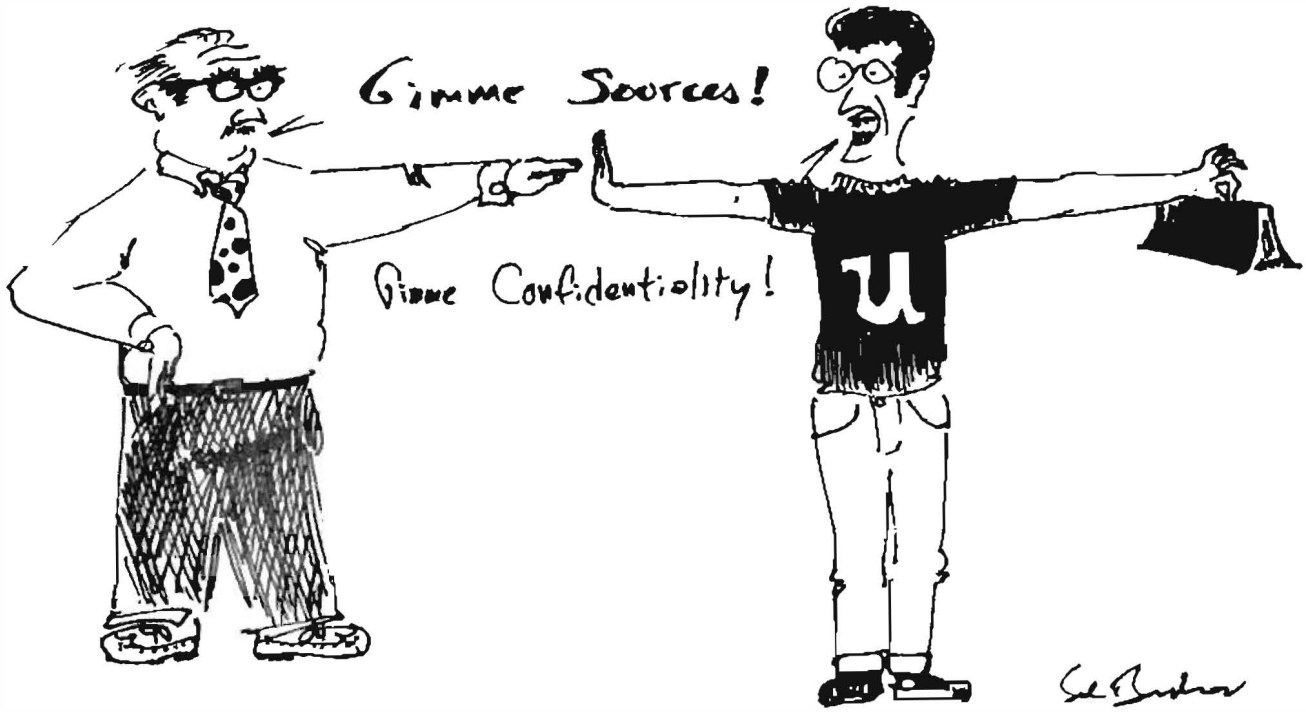
Watson's apology contained the sentence: "I regret that this controversy has been visited upon the school system and offer my apologies to the students and parents of the community."

Prince George's County School Superintendent John Murphy recommended in May that the Board of Education fire Watson after the remarks were discovered in the 1990 yearbook. Murphy's decision prompted more than 300 parents, teachers and students to picket a school board meeting and denounce the recommendation.

As a result of the controversy, the Prince George's School District decided a yearbook policy was needed and appointed a publications committee headed by Laurel High School Principal Tom Kirby.

Kirby said the committee made recommendations to Murphy in September that he in turn will present to the Prince George's Board of Education. The new policy could take effect by the second semester. Kirby said the committee stressed ethical journalism and suggested that the school district form a publications committee similar to an athletic association.

"We're recommending that students be a part of that," he said.■



Shield Laws: A Ten-State Survey

This is the last in a series of articles examining the rights of student journalists to maintain the confidentiality of their sources and the information they gather as a part of their reporting effort. As stories in this issue of the* Report *illustrate, a growing number of students are being asked to turn over their notes, photographs or videotapes or to reveal the individuals who have given them information anonymously. In this article, we continue a state-by-state examination of shield laws and privileges that protect journalists in keeping their sources and information to themselves. Because 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 call the SPLC.

NEW MEXICO

Shield Law: N.M. Sup. Ct. R. 11-514 (1986 & Supp. 1988).

The New Mexico Supreme Court has adopted an evidentiary rule that protects reporters from being forced to disclose confidential sources or information in most circumstances. No state court has decided whether student journalists may assert the privilege. However, student reporters could make strong arguments that the rule's qualified privilege protects them because of the rule's broad language.

The evidentiary rule extends a testimonial privilege to "A person engaged or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public . . . ." A student reporter could make a strong argument that he or she is "engaged" by the news media when that reporter is gathering or editing news. The student reporter also could attempt to show that he or she was "employed by" the news media but probably would need to offer evidence that the reporter received some compensation such as a wage or tuition reimbursement.

To qualify for the rule's privilege, students also must show that their audience is "the general public." No court has stated what constitutes "the general public" under the rule. Students may have to show that persons outside the high school or college community have access to the publication or that the publication addresses issues of interest to the general public.

The court's evidentiary rule defines "news media" as "newspapers, magazines, press associations, news agencies, wire services, radio, television or similar . . . means of disseminating news to the general public." To qualify as a newspaper, a publication must be 1) distributed not less than once a week and 2) contain "news, articles of opinion, editorials, features, advertising, or other matter regarded as of current interest." Even if a student publication did not meet the once-a-week distribution requirement, it would probably still be

considered a "means of disseminating news."

The evidentiary privilege may be overcome if a court believes that there is a reasonable probability that the confidential sources or information are material and relevant to the case, no alternative means of discovering the information or sources exists, the information or source is crucial to the case and the need for the information or source "clearly outweighs" the public's interest in protecting the source or information.

