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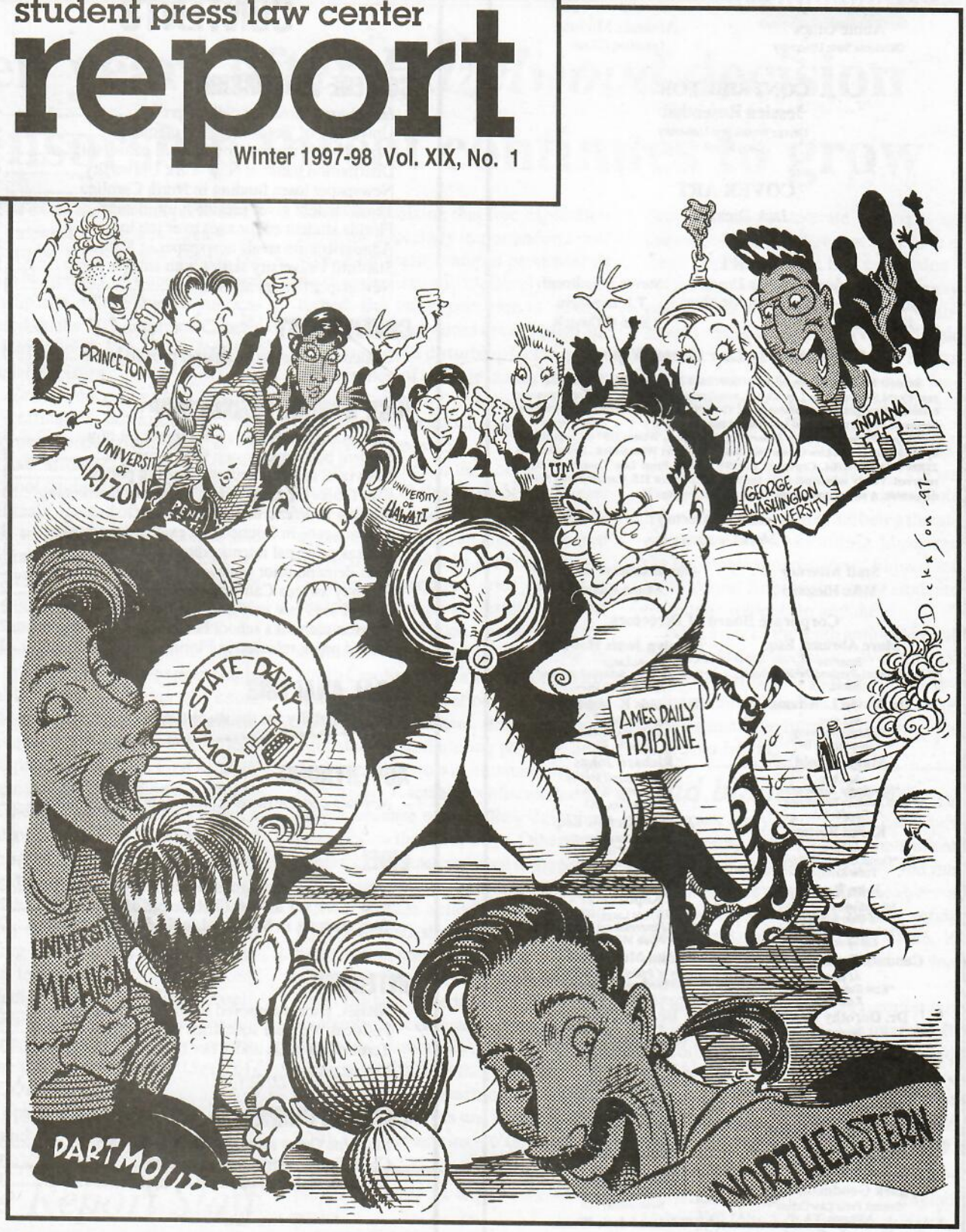


# Students v. Professionals in Iowa

*Also inside: U.S. Court of Appeals upholds student ad control, p. 25*

### *Student Press Law Center Report*

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

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# Ten years after *Hazelwood* decision censorship threat continues to grow

The event that student press advocates had both anticipated and feared for a decade finally occurred in November. A court upheld the censorship of a college student publication based on the U.S. Supreme Court's 1988 *Hazelwood School District v. Kuhlmeier* decision.

The *Hazelwood* ruling, you will recall, significantly curtailed the First Amendment protections that lower courts had afforded school-sponsored high school student publications for almost 20 years. Instead of requiring school officials to demonstrate "material and substantial" disruption" of school activities or invasion of the rights of others before they could censor student newspapers and yearbooks, the Court said officials would be allowed to curtail school-sponsored student expression in non-public forums whenever they could demonstrate they had a "valid educational purpose." The result was a much more vague and subjective First Amendment standard and, based on our experience at the Student Press Law Center, a significant increase in the amount of censorship of the high school media by school administrators.

Despite the fact that the Supreme Court explicitly said in H*azelwood* that it was not ruling on the rights of college students, a federal district judge in Kentucky decided to make that leap himself. The decision in *Kincaid v. Gibson* could set the stage for the Supreme Court to confront this issue head-on. (*See HAZELWOOD, page 4.*)

Our optimistic outlook here at the SPLC and the wealth of court precedents emphasizing that free expression rights are especially important on a college or university campus persuades us that this decision will ultimately be overturned. But our expectation of an ultimate legal victory does not diminish our concern about a disturbing fact: a growing number of college and university administrators are willing to sacrifice student press freedom when it does not suit their purposes.

The examples in the college censorship section of this issue of the *Report* are useful illustrations. The top official of one of the largest and most respected university systems in the country says he supports required prior review of student newspapers, despite the fact courts have said such review is unconstitutional. A university chancellor in North Carolina shuts a newspaper down, claiming the publication had not met a technical requirement, after the paper published an unflattering photo of him. And administrators at a community college in Kansas actually confiscated newspapers because of what they described as errors on the front page. Other incidents like these are reported to the SPLC every week.

Even if these school officials could legally defend their actions (and our belief is that they cannot), one can only ask how in the world they think they can claim the title of "educator" when they so clearly reject a fundamental value of American democracy. Have they become so cynical that they have given up on the notion of teaching students to think for themselves and take responsibility for their actions, so thin-skinned that they cannot tolerate criticism, so concerned about image that they give it more importance than free expression?

Our sad conclusion is that for many college and university officials, the answers to these questions is yes. And their numbers will continue to grow unless the true educators, whether they be faculty members, advisers, students, alumni or legislators, step in and say, "enough."

We all have an obligation to be defenders of the First Amendment. Yet we too often fail to take on that responsibility unless our own rights are being threatened. The Kentucky ruling illustrates the inevitable progression of limitations on freedom: from high school students to college students to anyone.

Jan. 13 marks the tenth anniversary of the *Hazelwood* decision. We urge all defenders of our Constitution and the values behind it to use the occasion to take a stand. The future of our freedom is in your hands.

## *Bad blood in Iowa*

Our cover story in this issue describes the on-going battle between the student media at Iowa State University and the community newspaper that believes a state-funded publication has an unfair (and illegal) advantage. That claim, if upheld, could devastate student newspapers around the country.

Our belief is that everyone comes out the loser in this conflict. The interests of the college and commercial media are so closely tied to each other that an injury to one will inevitably harm both. This battle needs to be settled out of court before more serious damage is done.■

## *The Report Staff*

**Abbie Gibbs** is a communications senior at Oklahoma State University in Stillwater where she is a staff writer at *The Daily O'Collegian*. After graduation in December 1998, she plans to pursue a career as a professional reporter.

**Amanda Michne** earned her degree in Political Science from Lynchburg College in Virginia in 1995. Her life's goal is to lead a peaceful revolt against AP style.

**Jessica Rosenthal** is a second-year law student at the George Washington University Law School in Washington, D.C. She received her undergraduate degree in English from Tufts University, where she was editor-in-chief of the *Tufts Daily*. After graduation, she hopes to continue to work in First Amendment or communications law.■

# *Hazelwood* threatens college press

## *Federal court decision applies censorship restrictions to yearbook*

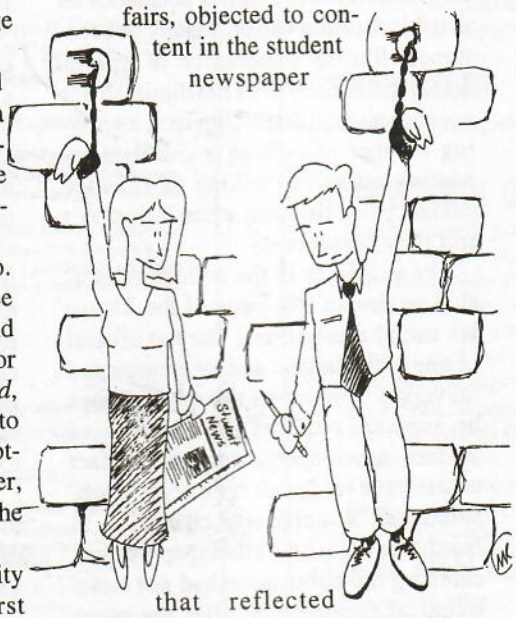
**KENTUCKY** — If allowed to stand, a Nov. 14 decision by a Kentucky federal district court would mark the first time the *Hazelwood* standard has been used to justify the censorship of a college publication.

In his opinion, Judge Joseph M. Hood ruled that a college yearbook was not a public forum and that university administrators have the right to exercise "reasonable" control over student publications.

The case, *Kincaid v. Gibson*, Civ. No. 95-98 (E.D. Ky., Nov. 14, 1997), arose after Charles Kincaid, a student, and Capri Coffer, the former student editor of the school yearbook, *The Thorobred*, sued KSU administrators for refusing to distribute the 1994 yearbook, attempting to control the student newspaper, *The Thorobred News*, and removing the publications adviser.

The students claimed the university administration abridged their First Amendment right to free speech by withholding distribution of the yearbooks and interfering in the publication of the student newspaper.

The students claimed that Betty Gibson, vice president of student affairs, objected to content in the student newspaper that reflected negatively on the university. They claimed the publication adviser was temporarily removed from her position because she refused to censor the newspaper. They also said Gibson withheld the yearbooks because of content.




Kentucky State administrators claimed they refused to distribute the yearbook because it was of poor quality and did not properly represent the university. The yearbook should have been more focused on campus events and people, Gibson said. Gibson was also unhappy that the yearbook failed to highlight the school colors of yellow and green

In granting the school's motion to dismiss the case, the court cited *Hazelwood School District v. Kuhlmeier*, a 1988 U.S. Supreme Court case that significantly limited the First Amendment protection available to school-sponsored high school student publications.

In a footnote to the *Hazelwood* ruling, the court made clear that its decision addressed only the constitutional protection afforded high school students. It left open the question of whether similar

*(See KENTUCKY, page 11)*

# *University of Texas chancellor supports prior review*

**TEXAS** — The chancellor of the University of Texas system publicly announced in November that the system would continue to enforce a prior review policy on its student publications, despite outrage from some college media groups.

In a letter to the College Media Advisers organization, Chancellor William Cunningham stated, "It is the position of The University of Texas System that any prior review by faculty advisors...does not constitute illegal censorship, does not violate First Amendment rights, and is a proper exercise of the responsibility the University assumes as the publisher of a student newspaper."

The only courts to rule on the issue have said prior review by public college or university officials is an infringement of student First Amendment rights.

The letter was in response to an October letter from the College Media Advisers board to Cunningham condemning the prior review policy forced on some student publications in the University of Texas system and a university lawyer's claim that the policy could be defended because the *Hazelwood* decision applied to college student publications, not just those at high schools.

Kathy Lawrence, the general manager of student publications at the University of Texas at Austin, said she believes it is important to repeal the prior review policy for the educational benefit of the students.

"Students learn better when the publication belongs to them and not someone else," Lawrence said. "I don't think we are doing the best we could by our students by having [a prior review] policy in place.

She said having the policy in place presents an "incredible danger."

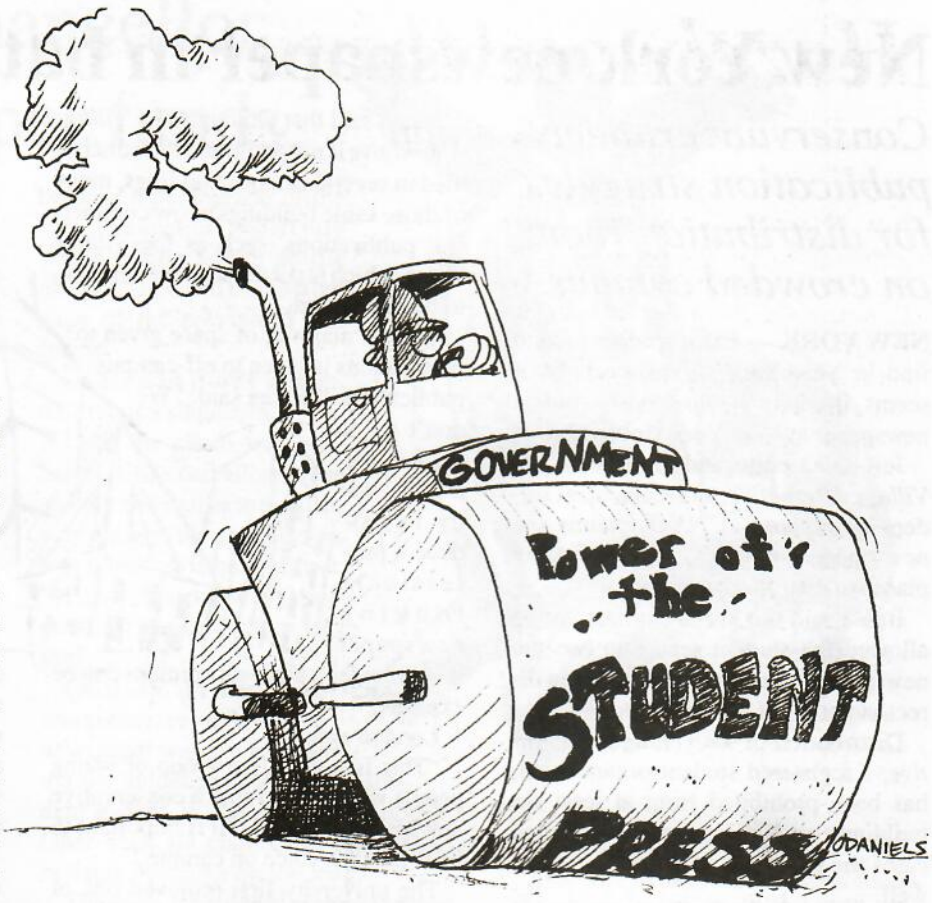
"This is a huge embarrassment for the University of Texas," said SPLC Executive Director Mark Goodman. "When a major university system endorses unconstitutional censorship, you have to wonder what administrators think the First Amendment is all about."

The University of Texas Pan-American and Arlington campuses are working on new publication policies that would prevent required prior review of their student publications. The proposed regulations have not yet been approved by the administration.

Lawrence said College Media Advisers and the journalism faculty at the University of Texas will continue to push for the repeal of the prior review policy at the Austin campus. ■

# Students censor students

*Campus leaders use funds to attack the campus press*




The clash between college student newspapers and student governments is an issue all too familiar to many student journalists, as incidents around the country have shown.

But rarely is the conflict taken to the extreme it reached in October at the State University of New York at Plattsburg.

The student government at the SUNY campus attempted to prevent the publishing of the student newspaper, the *Cardinal Points*, just after midnight on Oct. 9 by suddenly halting payment to the local newspaper that prints the student newspaper.

The student government disapproved of an article in that edition of the newspaper which named a student accused of setting fire to a campus dormitory. They warned the newspaper's editors that if they attempted to publish the article with the student's name, the newspaper would lose its student government funding, which pays for the printing of the paper.

The student accused of starting the fire in the dormitory admitted on the record to *Cardinal Points* reporters that he had started the fire, said the newspaper's editor in chief, Jennifer Coffee.

"They had no reason to hide his name," Coffee said. "We verified it, it was fact."

Student government said printing the student's name would be a violation of the Family Educational Rights and Privacy Act, commonly known as the Buckley Amendment, which allows punishment of schools that release student education records.

The local newspaper, which usually is paid to print the student publication, printed the edition in controversy that night despite not being paid for its efforts.

It printed the campus paper free of charge in defense of the students' First Amendment rights, Coffee said.

The newspaper's funding was reinstated Oct. 10 on the condition it become an independent newspaper by the beginning of the fall 1998 semester.

> "We really feel First Amendment rights are being violated."
>
> **Michelle Phillips**
> *Independent* former editor

That was not a problem with the *Cardinal Points* staff.

"We've always wanted to go independent," Coffee said. "Now we have an excuse to do it."

The *Cardinal Points* plans to gain revenue from advertising and subscription fees once it becomes independent.

Student government officials would not comment on the issue.

Student journalists at Kean University in Union, N.J., faced a similar situation in October when the school's student council yanked the student newspaper's funding and seized control of the newspaper.

The proposal passed by the student council to take control of the *Independent* stated "the *Independent* is in dire need of a dramatic overhaul."

The president of the student organization, Eric Parker, said the main problem with the newspaper, and the reason funding was pulled, was its irregularity of distribution and lack of production last year.

*(See GOVERNMENT, page 9)*

# New York newspaper in battle for space

## *Conservative student publication struggles for distribution room on crowded campus*

**NEW YORK** — Extra space is hard to find in New York City, especially, it seems, if you're a conservative student newspaper at New York University.

Jeff Barea, editor and publisher of *The Village Alternative*, an independent student newspaper at NYU, claims the newspaper is having difficulty finding places to distribute on campus.

Barea said the university last spring allowed the student senate to ban the newspaper from several buildings in direct violation of university policy.

Distribution of *The Village Alternative*, a registered student organization, has been prohibited from at least six buildings on NYU's campus. In some cases the paper has been vandalized as well.

University policy says, "Local offices may designate areas within University facilities for the distribution of literature or other materials by students as long as such activity does not (a)impede the flow of traffic or (b)disrupt the normal functions of the facility."

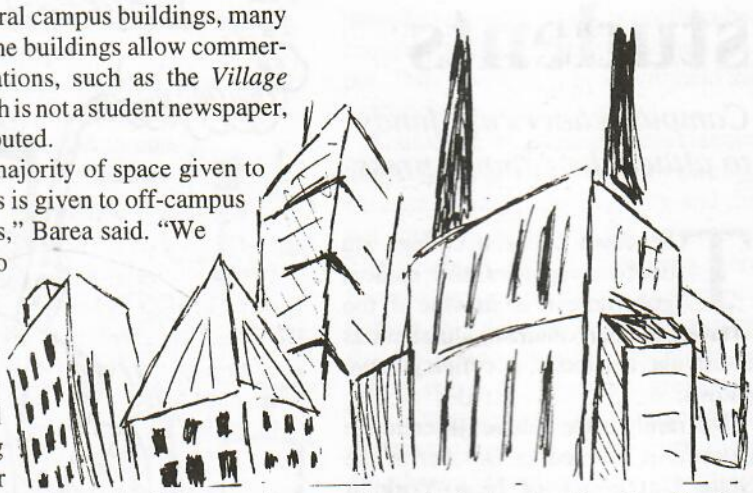
Herb London, NYU professor and faculty adviser for the newspaper, said the university claims *The Village Alternative* newsstands would threaten security in some way and disrupt the flow of traffic coming in and out of the buildings.

