

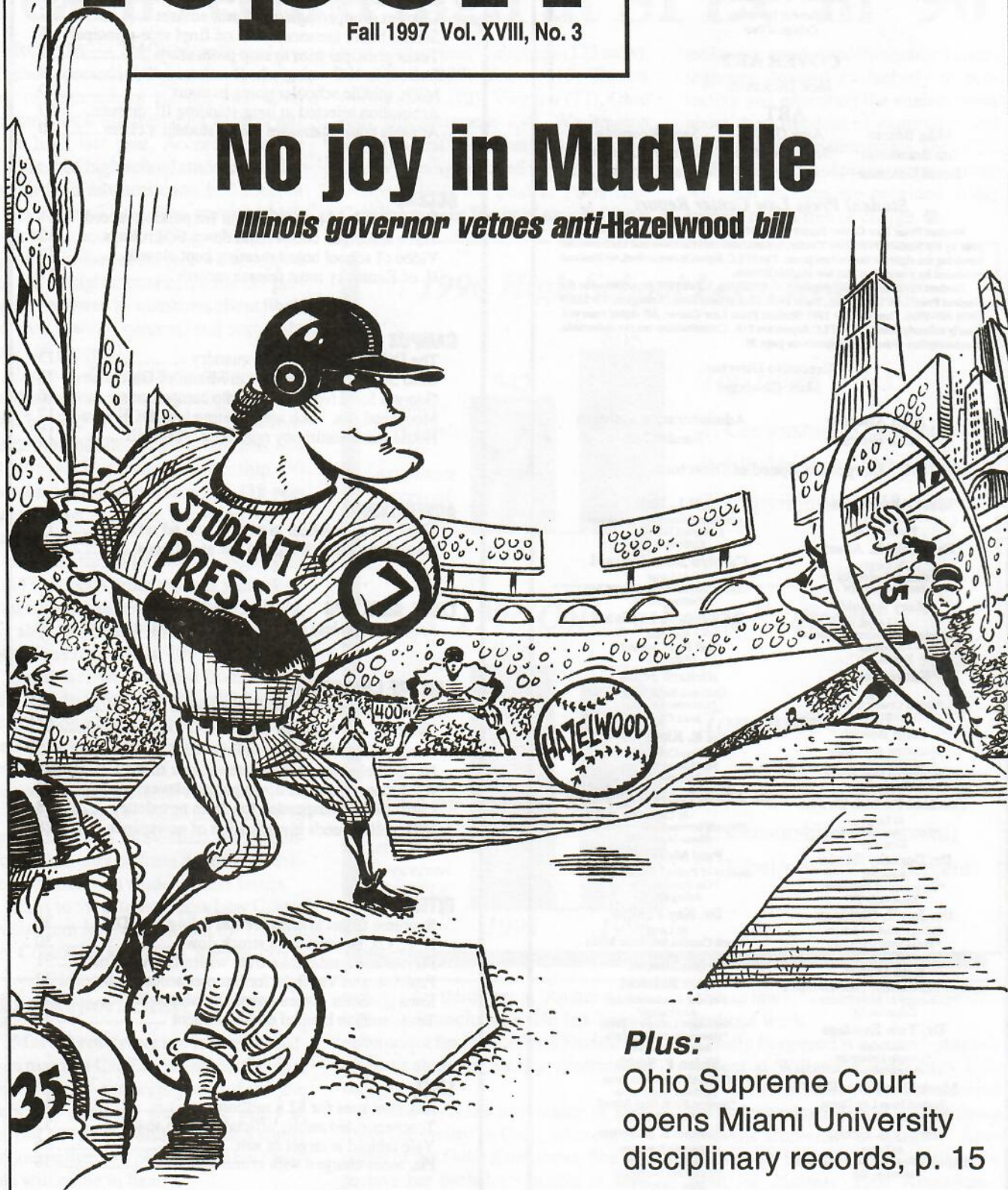
student press law center

report

Fall 1997 Vol. XVIII, No. 3

No joy in Mudville

Illinois governor vetoes anti-Hazelwood bill



Plus:
Ohio Supreme Court
opens Miami University
disciplinary records, p. 15

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Student Press Law Center Report

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Legal requests from high schools reach record high at SPLC in '96

VIRGINIA — The Student Press Law Center reported in August that the number of high school student journalists seeking legal assistance hit another all-time high last year. According to the Center, 605 high school student journalists or their advisers contacted them in 1996 for legal help. The previous high was 542, recorded during 1995. Once again, questions about censorship topped the list of high school concerns (37 percent), followed by questions about libel/privacy law (30 percent) and copyright law (18 percent).

Requests for legal help from college student media were down slightly, from 806 in 1995 to 771 last year. Questions regarding public access to records and meetings (31 percent), censorship (30 percent) and libel/privacy law (18 percent) were most on the mind of the college media.

Overall, the SPLC staff responded to 1,443 requests from student journalists and advisers seeking legal help in 1996, up about 2 percent from the 1,409 legal questions received in 1995.

Legal assistance ranged from providing information over the telephone to drafting opinion letters to making referrals to local attorneys who are members of the Student Press Law Center's pro bono Attorney Referral Network.

The Center received an additional 413 questions from individuals seeking information only or from the media seeking comment on student press issues.

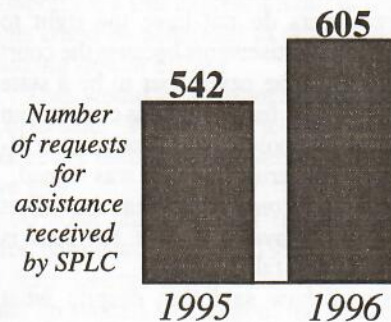
Calls to the Student Press Law Center came from forty-nine states, the District of Columbia and three foreign coun-

tries. Callers from California (173 calls), New York (125), Texas (115), Illinois (88), Florida (72), Virginia (72), Ohio (66), Massachusetts (64), Washington State (63) and Michigan (58) topped the list. Wyoming reported no calls.

Since 1974, the Student Press Law Center has been the only national legal

assistance agency and information clearinghouse devoted exclusively to protecting and educating the student press about their freedom of expression and freedom of information rights. The SPLC is a 501(c)(3) nonprofit organization. All legal services are provided to the student media free of charge. ■

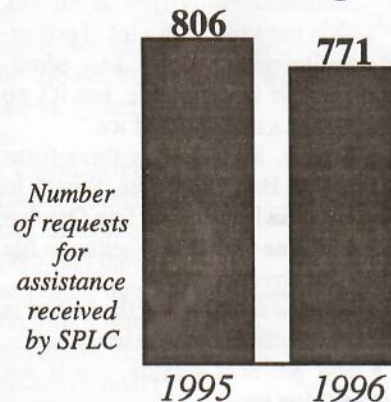
1996 High School Legal Requests



Top three types:

1. Censorship (37 percent)
2. Libel/privacy (30 percent)
3. Copyright law (18 percent)

1996 College Legal Requests



Top three types:

1. Access to records and meetings (31 percent)
2. Censorship (30 percent)
3. Libel/privacy (18 percent)

The Report Staff

Mark Armstrong is a senior journalism major at Cal Poly, San Luis Obispo, and former managing editor of the school's *Mustang Daily*. He plans to attend law school and continue a career in journalism in a place where his Spanish will come in handy.

Mike Becker is a political science

major in his third year at Amherst College in Massachusetts. He has been a news editor for *The Amherst Student* and plans to study on another continent in the spring.

Jennie Griveas is a senior at Kent State University in Ohio, where she is editor of the *Daily Kent Stater*. She will receive her bachelor's degree in news journalism this year, and plans on at-

tending law school following her undergraduate work.

Holly Ferguson is a second-year law student at Willamette University College of Law in Salem, Ore. She received her undergraduate degree in advertising from the University of Oregon. After graduation, Holly hopes to continue the fight for students' First Amendment rights. ■



Illinois swings... and misses

*Gov. Jim Edgar vetoes legislation
that would have protected student media*

ILLINOIS — In a surprise move, Gov. Jim Edgar (R) vetoed an amendment to the state's School Code Aug. 10 that would have guaranteed greater rights for high school student journalists in the state.

House Bill 154 had met with little opposition in the legislature, raising the hopes of free press advocates.

Rep. Mary Lou Cowlshaw (R-Naperville) introduced the Illinois Student Publications Act originally this year, and the House approved it on April 14 by an overwhelming 109-4 vote. On May 15 the bill, sponsored by Sen. Kathy Parker (R-Northfield) passed the Senate unanimously, 57-0.

Illinois legislators have been trying for eight years to pass student free expression legislation. The measure died in committee in 1989 and was blocked by the Senate's Republican majority in 1993 before Cowlshaw reintroduced it this year.

Edgar wrote in his veto message that he believed "the legislation creates a situation in which the entity ultimately responsible for the newspaper — the school board — cannot exercise full control over the paper's content."

Mary Dixon of the American Civil Liberties Union of Illinois said that with Edgar expressing the need for "total control," little could have been done to save the bill.

Dixon and Cowlshaw said that the U.S. Court of Appeals First Circuit's decision in the case of *Yeo v. Town of Lexington* on June 6 had a damaging effect on the bill's progress (See *COURT*, page 18).

Although the June 6 court decision was withdrawn on June 27, the Illinois School Management Alliance (ISMA), an organization of school boards and administrators that had previously en-

Cover Story

dorsed the Illinois measure, withdrew its support.

The *Yeo* decision held that student newspapers do not have the right to refuse advertisements because the court concluded the newspaper to be a state actor. ISMA feared that this could mean Illinois schools would face greater liability concerns if the bill was signed.

ISMA recommended that the bill at least be delayed until the *Yeo* case is reheard this fall.

Cowlshaw said that despite what looked like tremendous support from both the House and Senate for the bill, she was still unsure of the chances that they could successfully override the veto.

"This is not a bill with a lot of powerful constituencies," Cowlshaw admitted. "Support is very wide, but it's no thicker than a thin sheet of ice."

In Illinois, it requires a three-fifths vote in the House and the Senate to override. Cowlshaw said late October is the deadline to decide whether to file a motion to override.

Cowlshaw said whether the answer is with a veto override or with introduction of a new bill next session, she is not ready to give up.

The bill provided that "public high school students have freedom of expression through speech and press and that, subject to certain limitations, expressions contained in a high school newspaper shall not be subject to prior restraint, and would authorize proceedings for injunctive or declaratory relief to secure such rights." The bill would have created stronger free press protections than Illinois students have had since the Supreme Court's 1988

Hazelwood School District v. Kuhlmeier decision.

Cowlshaw became involved in the development of the Illinois Student Publications Act when a high school in her district suffered from an incident of censorship.

Before putting together an actual bill, Cowlshaw — who holds a degree in journalism — created an ad-hoc committee that included publishers from major newspapers in the Chicago area. At a public hearing, student journalists from across the state testified about the problems they had experienced.

"After all these students told their horror stories," Cowlshaw said, "[the committee] saw there was a real problem out there that needed to be fixed."

Fighting Hazelwood

Six states already have student free press legislation on the books:

- California (1976)
- Massachusetts (1988)
- Iowa (1989)
- Colorado (1990)
- Kansas (1992)
- Arkansas (1995)

Lobbyists, particularly from the Illinois Journalism Education Association, pressed hard for the governor to sign the bill during the summer. Dixon said numerous letters were sent to Edgar supporting the bill by members of the adviser's group, the ACLU and the Illinois Federation of Teachers.

James Tidwell, executive secretary of the IJEA, said that after all the hard work to move the legislation forward, the veto was "definitely discouraging."

"It's really bizarre — passing as overwhelmingly as it did [in the House and Senate], and now this happening," Tidwell said. ■

Sink or swim

Other states keep up the effort to protect free expression by law

Illinois won bipartisan support for a student free expression bill, but legislation elsewhere hardly made it out of the gate

The Supreme Court's 1988 *Hazelwood v. Kuhlmeier* decision gave greater power to administrators over content in student media, but state legislators continue fighting to restore free speech protections through legislation.

In **Missouri**, Rep. Joan Bray (D-University City) introduced a freedom of expression bill in January for the fourth time. But the bill failed to get voted out of the education committee after hearings in March.

"We've lost some of the people who supported us [before]," Bray said, adding that she has already made several concessions in the bill's wording to opponents.

Bray cited the school board lobby as powerful opposition that has made it difficult for people to "hear arguments well."

Despite the lack of progress this session, Bray plans to reintroduce the bill in January.

"I know there are a lot of people who want to keep trying," she said.

In a separate effort, State Sen. Joe Eddie Lopez (D-Phoenix) of **Arizona** introduced a student free press bill during the last session that was defeated 6-1 by the Senate Education and Judicial Committee.

While Lopez "went in very excited about it," he said there turned out to be bipartisan opposition.

The legislation was introduced on the last day to introduce bills and Lopez did not have much time to build up a lobbying effort, he said.

Lopez also postulated that a lack of support from the school board association turned Democrats away while Republicans simply did not want to remove any authority from principals.

"I am going to reintroduce it and do a little more lobbying," Lopez said, add-

ing that he may also change some of the wording to move the bill along.

"This year I want to put [the bill] in early. There will be more opportunity to discuss and get more testimony," Lopez said.

Lopez also said that the widespread support for a free expression bill in Illinois could be beneficial to other states making similar efforts.

"That would be extremely helpful," Lopez said. "We have to show that other states are taking it more seriously than we are."

Arizona legislation on free expression has circulated since 1992.

Rep. George Eighmey (D-Portland) had no success in **Oregon**; the student free expression bill he sponsored was not even brought out for actual debate in the House Education Committee.

Eighmey introduced similar bills in 1989 and 1995, but the latest failure throws the bill's future into question; because of term limits, Eighmey cannot hold his position in the legislature after this term.

Legislation for student expression has been proposed in **Maine** by Augusta attorney Jed Davis who said a bill will definitely be introduced during the next session in January.

In **Michigan**, Rep. Kirk Profit (D-Ypsilanti) had planned to reintroduce a student free expression bill that he brought to the House Education Committee last year, but he never introduced

a bill this session.

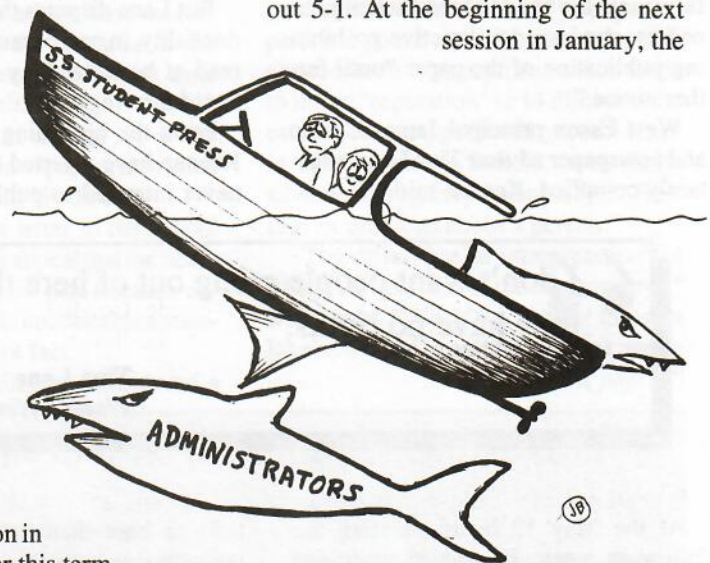
Cheryl Pell of the Michigan Interscholastic Press Association (MIPA) said her organization has made it a priority to find a new sponsor for the fall.

Pell said the previous piece of legislation ran into problems because it was too broad and tried to insure student freedom on everything from the newspaper to T-shirts to drama productions.

"We're going after just a publications policy instead," Pell said.

MIPA is sending a draft proposal to Rep. Nick Ciaramitaro (D-Roseville), a potential sponsor.

The Student Freedom of Expression Act in **Nebraska** went through committee hearings in the spring and was voted out 5-1. At the beginning of the next session in January, the



bill can be scheduled for the first stage of debate on the House floor.

An aide to state Sen. Chris Beutler, the bill's sponsor, said the debate in the committee hearing centered on the potential for "nastiness" in publications given too little supervision.

In 1995, a similar bill also passed out of committee but never made it onto the floor for debate at the next session. ■

Board president blocks editors' use of confidential report on investigation

NEW JERSEY — Lawsuits abound at West Essex High School, and the next party filing suit may be the editors of the student newspaper.

Editor in chief Jennifer Keenan is leading the charge against a prior restraint order that crippled the ability of the *Wessex Wire* to report on a scandal involving school superintendent Gary Vitta.

After the West Essex Regional School District Board of Education announced on April 24 that an investigation of Vitta had taken place, editors of the *Wire* decided to investigate and report the probe in an upcoming issue.

Before the article was written, however, about nine pages of the school board's 50-page confidential report were leaked to student editors.

When board president Kathy Kaczynski learned that the report had fallen into the hands of the student journalists, she issued a directive prohibiting publication of the paper "until further notice."

West Essex principal James Corino and newspaper adviser Tina Lane reluctantly complied, Keenan said.

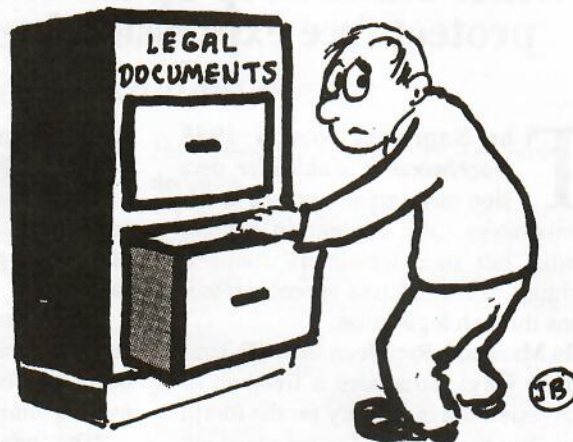
Still forbidden from using the report excerpts, the *Wire* published a story on May 27 detailing some of the complaints against Vitta based on Tandler's legal complaint. While the *Wire* quotes some examples of Vitta's alleged anti-Semitism, the student newspaper still did not mention any examples of the alleged sexual harassment.

A May 15 issue of the local newspaper, *The Progress*, had already detailed examples of the alleged anti-Semitism and sexual harassment.

