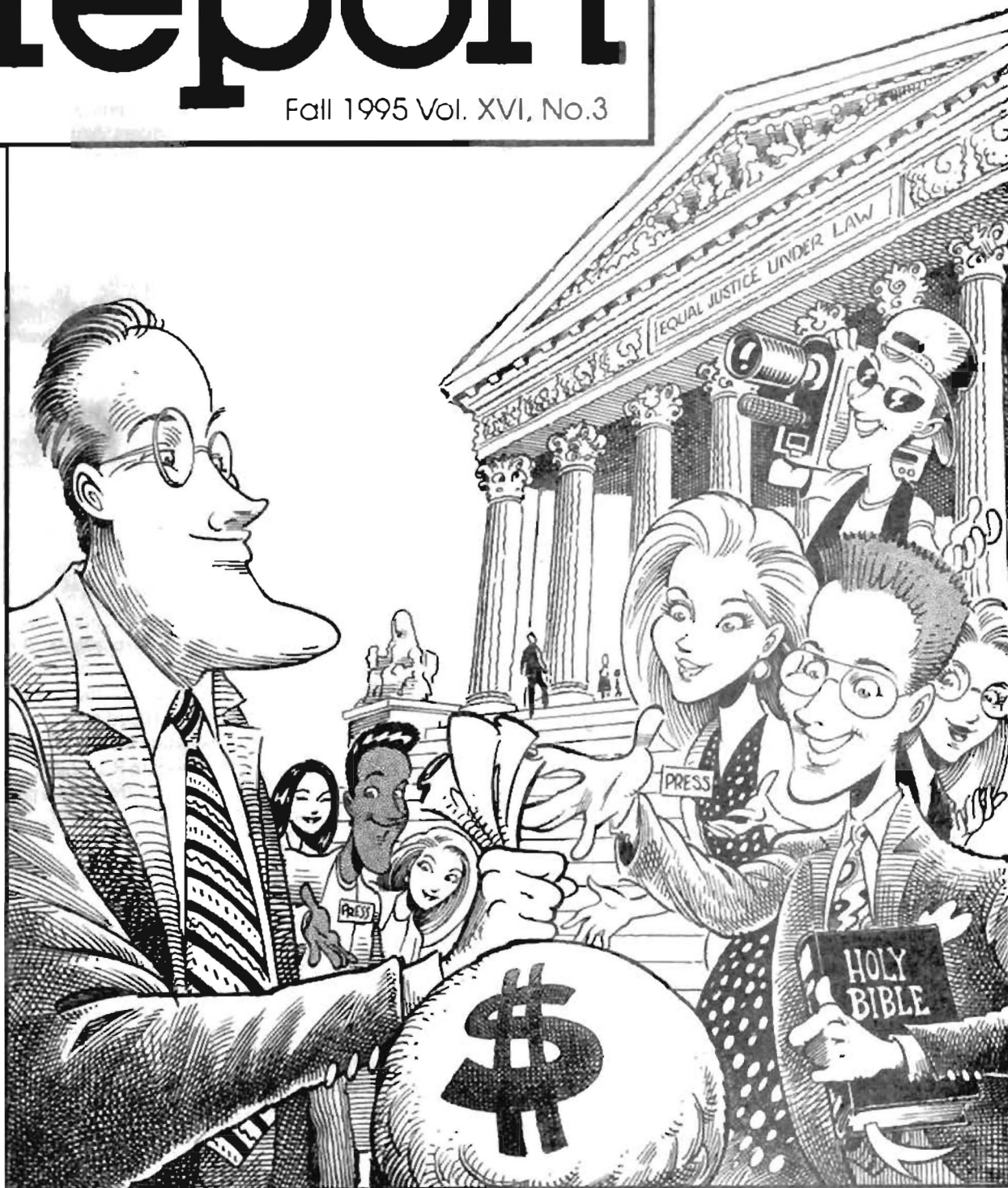


student press law center

# report

Fall 1995 Vol. XVI, No.3



## *Court rejects funding censorship*

Inside: Internet indecency bill divides Congress, page 6

## EDITORS

Heidi Keibler  
Eastern Illinois University

S.L. Spooner  
University of South Carolina - Aiken

## CONTRIBUTORS

Mike Hiestand  
Student Press Law Center

Evan Baranoff  
State University of New York at Buffalo  
School of Law

Sarah G. Madden  
University of Missouri - Columbia  
School of Law

## COVER ART

Jack Dickason

## ART

Mike Boasso  
Jim Brandelias  
Brad Conn

Jack Dickason  
Scott Kleinhans  
Keith Marshall

Allan Miller  
Christine Osborn  
Brandon Page

## 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.

*Student Press Law Center Report*, Vol. XVI, No. 3, Fall 1995, is published by the Student Press Law Center Inc., Suite 1910, 1101 Wilson Blvd., Arlington, VA 22209-7831 807-1904. Copyright © 1995 Student Press Law Center. All rights reserved. Early subscriptions to the SPLC Report are \$15. Contributions are tax deductible. A subscription order form appears on page 39.

## Executive Director

Mark Goodman

Staff Attorney  
Mike Hiestand

Administrative Assistant  
Randall Law

## Corporate Board of Directors

J. Marc Abrams, Esq.  
At Large  
Portland, OR

Dr. David L. Adams  
At Large  
Indiana University  
Bloomington, IN

Mary Arnold  
At Large  
Iowa High School  
Press Association  
Iowa City, IA

Karen Bosley  
At Large  
Ocean County College  
Toms River, NJ

John Bowen  
Journalism Association  
of Ohio Schools  
Lakewood High School  
Lakewood, OH

Dr. Dorothy Bowles  
Association for Education  
in Journalism and  
Mass Communication  
University of Tennessee  
Knoxville, TN

George Curry  
At Large  
Emerge Magazine  
Washington, D.C.

Beth Dickey  
Southern Interscholastic Press  
Association  
University of South Carolina  
Columbia, SC

Dr. Tom Eveslage  
At Large  
Temple University  
Philadelphia, PA

John Garcia  
At Large  
New York University  
New York, NY

Mark Goodman, Esq.  
Student Press Law Center  
Arlington, VA

Nancy L. Green  
At Large  
Clayton State College  
Morrow, GA

Carolyn Jones Howard  
At Large  
Duke Ellington School of the Arts  
Washington, DC

Dr. Louis E. Ingelhart  
Emeritus  
Ball State University  
Muncie, IN

Richard Johns  
Quill and Scroll Society  
University of Iowa  
Iowa City, IA

Ron Johnson  
College Media Advisers  
Kansas State University  
Manhattan, KS

Jane E. Kirtley, Esq.  
Reporters Committee for  
Freedom of the Press  
Arlington, VA

Dr. Lillian Lodge  
Kopenhaver  
At Large

Florida International University  
North Miami, FL

Paul McMasters  
Society of Professional Journalists  
Freedom Forum  
Arlington, VA

Candace Perkins  
Journalism Education Association  
Kent State University  
Kent, OH

Tom Reznicki  
National Scholastic Press  
Association/Associated Collegiate  
Press

University of Minnesota  
Minneapolis, MN  
Helen F. Smith  
Columbia Scholastic Press  
Advisers Association

Newton North High School  
Newtonville, MA

Edmund J. Sullivan  
Columbia Scholastic  
Press Association  
Columbia University  
New York, NY

Robert Trager, Esq.  
At Large  
Trager & Rowland  
University of Colorado  
Boulder, CO