London says he is suspicious of the university's claim but that does not mean the university is wrong.

"If they want to get rid of a newspaper, they should get rid of the *Village Voice* and allow room for student publications," London said.

Barea said that although *The Village Alternative* is not permitted to be distributed in several campus buildings, many of those same buildings allow commercial publications, such as the *Village Voice*, which is not a student newspaper, to be distributed.

"A vast majority of space given to publications is given to off-campus publications," Barea said. "We don't try to create trouble, we try to produce a professional looking newspaper that provides a place all opinions can be explored."



London agreed.

"This is a very fine group of young people who want to start a conservative newspaper," he said. "It is important to have another voice on campus."

The university first removed one of *The Village Alternative's* news stands displaying a McDonalds' advertisement saying newsstands with commercial advertising were not permitted in campus buildings.

> "We are a major force on campus and that is their problem with us. When we were small, they were happy to give us space."
>
> **Jeff Barea**
> *Village Alternative* editor

The newspaper removed the advertisement but were still told they could not distribute.

Barea said he thinks the university's unwillingness to allow the newspaper to distribute on campus is in direct relation to the fact that it provides a relatively conservative student voice.

"[*The Village Alternative*] is by no means offensive," Barea said. "It is, however, the only even remotely conservative presence on campus."

The school administration left the decision of whether to allow the distribution of *The Village Alternative* to the student senate, which, Barea said is also a violation of the university policy. The student senate voted to ban the publication from campus buildings.

The student senate is supposed to advise on how campus space is distributed, but they do not have the final decision, Barea said.

Pam Bolen, director of student life and of the student center, who London and Barea said has been involved on the university's side of the issue, said she did not know *The Village Alternative* was still publishing.

Both Barea and London confirmed the newspaper has been publishing every week.

"We are a major force on campus and that's their problem with us," Barea said. "When we were small, they were happy to give us space."

The *Alternative's* circulation is about 10,000.

"I hope this is a security problem and no more," London said. "I hope this is not an invasion of free speech."

The newspaper has not filed any legal claim against the private university yet, but it has asked the Individual Rights Foundation in California to file a civil suit against the university to force administration to follow university policies. The foundation is still considering the request. ■

# University chancellor halts newspaper funds


**NORTH CAROLINA** — The student newspaper at Fayetteville State University began publishing again in October after almost a month without funds.

Harry Ghee, vice chancellor of student affairs at the school, halted funding for Fayetteville State's student newspaper, *The Bronco's Voice*, on Sept. 24, for what the newspaper staff contends was a content-related shutdown.

The newspaper's entire funding comes from the student activities office and the newspaper is a registered student group, which gave the vice chancellor an avenue to control those funds.

Ghee said he pulled the paper's funding because it had not submitted an approved constitution. The paper's constitution had been under revision for two years. A student group is usually not allowed funds if they do not have an approved constitution.

However, Roger Harris, editor in chief of the newspaper, pointed out that although a new constitution had not been submitted, the newspaper had, until this fall, been allowed to publish during the constitution's revision.

Harris said he believes the newspaper's funding was pulled without warning because a photograph of the vice chancellor apparently asleep during a high profile meeting appeared on the front page of the newspaper last spring.

Harris said it was a "content-related shutdown."

Until the photo was published, Ghee had allowed the student newspaper to publish, even though the constitution was under revision, because "of the impact and overall good" of the newspaper, he said.

Ghee said the shut down was not content-related. The newspaper was not following the guidelines defined for student groups in the student handbook, Ghee said. He claims the constitution revision had gone on too long.

The rules for student groups outlined in the student handbook state organizations must submit or update their constitution each year.

Ghee said the student newspaper's failure to submit an updated constitution for an extended period of time was the only reason he pulled funding.

After *The Bronco's Voice* submitted a revised constitution at the beginning of October, the Ghee allowed the newspaper to receive funding again, but only after the issue of censoring the newspaper had received much local media coverage. ■

# *Private college editor fights for her rights*

## *Student resists censor by issuing ultimatum*

**TEXAS** — Battling what the student newspaper at the University of Incarnate Word described as censorship by the administration, the editor delivered the university president an ultimatum this fall and printed it in the newspaper.

The issue began last spring when administrators told the editor and assistant editor of the *Logos* they could not print the name of a faculty member who was under investigation for sexual harassment.

Jennifer Walsh, then assistant editor and currently editor of the *Logos*, said she and John Tedesco, then the newspaper's editor, pointed to the publication's by-laws which state, "The student press should be free of censorship in advance of copy and its editors and managers should be free to develop their own editorial policies and news coverage."

Walsh said members of the administration, including Eduardo Paderon, vice president of academic affairs; Gilberto Hinojosa, arts and science dean; and Sister Helena Monahan, assistant to the university president, then informed the pair that the by-laws were being verbally changed and that the name would not be published.

Following the administration's announcement, the entire *Logos* staff resigned and did not publish another edition until the fall 1997 semester.

"We felt they were not following procedure and we did not want to be a part of that," Walsh said.

In the *Logos* Sept. 10 edition, the first issue since the spring, Walsh published an editorial about the censorship occurring last spring. Along with the editorial, Walsh published a letter that she asked Louis Agnese, university president, to sign.

The letter listed specific by-laws the newspaper believed to be under threat

*(See RIGHTS, page 13)*

# College newspaper editor gets the boot

**FLORIDA** — A Florida student who is suing his college said he believes censorship played a role in the loss of his position at the student newspaper.

Glenn Danforth, the former managing editor of the Brevard Community College student newspaper, filed suit in August against the college because he believes he was removed from his position over controversy caused by the stories he published.

A federal district court issued an order in October reinstating Danforth as the managing editor of *The Capsule*.

Danforth was removed from the managing editor position at *The Capsule* at the end of the 1997 spring semester.

He also was informed he would not be given the job of managing editor for the 1997 fall semester he had been promised earlier in the year.

Danforth said he believes he lost the position because the administration, headed up by community college district president Maxwell King, wanted to censor his stories and exercise prior restraint over the newspaper.

Jim Ross, associate vice president of college relations at Brevard, said Danforth was not rehired as the managing editor only so that other students would have a chance to fill the position.

"I'm not aware of any student who has been the managing editor for three semesters in a row," Ross said.


Danforth was hired as the managing editor of *The Capsule* in May 1996 by Sam Stanley, then the newspaper adviser. Danforth said Stanley had promised him the managing editor's position.

Stanley said when he promised Danforth he could keep the editor position, he meant the news editor position, another position Danforth filled at the newspaper. The news editor is responsible for laying out the newspaper and has no involvement in deciding content.

Danforth said he is not suing the school because he wants the managing editor position, but he thinks the school administration is violating the First Amendment.

"It's not about the money, not about the job, it's about principle. There is no evidence of any reason to fire me except to shut me up," Danforth said.

During Danforth's time as managing editor, *The Capsule* was named Florida's best college newspaper in the community college division by *Florida Leader* magazine.

Danforth says he attributes some of the papers success to his decision "not to run away from controversial issues."

Some of those controversial issues covered in the newspaper which Danforth said he believes led to his dismissal include several articles criticizing the college.

Ross said there were some articles published in *The Capsule* that upset some faculty members, but college administrators were careful to warn them they should not try to take any action because it was the student's First Amendment right to publish what they deemed appropriate.

Depositions for the case began in September and a hearing date has not been set. The court issued an injunction against the university in late October stating the college must immediately reinstate Danforth as managing editor until the case is decided.

The order from the court stated "Danforth has shown that the [college] removed him as managing editor of the student newspaper because the college's administration disagreed with the content of *The Capsule*." ■

## *Administration steals newspaper*

**KANSAS** — The administration was behind the disappearance of about 500 copies of the student newspaper at Kansas City, Kan., Community College in September.

The vice president for academic services at the college, Kaye Walters, ordered the confiscation of the newspapers after she received several complaints from students and faculty about errors on the front page, she said.

"According to *Hazelwood*, we are responsible for making sure the quality of the work is what it should be," Walters said, referring to the 1988 Supreme Court ruling that cut back on First Amendment protections for high school journalists.

Editors of the newspaper, however, said they felt the newspaper removal was a violation of their First Amendment rights.

"...We are a college paper, and it's a learning process. Instructors should support us, whether it's good or bad," Tony Jappa, managing editor of the paper, told the *Kansas City Star*.

The newspapers had been on the stands for three days when Walters had the papers removed. About 2,000 copies of the newspaper had already been mailed out or picked up from the stands. ■

# *Government*

*(Continued from page 5)*

Michelle Phillips, former editor of the *Independent*, said she thinks the pulling of funds was content based.

In the last edition of the *Independent*, before the student government pulled its funding, an editorial was published exposing the organization's budget.

The editorial revealed the student executive board took a training trip to New Orleans two weeks before their term was up which cost $10,000 in student funds.

Parker said it was simply the newspaper's lack of quality that prompted the student council to take over. The newspaper was supposed to issue 19 editions last semester but only issued nine newspapers.

Phillips said unreliable and outdated equipment was to blame for the low number of editions.

The student organization ordered about $10,000 worth of new equipment for the newspaper last year, but it went unused in the student government office for more than a month before the newspaper staff was ever made aware it had arrived, Phillips said.

"They withheld the computers from us," Phillips said.

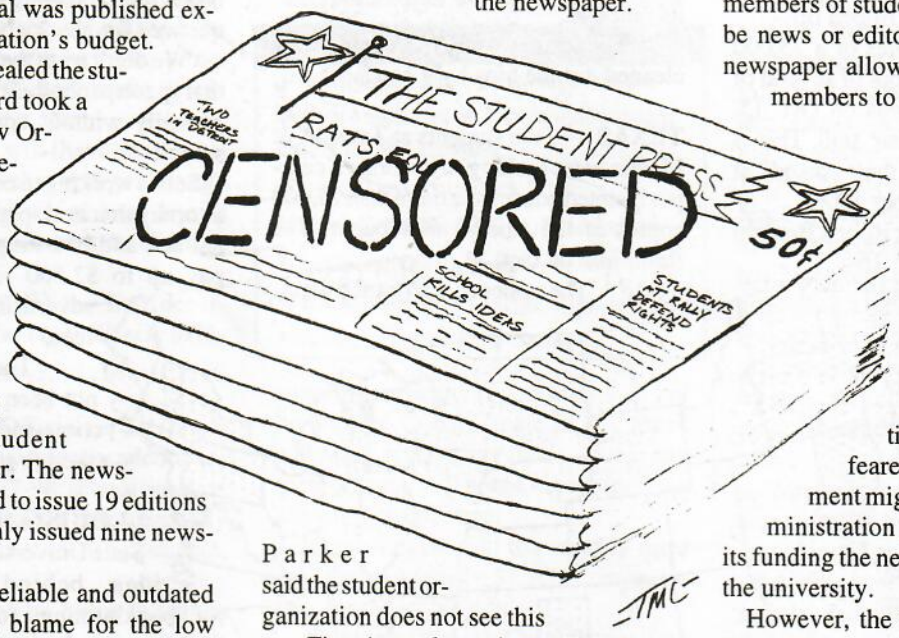
The student government started a newsletter, *The Observer*, to temporally replace the *Independent* while the newspaper's structure was being reworked. *The Observer* is intended to tell the student government's side of stories, Parker said.

On Oct. 24, the council conducted its final vote on the issue and gave itself the power to hire and fire the newspaper staff.

Phillips, who is now the editor of an underground newspaper called *Not The Independent*, said this was blatant censorship.

"We really feel First Amendment rights are being violated," Phillips said. "If they are choosing the staff and paying the staff, why would they [the staff] say or write anything bad about them?"

The *Independent* staff brought its case before the faculty senate, a group that does not have power over the student organization but is influential on campus, Phillips said. The faculty senate voted unanimously to support the newspaper.




Parker said the student organization does not see this as a First Amendment issue. He said it was simply an issue of improving the paper.

Phillips and some of the former *Independent* staff continue to publish *Not The Independent* out of Phillips' apartment. They also have submitted a proposal to the office of Student Affairs for funding by the way of a separate student activity line item for a new group, the Student Media Group, which will put out its own paper.

At the University of Connecticut in Storrs, the student government passed a resolution in October to voice their disapproval of the hiring policy of the student newspaper, which prohibits student government members from being on staff.

*The Daily Campus* policy states that members of student government cannot be news or editorial staff writers. The newspaper allows student government members to submit op-ed pieces.

"We don't allow them to write news just like we wouldn't let the captain of the baseball team write sports," said Jason Jakubowski, editor in chief of the newspaper.

For a short time, the newspaper staff feared the student government might recommend that administration pull the 20 percent of its funding the newspaper receives from the university.

However, the two groups were able the reach a compromise before the conflict reached that extreme.

The student government promised to support the newspaper as an independent paper and the newspaper now sets aside one day a week for op-ed pieces by student government members.

Jakubowski said this has not changed the way the newspaper covers student government.

"Absolutely not," he said. "The coverage has not changed at all." ■

# Stanford settles two-year debate

**CALIFORNIA** — Stanford University and the *Stanford Daily* reached a settlement agreement in October in a 2-year-old lawsuit regarding the newspaper's distribution on campus.

The *Stanford Daily* filed a lawsuit against the university in June 1995 for denying the newspaper access to distribute during the 1994 World Cup soccer game which was played in the campus stadium.

Todd Bernstein, the business manager of the *Stanford Daily*, said the newspaper and the university entered into a settlement agreement that says "The *Stanford Daily* would have a seat at the table when a third party comes to the university."

This settlement gives the student newspaper a say in decisions that are made regarding campus events involving parties other than the university. ■

# Newspaper thieves run rampant

*Nine schools report theft of campus papers fall semester*

**CALIFORNIA** —For the seventh time in one year, the University of California at Berkeley's student newspaper, *The Daily Californian*, was ripped off.

More than 6,500 copies of a 23,000 press run were cleaned out of several of the main distribution bins on Oct. 15, Editor in Chief Ryan Tate said. This is the seventh newspaper theft episode at Berkeley since November 1996.

University Chancellor Robert Berdahl said in a statement Oct. 16 that the university would not stand for this kind of activity anymore.

"The university will not tolerate suppression of views expressed in *The Daily Californian* or any other campus publication," he said.

Tate said it was a relief to have that kind of support.

"It's very encouraging to hear official public condemnation of these thefts," Tate said.

The university police department along with newspaper staff members patrolled distribution bins the following morning to dissuade potential robbers.

The university police are investigating the theft of the free periodicals as a crime, but so far have made no arrests.

The newspaper staff has also begun working to ward off thieves whenever issues with controversial articles come out.

"We now try to be vigilant [patrolling] when we come out with something that might be deemed controversial," Tate said.

Tate said the Oct. 15 theft was probably due to one of two articles appearing in the newspaper that day.

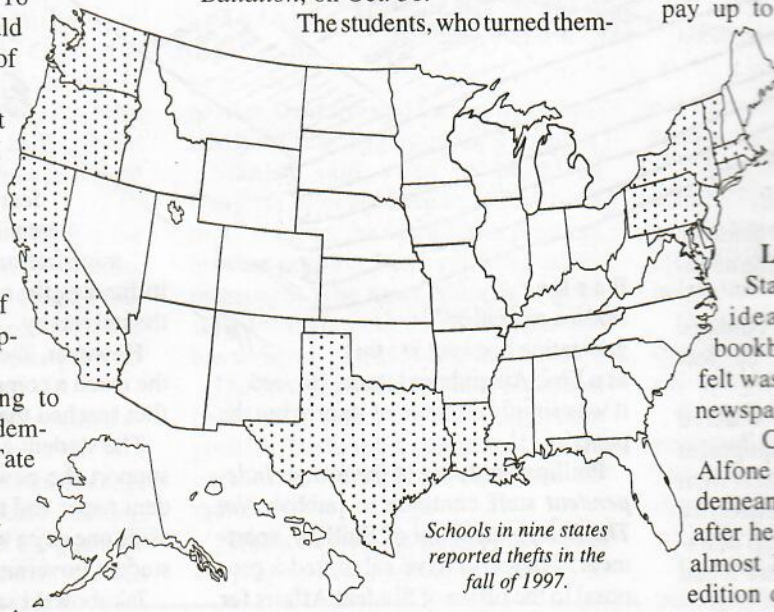
One called a pro-affirmative action group too radical and said it purposely tried to attract media attention.

The other article, an opinion piece, said a movement to add "Third World culturism" and "oppression studies" to the campus class roster needed to focus its purpose.

"Whoever they were," Tate said, "they cleaned out the bins by 9 a.m."

**TEXAS** — Two students at Texas A & M who were looking to decorate a campus haunted house stole more than 15,000 copies of the student newspaper, *The Battalion*, on Oct. 31.

The students, who turned themselves in the next week, followed distributors on their routes, cleaning newspapers out of several campus bins as soon as they were dropped off.



*Schools in nine states reported thefts in the fall of 1997.*

The students used the newspapers as wadded up trash to add atmosphere to a campus haunted house that evening.

Charles Self, director of the journalism department at the university, said the scariest part of the Halloween prank is that university police at first refused to investigate the theft as a crime.

The university police department said that since the publication was free, no criminal action could be taken.

However, there have been cases in Texas when the thefts of free publications were investigated as criminal acts, Self said he told police.

University police then decided to conduct an investigation and two students turned themselves in for the theft.

Self said in this case, he is not as much interested in a criminal prosecution as he is in establishing a policy of consequences for newspaper theft.

"We don't want the message to get out that [newspaper theft] could happen repeatedly without consequences," Self said.

Self is working to convince the county attorney that newspaper theft is a criminal act, and is asking that the students pay up to $2,500 restitution for lost advertising and subscription fees.

The two students have not been charged with any crime and have not yet been asked to pay any restitution.

**LOUISIANA** — A Louisiana State University student used the idea behind old-fashioned bookburnings to protest what he felt was unfair coverage in a student newspaper.

Campus police arrested Joe Alfone Sept. 25 for suspicion of misdemeanor theft and criminal mischief after he allegedly publicly set fire to almost 1,000 copies of the Sept. 24 edition of *Tiger Weekly*, a conservative student newspaper at LSU in Baton Rouge.

Alfone was issued a criminal summons by the district attorney's office.

Alfone apparently felt scorched by a piece for which he was a source that appeared in the newspaper.

Alfone said the published interview misrepresented him by making him sound like a "big, dumb hippie," and that the end of the interview had been deleted.

*Tiger Weekly* editor Wayne Lewis said Alfone's interview had been published the week before the theft and burning occurred and the end was cut for space.