Despite finally being able to report on the allegations, the *Wire* has been forced to continue operating under a restriction against using the confidential report.

But Lane disputes the report's confidentiality, in part because excerpts were read at both the May 12 and June 23 board meetings.

From the beginning, both Lane and Keenan have asserted that the students never intended to publish a biased ar-



ties, "they [affected parties] would be free to do with it as they saw fit, including showing it to witnesses, submitting to a court, and even publishing it."

Despite the internal disagreement within the school board, the *Wire* has not gone ahead and discussed the report in print directly or published any excerpts because the students "want to maintain their contention of responsibility," Lane said.

Rather than publishing an underground paper or even just defying Kaczynski's order directly, the editors have "decided to listen and fight it," and are considering filing a lawsuit.

"We maintain that we are a public forum," Lane said, adding that she would like the school board to see "this is the law and this really supersedes what you are doing."

If Keenan and Lane can show that the *Wire* was well established as a "public forum," the paper would be exempt from the 1988 Supreme Court decision *Hazelwood School District v. Kuhlmeier* which placed greater limits on high school journalists.

Furthermore, previous cases have held that the New Jersey state constitution provides even greater free expression protection than the First Amendment.

"We really want to test the state constitution," Lane said.

"I don't want people going out of here thinking they have no rights." ■

"I don't want people going out of here thinking they have no rights."

Tina Lane
Wessex Wire adviser

At the May 12 board meeting the following week, Kaczynski rescinded her order against publication but left in place a restriction on printing excerpts from the report.

In the meantime, vice principal of academic affairs Jo Tandler filed a formal lawsuit against the superintendent and the school board. The lawsuit alleged that Vitta made several anti-Semitic remarks and sexually harassed female employees.

ticle or base their article entirely on inconclusive excerpts.

In articles in the *Wire*, in fact, Keenan and Lane take issue with the fact that the board censored the article before even having seen it.

Complicating the issue even further, however, is a statement read by board members Ron Davison and Richard Schwartz at the May 12 meeting that said once the report was issued and copies were given to the affected par-

Paper distribution halted for ethics headline

Plastic bag recycling drive fuels controversy; school invokes its own definition of libel

MARYLAND — What student editors thought was a clever headline snowballed into a censorship conflict that threatens the future of the student newspaper at Governor Thomas Johnson High School in Frederick.

Principal Joseph Heidel refused to allow the 1,600 copies of the year-end issue of *The Governor* to be distributed when a teacher objected to the headline "Students bag ethics in contest."

The story referred to a plastic bag recycling drive. The article related that teacher Richard McDonough's philosophy class won the competition by purchasing unused bags from a grocery store and turning them in for recycling.

Heidel had no objection to the story itself, but told the newspaper's adviser not to distribute the papers because the headline was libelous.

"[The administration] exercised powers we didn't really think they had," said student editor Hillary Walker.

Walker contacted the Student Press Law Center who helped the editors determine that the headline was, in fact, not libelous. Statements of opinion that neither state nor imply facts are not defamatory.

According to Walker, Heidel said he still sided with McDonough and that newspapers could only be distributed if the headline was changed.

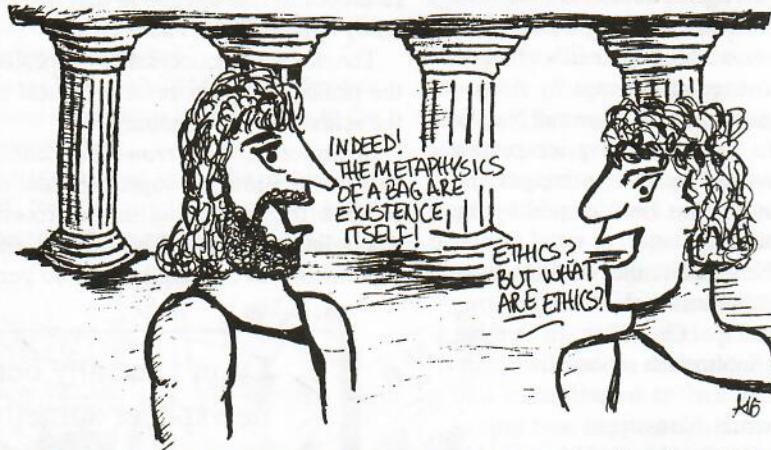
"We wanted to publish it the way it was," Walker said.

The student editors called a staff meeting and told their reporters that anyone who wanted to pull their stories from the "revised" edition could do so.

Even though Walker warned the staff members that withdrawing their articles "might mean sacrificing the paper," the majority of students chose to protest the censorship and pulled their stories. As a result, Walker presented pages full of blank spaces to Heidel for prior review.

Walker said that Heidel told her he was "disappointed" and that he would not allow the blank pages to be printed because of the "embarrassment."

While the students unsuccessfully appealed Heidel's decision to Director



of High Schools Joseph Polce, they attempted to reach some compromise with the principal, Walker said.

Heidel rejected offers to include an insert clarifying that no accusation on McDonough's character was intended or to cut out the headline manually from every copy.

Instead, the only compromise reached allowed the editors to distribute a four-page senior section. The rest of the newspapers remain undistributed and the editors are appealing the decision to the associate superintendent through their lawyer, Richard Peltz.

"The remedy I'm asking for is the distribution of the newspapers as printed first thing in the fall," Peltz said.

Peltz argues in a letter to the school district outlining the appeal that the headline is not libelous, in part because describing someone as unethical is a statement of opinion, not fact.

Even if the headline is considered a

statement or implication of fact, however, Peltz said that in this specific case, "I would find that it's true."

But Assistant Superintendent of Legal Affairs Mark Blom explained that the Board of Education of Frederick County has its own definition of libel for student publications that does not match the legal definition.

The policy reads, "Libel is defined as any unprivileged false and malicious publication which ... tends to expose a person to public scorn, hatred, contempt, or ridicule. It is a statement which tends to injure 'reputation' or to diminish the esteem, respect, goodwill or confidence in which a person is held, or to excite adverse, derogatory or unpleasant feelings or opinions about a person."

"The difference in interpretation [of libel] is at the crux [of the controversy]," Blom said. "When we choose to use a label also used in another context, we're

(See *ETHICS*, page 37)

Complaint dismissed against Schroeder

WASHINGTON — The state Superintendent of Public Instruction has ended the investigation into Val Schroeder of Stanwood High School.

Schroeder, former adviser to the student newspaper, had been under scrutiny after school district superintendent Raymond Reid filed a complaint with the state superintendent, alleging "certain misconducts."

Last November, Schroeder was no-

tified that the complaint was dismissed without prejudice.

Meanwhile, Schroeder's own legal action against the Stanwood School District, the superintendent and the school principal is proceeding. A trial date has been set for April 6, 1998.

Schroeder claims she lost her adviser position to the *Spartan Spectrum* because of an article about bestiality that appeared in the paper. ■

Prior review keeps up Snohomish snow job

WASHINGTON — Student editors at Snohomish High School have found that dealing with the school board is like dealing with a brick wall: neither listens.

The most recent attempt by *Arrowhead* editors Amber Holmes and Natalia Jenkins to overturn the prior review policy invoked by their principal and superintendent has been denied by the school board.

Since November, the students have tried to publish an article about the firing of vice principal Greg Cox. In October 1996, the Snohomish school district informed Cox that an investigation into alleged sexual harassment and unprofessional conduct provided probable cause for his removal.

When Principal Larry Aalbu learned that students were planning to write about the charges in November, he requested to preview the newspaper.

Jenkins and Holmes denied his request and put the story on hold.

"My feeling is if we did that, we'd set a precedent for every controversial issue to be previewed by the principal," Jenkins told the *Seattle Times*.

"How can they teach real journalism if students aren't even able to exercise their responsibilities?"

In the same article, Aalbu said he thought the students' article would be "very disruptive" and take students' attention away from the classroom.

"I don't see any benefit to putting in a school newspaper something about a

big, juicy kiss," Aalbu told the *Times* in reference to one allegation that had already appeared in a *Times* article.

The students unsuccessfully appealed the principal's prior review request to the school board in January.

In response, the *Arrowhead* editors decided to allow the superintendent to preview the article, but under protest. According to adviser Lisa Stettler, the superintendent censored about 40 per-

centage of the article for the May issue.

The article mostly reported on the two new administrators who were hired to replace the vacant vice principal position. The final portion of the article dealt with Cox's dismissal.

Jenkins and Holmes submitted the new article to the superintendent for prior review, again under protest. The story mentioned all allegations, but only

"I don't see any benefit to putting in a school newspaper something about a big, juicy kiss."

Larry Aalbu
Snohomish principal

cent of the article and said it had real potential for disrupting the school.

The students chose not to publish the censored article.

While Holmes and Jenkins still wanted to publish a complete account of the story, Stettler advised them in March that they drop their efforts to report the sexual harassment out of respect for the women who made the complaint.

"We don't know who the women are," Holmes said, "but we had heard they were really suffering."

The editors decided not to discuss the sexual harassment charges, but still intended to mention the charges of unpro-

fessional conduct in an article for the May issue.

The superintendent censored all the background information relating to Cox, even material taken from a press release that Cox had sent out himself.

At the May 28 school board meeting, the student editors appealed the superintendent's censorship.

In a detailed oral presentation, the students argued that the article would be balanced, based on legitimate sources and help clear up the rumors circulating.

But the school board again denied the students' request, with no discussion.

"They basically asked us 'why were we here again?'" Holmes said. "I don't think they had taken into consideration that it was a whole new article."

Since the latest failure, the students have considered taking legal action.

"The district has not substantiated how the article would be an invasion of privacy or interrupt the educational policy," Stettler said.

Holmes said they have been careful to follow the order given in November requiring prior review on all articles about Cox.

"If we end up moving along with this [in a lawsuit], we will have followed the school district the whole time," Holmes said. "We've done everything by the rules." ■



Principal tries to censor prom coverage

TEXAS—A controversy over the prom led Principal Jimmy Jones of Lamar High School to butt heads with editors of the student newspaper, *The Viking Scroll*.

When the paper made the plans for an “alternative prom” the lead story of its March issue, Jones confiscated the papers for a day before allowing them to be distributed.

The alternative prom was a student protest to a new district-wide policy that required everyone attending the official prom to take a breathalyzer test.

Besides announcing that tickets for the alternative prom had gone on sale, the March issue contained an editorial that applauded the alternative prom effort and two columns on the same topic.

After Jones prevented the papers from being distributed on time, editor in chief Chris Mycoskie contacted local media in order to publicize the censorship.

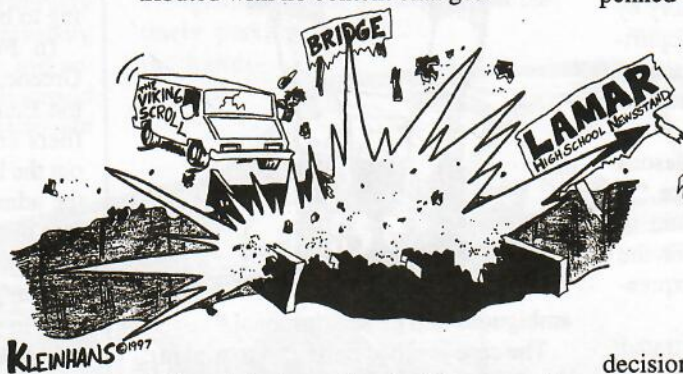
“The best way to get my way was to go to the media,” explained Mycoskie, who first called the *Arlington Star Telegram*. After a story ran the next day, Mycoskie said, local television and radio stations picked up on the controversy.

According to Mycoskie, Jones said he

held up distribution because “he wanted to look it over more and let the district’s attorney look it over.”

Jones had also told Mycoskie that one column might have been libelous to the superintendent.

After meeting with the newspaper staff, Jones allowed the paper to be distributed with no content changes.



Although the immediate incident seemed resolved, problems came up again after the April edition of the newspaper included coverage of both the alternative prom and the previous month’s censorship. Jones insisted on reviewing the paper before it went to press, Mycoskie said.

Although no censorship occurred, Mycoskie said he was told that the final issue of the paper in May — after the proms — could not include any cover-

age of the alternative prom. The same directive was given to Lamar’s yearbook, *The Valhalla*. According to Mycoskie, Jones said he was banning coverage because the event was not school-sponsored.

After the proms had taken place, newspaper and yearbook staff members penned a letter to Superintendent Lynn Hale appealing Jones’ decision. The students argued in the letter that “*The Viking Scroll* is a forum for news important to the Lamar community, not just the items sponsored by the school.”

Jones met with Mycoskie later that week with new instructions.

“He said he’d rethought his decision,” said Mycoskie. “The only stipulation was that we had to give [the proms] equal coverage.”

The final issue of the newspaper and the yearbook were in compliance with the order.

“Whatever way, we got to cover the story and won the battle,” said Mycoskie. “I hope if the breathalyzers stay, they are not going to question [coverage of it] again next year.”

Jones did not return calls from the *Report*. ■

Manifesto leads to suspension, lawsuit against school

NEW JERSEY — Distributing fliers got a Montclair High School student quickly grounded by his principal.

Now he is suing.

Husani Oakley has taken his principal and the Montclair Board of Education to court for suppressing his right to free speech and for other school policies that the lawsuit claims are overbroad and vague.

Oakley distributed a flier in June 1996, that criticized the Reserve Officers Training Corps (ROTC). It was titled, “The Northern Jersey Socialist Liberation Organization Manifesto.”

According to the complaint filed by Oakley’s attorney, Joseph A. Fortunato, Montclair High School principal Elaine

P. Davis suspended Oakley for five days and revoked a community service award he won from the school.

In his lawsuit, Oakley claims that the school disciplinary policy “unconstitutionally regulates free speech by placing prior restraints on speech.”

A section in the Montclair High School student manual prohibits unapproved distribution of material that is “sensitive in nature.”

Federal courts, however, have consistently said that students do have the right to distribute non-school-sponsored publications at school.

The lawsuit also takes issue with the “Special Notice to Students” that Davis subsequently issued on Jan. 7, 1997.

Besides prohibiting the sharing of unapproved fliers, the notice threatened suspension against students “gathered in groups to discuss or review these fliers [sic].”

Fortunato called Montclair High School’s policies “too narrow” and “offensive to the constitutions, both state and federal.”

Fortunato also said that he is seeking a settlement for his client that “would change the school policy to affirm that the school board would respect the First Amendment rights of students” and recognize Oakley’s rights.

If a settlement cannot be reached, Fortunato said, the case will most likely go to trial this fall. ■

Middle school editor sues for \$50,000

Complaint attacks censorship, new regulations on paper

MICHIGAN — Dan Vagasky, the 14-year-old editor of Ostego Middle School's student newspaper, the *Bulldog Express*, is trying to teach his school district a lesson — in federal court.

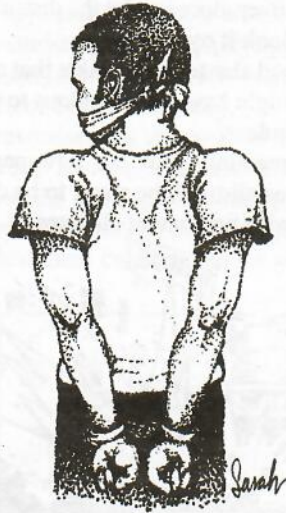
The complaint filed in April asks that the court declare that administrators violated Vagasky's constitutional rights by prohibiting the publication of a story by student Haley Pierson about a shoplifting incident that occurred during a school ski trip. The lawsuit seeks damages of at least \$50,000.

The complaint argues that the reasons given for censoring the article are "... pretextual, irrational, arbitrary and in retaliation for and punishment for the exercise of First Amendment expression...."

Administrators never demonstrated that the article would have disrupted school activities to the extent that pedagogical goals were threatened, the complaint states. School administrators cannot censor a publication without a legitimate educational interest according to the Supreme Court's 1988 decision *Hazelwood School District v. Kuhlmeier*.

The complaint also asks the court to strike down new regulations that Ostego administrators have since enacted.

According to the complaint, a new prior review policy includes restrictions that are "content-based" and "vague,



ambiguous and unconstitutional."

The case is scheduled to go to trial in the spring of 1998 unless an agreement can be reached when both sides meet with a mediator in late summer.

Meanwhile, Dianna Stampfler officially has been removed as adviser to the *Express* by superintendent James Leyndyke. Stampfler had supported Vagasky's claim that his rights were violated and served as the paper's adviser for four years.

Leyndyke, who initially had said that censoring the story was a way for the school to put its "best foot forward," refused to comment. ■

Appeal dismissed because plaintiff lacked standing

MICHIGAN — The state court of appeals has dismissed a student's challenge to her former high school's prior review policy on the grounds that she has no legal standing to bring the case.

In February 1994, Melissa Greene, a senior at Plymouth-Canton Educational Park, distributed fliers entitled "Walkout & Drive out the Fascists." She did not seek the administration's approval before distributing the fliers, violating School Rule 8 which demanded prior approval of all fliers and surveys in school.

In April 1994, the school adopted a new, clear prior review policy in response to the controversy, and Greene's lawsuit protested the constitutionality of the new regulations.

In a two to one decision, the three judge panel ruled in July that Greene had no standing to raise that issue.

"[Greene's] suspension based upon an application of the old school policy does not confer

(See *STANDING*, page 37)

Parties reject long-awaited arbitration decision

ILLINOIS — For a few days at least, Cynthia Hanifin seemed to have finally won the long-standing battle with her former high school principal.

In May, a Cook County arbitration panel ruled that Charles Vietzen, principal of Chicago's Hubbard High School, was liable for violating Hanifin's constitutional rights when she was a high school senior in 1993.

Vietzen had suspended Hanifin for writing an editorial in the school newspaper criticizing the school's prohibition on wearing shorts.

The arbitration panel awarded Hanifin \$1,000 in damages, but Hanifin's attorney, Timothy J. Touhy, said neither side has accepted the decision issued by the hearing and the case will still go to court.

"The case can be resolved, but we need an apology," said Touhy. "[Cynthia] is going to ask for restoration of her repu-

tation in trial."

In a press release issued by her attorney, Hanifin said the case was not about money.

"This was always about me taking a stand for what I believe in and fighting for my First Amendment rights," Hanifin said.

