student press law center
report
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Braving the Waters

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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The Search For *Hazelwood*-Free Zones

Over three years have passed since the U.S. Supreme Court handed down its decision in *Hazelwood School District v. Kuhlmeier* that gave school officials greater authority to censor high school publications without running afoul of the First Amendment. Despite the growing increase in censorship of student publications that has been reported to the Student Press Law Center as a result of *Hazelwood*, students and their advisers continue to find new legal avenues for fighting the threats to their press freedom.

In a first-of-its-kind ruling, a state court in New Jersey has ruled that students have greater free press rights under their state constitution than they do under the First Amendment to the U.S. Constitution after *Hazelwood*. Some legal scholars, including former Supreme Court Justice William Brennan, have noted the untapped potential of state constitutions for protecting individual rights in ways that the federal constitution does not. In the future, high school journalists and publication advisers who go to court to fight censorship will be more likely to raise state constitutional claims in place of or in addition to those based on the First Amendment.

New Jersey is also one of the states actively working towards the passage of a student free expression bill in the state legislature. Hoping to take advantage of another state law avenue for protecting press freedom, high school journalists there could find themselves doubly shielded from arbitrary censorship by school officials if the bill is signed into law.

A third method for stopping censorship that seems to be a frequent news maker is the effort to persuade school officials to adopt policies protecting student publications. Since the SPLC first published its Model Guidelines for Student Publications in 1978, hundreds of schools have used them or similar polices to spell out the boundaries of student journalists' rights and responsibilities. (If you would like a copy of the SPLC's Model Guidelines, write or call the SPLC.)

But the process of adopting school policies can be difficult. Those who favor restrictions on student publications can sometimes sway school officials into adopting policies that cause more problems for the student press than if there was no policy at all. Many so-called "experts" in the field of school policy development support regulations that would give students fewer rights than prison inmates or journalists in nations controlled by totalitarian governments.

When all other avenues for guaranteeing press freedom have failed, students have usually been able to rely on the court-recognized First Amendment protections for "underground" publications. Recent decisions involving distribution of religious pamphlets by students have suggested that students' rights in this area remain intact but are being frequently questioned.

Through legislation, state court rulings, school district policies and non-school-sponsored publications, a growing number of student journalists are looking for ways to create *Hazelwood*-free zones where censorship will not be tolerated.

On December 15 of this year, we will mark the 200th anniversary of the First Amendment becoming a part of the U.S. Constitution. For high school journalists, the protections for press freedom being found outside the First Amendment are providing more cause for celebration.■

The Report Staff

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Close to Home

Since the Supreme Court's 1988 *Hazelwood* decision, local jurisdictions have had more control over student press rights than ever before

In student press law as in real estate, location is everything.

Since the Supreme Court's 1988 ruling in *Hazelwood School District v. Kuhlmeier* that the First Amendment does not protect high school newspapers from censorship under many circumstances, state and local policies have increasingly defined the rights of student journalists.

Depending on where they live, students in similar situations may have different rights.

National policy analysts have noticed a resurgence of states' rights across the board, with control shifted from the federal government to local jurisdictions. The Supreme Court has upheld local policies on nude dancing and state mandatory criminal sentencing laws, and the possibility that a more conservative court might return control of abortion rights to the states by overturning *Roe v. Wade* is hotly debated in Washington and around the country.

In many places, the *Hazelwood* decision has moved the struggle for student press rights out of the courtroom and into the legislatures. While individual states may not restrict speech any more than the First Amendment allows, they are allowed to expand free speech protections. Four states now have laws protecting the rights of student journalists and many other states have considered or are considering similar bills. *(See LEGISLATION, page 11.)*

Even in the courtroom, the newest tactic is to claim that expression is protected under a state constitution as well as the federal bill of rights. *(See CONSTITUTION, page 5.)*

In other cases, the issue has become even more local as community school boards and even individual high schools grapple with censorship questions. Some school districts have moved to protect student rights, while others have begun to take advantage of the powers made available to them by the *Hazelwood* decision.

Two private groups in the Midwest have actually begun to encourage school administrators to exercise greater control over student newspapers. *(See PRIVATE FIRM and HIRED GUNS, pages 6 and 7).*

Thomas D. Buckley, a lawyer for the American Civil Liberties Union in Ohio, has said that prior review of student publications by school administrators "legitimizes repression and authoritarianism. It teaches students a lesson in submissiveness, passivity and the virtue of docility."

The Journalism Education Association's policy on prior review calls it "journalistically inappropriate, educationally unsound and practically illogical."

Franklin McCallie, a principal in Kirkwood, Mo., has repeatedly come face to face with demands for censorship. Within the span of a few weeks, community members reacted angrily to a Planned Parenthood ad in the school newspaper and to a display of partially burned flags in the school art show.

McCallie refused to silence either form of expression, and even opened up the school's public address system for debate on the controversy.

"Our commitment to our students and to our parents at Kirkwood High School will continue to be to education, to a full discussion of all issues from all viewpoints," McCallie said.

Many of his students say they are lucky to live in Kirkwood, Mo.■

State constitution protects student rights

NEW JERSEY — The state constitution of New Jersey affords more protection to student journalists than does the federal Bill of Rights, according to a decision handed down by a Gloucester County Superior Court last May.

Brien Desilets, backed by the American Civil Liberties Union, sued administrators at Clearview Regional Junior High School for censoring two movie reviews he had written for the school paper in January 1989. School officials said the reviews were inappropriate for young readers because the films, *Mississippi Burning* and *Rain Man*, were both rated R. At the time, Desilets was 13 years old.

In an oral decision from the bench, Judge Robert E. Francis ruled that by removing the articles the school had violated Desilets' rights under New Jersey law. Francis issued no written decision.

While states may not restrict speech any more than the First Amendment allows, they may interpret their own constitutions more expansively than the Supreme Court interprets the federal Constitution. New Jersey is one of several states with a free speech clause that has been interpreted as more protective of expression than the First Amendment.

In the 1988 *Hazelwood* case, the U.S. Supreme Court ruled that because of the special nature of the school environment, the First Amendment would not stop administrators from censoring material in some school-sponsored publications if they deemed the content incompatible with the school's mission.

Because the *Hazelwood* standard would take precedence in a case based on federal law, the ACLU decided to take the case to a state court with a state constitutional claim based on New Jersey's expansive free speech clause.

The New Jersey constitution asserts an affirmative right of every citizen to "freely speak, write and publish his sentiments on all subjects." In contrast, the federal constitution only restricts government action "abridging the freedom of speech, or of the press."

William Buckman, Desilets' lawyer, based his arguments on a narrow evaluation of the facts of the case. Buckman said the reviews were innocuous, posed no threat to discipline, and that students had access to information about the same movies published in magazines available in the school library.

Buckman reported that Judge Francis said he based his decision on the details of this particular case, refusing to adopt a state-wide constitutional standard on school censorship because he thought such a standard ought to be determined by a higher court.

(See DESILETS, page 6)

Quick Guide to Legal Terminology

This section of the magazine is about the censorship of student expression in high schools around the country. While each story involves a unique and often quite complicated set of circumstances, the same legal issues appear again and again.

The legal principles themselves are straightforward but the terminology can be confusing. This box contains a summary of the key concepts and terms that appear in this section of the magazine.

The government is sometimes allowed more or less control over free expression depending on the place or forum in which that expression occurs.

A street corner or park would be classified as a pure public forum, a place that has been traditionally open for citizens to assemble and exchange ideas. In a public forum the government may not restrict free speech any more than it absolutely must in order to accomplish some compelling state interest.

The state may create a limited or designated public forum by opening government property to a segment of the community. A limited public forum does not exist naturally, but once it has been created, expression in it is protected in the same way as in a pure public forum. Once again, there must be a significant government interest at stake to overcome the free speech protection.

Finally, the state may create a non-public forum. This is easily the most confusing designation. A non-public forum exists when public property is not intended for indiscriminate communication.

In the 1988 case *Hazelwood School District v. Kuhlmeier*, the Supreme Court ruled that school newspapers were non-public forums unless by "policy or practice" the school had opened them for free expression by students. Up until that decision, student publications had been viewed as limited public forums.

The Court said that because the paper might reasonably be perceived to bear the endorsement of the school, the school "need not tolerate student speech that is inconsistent with its 'basic educational mission' even though the government could not censor similar speech outside the school."

The Court noted that there was a difference between requiring the school to promote or endorse student expression, as in *Hazelwood*, and requiring the school to tolerate student expression, as in the 1969 case *Tinker v. Des Moines Independent Community School District*.

Tinker is still the landmark case for underground newspapers and school-sponsored newspapers that have been established as limited public forums for expression. In *Tinker*, the Supreme Court upheld the rights of students to wear armbands protesting the Vietnam WWar.

The *Tinker* standard defines what state interests are compelling enough to allow the repression of speech in a limited public forum. The standard prohibits schools from censoring student expression unless it would cause a material and substantial disruption of school activities or would infringe on the rights of others, as in the case of obscenity or libel. Courts generally apply this standard whenever student expression is judged to take place in a public forum at a school.■

Desilets

(Continued from page 5)

Francis did say that New Jersey law provided more protection to student journalists than the *Hazelwood* decision, according to Buckman.

In a separate part of the decision, the court ruled that the school had not violated Desilets' rights by searching his luggage prior to a school field trip.

Alan Schmoll, the school's attorney, said the school district planned to appeal the censorship issue, and Buckman indicated the ACLU intended to appeal the search and seizure issue.

Buckman went on to say he hoped the higher court would take the opportunity to set out a definitive standard on censorship of student publications in New Jersey, ideally adopting the *Tinker* standard.

Buckman said Desilets stood on "pretty strong ground in New Jersey" and that there was a "good chance" of the court adopting the guidelines from *Tinker*.

Because both sides agreed there was little point in publishing the outdated movie reviews now, Desilets said he planned to write an article about the lawsuit for the next issue of the junior high school's paper. Desilets enters his junior year of high school this fall.■

Hired guns help board shoot down protective school publications policy

INDIANA — A policy which would have protected the rights of student journalists in Fort Wayne was narrowly defeated after heated debate at a May school board meeting.

The measure would only have allowed schools to bar content that was obscene, libelous or would cause a material and substantial disruption of school activities. Such determinations would have been made by a panel of students, teachers and administrators.

And according to the policy's backers — the superintendent, four of the seven school board members, school attorneys, and the committee of students, journalism advisers and principals who had drafted the measure in response to a spate of censorship problems the year before — it would have allowed area high school students to become better journalists.

It would also have allowed them to print homoerotic photographs and foul language, and would have left the school district vulnerable to lawsuits, according to two attorneys from the conservative Indiana Policy Review Foundation.

The two lawyers traveled to Fort Wayne from other parts of the state to speak against the policy at the request of one of the school board members, whose son is chairman of the Indianapolis-based think tank.

In spite of the visting lawyers arguments, a majority of the school board members supported the proposed guidelines in the final 4-3 vote, but the measure was defeated because policy changes require a 5-2 margin.

The school board meeting precipitated a storm of angry letters to the editor and retaliatory press releases from partisans on both sides of the controversy.

Supporters of the proposed policy said the out-of-town lawyers were advocating censorship.

"In a wide sense it is censorship," admitted Peter Rusthoven, one of the attorneys. "But you have to agree that what would be perfectly appropriate in an adult newspaper wouldn't be appropriate for an 8-year-old."

"Not many 8-year-olds are editors of high school newspapers," retorted Matthew Holly, editor in chief of the South Side High School paper, in an editorial published shortly after the debate.

The attorneys argued that the policy would have rendered school administrators powerless to censor anything — no matter how offensive — unless it met the adult standards for obscenity. As a result student newspapers could publish homoerotic photographs by Robert Mapplethorpe, which the courts have ruled are not legally obscene.

That interpretation of the policy is flawed, said Mark Goodman, the executive director of the Student Press Law Center.

Goodman pointed out that the Supreme Court has said that material which is not obscene for adults can be considered obscene for minors.

The lawyers also said the guidelines would have made the school district more vulnerable to litigation. Suits for libel and invasion of privacy would be more likely, they argued, as would lawsuits by student journalists claiming their rights had been violated.

"Of course, they have not one whit of empirical evidence to support their claim," Goodman responded. "Under the proposed policy the school could still stop material that would result in libel or privacy lawsuits. And if school officials censor in violation of their policy, they deserve to be sued by students."

Superintendent William Coats, who supported the policy, became visibly upset at several times during the debate.

At one point, an exasperated Coats shouted "Have you even read this?" and he later called the out-of-town lawyers "hired guns."

Rusthoven and Charles Rice, the attorneys from the Indiana Policy Review Foundation, are both conservative legal scholars. The Harvard-educated Rusthoven served as a counsel to President Reagan and is currently a partner in Indiana's largest law firm. Rice, a professor at Notre Dame Law School, has been active in a number of conservative causes and helped found a group devoted to defending the free speech rights of anti-abortion activists.

While the foundation emphasizes its non-partisan status, it was repeatedly referred to in both editorials and straight-news accounts as a "conservative" or "right-wing" organization.

Some members of the community were angry that the visiting lawyers had tried to present themselves as objective observers.

"When lawyers for a group with a philosophical agenda appear in the guise of 'friends' of young journalists, we had better hide the virgins and lock up the silverware because no one is safe," wrote local newspaper columnist Alex Vagelatos.

Recent censorship controversies at Fort Wayne high schools led to the consideration of the policy.

The lack of district-wide guidelines meant that different standards were imposed at each high school, according to school board president Steve Corona, who supported the policy.

Last year, the principal at Wayne High School allowed the student newspaper to run an article about the arrest of a school custodian on sexual molestation charges.

But just a few weeks later, the principal of Northrop High School refused to allow the newspaper to publish an article accusing the girls' tennis coach of overcharging the athletes for tennis court fees. Administrators admitted that the accusations were true but were concerned the publicity would be embarrassing to the school.

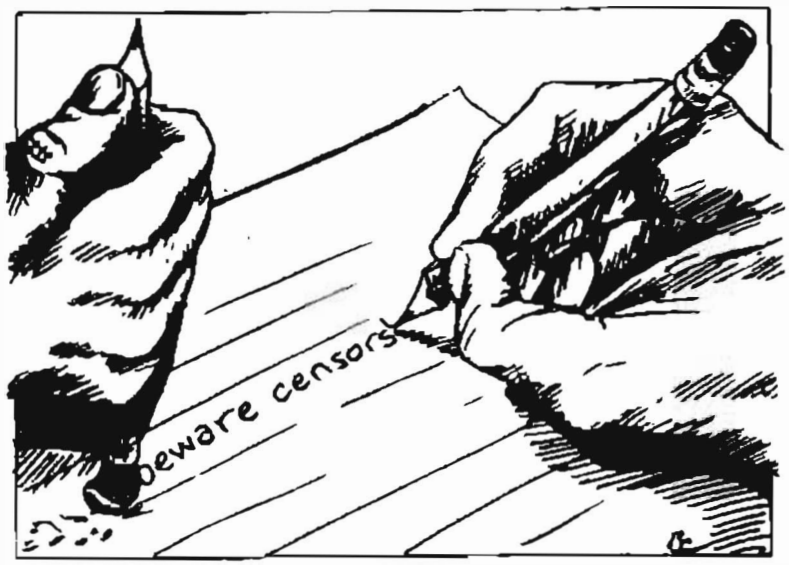
In the end, the censorship controversy drew as much attention as the tennis coach. The inconsistency among different school newspapers in what was and was not allowed led Superintendent Coats to appoint a committee to draft a district-wide policy on student publications, Corona said.