The interview was for a section in the newspaper called "In Focus." The section concentrates on personal interviews with campus individuals well-known for

their political activities. The pieces are written in a question and answer style format and all the interviews are tape recorded, Lewis said.

The newspaper gave Alfone's story 1,400 words of space.

"We certainly didn't cut him short," Lewis said.

Lewis said that although he was happy the theft is not going unpunished, he does not think this will have any affect on the many newspapers thefts occurring each year.

"I don't think it will [have an impact] because I don't think it will get enough press," Lewis said. "If no one knows about it, then it won't be a deterrent to potential thieves."

Louis said this was the first occurrence of theft of the *Tiger Weekly* to his knowledge.

**NEW YORK** — Officials at St. John's University in Jamaica suspended a sorority for the 1997-98 school year as punishment for stealing approximately 5,000 copies of the student newspaper, *The Torch*.

Chris Tricoles, who helps distribute the papers, said members of the Gamma Chi sorority followed him on his distribution route last April 16 and removed the papers from the bins.

Gamma Chi originally admitted to taking only about 60 copies of the edition, which contained the article "Is Gamma playing fair?"

The story questioned whether the sorority was resorting to unfair tactics to win greek competitions.

The office of student life at St. Johns conducted an investigation, in which they found Gamma Chi responsible for the theft.

The sorority was suspended from campus for one year. Matt Jablonski, assistant sports editor for T*he Torch*, said the suspension means the sorority will not be allowed to participate in any greek activities, receive any funds, accept any members and will not be recognized as a campus organization.

Jablonski also said the sorority must pay the newspaper $1,300 compensation for the stolen edition.

Although Gamma Chi will not face any criminal or civil charges, members of *The Torch* staff said they are "satisfied" with the suspension.

**Thefts across the country**

The following schools also reported the theft or vandalism of a student newspaper during the fall semester:

- Cornell University, New York
- Lower Columbia College, Washington
- Castleton State College, Vermont
- Framingham State College, Massachusetts
- Southern Oregon State College

**PENNSYLVANIA** — Staffers of the student newspaper at Drexel University in Philadelphia discovered copies of their newspaper, *The Triangle*, in a shredded heap piled five feet high outside the newsroom door.

The incident was in response to a controversial classified advertisement published in *The Triangle* on September 19.

The classified promoted the sale of "Children, 7 Africans, 14 Cubans and 8 Hispanics...Excellent condition, Love to work. Talented blow-job artists. Need to make room for winter time midgets' sale. Buy or lease. No credit? No Problem. Factory Authorized Rebates Leasing Available..."

*The Triangle* Editor Anh Dang offered his apologies on behalf of the newspaper in an editorial in the September 26 edition of the newspaper. In the article, he emphasized that the ad was overlooked in the editorial process and printed by mistake. He took responsibility but also pointed out the responsibility of those that placed the advertisement.

"Most of our classified advertisements are submitted by members of the Drexel community; as a service to Drexel we offer free advertising to Drexel students, faculty and staff. It is important that those who submit ads understand the significance of having their words published in a newspaper which is read by 7,000 people," Dang said in his article.

The newspaper does not know who placed the ad and has reported no further incidents since the classified advertisement issue was settled. ■

## *Kentucky*

*(Continued from page 4)*

restrictions would be appropriate for college student media.

"We need not now decide whether the same degree of deference [to censorship by school officials] is appropriate with respect to school sponsored expressive activities at the college and university level," the Court said.

Since 1988, a handful of courts have had the opportunity to extend *Hazelwood* to the college media, but have refused to do so.

The court's ruling in the Kentucky State case said that since the university is the publisher of the yearbook and because the publisher had not intended to open up the yearbook as a public forum for student expression, it could not be considered such.

Therefore, the court found that the administration's confiscation of the yearbooks was a reasonable restriction of speech.

The decision also said that the students could not sue the university for violating their First Amendment rights concerning the newspaper because they failed to establish any "injury in fact."

Mark Witherspoon, president of College Media Advisers, said this decision could be potentially devastating to the student press.

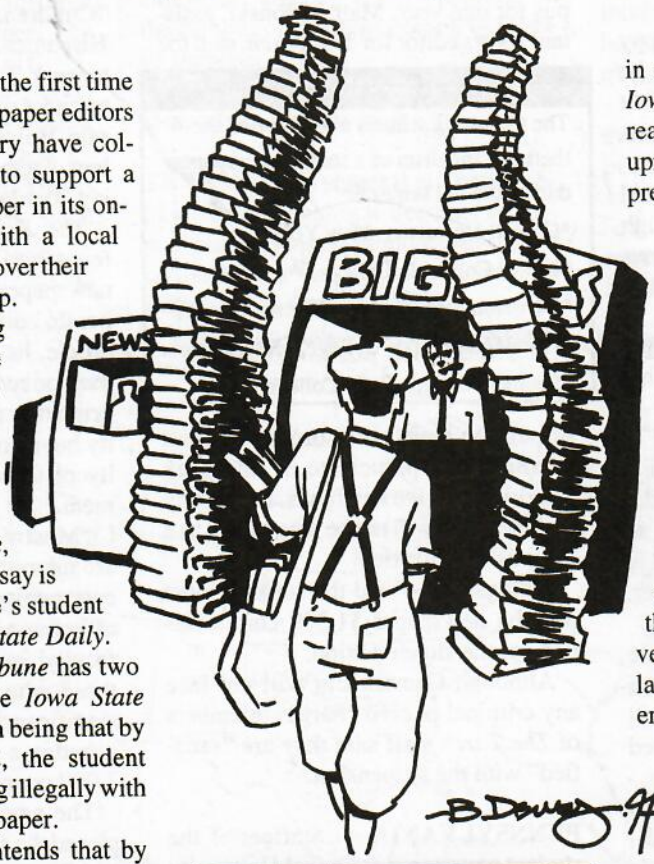
"College student media have a First Amendment right to be free of prior review and censorship," Witherspoon said.

"If we don't have good journalists, we don't have a good democracy. If you are trying to train journalists for the future, this kind of decision hampers journalism educators from training good journalists and therefore endangers the future of America," he said.

Bruce Orwin, attorney for the students, said they will appeal the judgment. ■

# Big business

## The conflict over competition between a community newspaper and a college student daily continues to rage




**IOWA** — For possibly the first time in history, college newspaper editors from around the country have collaborated in an effort to support a fellow college newspaper in its ongoing disagreement with a local commercial newspaper over their competitive relationship.

Editors and managing editors from 46 college newspapers from across the United States signed a letter to Michael Gartner, the editor and co-owner of the *Ames Daily Tribune*, condemning what they say is an attack on Iowa State's student newspaper, the *Iowa State Daily*.

The *Ames Daily Tribune* has two complaints against the *Iowa State Daily*, the heart of each being that by accepting state funds, the student newspaper is competing illegally with the professional newspaper.

The local daily contends that by accepting a subsidy from a state university and selling advertisements and distributing in the commercial marketplace, under Iowa state law the student newspaper is engaging in illegal competition.

This claim has student journalists around the country concerned about whether their newspapers will fall subject to these kinds of allegations from professional news organizations in their communities.

"This case has important impact on the student press as a whole," said Jonathan Berlin, editor in chief of the student newspaper, *The Daily Illini*, at the University of Illinois in Champaign-Urbana and one of the 46 editors that signed the letter to Gartner. "If [the commercial press] wins, it could set a dangerous precedent for the entire student press."

**Cover Story**

Gartner said he thinks this concern is not necessary. As long as a student newspaper is completely independent from a university, then it could accept advertisements from off-campus retailers and be distributed in the commercial marketplace.

If a student newspaper does receive funding through a state university, then its distribution and advertising should be limited to campus, Gartner said. He believes that as long as a student newspaper sticks to one system or the other, there should be no danger of an unfair competition claim.

However, according to college media experts, the majority of state universities' student newspapers operate in a similar manner to that of the *Iowa State Daily*, which may be one reason this case has caused such an uproar among the university student press.

According to a study by journalism professors, Lillian Lodge Kopenhaver and Ron Spielberger, published in the summer 1996 edition of the *College Media Review*, almost half, 43.3 percent, of campus papers are funded through student activity fees. One fifth of student newspapers are funded through general university funds.

Two thirds, 64 percent, of college newspapers receive more than half of their revenue from advertising, including advertising dollars from on and off-campus retailers.

For example, *The Daily O'Collegian*, the student newspaper at Oklahoma State University in Stillwater, receives student funding through the university, sells advertising space to off-campus retailers and distributes in the community as well as on campus.

"[If the *Ames Daily Tribune* wins], the professional press would have a legitimate reason to do that to us here, and it would have the same crippling effect on us that it could have on the *Iowa State Daily*," said Jim Luetkemeyer, editor in chief of *The Daily O'Collegian*. "This case is very important to us and could have a direct impact on us."

However, illegal competition laws vary from state to state. Whether a commercial newspaper could claim a student newspaper was engaging in illegal competition would depend on individual state law.

*(See IOWA, page 13)*

# *Rights*

*(Continued from page 7)*

and asked Agnese to sign the letter to "reaffirm that these are the rules and values that were established to protect our freedom of speech."

> "Nobody knew what was going on behind closed doors. It was important for them to see we would set the record straight."
>
> **Jennifer Walsh**
> *Logos* editor

Walsh said she put the letter in the newspaper, instead of giving it to him personally, to make everyone aware of the situation.

"Everybody needed to know that policies just weren't going to be changed like that," she said. "Nobody knew what was going on behind closed doors. It was important for them to see we would set the record straight."

Hinojosa said the university was not trying to censor the student newspaper, but rather, protect it. He said school administrators consulted with attorneys who said printing the name of the faculty member under investigation would be libelous.

Hinojosa pointed out that the students were still allowed to print the article, which could have been potentially damaging to the university's reputation, and were told only to leave out the name.

The student newspaper also consulted an attorney, who said printing the faculty member's name would not be libelous.

Several members of the University of Incarnate Word's administration and faculty had commented on the record to the newspaper about the sexual harassment investigation.

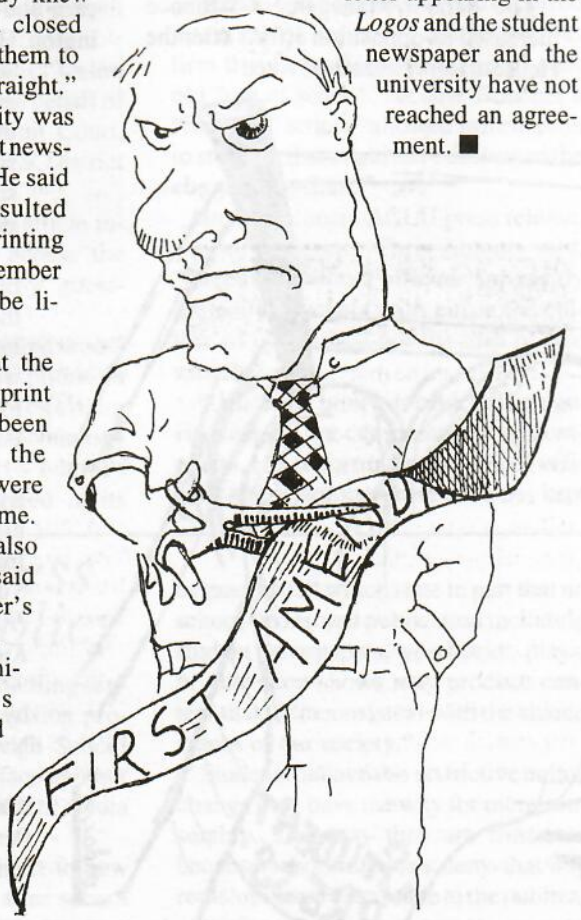
Walsh said she thinks the university was trying to protect itself, not the newspaper.

"I think they were afraid of what we were going to say because they didn't take the proper avenues in this case," Walsh said.

Hinojosa also said that since the private university is the publisher of the newspaper, it has a publisher's right to control what appears in the newspaper, since it would be held liable for the newspaper's content.

"We want to give the newspaper all the freedom except when it comes to libel," Hinojosa said.

As of now, Agnese has not signed the letter appearing in the *Logos* and the student newspaper and the university have not reached an agreement. ■




# *Iowa*

*(Continued from page 12)*

College media experts are hopeful this conflict between the professional and student press will not have the far reaching effects some of the college media anticipate.

Tom Rolnicki, executive director of the Associated Collegiate Press, said he does not expect other professional newspapers around the country to follow the *Ames Daily Tribune's* lead.

"In most instances, city commercial papers are not interested in competing head to head on college campuses," Rolnicki said. "They respect the notion that it is OK for the student press to have preferred distribution on college campuses. It is a long-standing tradition."

Michael Lazerow, the founder of *University Wire*, a national college news service, who organized the letter to Gartner, also said he hopes this case will not have repercussions on the student press as a whole.

"I don't see there being a big effect because it is such a unbelievable case that a professional newspaper would sue a student newspaper," Lazerow said.

However, he said "If a precedent is set with this case then the student newspaper is free game. You're possibly going to have the smaller city papers, purely for greed and money, going after the student papers."

The letter to Gartner states "By limiting the *Daily's* ability to compete fairly in Ames, you may ultimately force it out of business. We fear that it would not be the only paper to fall victim to professional local newspapers seeking to dampen the voice — and advertising clout — of college newspapers."

The illegal competition claim may raise other issues in the university community. Other school-funded organizations such as athletic teams or campus book stores may wonder if they could fall subject to this same claim from their commercial counterparts. ■

# Student press law close enough to taste

## Senators bail on anti-*Hazelwood* bill after 11th hour fight by schools

**ILLINOIS** — High school student journalists have suffered another setback in their 8-year battle to secure stronger press freedoms.

Following a string of surprising moves, the Illinois Senate vote on a state Student Publications Act, which would have given greater freedom of expression protections to high school journalists, was canceled on Nov. 14.

The Senate had unanimously approved House Bill 154 in May before it was vetoed by Gov. Jim Edgar in August.

The decision to withdraw the veto override motion came after a roll call revealed that many Senators had moved to the Governor's side after being inundated with faxes protesting the bill, explained the bill's sponsor Sen. Kathy Parker (R-Northfield.)

Claiming that the bill would create greater liability for school boards, the School Management Alliance, a coalition of school boards, principals and other school administrators from throughout the state, asked residents to urge senators to vote no on the veto override.

"The School Management Alliance did a good job confusing enough people," said Parker, who canceled the vote after consulting members of the Illinois Journalism Education Association.

The School Management Alliance increased its opposition efforts after the House of Representatives voted 98-19 on Oct. 29 to override Gov. Edgar's veto.

"In our opinion, there's no way you can have a situation where you tell the school administration they have no control over the student paper," said Ben Schwarm, a lobbyist for the Alliance.

The state Journalism Education Association is working hard to uncover the "ins and outs" of the Alliance's actions prior to the vote. "We have to have their support to go anywhere [in the future]" said IJEA's executive director, James Tidwell. "It's hopeless if we don't have them on board."

Tidwell and Parker agree that the fate of student press legislation in Illinois could depend on the federal court of appeals decision in *Yeo v. Lexington*.

Illinois administrators expressed concern about school liability when Lexington High School in Massachusetts was sued after students rejected an advertisement submitted to their student publications, despite a state student press law similar to the one Illinois almost passed. [See COURT, page 28]

"The school administrators originally supported the bill until they became concerned with [the Lexington case]. Our contention was that [that case] had nothing to do with our legislation," said Parker.

Illinois legislators have been trying to secure a free expression bill for students since their press freedoms were weakened by the Supreme Court's 1988 *Hazelwood School District v. Kuhlmeier* decision.

The current bill was introduced by Rep. Mary Lou Cowlishaw (R-Naperville).

"This is disappointing, but legislation can take a long time," said Parker who hopes the bill will be reintroduced in the spring. ■

# Student hacker wins first round

## *School officials were confused by 'tech' jargon in paper, defense says*

**WISCONSIN** — Greenfield School District is making a second attempt to suspend a student for writing an article about computer "hacking" that the school claims violates its computer use policies.

U.S. District Court Judge John Reynolds called the suspension an "extreme response" and issued a preliminary injunction on Sept. 19 to prevent the school from enforcing the punishment.

Greenfield's computer policy provides that "good behavior on school computers" must be maintained.

Judge Reynolds found no evidence that the student had used the computers in a manner that would violate school policy, only that he had authored an article describing such improper use.

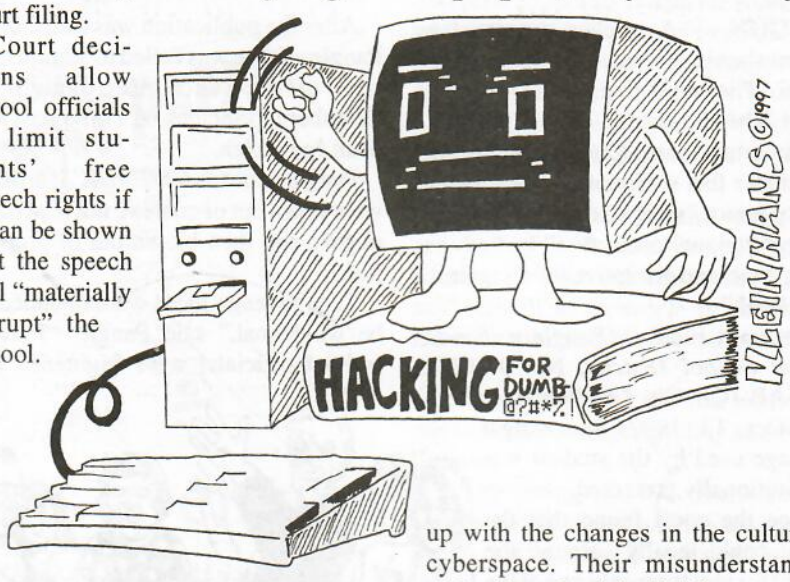
Justin Boucher was expelled on July 10 for his article, "So You Want to be a Hacker" in the alternative, non-school sponsored newspaper, *The Last.*

The American Civil Liberties Union of Wisconsin filed a lawsuit on behalf of Boucher in Milwaukee Circuit Court, which was then removed to U.S. District Court by the school district.

Boucher's profanity-laden article instructed students how to access the school's computer programs by "guessing" user passwords.

Boucher's actions "endangered school property" and caused "disruptions in school processes" by requiring Greenfield to employ costly technology experts to assess damage to school's computers, Greenfield claimed in its court filing.

Court decisions allow school officials to limit students' free speech rights if it can be shown that the speech will "materially disrupt" the school.




Minimal computer damage was found. None of it could be attributed to Boucher. Greenfield's superintendent Bill Larkin conceded that no problems had occurred as a result of Boucher's article, but was firm that Greenfield wants the 17 year old "out of school" because Boucher's "hacking" article "allowed information to students that could have destroyed the computer system."