Back in 1993, Vietzen also had Hanifin arrested for trespassing when she tried to attend an awards ceremony during her suspension.

"I am gratified that the arbitration panel has ruled that Vietzen violated my rights, but Vietzen has not yet admitted his wrongdoing in this matter," Hanifin said in the press release. "Vietzen robbed me of the honors I had earned in high school and, even worse, he has damaged my credibility as a journalist."

Hanifin said that any money she does receive from the lawsuit will go toward creating a scholarship for high school students interested in pursuing journalism in college. ■

Access to parking records denied

Department of Ed., NCAA back U. of Maryland's stance on FERPA

MARYLAND — The University of Maryland at College Park student newspaper, the *Diamondback*, has found itself in a freedom of information battle with the university over unpaid parking tickets.

Following the discovery in February 1996 that Duane Simpkins, a University of Maryland basketball player, had accumulated more than \$8,000 in unpaid parking fines, the *Diamondback* sought information from the school concerning the parking violation records of other student athletes and coaches.

The *Diamondback* also requested to see correspondence between the NCAA and the university concerning possible rule violations by student athletes.

But the university claimed that records of parking violations and letters of inquiry by the NCAA constituted education records, and were therefore protected from disclosure by the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment. FERPA is a federal law that imposes penalties on schools that release student education records without the student's permission.

The actual amount of Simpkins' fines were only made public because an NCAA official released the dollar amount to the media, claiming the NCAA is immune from the Buckley Amendment since it does not receive federal funding.

The *Diamondback* soon after filed a lawsuit to obtain the information.

In February, the Prince George's County Circuit Court granted a motion for summary judgment filed by the *Diamondback*, ruling that the University of Maryland had to release the information.

But the school refused and has appealed the decision.

"The university has been stonewalling since the very beginning," said Elizabeth Koch, attorney for the *Diamondback*.

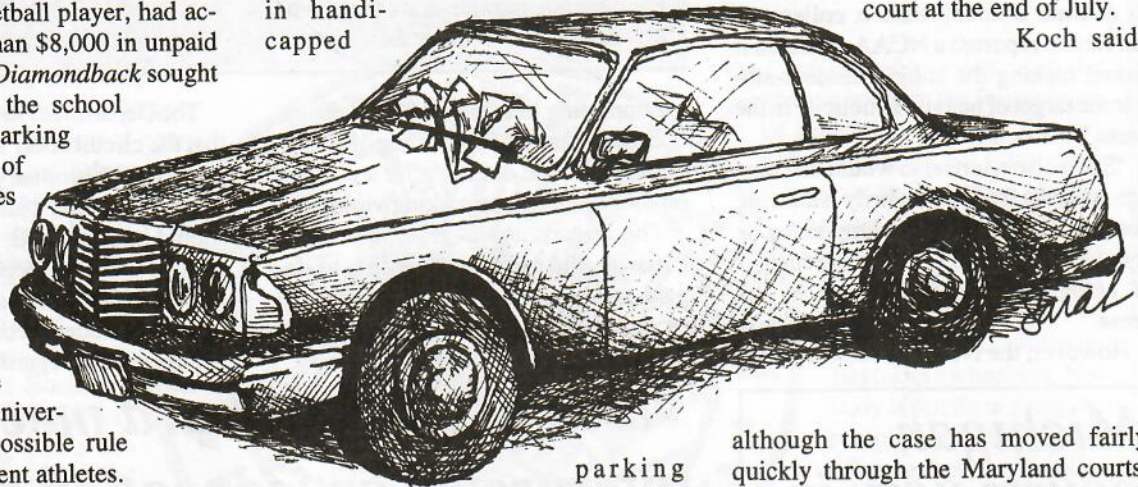
The beginning was 1996, when reporters for the *Diamondback* began investigating whether students were routinely parking in handicapped

ment.

Koch said oral argument for the case will be heard by the Maryland Court of Appeals, the highest court in the state, some time this fall, at the request of that court.

The case had been in the court of appeals, but was moved to the higher court at the end of July.

Koch said



parking spaces and if certain students were being granted preferential treatment by the university in the paying of parking fines.

The investigation was sparked by Simpkins' NCAA-imposed three-game suspension for receiving a \$2,000 loan from a former summer league coach to put a down payment on his 285 unpaid parking tickets.

Diamondback sports editor David Murray then requested records disclosing the parking records of other members of the basketball team and the team's head coach.

Murray also requested copies of NCAA reports sent to the school concerning the suspension of basketball players for rule violations.

In response to Murray's requests about student records, the university cited FERPA as its reason not to disclose the information.

The school has taken the position that its parking department is not a law enforcement agency. Records kept by law enforcement agencies are not protected from disclosure by the Buckley Amend-

ment. although the case has moved fairly quickly through the Maryland courts, "the paper wishes that this thing could have been settled in less than two years."

In their appellate brief, the University of Maryland conceded that parking tickets themselves do not constitute education records because tickets are assigned to license plate numbers, and therefore do not identify individual students.

However, the school believes records concerning unpaid parking tickets do identify individual students and are maintained by the university, therefore they should be protected by FERPA.

The U.S. Department of Education and the NCAA have both filed briefs in support of the university.

The NCAA has created a policy against disclosing information protected by FERPA. The policy was not created until after the staff member released the dollar amount of Simpkins' parking fines.

"This policy dates to October 1996 (after the events of the case) when the NCAA Council voted to support full compliance with Buckley Amendment,"

(See MARYLAND, page 12)

Maryland

(continued from page 11)

states the NCAA brief. "Subsequent to the Council vote, mandatory educational sessions were held for the entire NCAA national office staff concerning the application of the Buckley Amendment."

The NCAA believes that violating FERPA would discourage "reporting and self-regulation" among students, student athletes and universities.

"Self regulation and reporting is sure to decline if every time a college or university reported a NCAA violation it risked making the subject student-athlete the target of negative publicity in the press," states the brief.

"Such disclosure also would discourage students from voluntarily admitting concerns about NCAA compliance or squelch self-reporting altogether for fear of being tarred and feathered in the press."

However, the NCAA limited its brief

Michigan courts vary in access rulings

MICHIGAN — Three state courts recently have ruled on separate freedom of information cases. In two of the three decisions, the court ruled in favor of opening records.

- The Michigan Court of Appeals upheld in June a circuit court ruling that evaluations of a public school teacher had to be disclosed to the *Ann Arbor News*.

- The Washtenaw County Circuit Court ruled in June that the University of Michigan must release records concerning an internal investigation of the school basketball program, including letters of reprimand from the university to a coach.

- A Michigan Court of Appeals has declared moot a case that sought to open the presidential search process at Oakland University because of a new state law that allows schools to practice closed search processes. ■

The NCAA: friend or foe?

From high school to college to the professional ranks, journalists have found their own interests or the interests of their readers sometimes at odds with the policies of the National Collegiate Athletic Association.

The NCAA's support of the University of Maryland in the dispute over access to the parking ticket records of athletes is just one example of many. High school journalists are faced with a dilemma over whether their journal-

ism courses can count for NCAA eligibility; college newspapers walk a tight rope in their efforts to obtain press credentials for sporting events.

For many journalists, the NCAA consistently seems uncooperative, set on making it difficult for a free press to function. To take an in-depth look at the NCAA's tenuous relationship with the press — especially the student media — log in to the SPLC's Web site at www.splc.org. ■

to supporting the closure of "investigation, punishment and reporting of NCAA eligibility," and did not offer a position on the release of the parking violations.

The Department of Education brief, however, did imply that records of unpaid parking violations are educational records to be protected from disclosure by the Buckley Amendment.

The Department in its brief contended that the circuit court was incorrect in all parts of their summary judgment to open the records, and believes the decision should be remanded.

In its brief, the Department of Education interprets "education record" to mean any student record maintained by the university, regardless of content. ■

Video of school board meeting interpreted as 'education record'

TEXAS — The Texas attorney general has handed down an informal ruling stating that a tape of a school board meeting that includes a high school student drama production is an educational record protected from disclosure by the Family Educational Rights and Privacy Act (FERPA), referred to as the Buckley Amendment.

FERPA is a federal law that allows the

government to impose penalties on universities that disclose student educational records.

Texas Attorney General Dan Morales' office ruled that because the tape "contains information directly related to school district students, it is an education record for purposes of FERPA."

The Huffman Independent School
(See *TEXAS*, page 37)

Income sources must be released

Athletic officials have limited privacy interest

KENTUCKY — Athletic department officials at the University of Kentucky will have to make public the sources of any outside income, according to an opinion issued by the state attorney general.

A.B. Chandler, Kentucky attorney general, ruled that the *Kansas City Star* does have the right to see some records of "University related documents re-

quired to be on file in the school's athletic department."

These records included NCAA documents regarding "Request for Approval for Outside Athletically Related Income" forms, which detail the amounts of non-university-related income generated by employees of the University of Kentucky athletic department.

The attorney general agreed with the university that the amount of income should not be disclosed, but found the source of outside income to be a matter that should be public information. ■

A matter of interpretation

Is the Education Department's spin on federal law keeping university crime information and other records under wraps?

From college campuses to the U.S. House of Representatives, the question of how open campus crime information should be is a topic of continued debate. Many school administrators claim that the Family Education Rights and Privacy Act (FERPA), commonly referred to as the Buckley Amendment, forbids them from disclosing crime information about individual students in discipline records.

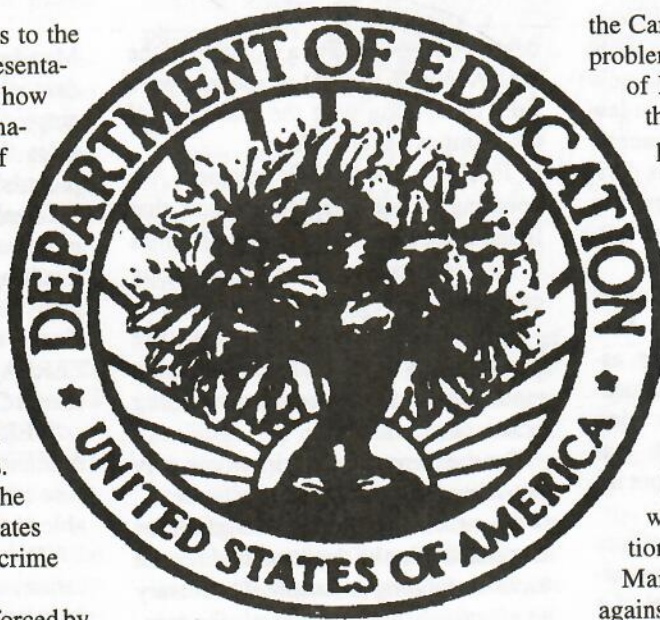
But another federal law, the Campus Security Act mandates that schools report campus crime statistics.

Both of these laws are enforced by the U.S. Department of Education. But critics say the Department is applying an overbroad interpretation of FERPA, and that they are allowing schools to ignore the mandates of the Campus Security Act.

Partially because of this belief that the Department is not doing its part to enforce laws that promote fair and open reporting of campus crime and freedom of information, many have thrown support behind House Bill 715, the Accuracy in Campus Crime Reporting Act (ACCRA), which would specifically exempt disciplinary records from FERPA protection, and mandate a system of open campus crime logs.

Monitoring compliance

Steve Geimann, president of the



Society of Professional Journalists, said his organization has been in support of ACCRA before it was even a bill. The bill would close loopholes in campus crime reporting and specifically exempt campus judicial records as being protected by FERPA. (See *HOUSE*, page 17.)

Geimann said this legislation is necessary, partially because of the Department of Education's lax enforcement of the Campus Security Act.

"The Department of Education has relinquished its role in enforcing the rules," Geimann said. "It is a dereliction of duty to not pay attention to rules passed in 1990. People have lost sight of what is important."

But Margaret Jacobson, who filed the first complaint against a school under

the Campus Security Act, said the problem is not with the Department of Education, but it is the fact that people are not filing complaints against their schools as she did at her former school, Moorhead State University. (See *MOORHEAD*, page 17.)

"The Department has taken a whacking. Nobody is out there filing the complaints. Not one journalist except for Jennifer Markiewicz and Michael Matza has filed a complaint with the Department of Education," Jacobson complained.

Markiewicz filed a complaint against Miami University of Ohio and Matza against the University of Pennsylvania.

Both schools are currently being reviewed by the department for compliance with the Campus Security Act.

Jacobson said she believes the department is doing everything it can to enforce the law, and the only way to improve universities' compliance is to file complaints.

"I'm more than willing to assist people in framing [complaints]," she said. "I haven't found a school yet that complies with the Campus Security Act."

To date, the Department has conducted or is in the process of conducting five reviews of schools for compliance with the Campus Security Act. (See *DEPARTMENT*, page 14)

Department

(continued from page 13)

rity Act. Moorhead State and Virginia Tech have both recently been found to be in violation of the act, and reviews are still underway for Miami, the University of Pennsylvania and Clemson University.

Jane Glickman, a public affairs official for the Department of Education, said the Department only reviews schools when a formal complaint is filed.

She said other schools are monitored for compliance through regular audits that all schools that take part in federal financial aid programs must go through.

Although Moorhead State could now be penalized for its violation of the law pending a decision by the Department's administrative action and appeals division, no school has been assigned a penalty by the Department yet for failure to comply with the law.

The reason for not penalizing schools, according to a 1996 quote in *The New York Times* by David Longanecker, assistant secretary for Secondary Education, is that the Department of Education believes the majority of schools that have compliance problems have not intentionally broken the law.

Stephanie Babyak, a public affairs official for the Department, said penalizing schools is not the main goal of a department review.

"There can be a range of penalties, but the main objective is to get the schools into compliance," she said. "If there is something that needs to be changed, we then work with the school to bring them into compliance."

What the numbers show

Exactly how many schools are in violation of the Campus Security Act remains in dispute.

According to a Department of Education study released in February, just over 10 percent of schools are in violation of the act.

The study, which was released 18 months late, found that the schools in violation were not compiling mandatory reports, and the biggest violators of the act tended to be trade schools and colleges with less than 200 students.

But other studies conflict with the Department of Education's findings.

A 1995 study conducted by Bonnie Fisher, a University of Cincinnati political science professor, reported that more than 50 percent of schools did not make security information available to stu-

But what constitutes an "education record" is a matter of debate. Congress amended the law in 1992 to specifically exclude campus law enforcement unit records from that definition.

But the Department of Education's recent backing of the University of

"It seems like sometimes with the DOE, the right hand doesn't know what the left hand is doing."

Ben Clery
president, Security on Campus

dents who requested it, a violation of the act. About 36 percent of schools were fully complying with the mandates of the Campus Security Act.

In March, the U.S. Government Accounting Office released a report that found schools are not including all crimes in their reports, and are using the wrong categories for reporting crimes.

The GAO asserted that the department's lack of enforcement is the main reason for inaccurate reporting practices of schools.

But the Department claims it can only do so much to enforce the act.

On several occasions, Longanecker has stated that the department does not have the funding or resources necessary to effectively monitor schools for compliance.

FERPA's role in limiting disclosure

For access advocates, open crime statistics are just part of the battle. Public campus police logs and disciplinary records regarding criminal incidents are even more important.

The most common justification schools use for keeping campus courts and incident reports closed is that opening such proceedings and records would violate FERPA.

FERPA was enacted with the goal of protecting students from having their privacy rights compromised by schools.

The act allows for the penalizing of schools that release students' private "education records" without a student's permission.

Maryland's assertion that records of student athletes' parking violations are exempted from disclosure by FERPA indicates they are still giving "education records" a broad definition.

Elizabeth Koch, attorney for the *Diamondback*, the newspaper that has filed a suit against the University of Maryland for keeping the parking records closed, said the Department's stance on FERPA ignores the spirit of the law. (See *ACCESS*, page 11.)

"FERPA was created with two goals in mind; the primary goal was to make sure students' own records were available to them," Koch said.

"The second part was to protect education records from disclosure. The DOE fails to distinguish between those two points."

Koch pointed to the fact that in past cases, the Department has taken a narrower stance on what constitutes an education record.

"Apparently because it suits their purpose, they have changed their minds," she said.

Ben Clery, president of Security on Campus, a watchdog organization concerned with campus safety issues, says the Department has taken a ridiculous stance on FERPA and what it should protect from disclosure, especially in the University of Maryland case.

"It's absurd. I can't believe the Department of Education would back that kind of nonsense," Clery said. "It seems like sometimes with the DOE, the right hand doesn't know what the left hand is doing." ■

Ohio court opens discipline records

Campus court documents are not considered 'education records'

OHIO — The Ohio Supreme Court has handed down a ruling that will open one school's records previously kept from the public and help open secret campus judicial proceeding records in public universities across the state.

The court said student newspaper reporters at Miami University of Ohio have the right to see records of the school's campus court proceedings, and that records of disciplinary proceedings are not "education records" protected by federal law from disclosure.

Jennifer Markiewicz and Emily Hebert, now former editors of *The Miami Student*, filed suit against the university to obtain disciplinary records that the school claimed to be protected from disclosure by the Family Educational Rights and Privacy Act (FERPA), commonly known as the Buckley Amendment.

FERPA is a federal law that allows the government to impose penalties on schools that release a student's "education records" without the student's permission.

The student editors claimed that the campus court records — many of which involved criminal conduct — were not "education records."

Although the school had given *The Miami Student* some information regarding campus crimes, information such as the name of the student involved, location, time and date of the incident were deleted.

The university argued that by disclosing this information, students could be identified, which the school claimed would violate FERPA.

But the Ohio Supreme Court disagreed with the university's interpretation of FERPA.

Judge Francis Sweeney wrote for the majority of the court, and referred to *Red*

& *Black Publishing Co. v. Board of Regents*, a 1993 case that opened campus disciplinary records at the University of Georgia.