# CONTENTS

## COVER STORY

Court orders school to fund religious publication ..... 4

## COLLEGE CENSORSHIP

Congress divided on Internet censorship ..... 6

Mich. judge drops charges in Internet case ..... 6

Near-nude photo causes stir on Calif. campuses .. 7

Newspaper theft at Iowa school still unsolved .... 7

Photographer arrested at Okla. bomb site ..... 8

Censorship cartoon costs editors their positions .. 9

Neb. school censors literary magazine ..... 10

Theft pits staff against administration in N.C. ... 10

Distribution hampered by World Cup ..... 11

No action taken against newspaper thieves ..... 12

Dean reverses censure of Ga. newspaper ..... 13

Mich. school outlines cyberspace policy ..... 13

## ACCESS

The right to know battles the right to privacy .... 14

La. SPJ chapter drops appeal ..... 15

Hawaii passes law sealing police records ..... 16

Va. editor loses fight for election vote totals .... 16

Judge orders Ala. to disclose NCAA letter ..... 17

Mich. school ordered to open searches ..... 18

*Times-Picayune* back in court ..... 18

## LEGAL ANALYSIS

Opening school personnel disciplinary records .. 19

Portion of Right-To-Know Act on hold ..... 23

## HIGH SCHOOL CENSORSHIP

Publishing offensive messages ..... 24

Internet prank costs Calif. student scholarship .... 25

Co-ed Naked shirts spark debate in Mass. .... 25

Principal confiscates newspapers at Ind. school ..... 26

Judge dismisses portion of Tigard case ..... 27

Editor barred from graduation at Kan. school ..... 28

Art teacher sues high school in R.I. .... 28

Sign language symbol banned from Iowa paper.. 29

Judge OK's censorship of video in Calif. .... 30

## CAMPUS CRIME

Mo. passes law closing investigative reports ..... 31

## ADVERTISING

Student sues U. of Ohio paper ..... 32

Calif. student takes offense to advertisement .... 32

## CONFIDENTIALITY

Court refuses to hear Wash. editor's case ..... 33

Photographer settles out of court in Mo. .... 33

## POLITICAL CORRECTNESS

Mich. court rules speech code unconstitutional . 34

Court reverses ruling in CUNY professor case ... 34

Bill to diversify student publications dropped ... 35

## ADVISERS

Adviser, manager fired at Colo. school ..... 36

Professor fights to keep job at Wis. school ..... 36

Adviser says newspaper cost her job ..... 36

## ANTI-HAZELWOOD

Legislation stalls in three states ..... 37

# The unfortunate battle over censoring 'indecenty'

**A** number of stories in this issue of the *Report* reflect a recurring theme: the effort by those in and out of schools to prohibit expression they deem "indecent." From legislation being debated in Congress to police the Internet to censorship of high school and college newspapers, literary magazines and yearbooks because of the off-color language they contain, concern about words that are deemed by some to be vulgar or profane seems at an all-time high.

To a certain extent, the controversy reflects the different attitudes of those of different generations to the same language. Words that seem shockingly offensive to some school administrators, teachers and parents may be an accepted part of daily conversation for some student journalists and their peers.

First Amendment supporters have mixed feelings about these controversies. In a perfect world, few would choose to wage a major free expression battle over the right to use a four-letter word that may reflect little more than a limited vocabulary or a lack of knowledge. They realize that practicing good journalism urges avoiding the use of vulgar language when it is not necessary to the message being conveyed or when the reaction to the language may only serve to divert attention from that message. A publication that fails to consider the sensibilities of its readers in determining the way it presents information probably has much room for improvement.

Yet those committed to free expression know that allowing the government, including school officials, to decide what is "indecent" presents a dangerous path. Throughout history, officials have described their censorship of

legitimate criticism as an effort to protect the public from offensive expression. Some of the greatest literary works of all time contain language that has been branded vulgar or indecent and thus deserving of constraint. The writings of William Shakespeare and the Bible are two notable examples.

For high school students, the legality of restrictions on the use of vulgar language in a student publication is increasingly complex. In California, for example, the state appellate court has said such language is not protected by state law in school-sponsored publications, but very well may be in the underground press. For college students, the First Amendment appears to remain a strong barrier to almost any limitation.

But for all students as well as school administrators and citizens in this democracy, the time has come for some thorough discussion of two important questions: why has language that offends become so pervasive among young people and what threat, if any, does it truly pose to education? If causes and consequences can be honestly identified, perhaps we can find responses other than regulation, thus avoiding the serious threat to free expression that comes along with any effort to censor. ■

## The Report staff

**Heidi ("I have no middle name") Keibler** is currently a senior at Eastern Illinois University majoring in journalism. She serves as editor in chief of *The Daily Eastern News*, where she practices her favorite hobby: putting SG in its place. Her firm beliefs include: Grant was set up; swimsuits are tacky; golf, tennis and Manilow rule; and Elle McPherson should watch her back. She is also a great fan of the volleyball scene in *Top Gun*. "Batman is forever, right?"

**S.L. Spooner** is currently finishing her final semester at the University of South Carolina - Aiken where she is majoring in journalism and art history. She serves as editor in chief of *Pacer Times* and is not easily swayed by SGA offers of free drinks. Batman Com Pops, swimming underwater and tongue splints float Stephanie's boat, and the chance of her appearing on "Soul Train" is as likely as her enrolling in law school. She is especially grateful to Poo and Fred for their loving support. "Yeah, forever."

**Evan Baranoff** will graduate in May 1996 from the State University of New York at Buffalo School of Law, where he fights for the students' right to free speech, free press and free beer. Last year he served as editor in chief of *The Opinion*, the law school's biweekly student-run newspaper. He was a 1993 graduate of Binghamton University, where he received a B.A. in literature and rhetoric. Always the idealist, he believes the answers to all the world's problems are contained within the 79 episodes of the original "Star Trek" TV series.

**Sarah G. Madden** will be a May 1996 graduate of the University of Missouri - Columbia School of Law where she survives on daily rations of raisins and Cysco. She was a 1993 graduate of the University of Missouri - Columbia School of Journalism where she received her Bachelor's of Journalism. Her interests include: Brazilian soccer players, Daddy Longlegs, attention loving kittens and Nutella. Sarah hopes to work in Washington one day where she will live happily ever after with J.F.K. Jr. ■

## Corrections

The Spring issue of the *Report* incorrectly reported the cost of National Newspaper Association insurance rates.

For libel insurance, premiums for daily newspapers that are NNA members start at \$1,110. Benefits include access to a libel hotline for \$150 a year. Newspapers who sign up for the hotline receive a 10 percent credit toward their libel premiums.

The names of the following artists were inadvertently omitted from the Spring 1995 issue of the *Report*:

Aaron Cole  
Mike Corey  
Jeff Masilun

The *Report* apologizes for the errors.

# Rosenberger: The promise, the perils

*The Supreme Court rejects denial of funding based on viewpoint, but questions remain about the ruling's impact on the college press*

In June the U.S. Supreme Court issued a long-awaited ruling concerning school funding for a student religious publication at the University of Virginia.

The Court decided, by a 5-4 margin, that the University of Virginia could not refuse funding to the student-run Christian newspaper, *Wide Awake*. The majority included Chief Justice William H. Rehnquist and Justice Anthony Kennedy, who authored the majority opinion. They were joined by Justices Sandra Day O'Connor and Clarence Thomas, who wrote a concurring opinion, and Justice Antonin Scalia. A dissenting opinion was written by Justice Thomas Souter. He was joined by Justices John Paul Stevens, Ruth Bader Ginsberg and Stephen G. Breyer.

The case, *Rosenberger v. Rectors and Visitors of the University of Virginia*, 63 U.S.L.W. 4702 (June 9, 1995), may have broad reaching implications for other student publications by upholding previous rulings protecting publications from content-based censorship.

*Rosenberger* began its long journey to the Supreme Court in 1990 when student Ronald Rosenberger requested money from the university's appropriations committee to cover the costs of printing the magazine. The school denied the

funds after deciding that the purpose of the magazine was "primarily religious" but allowed the student organization to use school facilities.

The university defines a religious activity as something that "primarily promotes or manifests a particular belief in or about a deity or an ultimate reality."

That same year the university provided funding for organizations such as the Jewish Law Students Association and the Muslim Students Association, defining these groups as "primarily cultural" rather than religious.

Rosenberger and two other students involved with the production of *Wide Awake* filed suit in federal district court claiming the university violated their rights to freedom of speech, the press, religion and equal protection under the law.