In a Wisconsin ACLU press release, executive director Chris Ahmuty said, "Greenfield school officials apparently are not conversant with either the culture of cyberspace nor the idea of free speech."

"'Hacking' is now considered benign. Hackers do not cause damage to computers. It's unfortunate the school officials and board members have not kept up with the changes in the culture of cyberspace. Their misunderstanding makes them look foolish."

"Hacking" is computer slang that generally refers to the process of using programs and accessing information by unconventional means. It is not considered a destructive method.

Boucher's article did not contain any "hacking" information that was not easily or readily available to any computer novice testified Ross Kodner, president of Micro Law, Inc., a technology services provider at Boucher's expulsion hearing.

Greenfield's technology support expert, Minnie Young, agreed with Kodner's evaluation.

The school district filed an appeal to the decision on Sept. 22. ■

## *Student press protests policy*

**MARYLAND** — After battling censorship of a student television program last year, Blair High School student journalists may face another fight, this time for all student media in the county.

Student journalists object to new regulations discovered after school began this fall which state in part that no school-sponsored publication including student newspapers, yearbooks, plays, or television shows may produce content that is "inconsistent with the shared values of our society."

Students believe this restrictive policy change may pave the way for more censorship. They say they are frustrated because school officials deny that any revisions have been made to the publications policy despite clear evidence.

Montgomery County Public Schools' spokesman Brian Porter said, "Some students and people they're working with, maybe teachers, are very badly misinformed. There have been no changes in policy at all."

When the *Report read* Porter two different versions of the district's

*(See BLAIR, page 18)*

# Underground paper case misses

## *Journalist asks court to lessen school's penalty for threatening speech*

**OREGON** — A teacher suggested a student should not voice his opinions in school. The student did, and got expelled. Then he sued.

Deschutes County Circuit Court ruled in October that a Mountain View High School junior "stepped over the bounds of constitutional protection" by "advocating direct and disruptive action against the school."

The court ruled in *Pangle v. Bend-LaPine School District*, No. 97-CV-0316-AB (Or. Cir. Ct. Deschutes Cty., Oct. 13, 1997), that vulgar language used by the student was constitutionally protected.

Since the court found that the school could legally suspend the student for violating only one of the charges against him, "threatening" speech, Chris Pangle has filed an objection to the court's decision asking that his punishment be reconsidered.

During the spring of 1997, Pangle and some friends published an underground newspaper, *OUTSIDE!* that was critical of administrators and teachers in the Bend-La Pine School District.

The idea for *OUTSIDE!* began during a math class when Pangle and a classmate say they were told by their teacher that they were entitled to their opinion but they could not voice it at Mountain View High School.

The teacher's comment was in response to Pangle's questioning the usefulness of learning trigonometry.

Most articles in *OUTSIDE!* provided social commentary and satire including Mark Twain's famous quote, "God made the idiot for practice, and then He made the school board."

Mountain View's assistant principal, Dave Holmberg, said that some of the teachers felt threatened by an article in the publication that suggested ways for students to seek revenge on teachers such as "blowing up the bathrooms," sending pornography to their home addresses or polluting the school with "some very disgusting smelling liquid."

After the publication was distributed, Pangle said he was called to administrative offices and interrogated by Holmberg, principal Ed Tillinghast and dean Joe Dolan.

Pangle believes *OUTSIDE'S!* articles were taken out of context, not read thoroughly and then blown out of proportion.

"The revenge ideas were intended to be whimsical," said Pangle. "I think [school officials] were frightened because they took many articles out of context. If they would have sat down and actually read them, they wouldn't have panicked. One teacher told his class that [*OUTSIDE!*] showed how to set your teachers on fire. I must have missed that issue...."


Pangle described the administrators as outraged and claims that Tillinghast declared, "I can't believe this happened in my school."

Discussing the meeting where these statements were made Pangle said, "When I was in there, they were saying how profane all the articles were, then they were cussing and swearing up a storm. It was the greatest display of hypocrisy."

Holmberg ordered all copies of *OUTSIDE!* found on campus to be confiscated said Pangle.

After a second interrogation one week later, Pangle was suspended from school pending a district disciplinary hearing.

The disciplinary hearing recommended expulsion.

Assistant superintendent Allan Frickey accepted this recommendation and found that Pangle's actions had violated the charge of "Writing and Distribution of an unauthorized publication, the contents of which were profane, threatening to staff, and disruptive to the school."

U.S. Supreme Court decisions allow student expression to be censored if it proves to be materially disruptive to the school.

In the argument filed in circuit court, Jonathan Hoffman, Pangle's attorney, argued that *OUTSIDE!* did not contain threats in a manner that were "unambiguous, unequivocal, and specific".

Writing must demonstrate these characteristics in order to be considered unprotected threats under the First Amendment, Hoffman argued.

"Nothing in *OUTSIDE!* threatened to inflict serious physical injury or commit a violent felony to any 'addressee,' Hoffman told the court.

No disruptions were shown to have occurred at Mountain View as a result of *OUTSIDE!*

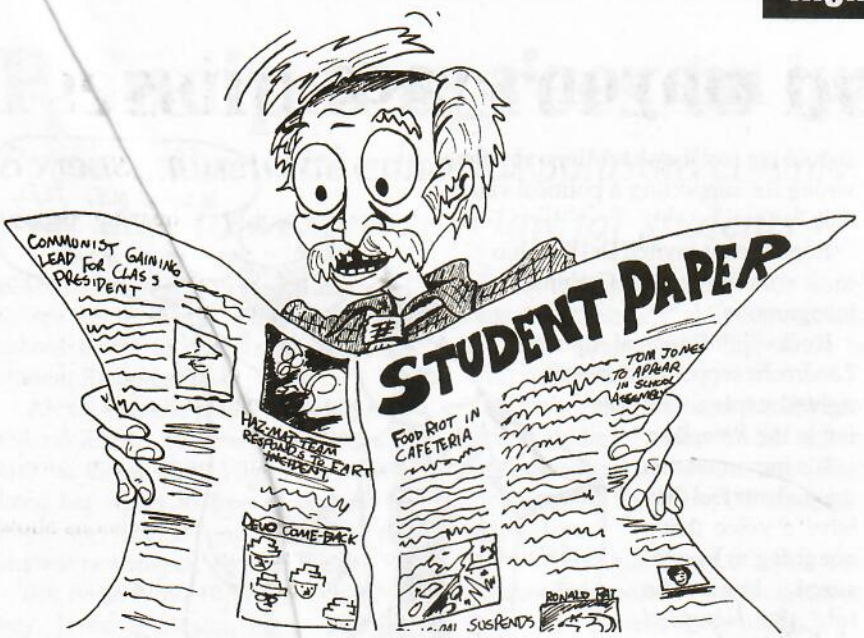
The court disagreed.

Although *OUTSIDE'S!* use of vulgar language was found constitutionally protected, the message was not.

In the decision, Judge Alta Brady found, "*OUTSIDE!* is intended to materially and substantially interfere with the school's operation. It is not simply an expression of an unpleasant or unpopular viewpoint."

"None of this was ever supposed to happen," said Pangle. "[*OUTSIDE!*] was just supposed to be a poke at the school for many of the things they had done to the students."

While he awaits the court's action on his request to reconsider the decision, Pangle is drawing illustrations for Mountain View's official paper, *The Viewpoint*, and attending classes under conditions set by the school. ■




# Student journalists avenge

## *Ethics charges protest adviser's dismissal*

**FLORIDA** — Student journalists are fighting for their rights as their adviser fights for her job.

Mosley High School journalism students and their parents asked the state Commissioner of Education on Nov. 19 to investigate the actions of Mosley's principal and superintendent, whom students claim censored their paper by removing their adviser.

"The ethics charges are being lodged against the principal, new adviser, an administrative assistant and guidance counselor at Mosley for various violations of the professional code of conduct for educators," said Gloria Pipkin of the group, the Friends of the Student Press, who wrote the complaint.

On the same day, former newspaper adviser ReLeah Lent filed suit in U.S. district court claiming her First Amendment rights to free speech and academic freedom were violated by the principal and superintendent who fired her "due to her unwillingness to force students to accede to censorship directives" said a press release.

Lent says that until she is reinstated as adviser to the award-wining *Making Waves*, she and Mosley's journalism students "will be chilled in the exercise of their free speech rights."

Claiming that he wanted *Making Waves* to take a "new direction," principal Bill Husfelt removed Lent last June.

Students claim that Husfelt removed Lent in order to better control the content of their stories.

"The principal just wants to make sure that we write articles that are positive about the school, things he wants us to write about," said co-editor Lorine Stewart, who explained that Lent had allowed students broad editorial responsibility.

Students feel their new adviser, Carolyn England, is more supportive of the principal than she is of the *Making Waves* staff.

"She doesn't seem to care a whole lot," said Stewart. "The whole atmosphere of the classroom has changed. People's hearts are not in it."

According to Stewart, tensions ran high when England refused to distribute the editorial guidelines that *Making Waves* had been using for years because of a provision that allowed the editorial board to override the adviser.

When instructed to remove that sentence, Stewart said she told England, "It's a student-run paper. If you have the right to say 'yes' or 'no' than it is no longer a student paper."

Husfelt suggested to Stewart that editors come to him if they disagreed with England.

Stewart was baffled by this idea. "The adviser is supposed to help the students, and sometimes protect *us* from the administration," she said. "People are stabbing us in the back."

Husfelt has called Lent a "fantastic teacher" and also praised the *Making Waves* staff.

"These are great kids, and very good at what they do. But they need a guiding hand that needs to change at this time," said Husfelt in an article in the *News Herald* explaining why he had removed Lent.

Students believe Lent was removed due to a controversy regarding an advertisement.

In late spring of 1997, Husfelt censored an ad for a gay and lesbian support group that *Making Waves* staff unanimously voted to print.

After Lent consulted a local reporter for advice, Husfelt accused her of airing the school's "dirty laundry."

The ad did not run.

Husfelt told Lent in early June that he would not recommend her return as *Making Waves'* adviser to the superintendent, who accepted Husfelt's decision.

Students begged Lent to challenge her removal.

At a meeting in September, the school board heard from students, parents and community members, but found that Husfelt had not violated the students' press rights by firing Lent.

"It is not [the] school board's authority to circumvent the authority of the principal or the superintendent," school board chairman, Ron Danzey told the *News Herald*.

The students' attorney, Pam Sutton, suggested after the meeting that the board did not fully understand the constitutional issue at stake.

Lent's attorney, Ron Meyer, hopes the court will see things differently.

"It's an uphill swim but we've got a good client and good facts behind us," said Meyer.

Mosley High School officials did not return phone calls from the *Report*. ■

# Student stirs up mayor's race

## *17-year-old's op-ed irks GOP, prompts state investigation*

**CONNECTICUT** — A high school student's political editorial almost became the focus of a state investigation in Vernon this fall.

Local Republicans asked the Connecticut Elections Enforcement Commission to investigate after senior Chris DelVecchio's endorsement of incumbent Democratic Mayor Tony Muro appeared in the *Rampage*, Rockville High School's student newspaper.

The Republican's inquiry charged that a tax-funded school newspaper is not allowed to try to influence voters.

State law forbids candidate endorsement from public-funded materials.

In 1987, a California court ruled that a similar law did not apply to editorials in student publications as long as students made the content decisions.

DelVecchio believes that students should be encouraged to participate in politics and allowed to express their opinions.

"Students shouldn't be restricted or held back in any way from learning about politics, that means picking a candidate," said DelVecchio. "We were trying to elevate our student paper by taking sides. We were emulating what a professional paper would do."

The Commission has dropped the investigation since Republicans did not file a formal complaint after the Republican candidate, Joe Grabinski, won the election in November.

An attorney for the commission, Ron Gregory, believes that the school board may address the question of whether student editorials may endorse candidates.

DelVecchio was disappointed that the issue was dropped without a resolution.

"I wanted to find out what the ruling would be. By not making a decision, there is no set policy. If it isn't addressed now, it should be eventually. Students should not feel they have done anything wrong for supporting a political candidate."

Republicans invited DelVecchio to sit with the press at Grabinski's inauguration.

Rockville's Principal Alphonse Landroche supported students' rights to express their opinion in the *Rampage*.

It's important that the students feel they have a voice that's not going to be censored," Landroche told the *Hartford Courant*. ■


## *Blair*

*(Continued from page 15)*

Student Rights and Responsibility regulations, one from the 1996-97 school year, and one that said it was revised in June of 1997 that contained additional publication restrictions, Porter seemed confused.

He suggested that the explanation of the policy may have changed, but the regulations themselves did not.

Students are outraged.

"The county claimed they were just editing and rewording [the existing publications policy] and avoided having it brought to the public's attention or commented on by elected public officials," said Adam Jentleson, a student journalist at Blair's television studio, WBNC.

Blair's newspaper, *Silver Chips*, has not been censored concedes Jentleson, but he claims this is part of administration strategy. "The county office is too smart to censor anything yet," said Jentleson. "If they censor anything, that gives us a peg to hang our whole argument on."

Jentleson said he would not be surprised if content regulations were imposed following a controversy over a student show on WBNC last year.

An episode of *Shades of Grey*, a live show produced by Blair students and broadcast in their community, featuring a same-sex marriage topic, was censored by school administrators in October 1996.

Students appealed to the school board, which overruled the superintendent in April and allowed the *Shades of Grey* episode to air.

The board then ordered a panel comprised of school officials, teachers and students to draft a new policy for electronic media that is still being deliberated. A decision on that policy was expected before January.

As of November, WBNC was still forbidden from live broadcasting.

Worried about the future of student journalists in Montgomery County, Jentleson and other students have formed the Maryland Coalition for a Free Student Press, whose ultimate goal is to pass state legislation to secure stronger press freedoms for high school journalists.

"Montgomery County has always been very liberal in terms of its educational policies," said Jentleson. "If this [publications policy] is enforced, it's a tremendous shame. It's scary to think of the prospect of student journalists who will not really know what their rights are." ■

# Principal agrees to news changes

## *Board will rewrite editorial policy to comply with state free expression law for students*

**KANSAS** — A student journalists' plan to sue her principal may prompt the school board to conform to the state student free press law.

Alexis Vanesse planned to file suit in federal district court arguing that officials at Great Bend High School violated her rights to free expression by imposing "illegal" guidelines for the student newspaper, *Panther Tales*.

But in on Nov. 10, Vanesse's attorney, Gene Anderson, began negotiations with the school board while they deliberate over new student publications guidelines that paraphrase the Kansas Student Expression Act.

"The critical question now is whether they will accept these guidelines or continue with the current *Panther Tales* guidelines currently in effect that are completely unacceptable," said Anderson.

The conflict arose this summer when principal Mike Hester instructed *Panther Tales* to stop printing an opinion page because of writing he considered "yellow journalism."

One of the stories in question was Vanesse's editorial in the spring of 1997, "All Hail the Good 'ol Boy System," which criticized the administration's discipline policy, suggesting preferential treatment for rule-breaking students from respected families.

Hester disputed the facts in Vanesse's story and called her writing "malicious, slanderous, and libelous" in *The Hutchinson News*, a local paper.

Students protested the censorship of *Panther Tales'* opinion page by collecting 500 signatures from students, teachers and parents.

Following a *Hutchinson News* story about the conflict, the American Civil Liberties Union offered to help the students.

Hester allowed the opinion page to run in September, but issued new guidelines for student editorials. According to Hester's guidelines, stories must show "restraint" and students could not write about topics that could be "misconstrued."

Hester's guidelines state that any conflicts regarding *Panther Tales'* articles will be resolved by "a panel comprised of community members, GBHS faculty and students."

Under these guidelines, this panel, not *Panther Tales* editors, had final authority over the content of the paper.

*Panther Tales* adviser Marla Stark encouraged students to accept the guidelines said Vanesse, but the students refused, claiming they were "ridiculous and illegal".

"[The adviser] didn't want us to cause any more trouble. She was just trying to keep her job," said Vanesse.

Anderson sent Hester a cease and desist letter instructing the administration to comply with the Student Publications Act.

The law, which was enacted by the state legislature in 1992, is meant to protect press freedoms of high school students that were limited by the 1988 Supreme Court's decision in *Hazelwood v. Kuhlmeier*.

The law reads, "School employees may regulate the number, length, frequency, distribution and format of student publications. Material shall not be suppressed solely because it contains controversial or political subject matter."

Hester claimed this law justified his censorship of the editorial page because it was a "format" change.

Hester's idea that the law allows him to change the format of *Panther Tales* was "bizarre" says John Hudnell, executive director of the Kansas Scholastic Press Association.

"[Hester] is interpreting 'format' to mean 'content' as opposed to physical structure," Hudnell says. "I suppose you can twist anything to make it fit, but it doesn't hold water in court."

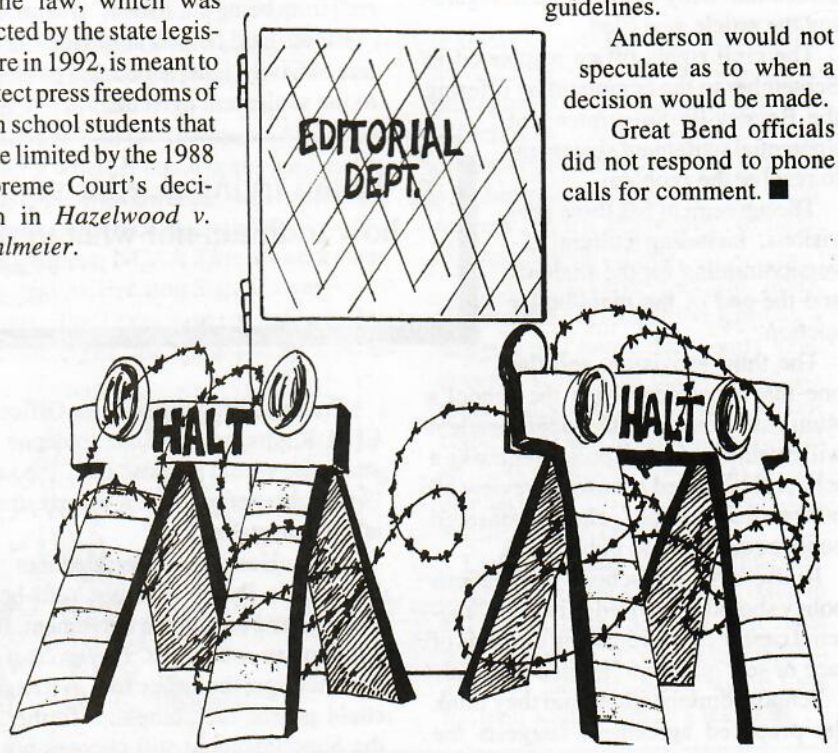
After deciding to take legal action, Vanesse lost support from her adviser.

"A lot of people think I'm overreacting, but I'm really disappointed in my adviser and principal," said Vanesse.

Vanesse hopes to avoid a lawsuit, but she and Anderson will file suit if the school board does not accept the new guidelines.

Anderson would not speculate as to when a decision would be made.