A state court has declined to recognize a common law or constitutional privilege for reporters to refuse to disclose confidential information or sources. *See Ammerman v. Hubbard Broadcasting Inc.*, 572 P.2d 1258 (N.M. Ct. App. 1977), cert. denied, 572 P.2d 1257 (N.M. 1977), cert. denied, 436 U.S. 906 (1978).

NORTH CAROLINA

Shield Law: None

The North Carolina legislature has not adopted a statutory shield law, but the lower state courts have repeatedly recognized a qualified privilege to refuse to disclose sources or information. The courts rely on the First and 14th amendments and the North Carolina Constitution as the basis for the reporter's privilege. The state supreme court has never ruled on the issue of a reporter's privilege.

Student journalists may take some comfort in the fact that the courts have found that the reporter's privilege emanates from the federal and state constitutions. Article I, section 14 of the state constitution states, in part: "Freedom of speech and of the press are two great bulwarks of liberty and therefore shall never be restrained . . . ." Arguably, the courts should extend the reporter's privilege to student reporters because all reporters have the same constitutional rights as persons and newsgatherers.

Student reporters should be aware that the lower courts have extended the privilege to reporters who acquired information or sources in the "course and scope" of their newsgathering activities. The privilege has not been made explicitly contingent upon the reporter being "employed by" the news media. See, e.g., *North Carolina v. Smith*, 13 Med. L. Rptr. 1940 (N.C. Sup. Ct. Buncombe Cty. 1987).

In general, reporters in North Carolina may qualify for the privilege regardless of whether the sources or information were acquired under the promise of confidentiality. *See Chappell v. Brunswick Board of Education*, 9 Med. L. Rptr. 1753 (N.C. Super. Ct. Brunswick Cty. 1983). In addition, reporters should be aware that the privilege may be overcome if the party seeking disclosure shows that the information sought is 1) highly relevant and material, 2) not available from nonprivileged sources, 3) unavailable from an alternative source; 4) essential to insure that justice is done. See, e.g., *Locklear v. Waccamaw Shovan Dev. Ass'n.* 12 Med. L. Rptr. 2391 (N.C. Gen. Ct. Just. 1986).

NORTH DAKOTA

Shield Law: N.D. Cent. Code 31-01-06.2 (1976 & Supp. 1989).

Student journalists in North Dakota probably would be protected from compelled disclosure of sources or information by the state's shield law. The statute extends a qualified privilege to a "person" who is "engaged in gathering, writing, photographing, or editing news" while the reporter is "employed by or acting for" a news medium.

High school and college reporters clearly qualify as persons under the statute. Moreover, student journalists should be able to show without difficulty that they are "engaged in" newsgathering and "acting for" a news medium. Student journalists may have a more difficult time proving that they are "employed by" a news medium, unless they can show that they receive some type of remuneration for their work. However, because the statutory requirement is stated in the alternative - "employed by or acting for" a news medium - students should be able to qualify for the privilege without making a showing that they are employed by the news media.

In general, North Dakota's shield law protects reporters from disclosing their sources or information unless "the failure of disclosure of such evidence will cause a miscarriage of justice." The privilege applies to confidential and nonconfidential sources and information, as well as criminal and civil proceedings. *See Grand Forks Herald v. District Court*, 322 N.W.2d 850 (N.D. 1982) [8 Med. L. Rptr. 2269].

However, the availability of alternative sources and whether there was a promise of confidentiality are factors in a court's determination of whether failure to disclose would cause a "miscarriage of justice." *See Grand Forks Herald.*

OHIO

Shield Law: Ohio Rev. Code Ann. secs. 2739.04 & 2739.12 (Anderson 1981 & Supp. 1988)

Student reporters probably would be protected by the state shield law. The law provides that "No person engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding . . . ."

A separate shield law protects television and radio broadcasters and is nearly identical.

The threshold question is whether the reporter must be "employed by" the news media to be protected. The shield law initially indicates that the reporter can be "engaged in the work of" or "connected with" the news media to be protected. These alternative requirements suggest that a reporter is not required to be "employed by" the news media for the privilege to apply.

However, the law also states that a reporter will not be required to disclose a source of information "procured or obtained . . . in the course of his employment . . . ." Thus, from the wording of the statute, it is uncertain whether a reporter must be employed by the news media to be protected from forced disclosure.

Student reporters can argue that the shield law protects them because the legislature intended that the law protect reporters "engaged in the work of" or "connected with," but not necessarily

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"employed by," the news media and that student reporters are "employed by" the news media if they are compensated for their work.

Once a reporter qualifies for the privilege, the shield law provides a qualified privilege to refuse to disclose the identity of a source of confidential information. The privilege may be overcome by a criminal defendant's Sixth Amendment rights. *In re McAuley*, 63 Ohio App.2d 5, 408 N.E.2d 697 (Ct. App. Cuyahoga County 1979). Also, the privilege protects confidential sources, but not confidential communications and acts. *Forest Hills Utility Co. v. City of Heath*, 37 Ohio Misc. 30, 302 N.E.2d 593 (C.P. Licking County 1973). Reporters for student magazines or other publications should be aware that the shield law does not protect reporters for periodicals and magazines. *Deltec Inc. v. Dun & Bradstreet Inc.*, 187 F. Supp. 788 (N.D. Ohio 1960).

OKLAHOMA

Shield Law: Okla. Stat. Ann. tit. 12, sec. 2506 (West 1980 & Supp. 1990).

Student journalists may be protected by the state shield law. The law protects reporters who are "regularly engaged in" newsgathering for the news media. Although the law does not define the term "regularly engaged in," it does state that reporters who are "employed by" the news media are regularly engaged in gathering news. But the law is worded so that employment by the news media probably is not a prerequisite for asserting the privilege. Student journalists could argue that being employed by the news media is only one way to regularly engage in gathering news. Therefore, the privilege arguable could be extended to students.