Both parties in the *Rosenberger* case agreed that content was the sole factor governing the school's decision not to fund the publication.

*Rosenberger* pitted two constitutional guarantees against one another: the free expression protection granted by the First Amendment and the Establishment Clause, which insures the separation of church and state interests. The University of Virginia maintained that its denial of funding was supported by the Establishment Clause.

The federal district court in Virginia agreed with the university. This ruling was supported by the U.S. Court of Appeals for the Fourth Circuit. Al-

though the appeals court agreed that denying funds to a publication on the basis of content and viewpoint was generally unconstitutional, the Establishment Clause provided enough justification for the denial, the court said.

Rosenberger and his attorneys, however, argued that since other religious and culturally oriented organizations received funding, the Christian magazine should be given equal consideration.

In their brief, Rosenberger's attorneys argued, "*Wide Awake* magazine is excluded because it 'promotes' Christianity at the University of Virginia, but the Muslim Students Association receives SAF money to 'promote a better understanding of Islam to the University community' through its magazine *Al-Salam*."

The Supreme Court agreed and stated, in effect, that once a state-supported college or university chooses to fund the private speech of campus groups it may not exclude a particular group of students because of the viewpoint of their speech.

"It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint," wrote Kennedy.

"If any manifestation of beliefs

in first principles disqualifies the writing, as seems to be the case, it is indeed difficult to name renowned thinkers whose writings would have been accepted, save perhaps for articles disclaiming all connection to their ultimate philosophy. Plato could contrive perhaps to submit an acceptable essay on making pasta or peanut butter cookies, provided he did not point out their (necessary) imperfections."

Kennedy stated that by denying funding to the magazine the university had denied religious students their free-speech rights.

"The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction," Kennedy wrote.

"Vital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and if so for the State to classify them," Kennedy said. "The second, and corollary, danger is to speech from the chilling of individual thought and expression.

That danger is especially real in the University setting, where the State acts against a background and tradi-

tion of thought and philosophic tradition."

In a concurring opinion, Justice O'Connor addressed the issue of reconciling freedom of speech with the Establishment Clause, which demands the government remain neutral on the issue of religion. "Withholding access would leave an impermissible perception that religious activities are disfavored," she wrote.

Justice Souter authored the dissenting opinion and expressed concern about the funding of a religious publication by a government agent. "The Court today, for the first time, approves direct funding of core religious activities by an arm of the state." Souter added that he felt the decision was in direct conflict with the Establishment Clause of the First Amendment.

Supporters of the decision hope the case will provide more protection to student newspapers nationwide against censorship and the removal of financial support by school officials.

"The viewpoint discrimination inherent in the University's regulation required public officials to scan and interpret student publications to discern their underlying philosophic assumptions respecting religious theory and belief," Kennedy wrote.

"For the university, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the nation's intellectual life, the college and university campuses," he continued.

Next year's *Wide Awake* staff is currently planning to request student activity funds in the fall. The response they receive from school administrators should be markedly different from the answer they received five years ago.

The decision has already impacted funding at one North Carolina university. Following the Su-

preme Court ruling, Paul Hardin, chancellor of the University of North Carolina at Chapel Hill, ordered that funding be made available to four campus publications that were previously denied funds by the student government.

The student government had based its decision on clauses in the student constitution and student government code that prohibit funding to religious or politically partisan groups.

According to the university's student newspaper, *The Daily Tar Heel*, after the Supreme Court's decision UNC legal counsel advised Hardin that the clauses were now unconstitutional. The university is planning to make revisions to the Student Constitution and Student Government Code by early fall.

Student Body President Calvin Cunningham said he hopes *Rosenberger* will quiet conflicts that have arisen at UNC concerning the funding of various magazines, but worries it may cause a drastic increase in the number of publications seeking funds. UNC currently has 350 officially recognized campus groups.

"Funding is spread fairly thinly now," Cunningham said. "I think it will present some problems for the funding pool. Large groups will have to adjust to sharing funding with smaller groups."

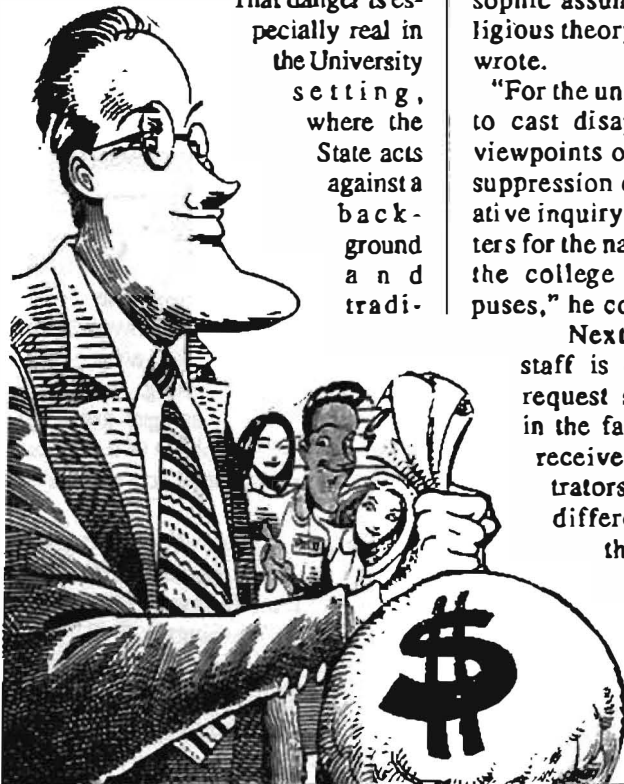
Charles Horner, president of the Madison Center for Educational Affairs, which sponsors the Collegiate Network, an association of over 60 student-run conservative publications nationwide, said he isn't convinced the ruling will automatically mean changes on all college campuses.

"As best we understand the case, it seems to encourage a diversity of viewpoints on campus," he said.

But Horner also cautioned that he believes the facts of *Rosenberger* are too specific to automatically apply to other schools.

"I would suspect that issues of this type will still have to be decided on a case by case basis," he said.

Horner said in *Rosenberger* the university was funding two other religious magazines and therefore the issue of discrimination was more obvious than it might be in other cases. ■



# Congress debates bill to police superhighway

Lawmakers target 'obscene, indecent' communication

WASHINGTON, D.C. — The battle over Internet restrictions has recently divided the Senate and the House of Representatives.

On June 14, U.S. Sen. Jim Exon's (D-eb.) Communications Decency Act amendment was passed in the Senate by vote of 84-16.

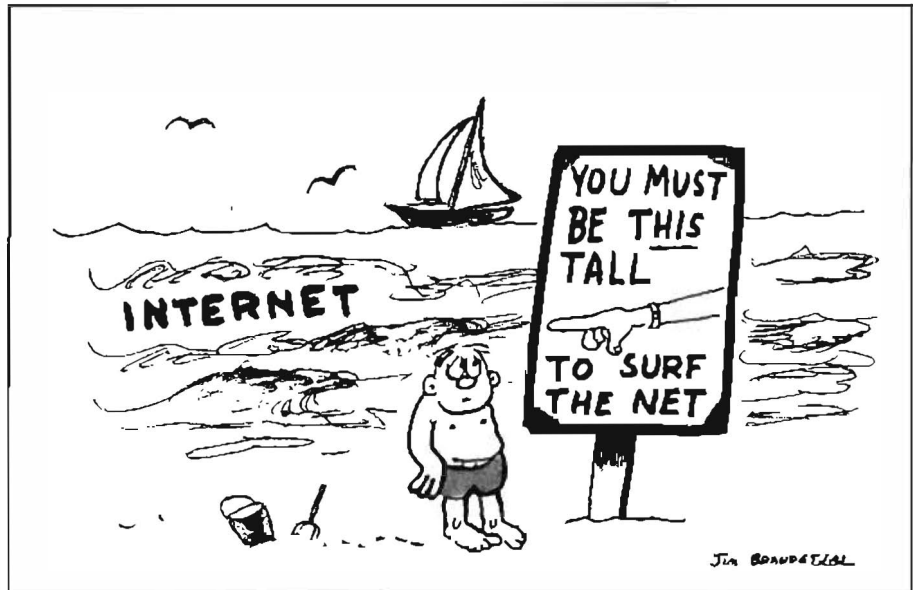
In August, however, the House of Representatives passed an amendment that would effectively take the wind out of Exon's sails.