Great Bend officials did not respond to phone calls for comment. ■



# *Dep't of Education requires prior review*

## Controversy results from complaint about 'slave aution' article

**ARKANSAS** — The U.S. Department of Education's Office of Civil Rights is trying to inflict a prior review policy on a high school student newspaper in Arkansas.

The proposed review policy stems from a article appearing in the December 1996 issue of Booneville High School's student newspaper, the *Bearcat Eyes*, with the sub-title "Student Council sponsors slave auction for Goodfellows."

The article provided a factual report about the school's annual charity auction. Students are auctioned off to the highest bidder to be their "maid or butler" for one day. The proceeds are donated to charity. Until two years ago, the event was called the "slave auction."

The word "slave" used in the headline was found offensive by one reader, who then filed a complaint with the Office of Civil Rights in the U.S. Department of Education. Only one complaint regarding the article was filed.

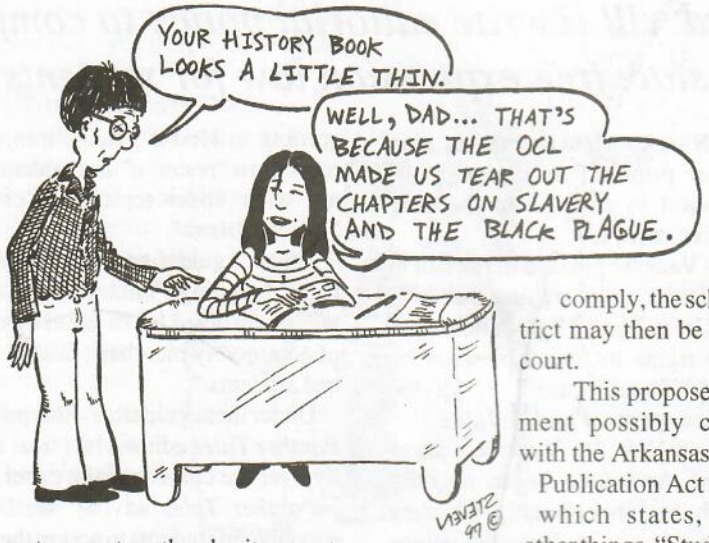
The civil rights office responded in September to the complaint by offering the Booneville Superintendent a potential settlement agreement to resolve the problem.

The agreement has three provisions, including cultural diversity training for the students and the end of the maid/butler auction.

The third provision, and the one that most concerned the school's administration, states the superintendent will establish a formal policy requiring a school-designated sponsor to review all information for all school-sponsored publications prior to publication.

It also says the school publications policy should be revised to include "material cannot discriminate on the basis of race or sex" under prohibited material.

School administrators said they think the proposed agreement suggests the accurate report on the charity event could have been prohibited under this provision of the agreement.




Paul Bloom, attorney for Booneville School Board, said the proposal from the civil rights office prohibiting the publication of potentially discriminatory material is "overkill, unconstitutional and arrogant.

"It is a violation of the First Amendment to prohibit [discriminatory material] from being published," Bloom said.

Bloom said he was surprised the Office of Civil Rights added that provision to the settlement agreement.

> "We are trying as educators to teach students how to think, not what to think."
>
> **Lana Hampton**
> Booneville High School adviser

"Frankly, I'm shocked the Office of Civil Rights would have someone on staff who would propose that," he said. "I thought everyone knew prior restraint is not acceptable."

Aaron Hosman, superintendent for Booneville Public Schools, said he is not required to sign the agreement. It is a voluntary settlement. However, if he does not sign, the Office for Civil Rights could pursue the complaint further. If the Superintendent still chooses not to comply, the school district may then be taken to court.

This proposed agreement possibly conflicts with the Arkansas Student Publication Act of 1995, which states, among other things, "Student publications policies shall recognize that students may exercise their right of expression....This right includes expression in school sponsored publications...."

Lana Hampton, publications adviser for Booneville High School, said a prior review policy and the recommended publications policy revision would "shut down" the learning process for students.

"We are trying as educators to teach students how to think, not what to think," she said. "If we say 'you can't go down that road cause because you may find truth,' then they will learn not to go down it."

Regarding the proposed publications policy revision that states discriminatory material is prohibited, Hampton said that is an impossibility.

"I don't know if my students or even myself would be able to recognize discrimination under every guise," Hampton said.

She said she thinks asking someone to review a newspaper for discriminatory material is like asking someone to be the "thought police."

The Department of Education refused to comment on the issue. ■

# *Adviser accepts Playboy award*

**CALIFORNIA** — A journalism teacher accepted the Playboy Foundation's Hugh M. Hefner First Amendment Award in November despite disapproval from her school district.

Accepting the award is inappropriate because of Playboy's "adult" products, argue San Francisco Unified School District's associate superintendents Gwen Chan and John Quin.

The winner thinks differently.

"I see it as an award for the First Amendment," said Katherine Swan, former newspaper adviser at Mission High School's *West Wing*. "It's not being given for doing the things that Playboy does."

In a letter to Cleo F. Wilson, the Playboy Foundation's executive director, Chan and Quin stated, "We believe that to accept an award, no matter how well-intentioned, from a foundation which represents an adult magazine and adult products that are 1) inappropriate for minors, and 2) illegal to sell to minors, would represent a tacit endorsement for those products and therefore contrary to the mission of our school."

Responding, Wilson explained that the Foundation was impressed by *West Wing's* staff, but the award, to honor *individuals* who champion First Amendment freedoms, is meant solely for Swan.

The plaque honors Swan saying, "in the face of daunting odds - including opposition from the school administration - [she] understood and enshrined the value of the First Amendment and the pursuit of journalistic truth in her students."

*West Wing* won the Edmund J. Sullivan award from the Columbia Scholastic Press Advisers Association last year and was known for investigative reporting on issues such as school administrator replacements and perks for student athletes.

Swan said that *West Wing* had overcome several censorship attempts by Mission's principal, Ted Alfaro, who informed her at their first meeting that he expected to read the paper prior to its distribution.

Alfaro objected to Swan's wish to bring the students to the award ceremony and said the school would not finance the trip.

"It's a sexist magazine," said Alfaro. "The students are upset because they worked hard and did a great job, but they don't see the whole side. If they were 18 and in college it might be different."

> "I see it as an award for the First Amendment. It's not being given for doing the things that Playboy does."
>
> **Katherine Swan**
> journalism adviser

Swan currently teaches journalism at Lowell High School, another San Francisco area school.

She plans to use the $5,000 award for student scholarships. ■

# Story claims education law can dictate news content

A small section of an article published in the August edition of *The American School Board Journal* poses a potential threat to high school journalists.

The article of concern, entitled "Playing Fair" by Brenda Lichtman, concentrates on Title IX, a 25-year-old law prohibiting federal funding of schools and colleges that discriminate on the basis of gender.

In an opinion that many student journalists and free press advocates will contest, the article states that unequal coverage of men's and women's sports in a student newspaper is a violation of Title IX.

Section c of the law states, "In determining whether equal opportunities are available the Director will consider, among other factors...publicity."

Lichtman, NCAA Title IX coordinator for Sam Houston State University in Huntsville, Texas, said she believes this section of the title applies to all aspects of the school's media, including those produced by students.


"This deals with publicity relevant to interviews in terms of coverage by media, promotional services to teams, posters, press guides and schedules," she said.

Lichtman maintains that this requirement could include the number of column inches given to men's and women's sports and picture coverage in student publications.

SPLC Executive Director Mark Goodman disagreed with Lichtman's analysis and noted that courts have drawn distincitions between the actions of students and those of school employees. But he said students and advisers should be wary that school officials might use this argument as a justification to censor.

Lichtman said that student press coverage has not yet been an issue in a Title IX case. Schools first must deal with more prevalent issues such as equal facilities and playing time for men's and women's teams. ■

# Teen runs for school board seat after struggling with principal

**CALIFORNIA** — An 18-year-old lost a bid for a seat on his school board on Nov. 4, but won a censorship battle against his principal last June.

Six hours before a graduation ceremony from which student Joe Neal had been barred, a U.S. district court found that a letter Neal distributed to students which criticized Bassett High School's principal was "protected political speech" and ordered the school to allow Neal to graduate.

In response to an editorial in the school newspaper by Neal, which criticized the school for cutting down trees, principal Linda Bouman began strictly overseeing the editorial and opinion section of the paper.

"It was such an environment of intimidation," said Neal.

Hoping to inspire his classmates to resist censorship, Neal distributed a letter encouraging students to speak out against unwelcome changes imposed by the administration.

"Ms. Bouman, how dare you attempt to infringe on the rights of each and every one of us to publish our opinion, an inalienable right by the First Amendment? SILENCE = DEATH, ACTION = LIFE, FORWARD IN THE STRUGGLE," states one part of the letter.

After Neal distributed the letter, which he had written and copied on his own, he was questioned by Chuck Stanzione, a school police deputy who identified himself to Neal as a "district investigator."

Stanzione demanded to know Neal's "intention" and whether or not he had written the letter in collaboration with a teacher.

At their third meeting, Neal said that Stanzione read him his Miranda rights.

Neal said that Stanzione told him, "Free speech and freedom of the press does not exist on this campus."

"At that point, I wished I hadn't [distributed the letter]," said Neal who feared being sent to jail.

Neal was not charged with a crime but he was suspended. The suspension took effect seven weeks after the letter was distributed, but only a few weeks before final exams and graduation.

Neal said he was escorted off campus, warned that he would be arrested if he tried to return, and informed that he would probably be expelled.

At a meeting following the suspension, Neal said he was told that his letter created a "threatening situation," although Bassett officials failed to demonstrate any harms that had resulted from the letter.

School officials did not return phone calls from the *Report*.

Teachers at Basset High School supported Neal by dressing in red and blue to symbolize the American flag the day after he was suspended.

*The San Gabriel Tribune* covered the situation and then contacted the American Civil Liberties Union, which provided attorney Peter Lasburg to represent Neal.

Less than six hours before Bassett's graduation ceremony, Judge James Ideman issued a temporary restraining order to stop the school from enforcing the expulsion.

Neal graduated with his class.

"Given the First Amendment concerns, the draconian effects of the suspension, and the potential for harm that cannot be undone, the issuance of a temporary restraining order is appropriate," said Judge Ideman in his decision.

Riding high on this victory, Neal campaigned for the school board election held on Nov. 4.

Neal was pleased with the election despite his loss.

"We had a great voter turn-out," said Neal. "Two incumbents lost and the first item on the new board's agenda will be to try to remove superintendent Linda Gonzalez, who had written a declaration against me."

Neal is proud that he found the courage to speak out and plans to continue fighting for students' rights by encouraging them to participate in board meetings and write petitions.

"I want to make students realize that someone does care about them and someone is looking out for them," said Neal.

Neal is still interested in journalism. He is currently attending college and hopes to pursue a career in music. ■

# Reporter saves seized newspapers

## *Principal relents and allows publication distribution*

**FLORIDA** — A student received a standing ovation from teachers and students in September after winning a newspaper censorship battle with her principal at Northeast High School in St. Petersburg.

Managing editor Maribeth Phillips wrote a story describing the school's possible change to a "traditional" curriculum for the *Nor'easter's* first issue of the 1997-98 school year.

"Traditional" schools require such things as mandatory attendance of parents at meetings and stricter dress and behavior codes for students. A coalition of teachers and parents in St. Petersburg are in favor of changing to a traditional school.

Northeast's principal Michael Miller saw the *Nor'easter* prior to distribution because his assistant principal had "concerns" about the content of the paper.

Miller approached the *Nor'easter's* faculty adviser and first year teacher, Katherine Preble, claiming that the paper contained "errors."

"She had two options: She could hold the newspaper, or I could hold the newspaper," said Miller.

According to Miller, this new adviser was the person who actually "held" the paper after being given those two options from the principal, her boss.

Miller said he was "concerned" about a few stories including an article "warning" incoming freshman about hazing practices that was, "in my opinion, an intimidation article." Miller felt that the traditional school story plainly stated that Northeast was becoming a traditional school, rather than explaining that the policy was in the deliberation stage.

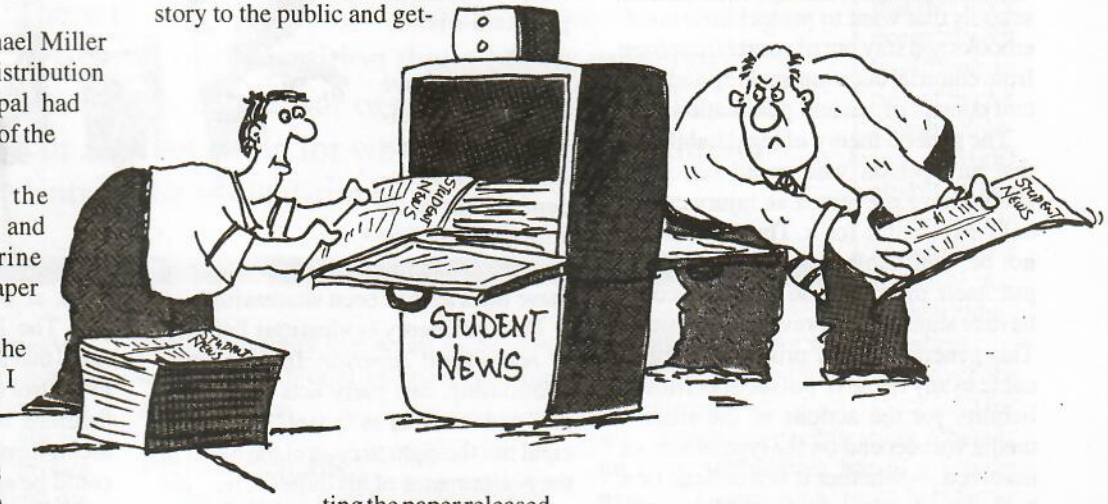
"Right now the committee is divided [over the change], we have not had the opportunity for public forum," said Miller. "If that article were to hit the streets it would cause real, real political controversy."

"They didn't like the fact that I told it like it was," said Phillips, who believes Miller was worried about the reaction of parents to the traditional school story.

When Bonnie Hill, an advertiser in the *Nor'easter*, discovered that the paper had been seized, she contacted the Student Press Law Center for advice and notified the *St. Petersburg Times*.

"I don't understand why [the school] has classes to teach journalism to the students and then when the first controversial article comes up they do what they do," said Hill.

Hill credits *St. Pete Times* reporter Jim DeBrosse's story about the confiscated *Nor'easter*, for getting the story to the public and getting the paper released.




DeBrosse's story stated that Miller "locked up" the newspapers and was planning to "destroy" them because he was worried about parents' reaction to the traditional school story.

Miller claims that the papers were held "always on a temporary basis."

Miller finally allowed the paper to be distributed under the condition that a letter be printed along with the traditional school story. This letter provided the principal's perspective on the censorship of Phillips' article.

The *Nor'easter* was released a week after it was originally scheduled for distribution.

"I really admire the students for sticking up for their rights, especially Maribeth," said DeBrosse.

Northeast students' fight for press freedom may encounter future obstacles as a new policy has been drafted that requires "anything dealing with controversy to be shown to the assistant principal," said Miller. "We believe in the freedom of the press, but we also believe in responsible journalism."

Prior to distribution, the paper is reviewed four times by assistant principal Trisha O'Neil. She even participates in the *Nor'easter* staff's "story idea day."

"I don't like it at all," said Hill regarding the new policy. "I don't like the fact that students were told that a controversial article may not appear. We'll just have to wait and see about this one."

Apparently this new prior review policy has already led to canceled stories. Phillips explained that an article about school-bus overcrowding was not run for fear that the school would look bad. A story dealing with abortion and teen pregnancy was also stopped by O'Neil.

"Unfortunately, if we want to have our paper, we have to put up with this," said Phillips.

O'Neil did not return phone calls from the SPLC. ■

# Fixing the blame

*Level of editorial control determines schools' liability for student media*

One of the most common excuses school administrators employ to justify censorship of student publications is that in order to protect the school from liability for articles that are libelous, invade privacy or are otherwise illegal, they need to closely supervise the actions of the students. But this excuse makes little legal sense, as a growing body of law indicates that censorship is more likely to create, rather than counteract, a school's potential for liability.

In reality, the best advice for most schools that want to protect their pocketbooks and stay out of court is to refrain from editorial decision-making and content control of student publications.

The general theory of legal liability is that any person who could have and should have prevented an injury can be held responsible for it. Thus, in order to not be held liable, a school should not put itself in a position where it could have or should have prevented an injury. This general liability principle is applicable to any context, but the specifics of liability for the actions of the student media will depend on the type of school involved — whether it is a college or a high school, whether it is public or private — because courts may afford different protection to each.

## Public Colleges

While libel suits against college publications are relatively rare, college administrators may still be concerned about their potential for liability. Libel plaintiffs would like to make the school responsible for the actions of the student media in order to reach the "deep pockets" of the school for paying damage awards.

The positive news for administrators is that courts have consistently said you cannot hold a public college liable for the acts of its student publications as long as the school is not censoring or exercising some other form of content control. The First Amendment does not permit public colleges to exercise the type of control necessary to be held liable. Thus, as long as a school follows the constraints of the First Amendment, it should be protected from liability.


Those who have sued public colleges for the actions of their student media have attempted several theories of liability; however, none of these theories has been successful.

The first theory is vicarious liability, or *respondeat superior*. In an agency relationship, one party acts as "principal" and the other as "agent." The principal has the right to control the agent in the performance of his duties. Thus, the principal is vicariously liable for the actions of its agent.

Applying this relationship to a public college and its student publications simply does not work. A public university is constitutionally prohibited from exercising content control, court decisions indicate.

Thus if a public college uses censoring a student newspaper as a justification for protecting itself from liability, the school is setting itself up for two potential lawsuits: a First Amendment infringement claim by student editors as well as any libel or invasion of privacy suits.

A vicarious liability claim was rejected in *Mazart v. New York*,[1] a case involving an allegedly libelous letter printed in the State University of New York at Binghamton student newspaper. The New York Court of Claims ruled that a public university was unable to control the content of its student publications because of the First Amendment; therefore, no agency relationship could be established.

Further, the court held that funding provided by the school did not establish an agency relationship. In *Mazart*, the university partially funded the newspaper through a student activities fee and provided office space, desks and janitorial services at no cost to the newspaper. Students could also receive school credit for work on the newspaper.

None of these factors were sufficient, however, "to overcome the university's lack of control over the newspaper.... Such accoutrements are nothing more than a form of financial aid to the newspaper which cannot be traded off in return for editorial control."[2]

The reasoning of *Mazart* was more recently reaffirmed in a case against Clemson University in South Carolina.[3]

The university was not held responsible for an allegedly defamatory article printed in its student newspaper because the paper was not subject to prior review by the university.