Governmental entities and government employees who are asked to testify about confidential information are excluded from the shield law's protection. Although somewhat tenuous, students could argue that the legislature also could have excluded them from protection of the testimonial privilege, but did not. Thus, because the legislature did not exclude student journalists, the privilege should be available to students.

Student reporters at public high schools and colleges possibly may have to rebut the argument that because they attend public schools, they are in essence government employees and thus not protected by the shield law. The courts have not indicated whether they might accept the reasoning of this argument. Students could respond that they are not government employees, even if they are paid by the school, because student reporters traditionally are not thought of as government employees, student reporters do not receive the same benefits as other government employees and the school as government does not have the authority to control the actions of student reporters. In addition,

reporters for independent student news mediums could assert that their relationship with their public school is minimal and thus not enough to warrant designating them as government employees.

Once the privilege applies, a reporter is protected from disclosing sources of published or unpublished information and unpublished information, unless a litigant shows that "such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternative means."

The state supreme court recognized a qualified privilege against forced disclosure of confidential sources or information based on the shield law and the First Amendment in *Taylor v. Miskovsky*, 640 P.2d 959 [7 Med. L. Rptr. 2408] (Okla. 1981). In Taylor, the court threw out the contempt conviction of a reporter who refused to testify about confidential sources in a deposition for a civil lawsuit. The court balanced the reporter's privilege against the relevance of the information to a significant issue in the case and whether the information was available from alternative sources. The court in Taylor held that the litigant failed to prove that the information sought from the reporter was relevant to a significant issue in the lawsuit.

In a decision that did not implicate the state shield law, the court of criminal appeals ruled that the First Amendment does not protect reporters who violate the law while gathering news. *Stahl v. Oklahoma*, 9 Med. L. Rptr. 1945 (Okla. Crim. App. 1983). In Stahl, the court refused to overturn the trespass convictions of several reporters who entered private property while covering a demonstration.

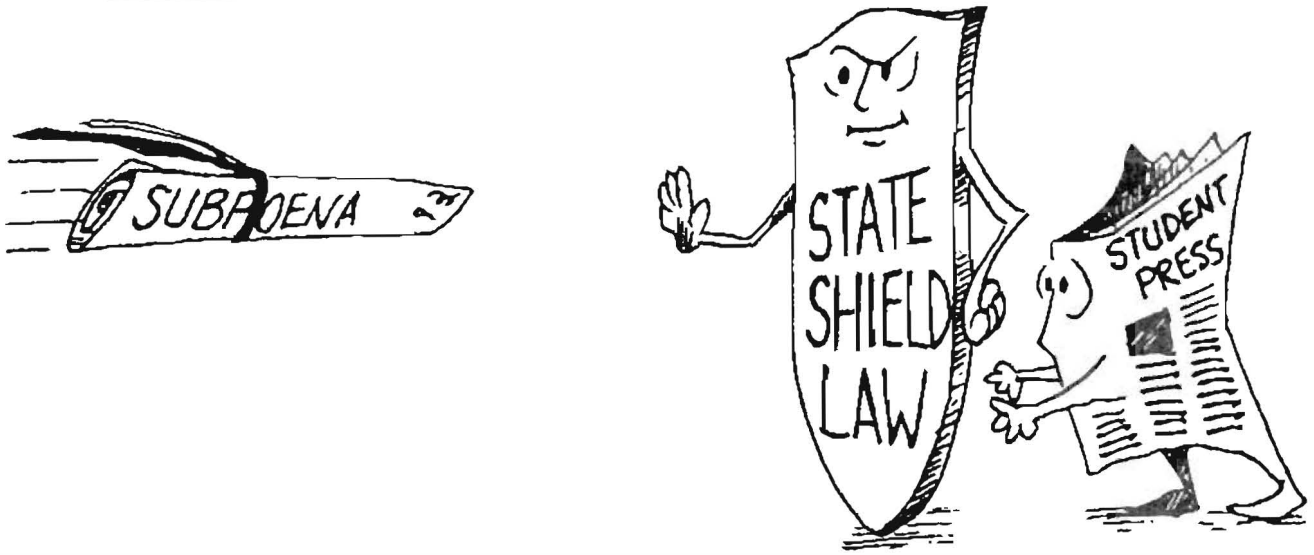
PENNSYLVANIA

Shield Law: 42 Pa. Cons. Stat. Ann. sec. 5942 (Purdon 1985 & Supp. 1990).

No court has ever decided whether the state shield law, which was enacted in 1937, protects student journalists from being forced to disclose confidential sources of information. The law provides a qualified privilege to reporters who are "engaged on, connected with, or employed by any newspaper of general circulation" or other news medium.

Although the law requires that newspapers be "of general circulation," neither the statute nor the courts have defined this term. The student news media might have to show that their product is disseminated outside the high school or

CONFIDENTIALITY



college community to qualify for the privilege.

The state supreme court has stated that the law provides a qualified privilege against compelled disclosure. *In re Taylor*, 412 Pa. 32, 193 A.2d 181 (1963). The court in Taylor rejected a reporter's claim that confidential sources and information were absolutely privileged under the First Amendment or state constitution. However, the court ruled that the privilege applied to confidential documents, as well as personal informants. Moreover, the court stated that the shield law should be liberally construed in favor of the news media when the meaning of the law is ambiguous.

In *Altemose Construction Co. v. Building & Construction Trades Council*, 443 F. Supp. 489 [2 Med. L. Rptr. 1879] (E.D. Pa. 1977), a federal district court held that the state shield law protects all sources whether confidential or not. A federal court of appeals stated that the privilege must be balanced against a criminal defendant's Sixth Amendment rights. *Riley v. Chester*, 612 F.2d 708 [5 Med. L. Rptr. 2161] (3d Cir. 1979).