The House, by a 420-4 vote, passed an amendment to prohibit regulation of the Internet by the Federal Communications Commission (FCC). The House amendment, titled the "Internet Freedom and Family Empowerment" amendment, encourages parents to use available software to limit what programs are available on their home computers.

This comes as a relief to many who worried that the Senate bill amounted to government censorship. Speaker of the House Newt Gingrich stated that Exon's amendment was probably unconstitutional.

The final legislation will be determined by a House-Senate Conference Committee.

The Senate bill would make it illegal to



transmit any "indecent" communication to any person under 18 years of age, even if the person initiated the contact. The bill also increases the penalties for transmitting obscene material over a computer. Violating the bill's provisions could result in a jail sentence of up to two years, and a maximum fine of up to \$100,000.

The U.S. Supreme Court has defined obscenity as that which appeals to "prurient interest, as judged by community stan-

dards," and lacks "serious literary, artistic, political, or scientific value."

Although the amendment offered no definition as to what would be considered "indecent" communication, Exon's spokesperson Russ Rader said his office views indecency by the standards set forth by the FCC. The FCC has defined indecency as "language or material that, in context, depicts or describes, in terms patently

(See *INTERNET*, page 8)

## Federal judge dismisses charges in Internet case

MICHIGAN — A federal district court has dismissed the charge of transmitting a threat over state lines by electronic mail against a University of Michigan student Jake Baker.

The ruling, which was handed down in June, came six months after the student was arrested by the Federal Bureau of Investigation for posting a violent and sexually explicit fantasy about a fellow student on a computer bulletin board. Defense attorneys argued Baker's writings were free speech and thus protected by the Constitution.

Prosecutors, however, believed that Baker's electronic messages and discussions about the woman were akin to threats. If convicted Baker could have faced a maximum sentence of five years in prison.

Instead the judge ruled that the case should be handled as a disciplinary matter by the university. The university suspended Baker shortly after discovering the Internet story, citing school

bylaws that give the president the power to maintain "health, diligence and order among the students." The university was notified of the story by a University of Michigan alumnus who contacted school officials after seeing the posting.

Also troubling to the university were messages exchanged between Baker and a Canadian man in which the two discussed ways to carry out the fantasy, which included acts of rape and torture.

Critics of the case have questioned why electronic speech receives less First Amendment protection than the spoken word. This concern is echoed by David Banisar, lawyer for the Electronic Privacy Information Center in Washington, D.C.

In a *New York Times* interview Banisar said, "Idle banter across the Internet, even if it is discussing things most people are appalled by, is still not a crime, any more than if it were discussed in a bar or a college dormitory." ■

# Near-nude photo sparks student anger

## Outraged feminists take aim at national law magazine

CALIFORNIA — A nearly nude woman has caused problems at two different California campuses for *National Jurist* magazine.

The magazine's April/May issue created quite a stir at both the University of Berkeley's Boalt Hall School of Law and California Western School of Law in San Diego when several students and professors became offended at the cover choice for the publication.

The cover of the magazine featured a woman covered in money and the headline "Money — How much do you need?" The photograph accompanied a story about repaying law school student loans. Two other photos of the female model in slightly different poses were featured inside the magazine.

The *National Jurist* is an independent student magazine distributed to roughly 80 law schools nationwide.

Shortly after the magazine was distributed, a group of students at California Western ripped the covers off of about 300 issues, returned the issues to the racks and mailed the covers back to the *Jurist* office in Arlington, Va. The local media, tipped off by someone on campus, arrived in time to capture the event on film, leaving no doubt to the identity of the participants. The school, however, failed to take any action against the group.

Linda Cianciolo, a third year law student at Western and a participant in the "protest," said the event was a spontaneous response to what she considered an inappropriate photograph.

"I find it offensive anytime anybody uses a woman's body to sell something," Cianciolo said. "It is especially inappropriate for something called the *National Jurist*, which goes to law schools where 42 percent of the student population is women."

Cianciolo admits, however, that she has received criticism from those who feel she has tried to censor the magazine and thereby squelch the First Amendment rights of the publication.

"It was an act of civil disobedience and peaceful protest," she said. "Things like this involve balancing the First Amendment

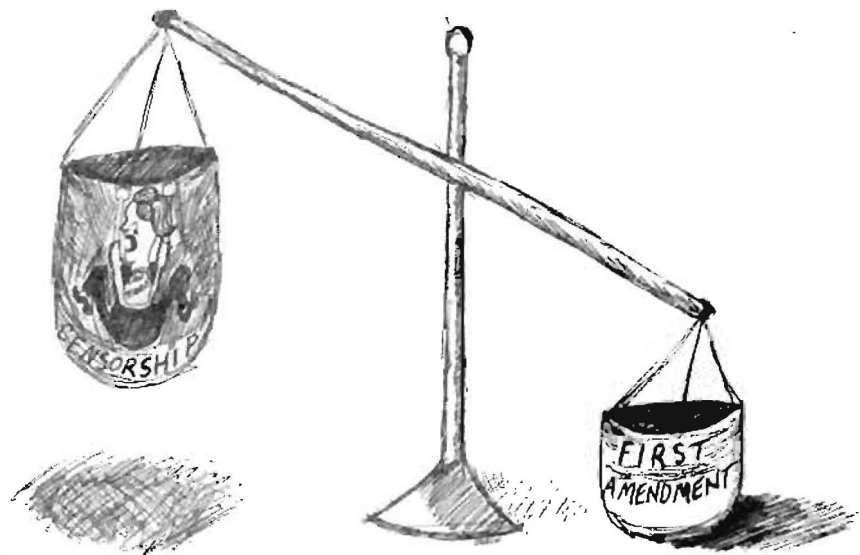
against the other students' right to peacefully protest. We've been accused of censorship and violating the First Amendment, but this is not a First Amendment issue because we're students, not the state, therefore it's not censorship. The magazines were still there for people to take even if they didn't have covers."

The opposite side of the cover page featured a full-page ad for Gilbert Law Summa-

ries along with information on how to order the study aids. When questioned how she justified depriving the advertisers of part of their audience, Cianciolo said students at her campus receive mailboxes full of such ads each semester and were well aware of the product.

*National Jurist* publisher Jack Christenden said that his staff had no idea the cover would

(See *JURIST*, page 9)



## April theft of Simpson College newspapers remains unsolved

IOWA — When the Simpson College student newspaper carried a story about criminal charges being filed against two students allegedly involved in a credit card scam, almost no one noticed. They might have, of course, if they had seen the issue.

A portion of *The Simpsonian's* 1,200 issue press run disappeared minutes after it was distributed on the evening of April 17. Students involved in the credit card incident approached the newspaper earlier that week and said they would not permit the story to run.

One student later admitted to taking some of the papers, but claimed he returned them soon afterwards, fearing the consequences of his action. The college took no measures against the student and failed to condemn his actions.

Brian Steffen, adviser to *The Simpsonian*, said he is frustrated that no one has been made accountable for the theft.

"As far as I'm concerned, the kid's admission that he took the papers amounts to theft, even if he returned them," he said. ■

# Student photographer arrested at bomb site

DELAWARE — When photographer Kelly Bennett flew to Oklahoma in April, he didn't expect his trip to include a visit to the local jail.

Bennett, a photographer for the University of Delaware student newspaper, *The Review*, and Melissa Turrell, a writer for the publication, traveled to Oklahoma City to report on the aftermath of the bombing of the Alfred P. Murrah Building. The trip was funded by a grant from *Reader's Digest*.