The proposed policy, based in part on Student Press Law Center model guidelines, was reviewed by teachers, parents, administrators and the school's attorneys before it was considered by the school board.

Student journalists and their advisers were dismayed by the measure's defeat, which was unexpected after the months of deliberation and compromise which went into crafting the policy.

Norma Thiele, publications adviser at North Side High School, said that a modified policy might be reconsidered later. Fort Wayne has plans to shift to a site-based management program, where each of the six high schools would set its own policies on many matters now controlled by the central school board.

Under the new system, Thiele said it is possible that all of the high schools would adopt the portion of the policy that sets out a student publications "philosophy." Implementation of that philosophy would be left up to the individual school.■



Private consulting firm sells restrictive policies to schools

INDIANA — Terry Nelson received an unpleasant surprise when she saw the new student publications guidelines being considered by her school district.

The guidelines, which would have provided administrators with sweeping powers of prior review, "chilled" the Yorktown High School journalism adviser.

"The policy was just awful," Nelson said.

A few months before, Nelson's newspaper students had been embroiled in a controversy over the publication of an advertisement for a telephone hotline for gay and lesbian teens. The ad ran despite vocal opposition from several members of the community.

In response to the incident, the school district decided to clarify its policies toward student publications. Nelson initially supported this push for new guidelines. Then she saw the policy.

Nelson appealed to media law experts to provide her with letters supporting her analysis of the measure, and school district officials eventually rejected the policy. The officials had not drafted the policy themselves. They had arranged to "buy" it from a private consulting firm called NEOLA.

Superintendent Jerome Sector said he originally heard of NEOLA at a professional convention. NEOLA, which stands for the Northeastern Ohio Learning Association, is based in Cochocton,

(See NEOLA, page 8)

Principal censors story; editors resign in protest

WISCONSIN — The entire staff of Madison Memorial High School's newspaper resigned last June after the principal refused to allow them to print a story about the off-campus shooting of a 16-year-old student.

The administration claimed it was concerned that publishing the student's name could result in litigation against the school. The boy's mother had requested that the name be withheld because publicity might harm his recovery, according to school district attorney Clarence Sherrod.

But the identity of the shooting victim, a well-known and popular student, was already widely rumored at the school, adviser Art Camosy said. The student editors obtained the victim's name from a school memorandum sent from Principal Carolyn Taylor to all teachers shortly after the shooting.

The editors believed identifying the student in the article was important because it would lend credibility to the report and dispel inaccurate rumors. Rather than run the story without the name, the students decided to print a black box with the words "Principal Carolyn Taylor would not allow this story to be printed as written" in its place.

But Taylor was unhappy with this solution and asked that her own explanation of why the story could not be run be printed instead. At that point, the students resigned from the newspaper staff.

The commercial newspapers in the area did not publish the name because the victim's identity was of no particular significance in the community at large, according to editor Dave Zweifel of the *Capitol Times*, a daily newspaper in Madison.

But Zweifel said it would be appropriate for the student newspaper to identify the victim because it had significance in the context of the high school, where many students knew him personally.

Taylor has exercised increasing control over the newspaper in the past year, Camosy said. Last year, the principal delayed

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NEOLA

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Ohio. The 10-year-old firm specializes in creating policy handbooks for school districts in Indiana, Michigan and Ohio, according to the group's vice-president and general manager, Lyle Ehrenberg.

The policies are drafted by retired school officials and reviewed by school law firms in each state for "consistency with state and federal law," Ehrenberg said. Policies govern everything from student publications to disciplinary actions, and individual school districts can pick and choose the policies they need from NEOLA's generic guidelines.

The group regularly updates its policies to keep up with new developments in school law, according to Ehrenberg.

"For example, we are watching the Michigan legislation very closely," Ehrenberg said. Michigan is currently considering a student free expression bill to restore rights lost under the Supreme Court's 1988 *Hazelwood* decision, which gave school administrators greater power over the content of student publications. Ehrenberg added that NEOLA's policies were modified after *Hazelwood* to allow schools to take advantage of the new powers.

Ehrenberg said NEOLA had no official viewpoint on how much control should be exercised over student publications.

Nelson thinks the group's views are clear from their policies.

NEOLA's generic policy would ban any advertisements which "would be offensive to a significant minority or the majority of the community."

As far as editorial content goes, the policy states "issues on which opposing points of view have been promulgated by responsible opinion may be introduced in a school sponsored publication provided equal opportunity is given to present each view and provided further that the material is generally acceptable to the community."

Mark Goodman, executive director of the Student Press Law Center, advised Nelson in a letter last February that the policy "uses language so vague it defies interpretation."

"I can tell you that this policy looks to me like a recipe for confusion and eventual litigation," Goodman wrote.

"Our story turned out well," said Nelson. Her school district is currently developing a policy more agreeable to students and their advisers. "It just scares me how many others they may have sold that package to," Nelson said.

The company's brochure says NEOLA has worked with more than 250 superintendents and school boards. The organization's standard prices range from $595 per section for "administrative guidelines" to $4,250 for a complete set of school board "bylaws/policies."

Ehrenberg said he was unaware of any problems resulting from NEOLA policies and that most school districts that have the policies have been satisfied with them.

Bob Foul, a journalism adviser in the East Lansing Public Schools in Michigan, said he had had no problems with the NEOLA policy in place in his school district. "To be honest, I wasn't even aware of it," Foul said.

Although he said NEOLA has no official stance on student publications, Ehrenberg was willing to express his personal views.

"I think review [of student publications by school administrators] is an important part of the educational process. In my experience, these kids need a lot of guidance," Ehrenberg said. "Of course, you don't want to censor something unnecessarily but as long as it reflects the school and is available to all the students, you can't let a small group of unsupervised students have complete control."

Ehrenberg said the Michigan bill "would let kids do whatever they want. And many people are not too happy about that."■

Madison

(Continued from page 8)

distribution of an issue covering a lunchtime racial fight for fear that it would heighten racial tensions. The newspaper was passed out a few hours later. This spring, Taylor instituted a policy of prior review after the publication of a controversial article comparing grade point averages of students by race.

Camosy said that a long-standing school board policy allows the school to censor only material which is obscene, libelous or would cause a substantial disruption of school activities.

This could be interpreted as establishing the paper as a public forum for student expression — a category entitled to broad protection even under the Supreme Court's 1988 *Hazelwood* decision. *Hazelwood* allows administrators broad discretion in controlling the content of papers which are not public forums.

But despite their potentially strong legal case, Camosy said the students were no longer interested in fighting the school.

"This incident shows once again that she [Taylor] just can't be trusted. It just isn't worth it at this point," Camosy said. His term as adviser was already scheduled to end at the beginning of the 1991-92 school year.

The editors have handed in their resignations and currently plan to start an underground publication.■

Principal gives in on review

ARIZONA — A high school principal dropped plans to institute a prior review policy at Ampitheater High School in Tuscon last April, ending a month-long battle for control of the school's newspaper.

Pressure from parents, students and the local media prompted the school board to ask principal Mary Jeanne Munroe to "reconsider" her decision to examine the contents of each issue before publication.

An article in the March issue of the *Desert Gazette* touched off the controversy. The article questioned the effectiveness of the school's Drug Free Zone, a program designed to reduce drug trafficking on school property by increasing police patrols and stiffening penalties for violators.

Munroe, who said she was "appalled" by the article, sent an "administrative reprimand" to the *Desert Gazette*'s adviser, Tony Gomez, and announced her intentions to institute a prior review policy.

Munroe claimed the article was inaccurate and would damage the relationship between the school and the local police. She also objected to an unrelated photograph in the same issue which showed a teacher holding a coffee cup in a hallway, an apparent violation of a school rule prohibiting eating and drinking in the corridors.

As a result of the controversy, Munroe temporarily decided to cancel the students' trip to a national journalism conference the following month. The debate escalated when Gomez contacted union officials about the reprimand and the Student Press Law Center about the censorship issue. These actions drew attention from the local press as well as support for the students' cause from parents and other members of the community.

Shortly after the school board hearing on the matter, Munroe was asked to reconsider her actions. A few days later, the district released a statement saying that "based on further analysis of the situation she [Munroe] has rescinded that directive effective immediately. At no time has there been an intent to restrict the ability of student journalists to investigate and report on issues of controversy, interest or importance."

The students' outrage over the censorship turned to elation when they learned Munroe had rescinded the order, said Jason Misner, the student photographer responsible for the controversial photo.

"It's hard to do better than a 100 percent win," agreed Jim Slingluff, the Arizona Education Association union official who represented Gomez in the dispute.

Munroe refused to comment further on her motivation in revoking the order, saying only that she and the board had decided that prior review would continue to be exercised by the journalism adviser alone.

Gomez said relations between the administration and the newspaper are still tense, indicating a potential for more problems in the future.

"It doesn't matter how good the program is, or the adviser, or how many awards you've won. It [censorship] can always happen," Gomez said. The *Desert Gazette* had received state and national awards for its coverage of campus issues.

In the reprimand, however, Munroe said that "if the March 22nd issue represents journalism, then we must redefine what that will mean at Amphi High School."

As the controversy developed, Munroe argued that the steps taken were necessary to preserve "quality journalism and accurate reporting," and also called for Gomez to define his "role as the professional educator in the class." Munroe defended her actions as comparable to evaluating the classroom performance of any other teacher in the school. "Journalism is no different," she said.

Gomez said that the best way to make students responsible journalists was to hold them accountable for their actions. "If you don't give students that full opportunity to learn and expand — and to make mistakes — that's missing one of the best ways to teach."■

Drug article censored from Horace Mann paper

School's alumni are outraged by censorship, write protest letters

NEW YORK — It was not really the content of the article on drug abuse at Horace Mann that caused problems, according to students at the prestigious private school in the Bronx. It was the timing.

The article was scheduled to appear in the school newspaper during the week in April when parents of prospective students visit the school. Administrators were less than pleased, and demanded that the article be removed.

Students and faculty characterized the article as mild and unsurprising. Editor Emily Straus said that Horace Mann's drug problem could even be considered fairly minor in comparison to other city schools.

But the censorship uproar attracted major attention at the school and in the city. The students called in support from Horace Mann alumni, and the controversy attracted considerable media attention.

The problems began when the school ordered Straus to pull the article, warning her that she could be suspended if she refused. The student editors decided to run a piece on censorship in place of the drug article. But the next day, all 1,000 copies of the paper carrying the censorship story mysteriously disappeared. They were found in an administrator's office and distributed later that day. The drug article appeared in the paper later in the year.

Like other private school students, the editors of the *Record* had few formal options for legally contesting the school's decision. But Horace Mann has a network of powerful alumni, many of whom still remember their own stints on the school's paper. When they heard of the censorship controversy, 27 of the alumni sent a letter condemning the administration's action.

"When it comes down to it, all you can do is protest," said Simon Lipskar, the paper's editor in 1989 and now a student at Yale University. "But even that doesn't work unless you can bring in outside pressure," such as publicity and alumni support.

Lipskar, who helped organize the alumni letter, said he had no problems with censorship when he was editor, but that the administration had changed since he graduated.

Students said they were unsure whether more censorship problems lay ahead, particularly since the school's top administrators are expected to change again in the near future.

At first the school said the poor quality of the article prompted their action. Greg Miller, dean of students, told the *New York Times* the article was "poorly written and contained inaccuracies."

But faculty adviser Adam Kenner, who agreed with the administration's decision to censor, said the content was not what troubled him the most.

"I felt that given the timing of this, the [students] weren't being sensitive to the needs of the school," Kenner told the *New York Post* during the height of the controversy.

"It was scary," Straus said immediately after the incident. "First we're getting censored. Then there was a personal threat against me and I wasn't allowed to defend myself."

"The administration is trying to downplay the significance of its actions," Lipskar said. "But it's a case of censorship, plain and simple."■

Ben Davis adviser continues court battle to get job back

INDIANA — Marilyn Athmann, the former adviser of the Ben Davis High School yearbook, says she is relieved now that her day in court is finally in sight.

Athmann says she was removed as the Indianapolis high school's adviser two years ago because she refused to yield to school administrators in a battle for editorial control. She filed suit in April, claiming the school's actions violated her First Amendment rights. A preliminary hearing before a federal judge was to be held in August.

The conflict began in 1987, when Athmann says the student editors of the yearbook fought to retain control of a yearbook spread on the football team's state championship despite pressure from the administration to allow the school's athletic department to produce the spread.

At the end of the 1989 school year Athmann was removed from her position as yearbook adviser, but was allowed to continue teaching English classes at the school.

Administrators say she was reassigned because she failed to maintain discipline in her journalism classes, was unwilling to cooperate with the advisers of the school newspaper and sports magazine, and was guilty of insubordination and flagrant disregard for authority. The officials also maintain that they never demanded control of the yearbook spread.

Athmann says she was fired because she stood up for her students' First Amendment rights. She says she wants her job back, and she is willing to go to court for it.

> *'If we win this case, it will give everybody a shot in the arm.'— Marilyn Athmann*

A group of parents, Ben Davis alumni and journalism advisers has raised over $25,000 to cover Athmann's legal fees.

"My [former] editor has a baby now," Athmann said, explaining how long the controversy has gone on. "Most cases like this don't get pursued just because of the time it takes."

But Athmann believes this is a cause worth fighting for, despite the time and expense involved. "There are so many good advisers leaving the field because they think it's just not worth it. If we win this case, it will give everybody a shot in the arm."■

It's (Almost) The Law

Student free expression bills continue to inch towards passage in state legislatures around the country

Student journalists met with mixed results in their continued push for state free expression laws designed to restore rights lost under the U.S. Supreme Court's 1988 *Hazelwood* decision. Two bills died in state legislatures over the summer, but two other states still seem likely to pass legislation before the end of the year.

In *Hazelwood*, the court ruled that under many circumstances the First Amendment does not protect school-sponsored publications from censorship by high school administrators.

California, Colorado, Iowa and **Massachusetts** have laws which effectively counteract the *Hazelwood* ruling by setting up statutory protection for student expression. Twenty-one states have considered free press legislation since *Hazelwood*. It is common for such bills to be introduced and defeated several years in a row before finally passing.

The unexpected death of the **Indiana** bill at the end of the legislative session disappointed many. The bill passed the state House of Representatives on Feb. 11 by a margin of 84-16. Supporters were optimistic that the bill would garner similar levels of support in the Senate. Indiana High School Press Association (IHSPA) Director Terry Vander Heyden characterized the bill's chance of passing as close to "a sure thing."

But the bill faltered in the last days of the legislative session. It was attached to two different pieces of legislation. The first one failed due to the absence of a quorum when legislators stalked out of the Senate in an unrelated quarrel. The second bill failed when the Senate ran out of time at the end of the session.

The bill will be reintroduced next year. Rep. Hurley Goodall (D-Muncie), the original sponsor in the House, has said he should have no problem getting it through the House a second time. The bill will be introduced in the Senate first this time, and Wendy Kruger and David Adams, co-chairs of the IHSPA's legislative committee, planned to meet with key members of the Senate Judiciary Committee during the summer and early fall.

The Indiana bill would have required school districts to adopt written policy guidelines protecting student press rights. It would also have provided school administrators immunity from liability in civil actions against student publications.

New Jersey activists were rewarded by a resounding victory in the state Assembly on June 10. Gov. Jim Florio has said he will sign the bill once it passes the Senate, which it is expected to do later this fall.

The endorsement of the state principals' association was instrumental in getting the bill through, John Tagliareni of the Garden State Scholastic Press Association said. The principals initially opposed the bill, but agreed to support it after a compromise was reached on the issue of prior review. A section of the bill prohibiting

(See LEGISLATION, Page 18)

Uncovering the Cover-up

Over the last four months, it appeared as if everyone in government — from local to national, from legislative to judicial, from senators to cabinet secretaries — was grappling with the issue of campus crime.