In libel cases, a news medium-defendant may invoke the law to protect the confidentiality of sources and information. *Mazzella v. Philadelphia Newspapers Inc.*, 479 F. Supp. 523 (E.D.N.Y. 1979) (interpreting Pennsylvania's shield law). However, unpublished information may be discovered by a plaintiff in a libel case so long as the identity of the source of the information is not revealed. *Hatchard v. Westinghouse Broadcasting Co.*, 532 A.2d 346 (Pa. 1987).

RHODE ISLAND

Shield Law: R.I. Gen. Laws sec. 9-19.1-1 to 9-19.1-3 (1987 and Supp. 1990)

Student reporters may have a difficult time claiming the protections afforded by the state shield law. The law extends a qualified privilege to reporters who acquire confidential information "in [their] capacity" as reporters. Reporters are protected if they are "directly engaged in the gathering or presentation of news for any accredited newspaper" or other news media.

The law does not define what constitutes an "accredited newspaper or news medium." Student publications might not be considered "accredited" news mediums if the courts interpret that to mean that they have been determined appropriate for publishing legal notices.

However, many student publications could meet the law's definition of "newspaper." The law requires that newspapers and periodicals be "issued at regular intervals and have a paid circulation." This requirement obviously poses problems for student reporters on newspapers that do not have a paid circulation.

The law, unlike the shield laws in several states, does not require that a reporter be "employed by" the news media or be a "professional journalist."

The privilege may be overcome if 1) the reporter waives it by publishing the confidential information, 2) the information is sought from a reporter who is defendant in a libel case or 3) the information concerns a proceeding that is required to be secret under state law.

Litigants also may force disclosure of confidential information if they offer substantial evidence that the information is "necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life" and that the information is not available from alternative sources.

The state supreme court ruled in August that the shield law could not be invoked in a libel action by a reporter who obtained information from confidential sources. *Capuano v. The Outlet Co.*, 579 A.2d 469 (R.I. 1990). The court also said that there was no First Amendment privilege for the reporter.

A federal district court has held that partial disclosure of confidential information does not constitute a waiver of the privilege. *Fisher v. McGowan*, 585 F.Supp. 978 [10 Med. L. Rptr. 1650] (D.R.I. 1984).

VERMONT

Shield law: None.

Student reporters probably enjoy a qualified privilege against compelled disclosure of confidential information under the First Amendment and the state constitution. The supreme court extended a privilege based on the First Amendment to a reporter for the commercial press in *State v. St. Peter*, 132 Vt. 266, 315 A.2d 254 (1974). A state

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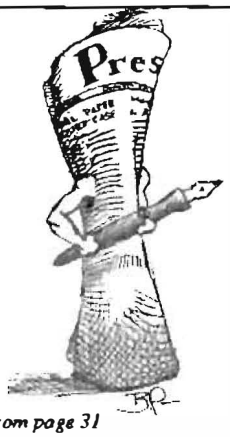

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could be based on the state constitution *Vermont v. Blais*, 6 Med. L. Rptr. 1537 (Orleans County Dist. Ct. 1980).

The privilege may be overcome in criminal cases if a party shows that the information is relevant and material to the issue of guilt or innocence and not available from other sources. *St. Peter.*

VIRGINIA

Shield law: None.

Student reporters probably could assert a qualified privilege against compelled disclosure of confidential sources and information. The supreme court never has decided whether students may assert the privilege. But in *Brown v. Commonwealth*, 214 Va. 755, 204 S.E.2d 429, cert. denied, 419 U.S. 966 (1974), the statesupreme court held that reporters were protected under the First Amendment from being forced to divulge confidential sources and information.

Because the court recognized a constitutional privilege to refuse to disclose confidential information, the court may be more likely to protect students or other persons engaged in newsgathering from compelled disclosure.

The court in Brown said that the privilege may be overcome in criminal cases only when the testimony is "essential to a fair trial."

In civil cases, the privilege may be overcome only in "rare and compelling circumstances." *Gilbert v. Allied Chemical Corp.*, 411 F. Supp. 505 (E.D. Va. 1976). The federal district court said that the party seeking disclosure must show that the information is crucial to the case and not available elsewhere. The court also held that the privilege could be overcome in libel cases when the reporter is a defendant. Also, the privilege only protects confidential information and sources.

WEST VIRGINIA

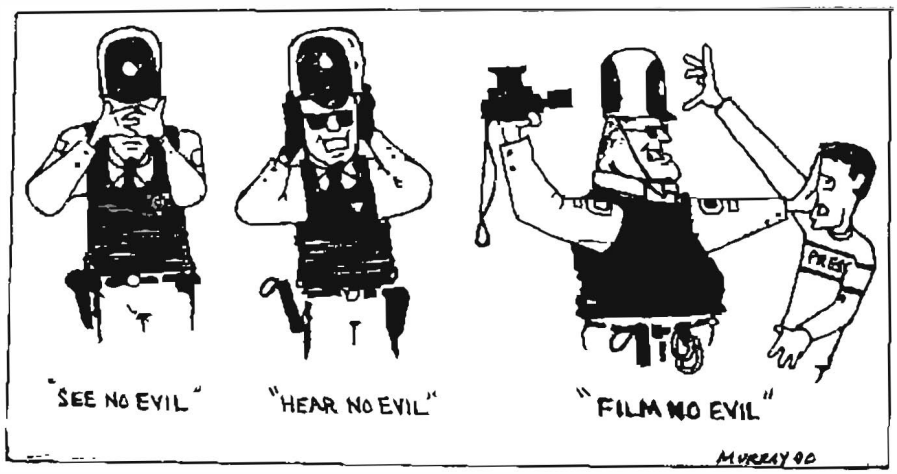
Shield law: None.

Student reporters probably would be protected from compelled disclosure under the state's recently recognized constitutional privilege. In *West Virginia v. Henry*, 389 S.E.2d 188 [177 Med. L. Rptr. 1627] (1989), the state supreme court of appeals held that the First Amendment protected reporters from compelled disclosure of information. Although the reporters in the case also contended that they were protected by the state constitution, the court did not address that argument. (A federal court in West Virginia previously had recognized a qualified privilege against disclosure based on the First Amendment. *Maurice v. NLRB*, 7 Med. L. Rptr. 2221 (S.D.W.Va. 1981), *rev'd on other grounds*, 691 F.2d 182 (4th Cir. 1982).