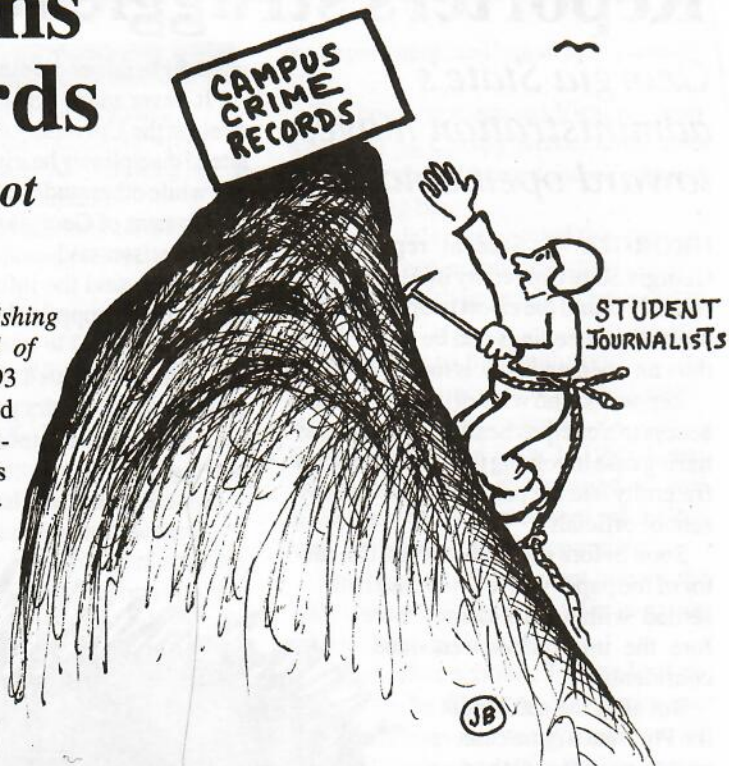
The court determined that the Miami University Disciplinary Board (UDB) hears cases of infractions of school rules, but also hears criminal cases. Because of these criminal proceedings, the court concluded that the Disciplinary Board hearings are non-academic in nature.

"The UDB records, therefore, do not contain educationally related information, such as grades or other academic data, and are unrelated to academic performance, financial aid, or scholastic performance," Sweeney wrote. "Consequently, we adopt the reasoning of the *Red & Black* decision, and hold that university disciplinary records are not 'education records' as defined in FERPA."

But the court did state that because *The Miami Student* did not request names and social security numbers to be included on the records in question, the university does not have to disclose that information in this instance.

Markiewicz said the court's decision is a big victory for the collegiate media.

"It is a tremendous step for student safety. A lot of students don't know that these secret court proceedings are going on," she said. "I just hope student newspapers take advantage of the freedom they have been given."



Marc Mezibov, attorney for *The Miami Student*, said the decision is binding on all state schools in Ohio, and has implications nationwide.

"In terms of schools across the country, it is certainly persuasive authority, and follows the example of *Red & Black*," Mezibov said.

Markiewicz agreed that the decision will have state and national impact.

"This will be an eye-opener," she said. "This movement [to open disciplinary records] is just gaining momentum."

The Georgia and Ohio Supreme Courts are the only state supreme courts to rule on public access to campus disciplinary records.

Carolyn Carlson, former president of the Society of Professional Journalists, and current chair of its Campus Courts Task Force, said the ruling is important, but the pace that states are moving at in opening campus courts is too slow.

"The problem is that it took four years to get the second favorable high court ruling," Carlson said.

"At this rate it will take almost two centuries for all 50 states to stop universities and colleges from using secret campus courts." ■

Reporters struggle for open hearings

Georgia State's administration moves toward open court

GEORGIA — Student reporters at Georgia State University in Atlanta have recently found the effort to open campus judicial proceedings can be much more than an open and shut issue.

Reporters who were originally denied access to a campus hearing of an alleged hazing case involving the Phi Beta Sigma fraternity had the proceeding opened by school officials.

Soon before the trial was set, the editor of the paper was told the case had settled without a hearing, therefore the information remained confidential.

But after the settlement of the Phi Beta Sigma case, reporters got a foot in the door of their campus court system when they were granted permission by the school to cover a hearing involving a sorority hazing case.

The school's office of legal affairs originally told the *Signal*, the Georgia State student newspaper, in spring of 1997 that reporters could not attend the scheduled hearing for the Phi Beta Sigma case.

"One of our reporters asked if he could cover [the hearing], and they told him — it sounded ludicrous — that he couldn't unless he got written permission from the defendants," said Tom Lasseter, then editor of the *Signal*.

Lasseter said Carolyn Carlson, former president of the Society of Professional Journalists and chair of the organization's Campus Courts Task Force, gave him precedent cases to assist the *Signal* in its efforts to gain access to the hearing.

One of the cases was *Red & Black Publishing Co. v. Board of Regents*, in which the Georgia Supreme Court ruled that the University of Georgia had to

open judicial proceedings to the public.

"It never made sense to me that students at the University of Georgia could attend disciplinary hearings on their campus while other students at other University System of Georgia campuses could not," Carlson said.

Lasseter said the information helped him to better support the *Signal's* argument.

"Armed with this information, I met with our legal affairs people," Lasseter said. But they still refused to open the hearing.

Lasseter then sought legal advice from a local at-

so he just told them to open it," Lasseter said.

But Lasseter said shortly before the hearing was scheduled to take place, the case was settled out of court, and that there would be no hearing. Records of the case were closed to the public.

Carlson said that the action of the school left the prospect of opening campus judicial proceedings as a possibility.

"Georgia State's attorney acknowledged that college disciplinary hearings are public under Georgia's Open Meetings Act," Carlson said. "He therefore opened the hearing in question, and presumably will use the same



torney, who also supported the *Signal's* belief that the hearing should be opened.

The Office of Legal Affairs then consulted with the Georgia State Vice President for Student Affairs, who decided the trial could be opened.

The Office of Legal Affairs sent a memo to the *Signal*, and stressed that they were not setting a precedent by granting permission to cover the hearing.

"Basically the vice president for student affairs didn't think it was a big deal,

reasoning in opening similar hearings in the future."

Since the settling of the Phi Beta Sigma case, the promise of an open campus court has started to become a reality.

Shannan Cutler, current *Signal* editor, said the university has made no attempt in stopping reporters from covering the most recent hazing hearing.

"We just made arrangements to cover the hearing and they didn't try to block it," she said. "We didn't have any problem covering this hearing." ■

Moorhead, Va. Tech violate law

Both found to ignore Campus Security Act

MINNESOTA, VIRGINIA — Moorhead State University in Minnesota and Virginia Polytechnic State University now share the distinction of being the first two schools found in violation of the Campus Security Act following compliance reviews by the U.S. Department of Education.

The Campus Security Act mandates that all schools receiving federal funding must report crime statistics and make them readily available.

Schools that do not comply can be penalized by the federal government.

Both Moorhead State and Virginia Tech were issued final review reports in early July by the Department of Education regional offices responsible for each school.

The results of the review of Moorhead State come three years after the filing of a complaint against the school, by Margaret Jacobson, a former Moorhead student.

"We believe that the institution has not demonstrated a serious commitment to its obligations under the Campus Security Act and has discounted the seri-

Reviews in Progress

The U.S. Department of Education reviews schools for compliance with the Campus Security Act following the filing of a federal complaint.

The department is currently conducting reviews at the following schools:

- Clemson University
- Miami University of Ohio
- The University of Pennsylvania

ousness of the issues raised by this office," stated a letter to the university from the Department of Education's Chicago case management team.

The regional office that performs the review cannot impose sanctions on the school, but the final review findings will now be handed over the Department of Education's Administrative Actions and Appeals Division (AAAD), which could penalize the university.

Moorhead State will have the right to appeal a decision of the AAAD.

The Department of Education has also recently informed Virginia Polytechnic Institute and State University of compliance problems discovered in a review.

The review for Virginia Tech was performed by the Region III division of

the department, and began in September 1996.

The complaint against Virginia Tech was filed by Christy Brzonkala, a student who charged two football players with raping her.

Brzonkala's claim stated that the university did not include the statistic of her rape as part of their yearly campus crime reports.

According to the final review, "Va. Tech failed to accurately report crime statistics," and "A review of Va. Tech's Sept. 1, 1995, and Sept. 1, 1996, Campus Security Reports revealed several instances where statements of policy were omitted or were incomplete."

The two schools may not remain the only two schools to be found in violation of the Campus Security Act.

Three other schools, Miami University of Ohio, Clemson University and the University of Pennsylvania are all currently being reviewed by the Department of Education.

Jane Glickman, public affairs official for the department, said the department cannot comment about the three school reviews in progress.

"We work with these schools to bring them into compliance," she said. ■

Subcommittee hears crime bill testimony

Witnesses present views on the merits, questions of ACCRA

WASHINGTON, D.C. — Witnesses presented testimony to the House Subcommittee on Postsecondary Education Training and Lifelong Learning in July regarding the Accuracy in Campus Crime Reporting Act (ACCRA), and the need for Congress to take action concerning campus crime.

The bill, H.R. 715, sponsored by Reps. John Duncan (R-Tenn.) and Charles Schumer (D-N.Y.), would close loopholes in campus crime reporting and

open campus disciplinary proceedings.

The bill would mandate schools to maintain open police logs, and amend the Buckley Amendment to exempt student disciplinary records from being protected as "education records."

Ben Clery, president of Security on Campus, testified in favor of the bill, which his organization helped to draft with the Society of Professional Journalists.

"We must insist on an open system with checks and balances," he said. "We need to open those courts so there is a balance and an understanding of the seriousness of the crimes going on."

In addition to Clery, testimony concerning the bill was presented by Crystal

Paulk, Society of Professional Journalists intern, Carol Bohmer, professor at Ohio State University and coauthor of "Sexual Assault on Campus: the Problem and the Solution" and Delores Stafford, director of the George Washington University Police Department.

Paulk's testimony drew upon her experience as a police and campus crime reporter at the University of Georgia, whose campus judicial proceedings were opened in 1993 by the Georgia Supreme Court decision *Red and Black Publishing Co. v. University of Georgia*.

According to Paulk, other students are being denied a fair judicial process on their college campuses.

(See ACCRA, page 37)

Court of Appeals to rehear arguments over the right to refuse advertisements

MASSACHUSETTS—The U.S. Court of Appeals for the First Circuit has agreed to rehear arguments in the case of *Yeo v. Lexington* and threw out its earlier decision.

A three-member panel of the court ruled 2-1 on June 6 that the student yearbook and newspaper of a public high school do constitute government publications, therefore making it constitutionally impermissible for student editors at Lexington High School to refuse a paid advertisement promoting abstinence.

The ruling had raised new questions concerning the strength of state student free expression statutes and student control over the content of student publications.

On June 27, the court granted a rehearing by the six judges of the court after the school, national and regional journalism education groups and the National School Board Association protested the decision. The case will be reargued during the September 1997 session.

The case first arose when Douglas Yeo submitted an advertisement promoting the views of his organization, the Lexington Parents Information Network (LEXNET), to the Lexington High School student newspaper and yearbook in response to a new school condom distribution policy in 1992. Student editors of both publications refused the advertisement, stating it was against their policy to run advertising of a political nature.

Yeo then filed suit, claiming his First Amendment free press rights and Fourteenth Amendment right to equal protection were being denied.

Although the district court found that no state action was established by Yeo because students made the content decisions, the First Circuit panel reversed.

"We were surprised by the result," said Adam Foreman, lawyer for the school district. Foreman explained that although he thought the only issue pend-

ing was the question of state action, the First Circuit ended up going much further by creating a new interpretation of the standard for a public forum and on the question of state action.

"Based on our review of relevant precedent and the undisputed record evidence before us, we conclude that the Musket [student newspaper] and the Yearbook do engage in state action to the extent they bear the imprimatur of Lexington High School. Their refusals to print the LEXNET ads thus constituted state action," wrote Judge Norman H. Stahl in the majority opinion.

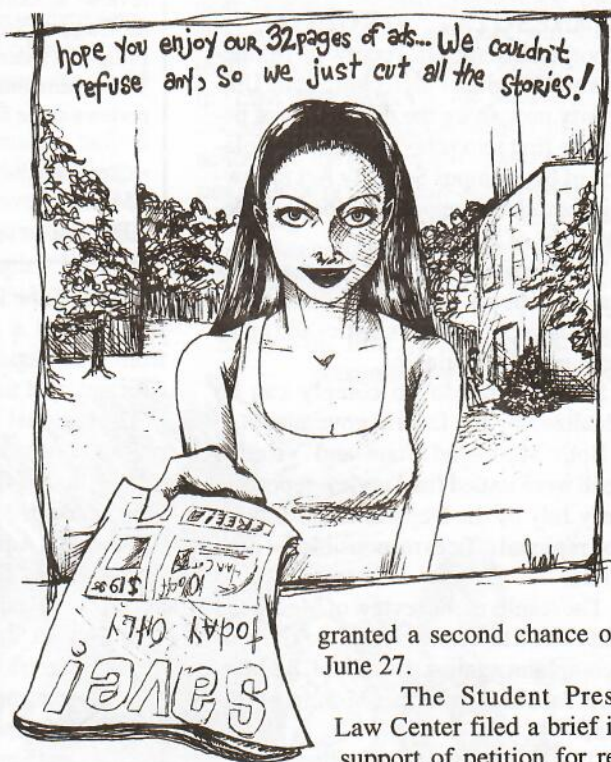
The First Amendment only forbids censorship of free expression by the government, not by private individuals or entities; had the Lexington High School student publications been found to be non-state actors, Yeo's claim would have been rejected.

Because the First Circuit panel determined that anything bearing a stamp of the school constituted state action, the ruling essentially skipped over a state law that reads explicitly, "No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy"

But the logic of the First Circuit panel said otherwise.

If the original decision holds, "Everything [done by students would be] state action from now on," Foreman said. "In Massachusetts, that statute [would be] a nullity at this point."

Attorneys for the school district asked for a rehearing of the case by the full panel of First Circuit judges and were



granted a second chance on June 27.

The Student Press Law Center filed a brief in support of petition for rehearing on behalf of every

major national organization of journalism educators.

In the brief, the SPLC cites the Supreme Court's 1988 decision *Hazelwood School District v. Kuhlmeier* to argue that "... a court should not be permitted to intervene when educators ... have chosen *not* to control content, but instead to foster students' decision-making skills by granting them discretion."

The brief also argues that precedents have "... found that the student press has the same right to reject advertisements as the private press, so long as it is the students, not the school, that is making the decision."

Critical of the First Circuit's interpretation of "public forum," the brief reads, "To rule as the panel majority did is to give advertisers more control over content of those fora than the students themselves."

The SPLC and other journalism education organizations will be filing another brief before the case is reheard. ■

Alcohol-related ads banned

Pennsylvania college papers try to make sense of a new state law that has damaging potential

PENNSYLVANIA — A law nobody seems to know much about is causing confusion among student journalists.

The state legislature of Pennsylvania passed a law in the waning moments of the 1996 session that places severe constraints on the advertising content of college publications.

Act 199 was introduced by Rep. Mario Civera (R-Upper Darby) and included a clause stating, "No advertisement [for alcoholic or malt beverages] shall be permitted, either directly or indirectly, in any booklet, program book, year-book, magazine, newspaper, periodical, brochure, circular or other similar publication published by, for or in behalf of any educational institution."

For college newspaper editors and advisers, the law came as a surprise and no one seems sure exactly what the broad wording means.

"We knew nothing about it until bars started calling us in February and telling us they couldn't advertise with us," said Joe Lawley, Director of Student Publications at Indiana University of Pennsylvania (IUP).

Lawley explained that the law is not being enforced by prohibiting the ads newspapers accept. Rather, the Pennsylvania Liquor Control Board contacted establishments with liquor licenses and "told them they aren't allowed to advertise in student papers."

Christopher Hoel, lawyer for the *Pitt News* at the University of Pittsburgh and a specialist in liquor law called the law "extraordinary" and "far-reaching."

The language is ambiguous enough that it is "tough to know how to comply with it," he said.

"You can read it to make it unlawful for a high school teacher to have a *Time* magazine in the teachers' lounge because it contains alcohol ads," Hoel said.

He suggested other problem areas. For instance, programs for a Penn State football game may be prohibited from advertising beer; a college advertising a Sunday brunch for alumni may be for-

bidden to mention that champagne will be served.

"This is this is the broadest [law of this kind] I've seen," Hoel said.

"The people affected most by this are the student media and it's tough for them to assemble the resources to fight something like this," Hoel said.

Lawley said the ban is being enforced at IUP. The student newspaper, *The Penn*, raised \$24,000 in revenue from alcohol-related ads between July 1995 and July 1996. That accounted for 10 percent of the paper's revenue during that time period.

"This is definitely going to hurt us," Lawley said. "It's killing us already."

Other college newspapers in the state have not yet seen the ban enforced, but awareness is growing.

Eric Jacobs, the general manager at the University of Pennsylvania's *Daily Pennsylvanian*, said he is investigating who it affects and whether it is going to be enforced in the near future.

"It's not clear whether [the law] would really apply [to a newspaper that is independently operated from the school]," Jacobs said. "It's not clear that we're 'by' or 'on behalf' of the university."

Business manager Chris Taylor of Penn State's *Daily Collegian* said he had not even heard of the law, but said that approximately 25 to 30 percent of the paper's ads are alcohol-related and might be covered by the ban.

"If this is the case, we have a serious problem," he said.

While the law poses a potential infringement on the First Amendment rights of college publications, several people are questioning whether the law's application will serve its original intent. If lawmakers meant to prevent people under the age of 21 from exposure to alcohol-related ads, Lawley says the law is a mistake.

"A good deal of our readership is over the age of 21," he said.

Applying the ban to publications like a college alumni magazine seems like an unintended consequence as well.

"I'm sure it's not the intent of the law to not allow the university to publish its alumni magazine," Jacobs said, adding that the school's alumni magazine regularly features ads for products such as Absolut Vodka.

Jacobs also said that no clarifications have been made over what ads are still

permissible and what are banned. Can a bar advertise if a band is performing? Can the ad list drink specials?

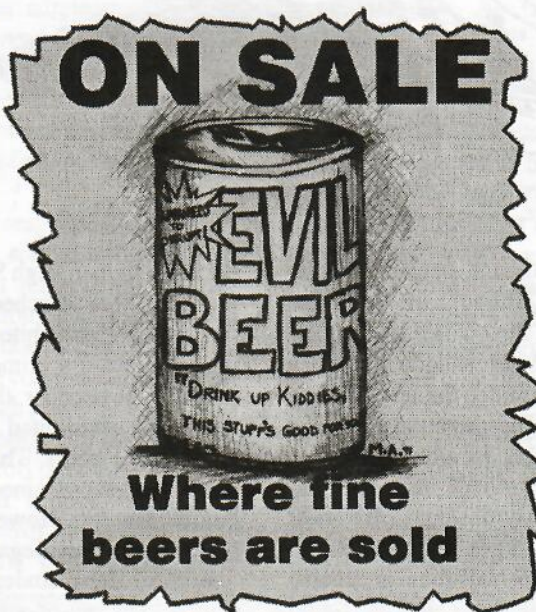
"We'd like to know where the dividing line is," Jacobs said.