It all started with a federal court ruling in Missouri, which forced Southwest Missouri State University to release campus police reports to Traci Bauer, then editor in chief of the *Southwest Standard*.

Since then, a state court in Arkansas has handed down a similar ruling, the U.S. Senate has passed a bill that would allow colleges and universities to disclose police reports, the U.S. Department of Education has urged the introduction of legislation to prevent schools from covering up crime incidents on campus, and more than a half-dozen state legislatures around the nation have passed or are considering bills to help the campus media get more access to crime information.

Needless to say, the tide seems to be turning in favor of the campus media.

These recent developments are a decided change of tack for the crime record disclosure movement. Before the *Bauer* case, college news outlets, free-press advocacy groups and those concerned about campus safety centered their energies on crime statistics legislation, which require colleges to annually report what crimes have occurred on their campuses. Spearheaded by the Pennsylvania-based organization Security on Campus, this battle was all but won last year when Congress passed the Student Right-to-Know and Campus Security Act.

From the White House to the statehouse, it was a busy summer in the crime information arena, and the campus media made major gains on all fronts

The current push has changed the focus from annual statistics to daily reports, and has centered on the Family Educational Rights and Privacy Act (FERPA), a 1974 law which the Education Department has continued to assert prevents universities from releasing crime reports to the media.

The fight to gain access to the daily crime reports on campuses has also been fought on several fronts, from the White House to the statehouse. Campus media advocates see the change of focus as the "next logical step" in the movement to make the public better aware of what is occurring on college campuses.

"A tally that there were 100 muggings [on a campus] over a year is not as useful as information saying there were 16 crimes in the last two days," said former *Harvard Crimson* senior editor Joshua A. Gerstein, who authored legislation this spring in Massachusetts to open campus police books to the public. *(See STATES, page 14.)*

Although the outlook for the campus media appears promising, there are still several hurdles to be cleared before complete access can be achieved. Key developments in the next few months will occur in the U.S. Congress where no fewer than five bills would affect campus crime information.

Of two possible bills that would amend FERPA to allow the release of crime reports, one introduced by Sen. Tim Wirth (D-Colo.) has already passed the Senate. The other planned legislation, which is a little broader in scope and was proposed by the Education Department, is still awaiting action. *(See EDUCATION, page 13.)*

Sen. Joseph Biden's (D-Del.) Violence Against Women Act (Senate Bill 15), which could restrict the media's access to sexual assault reports, was approved by the Senate Judiciary Committee in July, and congressional sources said the bill should move to the floor before classes begin in September.

The Campus Sexual Assault Victim's Bill of Rights Act (House Bill 2363), which was introduced in May by Rep. Jim Ramstad (D-Minn.) and could also have an effect on how sex crimes are reported, has been referred to the House Post-Secondary Education Subcommittee and no action is expected until this fall.

The Women's Equal Opportunity Act (Senate Bill 475), which would add sexual assaults to the list of crimes schools must report annually, is in the Senate Judiciary Committee, but movement on the bill, introduced by Sen. Robert Dole (R-Kan.), is not expected any time soon.■

Education Dept. makes an about face

AGENCY PROPOSES CHANGES IN BUCKLEY AMENDMENT, BUT CONTINUES CURRENT ENFORCEMENT THREAT

WASHINGTON, D.C. — The battle over the disclosure of campus crime reports came to a boil this summer, culminating in a dramatic 180-degree turn around by the Department of Education on the controversial Buckley Amendment, which may lead to a federal law that could help student journalists gain access to police records.

The Buckley Amendment, officially known as the Family Educational Rights and Privacy Act (FERPA), prohibits universities from releasing student education records to the public, but many colleges have used the statute to withhold crime reports, claiming that the reports fall under the category of "education records."

After a Missouri federal judge ruled in March that crime reports were not education records, the Education Department filed an appeal of the case. In addition, during the trial Education officials sent notice to more than a dozen universities that they could lose federal funding if they released police reports to the public and the media.

But after several months of intense pressure and criticism by security advocates, student media organizations and Congress, the Education Department made an almost complete reversal in July, announcing that it would introduce legislation to exempt law enforcement records from FERPA and would withdraw its appeal in the Missouri case.

The department stopped short of a complete policy change, however, stating that until the bill passes through Congress and is signed by the president, it will still advise universities to withhold police reports from the public.

"The law is still the law," Education spokesman Jim Bradshaw said.

The move by Education was hailed by student media organizations, but their praise was tempered by the fact that the shift came only after the department had been backed into the corner by the courts and by Congress.

The department's hand was forced when Sen. Tim Wirth (D-Colo.) announced in June that he would propose an amendment to the Senate's omnibus crime bill which would exempt crime reports from FERPA when they are also subject to state open records laws.

The amendment was unanimously added to the crime bill by the Senate in June, and the crime bill passed the Senate overwhelmingly in July. But in what appeared to be a move to steal credit for the initiative to change FERPA away from Wirth, the Education Department announced its proposed legislation the same night the crime bill passed.

If both bills are passed by Congress, whichever one is signed last by President Bush supercedes the other and becomes the law.

From the student journalist's standpoint, the Education Department's proposed bill is more all-encompassing and would allow for greater access on more college campuses than Wirth's bill.

The Colorado senator's proposal only makes crime reports exempt from FERPA where they are also subject to state open records laws, which could leave public universities in some states and most private universities outside the reach of the exemption.

Education's bill would make campus law enforcement unit reports exempt from FERPA in all 50 states and would allow private colleges and universities to release them as well.

But beyond these semantics, the moves in all three branches of the federal government can only mean good news for the campus media.

"Campus crime is a growing problem that not only threatens the safety of that community, but hinders the education of our students," Wirth said in a speech on the Senate floor. "Releasing the information [in crime reports] plays a role in protecting the pubic safety."

All the action on the federal level was instigated by the federal court ruling in Missouri. In the case, *Bauer v. Kincaid*, the editor in chief of Southwest Missouri State's student newspaper, the *Southwest Standard*, filed suit against her university for crime reports that the school had claimed were unreleasable under FERPA.

U.S. District Court Judge Russell G. Clark ruled that FERPA did not cover campus crime reports, and if it did the law would be unconstitutional.

"If FERPA imposes a penalty for the disclosure of student security and crime reports produced by a non-commissioned campus law enforcement unit, FERPA creates an irrational classification in violation with the equal protection component of the due process clause of the Fifth Amendment," Clark wrote in his

(See EDUCATION, page 15)

More states pass campus crime bills

By continuing to adopt open records and crime statistics laws, state legislatures are making reporters' jobs easier

Even though the federal government passed a law requiring all colleges to make crime statistics public last year, state legislatures around the nation have not let up in their effort to fight campus crime and to make information on the topic available to the public.

Initially, the passage of the federal Student Right-to-Know and Campus Security Act appeared to be stymieing attempts in statehouses to act on campus crime problems, and recent developments in federal courts, the Department of Education and the U.S. Senate in the crime information arena have taken the focus off state legislatures.

But recent initiatives in several states have given the federal law more teeth and have attempted to give the student press even more access to crime data.

Arguably the most significant step was taken by the **Massachusetts** state legislature. A bill requiring security departments at all colleges and universities in the state to maintain public logs detailing arrests, crime reports and responses to complaints was signed into law in July by Gov. William Weld.

House Bill 1585, which was the brainchild of former *Harvard Crimson* senior editor Joshua A. Gerstein, swept through the state Senate and House of Representatives this summer, receiving unanimous approval in both houses.

Gerstein, who drafted the bill and recruited Rep. Robert H. March (R-Norfolk) to sponsor it in the legislature, said that pushing for access to police blotters and reports in state legislatures may be the "next logical step" in the effort to force campus police to be more forthcoming.

He said the push for the federal crime statistics bill was a good first step, but noted that these statistics are often of little use to daily newspapers.

"The usefulness of that information is very limited — it's just a raw number," he said.

Texas state legislators may not have been as ambitious as their counterparts in Massachusetts, but a bill signed into law by Gov. Ann Richards in June does help strengthen the federal law passed last year. House Bill 43, which faced little opposition, requires all colleges and universities in Texas to report crime statistics to the state annually.

Governor's office spokesman Brad Williams said that the federal law had a hole that allowed schools that do not receive government funds to escape the statute's reach. The new state law will plug that hole.

"There were crimes on campuses that weren't being reported," Williams said. "There can now be an accurate count of what crimes occur on all college campuses so potential students know what's going on. Obviously the governor thought that was a good idea."

In **Oklahoma**, state legislatures gave student journalists a tool with which to gain access to campus crime reports, but may have done so inadvertently. House Bill 1536, which was approved by the governor in June, officially makes all university security departments public agencies, which would make them subject to the state open records law.

"Campus police departments formed by private institutions of higher education pursuant to this act shall be deemed to be public agencies in the State of Oklahoma," the statute states.

Rep. Ray Vaughn (R-Edmond), who pushed for the requirement to be included in an end-of-session omnibus bill, said its intention was to give campus departments more power to do their job.

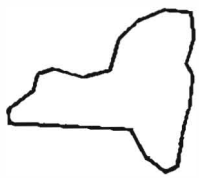
"The main purpose was to give them police authority," Vaughn said, and not to allow more public access to police records.

He declined to comment on what effect the law would have in regards to the Oklahoma Open Records Act, but clearly campus police would now fall under the scope of the act, which describes law enforcement agencies as "any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions."

The open records act, one of the more liberal in the country, requires all law enforcement agencies to "make available for public inspection" a slew of documents, including arrest records, conviction information, warrants, police logs and jail registers.

Other states have had more difficulty passing campus crime acts. After several fits and starts, the **New York** state legislature was forced to table Assembly Bill 6049 because state budget debate dragged out until the end of the session.

Although New York already passed a campus crime statistics law, the bill has been somewhat ineffective because there is no way to enforce it. The new bill, which was introduced in March by Assemblyman Neil Kelleher (R-Troy), would impose fines up to $10,000 on institutions that did not report their crime statistics annually.



According to David Little, an aide to Kelleher, the bill passed the Senate, but the Assembly never was able to consider the bill because it simply ran out of time.

He said that the Assembly will be holding a special session in the fall to address bills that were pushed off by the state budget haggling and that Kelleher is hoping the bill will pass then.

Another bill introduced by Kelleher in January is still stuck in the Assembly Higher Education Committee. Assem-

bly Bill 2667 would require colleges to report all felonies to local police agencies and provide quarterly reports to the state, but the bill will probably not be acted on in the special session.

In Missouri, Sen. Pat Danner (D-Smithville) introduced a sweeping bill that would require all colleges not only to report crime statistics, but also to enact a comprehensive security policy and to separate all law enforcement records from academic records so that the public and the media could gain access to them.

Senate Bill 425 passed the upper house of the state legislature, but then got stuck in the House Education Committee. According to Debbie Mullallay, an aide to Danner, the bill got through the committee at the end of the session, but it was too late to get on the senate's calendar before the summer recess. She said Danner intends to reintroduce the bill during the legislature's next session.

New Jersey's three-year-old attempt to get a crime statistics act on the books does not have as promising a future as the Missouri and New York bills and may be about to die yet another inauspicious death. The current legislation, Senate Bill 1776 which was introduced over a year and a half ago by Sen. Raymond Zane (D-Salem), has been stuck in the Senate Education Committee for months and it appears it will stay there.

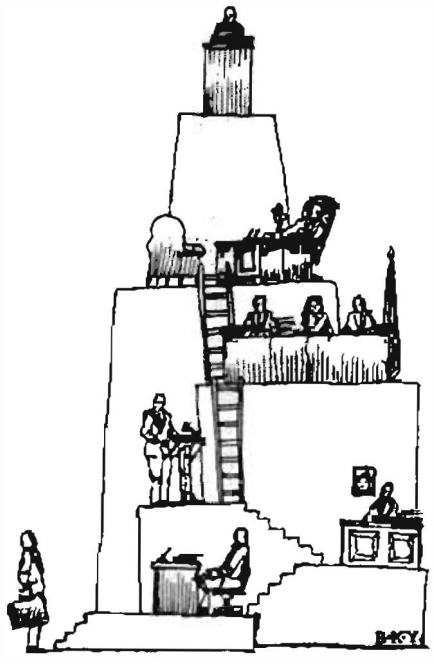
Betty Krass, an aide to Education Chairman Sen. Matthew Feldman (D-Teanec), said that the committee will take no action on the bill because "it's already been covered by the federal law."■

Pending cases could hit FERPA

Court battles in Kentucky, Arkansas could be decided by year's end

Two court cases that could have an important impact on the ongoing battle over campus crime reports are still in the process of being litigated, but decisions could be handed down in both as soon as this fall.

In Arkansas, a Fayetteville attorney has filed a freedom of information lawsuit in federal court on behalf of a 34-year-old woman who claims she was raped by several University of Arkansas athletes.



The suit, filed by Doug Norwood, asks the court to force the university to comply with his request for copies of police reports regarding alleged sexual assaults and crimes involving athletes on campus during the past five years.

Norwood said the university cited the Buckley Amendment as the reason it could not release full reports.

Despite presenting a copy of the *Bauer v. Kincaid* decision with his lawsuit, Norwood said U.S. District Court Judge Franklin Waters ruled that he could not rule on the matter because of "lack of federal jurisdiction."

Norwood has filed an appeal of the ruling with a federal appeals court in St. Louis.

"I have had other judges here, state judges, tell me that they felt the federal judge was just wrong," Norwood said.

The attorney said that he is not overly concerned with the ruling because he feels he will win if the freedom of information case is taken to a state court. In April, an Arkansas state court judge adopted the *Bauer* ruling as precedent to force Southern Arkansas University to turn over police reports to the school's student newspaper.

"If I lose, I'll just take it to state court," Norwood said. "If I win, the school will probably appeal it to the U.S. Supreme Court."

In the other suit, the *Louisville Courier-Journal* filed a complaint against Murray State University in Kentucky state court last year after the school denied one of its reporters copies of records kept by the campus public safety office, citing the Buckley Amendment.

Although little has happened in the case since its filing in April 1990, the newspaper's attorney, William Hollander, is in the process of writing up a motion that would end the case, forcing the school to turn over the records. He said he is optimistic about his chances of success.■

Education

(Continued from page 13)

sion.

"Now the public will get to know if they're sending their students to a safe place," said Steve Garner, one of the lawyers for *Southwest Standard* editor Traci Bauer. "We think the major impetus for the legislative retreat by the Department of Education was Traci's suit."

"[The Department] just needed a strong push, which was Traci's suit," Garner added.■

RELIGION

Church v. State

Can schools restrict the distribution of religious publications on campus without violating students' First Amendment rights?

Students seeking permission to distribute independent publications on school grounds have recently run into a new version of the familiar administrative brick wall — the wall separating church and state.

In several cases around the country, high school students have confronted school regulations prohibiting the distribution of religious pamphlets on campus. While the students argue that such content-based restrictions violate their First Amendment rights, school officials say the rules are necessary because the constitution forbids government establishment of religion.

Several of these cases have reached the courts, and for the most part judges have resolved the conflict between the two constitutional guarantees in favor of the students.

In addressing the policies on religious publications, the courts have issued rulings which could have broader implications for all non-school-sponsored publications, including underground newspapers. Courts have considered such matters as the constitutionality of prior review by school administrators and the appropriateness of content-based restrictions when applied to non-school-sponsored publications.