Trouble began when Bennett accidentally crossed a police line located roughly three blocks away from the building. He was soon approached by police officers who placed him under arrest and confiscated his camera equipment and film. Bennett has stated that at the time he did not realize he had crossed the police line, which he contends was not well

marked, and that he was not taking pictures at the time of his arrest. After spending five hours in jail, he was released and ordered to return to Oklahoma for a court appearance in June. Oklahoma City Police did not return Bennett's camera and film.

At the hearing Bennett pled guilty to crossing the police line, was fined \$300 and placed on unsupervised probation for six months. If, at the end of six months, he has not been arrested for a similar offense, his record will be cleared.

Bennett and his attorney, Gloria J. Moore, are currently trying to retrieve his film and equipment from the authorities.

Although Bennett said he briefly considered battling the charge in court, in the end he decided not to pursue the matter.

"It was just a lot easier," he said. "All I had to do is pay the \$300 fine and now I don't have to go back." ■

## Internet

*(continued from page 6)*

ensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs."

Using this definition, student publications that publish on the Internet could find themselves subject to criminal prosecution for distributing "indecent" material that would be protected in the print version of their publication.

In a statement of support for his bill, Exon wrote: "What the legislation will do is give law enforcement new tools to prosecute those who would use a computer to make the equivalent of obscene telephone calls . . . and to enhance the process of prosecution of those who would disseminate pornography to children via computer."

Exon said his legislation is designed to make the Internet safe for younger users. Critics, however, say the restrictions imposed by Exon are unwarranted and unconstitutional.

L.B. Quinn, legal counsel for the Freedom Forum First Amendment Center at Vanderbilt University, said the Exon amendment clearly restricts First Amendment liberties.

"A lot of things are wrong with the Exon amendment," he said. "My first problem with it is the practical problem of how

Congress expects to enforce this kind of law. Is Congress going to give power to just visit peoples' computers at home?"

Quinn said that although he believes outside influences such as the media and cyberspace have an impact on children, restricting the access of all Americans to these technologies violates the First Amendment.

"Congress is trying to be either a parent or baby sitter and it's not the role the Constitution says it should have. The Constitution says the government cannot be a viewpoint determiner," Quinn said.

Another concern is deciding how courts will determine whether or not Internet messages are obscene based on different "community standards." If, for example, a non-obscene message originating in New York is judged to be obscene by the community standards of Arkansas, can the sender be prosecuted? What about electronic messages from other nations?

According to reports from the Associated Press, one such case was decided in a Tennessee federal court in July.

The case involved a California couple who were charged with transmitting obscenity through interstate phone lines via a computer bulletin board after a local resident complained about the material.

The case, which marks the first time the originators of an electronic message have been put on trial in the state where the message was received and not sent, ended

with the couple being convicted of 11 counts of transmitting obscenity. Although a sentencing date has not been set, each count carries up to five years in prison and a \$250,000 fine.

"The problem with [the Exon Amendment]," said Quinn, "is that they can't enforce it and they won't enforce it fairly."

These concerns are echoed by Shari Steele, director of legal services for the Electronic Frontier Foundation, a First Amendment organization based in Washington, D.C., who also believes the Exon Amendment to be a violation of basic free speech rights.

"It's unconstitutional," she said. "It takes speech that is protected and confuses it with other speech, such as obscenity, which is not."

Steele also disagrees with the picture Exon and others paint concerning the ease with which children can stumble into the rougher areas of cyberspace. She says it takes a great deal more than simply typing a few keys to gain access to the adult areas.

A better solution than the Exon Amendment, Steele said, would be to let parents install filtering software on their home computers that would limit what areas of space children have access to.

"Although I think it's appropriate to want to protect children from some areas, it isn't fair that the rest of us get bumped down to a four-year-old's level," she said. ■



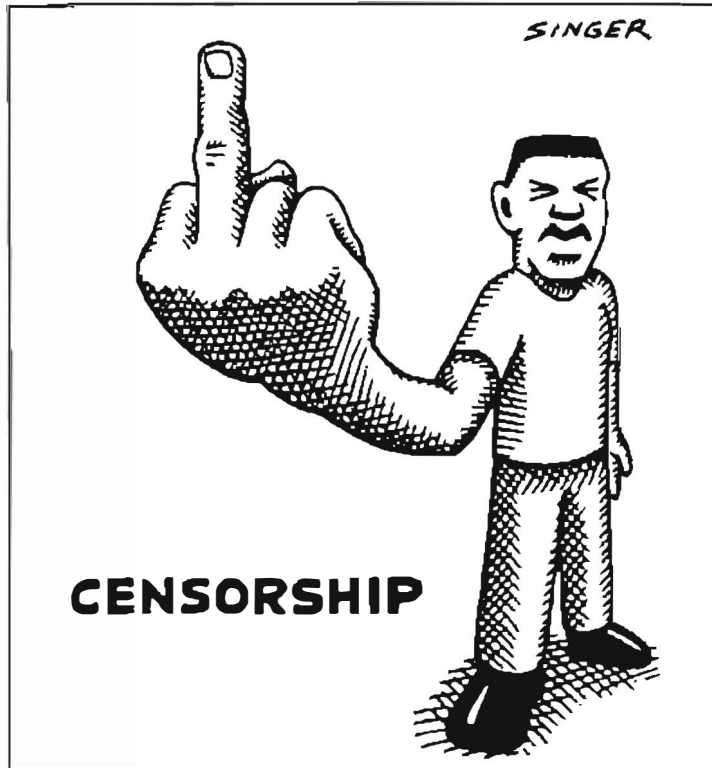
# Student government demands apology, fires editors following publication of controversial cartoon

WEST VIRGINIA — A picture may be worth a thousand words, but a cartoon published in the Salem-Teikyo College student newspaper brought about a demand for a written public apology.

In an April issue of the *Green & White*, editors chose to illustrate an article about censorship with a cartoon depicting a man with his middle finger sticking up.

Beneath the gesture was the word "censorship." School officials, it seems, were less than amused and demanded the newspaper print a public apology.

According to editors Warren Gardner and Gary Weaks, relations between the newspaper and the student government were already strained as a result of a November article critical



Cartoon that sparked controversy at Salem-Teikyo College. Courtesy of National Student News Service

of the group's management of student funds.

Salem-Teikyo's student government is responsible for allocating funding to student groups and clubs, including student media.

Shortly after the April cartoon was published, Gardner and Weaks were removed from their positions on the paper by the student government vice president, who oversees the student media.

A public apology for the cartoon was never issued by the *Green & White*.

Gardner and Weaks currently hold no positions on the newspaper but are planning to work as staff writers next year.

Student government officers were unavailable for comment on the issue. ■

## Jurist

(Continued from page 7)

prove controversial.

"I think if we had known a percentage of readers would be offended we would have chosen a different cover," he said. "Our intent was not to show women in a sexist or derogatory fashion. Most of our readers had no problem with it."

He also said he was especially surprised that law school students would deface a publication. "You would think law school students would have a better understanding of the First Amendment," he said.

Christenden said at this point he has no plans to take action against the group. "We felt we had the right to take action, but we decided it would only exacerbate the situation. If this becomes an ongoing problem we will take action."

The *Jurist* also sparked heated debate at University of California at Berkeley's Boalt Hall School of Law, where in an open letter to *Jurist* editor Jodi Clecsaule, Dean Herma Hill Kay condemned the cover stating, "...it borders on the pornographic and has no place in this or any other law school."

Her letter was quickly followed by an open letter from Stephen

R. Barnett, another member of the Boalt Hall faculty, who accused Kay of issuing veiled threats of censorship against the magazine and stated his belief that someone had removed copies from the distribution area.



Photo from April/May *National Jurist*

Christenden said he hopes the school does decide to officially ban the magazine from the campus.

"When it becomes an official action of the university, as opposed to a few students acting on their own, it becomes a much bigger issue," he said. Lujana Treadwell, assistant dean of Boalt Hall, said there are no plans to stop the publication from distributing on campus. ■

# Students 'censor' statue in response to school's removal of controversial literary magazine

**RASKA** — The student literary magazine "Potpourri" was removed from the Concordia College campus in 1985 by administrators who felt the magazine's language was inappropriate for the church-sponsored school. Administrators were specifically concerned about the poem in the magazine which dealt with the subject of suicide.