The court stated that "[t]here is overwhelming authority across the country in support of the position that a public university which does not censor or otherwise control the content of a school-sponsored newspaper is not liable for what is published by the students in the student-run newspaper."[4]

A similar ruling rejecting the agency theory of liability was issued by the Appellate Division of the New York Supreme Court in *McEvaddy v. City University of New York*.[5] As in *Mazart*, the fact that the university provided the newspaper with a faculty adviser and funding was irrelevant in the eyes of the court; the university could not exercise control over the newspaper that would justify liability.

Libel plaintiffs have also attempted to argue that the university is the publisher of a student publication and thus is liable for its actions as a commercial publisher would be. However, as one federal appellate court noted, "[t]he university is clearly an arm of the state and this single fact will always distinguish it from the purely private publisher as far as censorship rights are concerned."[6]

The university as publisher analogy was advanced in a 1983 Louisiana case against the student newspaper at Southern University of New Orleans.[7] The court held that because the First Amendment bars state universities from exercising anything but advisory control over student publications, the university could not be held liable for defamatory articles printed in the paper.[8]

Another possible theory for university liability is negligence. To prevail, the person bringing suit would have to establish that the university had a duty to exercise due care to protect the individual and failed to exercise that care.

This theory was also advanced by the plaintiffs in *Mazart*, but the court rejected it. The court explained that college students are legally adults, not children; therefore, the university had no duty to provide students with editing guidelines because as adults, they were presumed to already know the guidelines.[9] Since there was no duty, there could be no negligence on the part of the university.

In summary, because public colleges lack the critical requirement of the ability to control content because of First Amendment prohibitions, those schools should not be held liable for the actions of the student media.

However, if school officials do ignore the First Amendment and engage in censorship or require prior review of content by an adviser or administrator, protection from liability would be lost. A public university that wants protection must allow editorial independence for student media.

> "There is overwhelming authority across the country in support of the position that a public university which does not censor or otherwise control the content ... is not liable for what is published by the students in the student-run newspaper."
>
> ***Lentz v. Clemson University (1995)***

## Private Schools

The situation may be quite different at private universities and high schools. While a school policy, state constitution or state law may offer some free expression protection, the First Amendment does not prohibit private schools from censoring or regulating the content of their student publications.

For example, the vicarious liability theory may be successful in the context of a private school. Where it is presumed that the school has the ability to regulate content, there are three major elements needed to demonstrate the existence of an agency relationship.

First, consent must be given to the agent newspaper to act on behalf of the principal university. The necessary consent may be evident in the university's establishment and funding of a student newspaper.[10] Next, the university must be shown to benefit from the presence of the newspaper. Finally, student editors must be acting within their granted scope of authority when they select content for publication.[11] If these factors can be met, it would be possible for a private university to be found liable under a vicarious liability theory.

That assumption was recently challenged in a case involving Princeton University, where a court, for the first time, said a private university was protected from liability for material published by a student newspaper.[12] The potential significance of this case is unclear, however, because unlike most student publications, *The Daily Princetonian* is an independent, separately incorporated newspaper. The court never noted that fact in its decision, so it is difficult to determine how this holding might shield other private universities from liability for student publications that are not so independent.

The analogy to the private university as publisher might also be successful for school-sponsored publications. There is no First Amendment bar to a private university exercising prior review or censorship, so there may be greater authority for the school to control the newspaper, which translates into greater potential for liability.

This argument was advanced in a case against the University of Rochester, where the court expressly stated that a private school is not limited by the First Amendment like a public school.[13] While the case was ultimately settled out of court, the decision suggests the burden would be on the university to demonstrate that it had no power to exercise control over the newspaper. In some places, state law limiting censorship of expression by non-government agencies could provide this protection.

*(See LIABILITY, page 26)*

# *Liability*

*(Continued from page 25)*

## Limiting the Liability of Private Schools

Because private schools are not constitutionally prohibited from controlling the content of student media, their potential for liability will likely depend on the amount of control they choose to exercise. Private schools can still take steps to limit their potential for legal liability that avoid a need to censor.

The best way for a private school to protect itself is to limit its direct interference with content decisions. If a private school adopts a written policy that prevents school officials from exercising content control over student publications, the policy might work to protect the school from liability. The school should draft a strong and clear statement affirming the rights of student editors to make all content decisions and assume all responsibility for student media. If faced with a suit, the school could then point to the policy and argue that the student journalists are not like employees in an agency relationship, but more like independent contractors exempt from vicarious liability theory.

Other precautions that can be taken to limit potential liability include: printing a disclaimer in every edition emphasizing the paper's separate operation from the university and stating that all views expressed are not necessarily those of the university; administering funds separately from those of the university in a separate bank account; obtaining libel insurance; or becoming separately incorporated like in the Princeton case.

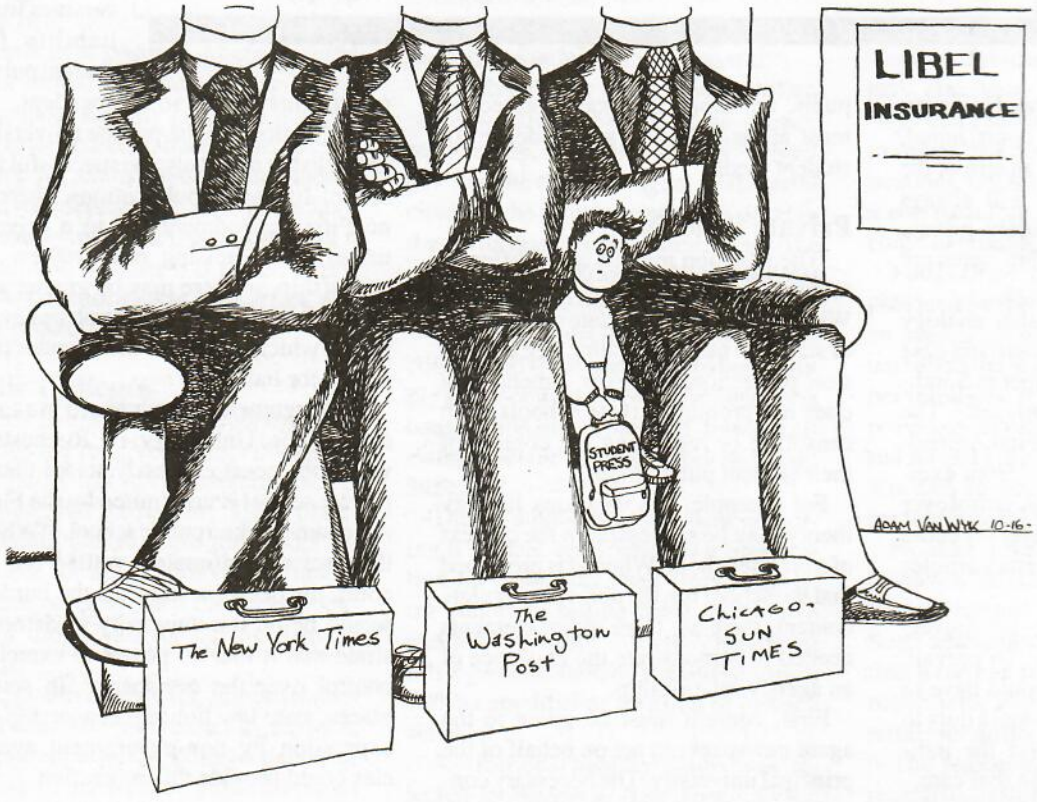
Above all, students and administrators at private schools should learn the law and employ good journalism and ethics. The more the school refrains from interfering with content decisions made by student publication staffs, the more likely it will remain free from liability.

## Public High Schools

After the Supreme Court's decision in *Hazelwood School District. v. Kuhlmeier*,[14] public high schools have greater authority to legally exercise control over many school-sponsored student publications. However, those schools that censor probably put themselves at a greater risk of legal liability. If public schools establish written policies similar to those recommended for private schools, the schools are more likely to be shielded from liability.

Additionally, Massachusetts, Iowa, Colorado, Arkansas, Kansas and California have adopted laws that limit the amount of control school officials have over the content of their student media.[15] The Massachusetts, Iowa, Kansas, and Colorado laws explicitly limit liability of school officials for material printed in student publications unless the school has interfered with content decisions of student editors. Thus, high schools located in these states are afforded greater protections, making their situation more like that of a public college.[16]

High school administrators in particular may attempt to use the potential for liability as an excuse to control content, but that justification is not supported by court decisions. The Student Press Law Center has found no published court decisions anywhere in the country where a high school was found liable for the content of its student media. The best protection a school can take is not to censor but to hire competent publication advisers who can teach students about their legal responsibilities and to distance itself as much as possible from the content decisions made by student editors.




## Libel Insurance

Another route that some newspapers have taken to protect themselves against paying damages in a lawsuit is to obtain libel insurance. Even a value-priced policy can be an expensive undertaking for cash-strapped student media, so often only pub-

lications with large circulations and substantial assets will consider purchasing insurance.

For example, one private university student publication that comes out daily pays Employers Reinsurance Co. of Overland Park, Kan., $3,616 a year for a $1 million policy with a $5,000 deductible. Another private university pays $1,784 for a similar policy for 65 issues a year (twice a week). National Casualty Co. insures one public college daily newspaper for $2,304 a year for a $1 million policy with a $20,000 deductible.

> "The university is clearly an arm of the state and this single fact will always distinguish it from the purely private publisher as far as censorship rights are concerned."
>
> ***Bazaar v. Fortune (1973)***

Smaller newspapers need not look at these figures and panic, as the cost of insurance greatly depends on circulation. For instance, Walterry Insurance Brokers of Clinton, Md., says it can provide basic coverage to a weekly newspaper with a circulation of less than 1,500 for $705 a year. This is the category in which many small schools would fall, and this figure may even be affordable to them. A school with a weekly paper with a circulation of 1,501 to 2,999 could pay only $830. The deductible from Walterry for a weekly paper is typically $5,000.

For basic coverage of a daily newspaper, Walterry's deductible is $10,000. A daily paper with a circulation of less than 5,000 could pay $1,110; annual premium for a circulation of 5,001 to 7,500 could cost $1,445; for a circulation of 7,501 to 10,000 the price is $1,665; and for 10,000 to 15,000 the cost is $2,035.

Basic coverage of an insurance plan generally includes protection from such claims as libel, invasion of privacy and copyright infringement. Errors and omissions coverage for printers' errors is almost always an additional charge.

In choosing an insurance plan, there are several things publication should consider. One of the most important is who decides on retractions or corrections. Many editors believe that the newspaper itself, not the insurance company's lawyer, should make that type of decision.

Other factors to consider include: whether to buy errors and omissions coverage, whether there are discounts for no losses in a five-year period, whether the policy covers intentional or malicious acts, whether the insurers will pay attorney's fees in addition to the policy limit on judgment costs, and whether the policy covers punitive damages.

Probably the largest factor affecting the cost of an insurance policy is circulation. Another important factor may be location. Colleges in Philadelphia, for example, may have to endure higher than average insurance premiums because Philadelphia is an area where courts have been unfavorable to libel defendants.

Another factor is whether the newspaper has been involved in past lawsuits. If the paper has been sued in the past, it will likely have higher than average premiums or deductibles. Insurers may also examine the newspaper's procedures on topics such as dealing with letters to the editor and verifying sources. Finally, some companies provide lower insurance rates to newspapers that have faculty advisers.

Although it does depend mainly on circulation, libel insurance may be a costly proposition and out of reach for many schools. Additionally, some believe it may invite lawsuits that would otherwise not be filed against poor students. But, for those that can afford insurance, it is a protection worth looking into.

The question of legal responsibility ultimately turns on who has control over the printed material. The general test is that when a school exercises control over the content of the paper, it takes on a greatly increased potential for liability. Schools should then not employ the misguided excuse that content review of a paper will reduce the likelihood of liability.

Obviously the best protection against being sued is to engage in careful, accurate reporting. Everyone involved, from the administrators to the student journalists, wants to avoid liability. The first step in doing so is promoting awareness of the law and the legal constraints that apply to student media. ■

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[1] 441 N.Y.S.2d. 600 (1981).
[2] *Id.* at 606.
[3] *Lentz v. Clemson University*, No. 95-CP-39-66 (S. Car. Ct. of Common Pleas, 1995).
[4] *Id.* at 6.
[5] 663 N.Y.S.2d. 4 (1995).
[6] *Bazaar v. Fortune*, 476 F.2d. 570, 574, *aff'd en banc with modification*, 489 F.2d 225 (5th Cir. 1973)(per curiam), *cert. denied*, 416 U.S. 995 (1974).
[7] *Milliner v. Turner*, 436 So.2d. 1300 (La. App. 1983).
[8] *Id.* at 1302.
[9] *Mazart* at 607.
[10] *Wallace v. Weiss*, 372 N.Y.S.2d. 416 (Sup. Ct. 1975).
[11] Ruth Walden, "The University's Liability for Libel and Privacy Invasion by Student Press," in *Journalism Quarterly* 702, 707 (Fall 1988).
[12] *Gallo v. Princeton University*, 656 A.2d. 1267 (N.J. Super. A.D. 1995).
[13] *Wallace* at 422.
[14] 484 U.S. 260 (1988).
[15] Ark. Stat. Ann. §§ 6-18-1201-1204 (Supp. 1995); Cal. Educ. Code § 48907 (Deering Supp. 1991); Colo. Rev. Stat. § 22-1-120 (1990); Iowa Code § 28022 (Supp. 1996); Kan. Stat. Ann. §§ 72.1504-72.1506 (1992); Mass. Gen. Laws Ann. ch. 71, § 82 (1991).
[16] A federal court of appeals recently concluded that school officials in Mass. could not be held responsible for content decisions of student editors if they did not interfere with student control. *Yeo v. Town of Lexington*, 1997 W. L. 748667 (1st Cir., Dec. 9, 1997).

# Court decides students have ad control

## *School not liable for editorial decisions made by newspaper or yearbook staff*

**MASSACHUSETTS** — Journalists at Lexington High School and student press advocates across the country are celebrating a victory they have been working toward for nearly five years.

A six-judge panel of the U.S. Court of Appeals for the First Circuit unanimously ruled in December that student journalists have the right to refuse ads submitted to their publications.

"As a matter of law, we see no legal duty here on the part of school administrators to control the content of the editorial judgments of student editors of publications," stated the court's opinion.

The case arose when student yearbook and newspaper editors at Lexington High School refused to print an ad submitted by Douglas Yeo in 1992 encouraging sexual abstinence by students.

Yeo and other parents had been in a battle with the school over its decision to allow condom distribution. The students had an unwritten policy of not accepting political or advocacy ads, but did offer to allow Yeo to present his message in a letter to the editor. Yeo rejected that invitation.

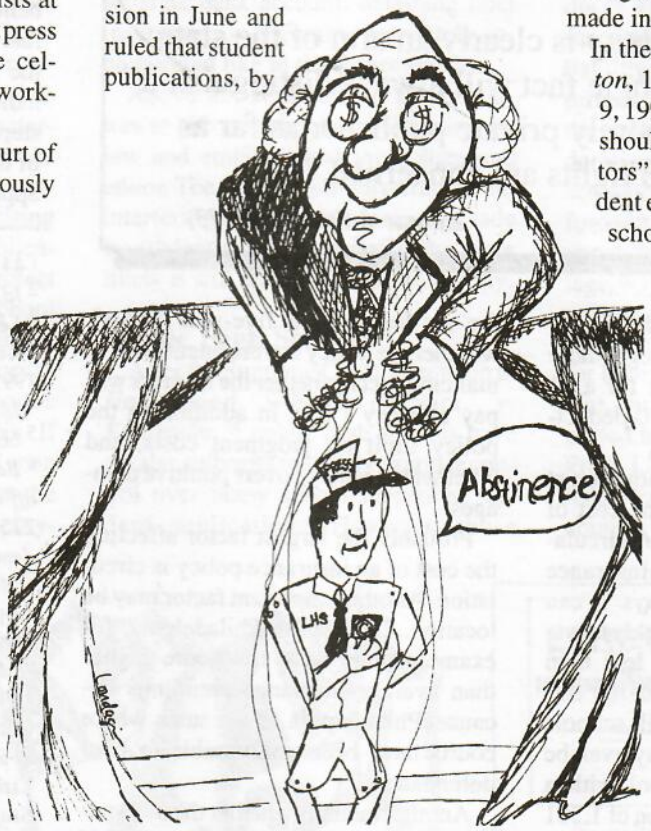
Students and school officials maintained from the start that the school's policy and practice had been to allow students to control the content of their publications.

Yeo filed suit in federal district court claiming that school officials were ultimately responsible for the students' actions and were denying his First Amendment right to free speech and his Fourteenth Amendment right to due process.

The district court found that since the students, not school officials, made content decisions regarding ads, the refusal of Yeo's ad was legal.

The First Amendment limits censorship by the government, but courts generally have said that although public schools and school officials are considered government, actions of student editors at public schools are not.

The First Circuit Court reversed the district court's decision in June and ruled that student publications, by bearing the "imprimatur of Lexington High School," are "state actors" despite a state law which reads, "no expression made by students in the exercise of such rights shall be deemed to be an expression of school policy."




After this reversal, the National School Board Association and national journalism education groups banded together in protest saying that the consequences of the ruling would be to turn student publications into bulletin boards.

The court quickly withdrew its decision and agreed to rehear the case by a larger six-judge panel.

Arguments for this rehearing were made in September.

In the new decision in *Yeo v. Lexington*, 1997 W.L. 74866 (1st Cir., Dec. 9, 1997), the court ruled that students should not be considered "state actors" because decisions made by student editors are not attributable to the school.

The court noted that school officials' decision not to censor the students was based in part on the Massachusetts student free expression law.

"This decision is great for student free press rights throughout the country and affirms the courage of [Lexington] school administrators in allowing students to make responsible editorial decisions on their own," said John Walsh, one of the attorneys for Lexington. "We're elated with the results."

Lexington High School's yearbook adviser, Karen Mechem, described the school community's reaction to the decision as "pretty happy."

"We were glad to see that student press rights are still intact. It's been a long four-and-a-half years."

Yeo said in a press release that he was "very disappointed" by the decision. ■

> "This decision is great for student free press rights throughout the country and affirms the courage of school administrators in allowing students to make responsible editorial decisions on their own."
>
> **John Walsh**
> Lexington school attorney

# State high court agrees to review 'butt-licking' suit against paper

**VIRGINIA** — The state supreme court decided Sept. 4 to consider the appeal of a Virginia Tech administrator who brought a libel lawsuit against the student newspaper. The newspaper had identified the administrator as the "Director of Butt Licking."

Sharon Yeagle filed the original lawsuit in 1996 after the *Collegiate Times* printed her name and the fictitious title under a pull-quote in a newspaper story.

Then editor in chief of the *Collegiate Times*, Katy Sinclair, said the use of the title was a mistake that occurred because the paper used "dummy copy" stored on the computer templates without changing the copy. Yeagle was identified by her correct title, assistant to the vice president for student affairs, in the text of the story.