Last May, a federal court in Pennsylvania struck down a school district policy that barred any non-school written material "that proselytizes a particular religious or political belief."

In *Slotterback v. Interboro School District*, the court ruled that "such restrictions stunt the growth of budding citizens and budding minds and are invalid absent a legitimate constitutional justification." *(See INTERBORO, page 17.)*

"There's this myth that any kind of religious expression by students runs afoul of the separation of church and state. That's not what the law says," said Michael Considine, the attorney for the student, Scott Slotterback. "Allowing students to express their views is not the same thing as sponsoring those views."

These cases are particularly important in light of the Supreme Court's 1988 decision in *Hazelwood School District v. Kuhlmeier*, which gave school administrators sweeping control over the content of many school-sponsored publications.

Incidents of censorship have been on the rise since the *Hazelwood* . In many schools, independent publications may become the only avenue left for free expression.

In dealing with underground publications, the courts have focused on two major issues: whether schools themselves are public forums for student expression and whether administrators should be allowed to review the publications prior to distribution.

Several courts have held that school hallways are limited public forums, placing strict limits on the government's right to control students' personal expression there. Some courts have even ruled that the hallways' forum status is irrelevant, and that independent student expression on campus is always entitled strong constitutional protection.

A federal court in Colorado, however, took the opposing view last April. In *Henry v. School Board of Colorado Springs School District* the judge applied the forum analysis and determined the school hallways were not a public forum. The court ruled that the school did not violated the students' First Amendment rights by barring the distribution of a religious newspaper.

"The purpose of the school hallways is to facilitate the movement of students' between classrooms, not to provide a place for a speaker to set up his or her soap box," the judge wrote.

The court ruled that the school's policy was not a content-based restriction but merely a time, place and manner restriction consistent with the school's mission. Allowing anyone to distribute publications in the hallways could turn the school into a "three-ring circus", the court said. *(See COLORADO, page 18.)*

Were this view to be more widely adopted by other courts, it could present a threat to all underground publications.

As it is, most courts still look to the Supreme Court's 1969 *Tinker v. Des Moines Independent Community School District* ruling that students do not shed their rights to First Amendment protection at the schoolhouse gate. The Court did not consider a forum analysis in *Tinker*, but it did rule that students' personal expression was entitled to broad constitutional protection.

Courts have reached different conclusions on the issue of prior review. The most recent decision was the 9th U.S. Circuit Court of Appeals judgment in the 1988 *Burch v. Barker* case, in which the court said prior review of non-school-sponsored publications was unconstitutional.

In the *Interboro* case, the district court struck down a particular prior review policy — but did not rule out the possibility that a permissible policy providing strict time limits for action and procedures for appeal might be devised.

Litigation on the issue of religious distribution is currently pending in several jurisdictions around the country. These cases could have far-reaching effects on all student journalists.■

Judge Strikes Down Restrictions on Non-School-Sponsored Publications

PENNSYLVANIA — Another federal district court has ruled that allowing high school students to distribute religious literature on campus does not violate the separation of church and state.

Scott Slotterback, a 16-year-old student, sued the Interboro School District after he was forbidden to pass out religious pamphlets in the school hallways and cafeteria.

The court rejected the school district's argument that its policy restricting religious and political expression on campus was necessary to preserve the educational environment and to avoid government establishment of religion.

"A public secondary school environment is not fully 'educational' where students' personal intercommunication is restricted to particular issues," Judge Joseph L. McGlynn wrote in his May decision in *Slotterback v. Interboro School District*, No. 90-2559 (E.D. Pa. May 14, 1991) (WESTLAW No. 1991WL92972).

The judge also ruled that high school students would not interpret the school's tolerance of student religious expression as an endorsement of religion and that a content-neutral distribution policy would more effectively preserve the separation of church and state.

Judging the content restrictions to be overbroad and facially invalid, the court held that non-school-sponsored publications distributed by students should be entitled full protection under the *Tinker* standard regardless of whether the school intended to open its hallways as a public forum for free expression. The *Tinker* standard, based on a 1969 Supreme Court decision, allows school officials to restrict only material that would cause a substantial disruption of school activities or invade the rights of others.

The Court refused to determine whether the distribution of the pamphlets would actually cause material and substantial disruption of school functions. A trial date has not been set to decide that question, and Slotterback's lawyer indicated that an out-of-court settlement might be reached before the trial.

Slotterback began distributing gospel tracts in the hallways of Interboro High School during the fall of 1989. Teachers and administrators testified that they were concerned the distributions would disrupt school activities, and eventually referred Slotterback to the principal.

Principal Nicholas Cianci, after consulting the school district's attorney, told Slotterback that he would be allowed to distribute the pamphlets only twice during the remainder of the school year, immediately after school near the exits from the building.

Slotterback and his parents believed these conditions were unreasonably restrictive so they contacted attorney Michael Considine of the Rutherford Institute, a group that provides free legal counsel in freedom of religion cases.

Within a few months, the school district adopted new guidelines for non-school-sponsored publications. The new policy set up a formal procedure for prior review and barred the dissemination of any non-school written material that "proselytizes a *particular* religious or political belief."

Considine called this policy "a little less restrictive than communism." Slotterback amended his complaint, asking that the court declare the new restrictions unconstitutional.

The court did exactly that, striking down both the content restriction and the prior review procedure.

The school district argued that school hallways are not public forums that have been opened up for student expression. As a result, they said, administrators should be allowed to control the type of material distributed on campus in a manner consistent with the purpose of the forum.

The student's attorney asserted that the hallways are a limited public

(See INTERBORO, page 18)

Interboro

(Continued from page 17)

forum and students' personal expression should be protected from content-based restrictions.

The court agreed that the hallways were a limited public forum, but ruled that the forum analysis was ultimately irrelevant. Regardless of the forum status of the school, the judge held that student expression is protected because citizens going about their business in a place they are entitled to be are presumptively entitled to speak their minds.

The court noted that the forum test is only applicable when state action or access to state property is involved, pointing out that the Supreme Court had not even considered a forum analysis in the its 1969 *Tinker* ruling.

Courts which have applied the forum analysis to factually similar cases have usually determined that school hallways and cafeterias are limited public forums, but Judge McGlynn also referred to several other cases which have not used the forum test.

Up until the Supreme Court's 1988 *Hazelwood* decision, school-sponsored newspapers had generally been viewed as limited public forums entitled to protection under the *Tinker* standard. The Supreme Court ruled in *Hazelwood* that for school-sponsored publications, only those that had been designated as public forums by policy or by practice would be entitled to extensive First Amendment protections.

As long as protection of non-school-sponsored publications is contingent on the forum status of the area in which they are to be distributed, their protection could be jeopardized by a court ruling that high school campuses are not public forums.

The *Interboro* decision extends strong protection to student expression regardless of whether or not the school intends to make the campus a public forum.

The court also declared the Interboro School District's prior review policy invalid. While the court did not rule out the possibility of prior review completely, it did declare unconstitutional any policy which gives school officials "unbridled discretion to suppress protected speech in advance" or places no "time limits or other procedural obligations on school officials to ensure that speech is suppressed only briefly and for significant reasons."■

Colorado judge upholds distribution restrictions

Federal court rules that ban on religious newspaper does not violate student rights

COLORADO — A federal district court has upheld a Colorado Springs school's ban on the distribution of religious pamphlets in school hallways.

In a preliminary decision last April, the judge ruled that the school had not violated the Wasson High School students' First Amendment rights by prohibiting the distribution of the religious newspaper *Issues and Answers* because the hallways were not a public forum.

Allowing the students to distribute *Issues and Answers* would force the school to allow other organizations the same privilege and could be "devastating" to the school environment, the judge said in his decision in *Hemry v. School Board of Colorado Springs School District*, 760 F. Supp. 856 (D. Colo. 1991).

The students are continuing to distribute the papers on a sidewalk outside the school pending the final outcome of the case.

A full trial is scheduled for November 25, but the students' attorneys said that a settlement may be reached before then.■

Legislation

(Continued from page 11)

administrators from reviewing material prior to publication was removed, but the bill contained no language condoning the practice.

The bill, sponsored by Assemblyman Anthony Impreveduto (D-Hudson), passed the Assembly by a vote of 47-19. The bill passed out of the Senate Education Committee in July and is expected to be voted on by the full Senate before the end of the year.

Hearings on the **Michigan** legislation, the only other bill that could still be enacted this year, are tentatively scheduled for early fall, according to an aide to Rep. Lynn Jondahl (D-Okemos), the bill's sponsor.

Cheryl Pell, executive director of the Michigan Interscholastic Press Association, said superintendent and school board associations have already begun lobbying against the bill.

Legislation was introduced in **New Hampshire** for the first time this spring and was passed by the Senate, despite a negative recommendation from committee. It was later voted down by the House Judiciary Committee.

The bill, modeled after the Iowa law, was drafted in response to a censorship incident at Central High School in Manchester, New Hampshire Civil Liberties Union Director Claire Ebel said. The principal at Central shut down the newspaper after the student editors refused to repeat a public apology for an editorial criticizing a teacher. (See Spring 1991 *SPLC Report.*)

Sen. Burt Cohen (D-New Castle), the bill's sponsor, urged state legislators to adopt the bill to honor the 200th anniversary of the Bill of Rights, which will be celebrated this December. "This is the right time to send a message to our future leaders, students now in high schools, that our freedoms as defined by the Constitution are alive and well," Cohen said in a speech on the Senate floor.

Ebel and Cohen said they planned to keep reintroducing the bill until it gets through. The next time it may be introduced is January 1992.■

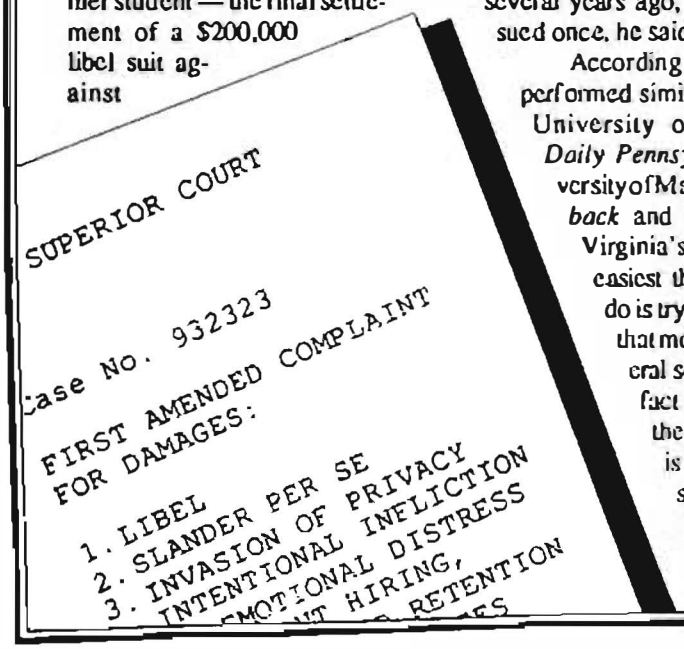
FOR THE DEFENSE

Libel suits can be scary and costly for any student publication, but many are avoidable

It is probably the scariest telephone call a student journalist can get.

It usually comes from subjects of stories, or, on occasion, their lawyers, and its purpose is to inform a reporter that the newspaper is going to be sued for libel.

The fear of this call often keeps reporters up all night the day before a controversial story is going to run in the morning's paper. And the fears are not unwarranted. Just this summer, for example, *The Stylus*, the student newspaper at the State University of New York at Brockport, shelled out $28,000 to a former student — the final settlement of a $200,000 libel suit against the weekly newspaper. *(See STYLUS, page 20.)*


SUPERIOR COURT

Case No. 932323

FIRST AMENDED COMPLAINT FOR DAMAGES:

1. LIBEL
2. SLANDER PER SE
3. INVASION OF PRIVACY
4. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
5. NEGLIGENT HIRING, RETENTION

"It's a litigious society," noted *Stylus* attorney Ian Mackler. "Everyone is suing everyone."

But many libel suits are avoidable. According to Lee Levine, a Washington, D.C.,-based libel lawyer, a basic knowledge of libel law and some common sense can prevent sensitive stories from landing a student newspaper in court.

Levine pointed to one campus daily which had been sued for libel three times in the course of three or four years. Since Levine gave the paper's staff a seminar on the basics of the law several years ago, they haven't been sued once, he said.

According to Levine, who has performed similar services for the University of Pennsylvania's *Daily Pennsylvanian*, the University of Maryland's *Diamondback* and the University of Virginia's *Cavalier Daily*, the easiest thing a reporter can do is try to be fair. Whether that means contacting several sources to confirm a fact or simply phoning the person the article is about to get their side of the story, the lawyer said it is "one of the key things in avoiding a suit."

"If circumstances permit, try to give the subject of a story an opportunity to comment," he added.

If a story has already run, Levine said that simply dealing with a complaint "professionally and with courtesy" often can avoid a suit as well.

"It's pretty well documented in most libel cases that a large percent could have been avoided with intelligent fielding of complaints before they mushroom into litigation," he said. "Too often, students ignore or blow off someone who called to complain."

Most importantly, however, Levine said a brief seminar or primer for a newspaper staff on the basics of the law, "just to heighten people's awareness," can be the best defense against the chance of getting sued.

"If you are aware of the issues, it's not that hard to write clean stories that don't compromise editorial content," he said.

But sometimes even the best reported story written by the fairest reporter can bring on the lawyers. At Pace University, for example, a dean sued the school's bi-monthly student newspaper over a story which quoted a former assistant dean accusing her of forcing him to resign. The dean sought $5 million from the paper, but dropped the charges in June. *(See PACE, page 21.)*■

Yearbook sued over crime report story

ILLINOIS — A former student at Eastern Illinois University who was acquitted of fabricating an assault report to police filed a $15,000 libel suit in March against an editor of the school's yearbook for writing a story that "falsely stated [she] committed a crime."

The student, Corina Grissom, was arrested by Charleston police in January 1990 and charged with disorderly conduct for allegedly reporting a crime that never occurred. She had told police in November that she was knocked unconscious by a man who had followed her into her campus apartment.

The Warbler, Eastern Illinois' yearbook, published a feature on campus security that reported that Grissom's story "fell apart" and had been a hoax.

"A joint investigation by the University and Charleston City Police revealed that the Nov. 2 attack Grissom reported never happened," the story stated.

But a month after the yearbook was distributed in April, Grissom, who was a freshman at the time, was cleared of all charges by a state Circuit Court judge who ruled that prosecutors "had not proven their case beyond a reasonable doubt."

The suit, filed both in state Circuit Court and the state's Court of Claims, charges that Grissom's "reputation and good name has been damaged" by the story, and adds that she has "been caused grievous mental suffering and humiliation."

Stephanie Cruse, a yearbook editor and author of the article entitled "Fearing the Unknown: Fabricated assaults and thefts prompt safety for students," is charged in the suit with willfully, maliciously and recklessly disregarding the truth.

Helen Ogar, Cruse's attorney, said she has moved for the suits in both courts to be dismissed. Under Illinois law, em-

(See WARBLER, page 21)

Stylus *pays out $28,000*

Part of libel suit settlement with former student

NEW YORK — The student newspaper at the State University of New York at Brockport agreed in May to pay a former undergraduate $28,000 because a story it ran incorrectly reported he was fired from his job at a campus fast-food restaurant due to "sexual harassment-related charges."

The former student, Gerald E. Lum, filed a $200,000 libel suit against *The Stylus* newspaper in state court in March 1989, charging that the weekly paper "acted negligently and with reckless disregard to the truth" when it ran a story about him and another student fired from the Off the Tracks restaurant.