The poem, "Big Deal" by Jon Walz, begins, "Feel death's icy / It's so soothing/Forget your / sins/Life ain't worth it/(What / is--?)" On the last line of the poem the word "is" is spelled in its entirety.

The school's newspaper, *The Sower*, published the poem shortly after administrators confiscated the magazine, but they removed the word from the final line. The newspaper has not suffered any consequences for this action.

In a written statement, President John Walz said, "No matter what the context or intent of the poem is, the use of an obscene expression offends me and many others, and therefore reflects nega-

tively on the college."

Walz also said although the college supports artistic freedom, "as a Christian institution we must consider the appropriate witness of materials published and distributed."

The incident has caused campus debate on the issues of artistic freedom and the First Amendment rights of students.

Following the removal of the magazines, a sculpture on campus titled "Christ Frees Us" was found with tape covering the eyes, ears, mouth and genitals of the naked man.

A note taped to the work asked why the sculpture was considered art while the poem was not. ■



## Newspaper, administration at odds over theft *Conflicting reports circulate concerning number of issues stolen*

**NC** CAROLINA — Controversy surrounding the theft of newspapers at Durham Technical College has caused conflicting reports from staff members and school administration.

Editor in chief Barry Smith-McCauley said about 2,500 issues of *Tech Tribune* were taken after they were distributed Tuesday, May 23. According to Smith-McCauley, the issues were gone at 9:45 p.m., 15 minutes after the campus buildings were closed for the night, and were discovered missing the next morning by Business Manager Mike Wynn. Later that morning 356 issues were found in a dumpster near one of the buildings.

"I think that freedom of speech doesn't amount to very much when you can't distribute a newspaper," Smith-McCauley said. "It's very frustrating because we're in a position where we can't prove who did it, and I honestly believe we never will."

Smith-McCauley said he did not believe a student was responsible for the theft since students, at least in theory, do not have access to the buildings at night.

However, University President Phail Wynn contends that only the 356 papers found in the dumpster were actually stolen, with the remaining copies being picked up legitimately by students on Tuesday afternoon. Wynn claims he saw stu-

dents distributing copies early that morning and that students appeared to be picking up copies at a brisk pace.

Smith-McCauley said that although some papers were distributed during the day, these accounted for only a few hundred, with mass distribution occurring that night.

As far as the 356 papers recovered from the dumpster, Wynn said campus security has not been able to determine a suspect or motive. "An investigation and search by campus security came up with nothing," he said. "No one witnessed anything and we have no idea why they were taken. We are currently discussing purchasing distribution (See *THEFT*, page 12)

# Newspaper sues Stanford University after World Cup hampers distribution

CALIFORNIA — The *Stanford Daily* filed a lawsuit in June against Stanford University for denying the newspaper access to distribute issues inside the campus stadium during last year's World Cup soccer game.

The student-run newspaper, which is independent of the school, claims that by doing so the school violated its lease contract with the paper and hindered its ability to distribute. The university denies the charges, citing provisions in the contract that allow limitations on the placement of the newspaper. Officials at the university refused to let students distribute the special World Cup edition of the paper inside the stadium because the Federation Internationale de Football Association (FIFA), world soccer's governing body, and World Cup USA '94, the national group that handled planning of the event, refused to let unauthorized products in the stadium area.

In a statement released by the university, President Gerhard Casper said, "By no stretch of the imagination is this a First Amendment case. It should cause anyone responsible for the fragile enterprise of higher education dismay when a student newspaper takes its university to court over the question of whether a lease agreement conferred an entitlement to distribute a publication inside the stadium area at World Cup soccer matches, as opposed to across the street, where it was in fact distributed."

But *Stanford Daily* editor Andy Dworkin said he believes this is very much a First Amendment case and is important because any restriction on distribution will affect the circulation of a newspaper.

"The parameter around the stadium where we were allowed to distribute wasn't close to all the areas people walked through," he said. "This reduced the number of people who could pick up our newspapers and therefore our ability to distribute was limited. Our paper has a 22-year-old contract with Stanford that says we can distribute anywhere on campus." Dworkin said that the restricted use of the stadium clearly violated that contract.

The student newspaper cites a section of the lease which states the newspaper can be distributed anywhere on campus as long as distribution does not "physically interfere with the free movement of persons or property at any place on the campus."

Tom Fenner, senior university counsel, said that this is an incomplete reading of the lease and omits portions stating that the university reserves the right to close certain areas of the campus.

"Common sense tells you that the *Daily* does not have unlimited rights to distribute anywhere it wishes on campus—say, in operating rooms at the hospital or the living rooms of faculty homes," Fenner said.

Dworkin said this was a ridiculous argument and that no comparison could be made between an operating room and a sports stadium.

"All we wanted to do was have newspapers inside the stadium for people to take if they wished," he said. "We didn't even want to go down the aisles handing them out. We just wanted people to have the option of taking one."

The university also cited sections of the lease that define the



publication as "a newspaper primarily serving the Stanford community." Fenner believes that the World Cup is not a Stanford University community event in the way a Stanford football game is, and the special World Cup edition of the *Daily* was not aimed at serving the Stanford community but at outside fans attending the game.

Dworkin said this is a weak argument because the soccer match had a direct impact on the campus community.

"Something this big occurring at Stanford makes it an event for the Stanford University community," he said. "Stanford people were heavily involved in bringing the event here and tending to it while it was here."

The university says that in taking the issue to court, the *Daily* is violating a specific contract provision requiring that all disputes related to the lease be settled in arbitration rather than court. Although both parties were originally involved in arbitration proceedings, the newspaper ceased talks and filed a formal suit. Dworkin said the publication had three reasons for leaving arbitration.

"First of all, going to a suit ensures it can be decided based on the rule of law," he said. "Secondly, a First Amendment issue such as this can be better decided in court. Finally, the court offers the possibility of appeal while arbitration is considered final."

The newspaper is seeking damages, punitive damages, attorney's fees and an injunction against future restrictions on distribution. The suit is scheduled for a hearing in early fall. ■

# College Censorship

heft

(continued from page 10)

for the papers and having security guards check on them periodically." Almares said he also believes the stolen newspapers were the only ones not stolen. "Three thousand copies were not stolen. All that was retrieved was 356," he said. Almares believes a giveaway promotion featured in the paper supports the theory that students were in a hurry to pick up the last issue of the *Techline*. He said the paper did not contain articles inflammatory enough to

provoke a massive theft.

"I really don't see any real reason why they would have taken them," he said. "It could have possibly been a graduation prank by some group or organization."

But Smith-McCauley said an article and an editorial critical of the administration may have prompted a faculty or staff member to want to remove the issues and that he does not believe the 2,500 copies were picked up by students.

"If students had picked up all of the papers for the giveaway contest they would have turned the entry forms into the newspaper mailbox as indicated. We only received a few responses," he said.

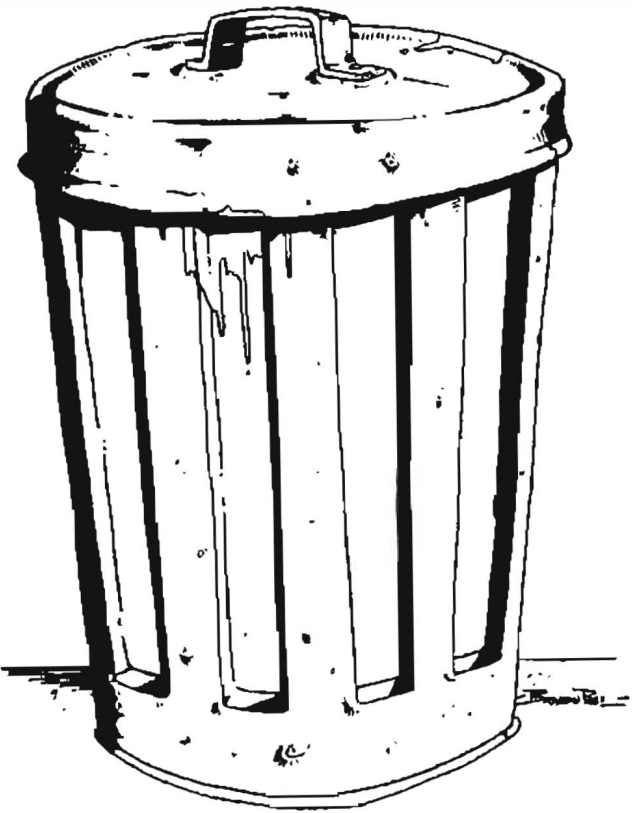
According to Smith-McCauley, there has been a silver lining to this particular cloud.