Lawley said that some bars still run ads in *The Penn*, but usually only when a band is appearing.

"Even those places are pretty intimidated [by the law]," he said. "Three-fourths of the places that formally advertised with us won't do it at all. They don't think that it is worth the fines they would get."

John Feichtel, media law counsel for the Pennsylvania Newspaper Publishers' Association (PNPA), said the PNPA has met with the state's Liquor Control Board and is planning its next step while soliciting comment from college papers.

"We are looking into doing something," he said, "but we haven't done anything yet." ■



The other side of the schoolhouse gate

Off-campus publications, Web sites can operate under different rules



In 1995, Paul Kim, a senior at Newport High School, in Bellevue, Wash., lost the chance to compete for a National Merit scholarship when his principal rescinded the school's recommendation. The principal informed all of the colleges to which Kim had applied that the school no longer endorsed him. The admissions officers at one of those colleges were curious to find out what he had done to receive such punishment. They called and found out: Kim had created a Web site at home on his own computer, on an Internet account he paid for, titled "The Newport High Unofficial Home Page."

The satirical site included information on Kim's friends and their preoccupation with football and sex. It also contained links to sites that offered sexually explicit material.¹ However, there were no legal problems with his Web site; nothing was libelous, obscene or otherwise unprotected by the First Amendment.²

A few months later Abe Haim, a stu-

dent at Hickman High School in Columbia, Mo., was searched, suspended for five days and prohibited from taking his exams.³ Haim's crime: he had published a newspaper that he paid for, wrote and distributed off campus and after school hours. The school alleged that his paper contained racist and anti-Semitic remarks. However, the newspaper contained no illegal speech.⁴

Both of these students probably assumed their out-of-school speech was protected by the First Amendment. It may not have occurred to them that school officials might try to control what they did during their hours away from school. As they — and others — have learned, many school administrators believe that their control does not end when the last bell rings.

Fortunately for Kim and Haim their situations were settled amicably. Most situations like these are settled before legal action is necessary. In the few cases that have gone to trial, courts have been generally very protective of stu-

dents' off-campus speech. Unfortunately, some have not been particularly clear in their reasoning.

A few courts, however, have allowed punishment for off-campus speech to stand, sometimes citing reasons wholly unrelated to the speech itself.

Although most of these cases have involved student print publications, it is a fair assumption that the same rules would apply to other First Amendment activities, including protests, picketing, speeches and Web sites.

Students as 'citizens'

For years, students in public high schools have had to accept that their First Amendment rights while at school "are not automatically coextensive with the rights of adults in other settings."⁵ But what about when they are not in school? Do students have the same rights off-campus as any other citizen or does their "student status" somehow carry over into their non-student lives? As the Supreme Court has said: "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect...."⁶

Another court was even more to the point. "School officials may not judge a student's behavior while he is in his home with his family nor does it seem to this court that they should have jurisdiction over his acts on a public street corner."⁷

Yet, as the examples at the beginning of this article show, school officials continue in their attempts to punish students for their out-of-school behavior.

Desktop computers, omnipresent copy shops — and perhaps most significantly, the Internet — have changed the rules. Now almost anyone can make themselves an independent, and in the case of Internet Web sites, a worldwide "publisher." And students, perhaps more than any other group, have taken to the new medium with fervor. For all of these

reasons, students do themselves a favor by knowing their rights ahead of time and doing what they can to avoid trouble in the first place.

Courts and off-campus speech

In *Thomas v. Granville Central School District*,⁸ four high school students published an underground newspaper with their own money and distributed it off-campus before and after school. The students were suspended for five days, had to write essays on the harm their speech caused and had suspension letters included in their permanent files.⁹ The school said the students' speech caused a disturbance on campus and that their paper was obscene; the court found no evidence of either.¹⁰

The students had asked occasional questions of an English teacher and typed a few of the articles on school typewriters. Even so, such minimal use of school property did not change the court's assessment that the students were essentially operating off campus.¹¹ The court noted that no school funds were used to produce the paper and that the students had included in their paper a notice that disclaimed any connection with the school.¹²

In ruling for the students, the *Thomas* court was clear: "[T]he First Amendment forbids public school administrators and teachers from regulating the material to which a child is exposed after he leaves school each afternoon."¹³

After school hours are traditionally the realm of parents, the court said, and therefore the court was loathe to allow the school to regulate that time.¹⁴ As

members of the public, students are subject to the same laws as any other citizen, and therefore school regulations are unnecessary, the court said.

In addition, the court was wary of the potential consequences of allowing such regulation. If the court upheld the regulation, it wondered whether school officials might not then be able to punish a

thoughts. We trust that it will come as no shock to the school board that their assumption of authority is an unconstitutional usurpation of the First Amendment."¹⁷

While these cases involved student publications, other courts have recognized the difference between off-campus and on-campus speech in other con-

[T]he First Amendment forbids public school administrators and teachers from regulating the material to which a child is exposed after he leaves school...."

Thomas v. Granville Central School District (1979)

student who legally purchased a "bad" magazine off-campus and then lent it, or "distributed" it, to a friend while visiting at the friend's house. The court rejected such far-reaching administrative control and commented that after-school activities are "the proper subjects of parental discipline...."¹⁵ School officials, the court said, were not empowered to assume the role of *parens patriae* [surrogate parent].¹⁶

A Texas court responded in a similar vein, chastising school officials who sought to punish students for the off-campus distribution of an independent newspaper the students had created.

"It should have come as a shock to the parents of five high school seniors...that their elected school board had assumed suzerainty [control] over their children before and after school, off school grounds, and with regard to their children's rights expressing their

texts and have limited the right of school officials to punish students for conduct outside of school that clearly would have been punishable if it occurred in the classroom.

In *Klein v. Smith*,¹⁸ for example, a student made an obscene gesture to a teacher in the parking lot of an off-campus restaurant. The court agreed that such behavior would be unacceptable on campus, and would also be unacceptable if the gesture had undermined the teacher's authority in school.¹⁹ But because the act was so far removed from school, the student's right to speak as he wished was accorded First Amendment protection and his suspension was overturned.²⁰

While most courts recognize the constitutional limitations placed on public school authorities to punish students for their off-campus activities, a few have
(See OFF CAMPUS, page 22)

What category does your speech fall into?

School-Sponsored Speech

- Takes place on campus
- Financially supported by the school
- Distributed on school grounds
- Supervised by a faculty adviser or sponsor
- The most regulated of all the categories

Non-School-Sponsored Speech On Campus

- Includes underground newspapers and other independently produced student works
- Distributed on campus
- Uses no school resources
- School can only regulate how and when it is distributed

Non-School-Sponsored Speech Off Campus

- Includes underground newspapers, other independent student works and Web sites
- Distribution is off school property
- The least regulated of all three categories
- The subject of this article



Off campus

(continued from page 21)

been very reluctant to tie the hands of school officials completely. Some courts have gone out of their way to justify a school's response, suggesting that students may not have the same rights as the general public when their off-school speech has a "disruptive" effect on campus.

In *Baker v. Downey City Board of Education*,²¹ school officials claimed that the underground newspaper two students created and distributed off campus caused a disturbance on campus. The court accepted their testimony, and upheld the suspensions of the students. In addition, the court upheld the removal of the students from their elected offices.²² Although the students claimed they were being punished for the content of their speech, the court disagreed, saying they were punished because of the "profane and vulgar manner" of their speech.²³ The court held that when there is a disturbance, a student can be punished due to the school's interest in a disturbance-free school day.²⁴

However, the validity of the almost 30-year-old *Baker* decision is in question. Its sweeping holding has not been followed by other courts. In addition, the holding is almost certainly invalid in California due to more recent state laws that give broad protection to student expression, both on and off campus.²⁵

Courts have also at times expressed a willingness to "fudge" the geographic boundaries of on-campus speech to include some off-campus speech that had an impact on school grounds. For example, the *Baker* court virtually eliminated the distinction between on- and off-campus speech stating that "school authorities are responsible for the morals of the students while going to and

activities might be regulated, even when it occurred some distance away.

Finally, a few courts have allowed schools to punish students for engaging in otherwise lawful speech off school grounds not because of the content of the speech, but rather because of the student's inappropriate conduct.²⁹ In 1973, for example, a high school student in Texas distributed a newspaper off campus, after school. The principal suspended him for violating a prior review policy. As the student left the principal's office, he slammed the door and swore at the secretary. The student continued to come on campus during his suspension and swore again, this time at the principal.³⁰

In upholding the student's suspension the court did not deal with the question of his published speech or the validity of the school's policy. Rather, it concentrated on the student's actions. The court was clearly disturbed by the what it viewed as a flagrant disregard of authority. The court found that the student's actions *after* distribution of his newspaper disrupted the school day; therefore, his speech rights were subsumed by the school's interest in maintaining a peace-

"We ask only that the student seeking equitable relief from allegedly unconstitutional actions ... come into court with clean hands."

Sullivan v. Houston Independent School District (1973)

from school, as well as during the time they are on campus."²⁶

Another court upheld the ability of school officials to regulate the distribution of publications handed out "near" campus in a "manner calculated to result in their presence on campus."²⁷ A third court stated that "[t]he width of a street might very well determine the breadth of the school board's authority,"²⁸ suggesting its willingness to adopt a "sliding scale" to determine how far off campus school authorities' power extends. Under this court's rationale, peaceful and orderly student speech that took place just outside school grounds could not be subject to school regulation while speech that significantly disrupted school

ful school environment.³¹

As the court said: "We ask only that the student seeking equitable relief from allegedly unconstitutional actions by school officials come into court with clean hands."³²

What about prior review?

At a number of schools, administrators require that official student publications be submitted for review — and approval — prior to distribution. This practice, known as prior review, is virtually unknown in the off campus world. Commercial newspapers and private citizens do not have to submit their speech to government officials for pre-approval. Indeed, courts have made it clear that

Creating an off-campus publication?

A guide to avoiding trouble with your school

Have as little contact with the school as possible.

- The more contact you have with the school, the more likely a court is to find that school officials have some authority to control your actions. To be an independent, you should act independently.
- If you are creating a Web site, do it at home, on your own computer, on your own time, and with a service you pay for. Do not use the school's equipment or resources.
- Encourage students to look up your Web site after school and off school grounds, instead of on campus.
- If your publication concerns school activities, place a disclaimer on it, making clear that you have no official ties to your school.

Obey all school rules and orders from school authorities.

- Challenge conduct that you believe violates your rights, but do so at an appropriate time.
- Advise the administration that you will fight their ruling.
- Contact the Student Press Law Center or other legal experts if you feel your rights have been violated.

Keep in mind you are responsible for everything you publish.

- Even if your school cannot regulate you, you are still bound by the laws of privacy, libel, obscenity and copyright.

any such prior restraint on publication is repugnant to our notion of freedom, and is — but for extremely rare exceptions — unconstitutional.³³ Independent, off campus student speech should be treated with the same respect. There is no valid reason to conclude that students relinquish their rights as citizens just because they attend school.

While a few courts³⁴ have suggested that prior review of off-campus student speech might be permissible where school officials can show that the speech could have a disruptive effect on campus or where the speech was in close physical proximity to campus, such cases are far from

conclusive. Given that more recent cases have barred school officials from engaging in prior review of independent student publications, even where they are intentionally distributed in school,³⁵ the right of school officials to preview

off-campus student speech is highly suspect. As one court has said, a school can never “exercise more control over off-campus behavior than on-campus conduct.”³⁶

A few last words

As a journalist, your obligation is to

Looking into private schools

The First Amendment applies only to laws made by the government and its agencies; private schools are not covered. Therefore the administrators of a private school have, with some important exceptions, significant leeway in punishing even off-campus speech.

Unfortunately, a detailed discussion of the rights of private school students is beyond the scope of this article. Additional information is available in the SPLC packet, *Press Freedom and Private Schools*, available from the SPLC, or on our Web site: <<http://www.splc.org/RESOURCES/PRIVATE.SCHOOL/private.html>>.

ensure that the public is informed. That means writing stories about issues that affect you and your fellow students. If that scares your administration, so be it. You may be a student, but you still have rights. Know them. Exercise them. ■

¹ *Internet Prank Costs Student Scholarship*, Student Press Law Center Report, Fall 1995, at 25.

² *Id.*

³ *Gaining Popularity*, SPLC Report, Spring 1996, at 7.

⁴ *Id.*

⁵ *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 682 (1986).

⁶ *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 511 (1969).

⁷ *Sullivan v. Houston Independent School District [Sullivan I]*, 307 F. Supp. 1328, 1340 (S.D. Tex. 1969).

⁸ 607 F.2d 1043 (2d Cir. 1979).

⁹ *Thomas*, 607 F.2d at 1046.

¹⁰ *Id.* at 1052.

¹¹ *Id.* at 1045.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 1050.

¹⁵ *Thomas*, 607 F.2d at 1051.

¹⁶ *Id.*

¹⁷ *Shanley v. Northeast Independent School District*, 462 F.2d 960, 964 (5th Cir. 1972).

¹⁸ 635 F. Supp. 1440 (D. Me. 1986).

¹⁹ *Id.* at 1441.

²⁰ *Id.* at 1442.

²¹ 307 F. Supp. 517 (C.D. Cal. 1969).

²² *Id.*

²³ *Baker*, 307 F. Supp. at 527 (emphasis in original).

²⁴ *Id.* at 523.

²⁵ Calif. Educ. Code §§ 48907 and 48950.

²⁶ *Baker*, 307 F. Supp. at 526.

²⁷ *Sullivan v. Houston Independent School District [Sullivan II]*, 475 F.2d 1071, 1073 (1973).

²⁸ *Shanley*, 462 F.2d at 974.

²⁹ *See Sullivan II*, 333 F. Supp. 1149, vacated, 475 F.2d 1071 (5th Cir. 1973), cert. denied, 414 U.S. 1032 (1973).

³⁰ *Id.*

³¹ *Id.*

³² *Sullivan II*, 475 F.2d at 1077, cert. denied, 414 U.S. 1032 (1973).

³³ *See e.g., Near v. Minnesota*, 283 U.S. 697 (1931).

³⁴ *See, e.g., Shanley*, 462 F.2d 960.

³⁵ *See Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988), *Johnston-Loehner v. O'Brien*, 859 F. Supp. 575 (M.D. Fla. 1994).

³⁶ *Sullivan I*, 307 F. Supp. at 1341.

University president forces ad removal

Newspaper faces opposition over planned parenthood clinic advertisement

MONTANA— The staff of the student newspaper at the University of Great Falls is questioning its publishing freedom after the president of the university stopped an advertisement for a family planning clinic.

The advertisement, paid for by Montana Family Planning Services, was cut after it ran twice in the *Lumen Press*.

University President Frederick Gilliard told the editors to pull the ad because it conflicted with the views of the Catholic Church. Great Falls is a Catholic university.

The ad was scheduled to run a third time, and according to editor in chief Thomas Nelson, the newspaper had to refund 25 percent of the ad costs back to the clinic for breaking the advertising contract.

Nelson said the newspaper staff was under the impression that it was free to print what it wanted.

"We were going by the rules we were given," Nelson said.

According to a student

handbook released by the university, the student press at Great Falls "shall be free of censorship and advance approval of copy, and its editors and managers shall be free to develop their own editorial policies and news coverage."

Gilliard said that the newspaper is funded by the private school, and therefore is not entitled to the First Amendment rights of a public school's publication. He argued that news coverage should remain free because it is generally balanced in its coverage, but advertising is a different issue.

Gilliard added that the newspaper's policy may need to be clarified.

"What came out on paper wasn't exactly the total picture," Gilliard said about the policy defined in the student handbook. "I would like

to see the development of a change in the advertising policy."

The *Lumen Press*, Gilliard said, is not a public forum, and should meet the standards of the church.

Nelson and the rest of the *Lumen Press* staff have met to discuss the newspaper policies, and Gilliard said he will open the issue to public debate when school begins in the fall.

Nelson said the policy in the student handbook clearly states that the newspaper should have total control of its content, and it is unfair for the university to suddenly change its mind about the policy.