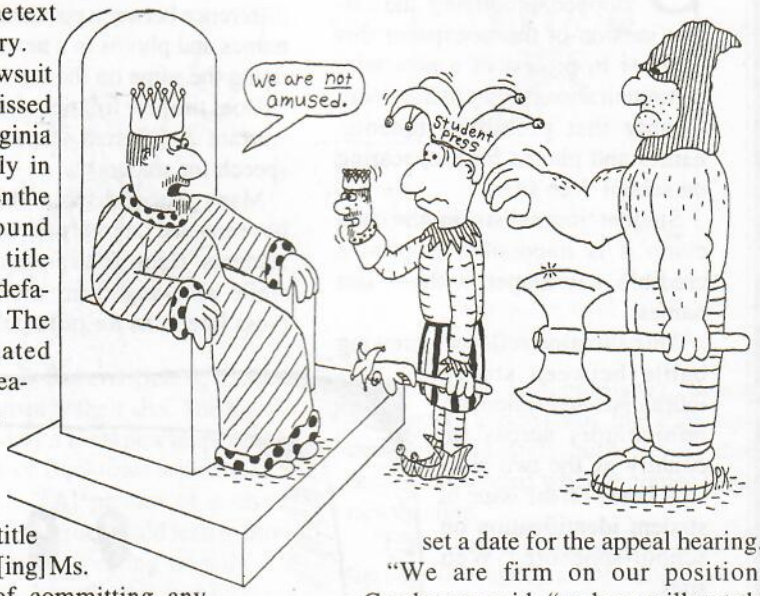
The lawsuit was dismissed by a Virginia court early in 1997 when the court found that the title was not defamatory. The court stated that no reasonable person would interpret the title as "accus[ing] Ms. Yeagle of committing any crime, much less any 'crime against nature.'"

The Virginia Supreme Court agreed to hear the appeal, but only on the issue of whether "the trial court erred in holding the fictitious title was not capable of conveying a defamatory meaning."

James Creekmore, attorney for the *Collegiate Times*, said the court has not set a date for the appeal hearing.

"We are firm on our position," Creekmore said, "and we will put that before the [Virginia] Supreme Court and hope they make the same decision the tribunal court made."

The Student Press Law Center and other First Amendment organizations filed a friend of the court brief supporting the lower court's ruling. ■




## *Suit dropped*

### *Court dismisses claim against student paper*

**NEW YORK** - A state appellate court upheld the dismissal of a former student's case against the student newspaper at Hofstra University in a ruling issued Dec. 4.

Michael Liebgold sued Hofstra's student newspaper, *The Chronicle*, for libel in April of 1996 because of a series of four articles and one editorial about Liebgold's involvement in a sexual assault case.

*The Chronicle* said it accurately reported the facts of the case and in June of 1996 asked a New York state court to dismiss the case. In October 1996 the court dismissed Liebgold's suit saying the articles were not defamatory.

In November of the same year, Liebgold filed an appeal with the appellate division court.

The decision in *Liebgold v. Hofstra University* upholding the dismissal of the case stated "...the articles contain substantially truthful and factual assertations." ■

# Students settle out of court

### *Parties to keep agreement terms confidential*

**MARYLAND** — Two students in conflict about an article published in the Arundel High School student newspaper, the *Spectrum*, have settled their disagreement.

Anthony Bonacci and his parents Steven and Joanne Bonacci have settled privately out of court with Ann Arundel School District, *Spectrum* reporter, Jennifer Tisdale and her mother, Linda Deringer.

Bonacci and his parents sued Tisdale and the Anne Arundel County School District last fall alleging he was libeled by a fabricated and defamatory quote in an article by Tisdale.

A quote attributed to Anthony Bonacci in Tisdale's *Spectrum* article said, "I frequently sexually harass girls, and I don't think I'll stop any time in the near future."

Tisdale's mother then filed a counter suit saying Anthony Bonacci slandered her daughter by accusing her of fabricating a quote. Tisdale and the school stood by the accuracy of the quote.

The disagreement was apparently settled in September and the parties have refused to release the terms of the settlement. ■

# For their own good?

## *Student news on-line censored by schools for 'safety' reasons*

Student editors of Dulaney High School's *Griffen* stopped producing the on-line version of the newspaper this October in protest of a new telecommunications policy in Baltimore County that prohibits students' names and photos from appearing on school Web sites.

Student journalists in the area claim it is impossible to print a credible newspaper without last names.

This situation reflects a brewing battle between student journalists and school administrators across the country as the two sides lock horns on the issue of student identification on school-sponsored Web sites.

A growing number of students say their press rights are being sacrificed by school officials who are imposing content regulations for publications on the school-sponsored Web sites that are more restrictive than those for student newspapers.

School administrators say they fear liability if providing full names and photos of minors on school-sponsored Web sites gives net-surfing potential criminals access to students.

Student journalists ask: What is the difference between publishing student names and photos in a newspaper and doing the same on the Internet?

Does the new frontier of the Internet warrant a different standard of free speech for students?

Many school districts think so and have enacted Internet policies that limit students' rights to expression on-line, while allowing them much broader press freedoms for print publications.

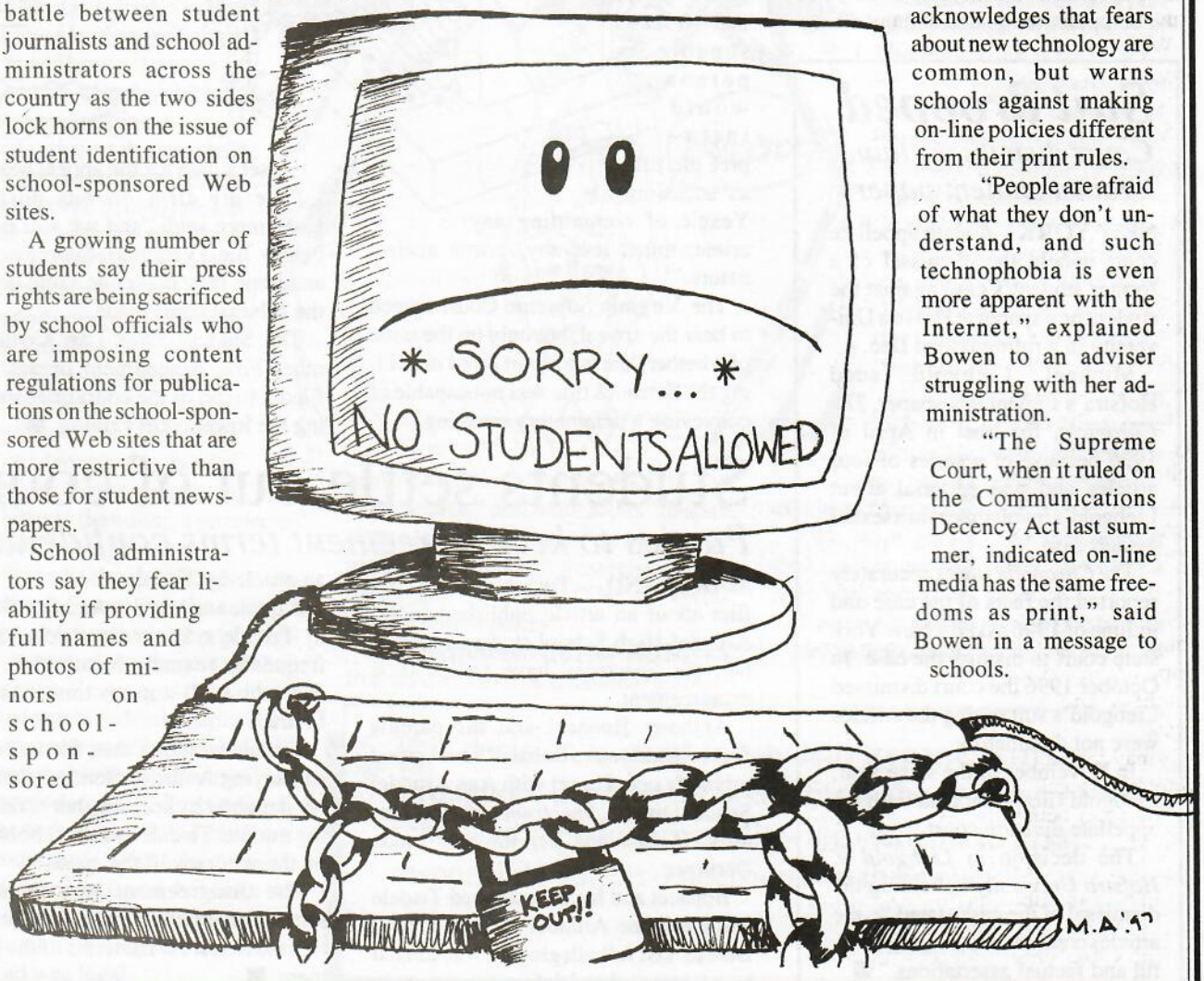
Other Baltimore area students affected by the school district's policy complain that the restrictions prevent them from receiving full credit for stories and art that is displayed on the Web, a consequence that they fear may jeopardize their college admissions.

County administrators concede that the Internet policy is not perfect and say they are willing to make revisions in the future.

The Journalism Education Association's past president, Candace Perkins Bowen acknowledges that fears about new technology are common, but warns schools against making on-line policies different from their print rules.

"People are afraid of what they don't understand, and such technophobia is even more apparent with the Internet," explained Bowen to an adviser struggling with her administration.

"The Supreme Court, when it ruled on the Communications Decency Act last summer, indicated on-line media has the same freedoms as print," said Bowen in a message to schools.



An adviser at an Illinois high school (who asked not to be identified) is trying to convince her school district that their and many other schools' newspapers have been identifying students on-line with no incident.

Attorneys for the school district want to avoid becoming a "test case." This teacher says the parent in her understands the fears, but the journalist in her has trouble accepting the regulations.

"It's a child safety issue, said Cheryl Williams, director of technology programs at the National School Boards Association in Alexandria, Va. "There is a heightened sense of fear about Internet based information. Is it valid? I don't know. There's danger in the telephone, too but we don't seem so concerned about that."

Williams said her organization does not have an official position regarding student identification on the Internet.

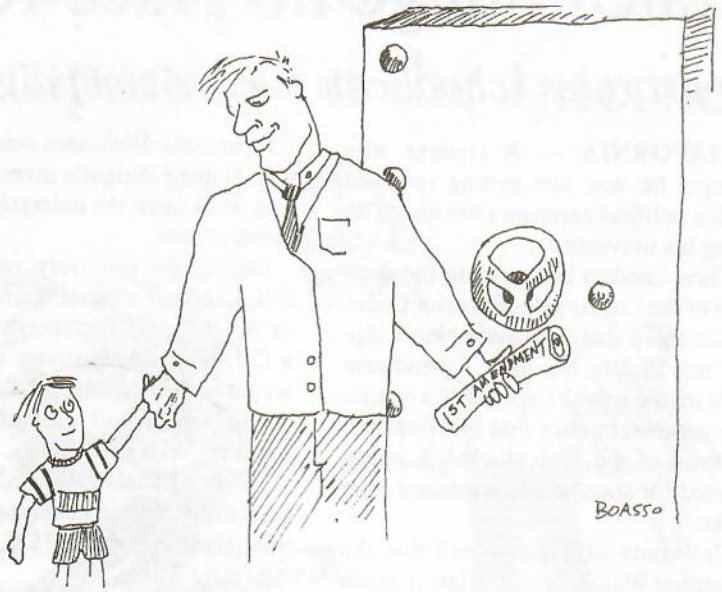
With no apparent standard available, school officials are using different factors to set their own guidelines.

Some schools require parental permission before publishing student photos. Others, such as Howard County, Md., weigh student age when determining their school Web site policies. School officials are more likely to allow names and photos of older students to be published on-line.

Administrators in Anne Arundel County, Md., tackled the Internet identification problem by isolating the school's home page and student publications from the rest of the Web so that no non-school related net-surfers could see it, despite opposition from teachers and students.

It may take a lawsuit to determine if schools can legally prevent student newspapers from being displayed with student names and photos on school Web sites, but can school officials prevent students from publishing their news on Internet sites independent of the school?

High school cheerleaders in Pennsylvania have set up their own Web page after Owen J. Roberts School District refused to display their site. The district is supported by a local newspaper in the community of Bucktown which said in an editorial, "[A] picture of a cheerleader on the Internet could lead to thousands of words reporting tragedy if it sets off a psychopath who then lives out his violent Internet dreams."




In their caution to prevent anything bad from happening, school administrators may be stifling good things as well claims Bowen.

"Do they realize this means no GOOD news can go out, either? No, wins, touchdowns, no scholarships, etc. What will they do if the local paper puts up a site? They can't keep them from using student names," Bowen said.

But they're trying.

A local PTA has asked the La Cañada *Valley Sun* in southern California to stop identifying area students in the on-line version of their newspaper.

The editor and publisher, Steven Whitmore, understands the PTA concerns for child safety, but believes, "their fear is unfounded when it comes to the news online."

"I have two children age 10 and 5. If the horrific tragedy occurred that one of my children were victimized by a sexual deviant who first saw their pictures on somebody else's homepage, I would blame the deviant, not the on-line service, because they are the one who victimized my children."

Whitmore plans to continue publishing student photos and names on his paper's Web site if they are part of important, newsworthy stories.

Bowen fears resolution of the student identification issue may have to come from a judge.

"Every new communications media met with panic, misunderstanding and ridiculous laws when it first emerged—even the printing press and the telephone," said Bowen. "Sadly, some of these issues will have to be decided by case law." ■

> *"Every new communications media met with panic, misunderstanding and ridiculous laws when it first emerged, even the printing press and the telephone."*
>
> **Candace Perkins Bowen**
> Former JEA president

# State college no place for political speech

## *Court rules school can remove campaign Web site posted by student*

**CALIFORNIA** — A student who thought he was just getting involved with a political campaign has ended up suing his university.

Chris Landers is appealing the decision of the Los Angeles Superior Court, which ruled that Cal. State-Northridge did not violate his First Amendment right to free speech by creating a restrictive computer policy that justified their removal of the Web site that Landers created for state senate candidate John Birke.

University officials argued that the campaign Web site violated laws against using state-owned computers for political activity.

Landers considers the school's Internet server a public forum and believes it is illegal for school officials to censor his political expression.

Birke and Landers believe the university may have been motivated to remove the Web site for fear of a lawsuit from Birke's incumbent opponent, Sen. Cathie Wright.

In addition to information supporting Birke, the site featured an image of Wright which slowly morphed into a skull above the headline, "Help Kick Cathie Wright's Tobacco $ Habit." This message was intended as an attack on Wright for accepting donations from tobacco companies.

Several months after posting his site, Landers learned that Wright was investigating it and had hinted that the site violated fair use of state property rules.

In a letter to Ron Kopita, vice president of student affairs, Landers asked for a copy of the university's guidelines for personal Web sites and informed Cal. State of Wright's investigation.

A week later, the university removed Landers' site.

During the discovery phase of the suit, Landers' counsel learned that one of Wright's staff members suggested to a Cal. State administrator that Wright would have pursued legal action against the university had they not removed Landers' Web site.

"Some officials got scared and did not want to thumb their noses at government officials who sponsored Cal. State funding," said Birke.

Wright denies that she would have filed a lawsuit. "I wouldn't have sued, though the site was illegal. I never considered the candidate a threat, anyway. A lawsuit would have just created more publicity for him."

University officials claimed the Web site violated school policy and state laws against using state-owned resources for political activity.

Landers argues, "The university is a public forum where people should be able to express themselves and their views."

The court granted Landers' request for a preliminary injunction in January 1997, and stated that the University could not constitutionally suppress political expression on its Web site.

Judge Diane Wayne wrote, "The policy of the university to make its computer server and systems available to its students and employees created a public forum for their use. Promoting a particular candidate is individual expression."

In response, Cal. State decided to create a new, severely restricting, computer use policy which changed the system from being a "right" of students into a "privilege."

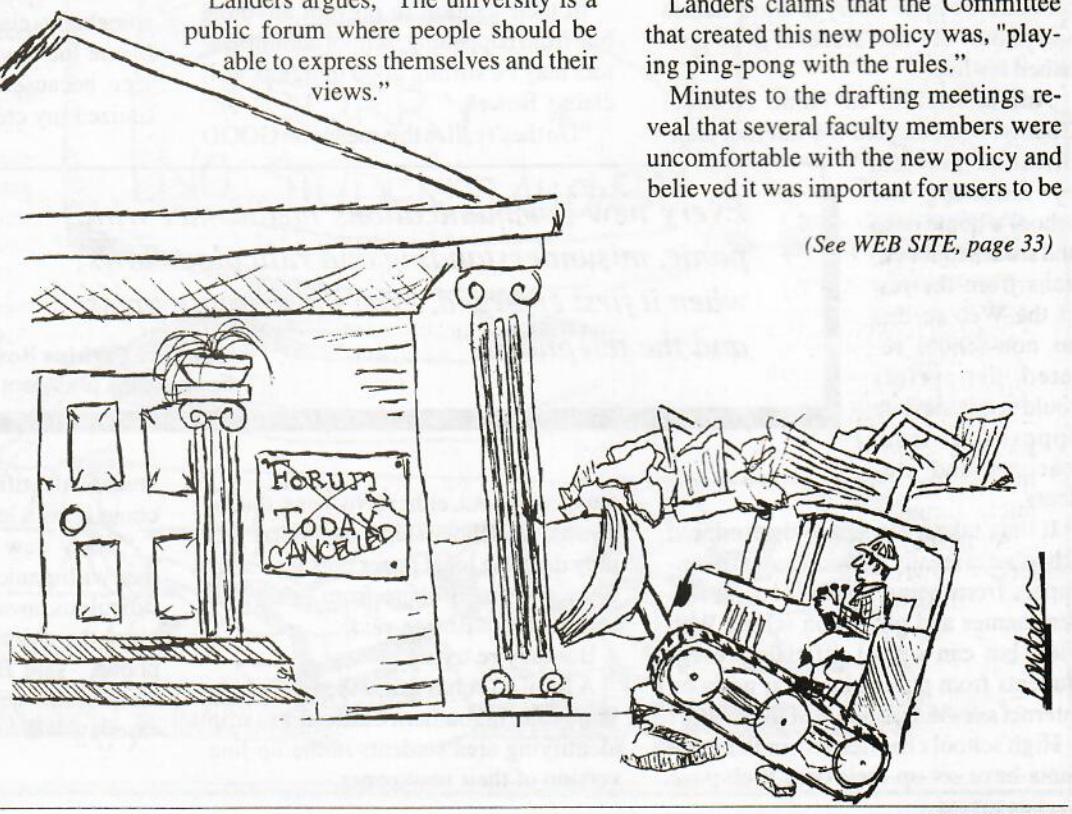
"Use of computers, networks, and computing facilities for activities other than academic purposes or University business is not permitted," reads the new policy.

The previous policy, in place when Landers created the Web site, encouraged students to, "Enjoy all of the many personal uses of the computer."

Landers claims that the Committee that created this new policy was, "playing ping-pong with the rules."