"While this is a terrible situation, some good has come out of it," he said. "The local professional and college press have been very supportive and a strong relationship has been formed with them."

*The Daily Tar Heel*, the student newspaper of the University of North Carolina at Chapel Hill, and *The Chronicle*, Duke University's student publication, both donated money to help cover the cost of reprinting the issue.

The new press run featured four extra pages devoted to reprints of local coverage of the theft. ■

## THE LATEST CRAZE IN DISTRIBUTION RACKS



## Newspaper thieves receive no sanctions from Salem officials

MASSACHUSETTS — Officials at Salem State College have decided not to take action against three students who removed 1,500 newspapers from campus distribution sites in February and returned them to the editor's office to protest what they considered racially biased reporting.

The students said they removed copies of *The Log* to protest an article about an African-American Student Association-sponsored dance that ended in the arrest of four students.

When the newspaper printed the names of the students involved, black students accused the paper of being racist and argued that if the students involved in the fight had been white, the story would not have received as much media coverage.

The same issue of the paper, however, featured eight other stories about African-American guest speakers visiting the campus and other events sponsored by AASA. ■

# Student newspaper triumphs over charges

## Dean reverses earlier censure over reporting of athlete's arrest

GEORGIA — The student newspaper at Mercer University faced disciplinary action after it reported that a student athlete had been arrested and brought up on disciplinary charges.

The issue arose in January after the *Mercer Cluster* published a story about the arrest of a member of the women's basketball team for driving under the influence of alcohol (D.U.I.) and leaving the scene of an accident. The arrest information was obtained from the public records at the local police station.

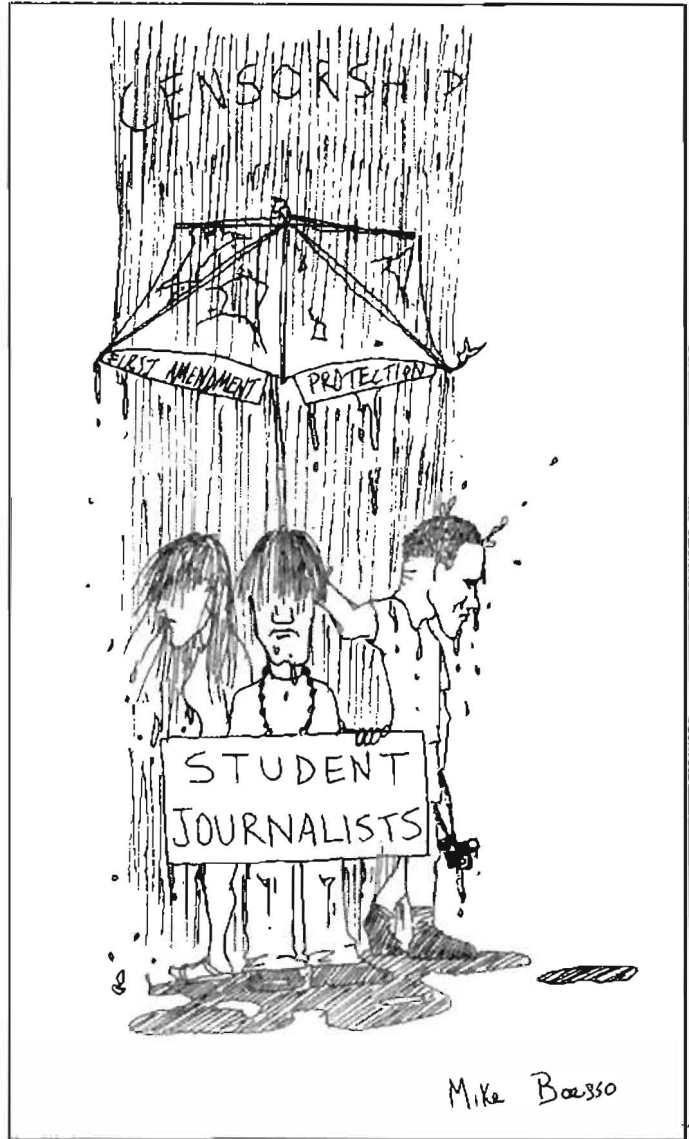
In addition to the arrest information, however, the newspaper also printed the time and place of the student's judicial board hearing, which is considered confidential by the university. The university's judicial council accused the newspaper of violating the woman's right to confidentiality.

Samuel F. Hart, assistant dean of student affairs, said the council was concerned the article hindered the woman's right to due process, citing the Buckley Amendment, which many schools claim prohibits a school from disclosing the names of students who face disciplinary action. The university also has internal regulations that prohibit publication of such names. In a letter, Hart said the newspaper falls under the jurisdiction of the student judicial system because it is a student organization.

The judicial board originally brought a contempt charge against the *Mercer Cluster*. This charge was later dropped due to insufficient evidence. The newspaper was, however, convicted of disorderly conduct. Under Mercer rules, the penalty for disorderly conduct is censure.

This ruling was later reversed by J. Barry Jenkins, dean of students, who said that shortly after the verdict the school received letters from the Department of Education stating that the Buckley Amendment does not apply to student publications.

Although Jenkins lifted the punishment of censure against the paper, he asserted the judicial board's right to make decisions and rulings against the newspaper. "The *Cluster* was concerned that the judicial board was trying to impose editorial type control, but that is not true. The judicial board has no editorial type of authority over the board of publications." ■



# Michigan school outlines new cyberspace policy

MICHIGAN — Students at Northwestern Michigan Community College who were denied permission by the university last March to put their newspaper and literary magazine on-line have received good news from school administrators.

Following meetings by a university task force set up to discuss the matter more thoroughly, the school has developed policies outlining procedures to

put the publication on the information superhighway.

The President's Council originally decided to keep the publications out of cyberspace because they felt a partially nude photograph in the literary magazine would cause too much controversy.

A new policy, which has been drafted but still awaits approval from the college president, will allow both the *White Pine Press* and *NMC Magazine* to be

made available electronically.

Marilyn Jaquish, newspaper adviser, said she feels the policy is a victory for the student press and does not consider the guidelines restrictive.

"Students should be aware of not only their rights, but also their responsibilities," she said.

Jaquish said she hopes the a final version of the policy will be approved by early fall. ■

# The Fight For Access

When the right to know battles the right to privacy, journalists are suffering some painful punches — and coming back for more

In the interest of holding law enforcement agents accountable to the public they serve, journalists around the country continue to seek access to disciplinary records, crime reports and court proceedings.

In the interest of shielding themselves from public scrutiny and protecting their right to privacy, the agents continue the fight to keep such things under wraps.

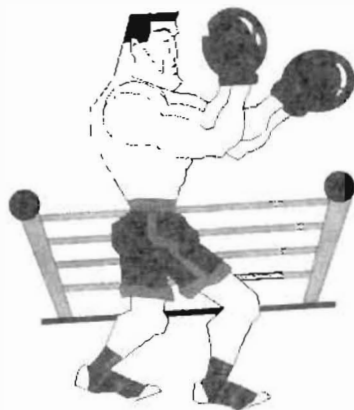
Courts and lawmakers send mixed messages to those fighting on both sides. Recently, several states have taken steps to limit public access to various areas of law enforcement.