The court in Henry did not consider whether the testimonial privilege would apply to students.

It also refused to recognize an absolute privilege against compelled disclosure. The privilege may be overcome if the party seeking disclosure makes a "clear and specific showing" that the information is highly material and relevant, necessary or critical to the maintenance of the claim and unavailable from other sources.

The court in Henry stated that the privilege would be harder to overcome in civil cases. It also ruled that the privilege applies equally to confidential and non-confidential information.■



City Police Confiscate Student's Camera

MICHIGAN — The editor of Western Michigan University's student newspaper had his camera confiscated in September by a police officer for taking photos of another officer.

Nik Kalyani, editor in chief for the *Western Herald* student newspaper, was photographing Kalamazoo Township Police Officers patrolling the city. While Kalyani was taking photos of an officer writing a ticket in an off-campus housing area, a second officer took his camera away from him.

Kalyani protested and showed the officer his journalism identification, but officer Thomas Miles took the camera to his patrol car and exposed the film.

Kalyani filed a formal complaint against Officer Miles "to remind police officers of their Constitutional duty to allow journalists to do their jobs without hindrance."

Kalyani followed his complaint with a list of demands for the Kalamazoo Township Police Department. Kalyani requested that Officer Miles be reprimanded for his actions, that the department implement a policy on how to deal with the media and that the police department send Kalyani a letter of apology.

Kalyani says all demands have been met. He has no plans for legal action against the department.■

Montclair State Student Newspaper Cries Harassment

NEW JERSEY — The Montclair State College student newspaper is considering legal action after school officials twice confiscated or destroyed photographs taken by staff members.

In October, Montclair State track coach John Blanton forced *Montclarion* photography editor Kristin Marcussen to accompany him to his office and turn over a roll of film after she photographed him during practice. Blanton told her she either had to obtain his photo from the public relations office ask him to pose for one, but she could not take them as he coached the team.

Five months earlier, *Montclarion* staff writer Anthony DiPasquale claimed he was assaulted and film ripped from his camera when he tried to photograph an altercation between campus police and students during a party. Dipasquale said an unidentified police officer broke the camera's battery compartment while destroying the film.

Dipasquale is suing the school for the damage done to his camera. The *Montclarion* is exploring legal action for violation of its First Amendment rights.

The *Montclarion* contacted Peter Danta, a Hackensack, N.J., constitutional lawyer, who wrote a letter to the Montclair State president demanding that an investigation take place. In the letter, Danta said the actions of the campus police "clearly show a lack of understanding of the constitutional rights of news gatherers . . . and further show a lack of guidelines for the conduct of staff and campus police and a lack of training of the campus police."

Michael Walmsley, *Montclarion* editor in chief, said the newspaper felt it was time to start fighting back.

"If we stand back and let this happen to us, it's going to happen to other college newspapers," he said. "We're getting sick of this. We should be treated just like any other newspaper."

Montclair State administrators said they were investigating both incidents, but Walmsley and DiPasquale said they did not trust the school to take any action. DiPasquale said that when he complained about the May incident, the school put the burden of proof on him.

"The administration told me I had to get in touch with all the witnesses and get everyone to call them," he said. "I was working three jobs this summer, and that's what they were counting on."

DiPasquale said he did not file charges against the school because he wished to avoid a media circus. But he became convinced the school has no intention a punishing the officers, so he took action.

"They keep telling me 'We have an investigation going,' but I haven't even been contacted," he said. "What kind of investigation is that?"

Phyllis Miller, director of communications at Montclair State, said the university could not comment on the incident involving DiPasquale since because it is in litigation. Miller said Danta's letter requested a meeting about the second incident. The only action that appeared certain at press time was that the university was planning an open forum on the freedom of the student press.■

Tulsa School District Loses Libel Suit

OKLAHOMA — A nineteen year-old mother of two won $5,001 in a libel suit against the Tulsa school district for articles published in her alma mater's student newspaper.

Tina McClellan sued because she claimed statements published in McLain High School's student newspaper *Scott's World* between 1988-1989 were libelous, invaded her privacy and caused her to suffer emotional distress.

Although most of the comments used only McClellan's initials, her lawyer, Robert Durbin said it was clear the references were to her. McClellan's mother said Tina was the only female student at McLain High School at the time with her daughter's initials.

The "Rumors of the Year" section of the May 1988 edition of *Scott's World* said, "T.M. is pregnant again."

The November 1988 issue said, "T.M. is the real umfoofoo," using a term from Eddie Murphy's film "Raw," defined as an African woman brought to the U.S. to be a servant and sexual toy.

During her senior year of 1989, the "Predictions" section of the May edition stated, "In the year 2006 maybe Tina McClellan and Noni will stop sharing Quiller." Noni is Tina's mother's nickname and Quiller is a friend of the family.

"In the year 2010 maybe T.M. will finally figure out who the father of her child really is."

Tina's mother said that because of the statements Tina did not want to go to school, eat or take care of her children.

Tim Neller, faculty adviser of the journalism class testified he did not see the 1989 statements and did not know who inserted them.

The school district denied the statements were defamatory.

McClellan, who sought $400,000.00 in damages, has since moved to Kansas.

The school district has no plans at this time to appeal.■

Beware Libel: It Can Pack A Punch

Sometimes the Road to Court is Paved with Good Intentions

Although many reporters believe that good journalists need only be vaguely aware of the possibility of libel suits while bad journalists should live in constant fear of them, libel is more complex than sloppy journalism.

Can you, the reporter, call someone else a cheat or a thief in a story just because someone else says it? Is there any difference between writing about the school's president or principal and a random student? Are you legally protected when you make certain statements in an editorial or column?