The newspaper's editors later said that they had only spoken to one person about the allegation and eventually admitted the story was incorrect, but denied that they had violated any libel laws.

"The statements ... were believed to be true and accurate when published," the newspaper claimed in court papers. "Any acts, statements or communications [by the paper] were done without malice toward [Lum and] with an honest and reasonably held belief in the truth of the facts upon which they were based."

But Ian Mackler, an attorney for Brockport's student government, said the paper decided to pay the $28,000 settlement after Supreme Court Judge Richard D. Rosenbloom ruled in March that there was enough evidence to proceed with a jury trial.

"It was not good reporting," Mackler said.

The story, which ran on the top of the front page of the Nov. 30, 1988, edition, actually focused on another man, Nkuma Uche, who had approached *Stylus* reporters to discuss accusations of sexual harassment brought against him after his firing from the restaurant.

While talking about his case, Uche also discussed the circumstances of Lum's dismissal, which appeared only in the last paragraph of the story.

"Former Assistant Manager Jerry Lum worked with [restaurant operator Beverly] Bernstine for about six months," the story reported. "He was fired on sexual harassment-related charges, Uche said."

After the story ran, Sandra Coates-Mason, executive director of the Faculty Student Association, which operated the restaurant, wrote a letter to the paper stating "for the record" that Lum's firing was "totally unrelated to sexual harassment."

The paper ran a correction and retraction in its next issue, but in the suit Lum claimed that the damage had already been done.

"[The story] has caused considerable mental anguish and emotional distress," the complaint stated. "[It has] affected [Lum] socially, physically and his ability to obtain employment since its

(See STYLUS, page 21)

Former dean drops libel charges at Pace

NEW YORK — A former dean of students at Pace University has dropped her libel claims against the school's newspaper that were part of a $40 million lawsuit against the *New Morning* and Pace administrators, a university lawyer said.

The charges against the bi-monthly newspaper stemmed from a front page article and a page-four editorial cartoon in its December 6, 1989, issue, which alleged that the former dean, Maryanne DiMarzo, was behind a push to oust a popular administrator.

A state trial court judge ruled in December that the suit had enough merit to go to trial. The newspaper's attorneys were in the process of appealing that decision, claiming that the "written comments regarding [DiMarzo were] statements of opinion" and therefore not actionable, when in June DiMarzo decided to drop the claims against *New Morning*.

"[DiMarzo's] counsel became more reasonable and realized there were no actionable violations on these [libel] counts," said Lawrence B. Gormley, a lawyer for the university. Gormley added that DiMarzo is still pressing counts against university administrators unrelated to the story in *New Morning*.

The complaint — which listed the paper, its editor and its faculty adviser among the defendants — was seeking $5 million for libel because it claimed the paper had published the story "without regard for the truth and without first appropriately investigating the actual facts."

One of the libel claims stemmed from this cartoon.

The article centered around an interview with a popular administrator, former Assistant Dean for Students Robert Heywood, who had recently resigned. Heywood was quoted as saying he felt that DiMarzo was behind a push to force him to resign.

"I feel she [may have been] threatened by my success with the students," Heywood was quoted as saying. The story also reported that "more than one source" had stated that Pace's president, William G. Sharwell, "may have taken a special interest in Heywood's resignation" because he is a family friend of DiMarzo's.

The cartoon, which ran on the editorial page, satirized this relationship, showing DiMarzo asking Sharwell, "But godfather, how are we going to get rid of Heywood?", to which the president responds, "Don't worry—I'll give him an offer he *can't* refuse!"

In the suit, DiMarzo charged the newspaper with "maliciously intending to injure, defame and destroy the good name and reputation of [DiMarzo] ... without regard for the truth or appropriately investigating the facts surrounding [the] dismissal of Assistant Dean Heywood." The suit also called the cartoon "ethnically libelous."

(See PACE, page 24)

Warbler

(Continued from page 20)

ployees of the state cannot be sued in Circuit Court. Ogar said she has argued that Cruse is a state employee since Eastern Illinois is a state university, and has therefore asserted that the Circuit Court has no jurisdiction in the case.

At a hearing in July, a Circuit Court judge ordered that Cruse be interviewed to find out if she can qualify as a state employee.

The suit filed in the Court of Claims is only against the university, and Ogar said that she has argued a university cannot be held responsible for what a student publication prints.

"Under the First Amendment, colleges can't control what goes into the yearbook, so they can't be held responsible for what it says," she said.■

Stylus

(Continued from page 20)

publication."

Lum's attorney, Howard Cohen, contended throughout court proceedings that the two reporters, three editors and faculty adviser named in the suit were irresponsible in their handling of the story, saying that the fact the newspaper made no attempt to verify the information about his client constituted "gross negligence."

"Mr. Lum would have been willing to come forward, but they didn't ask," Cohen said in court.

Newspaper attorneys asserted that there is no obligation for a reporter to call the subject of a story to either confirm or deny information, but in the end chose to settle rather than go to trial.■

THE RECORD

Your right of access
to government records and meetings
is not only important — it's the law

The federal Freedom of Information Act and state open record laws can be some of the most useful tools in a student journalist's arsenal. But far too often, reporters do not know how to use the laws to get information, or worse yet, do not even know the laws exist.

State open records laws can be indispensable for reporters, particularly at newspapers of public schools. These schools are, after all, state agencies and are typically subject to these "sunshine laws."

Although each state's law is different, most allow journalists access to a wide range of documents, from budgets to police reports.

In recent months, for example, courts and government officials have ruled that these laws afford journalists access to presidential candidates' resumes at Arizona State University *(see PUBLIC, page 26)*, to animal research proposals at the University of North Carolina *(see UNC, page 23)*, and even to student government notes and transcripts at the University of Oregon *(see OREGON, page 25.)*

Of more use to newspapers at private schools is the federal FOI act, passed in 1966. This statute allows journalists to request documents from agencies in the executive branch of the federal government.

Almost all colleges and universities, public and private, receive federal money, whether it be for research or student financial aid. The government agencies that provide these funds must, with only a few exceptions, provide copies to journalists of all documents they have concerning these grants. All it takes is a formal written request.

The Freedom of Information Act and state open records laws are often the most useful, and least used, tools in a student journalist's arsenal.

At Harvard University, for example, the *Harvard Crimson* received dozens of pages of records concerning its schools research costs, a controversial topic of late. But because the newspaper feels the government is illegally withholding some relevant documents, it has filed suit to force disclosure. *(See CRIMSON, page 23.)*

The Student Press Law Center provides free advice on how to use both the federal FOI act and state open record and open meeting laws.■

Court grants paper access to 3 teachers' arrest report

MICHIGAN — A state circuit court judge awarded a Grand Rapids newspaper access to a police report of the arrest of three public high school teachers in Zeeland after the teachers had sued to prevent the document's disclosure.

The teachers had been arrested for allegedly performing homosexual acts, showing pornographic movies and serving alcohol at a party attended by a minor.

The Grand Rapids Press, a professional newspaper, and a parents group requested a copy of the report after the teachers pled guilty to only misdemeanor charges, and the felony counts of "acts of gross indecency with another male person" and "exhibit[ing], to a minor, sexually explicit performances" were dropped.

In order to prevent the allegations from going public, the three teachers sued to halt the release of the report, citing their right to privacy and charging the allegations were untrue.

But in a nine-page opinion, Circuit Judge Calvin Bosman asserted that "the public is harmed when public records are suppressed and the workings of the government are kept secret" and ruled that the 100-page document be released to the newspaper.

"[The teachers] were arrested for serious charges with approval of a magistrate," Bosman wrote.

"Certainly the public has a valid and significant interest in trying to understand how and why private citizens are validly arrested for serious felony charges but never brought to trial on those charges."

As to the teachers' right to privacy claim, Bosman ruled that the teachers "do not have a Constitutional right to privacy protection" when alleged criminal conduct is involved "regardless of whether a conviction results."■

Crimson *sues HHS for research records*

MASSACHUSETTS — Harvard University's student newspaper filed suit against the U.S. Department of Health and Human Services in June, charging that the agency has withheld public documents regarding research funding for Harvard.

In a suit filed in federal court in Washington, D.C., *The Harvard Crimson* claims that HHS failed to release several documents that the newspaper requested under the Freedom of Information Act.

The suit, which was filed by Public Citizen Litigation Group on behalf of the *Crimson*, asks the court to order the documents' release.

The records sought by the newspaper are documents related to Harvard's indirect research cost rate, which the school negotiates every four years with the government through HHS.

Indirect research costs are money universities and private corporations bill the government for maintenance and administration of federally-funded research. These costs usually include such expenses as heat, electricity and administrative personnel.

A controversy erupted about these costs when a Congressional subcommittee revealed this spring that Stanford University had mischarged the government approximately $200 million. The money, which was billed as indirect research costs, went to pay for, among other things, the refinishing of the school's yacht and building a shopping center near Stanford's campus.

Congress has begun an investigation of more than a dozen of the nation's top grant receivers, including Harvard, to see if similar misspending has occurred. Preliminary findings have revealed that several schools, including Harvard, have mischarged the government, but not near the scale Stanford has.

Crimson staffer Joshua A. Gerstein, who is coordinating the suit for the newspaper, said that the withholding of the documents is particularly unsettling in light of these recent revelations.

"The government has had some serious problems with this over the past 10 years," Gerstein said. "Their claim that they have to keep this quiet is a very specious one. They're coming from a very strange angle."

According to the complaint, the *Crimson* filed its first FOI request in January, asking for all records related to indirect cost rates since October 1987. But because HHS is currently negotiating a new indirect cost rate with the university, they declined to release the papers saying disclosure "could harm the deliberative process."

In an effort to get around this exemption, the paper filed a second request in February for all documents before October 1987 and appealed the denial of the first request. Both of these were denied, but an appeal of the second request did prove fruitful. According to Gerstein, HHS released "about 80 pages" of documents, but he said the records contained no specific information and were not helpful.

"As a result, [the paper] still does not have any of the records containing the factual bases for the 1987 rate agreement, nor any factual information relating to the current negotiations," the complaint states.

Theresa A. Amato, one of the lawyers at Public Citizen handling the *Crimson*'s case, said a ruling in the case will have "broad legal implications" in the area of FOI law.■

UNC must open animal test data

State appeals court orders release of research grant applications

NORTH CAROLINA — The state Court of Appeals ruled in January that the University of North Carolina at Chapel Hill must release documents relating to the use and care of animals in scientific research to the public.

A suit against the university was filed in January 1989 by Students for the Ethical Treatment of Animals, a volunteer student organization that wanted information including the justification for using animals in experiments and steps taken to minimize pain and discomfort — information that must be included in every research proposal.

The university had argued that the information contained in the research applications is confidential and must be protected to insure the safety of the researchers. But the appeals court, in a unanimous decision written by Judge John B. Lewis, ruled that the information SETA was seeking would not jeopardize the researchers safety.

Lewis added, however, that information such as the names and phone numbers of researchers, which are also included on applications, need not be released and should be blacked out.

"We are sensitive to the needs of researchers to protect their privacy and the privacy of their staffs," Lewis wrote for the three-judge panel.

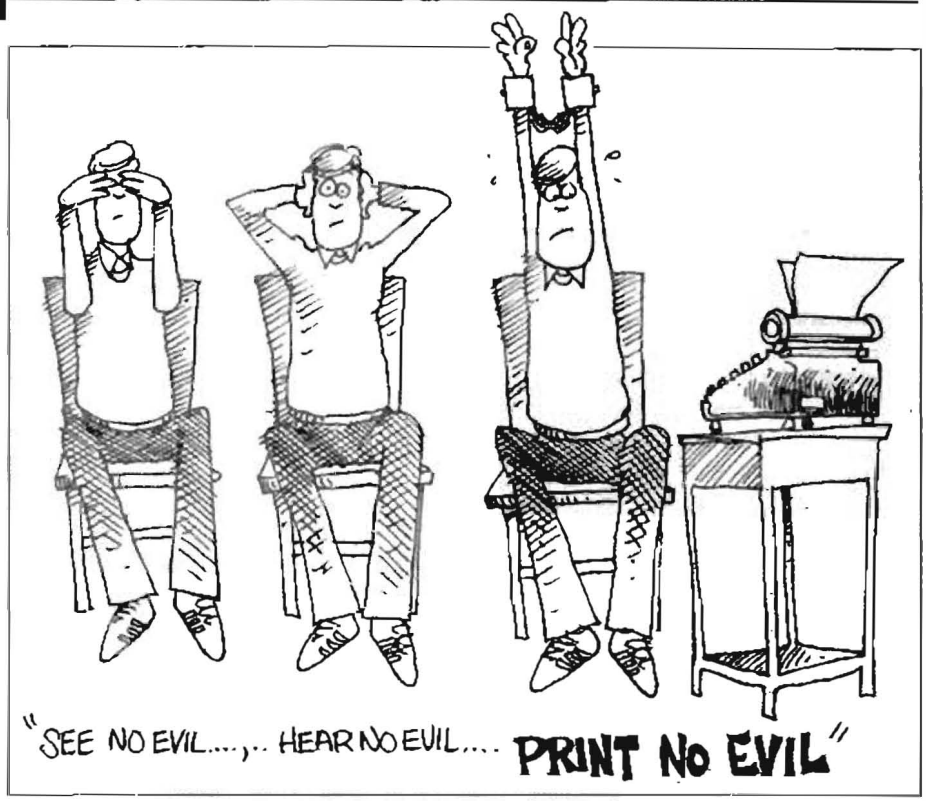
Despite the fact that names can be blacked out and patentable information can still be withheld, SETA's lawyer, Raleigh attorney Douglas A. Ruley, said the ruling was a big victory for the organization and for the public's right to know.

"If you look at the redacted documents, you'd see that about 98 percent of the information now has to be disclosed," Ruley said. "We felt very good about the decision."

A lower court had ruled that the university did not have to release such information because making the docu-

(See UNC, page 25)

U. Georgia suit seeks disciplinary records



GEORGIA—While many of the recent student press battles have focused on whether the Buckley Amendment applies to campus crime reports, attention at the University of Georgia in Athens has turned to the question of the law's impact on student organization disciplinary records and hearings.

Jennifer Squillante, editor in chief of the *The Red & Black* at the university, and her newspaper filed suit in July in Fulton County Superior Court. The suit alleges that the university has violated the First Amendment, the Georgia Constitution and the Georgia Open Meetings and Open Records acts by denying the paper access to meetings and records of the university's Organization Court, which conducts proceedings and imposes disciplinary measures when a student group violates student organization regulations.

Officials of the university claim the federal Family Educational Rights and Privacy Act (FERPA), commonly called the Buckley Amendment, justifies their denial of access to the meetings and records.

Squillante's suit is the first case dealing with the question of whether the Buckley Amendment applies to meetings and records of a student organization judicial body at a state university.

The lawsuit was filed after student newspaper reporters tried to attend an Organization Court hearing on alleged hazing at two university fraternities.

At one hearing in May, Squillante and a *Red & Black* reporter were waiting for the hearings to begin when they were told that the hearing was closed to the public.

At another hearing later that month, three *Red & Black* reporters were asked to leave after members of the Organization Court voted to close the hearing to the public. Before leaving, reporter Patrick Flanigan stated for the record that the *Red & Black* opposed the closing of the hearing to the public and that the action violated the state Open Meetings Act.

Squillante then wrote a letter to William B. Bracewell, the university's director of the Office of Judicial Programs, which supervises the Organization Court. In the letter, she asked for access to all hearings, meetings or proceedings of the court and all documents, records and other data relating to court operations, including incident reports that form the basis of charges filed against student organizations.