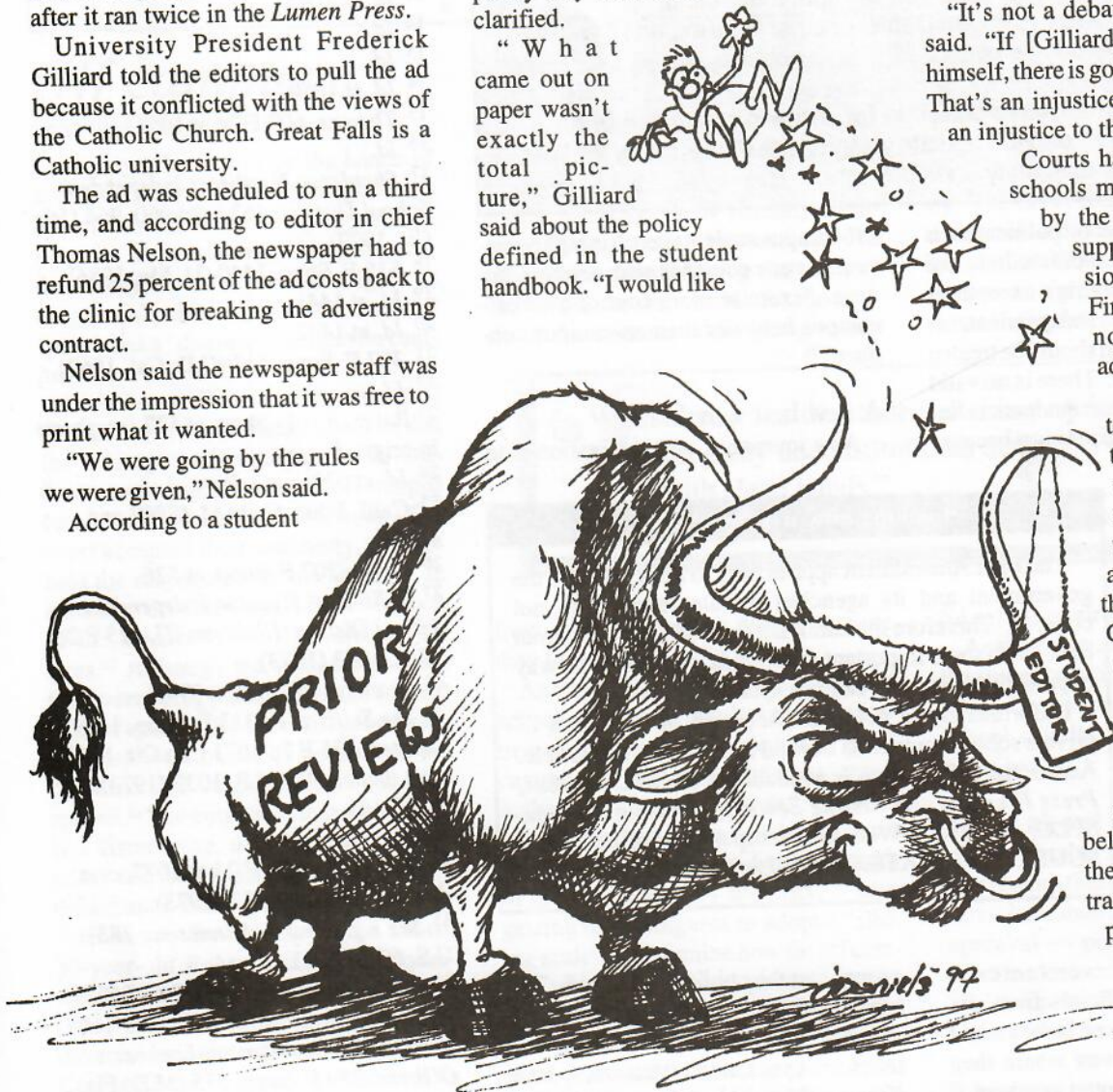
"It's not a debatable issue," Nelson said. "If [Gilliard] tries to change it himself, there is going to be some anger. That's an injustice to the students and an injustice to the university."

Courts have said that private schools may be legally bound by the policies they adopt supporting free expression, even though the First Amendment does not require them to adopt such protection.

In an editorial written after the incident, the *Lumen Press* wrote, "This is an issue that people have to deal with in this day and age, regardless of their religion or beliefs. Catholic beliefs are only one way to look at the ever-present issue of sexuality and birth control."

Nelson said the staff continues to believe the control over the ads is a breach of contract between the newspaper and the university.

"We just want the right to choose what ads we put in our paper," Nelson said. ■



Students not laughing at 'ebonics'

Two New York school publications draw fire over parodies

NEW YORK — The debate continues regarding the validity of ebonics, a term developed to describe a dialect of English used by some African Americans.

But along with the debate has come satire and parody — and some people are not laughing.

Two students staffers at Vassar College's *The Vassar Daily* in Poughkeepsie resigned from their positions under pressure after printing a satirical article titled "BoBo's Ebonics Pocket Dictionary" in the humor section of the March 26 issue.

The article gave dictionary definitions for words in ebonics and translations such as "Biotche *n.* An adult female human being," and "Bootey *n.* The buttocks of a female human being."

The piece also included a cartoon depiction of a black man saying, "Yo cuz! You best better check out my Ebonics Pocket Dictionary!"

Students in the college's Black Student Union reacted to the article by calling for the resignation of editor in chief Will Rahilly and editor Jon Kuta.

The Vassar Student Association Council, which funds the publication, decided to freeze its funding for two weeks in order to allow for a change in the newspaper's constitution. Rahilly said the new policy requires the editor in chief of the paper to review all of the

contents before publication.

Rahilly resigned from his post amid the complaints from students, a move he said did not come only as a direct result of the backlash from the article. Kuta, who illustrated and wrote the article, also resigned.

Rahilly added that he did not actually see the article before it was published and did not like what he saw when it came out.

"Besides being unfunny, the article was offensive," Rahilly wrote in an e-mail to the *SPLC Report*.

But while Rahilly did not agree with the article, he said that censorship of the

tions for Free Speech. The group includes members of student publications on campus, as well as members of on-campus drama and comedy troupes. Goldman said he stood by members of the *Vassar Daily* in fighting for their free press rights at a meeting of the Black Student Union, while the room was packed with students saying things he could not believe.

"It was a very scary experience," Goldman said. "People standing up saying, 'I believe in free speech, but not when it offends,' or 'If this means we can't have free speech, well that's fine.'"

Goldman said he helped convince the

"Yo cuz! You best better check out my Ebonics Pocket Dictionary!"

Vassar Daily ebonics parody

student publications is not unusual on the Vassar campus.

"A supposedly super-liberal college accepts only what is acceptable to the majority," he said. "How is that supposed to work? It's liberal in that it upholds a typically liberal standpoint on today's issues."

Some students spoke out for the *Vassar Daily's* free press rights in the wake of the article.

Former editor of the Vassar College *Miscellany News* Joe Goldman founded the campus' Association of Organiza-

council to unfreeze the paper's budget, and has spoken to the council about working to change the power the council has in cutting off funding by making an amendment to its constitution.

Meanwhile, student editors of the conservative Cornell university newspaper *Cornell Review* in Ithaca experienced a backlash of their own when they, too, wrote a humor article about ebonics.

The *Review* version, titled, "So You Be Wantin' to Take Dis Class," presented African Studies Department

(See *EBONICS*, page 29)

Both sides appealing Iowa open-records decision

IOWA — *The Ames Daily Tribune* is appealing a county district court's decision that required the opening of advertising and business records for the Iowa State University student newspaper, the *Iowa State Daily*.

Partnership Press, which owns the *Tribune*, essentially won the case but took issue with the ruling that the Iowa State Daily Publications Board was not responsible for paying their attorney's fees, and that portions of certain records could be deleted.

The decision stated that the publication board acted in good faith when it refused to release the information because

it believed it was not a government body subject to open records laws. *The Daily Tribune* originally sued to open the records of the student newspaper in 1995.

The Iowa State Daily Publications Board is also filing a cross appeal to clarify some parts of the ruling that it did not agree with.

The case was one of three separate complaints by the local newspaper against the university press, including the Partnership Press charges that the *Iowa State Daily* is involved in unfair competition, and that the university has an unfair distribution policy on campus. ■

California Thievin'

Six thefts of the University of California, Berkeley's Daily Californian head a long list of disappearing publications this year

CALIFORNIA — During the 1960s, the University of California, Berkeley stood at the forefront of a progressive movement on campuses across the country to bring free speech to college students.

More than 30 years later, UC Berkeley leads the nation again — but this time free speech is getting a raw deal.

The university's newspaper, *The Daily Californian*, experienced six thefts of its newspaper during the last school year, all alleged responses to stories dealing with — and mostly opposing — affirmative action.

From the first theft of almost 23,000 papers before elections in November to a string of thefts in the spring, editors at *The Daily Californian* are beginning to rethink the progress their campus has made.

"It's surprising," said editor in chief Ryan Tate, "especially on this campus where there's a tradition of cherishing and respecting freedom of speech."

Tate said he watched students hold a candlelight vigil for the late free speech activist Mario Savio, and at the same time witnessed students burning copies of the newspaper.

California's Proposition 209 is believed to be a main reason behind the thefts and vandalism.

The initiative to outlaw affirmative action was approved by California voters in November 1996.

One day before the election, an editorial ran in *The Daily Californian* supporting Proposition 209. About 4,000 copies of the issue soon disappeared from stands. The staff decided to reprint

the editorial in the next issue, but experienced the largest theft yet — 23,000 copies.

And the list continues. From January to May the newspaper experienced four more thefts, ranging from 3,000 stolen Jan. 28, to 10,000 copies stolen on May 2 after a column ran blasting anti-Proposition 209 protesters. In some instances, members of the staff have had to guard their distribution points.

Tate said the university police department was "hesitant" to get involved at first, but it has since taken steps to find out who is responsible for the thefts and now the department believes that these are definitely punishable crimes.

"When we first reported the thefts to them they were a little skeptical," Tate said. "Within a day they turned around and their position changed. A lot of people don't realize that stealing papers is a crime."

University police Capt. Bill Cooper said the department was initially unaware of how big the newspaper theft problem would be, but took an active interest "particularly once we saw the scope of it.

"There's a couple of groups everybody suspects," Cooper said. "In any of [the cases] it's not something in which we've had advanced surveillance. It's hard to monitor all the locations. You'd have to get into controlled distribution."

Cooper added that in finding suspects and deterring others from trying it, there is not one specific thing that can be done. But it helps when the community is aware that when they see the thefts occur, they know it is a crime.



TEXAS — Lamar University's student newspaper, *University Press*, is negotiating with the parents of a high school student to receive \$6,400 in lost advertising money after he admitted stealing copies of the April 30 issue.

The student was one of nine suspected students at the Beaumont school responsible for the theft of more than 3,000 newspapers. Staff members of the newspaper believe it was a response to an article and photo they printed about a high school student's suicide (See **PAR-ENTS**, page 34).

The students were all believed to be members of the Texas Academy for Leadership in the Humanities, a high school for gifted students, which is on the Lamar University campus.

Academy student Gabriel Kelley hanged himself near a campus dormitory on April 29.

The issue contained a short article about the suicide in the bottom right of the front page and included a photo of authorities rolling out a gurney with the body.

According to Allan Pearson, former editor in chief of *University Press*, the staff debated the issue of printing the

article and photo all day, but they decided it was appropriate to print.

"It took us all a little bit by surprise," Pearson said about the thefts. "We knew we would have problems, but not to this degree."

As soon as newspapers hit the stands they quickly ended up in recycling bins and dumpsters.

"We kept putting [the newspapers] out, and they would disappear pretty quickly," said Andy Coughlan, assistant to the director of student publications.

The academy student caught in connection with the thefts is now negotiating with the paper to name the other students involved and pay the lost advertising money from the issue, in exchange for dropping any criminal charges.

"There was \$6,400 riding on this, so it was enough to be a felony offense," said Howard Perkins, director of Student Publications and adviser for the paper.

CALIFORNIA — Student government representatives at the University of California, Santa Barbara decided to start their own club to respond to what they thought was unfair coverage in the campus newspaper, the *Daily Nexus*.

Headed by Associated Student President Russell Bartholow, they formed S.A.V.E. — Students Against Vicious Editorials, and "protested" by stealing

Other theft incidents

The following are the most recent thefts reported to the Student Press Law Center. The date and number of copies stolen are in parentheses:

- *The Golden Gater*, San Francisco State University (April, 6,000)
- *The Western Front*, Western Washington University (May, 400)
- *Daily 49er*, California State University, Long Beach (May, 10,000)
- *The Daily Targum*, Rutgers University (May, 4,000)
- *Vista*, Central Oklahoma University (June, 2,500)

more than 500 newspapers and taking them back to the editorial office. The newspaper published photos of the students carrying stacks back to the *Daily Nexus* office in the next issue.

The students who stole the papers claimed they were only demonstrating their right to freedom of expression.

"We had massive amounts of people decrying what had happened," said editor in chief Marc Valles.

The staff took its complaint to a campus disciplinary committee. Valles said he could not comment regarding the outcome.

"We are satisfied with the decision of the student-faculty committee," Valles said.

Kentucky prosecutor takes action against newspaper theft

KENTUCKY — While many student newspapers around the country have found little solace in local law

enforcement when dealing with newspaper thieves, one Kentucky prosecutor has shown that where there's a theft, there's a way.



Kannensohn

Fayette County Prosecutor Margaret Kannensohn found a case that hit close to her journalism

roots when the University of Kentucky student newspaper, the *Kentucky Kernel*, fell victim to a theft of 11,000 copies of one issue last year.

Kannensohn was a former copy editor for the campus newspaper during her years at Auburn University and took on the case after the advertising manager of the *Kernel* filed a complaint.

"To me that was unholy," Kannensohn said about the thefts. "But [the newspaper] walked into the arms of a prosecutor vitally interested in freedom of the press."

(See *PROSECUTOR*, page 29)

MASSACHUSETTS — Two students at Northern Essex Community College in Haverhill have been reprimanded by school officials after they admitted stealing about 2,000 copies of the campus newspaper, the *Observer*.

"What [the reprimand] means practically speaking — I have no idea," said newspaper adviser Joseph LeBlanc, who originally caught the two students removing copies of the Sept. 20, 1996, issue from newsstands.

LeBlanc expressed his satisfaction that action was taken against the students involved, but he felt the college did not handle the theft and the investigation as seriously as the situation warranted.

"I think [the college] was great at first," he said. "We were pleased in that they didn't just say '[the newspaper] was free so who cares.'"

"But when push came to shove, they didn't seem willing to punish them at all."

The two students admitted stealing the papers to protest opinion columns that criticized the welfare system.

According to Ernie Greenslade, director of public relations for Northern Essex, the college decided to handle the situation internally with the two students and not pursue criminal prosecution. But the case has led the school to clarify its policy on newspaper thefts.

Greenslade said LeBlanc and college officials are working to draft the new policy which will be displayed at all *Observer* distribution points and reinforce the newspaper's First Amendment rights.

The notices also will state that only the first issue of the *Observer* will be free, and any other issues must be received by calling the newspaper office.

But students that decide to steal newspapers may face more than reprimands from universities if new legislation passes in Massachusetts. Despite claims that many college newspapers are "free," criminal theft charges may become easier to prosecute.

State Sen. James Jajuga (D—Methuen) and Sen. Brian Dempsey (D—Haverhill) are still working to push an anti-newspaper theft bill through the state legislature's Criminal Justice Committee. ■



Free speech or sexual harassment?

Student suspended for material in dorm newsletter

CALIFORNIA — A judicial board at Claremont McKenna College in Claremont has suspended a student in April for a newsletter he published, drawing what it described as a line between free expression rights and sexual harassment.

Student Brad Kvederis was suspended for a semester. If he chooses to return he will have to take a sexual harassment sensitivity training program before returning to school.

Kvederis published a "gossip" newsletter primarily for his dorm, Wohlford Hall, and wrote about parties and included sexually suggestive material. In one issue, Kvederis answered the critics of his publication with an editorial titled "Land of the Free, Baby."

"If you are afraid of anything controversial and are that determined to screw everything up, then go ahead," the newsletter stated. "It will be pretty sad, though, since putting a stop to all things that could be controversial or offensive will make it damn hard to say anything on this campus without getting in trouble."

Three female students — one of whom was mentioned in the newsletter — were not entertained by Kvederis' newsletter and filed sexual harassment complaints with the university.

The university claims the content in the newsletter directly violated its sexual harassment policy.

Geoffrey Baum, assistant vice president for marketing and public relations for the university, said the school saw the content of the newsletter as sexual harassment, and did not see this as a violation of Kvederis' free press rights.

Under California's "Leonard Law," students of both public and private schools may not be punished solely on the basis of their speech.

"From our perspective this was a sexual harassment issue," Baum said. "We are required to provide an environment free of sexual harassment."

But the Southern California chapter of the American Civil Liberties Union came to the defense of Kvederis, saying the newsletter was far from sexual

(See NEWSLETTER, page 29)

Investigation of *Equinox* goes to 'pot'

NEW HAMPSHIRE — University officials at Keene State College have ended an investigation against the campus newspaper, *The Equinox*, after suspecting that members of its staff helped organize a pro-marijuana rally.

The investigation prompted the New Hampshire Civil Liberties Union to jump to the defense of the newspaper. ACLU attorney Jon Meyer said the organization wrote a letter voicing concern about the university's investigation and possible violations of the students' First Amendment rights.

"The issues we were concerned with were not just freedom of the press, but also freedom of association," Meyer said. "We wanted to focus the university on the individual liberties issue before the investigation was finished."

According to a memorandum sent to the newspaper's adviser from Campus Safety Director Vernon Baisden, university police received information that "...members of *The Equinox* staff were either directly responsible, instigated, initiated or conspired to disrupt the peace" with the April 20 rally.

A former editor for *The Equinox* believes, however, that the university police were merely using the investigation to put a burden on the staff after it had been working to open campus police logs for a campus crime section of the newspaper. University police were previously only releasing heavily edited crime reports.

"I think they were angry about the things that have happened in the past with pending freedom of information lawsuits," said former editor Joel Kastner.

Kastner said nothing official ever came of their complaint to university police, and the investigation of the staff merely put off any results.

University Director of Campus Safety Vernon Baisden did not return the *Report's* phone calls. ■

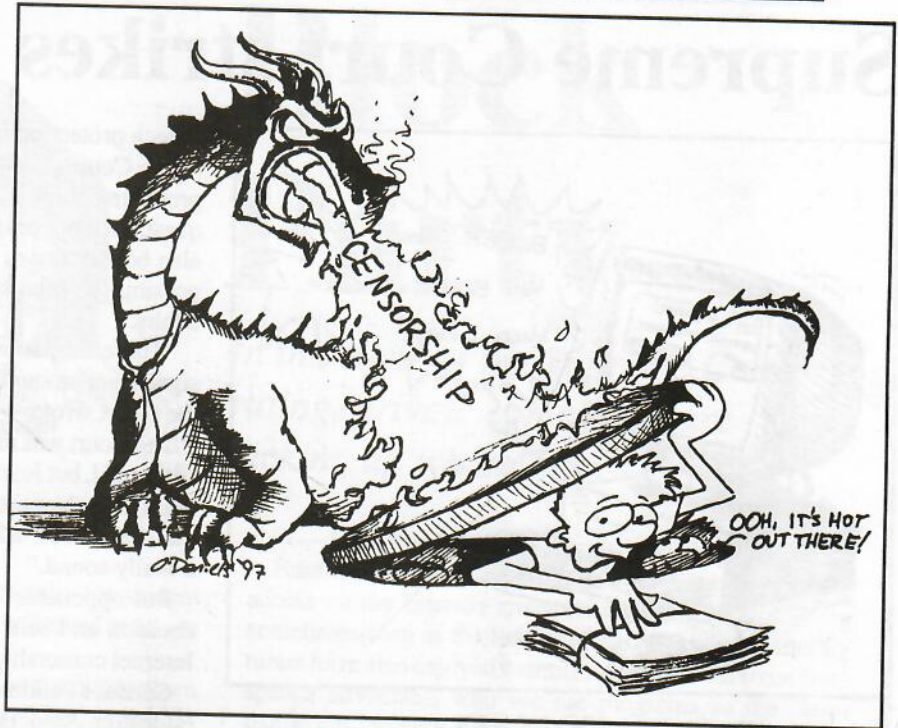
Newsletter

(continued from page 28)
harassment.