Every journalist needs to understand the specifics of libel law. An individual student reporter and editor as well as their publication or broadcast station could be responsible for significant money damages if they libel someone. They could also ruin the credibility of their news medium for a long time to come.

A crucial aspect of libel law is that it centers upon how the expression and communication of an information affects an individual's reputation. It is not always clear when a comment in a story about another person will rise to the level of providing the basis for a legal claim.

Thus in looking for potentially libelous statements editors and reporters must be aware of the impact of a particular statement, the context in which it is made, who it is describing and who it is that is receiving (reading or hearing) the statement.

All student journalists should be concerned about libel because they can commit it in student newspapers, yearbooks and over the airwaves. But if they understand the law and follow its limitations, they can avoid libel and still do their job.

Free Speech Versus Reputation

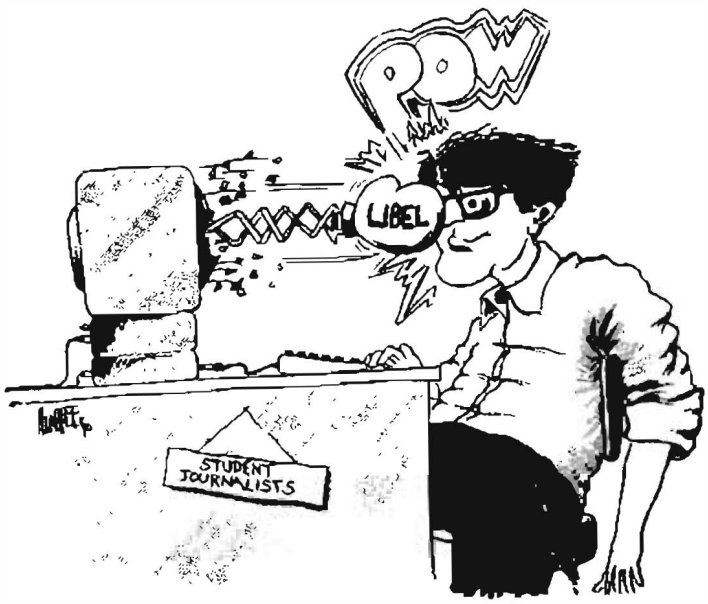
Libel law reflects a tension between the importance our law places upon freedom of speech and on an individual's right to preserve her good reputation. Reputation is not purely an abstract concept. A story that contains a libelous statement about a person can create measurable financial injury for that person that can result in money judgments against you or your newspaper or yearbook.

Reputation is the key concept. The student journalist must ask herself how what she has written changes the way people think about a particular individual. For example, you might want to profile a school administrator in a story you are writing for the newspaper. There are any number of interesting facts, rumors and allegations you have gathered that you might want to include in the article such as information that the administrator was a Rhodes scholar, worked for a large corporation before switching to academia, was fired from his or her last college job or is a convicted felon.

Each of these items changes the way the audience of your article thinks about the school administrator in a different way, and each requires a different level of care in substantiating them before they can be published.

No school administrator would likely sue you or your paper for mistakenly identifying him as a Rhodes scholar or former corporate executive. Instead, these mistakes will just reflect poorly on the credibility of your newspaper. But if you write that he was fired from a job when he was not, or was convicted of a crime he was never charged with, then a libel lawsuit could follow.

Thus, libel has been described by courts as any printed communication — words, pictures, and sometimes broadcasts, — that tends to expose one to public hatred, shame, contempt or disgrace or damages one's reputation in the community or injures one's livelihood. The spoken form of libel is called slander. Libel and slander jointly fall under the general heading of defamation.



In order for a person to prove that he has been defamed, he must establish each of the following four elements: publication, identification, injury and fault.

Publication. The statement was "published," i.e., communicated to a third party. This does not mean that the statement has to be in a newspaper and circulated; the defamatory statement could simply be on a computer screen in

the newsroom and read by other staff members to constitute publication.

Identification. The person supposedly libeled was identified in the article. If the publication does not specifically refer to the individual by name, it must be shown that some people who read the story believed the person claiming to have been defamed had been identified.

This leads to two types of situations. In the first, a journalist or newspaper is not protected simply by the fact that they do not use the individual's name. If the paper makes unsubstantiated comments about the brutality and unprofessional behavior of campus law enforcement as evidenced by a pattern of campus police actions, it is possible to libel the individual who is in charge of the campus police if some readers of the article believed the article was describing the school's Director of Public Safety.

It is also possible to libel an individual by making general statements about entire group if the group is small enough. For example, the charge that one unnamed teacher at Smith High School uses illegal drugs does not libel the 80 teachers at the school. However, the charge that most math teachers at Athens High School use illegal drugs could libel any of the math teachers. The courts have yet to define precisely the group size limit for individuals seeking libel damages because of statements made about a group that includes them, but a rule of thumb seems to be that if the group contains fewer than 25 persons, they might have grounds to substantiate a libel charge.

Injury. The person who was allegedly defamed was injured, i.e., his reputation must be damaged in the eyes of the community. The term "community" can mean a small segment of society. For example, the charge that the school's valedictorian cheated on an exam could be libelous even though his reputation was damaged only among a relatively small group of students and teachers. Depending on the type of libel, the supposedly injured person may be required to prove that he actually lost money because of the libel.

Fault. The defendant was at fault in publishing the statement. There can be no liability without fault. Public officials such as government office holders and top-ranking public school administrators, or public figures such as rock stars and professional athletes, must prove a higher level of fault than an ordinary person. This will be discussed later in the public official/ public figure section.

Republication of a Libel is Still a Libel

One pervasive misconception among journalists is that if they put quotation marks around a statement and identify its source, they will not be responsible for libeling someone. According to the law, however, the republication of a libel is still a libel.

Thus if the captain of the football team is mad at being benched and goes on the record as saying the football coach has a drinking problem and physically assaults the players on the team, a newspaper or yearbook that publishes it is not protected from legal action merely because the captain is the origin of the comment. Unless the statement is true, the newspaper may have merely compounded a wrong by communicating a baseless statement to a large group of other people. A publication usually is responsible for any libelous statement it prints even though the statement is made in a letter to the editor, appears in an advertisement or is attributed to a third party.