The university's Office of Legal Affairs denied her request on the ground that the incident reports and transcripts of hearings fall within the Buckley Amendment's definition of "education records" because they contain personally identifiable information relating to individual students.

While the letter did not specifically address the issue of access to the court's hearings or proceedings, the letter denied Squillante's request by implication, according to the lawsuit.

The lawsuit contends that the public and news media should have access to

Pace

(*Continued from page 21*)

Despite coming under heavy fire from Italian-American groups on campus and in the community, the newspaper stood by the story and the cartoon and has since won awards at two college press competitions for issues that included the DiMarzo coverage.

"The article was not and did not purport to be a factual rendition of Mr. Heywood's dismissal," said Grace C. Guiffrida, the paper's editor and the story's author. "It was a forum in which he could present his version of events."

She also noted that she is Sicilian and added that the "cartoon was nothing more than a caricatured expression of Mr. Heywood's version of his discharge."

The suit also claimed that an April Fools' Day satirical edition was "designed to injure her and was cruel toward [DiMarzo]."■

Organization Court proceedings because it operates as an agency acting under authority of a state body, is established pursuant to the board of regents of the university system and the court's hearings result in official action.

The court operates in a quasi-judicial fashion, much like a court of law. Students who call themselves "justices" hear testimony to determine guilt or innocence based on "clear and convincing evidence," administer oaths, officially summon witnesses to attend hearings, interpret university policy and grant fundamental rights such as the right to retain counsel or to remain silent at the hearing.

The court also renders decisions and sentences, which can be appealed to the state's superior courts. In addition, the requested documents, even though prepared by students, are kept for use by a university office.

Squillante's attorneys argue that the Buckley Amendment does not apply. The attorneys contend that the Organization Court records are not "education records" because they contain only information about organizations', and not individuals', violations of university policy.

Although the specific violation may be based on an individual member's activities, that behavior is not related to the member's performance in an academic setting and, as such, the records are not covered by the disclosure restrictions in the Buckley Amendment, Squillante's attorneys claim.

Squillante's attorneys have filed a motion asking the court for a restraining order that would prevent the university from denying the newspaper access to the hearings and records.

A hearing on that motion was expected to be held by the end of the summer.■

State orders U. of Oregon student gov't to make probe data public

OREGON — The state attorney general's office ruled in May that the University of Oregon's student government is a public body and ordered it to release transcripts of interviews conducted as part of an internal investigation to a campus magazine.

The magazine, conservative monthly *Oregon Commentator*, filed a petition with the state Justice Department after the school's student government, Associated Students of the University of Oregon (ASUO), refused to release complete transcripts and notes they had collected during a month-long investigation of a high-ranking student government official.

The ASUO had released documents with substantial portions blacked out, but *Commentator* editors claimed that the withheld information — which included derogatory statements about the official and evaluations of those who were interviewed — was essential to determining whether the investigation was handled properly.

The controversy started in January when the head of the Black Student Union came to an ASOU meeting to complain about the actions of Mike Colson, then head of the student government's Incidental Fee Committee, a body which allocates funds to student groups. The charges against Colson were relatively minor, and the government took no action on them.

Two weeks later, however, the ASOU's recording secretary reported that the portion of the minutes dealing with the complaint had been altered and much of the discussion about Colson's actions had been deleted. The ASOU conducted an investigation, and found Colson guilty of tampering with the notes, a charge Colson continues to deny.

Colson charged that the investigation was politically motivated and demanded the ASOU release all documents related to the inquiry. The documents that were eventually released concealed the identity of many of the interviewees and blacked out comments about inter-government relationships.

The ASOU held that these comments were exempt because they revealed personal information about students and because the interviewees had been told their statements would be confidential.

But the state Justice Department ruling, written by the Attorney General's Special Counsel Pamela L. Abernethy, said the ASOU must release all but a few "highly inflammatory" comments because it is a public body.

"The power of the university's recognized student government ... makes that government a 'governing body' subject to the Public Meetings Law," Abernethy said.

Abernethy said that the "inflammatory" statements could be withheld because they met a requirement in Oregon law that information need not be disclosed if it may "cause harm to the public interest."

But she said that none of the other information in the documents could be exempted as confidential and ruled that none of the information fell into the "Personal Information Exemption" of Oregon law.

According to articles in the university's daily newspaper, *The Oregon Daily Emerald*, the uncensored documents shed no new light on the scandal, but did reveal that Colson's relationship with other government officials had been strained before the controversy broke.

In the documents, one former government official said Colson "uses power to manipulate people," while a current member said he was "sly" and "manipulative."■

UNC

(Continued from page 23)

ments public would expose "trade secrets" and would violate the school's right to academic freedom.

The appeals court overturned the ruling, stating that the four research proposals SETA wanted contained no trade secrets and noting that the U.S. Supreme Court had recently rejected similar academic freedom arguments.

"What type and how many animals are going to be used in a particular research project is not a trade secret," the appeals court ruling states, "nor is whether surgery is going to be performed."■

Public searches at public universities

ARIZONA STATE FORCED TO RELEASE RESUMES OF PRESIDENTIAL CANDIDATES

ARIZONA — Public colleges and universities must release the names and qualifications of all finalists in a presidential search, the state Supreme Court ruled in March. The Arizona Board of Regents, the agency that oversees all state colleges and universities, had sought to keep the names and resumes of candidates for the presidency of Arizona State University under wraps, claiming that those most qualified for the job often need their candidacy to remain confidential.

But in the ruling, state Supreme Court Judge James Cameron wrote that finalists forfeited their confidentiality rights by actively seeking the position, adding that "the public had a legitimate interest in the names of persons being seriously considered for an important position."

Regents spokeswoman Barbra Wissmann said that her agency had wanted all the names to remain secret during ASU's 1989 search because some candidates held positions at other universities and could be subject to damaging repercussions if their employers learned they were seeking another job.

"The ones that you really want are the ones who don't apply for the job, the ones that you recruit," Wissmann said. "Usually they are the ones who are comfortable where they are and are successful at what they are doing and don't want to risk the political pressure that would come [if their candidacy were made public]."

Two Phoenix-area newspapers, *The Arizona Republic* and *The Mesa Tribune*, had sought the names and resumes of all 256 people who were originally considered for the post vacated at the end of the 1988-89 academic year by J. Russell Nelson, and a lower court had originally granted them the request.

But Cameron, writing for the 4-1 majority, ruled that the agency could withhold the names of candidates in the original pool because state law allows privacy where disclosure "might lead to substantial and irreparable private or public harm."

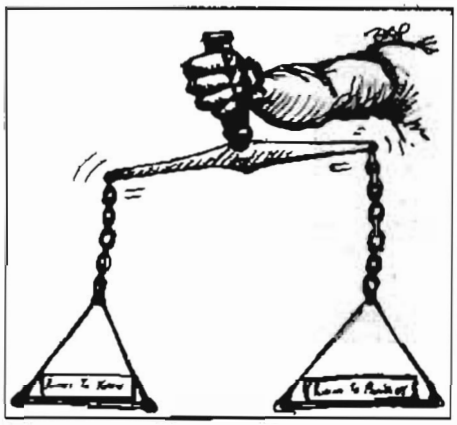
"Prospects did not necessarily know that they had been nominated by others and might desire confidentiality," he stated in his opinion. "Publicity attendant to searches in the past had sometimes proven detrimental to the search process, resulting in lesser-qualified persons applying for the position."

Because of the mixed verdict, both sides claimed victory and neither will appeal the case any higher.

"The opinion left a little something for everyone," said David Bodney, a lawyer for the newspapers. "The information the press most wanted was what the Supreme Court granted. For that reason the press can rightfully call it a victory."

"Substantially, the large lists of candidates are meaningless," Bodney added. "The narrow list of finalists, as long as it is big enough, is not meaningless."

But Bodney, who is now editor of the Phoenix weekly *The New Times*, said the fact the papers were not awarded attorneys fees by the court may prove to be an even more severe blow.



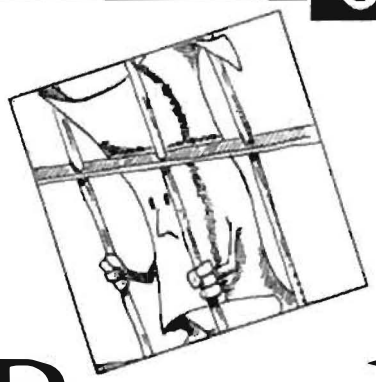
"That was the biggest loss the media suffered," Bodney said of the attorneys costs ruling. "If the press has no likelihood of prevailing on attorneys fees in a case like this ... the freedom of information law is rendered almost moot."

He added that the decision may have a chilling effect on news agencies, forcing them to think twice before they go to court on a freedom of information issue.

"Unless reporters and their publishers know there is some likelihood they will be reimbursed when government agencies misbehave as badly as they did here, they will not go to court," Bodney said. "In a perfect world, an appellate court would have punished, not rewarded, that behavior."

But Regents spokeswoman Wissmann disagreed with Bodney, saying the board had not disregarded the law in an "arbitrary and capricious manner" and therefore was not responsible for attorneys fees.

She added that she does not feel the ruling will prevent news organizations from pressing freedom of information cases in the future. ■



Bound & Gagged

In its different forms, censorship continues to rear its ugly head at colleges and graduate schools

Censorship on the college and graduate school level tends to be a little different than its incarnation in high schools. It often appears in the form of a "democratic" publications board, made up of students and faculty, that decides to pull a story in a campus newspaper because of its "responsibility" as the paper's "publisher."

Or it is pressure applied on a publication adviser to stay away from sensitive issues or risk losing his or her position.

Sometimes it is even less overt. At the Hastings School of Law, for example, the administration ordered an audit of the school's weekly newspaper after it ran articles and editorials critical of campus officials. The demand for the audit came despite the fact that the paper received no school funds, and no other student groups had been asked to submit to similar scrutiny. *(See HASTINGS, page 28.)*

In whatever form it comes, censorship of student publications at public colleges and universities is unconstitutional, and federal and state courts have repeatedly ruled that these student journalists are entitled to the same rights as their professional counterparts.

Publication boards and student governments have been held to the same limitations as administrators. A Nebraska federal court, for example, ruled in 1987 that a publications board cannot "regulate or direct the content" of a student publication without running afoul of the First Amendment.

Reporters at private universities, however, are not entitled to the same rights, but often can elicit other forms of help in their battle against censorship. Calling a professional newspaper reporter to do a story on the dispute, for example, can often bring public pressure on a school to back off its decision to censor.

The SPLC has a new publication focusing on the impact of the Supreme Court's 1988 *Hazelwood* decision on college press rights. Recent court decisions are included. The *Hazelwood and the College Press* packet is available from the SPLC for $3.

Other news on the college front:

• A two-year-old suit in which a newspaper adviser charged he was demoted and denied tenure because he allowed the paper to run controversial stories was settled out of court in July. Terms of the agreement were not released.

Philip Isett, a former associate journalism professor at West Texas State University, filed a suit against the university claiming school officials violated his free expression rights when they ousted him from his position as adviser to *The Prairie* and as head of the journalism department.

"I started feeling pressure to run non-controversial stories and omit controversial letters to the editor," Isett said at the time of the suit. Under the terms of the settlement, no one involved in the case could comment for the record.

• An unusual case involving the U.S. Department of Labor and the yearbook at Iowa State University was also resolved this summer.

The regional branch of the Labor Department had charged *The Bomb* with not complying with federal minimum wage standards in paying its student workers.

According to adviser Janet Terry, the yearbook restructured the way it paid students, now giving them monthly stipends instead of hourly wages, and the department has backed off. But the yearbook was fined about $8,000, and Terry said editors may sue to get the money back.

Labor Department policies state that college students who participate in "activities generally recognized as extracurricular are generally not considered to be employees" who would be subject to minimum wage laws.■

Former editors sue Hastings Law

Two charge law school administrators with retaliating for bad press

CALIFORNIA — Two former editors of a law school weekly newspaper filed suit against their alma mater in May, charging law school officials with using the state bar admissions process to retaliate against them for critical editorials and articles they had written.

In the more than 100-page complaint filed in state Superior Court, James P. Ballantine and Christina A. Dalton charge Hastings School of Law with 16 separate violations, including deprivation of free press rights, and claim that school administrators acted "wickedly" in "retaliation to the articles published by the student editors" in the *Hastings Law News*.

The dispute between the school and the two editors, who graduated from Hastings in May, began early last year when the *Law News* ran an article critical of the Hastings Board of Directors and two editorials calling for the dismissal of the school's general counsel.

After the articles ran, the administration informed the editors that they were beginning an audit of the *Law News* and asked the paper to turn over financial records to the school. The editors refused, noting that they receive no funds from the college and charging that the audit was motivated by the bad press.

"We feel that the timing of events here," the editors wrote in a letter to the administration, "creates an appearance of 'singling out' that gives us serious concerns ... in regard to journalistic content and the First Amendment."

After several months of often confrontational negotiations, the newspaper in September 1990, then under new editorship, submitted to an audit by an outside firm, but not before the administration locked the newspaper's offices and the new editors were forced to publish an underground edition.

But in the meantime, Ballantine, who had been editor in chief of the paper, and Dalton, a former copy editor, were refused admittance to the state bar — despite the fact that they had passed the bar exam — because Hastings refused to certify their "moral fitness."

After conducting an independent investigation, the California Bar Association admitted the two, but their suit states that the "false and misleading information" about their moral fitness "will remain permanently in their files with the State Bar for the rest of their professional careers in California" and claims they therefore deserve compensation.

Ballantine said the California bar has a policy of keeping all materials filed by a law school in a candidate's dossier, whether or not they contain errors.

"They said the school can file an amendment to their report, but the school has refused to do that," he said.

Hastings spokesman Tom Debley said he could not comment on any specific allegations, but asserted that the school will be vindicated if the case proceeds through court.

"We do feel that the actions by the college will be found to be proper once we undergo judicial review, if it comes to that," Debley said.

Although, under California law, the two students can seek only unspecified damages, Ballantine said that he has been told by attorneys knowledgeable in this field that, if victorious, the students

(See HASTINGS, page 30)

Detroit drops counts against reporter

MICHIGAN — Detroit city prosecutors dropped all charges against a Wayne State University student newspaper reporter who had been arrested while covering an anti-war demonstration in January.

Brian Bell, an assistant news editor of *The South End*, was apprehended along with 14 protesters outside a military recruiting office during a rally against the Persian Gulf War. He had been charged with several violations, including inciting a riot, which is a felony.

Bell's attorney, Dan Penning, said he reached an agreement with city lawyers to drop the charges in June after the 14 protesters were found innocent in May.

"I said, 'Look this is ridiculous to try this case after the other protesters were acquitted,'" Penning said. "They acquiesced."

Bell said that although he is relieved to have the criminal case against him dropped, he is currently looking for an attorney to help him file a civil suit against the city in federal court.

According to police and news accounts of the incident, Deputy Police Chief James Younger told a crowd of approximately 400 protesters that their demonstration was illegal about an hour after picketing had begun because ralliers were using profanity and blocking traffic.

Approximately 10 officers in riot gear, backed up by 25 more policemen, were called in to make arrests after the crowd did not disperse.

Although Bell said he is not currently sure exactly what charges he will file against the city in his civil suit, he has publicly accused officials of singling him out because he was a reporter.

"The city of Detroit is not very friendly to reporters," Bell said. *The Detroit News* has also asked the police department to investigate a separate incident involving two of its reporters at a rally, *News* officials said.