The ACLU appealed to a Pomona Superior Court to keep the school's judicial board from punishing Kvederis, but the court ruled that he "published a newsletter which may well contain obscene and libelous material and, therefore, is not constitutionally protected.

"His publication and other conduct appears to have the potential to create a hostile environment and could have become the basis of sexual harassment claims if the college did not take action when it did," Judge Wendell Mortimer Jr. wrote in the decision.

ACLU attorney Carol Sobel was unavailable for comment, but said previously in a report for the *Los Angeles Times* that she believed none of the material was libelous or obscene. ■



Ebonics

(continued from page 25)

class listings for prospective students from Oakland, Calif., where the ebonics controversy began after the local school board voted to teach students using the dialect as a tool.

"We ain't gots to axe da white man for nothin in dis class," stated part of a description for the class, "AS&RC 280

Racism in American Society."

Students upset with the article held a symbolic burning of a "handful" of copies of the paper, and some called for changes in university policy such as speech codes or racism sensitivity training, according to Cornell spokeswoman Linda Grace-Kobas. She added that neither of those ideas were ever considered by the administration.

Cornell President Hunter Rawlings

responded to the article by calling for "civil discourse" on campus.

"Though individuals have the right in this country to say or write such things, they thereby do themselves discredit, they harm others and they create a climate of hostility for all," Rawlings said in a statement released after the incident.

Grace-Kobas said no action against the *Review* is planned. ■

Prosecutor

(continued from page 27)

Apparently motivated by racial tension on campus and its coverage in the paper, the thieves left signs at distribution points saying, "No Diversity. No Equality. No Justice. No *Kernel*."

Three University of Kentucky students were apprehended for the thefts. The students pleaded guilty in November to third-degree criminal mischief, a charge Kannensohn said was the most plausible under Kentucky law for theft of a free distribution newspaper.

"One possibility was a theft charge, but these are free newspapers, so how do you steal something that's free?" she said. "Advertisers were severely hurt. There were some monetary aspects, but it still didn't fit into theft."

Many law enforcement officials have

“Quite frankly, if [the thefts] were to happen again, the stakes might get a little higher.”

Margaret Kannensohn
Fayette County
prosecutor

refused to bring charges after newspaper thefts occur, claiming no crime has been committed.

But Kannensohn said if other states' laws are anything like Kentucky's, the offense could be considered a simple

matter of vandalism because property was destroyed. She added that legislation specifically targeting newspaper theft should not be necessary in many states.

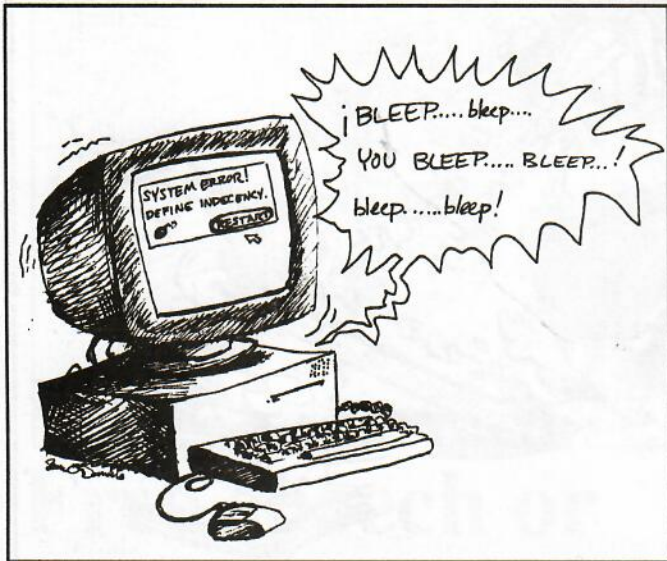
The three students served community service through the county's diversion program and have now had the charges dismissed. The program is for first offenders in nonviolent crimes.

"Quite frankly, if it were to happen again the stakes might get a little higher," she said.

Kannensohn said that while her background in journalism may be the difference between this case and other cases around the country that go without prosecution, others should realize that newspaper theft is definitely a crime.

"I would hope any kind of prosecutor without my background would think the same thing," she said. ■

Supreme Court strikes down CDA



Communications Decency Act called overbroad and vague

WASHINGTON, D.C. — The Supreme Court for the first time reached into the confusing area of the Internet and kept it clear of roadblocks by voting 7-2 to strike down two provisions of the Communications Decency Act (CDA).

The law, signed in 1996 by President Clinton, was seen by educators as a major threat to students' access to the Internet by banning the "'knowing' transmission of 'obscene or indecent' messages" to minors.

Obscene material is already prohibited under existing laws. Indecent material could have included everything from pornography to four-letter words.

The CDA also prohibited the displaying of "patently offensive" material to anyone under the age of 18.

The Court upheld the decision made last year by a Philadelphia federal court. Organizations fighting against the law included the American Civil Liberties Union, the American Library Association and the Journalism Education Association.

Justice John Paul Stevens wrote in the Court's opinion for *Renov. ACLU*, 117 S. Ct. 2329 (1997), "The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effects on free speech."

Unlike other laws restricting questionable material, the wording in the Communications Decency Act failed to exclude material that could have "serious literary, artistic, political or scientific value."

Ann Beeson, attorney for the ACLU in the case, said the decision to strike down the law was not unexpected, and she was pleased that the opinion affirmed First Amendment rights.

"It couldn't have been any stronger an endorsement for free

speech protection on the Internet," Beeson said.

The Court said it does realize the government's interest in protecting minors from harmful material. But the opinion questioned not only the vagueness of what is "indecent," but also how intrusive the Internet actually is in homes, and the possibility of the statute indirectly restricting speech among adults.

"These limitations [in the CDA] must inevitably curtail a significant amount of adult communication on the Internet," the Court wrote.

The Court was unanimous in ruling that the law was unconstitutional, but Justice Sandra Day O'Connor and Chief Justice William Rehnquist dissented in part of the opinion and stated that creation of "adult zones" on the Internet "can be constitutionally sound."

But opponents of the law cheered the Supreme Court's decision and said it will help clear up the confusion about Internet censorship.

Candace Perkins Bowen, former president of the Journalism Education Association, which was a plaintiff in the case, said the victory will help students continue to enjoy access to a free Internet.

"Only by allowing student reporters open access to information — on the Internet and elsewhere — can we help them develop the skills they need to be critical thinkers and to communicate important information to their teen audiences," Perkins Bowen said. ■

New York, Georgia Internet laws also shot down in June

NEW YORK, GEORGIA — Two recent court decisions have sent a message to states considering regulating content on the Internet — don't try it.

At least that is what attorneys for the American Civil Liberties Union are hoping after the simultaneous release of two rulings on Internet laws.

The decisions released June 20 by U.S. district courts in Georgia and New York concluded that states may be in over their heads if they try to regulate the limitless boundaries of the World Wide Web.

Georgia's law, dubbed

the "Internet Police Bill" by its opponents, prohibited using trademarked information, or using the Internet anonymously or under a pseudonym.

The law had been intended to eliminate fraud and copyright infringement on the Internet.

Georgia ACLU attorney Gerry Weber said the law was extremely vague and outlawed common aspects of the World Wide Web, such as linking to different pages. Those who violated the law could have faced up to one year in prison, he said.

(See LAWS, page 33)

Block Party

In the wake of the Supreme Court's ruling, private companies are picking up where the CDA left off



The Internet has quickly become the journalist's best friend.

But its future is shaky — especially for student journalists hoping to continue enjoying unlimited access to the Web.

The June decision by the Supreme Court striking down the 1996 Communications Decency Act (CDA) in *Reno v. ACLU* was not a definitive answer proclaiming absolute free speech on the Internet. Nor was the decision the end of the battle for anti-pornography organizations wanting to keep "indecent" material off the Internet and World Wide Web.

But the decision has given both sides more fuel for arguing what Candace Perkins Bowen of the Journalism Education Association called the more-important "smaller battles" in fighting for students' Internet freedom.

Battles range from new, more specific attempts at Internet regulation by Congress, to special policies being developed by schools and public libraries to keep students away from certain sites through blocking programs.

All of the ideas raise questions about what infringes on First Amendment freedoms.

"Most school districts are already adopting [Internet] policies," said JEA President H.L. Hall. "This is where the concern lies. The [Student Press Law Center] is just going to be even more inundated with calls" from students and advisers concerned about their rights.

While new legislation is in the works at federal and state levels, blocking programs are making their presence known in many public schools and libraries. It is a scary thought for Bennett Haselton, a senior at Vanderbilt University in Tennessee.

Haselton is the founder of Peacefire, an organization of about 1,000 students working to combat Internet censor-

ship — including censorship through blocking programs.

Haselton said that when concerns about freedom of access on the Internet arise, the blocking programs are sometimes seen as the least harmful. Blocking manufacturers have also enjoyed a strange alliance with some free-speech advocates, who see the programs as the "least dangerous" to First Amendment freedom, Haselton said.

"Eventually, there may be a point when the blocking manufacturers and the free speech advocates can't agree," Haselton said. "That's where [the alliance] will splinter."

With government bodies using these blocking programs — which are created by third-party companies — Haselton said there are plenty of problems that free-speech advocates need to worry about.

"[The blocking programs] were designed with parents at home in mind," Haselton said. "They aren't as bad as government regulation, but they block materials that haven't even been blocked [under most of the proposed laws]."

Haselton said much of the software uses "keyword-based" blocking, which blocks sites with words such as "sex" or "breast," regardless of the context. This sacrifices a large number of important sites to which minors should have access, he claims.

Haselton claimed one program, called CYBERSitter, by Solid Oak Software Inc., has not only blocked his Peacefire Web site, but also sites including the National Organization for Women and anything attached to the search string "gay rights."

Haselton said these sites and others have been blocked for purely political reasons, and the companies creating the software should not be able to dictate what is available at public institutions.

Solid Oak Software Inc. President Brian Milburn would not comment, but the company's Web site addresses

(See BLOCK, page 32)



Professors take Virginia Internet law to court

VIRGINIA — Six Virginia university professors have joined the American Civil Liberties Union to fight a new law that bans state employees from accessing sexually explicit material on the state-owned Internet providers.

Professors from schools including George Mason University, Old Do-

minion and Virginia Commonwealth filed the lawsuit in May with a U.S. district court in Alexandria.

George Mason English and cultural studies Professor Paul Smith is included in the lawsuit and has already experienced the effects of the law.

Smith downloaded pictures for a cultural studies class from Web sites that were considered sexually explicit, and the university forced him to remove the material from his Web site. Smith said he was going to use the material for a class discussion on Internet regulation of pornography.

"I was about to write a commentary on them about the significance of [the downloaded material] or lack thereof," Smith said.

But he was stopped short of his plan. Under the law, professors such as

Smith that are found in violation may even lose their jobs.

According to ACLU attorney Mary Bauer, the law took effect last July and one reason it was introduced was to keep state employees from "goofing off" while at work.

"One of their reasons [legislators] had is that they want to stop people from wasting time," Professor Smith said. "And [universities] see themselves in a position to enforce the law."

The result, Smith said, is professors being kept from information that could be used in their teaching. According to the ACLU, material that could be deemed sexually explicit under the law includes Web sites with literary works from D.H. Lawrence,

(See *VIRGINIA*, page 34)



Block

(continued from page 31)

Haselton's complaint: "CYBERSitter has no agenda of any kind, unless you consider protection of children a hidden agenda."

Still, schools and public libraries have been signing on to use various Web site-blocking programs. The Boston Public Library has begun using a program called Cyber Patrol on special child-designated computers, and leaving "adults-only" computers free of the software.

According to Elisa Birdseye, a librarian with the library's adult services department, minors are not allowed access unless they have parental permission verified when they receive their library cards.

In Orlando, Fla., the American Civil Liberties Union has begun looking into possible First Amendment violations from the installation of a blocking system at the Orange County Library.

ACLU attorney Andrew Kayton said the system is installed to affect all computers, regardless of the user's age. Kayton added that they are still investigating the program and will negotiate with the library before thinking of filing a lawsuit.

"There may be a point when the blocking manufacturers and the free speech advocates can't agree."

Bennett Haselton
Peacefire founder

"We have a pretty good idea how it works now, and we have the *ACLU v. Reno* decision in hand," Kayton said. "We absolutely object in principle to the Internet blocking programs."

Library spokeswoman Marilyn Hoffman said the system, called WebSENSE, by NetPartners, was installed in January 1997 in response to complaints from library patrons and employees about the use of computers to download pornography.

According to NetPartners spokesman Bryan Wampler, the system only blocks sites that the company's employees have screened, and the library can add and remove sites on its own.

Based on a 28-category system, the

Florida library says it has only chosen to block the "hard-core" pornography category. Hoffman said the library is following its normal policy of material collection.

"Right now, it's the best we can do," Hoffman said of the system. "I don't think there's going to be anything that's 100 percent."

At this point, almost everyone involved in regulation can agree that nothing will be perfect — and many are just looking for something that will work.

But Haselton and others are worried that with that attitude, the regulation will go beyond what is legal and will slowly restrict Internet access freedom.

"I predict that the ACLU will bring a first case against these [blocking] programs," said Jonathan Wallace, a New York-based lawyer and co-author of the book, *Sex, Laws and Cyberspace*. "That is exactly the next battleground."

Groups such as the ACLU and American Library Association have realized the problems with trying to create Internet policy, and continue to say that on-line intervention will do more harm than good for keeping Internet access open to everyone.

The end of the CDA may be the beginning of the Internet's days in court. ■

Iowa governor vetoes student Internet access bill

Off-campus users keep free access rights to university computers

IOWA—Pressure from students and faculty at the University of Iowa has finally helped halt a state bill that would have forced students and faculty living off-campus to pay the equivalent of a commercial rate for Internet use.

Students currently receive free access to the university's Internet system through a state-subsidized network.

Iowa Gov. Terry Branstad vetoed Senate file 519, originally introduced as a way to open the Internet server market to other private companies. But Branstad said it should not come at the expense of students.

"[The bill] would require our higher

education institutions to dramatically change the educational services offered to the students or face significant additional financial burdens," Branstad wrote in his veto message.

"My personal feeling is that [the current practice] was unfair competition," said Sen. John Jensen, who supported the bill.

Jensen said he did not believe students should receive free access when no one else does. With free access available via the university network from their home computer, and the school paying very little for access from a private company, Jensen said the private phone companies that provide Internet access cannot compete. But university officials said making students pay for the service was out of the question.

"That would be like telling the students off campus that they can't use the library," said Steve Parrott, assistant di-

rector of University Relations for University of Iowa. "We encouraged the governor to veto the bill.

"Although we have over 30 Instructional Technology Centers where students can use computers for free, that is not enough to accommodate all our students."

Parrott added that if students off campus had to use private Internet providers, many university services would not be available to them. Some information is licensed only to university-related networks.

University of Iowa President Mary Sue Coleman had proposed to pay the additional costs necessary for off-campus access for students if the bill passed. Parrott speculated that, although the bill was vetoed, the issue will come up again.

"The phone companies felt very strongly the other way," Parrott said. ■

Laws

(continued from page 30)

Organizations including the Georgia ACLU, Electronic Frontiers Georgia and members of the Georgia House of Representatives challenged the law and won.

"We were obviously delighted," Weber said. "We were fairly confident because the law was really poorly written. The law was drafted without much knowledge of the Internet, and the judges recognized that."

In the court opinion for *ACLU v. Miller*, No. 96-cv-2475 (N.D. Ga. June 20, 1997), Judge Marvin Shoob wrote that Georgia "already has in place many less restrictive means to address fraud and misrepresentation."

The court also recognized that the law could be misinterpreted to also cover communication such as by telephone or fax.

"The court has said that the Internet should be treated like any other form of communication," Weber said.

ACLU Attorney Ann Beeson said that while the Georgia decision analyzed traditional First Amendment claims, the

opinion by Judge Loretta Preska in New York's *ALA v. Pataki*, No. 97 Civ. 0222 (S.D. N.Y. June 20, 1997), reached past free speech and into the Commerce Clause of the Constitution.

"[The Commerce Clause] is really going to be crucial to stop the stifling of the Internet," Beeson said. "Traditionally, the Commerce Clause says states can't regulate the commerce that occurs wholly outside of state borders."

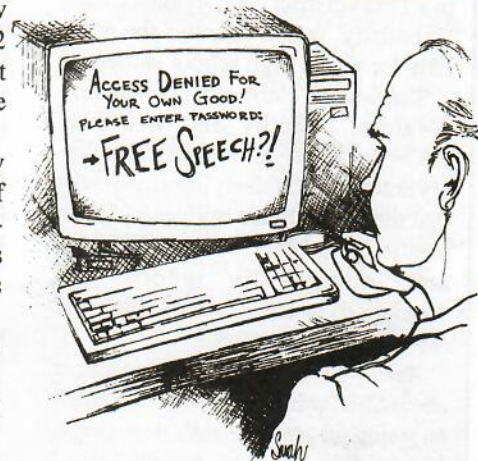
Beeson compared the Internet to railroads in the United States. Attempts to regulate them would be interfering with commerce between other states.

"The same is even more true of the Internet," Beeson said.

While the borders may be vague on this new "information super-railroad," Preska agreed that these laws could harm the free flow of commerce between states.

In her opinion, Preska wrote that "The Internet fits easily within the parameters of interests traditionally protected by the Commerce Clause. The New York Act represents an unconstitutional intrusion into interstate commerce."

Preska went on to write that while the state does not have the authority to regu-



late Internet content, the United States may have the authority.

"The Commerce Clause ordains that only Congress can legislate in this area, subject of course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require," Preska wrote.