Defenses

A legal defense is a specific exception carved out of the general rule which protects a journalist from being held responsible for what in other circumstances would be actionable libel. There are a number of defenses available to the media when sued for libel including truth, privilege and fair comment. The media defendants have the burden of proving these defenses in a court of law, but if they are successful, then the allegedly defamed person recovers nothing.

Truth. Truth is an absolute defense to a charge of libel. It goes without saying that believing something is true and proving it in a court of law are two different things. In *Philadelphia Newspapers v. Hepps*,[1] the Supreme Court ruled that the burden of proving the falsity and fault of a statement rests with the person alleging that he was defamed. This 1986 case makes winning a libel suit substantially more difficult for the party claiming he was libeled because previous to the decision some courts said it was up to the media defendant to prove the truth of the challenged statement.

Thus, only if the party who was supposedly injured by the statement were able to present some competent evidence that the charges are false will the issue be decided by a judge or jury.

A publication usually is responsible for any libelous statement it prints even though the statement is made in a letter to the editor, appears in an advertisement or is attributed to a third party.

Moreover, the charge need only be "substantially" true. For example, if the paper were to report that Mr. Smith was a habitual criminal, it might be libelous if Mr. Smith could prove only one conviction. However, the charge that Mr. Smith was convicted of embezzling $1,500 would not be libelous if the evidence were to show a conviction of embezzling only $1,200.

Privilege. Most state grants a privilege to publish *fair* and *accurate* accounts of *official* proceedings and reports. The media legally may not need to verify the accuracy of charges made in such reports and proceedings although ethical considerations and professional-

Continued on page 36

continued from page 35

ism might demand more. The best example of such a privilege is the reporting of court proceedings. It would not be libelous to report that the high school student body president had been charged with drunk driving. However, if he had been acquitted, the paper would have to report that fact also, to be fair and accurate, or lose its privilege.

What are "official reports and proceedings?" Meetings are "official" if there is a state or local law that requires that the meetings take place. Meetings, records and reports of the following types of agencies generally have been held to be "official:" school boards, boards of regents, city councils, courts of law, legislatures and most quasi-judicial, legislative and executive agencies.

The Public Official/Public Figure Rule

In the 1964 case, *New York Times Co. v. Sullivan*,[2] the Supreme Court created a new constitutional defense to libel suits. The Court said that if the person alleging injury were a "public official," then in order for her to win, she would have to prove that the false and damaging statement was published "with actual malice" - with actual knowledge that the statement was false or with reckless disregard as to whether it was false or not. This is a very heavy burden on someone suing for libel damages. In effect, the supposedly injured party must often prove that the defendant in fact entertained serious doubts as to the truth of the charges published. In a later case the Supreme Court said these same kind of protections applied to cases involving certain types of "public figures."[3]

For private individuals, those who are not public officials or public figures, the level of fault necessary is typically much lower. The standard varies from state to state, but generally the court asks whether the editor, reporter or publisher used that degree of care that the average or reasonable editor, reporter or publisher would use. Usually the issue of negligence concerns what actions the news medium took to verify the accuracy of the charges made.

As a practical matter, many libel suits are won or lost on the question of whether the person claiming injury qualifies as public official or public figure or is a purely "private" individual.

A journalist should use the examples listed below as a rough signpost for whether a person is or is not a public figure. There are many gray areas to the inquiry. For example, is a private person involved in a public issue a public figure or a private figure? When, if ever, does a public figure return to private status? And what is the cutoff point between being a low level government official who is a private figure and a government official who becomes a public figure? Due to the difficulty of the determination (even courts are inconsistent in making these decisions), a student journalist should never assume that his assessment of the status of the potential libel victim is correct. Only the courts can make this determination, and their decisions will vary from fact situation to fact situation and jurisdiction to jurisdiction. The status of the person being reported upon should never affect the care with which reporting is done.

Generally, a public figure is one who has voluntarily thrust himself or herself into the public limelight either by virtue of achievements (athletic, political or otherwise) or attempts to influence the outcome of a public controversy.

A public official is one who has, or appears to the public to have, a *substantial responsibility* for or control over the conduct of government affairs. A person is not a public official just because he is paid with government funds. School board members, school superintendents, principals, university trustees and college administrators at public schools are all probably public officials. Some state courts have determined that public school teachers are public officials while others have come to the opposite conclusion. If you have a question, check with the SPLC to determine what the law is in your state.

Generally, a public figure is one who has *voluntarily* thrust himself into the public limelight either by virtue of achievements (athletic, political, or otherwise) or attempts to influence the outcome of a public controversy.[4]

Opinion Versus Fact

Until the recent Supreme Court decision in *Milkovich v. Lorain Journal Co.*,[5] most journalists and media lawyers believed that there was an absolute privilege for statements of opinion as opposed to statements of fact. But now editorials, columns, reviews and letters to the editor might no longer be the safe-haven they were once thought to be.

In an earlier case, *Gertz v. Robert Welch, Inc.*, the Supreme Court wrote, "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas."[6] This seemed to suggest that since opinions could never be proved either true or false, they could never contain the same potential for causing harm to an individual as a false fact.

But of course the distinction between fact and opinion is not always clear because often a reporter or editor will arrive at certain opinions on the basis of his or her understanding of certain facts. Thus the Court in *Milkovich* determined that opinion based on a description of facts that would otherwise be considered libel, is no less libelous merely because it is labeled opinion.