"Younger ordered me arrested ... knowing I was a working member of the local media," Bell wrote in a opinion piece. "Student journalist or professional, this sets [a] dangerous precedent for the press everywhere."■

Catholic school paper pulls abortion editorial

WISCONSIN — The student newspaper at Marquette University was forced to pull an abortion-rights editorial when the school's publication board ruled that the paper could not take a stance on the issue.

According to Scheryl Johnson, adviser to the *Marquette Tribune*, the paper had planned an editorial page forum with approximately six opinion pieces both for and against abortion.

To accompany the feature, the editorial board voted 6-1 in favor of running an unsigned editorial supporting a woman's right to abortion. Johnson said she informed the Catholic university's student publication board of the plan, "which is my job," and the board decided to hold an emergency meeting on the issue.

The board — which is made up of four representatives from the newspaper, a Jesuit representative and three at-large faculty members — allowed the paper to run the forum, but forbid the editorial board to take a stance either pro or con.

"I think the perception is that even if it is a student publication, for the editorial board to submit an unsigned editorial [it] would seem too closely tied to the administration," Johnson said. "Everyone would say, 'Oh look, Marquette is coming out for abortion.'"

The adviser said that student editors agreed to abide by publication board rulings before they assume their posts, and

(See MARQUETTE, page 30)

College president sets review policy

NEW MEXICO — Student editors of a newspaper at a small international private junior college in Montezuma were forced to submit a transcript of an interview to the institution's president for editing after the president threatened to withhold funding if the paper published the interview.

Ted Lockwood, president of Armand Hammer United World College of the American West, a school which brings together students from 67 different countries to "promote the cause of international cooperation," said he feels he has the right to censor stories of *The Phoenix* that he considers harmful to the school.

"Someone has to exercise that power," Lockwood said. "I guess the students figure the administration is being autocratic. But in cases like that, you bet I am."

The controversy began when *Phoenix* reporters interviewed K. Don Jacobusse, then a dean of the school, and planned to run a transcript of the interview in a question-and-answer format.

Lockwood demanded he edit the piece before it ran, charging that the students had asked loaded questions and that the article was a "character assassination."

"*The Phoenix* staff envisions itself as great muckrakers and writing important exposés," Lockwood said. "But this is not something *The Phoenix* is expected to do."

Mohan Ambikaipaker, the newspaper's editor, said Jacobusse was unpopular and had been accused of being inaccessible, not relating to students and faculty and being dishonest.

"*The Phoenix* staff felt that the newspaper was a relevant and proper place to talk about [Jacobusse's] performance as a dean," Ambikaipaker said. "Students were angry. There were posters about the dean around. We wanted to make the paper credible and see what official debate we could generate."

The editors eventually allowed administrators to edit the interview and ran a letter by Jacobusse alongside the article. Their coverage in the issue included an editorial which called the dean "a topic of controversy since his selection last year, a process which was long and problematic." They also ran a survey that rated Jacobusse's performance a 4.04 on a scale from one to seven.

Jacobusse is stepping down as dean, largely due to the *Phoenix* articles, Lockwood said.

Ambikaipaker said the press in his homeland of Malaysia has no freedoms, adding that the situation at the school is "like Nirvana compared to back home."

But, he said, "If one preaches something, but teaches something else, it may be detrimental for a person from an authoritarian society."

The president has since agreed to let students develop guidelines and set up a review board, but he has maintained the right to censor material he considers harmful.■

Police seize *Daily Student* photographs

State judge orders Indiana University photographer to turn overs pictures of local riot

INDIANA — In the dark hours of the morning on April 21, 1991, a riot broke out at the Varsity Villa apartment complex in Bloomington. According to court documents, hundreds of people swarmed through the area following an annual festival nearby. The mob overturned cars and chanted "set it on fire" and "flick your bic."

Police arrived at the complex within minutes, pouring in from the Indiana University stadium parking lot dressed in full riot gear.

The police were not the only ones who rushed to the scene. Student photographer Richard Schultz captured the riot on film, taking 80 photographs including 10 of people overturning a car. Schultz normally works for the campus yearbook, but he sold one of the photographs to the *Indiana Daily Student*, where it was published.

Prosecutors ordered Schultz to hand over the photographs a few days later. Backed by the *Daily Student*, Schultz filed a court motion to challenge the subpoena.

Schultz said he was fighting the order because turning the press into an "investigative arm" of the police would cause the public to lose confidence in the press and reduce press access to information.

"It's very important that both the police and the media play separate roles. That's what the First Amendment is all about," said David Adams, the newspaper's adviser.

The judge denied Schultz's motion, saying the photojournalist's work was not privileged under the U.S Constitution or the Indiana shield law.

> *'Police and the media play separate roles. That's what the First Amendment is all about.'*
> ***David Adams***
> *Adviser*

The court relied on a 1972 Supreme Court ruling in *Branzburg v. Hayes* that the First Amendment did not afford protection to a journalist who wanted to withhold information on confidential sources from a grand jury investigation.

Some courts have recognized a limited First Amendment privilege for reporters based on this decision, but the judge in this case disagreed with that interpretation.

Schultz's attorney pointed out that in other cases involving unpublished photographs, appellate courts have ruled that alternative sources for the information must be exhausted before the press can be subpoenaed, but the judge was not convinced that the identities of the rioters could be obtained in any other way.

The judge ruled that under the Indiana shield law, which protects confidential sources, Schultz's photographs were not privileged because they involve no information obtained in confidence.

Schultz decided not to appeal the court's ruling because his lawyers advised him his chances of winning were not very good, Adams said. Indiana's shield law is considered fairly weak, and Adams said the outcome "definitely could have been different in another state."

Schultz has since turned the photographs over to prosecutors.

"I'm glad we went through the process," Adams said. "I think they [the prosecutors] thought there would be no resistance from a student newspaper, but we gave them a good strong fight."■

Marquette

(Continued from page 29)

Nancy Armour, the editor in chief of the paper, agreed to pull the editorial after consulting with staff members.

"It's obvious that writing an editorial coming out in favor of the right to an abortion is going to cause problems," Armour said.

This was not the first time the *Tribune* has become embroiled in a controversy on the issue. In November 1989, an abortion-rights advertisement published in the paper led to the firing of a business adviser, the suspension of two students from the staff and an apology to readers in its next edition.

The advertisement, which was placed by the National Organization for Women, urged people to "Stand Up. Be Counted While You Sill Have the Choice." and called for readers to attend a rally in the state capital.

At the time, Sharon M. Murphy, dean of the journalism school at Marquette, said that the incident would change the way the newspaper would accept advertisements, but emphasized that it would not effect editorial content.

"The University recognizes the clear distinction that is and always must be drawn between news and editorial content and review, and the policy for review and acceptance of advertising," Murphy wrote in a letter to journalism school alumni. "Enforcement of the advertising policy does not represent a change in policy ... We are NOT heading down the road to news and editorial censorship," the letter said.■

Hastings

(Continued from page 28)

could win big.

"We suspect that it could be a multimillion dollar award," he said.

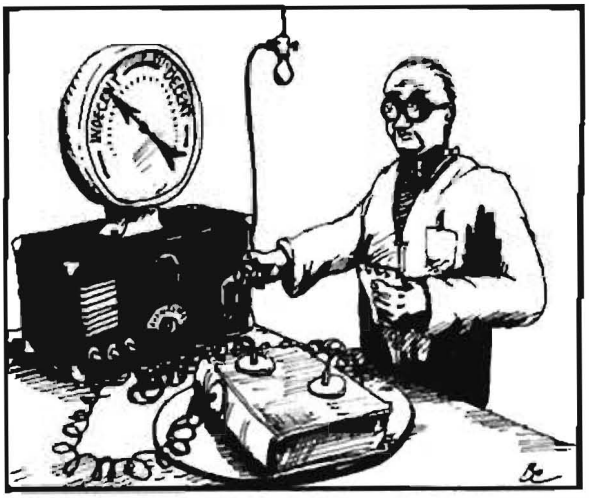
Although Dalton has been hired as a clerk for a prominent San Francisco criminal defense attorney, Ballantine said he has been unemployed since graduation and blamed it on the materials in his bar file.

The former editor in chief said the university is planning to hire a large law firm to defend them in the case and expects the legal battle to be a long one.

"It's going to be a drawn-out discovery process," Ballantine said. "They're going to try to 'paper us out' for a while."■

Toeing the Line

The 'political correctness' movement continues to impinge on the student press



Since the debate surrounding the "political correctness" movement and anti-harassment codes on college campuses drew national attention over a year ago, critics and advocates alike have centered their discussion on free speech rights. But another First Amendment right, that of press freedom, may be facing similar restrictions from school administrators who are trying to legislate sensitivity.

The SPLC first reported in 1988 that the seeds of the movement had begun to affect student newspaper coverage on at least six college campuses, and even though debate around the codes has intensified since then, the problem has not gone away.

At the University of Lowell in Massachusetts, for example, college officials started judicial proceedings against the editor in chief and news editor of the Lowell *Connector* last year after a cartoon in the paper was found to be in violation of a campus policy because it created a "hostile environment" for minorities on campus and caused other "civil rights" abuses. (See Spring 1991 *SPLC Report.*) The charges were eventually dropped.

And just this spring, student activists called for the withholding of the diplomas of the editor and a columnist of Georgetown University Law Center's student newspaper because of a column critical of the school's affirmative action program. *(See GEORGETOWN, page 32.)*

Nat Hentoff, a nationally syndicated columnist who has followed the political correctness movement since before it was given its label, said that while incidents involving infringement of student press freedoms are not the most publicized and may not be as widespread as other First Amendment violations on college campuses, they are occurring around the country in alarming numbers and are definitely posing a danger for campus journalists.

"Once you have that [attitude] on campus, there is an orthodox line that you can't cross over," Hentoff said. "It's bound to impinge on the campus press."

The battle to roll back some of the speech codes and to ensure greater free press rights is being fought on several fronts. In the courts, the 1989 federal court ruling that declared the University of Michigan's verbal harassment policy unconstitutionally vague and in violation of the First Amendment has set the stage for other challenges to the codes. As a peremptory strike, the University of Wisconsin at Milwaukee's student newspaper, *The UWM Post*, joined in a lawsuit against the University of Wisconsin system last year charging that its code is "impermissibly vague" and in violation of the First Amendment. Arguments were made before the court in July, but no ruling has been handed down yet.

The U.S. Supreme Court agreed in June to hear a case that could strike right at the heart of campus harassment codes. The case, in which the court must decide if a St. Paul, Minn., city ordinance against symbolic and actual "hate speech" is constitutional, is expected to be argued in the fall and decided next year. *(See SUPREME COURT, page 34.)*

In the U.S. Congress, the House of Representatives Civil Rights Subcommittee is still sitting on a bill introduced in the spring by Rep. Henry Hyde (R-Ill.) that would allow students at private universities to challenge codes restricting free speech in federal court. Private universities are currently not required to abide by the First Amendment limitations that apply to public schools, but Hyde's bill, which is endorsed by the American Civil Liberties Union and has been hailed by newspapers across the country, would make all colleges in the U.S. except those controlled by religious institutions subject to court action if they punish a student under an unconstitutional code. Hearings on the bill are expected this fall.■

P.C.

UNDER FIRE

Georgetown column sparks outrage, protests

WASHINGTON, D.C. — When Claudia Callaway saw the column for the first time, all she expected was a few letters. "I just thought everyone would start writing letters to the editor and we'd have to spend all this money on a huge paper to run all these letters," the editor in chief of the Georgetown *Law Weekly* said. But the column, which claimed that Georgetown Law's black students were less qualified than its white students, sparked campus uproar and national debate and now, according to Callaway, may lead the weekly newspaper to shut down.

"The school paper is in real danger," the recent graduate said. "I can't even tell you what a shock it has been."

The column, entitled "Admissions Apartheid," was written in April by Timothy Maguire, then a third-year law student and a former editor of the *Weekly*. In the piece, Maguire, who had been working in the school's admissions office, asserted that blacks accepted to the Law Center generally have lower Law School Admissions Test scores and grades.

He based his findings on a "random sample" of test scores and grades from confidential files of black and white applicants to the law school.

Although black campus leaders called for the withholding of Maguire's diploma, he was allowed to graduate in May with a letter of reprimand that was not included on his official school transcript.

Law Center Dean Judith Areen could not be reached for comment, but in a statement she said the punishment was handed down because Maguire had "violated an explicit duty not to disclose information he acquired during his employment at the Law Center admissions office," and not for "publishing controversial views in the student newspaper."

But Maguire said that the dean's statement was "nonsensical," claiming that the reprimand was due to political pressure brought by those who simply disapproved of his stand against affirmative action.

"They [the administration] are more interested in not rocking the boat than in any real justice," Maguire said.

Maguire's ordeal appears to have ended, but the school paper has not fared as well. The day after Maguire's piece ran, the law school's student government body, the Student Bar Association, passed a resolution calling for the paper to have an adviser who would assist editors when controversial decisions were to be made.

Joe Kerwin, vice president of the SBA, said the resolution "was not a punitive measure" and had been considered even before the Maguire column ran.

"I think [an adviser] would be a better idea for them," the third-year student said. "It wouldn't take away their autonomy . . .. It would just allow them to check with someone so they don't print something that shouldn't be made public."

Kerwin added that the adviser would not read over all copy before it went into the paper, but instead would help advise editors on "judgment calls."

But Callaway, who graduated in May, said the move was taken because SBA officials "don't want anything critical of what they do."

"The vice president of the SBA told me, 'We've had a problem with the *Weekly* and

(See GEORGETOWN, page 34)

The writer claimed that Georgetown Law's blacks were less qualified than its whites.

UCLA pulls ads from 'offensive' magazine

CALIFORNIA — The University of California at Los Angeles dropped a large portion of its school-funded advertising from a black student magazine and reprimanded its editors in May after it ran articles that were deemed "blatantly anti-Semitic" and "intentionally offensive" by the administration.

Winston C. Doby, UCLA's vice chancellor for student affairs, announced that his department was cutting all ads in *Nommo* magazine after the publication released its last issue of the year in late May. In a letter to the school's Communication Board announcing the moratorium, Doby accused *Nommo* of "promoting hatred and divisiveness and engaging in personal and group denigration."

"While fully supporting freedom of speech and of the press, UCLA also demands that all members of our campus community act responsibly and respect the rights of others," Doby stated. "[There is] an urgent need for the Communications Board, as publisher of these student newsmagazines, to determine whether our current student media structure is the most effective means of promoting pluralism at UCLA in the '90s."

UCLA's Chancellor Charles E. Young released a statement a week later supporting Doby's actions and "condemn[ing] what are clearly anti-Semitic statements."

Shonda Hornbeck, editor of the magazine, denied that the articles were anti-Jewish and said the vice chancellor's decision violated her First Amendment rights to free expression.

The magazine, which comes out six times each school year, had been at odds with Jewish student leaders since it ran an editorial in February supporting a book store that was selling a book entitled "The Protocols of Zion and the International Jew," which has been widely criticized for its discredited anti-Semitic theories.

In an opinion piece in its final issue of the year, the magazine called the editors of a Jewish student newspaper "typical cave-dwelling (Kazar mountains to be exact) white, Zionist fucks."

Hornbeck said the statement was not meant as an attack on all Jews, only the editors of the paper whom *Nommo* editors had been feuding with.

But UCLA spokeswoman Olivia Cervantes said that the article was the product of graduating writers who used their last issue to deliver a low blow to all Jews.

"It was a last ditch effort to really insult the Jewish students on campus," Cervantes said.

After calling an emergency meeting, UCLA's student government, which oversees the Communications Board, ruled that the magazine will pay for retractions in the school's seven newsmagazines and the *Daily Bruin*, the campus's major student daily.