Beeson agreed that only Congress, not the states, is in a position to regulate the Internet. Any states that try it themselves may be jumping in front of a moving train. ■

Parents say harassment over Web site led to son's suicide

Lawsuit blames two Texas administrators in son's hanging

TEXAS — Gabriel Kelley was only 17 when he was found dead after hanging himself near the dormitories of his high school, the Texas Academy for Leadership in the Humanities in Beaumont on April 29.

Although some viewed his untimely death as unforeseeable, his parents believe the suicide was preventable and came from harassment and mental abuse he experienced partly because of a Web site he posted that was critical of the school.

Kelley's family has filed a lawsuit in a Texas district court against Lamar University, which operates the academy for gifted high school students.

The lawsuit claims that two administrators, Dorothy Sisk and Jean LaGrone "falsely generated [disciplinary notices], and falsely informed Gabe that these fraudulent notices had been sent to his parents. They maliciously and intentionally ignored the Academy's student life policies and disciplinary procedures."

Kelley's Web site, which is no longer accessible, was connected to the academy student government's home page. Darren Umphrey, the Kelleys' attorney, said the Web site criticized the academy regarding the way they handle disciplinary matters.

The university made it clear early on that Kelley's Web site was not in violation of any school policies, Umphrey said. But, he said, two administrators used "renegade" tactics to try to scare him into believing he would be punished, or possibly expelled.

A suicide note found in Kelley's pocket named LaGrone and said that she "is a danger (at least in a psycho-

logical sense) to Academy students."

"[Gabriel] was the type of person who was outspoken," Umphrey said. "They [the administrators] made it known that they didn't like it. They were talking to [his] parents telling them he was a troublemaker.

"He was trying to reach out to ask for help. His efforts were fruitless in his mind."

Fernando C. Gomez, vice chancellor and general counsel for the Texas State University system, called the lawsuit "totally frivolous" and said that while the academy mourns the loss of Kelley, the family has no grounds to sue the university for what he said were two completely unrelated matters.

"There is no connection between the suicide and action on the part of the university," Gomez said. "This sort of thing happens all the time. What are you going to do? Sue the nearest deep pocket?"

In a July 3 report for the *Beaumont Enterprise*, LaGrone said many students have had much worse disciplinary trouble, and school administrators "weren't a threat to him."

Umphrey, however, points to a letter to the university four months before the suicide from an academy parent that complained of how discipline had been handled.

Also, in December 1996, a faculty senate ad hoc committee wrote a letter to Executive Vice President for Academic Affairs William Cale stating that lax discipline on the campus "creates an atmosphere that may lead to a tragic event...."

Umphrey claims these letters are directly related to the problems Kelley had with administrators in the academy, and his problems could have been prevented before it was too late.

Gomez said the university will fight the lawsuit, which is scheduled to go to trial in December 1998. ■

Virginia

(continued from page 32)

Allen Ginsburg and Walt Whitman.

Virginia Commonwealth Professor Melvin Urofsky had originally planned for a mass communications law class to research Web sites in possible violation of the now-unconstitutional Communications Decency Act. But Urofsky pulled the assignment for fear it would violate the Virginia law.

Virginia Gov. George Allen has been

"The governor just feels college professors don't need pornography to teach students."

Greg Crist
spokesman for
Gov. Allen

named defendant in the case, and spokesman for the governor Greg Crist said Allen stands by the law.

"The governor just feels that college professors don't need pornography to teach students," Crist said.

But Bauer called the law "overly broad," because it keeps university professors from material they may need.

The law contains the provision that the only way to obtain the information is with permission and when working on "a bona fide, agency-approved research project or other agency-approved undertaking."

"There are no guidelines," Smith said about the provision. "It doesn't say what is acceptable, who decides — it's totally vague."

The professors' complaint states that there are no established "regulations regarding the process or standards for approval."

Smith said that professors are stuck having to get their work approved, and the law does not even tell them how to do it. ■

Maryland teen files \$2.6 million claim

High school reporter is target of libel suit

MARYLAND — The Anne Arundel County Board of Education and a student newspaper reporter are currently facing a \$2.6 million libel suit filed by the family of a former student who claims a quote attributed to him was so damaging to his reputation he had to change schools.

The student, Anthony Bonacci, and his parents Steven and Joanne Bonacci, are alleging that he was libeled by a fabricated and defamatory quote.

A quote was attributed to Bonacci in a story by *Spectrum* reporter Jennifer Tisdale, that said "I frequently sexually harass girls, and I don't think I'll stop any time in the near future."

The suit claims that "as a direct and proximate result of the libelous actions of ... Jennifer Tisdale ... Bonacci suffered severe, painful, and permanent humiliation and injuries to his reputation, which has caused him and will continue to cause him great pain, mental anguish and emotional distress."

The Bonaccis are also claiming that the Anne Arundel County School Dis-

"We are viewing it as a ridiculous suit."

Darren Burns
Arundel School
District Attorney

trict was negligent, in that it did not provide appropriate supervision of the student newspaper, therefore facilitating the quotation's publication.

Tisdale claims that Anthony Bonacci was given the opportunity to view and edit his quote before it was published, and that he approved of it running in the newspaper.

Darren Burns, attorney to the Anne Arundel Public Schools superintendent, said the lawsuit is one without merit.

"We are viewing it as a ridiculous suit," he said.

County attorneys have taken the case on behalf of the school system and Tisdale.

Kim Carney, Anne Arundel County attorney representing the school district, said because the case is still in its early stages, she could not comment about it.

Since the filing of the original suit, the

mother of Tisdale has filed a countersuit, claiming \$2.2 million in compensatory and punitive damages.

Linda Deringer, Tisdale's mother, is claiming that Anthony Bonacci slandered her daughter by accusing her of fabricating a quote.

The countersuit also targets Bonacci's parents as conspiring to defame a minor.

Following the publication of the article quoting Anthony Bonacci, his father wrote a letter explaining the incident.

The letter was sent to the parents of journalism students at Arundel High School.

Part of the letter stated that "Obviously, the writer [of the article] is guilty of libel. Not only does she jeopardize her own future in journalism; she also damages the reputation of the paper."

Deringer's counterclaim states that this letter was libelous to Tisdale.

"The conspiracy and resulting defamation of the Minor, Jennifer Tisdale, were maliciously carried out by Counterclaim Defendant, Steven Bonacci," the suit states, "whose only concerns were his own self interest, and the publicly perceived reputation of his minor son and himself, without any consideration whatsoever for the truth...." ■

States find teachers to be public officials

Two courts hold public school instructors to actual malice standard

TENNESSEE, CONNECTICUT — In two recent court rulings, a public high school teacher and a professor at a public university were determined to be public figures.

In a libel suit, if the person who filed the suit is determined to be a public figure by the judge, he or she then has to prove that the defendant printed the defamatory material with actual malice, meaning the defendant either had a knowledge that the material was false,

or he or she printed the material with a reckless disregard for the truth.

In Tennessee, the state court of appeals affirmed in *Campbell v. Times Printing Co.*, C.A. No.03A01-96-11-CV-00364 (Tenn. Ct. App. 03/20/97), the dismissal of a libel claim by a public school teacher, finding that the teacher's job made him a public official.

The teacher, Kenneth Campbell, sued the Times Printing Company because of an article that, according to Campbell, implied he had a criminal record.

The court determined that although they could not be more restrictive than the U.S. Constitution requires in determining what makes a public official, they can be less restrictive.

"Therefore, states can reach lower into the governmental hierarchy than that which is required by the United States Constitution and lesser officers or employees can be designated 'public officials'," wrote Judge Don McMurray.

The court relied heavily on previous Tennessee cases that had determined a junior social worker, a government purchasing agent and a high school principal to be public officials.

In Connecticut, an appellate court issued a similar ruling in the libel suit of a public university professor in

(See *PUBLIC*, page 36)

'Cokehead' accusation leads to suit

CONNECTICUT — Yale University's tabloid magazine *Rumpus* has become the target of a libel suit, because of a story it ran accusing a local landlord of being a "cokehead" and mismanaging property.

The *Rumpus* printed the article focused upon Ed Anderson, a property owner in New Haven.

The article claimed his property was not taken care of, and implied that Anderson abused alcohol and drugs.

The feature on Anderson was the main story of that issue of *Rumpus*, and included a front page and inside spread.

Gordon Evans, attorney for Anderson, wrote a letter to Ray Deck, editor of the *Rumpus*, claiming the article to be libelous and demanding a retraction.

The *Rumpus* printed an apology in a later issue.

Anderson has since filed suit against Deck, the author of the article, the publisher and managing editor of the *Rumpus* and Yale University.

Evans refused to comment about the case. ■

Public

(continued from page 35)

Abdelsayed v. Narumanchi 668 A.2nd 378 (Conn. App. 1995).

The professor, who taught accounting at Southern Connecticut State University, filed suit against a colleague for accusing him of stealing ideas for courses. The professor demanded a retraction, and when he did not get one, he sued for libel.

Because the court determined the professor to be a public figure, he had to prove actual malice, which the court felt he did.

The case was appealed to the United States Supreme Court, but certiorari was denied in October of 1996. ■



Criminal charges against Fla. 'nerd gang' dropped

Prosecutors admit 1945 state statute is unconstitutional

FLORIDA — Criminal defamation charges brought against two 19 year-olds who created a Web site accusing a high school teacher of having homosexual relations with a minor student have been dropped by Citrus County officials, who have admitted the statute they were prosecuting them under to be unconstitutional.

The two former Lecanto High School students, Ryan Vella and Christopher Cohen, had been charged with criminal defamation, under a 1945 Florida statute which makes it a first degree misdemeanor to publish something "which tends to expose any individual or any religious group to hatred, contempt, ridicule or obloquy"

The Web site, posted by the two 19 year-olds, along with three current and former Lecanto High School students, accused a teacher at the school of having a relationship with a student.

The site featured a photograph of the student at a school dance and superim-

posed an image of the teacher in place of the student's date.

Charges against the two were raised to a third-degree felony under state anti-gang laws because county officials said the five people involved with the Web site operated like a gang.

The group of students and former students called themselves the "Wrathlords".

But Robyn Blumner, executive director of the Florida American Civil Liberties Union, said county prosecutors dropped all charges against Vella and Cohen when they determined the defamation statute to be unconstitutional.

The Florida ACLU was going to represent the two 19 year-olds if the charges had been pursued.

Blumner said the ACLU would file a civil suit against the prosecutors if they ever planned to prosecute under the criminal defamation statute.

"But the prosecutors are likely to write a memo to say the law is unconstitutional and they won't prosecute under it again," she said.

Although the teacher or student named on the Web site could file a civil libel suit, Blumner said neither had done so, and if they did, the ACLU would not be involved. ■

Texas

(continued from page 12)

District requested the attorney general's opinion after a request was made for a video of a February school board meeting.

The school district had inquired to find out if it had to edit the dramatic performance out of the tape before releasing it.

The attorney general's letter to the school district made clear that this was an opinion related only to the case at hand.

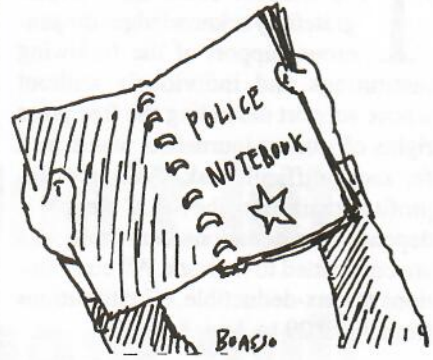
"This ruling is limited to the particular

records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records," the letter stated.

Nancy Monson, executive director of the Texas Freedom of Information Foundation, said the ruling was based on an unrealistic interpretation of FERPA.

"It is our understanding that this law [FERPA] was intended to protect student records, not public appearances," Monson said.

"[The students] were going to be performing this in public the next night, which makes this seem somewhat ridiculous." ■



ACCRA

(continued from page 17)

"These are court systems that are not subject to public scrutiny," she said. "On campuses across the country, secret judicial proceedings are the rule rather than the exception while administrators hide behind the Buckley Amendment."

Paulk also said schools must be stopped from hiding crime statistics.

Howard "Buck" McKeon (R-Calif.), chairman of the subcommittee, noted the need for Congress to address crimes on campus.

"We all want to believe our schools are safe havens," he said. "But the statistics are hard evidence that what is going on in our elementary, secondary and postsecondary schools reflects what is happening in society as a whole." ■

Standing

(continued from page 10)

standing upon plaintiff to challenge the new prior review approval policy that was never applied to her."

The court acknowledged that Greene did have standing to protest the old School Rule 8, but did not do so in the lower court and thus "has waived her right to pursue relief on this basis."

In dissent, Judge Myron H. Wahls argued that "the allegations in this case were sufficient to endow the plaintiff with standing notwithstanding the absence of actual injury...."

Wahls also wrote that the plaintiff "should not have to await the consummation of threatened injury to obtain preventive relief."

Greene's lawyer, George Washington, called the majority decision "gutless."

"No one ever thought [standing] was an issue," Washington said, noting that the school board had never disputed Greene's standing either.

Washington said he may next appeal to the state supreme court. ■

Ethics

(continued from page 7)

not obligated to take that alternative definition lock, stock and barrel."

Peltz writes in the letter, however, that a case regarding public schools in Baltimore, *Nitzberg v. Parks* (1975), already has determined that a school board's definition of libel can be "unconstitutionally overbroad and vague."

"[The school's standard of libel] is such a low standard that the students may as well pack up and stop reporting the news," Peltz said.

Walker said that Heidel has already told her that there will be no confusion regarding the newspaper next year.

"I take that to mean there is going to be a review board," said Walker.

The district policy on publications includes a provision to allow for a review board to review articles and advertisements that "may be offensive to the school community." The board may be composed of the principal and students, teachers or parents.

Blom said a review board's purpose is "to expand the viewpoint beyond the principal" and said it should be seen as a "positive-move."

Blom also said he thinks the district's policies "are generally in line with *Hazelwood*," and do not even go as far as they could "in recognizing the authority of the principal."

"The article itself was critical and the principal has no problem with that," Blom said. "There is a difference be-

tween being critical ... and being offensive or insulting people."

Walker, who helped resurrect the newspaper after a seven-year hiatus, has a different perspective on the situation.

"I expected so much more out of [the administration] than I ended up receiving," Walker said.

"I'm not surprised our school has so many other problems when it shows so little trust or respect for the students," Walker said. "What's the point of having [a paper] if all we can talk about is where you should shop for a prom dress?"

Peltz said he may not hear a ruling on the appeal until school begins again in the fall. ■

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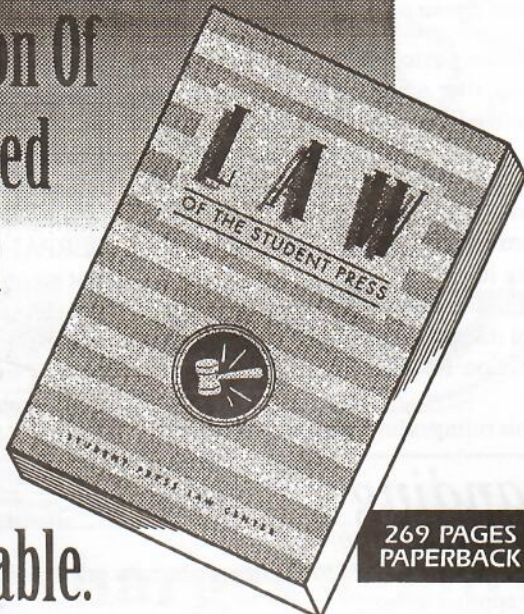
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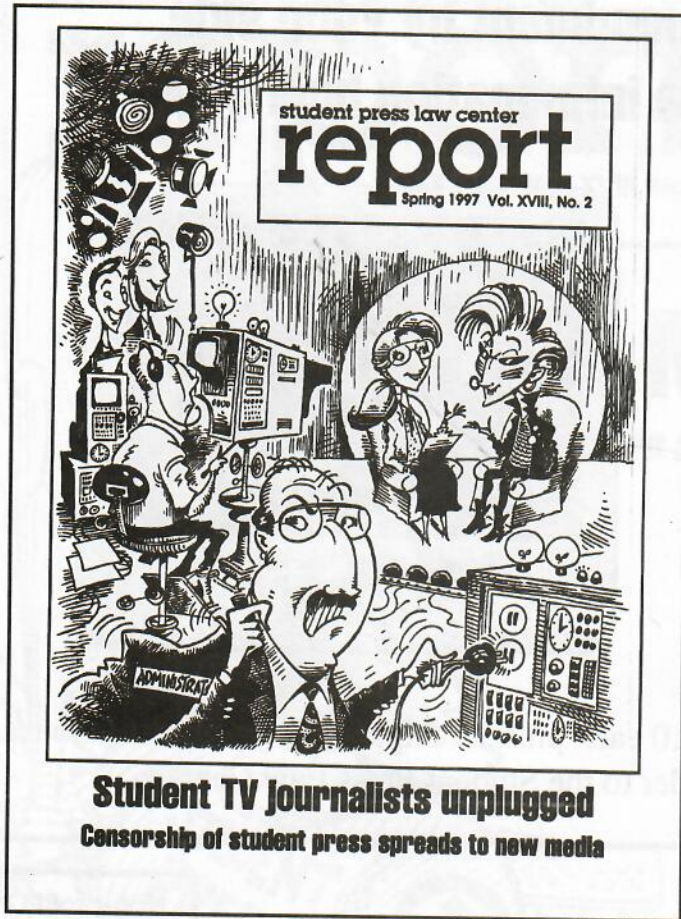
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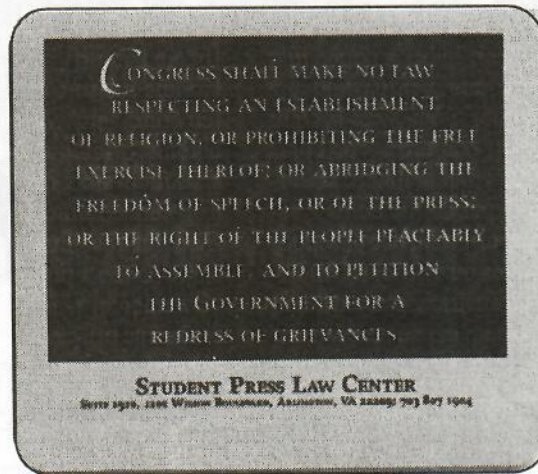
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