In *Milkovich* the Court ruled that statements in a reporter's column which implied that a high school wrestling coach lied in a judicial proceeding were sufficiently based in fact to be measured as true or false, thereby providing the grounds for libel.[7]

Thus, even though the offending column contained all the characteristics of an opinion piece, it was located on the sports page ("a traditional haven for cajoling, invective and hyperbole") under the large caption "TD [the columnist's initial] Says..." accompa-

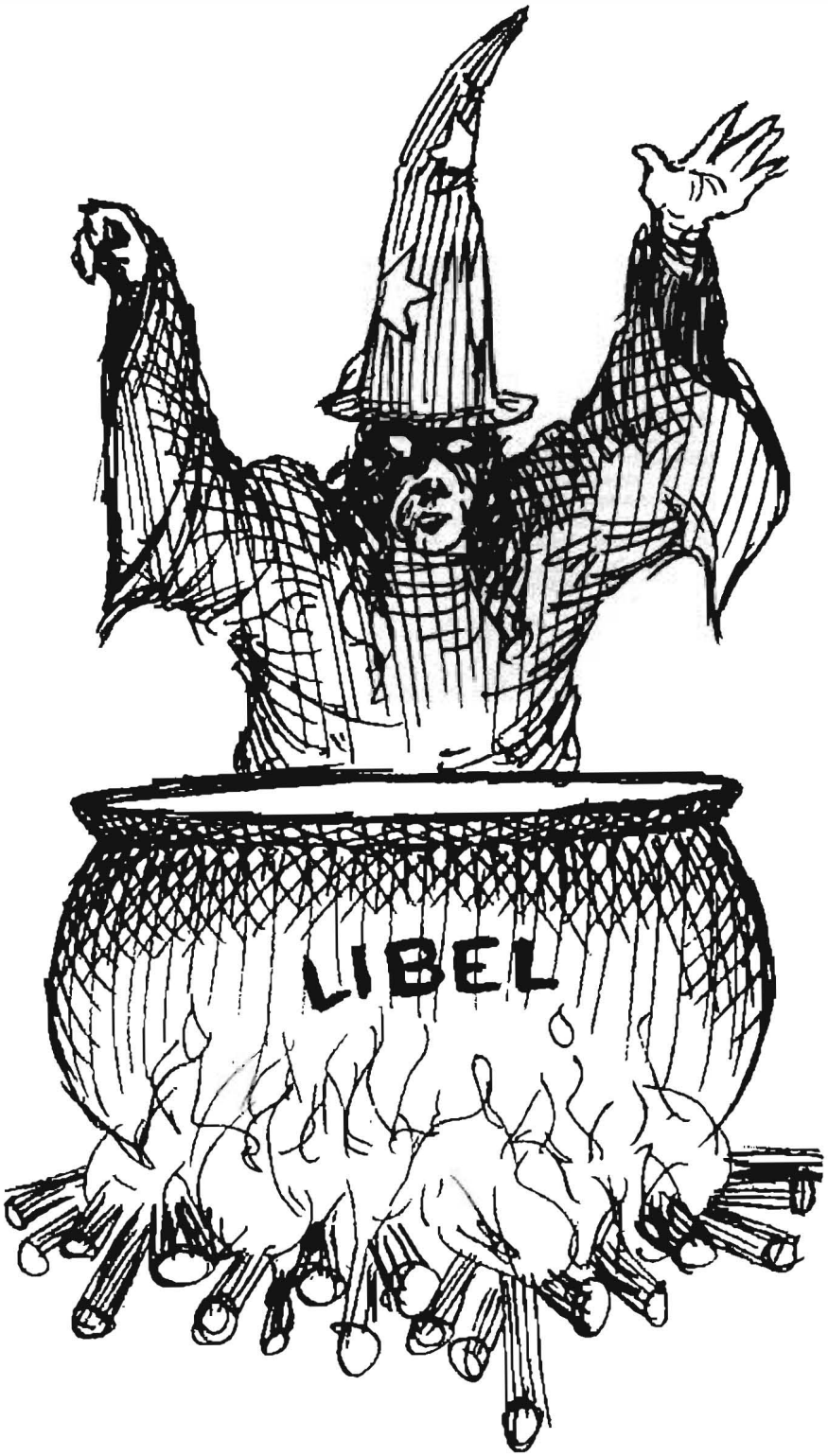
nied by a small box photograph of the columnist, the Court nevertheless determined that statements contained in the piece alleging that the coach lied during an official hearing could be proved false and libelous. The Court observed that the statements "'In my opinion Jones is a liar,' can cause as much damage to reputation as the statement 'Jones is a liar.'"[8]

But the Court also noted that it believed that there were sufficient constitutional safeguards in place that its decision would work no hardship on the press. In particular, a person claiming injury in an action against the media must still prove that the statement is false. And pure opinion addressing matters of public concern "which does not contain a provably false factual connotation" is still fully protected by the Constitution according to the court.

Additionally, statements which no reasonable person would believe to be stating actual facts, such as satire and rhetorical hyperbole, remain protected.[9] Also, the allegedly injured party contemplating legal action must still prove some level of fault. Finally, if the supposedly injured party wins, she must still overcome a close scrutiny by reviewing courts.[10]

While it is not clear whether *Milkovich* will lead to significantly more libel judgments against the media, it is already evident that prospective plaintiffs are testing the waters to see whether it will be easier to obtain a judgment for what had previously been considered protected opinion pieces.

In the meantime, vociferous columnists, editors and other journalists should not feel the chill of censorship and change the way they do their jobs. Instead, they should exercise some healthy common sense and use reasonable care in substantiating all potentially damaging statements. This advice will also stand opinion page editors in good stead when attempting to determine whether statements in letters to the editors and columns cross the line and become libelous because of their factual basis.■



Notes

[1] *Philadelphia Newspapers v. Hepps*, 475 U.S. 767 (1986).

[2] *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964).

[3] *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967).

[4] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974).

[5] *Milkovich v. Lorain Journal Co.*, 110 S. Ct. 2695 (1990).

[6] *Gertz*, 418 U.S. 323 at 339-340.

[7] *Milkovich*, 110 S. Ct. at 2707.

[8] *Hepps*.

[9] *Milkovich*, 110 S. Ct. at 2706.

[10] *Id.* at 2707.

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