Cervantes said that the Student Affairs advertising is a "major source of funding for the magazine," but Hornbeck said that the magazine will most likely survive.

Other UCLA departments who advertise in the magazine were not effected by the action, but Doby said he would "urge my colleagues to follow suit."

In his letter to the Communications Board, Doby said the moratorium on advertising will last until "more responsible leadership is exercised."

Matthew Fordahl, editor in chief of the *Daily Bruin*, said he does not expect the move to have a chilling effect on campus media organizations.

In fact, Fordahl added that his newspaper' editorial board has called for stricter control of campus publications by the Communication Board, which is made up of four undergraduates, four graduate students and four school officials.

"We criticized the board for not policing its publications properly," he said of the editorials.

The *Bruin* is overseen by the board, but Fordahl said board members "do not deal with editorial content except for material that is discriminatory and insensitive." ■

'Anti-Semitic' remarks halt yearbook distribution

MICHIGAN — A yearbook spread on student reactions to the Gulf War containing allegedly anti-Semitic remarks caused administrators at Pioneer High School in Ann Arbor to halt distribution of the yearbook until an apology could be written.

The adviser did not see the questionable passage before the yearbook went to the printer, and an administrator assigned by the school to review publications also said he had not seen the section before the school received complaints about it.

The offensive comment appeared on a page full of student reactions to the war. One anonymous student attributed America's involvement in the gulf war to a Jewish conspiracy.

Student editors of the yearbook could not be reached.

The school indicated that such material would be censored in the future.

"Had these viewpoints been noticed prior to publication, they would have been deleted," says the apology written by the principal and superintendent.

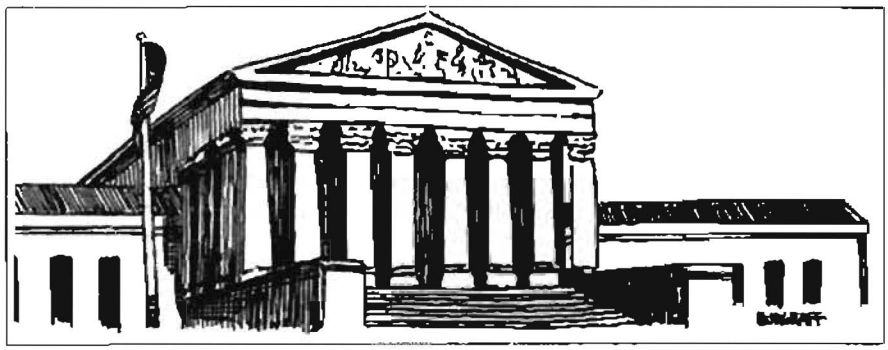
Members of a local Jewish congregation expressed their distress over the incident and the pain it had caused to students and their families.

Other members of the community were concerned about the free speech aspects of the school's position.

Local attorney Martin Smith criticized the school's "failure to support its publication's right to print opinions which are disagreeable to the majority." In a newspaper editorial, Smith said he feared that "the 'political correctness' in the air today is going to lead us back to that dark age when speaking one's mind was an act either of extreme courage or brazen foolishness." ■

Supreme Court to hear 'hate crimes' case

Ruling in R.A.V. v. St. Paul *could have big impact on speech codes at public universities*



WASHINGTON, D.C. — The U.S. Supreme Court announced in June that it will hear a case next session on the constitutionality of a city law that bars "hate speech," and its ruling could have a significant impact on similar policies that exist at public universities.

The case, which is expected to be argued this fall and decided some time next year, centers on a St. Paul, Minn., city ordinance that makes it a misdemeanor to intentionally put a symbol that "arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion or gender" on public or private property.

Last year Robert A. Viktora, who is now 18 years old, was charged with violating the statute when he participated in a cross burning at the home of a black family. A state trial court threw out the "hate crime" charge, claiming the statute on which it was based violated First Amendment rights to free expression. An appeals court reversed the decision in January.

On behalf of Viktora, the Minnesota Civil Liberties Union asked the U.S. Supreme Court to hear the case, *RAV v. St. Paul*. The MCLU admitted that Viktora could be punished for the cross burning incident — he was also charged with assault, a count that is not being challenged. The organization claims, however, that the "hate crime" law can be used to punish constitutionally protected expression, and therefore should be found unconstitutional.

The MCLU urged the high court to take the case because of the growing use of anti-harassment or "hate speech" codes by universities.

"The nation's colleges and universities are experiencing a type of reverse intolerance against unpopular opinion and increasing 'intellectual intimidation,'" the civil liberties group wrote in a brief filed with the Supreme Court. "The results are unprecedented prohibitions on expressive conduct that jeopardize the First Amendment guarantee of freedom of speech."

When the Supreme Court announces it will hear a case, a move that requires the approval of at least four of the nine justices, it does not reveal the reason for taking the case.

Mark R. Anfinson, a lawyer for the MCLU, said that the court may limit its review and simply rule on the vagueness of the St. Paul ordinance. But he predicted the justices will take a broader view and rule on the free-speech issues that are the underpinnings for campus harassment policies.

"It's going to either give a red light or a green light to the movement for speech codes," Anfinson said.■

Georgetown

(Continued from page 32)

we want to rein it in,'" Callaway said.

She added that she was particularly surprised that law students, "who are supposed to be well-versed on the First Amendment," could be pushing for such restrictions on the press.

"I will do anything I can to make sure that the newspaper doesn't have an adviser," Callaway said. "The people who are editors will fight it to the end."

Because the *Weekly* gets its funds directly from the university, the SBA resolution has no binding authority, but Kerwin said government officials would meet with newspaper editors to discuss the implementation this fall.

Kerwin said the administration could conceivably force the paper to get an adviser by withholding funding, but law school spokeswoman Adrianne Kunenam said she does not think the administration would resort to such actions.

"We've never imposed anything like that on a student organization and I don't think we would," Kunenam said.

Callaway said that the paper has "looked at a number of things" to prevent the imposition of an adviser, including becoming an independent corporation, but added that the paper may shut down if it is forced to get an adviser.

Both Maguire and Callaway said, however, that after the controversy dies down, they feel the administration will back down and the newspaper will continue without an adviser.

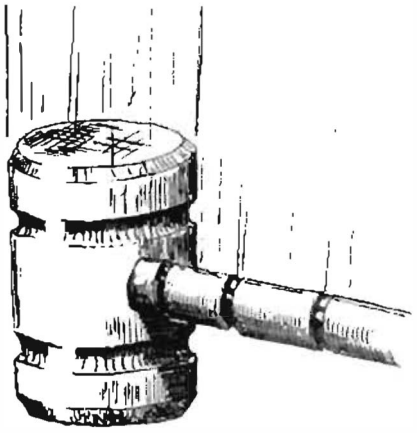
"I think cooler heads will prevail," Callaway said.

But Maguire added that he feels the faculty of the school is teaching students to ignore First Amendment rights for "politically correct" ends.

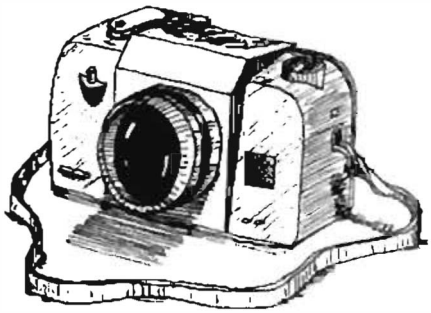
"At a law school like ours, in which the faculty is very liberal, students are not taught to think on their own," he said. "The faculty are teaching them how to use the law to promote blatantly political agendas."

Currently, both Maguire and Callaway are studying for their bar exams and said they do not think the controversy will have an effect on their professional lives.■

WHO OWNS THE Copyright



Determining the division of rights between the publication and its staff members in advance can avoid confusion



Student photographers, reporters and artists may think that as authors of their work, they own any and all rights to what they produce for a student publication. That presumption is not necessarily true. The Copyright Act of 1976 provides for authors' rights in the United States. The Act provides that copyright ownership "vests initially in the author or authors of the work."[1] As a general rule, the author is the party who actually creates a work, such as a writer or a photographer. But an important exception exists for "works for hire," where "the employer or other person for whom the work was prepared is considered the author" and owns the copyright, unless there is a written agreement to the contrary.[2]

A "work made for hire" may exist in two ways: 1) when the work is "prepared by an employee within the scope of his or her employment," or 2) when the work is commissioned or specially ordered for use as a contribution to a collective work and the parties expressly agree in a signed writing that the work "shall be considered a work made for hire."[3]

An example of the first instance is a staff photographer who works full-time for a professional magazine. In such a situation, the copyright would belong to the magazine under the "work for hire" doctrine unless there was an agreement to the contrary. An example of the second manner in which a work can be considered a "work for hire" is when a free-lance photographer contracts with a newspaper to produce photos for a story. In this situation, a newspaper may be considered a "collective work" and a photographer's work may be considered a "specially ordered" work. Therefore, if a signed written agreement stated that the photograph was a "work for hire," it would be considered as such.

As a general rule, the owner is the person who actually creates the work. But there is an important exception for "works for hire."

For a student newspaper, however, the situation is different from a professional publication. Most student news photographers do not work as full-time employees for the yearbook or newspaper. Their hours may vary from one week to another. In a situation where the work is not clearly created "within the scope of employment" the photographer may be considered the owner of the copyright. The work, however, might fall under the Copyright Act's second definition of a "work for hire" as a work specially ordered or commissioned for use as a contribution to a collective work, if there is an agreement stating so.

However, if there is no written document stating that the work is a "work for hire," is a photograph considered to be authored by the photographer? The answer is "maybe." The Supreme Court wrestled with this issue in the landmark case, *Community for Creative Non-Violence v. Reid*.[4] In that case, Reid, a sculptor, created a sculpture showing homeless people on a steam grate for the Community for Creative Non-Violence (CCNV), an association dedicated to eliminating homelessness in America. While members of CCNV returned the

(See COPYRIGHT, page 36)

sculpture to Reid for minor repairs, plans were made by CCNV to take the statue on a tour of several cities to raise money for the homeless. When they asked Reid to return the sculpture, he refused. Reid and CCNV had not signed a written agreement or discussed copyright. Both filed to register the copyright and CCNV later filed suit to determine who owned the disputed copyright in the sculpture.

The district court ruled that CCNV owned the copyright because the statue was a "work for hire." The court of appeals reversed, declaring that the sculpture was not a "work for hire" and the Supreme Court agreed. The Court held that Reid was not an employee and, therefore, his statue did not qualify as a "work for hire." Reid was considered an independent contractor rather than an employee, and was therefore the author of his work.

Like Reid, free-lance photographers, writers and artists could be considered independent contractors. If so, a newspaper would have a one-time-only right to use their photographs, unless a written agreement between the two stated otherwise.

In the *Reid* decision, the Supreme Court stated that in determining "whether a work is for hire under the Act [and thus belongs to the publication for which it was produced], a court first should ascertain, using principles of general common law of agency, whether the work was prepared by an employee or independent contractor."[5]

The Supreme Court listed a number of criteria to analyze in determining whether a hired party is an employee. First, the Court considered the "hiring party's right to control the manner and means by which the product is accomplished."[6] Other factors were: the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party had the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.[7]

The Court did not find any one of these factors to be determinative, nor did it state what "formula" it would use to determine if one is an employee or an independent contractor. In this case, all of the factors weighed in favor of finding that Reid was an independent contractor.

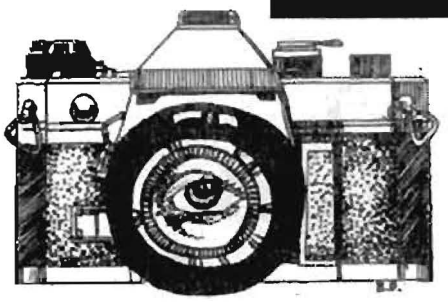
The *Reid* decision suggests that each of the factors is relevant in determining the issue of whether a person is an employee or an independent contractor. We can apply the analysis to the situation of a student photographer, reporter or artist for a student newspaper or yearbook to determine whether the student is an employee or an independent contractor. If a person has independent skills he brings to a job, as in photography skill, this factor would weigh in favor of treating him as an independent contractor. Similarly, if the photographer provides all of his own tools, such as camera, film, chemicals, and paper, it is more likely that he would be considered an

independent contractor. If the paper does not pay the photographer, this would also weigh in his favor.

Other factors may benefit the newspaper. In analyzing the duration of the relationship, if the photographer provides photos to the paper on a regular basis, throughout the school year, that would weigh in favor of the photographer being considered an employee, so that the copyright belongs to the paper.

The facts mentioned above seem to weigh in favor of the photographer being considered an independent contractor, not an employee. However, the factors may be more evenly divided in another situation. For instance, a paper might provide chemicals and film, while the photographer provides the camera and the skill. The paper may provide lab space for printing and locker space. The photographer might exercise great latitude in choosing subjects for shots, and also determine the lighting and location. But the paper might retain the right to control the manner and means by which the photographer produces photos that met its specifications. There might be no payment or a small fee paid on a per-photo basis. The photographer may provide photos over a period of the school year, but not every month. In other words, the situation might be very different from that of *CCNV v. Reid*.

Michael Sherer, freedom of information chairman for the National Press Photographers Association, provides some suggestions for student publications and student photographers/reporters to avoid copyright disputes. He stated



that such disputes seldom occur among professionals. If a person is a professional staff photographer, the copyright belongs to the organization under the "work for hire" doctrine. Professional free-lancers, however, generally own the rights to the photos they take and allow a publication to use the image one time only, unless stated in writing. When asked whether professional free-lancers provide their own materials, he responded that they do as an accepted practice, and that they charge the client for supplies as a part of "expenses."

Sherer said the key for professionals is to have everything in writing. This provides not only a record of an agreement, but protection for both parties in case questions later arise.

Student publications and their photographers and reporters should also write agreements to avoid copyright disputes, even though conflicts regarding ownership of copyrights for student photographers' works are rare. Sherer explained that when he was an adviser for student publications, the publications would, as a matter of policy, give the photographer the rights to the work he created. This was done as a means of promoting a student photographer's work and assisting him in becoming established in the field.

To avoid conflicts, student newspapers, yearbooks and magazines should create a simple document indicating to staffers from the start of their working relationship what rights to the works they create the publication retains. Most publications will want to give photographers, reporters and artists the right to use their works in portfolios, shows and any other appropriate situations. A publication might also want to assign the rights to prints and negatives to the photographer if the editors believe they have no further need for them. The crucial point is to spell out and agree to any conditions at the beginning of the working relationship.

Both the photographer, reporter or artist and a representative from the publication should sign and date the document and keep a copy. There is no need to create a complicated legal document. In most cases, there will be no war waged over ownership of a copyright. But for the exceptional situation, it is smart to have a written record of what the student journalist and the publication have agreed are their respective rights.■

[1] 17 U.S.C. § 201(a).
[2] 17 U.S.C. § 201(b).
[3] 17 U.S.C. § 101.
[4] 490 U.S. 730 (1989).
[5] *Id.* at 750-51.
[6] *Id.* at 751.
[7] *Id.* at 751-52.

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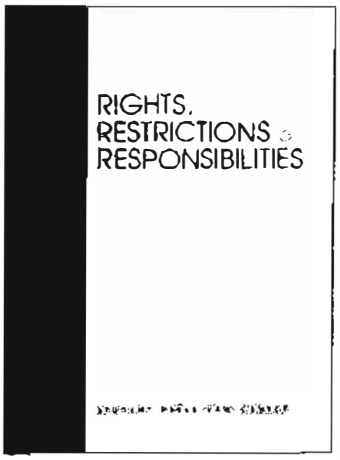

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