Minutes to the drafting meetings reveal that several faculty members were uncomfortable with the new policy and believed it was important for users to be

*(See WEB SITE, page 33)*



# Boston University attempts to shut down term paper sale companies on the Internet

**MASSACHUSETTS** — Boston University hopes a lawsuit will help its students beat the temptation to cheat.

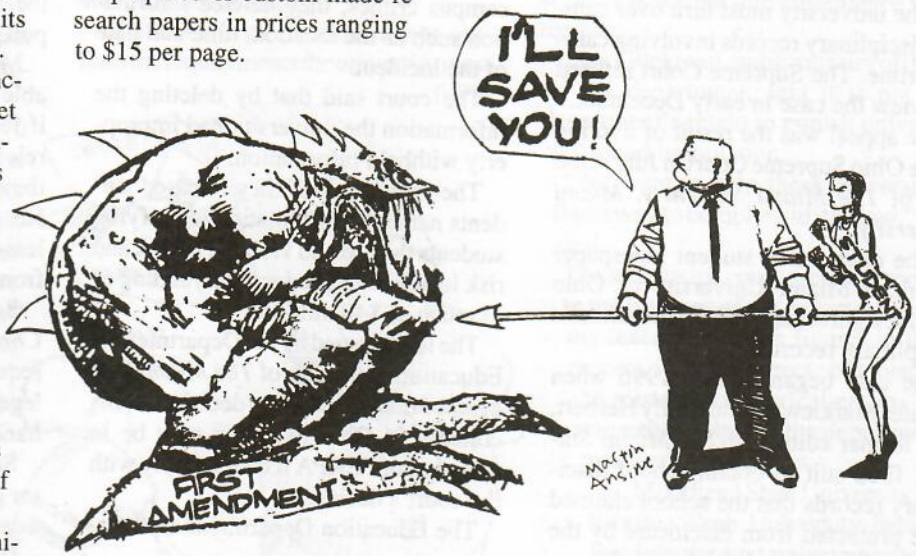
The University is seeking an injunction in federal court to stop Internet sites from selling term papers to students and is accusing these companies of racketeering and committing wire and mail fraud.

Massachusetts law makes it illegal for companies to sell term papers for students to submit as their own work. However, it is not illegal for these companies to sell research that may assist students in writing their own papers. The University wants to eliminate the students' option of buying the research papers at all.

The lawsuit is unique in that the university is asking the court to cut off public access to legal sources of information because some people may use that information for unethical or illegal purposes.

When asked if a student newspaper that advertised such research companies would be held liable in the same way as the Internet sites have been, BU spokesperson Kevin Carleton said he was "unsure."

Web-based term paper companies offer prepared or custom-made research papers in prices ranging to $15 per page.




Companies usually stipulate that purchased papers should be used only for research and never claimed as the students' own work.

Most sites warn students that submitting the company's research as their own is "unethical and illegal."

Still, BU claims that their employees, working in a sting operation, bought papers from Internet term paper sites after explicitly telling the companies that they intended to submit the papers as their own work.

A research assistant from The Paper Store Enterprises, one of the eight companies from seven states being sued, says that most of the defendants plan to fight the university.

In addition to stopping sales, BU is asking for the dissolution of the companies, the safeguard and seizure of all business records and payment for damages and legal costs. ■

## *Web site*

*(Continued from page 32)*

able to communicate freely.

The Superior Court decided that this new policy created a *nonpublic* forum which effectively mooted Landers' claim that he was exercising his free expression rights in a public forum.

About the new policy Judge David Horowitz wrote, "It is a forum limited both as to who may speak and topics upon which they may speak. There is no unlimited public component to the forum."

Birke disagrees.

"The Court ruled that a state [university] can do what a private shopping center cannot do." He cited a case that found circulating information regarding political positions outside a super market protected speech under California law because the super market constituted a public forum.

In 1987, a federal district court ruled that the California State University system could not prohibit student newspapers from publishing editorials endorsing candidates or ballot issues.

An attorney for Cal. State said the school is not required to maintain a public forum forever.

"If you have an empty field where rallies are held and it is considered a public forum, you still cannot preclude a building from being built there [and thus precluding its use for rallies]." said Donna Ziegler from the Chancellor's office.

Birke, who was assisting counsel for Landers, thinks the decision could have dangerous consequences.

"The Court is basically saying that a state university has an interest in preventing students from getting involved in political campaigns, especially local campaigns."

Landers filed his appeal in November. ■

# U.S. Supreme Court refuses to hear access case

**OHIO** — In an unexpected about face, Miami University of Ohio asked the U.S. Supreme Court to hear a decision that the university must turn over campus disciplinary records involving campus crime. The Supreme Court refused to review the case in early December.

The appeal was the result of a ruling by the Ohio Supreme Court in July in the case of *The Miami Student v. Miami University*.

The court ruled student newspaper editors at Miami University of Ohio have the right to see copies of the school's disciplinary records.

The case began in July 1996 when Jennifer Markiewicz and Emily Herbert, now former editors of *The Miami Student*, filed suit to obtain school disciplinary records that the school claimed to be protected from disclosure by the Federal Educational Rights and Privacy Act (FERPA), commonly referred to as the Buckley Amendment.

The Ohio Supreme Court determined last July that school records did not fall under the law's definition of education records, and that the university must disclose the documents.

Marc Mezibov, attorney for The *Miami Student*, said this is an important ruling for the student press.

"The decision means universities, at least in Ohio, are not free to ignore a request for information with respect to disciplinary records," Mezibov said.

However, Ohio universities are now caught between the U.S. Department of Education and the Ohio Supreme Court when it comes to releasing the disciplinary documents.

As a result of the state supreme court's ruling, the U.S. Department of Education issued on Aug. 7 a letter to colleges in Ohio saying they should not release university disciplinary documents that identify individual students.

The court had stated that because The Miami *Student* did not ask for student's names, the school did not have to release the names in this instance.

Although the school had given the newspaper some information regarding campus crimes, they deleted information such as the location, time and date of the incident.

The court said that by deleting the information the university had improperly withheld information.

The school said if they released students names or information identifying students they would violate FERPA and risk losing federal education funding of as much as $40 million.

The letter issued by the Department of Education as a result of *The Miami Student v. Miami University* decision warns colleges in Ohio that they may be in violation of FERPA if they comply with the court's decision.

The Education Department says disciplinary records are considered "education records" under FERPA and to release these records is a violation of federal law.


The letter noted Ohio universities could comply with the federal law if they released the records but deleted any information that might identify a student.

Identifiable information under FERPA includes names of students or their family members, Social Security numbers, student identification numbers or any other information that would make a student's identity easily traceable.

Mezibov said the education department does not have jurisdiction to stop universities from releasing the disciplinary documents in their entirety.

"The Department of Education cannot prohibit universities from releasing the information," he said. "They can pull their federal funding though."

Mezibov said universities would be able to file a suit against the department if federal funding was taken away for releasing disciplinary documents, since they were released under a court order. He also said he thinks documents released under a court order are exempt from FERPA.

Some publications, including the *Chronicle of Higher Education*, have requested disciplinary records from colleges since the Ohio Supreme Court handed down its decision.

Scott Jaschik, Deputy Managing Editor of *The Chronicle of Higher Education*, said the press has good intentions in requesting disciplinary and campus crime records.

"The press is not trying to invade people's privacy for the sake of doing it," Jaschik said.

He noted that *The Chronicle* reporters feel an obligation to cover campus crime and disciplinary records because they are of interest to students, parents and faculty interested in campus safety.

He said it is difficult to accurately report on campus crime when names and specific incidents are not available.

He said he understands the Ohio Supreme Court's decision to mean universities must release all information in crime and disciplinary records.

"We interpret the ruling to mean they have to give us everything," Jaschik said.

*The Chronicle*, however, voluntarily told universities they would not print the names of sex crime victims or any students' social security numbers.

After the Supreme Court announced it would not review the case, Miami University said it would provide the requested records. ■

# Miami University found to violate campus security act

**OHIO** — The U.S. Department of Education declared this fall that Miami University of Ohio is in violation of federal law requiring accurate reporting of campus crime.

The Campus Security Act of 1990 demands colleges receiving federal funds annually publish accurate reports on campus crime and safety procedures.

The department issued a letter to the university on Sept. 11 stating there were "several areas where the institution needs to improve its compliance with the requirements of the Act."

The letter cited several areas of noncompliance with the act, including inaccurately disclosed crime statistics, inconsistent data and statistics from branch campuses.

The department's investigation into Miami's crime reporting, which began in July, found nine discrepancies in the university's police records. Discrepancies include the inaccurate reporting of the number of forcible rapes, aggravated assaults and liquor and drug law arrests.

The letter from the department outlines the requirements the university must fulfill in order to be in compliance of the Campus Security Act. The university must review the requirements of the Act and develop a system for collecting information about all occurrences. It also must describe how it will bring campus security reporting into compliance with the law.


Jane Glickman, public affairs official for the department, said it is not the department's intent to punish universities found in violation.

"We want to help these universities find a way to comply with the law," she said.

The university composed a response to the findings of the department saying that some of the figures in their reports were incorrect, but blamed the mistakes on clerical errors. The university disputed the departments most serious findings.

Moorhead State University and Virginia Tech University became last July the first universities to be found in violation of the act. The University of Pennsylvania and Clemson University are still under investigation for possible violations. ■

# Higher education groups oppose access legislation

**WASHINGTON, D.C.** — A bill that could open campus disciplinary proceedings and make campus crime reporting more accessible, is facing opposition from some higher education lobbying groups.

The Accuracy in Campus Crime Reporting Act (ACCRA), H.R. 715, sponsored by Rep. John Duncan (R-Tenn.), would open campus police logs and campus disciplinary proceedings and prevent universities from hiding behind the Family Educational Rights and Privacy Act (FERPA), commonly known as the Buckley Amendment, to withhold campus crime reports and statistics.

Higher education lobbying organizations, including the National Association of Student Personnel Administrators and the Association for Student Judicial Affairs, have taken a stance against the legislation, saying it is a violation of students' privacy.

Ben Clery, president of Security on Campus, which helped draft the bill along with the Society of Professional Journalists, said the bill will not violate students' privacy. It is meant to inform students and faculty on the safety of their campuses.

If passed, the act will only require the release of information on incidents that could be construed as criminal, said Daniel Carter, regional vice president of Security on Campus.

Clery said criminal acts should be treated as such, regardless of where they occur.

"They are acting as though a student criminal is a different criminal with a special right to privacy," Clery said. "A rape is a rape whether it is on campus or not."

Michelle Goldsfarb, circuit representative for the Association for Student Judicial Affairs and chief disciplinary officer for the University of Pennsylvania, said she has three main problems with the bill.

She said she thinks the bill would actually undermine accurate reporting of crime, because more campus officials would be responsible for crime reporting.

She also said she thinks opening student disciplinary hearings and records would violate the confidentially of students and that these records are protected under FERPA.

Clery issued a letter in October to supporters of the proposed legislation encouraging them to voice their support to their Congressional representatives. He warned that unless student journalists report violations of the Campus Security Act and demonstrate support for the bill, the battle for open campus disciplinary hearings and police logs will

*(See LEGISLATION, page 36)*

# State high court opens personnel files

## *Mich. decides teacher records are public documents*

**MICHIGAN**—The Michigan Supreme Court upheld this summer a decision that portions of administrator and teacher files are open under the state open records law.

The first of two cases that were combined began in 1993 when the father of one of high school teacher Christine Bradley's students made a freedom of information request for the release of her performance evaluations, disciplinary records and complaints filed against her.

Bradley sued the board of education of the Saranac Community Schools and the Saranac School District to prevent the release of her personnel records. The court ruled in 1993 that the documents were not exempt from disclosure and should be released.

Also in 1993, the Parents Support Network, a group whose mission is to monitor the education process on behalf of African-American families, filed a open records request to the Lansing School District Board of Education. They were seeking copies of performance evaluations for nine principals employed by the school district.

The Lansing Association of School Administrators, representing the principals, sued the school district to stop the school board from disclosing the information. A court again ruled in favor of the school district and held that the information must be released.

Both Bradley and the Lansing Association of School Administrators appealed and the court of appeals consolidated the cases. The appeals court upheld the decisions of the circuit courts.

Bradley and the Lansing Association of School Administrators then appealed to the Michigan Supreme Court which heard the case last March. The July supreme court decision agreed that the requested personnel records must be disclosed, reasoning that the "information is related to the [school official's] public employment and not within the privacy exemption [under the open records law]."

Dawn Phillips, a media attorney who wrote a brief on behalf of the board of education in the Lansing case, said this is an important case for student journalists.

"What this decision essentially says is that [the student press] can have access to any documents about a teacher's or administrator's performance," Phillips said.

She also said this ruling has impact on government officials beyond the school. As a result, Phillips said there may be problems regarding the decision.

Legislation has been introduced into the Michigan Legislature which would reverse this decision.

"There are several bills pending that would essentially gut this decision," Phillips said.

House bill 4936, introduced on June 27 and referred to the Committee on House Oversight and Ethics, states that a public body may exempt personnel files that clearly warrant invasion of personal privacy.

The bill also states that a public body may exempt from disclosure "...information in connection with the performance of the duties of that public officer."

A similar bill was introduced into the state senate in January 1997 Senate bill 22 was referred to the Committee on Government Operations.

Both bills still sit in the committies and have not been acted upon. ■


## *Legislation*

*(continued from page 35)*

be lost.

"Closed campus judicial hearings and the Family Educational Rights and Privacy Act have become more of a cancer on an informed and vigilant campus community, than a reasonable 'privacy protection' for student records," he stated in the letter. "College and university campuses are not sovereign powers with the authority to withhold important safety information."

A House subcommittee conducted a hearing on the bill in July. By October the legislation had 63 co-sponsors in the house.

Supporters of the bill are hoping to find a sponsor to introduce the legislation into the Senate in 1998. ■


# *Tax Access*

## *Government proposes new tax access rules for schools*

**WASHINGTON, D.C.** — Tax exempt organizations, including private schools, may have to make their tax returns more readily available to the public.

The Treasury Department proposed rules in September to carry out a year-old law which requires tax-exempt organizations to send copies of their annual returns to anyone who submits a written request.

The rules, if approved, will require organizations to mail copies of their tax returns within 30 days of receiving a request. This includes e-mail and fax requests.

The rules also state organizations must provide the documents the same day if a request is made in person.

Organizations must release all parts of a return, according to the proposed rules. However, the names of donors may be excluded.

A public hearing on the proposed rules is scheduled Feb. 4, 1998, at the IRS headquarters in Washington, D.C. ■

# University of Mississippi denies all photographers access to controversial student government meeting

**MISSISSIPPI** — Photographers had to leave their cameras at the door of a highly publicized and controversial student senate meeting at the University of Mississippi in October.

Professional media from around the state and student journalists who had arrived to cover the meeting concerning banning the Confederate flag at Ole Miss sporting events were told they could come in, but their cameras could not.

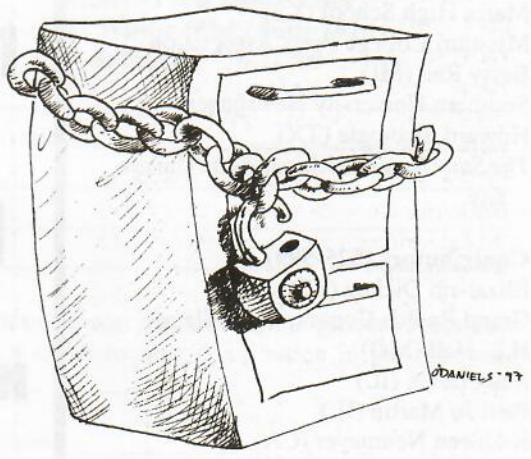
The student government office said the decision to ban cameras was made by the dean of students office, which reasoned that cameras would be a distraction during the meeting.

The Mississippi open meetings laws states that the press can cover and record meetings of a public body as long as the recording does not interfere with the meeting.

The student press at the university has decided not to take any legal action against the camera ban, but hopes some good will come out of the situation for journalists in the future, said Jenny Dodson, editor of the student newspaper, *The Daily Mississippian*.

"I think it has raised [student government's] level of awareness to realize there could be more problems with this type of banning than they expected," Dodson said.

Members of the student newspaper staff and student government were planning to meet to discuss a policy regarding future media access to meetings, said Stuart J. Bullion, professor and chairman of the journalism department. ■



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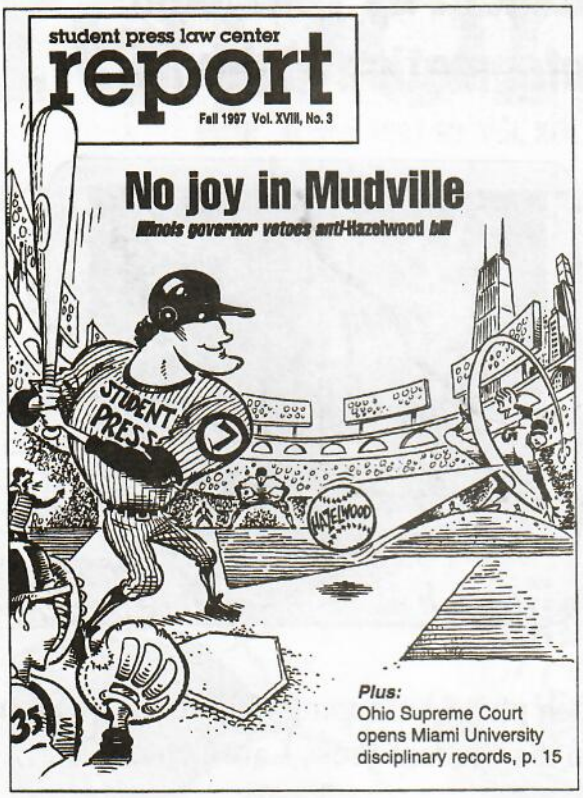


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Three times a year (Winter, Spring and Fall), the Center publishes this magazine, the *Report*, summarizing current cases, legislation and controversies involving student press rights. In addition, the *Report* explains and analyzes the legal issues that most often confront student journalists.

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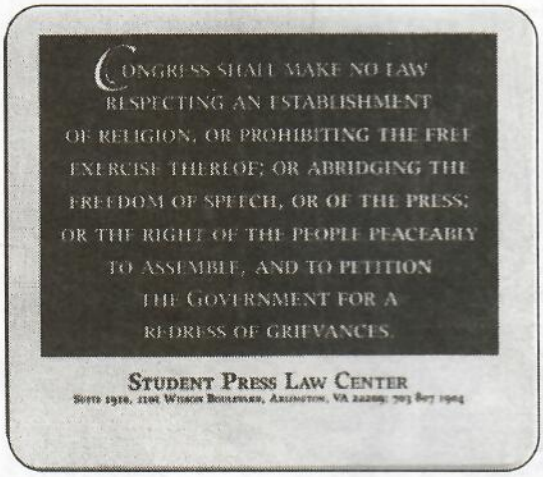


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