In Hawaii, Gov. Benjamin Cayetano signed a bill in June sealing all records of police misconduct except in cases where the officers are actually discharged. (See *HAWAII*, page 16.)

In Missouri, Gov. Mel Carnahan signed a bill in July defining the difference between investigative reports and incident reports and effectively closing investigative reports to the public until the investigation is complete. (See *MISSOURI*, page 31.)

And in Louisiana, a local Society for Professional Journalists chapter recently dropped its appeal of a ruling stating that student disciplinary records and hearings at the university did not have to be disclosed. (See *SPJ*, page 5.)

Taken together, these cases illustrate a trend in some states to withhold information about law enforcement that



the public may find beneficial. But what impact do the decisions have on the student press? And what do they say about the future of the public's right to know?

Gordon McKerral, chairman of the Society for Professional Journalists National Task Force on Campus Courts termed the trend "scary."

"States that want to eliminate access to public records or want to close off citizens' right to find out information about any function of government have taken full advantage of abusing their power," he said. "It's not a good practice. It's not the right thing to do."

McKerral said the sealing of police officers' disciplinary records in Hawaii is particularly troubling and will affect the student press.

"Anything that has to do with police records has an impact on reporting on campus crime," he said. "Often the two agencies work in tandem, often like tag team wrestling. Any kind of legal action

that is going to have an impact on law enforcement will certainly have an impact on campus."

But continuing to cover police aggressively is important, McKerral said, because law enforcement agencies are "just like any other bureaucratic system" in that they are "ripe for abuse, mistakes, wrongdoing."

"Police officers who want to stretch the law, the limits of their authority and take advantage of people are certainly in a better position to do so than an accountant, or say a school teacher, by virtue of the authority invested within them," he said. "The only way to prevent that is for people to have access to what they do," he said.

In addition, some say bills and court decisions limiting access will set precedent for others to seek shelter from public scrutiny.

Gerald Kato, the adviser for the University of Hawaii Society for Professional Journalists, the group that originally sought access to the police disciplinary records in 1993, said the state's new bill will "open up the flood gates" for other officials to hide records from the public.

"It's clear that one way or the other, all other public workers are going to want exemptions and negotiated secrecy whereby unions will negotiate provisions in their labor contracts saying disciplinary records are private," he said.

"Our interest is having the govern-

ment accountable," he said. "We hold people accountable by having the opportunity to, if we want to, look at what's going on in the organization."

But public scrutiny, the police officers complain, can be taken too far and can infringe on their privacy and the privacy of their families.

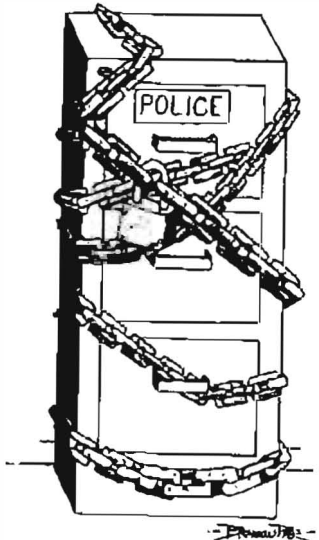
In a guest column for the Oct. 21, 1994, issue of the *Honolulu Adviser*, then-interim business manager of the State of Hawaii Organization of Police Officers Michael Joy pled with readers to support the police union in its fight to keep disciplinary records private.

He said police officers are often faced with "split-second decisions" and "dangerous situations," causing occasional errors. When mistakes do occur, Joy said, the officers accept the discipline, "some of which is harsh."

"[P]utting our officers to public ridicule affects our families," Joy wrote. "Why should our spouses, immediate family and friends, and more important, our children be subjected to further ordeals for something in which they had no part?"

McKerral agrees that privacy is "an important issue," but says police officers, given their authority, have to accept "significant public scrutiny."

"You're talking about sweeping authority over a lot of citizens — policy making authority, arrests, search and seizures; they're allowed to do a lot of things," he said. "They must understand when they take the job that . . .



they'll probably need to be watched and expect to be watched closer than other people."

Campus courts, former Louisiana State University student Michelle Millhollon will attest, are equally important to watch, and equally difficult to access.

Millhollon was the plaintiff in the suit attempting to obtain access to records of a disciplinary hearing involving two students who admitted taking money from a student government-run book exchange.

"We have a job to educate the public on why [access to court proceedings] is so important," she said. "What universities are setting up are their own little courts dealing with stealing, rape, assault — things that do not need to be handled behind closed doors. They're sweeping things under the carpet."

District Judge Scott Crichton ruled against Millhollon and the SPJ in February 1994. Millhollon said the ruling was detrimental to the public as much as to the media.

"It's the public's right to know, not the media's," she said. "We need to stress that records aren't for the media, they're for the public."

But Millhollon said she received little support from the community and local media in her fight, and eventually she dropped the appeal of the decision. Still, she said, the lawsuit was a worthwhile undertaking.

"It wasn't a popular decision [to sue the university], but it's one I'm glad I made," she said. "I hope it shows administrators we're serious about doing our job as journalists, even as student journalists."

Lucy Dalglish, Freedom of Information chairwoman for the Society for Professional Journalists, said more journalists need to be willing to step up and take a stand against limiting access.

"Become active and realize that we're doing this on behalf of the public, but the public is not organized," she said. "We have a responsibility to go to lawmakers and let them know that it's wrong."

"We have to become much, much more aggressive about lobbying for First Amendment interests because we're the only ones doing it." ■

## SPJ chapter drops appeal

LOUISIANA — After a frustrating year and a half, the Shreveport chapter of the Society for Professional Journalists decided to throw in the towel in its battle for access to student disciplinary records and meetings at Louisiana State University-Shreveport.

The group, along with former LSU-S student Michelle Millhollon, filed a lawsuit against the university in October 1993 when it refused to hand over the records of a disciplinary hearing involving two students who admitted to taking money from a student government-run book exchange.

The court heard the case in February 1994 and ruled that the information Millhollon and the SPJ requested did fall under the Louisiana Public Records Act. However, the court ruled, the information was also part of the students' education records covered by the Family Education Rights and Privacy Act, commonly referred to as the Buckley Amendment, and did not have to be disclosed.

Millhollon and the SPJ appealed the decision, but have recently decided to drop the lawsuit.

Shreveport SPJ President Frank May said the U.S. Department of Education's confirmation of the closing of disciplinary records under the Buckley Amendment, as well as an "unfavorable" court panel chosen to hear the appeal and "little support from other Louisiana media groups," all led to the dropping of the lawsuit. But the fight was not in vain.

"The pursuit of this information brought tremendous statewide and some national attention to the issues of crime on campus and university judicial systems," May said.

"I can safely say that today more student journalists and their campus papers are gaining access to crime reports and campus judicial information in Louisiana than ever before." ■

# Hawaii passes law limiting police record access

## Local SPJ plans to continue battle for disciplinary reports

HAWAII — The Society for Professional Journalists at the University of Hawaii-Monoa suffered a painful blow recently in the fight for access to police disciplinary records, when the state passed a law sealing all records of police misconduct except in cases where the officers are actually discharged.

Gov. Benjamin Cayetano allowed the bill to become law June 21 without his signature, effectively closing off the names and records of all police officers who are disciplined but not fired.

The law states that disclosure of disciplinary records would constitute an "unwarranted invasion of personal privacy" unless the records show an employee's suspension or discharge, in which case the police would disclose the following: "The name of the employee, the nature of the employment related misconduct [and] the agency's summary of the allegation of misconduct."

The law took effect upon approval. "I'm really disappointed," said Gerald Kato, the SPJ campus adviser. "But we're going to do our thing and keep on trying."

The SPJ's "thing" happens to be a lawsuit — scheduled to go before a Hawaii circuit court Nov. 13.

"The new law is a big step backwards, unfortunately," Kato said. "But it's not going to stop us from pursuing the lawsuit."

The struggle for access to the reports began in August 1993 when the University of Hawaii SPJ chapter sought the names of four disciplined officers under Hawaii's freedom of information law. The police chief complied, but the police union asked for and received a restraining order against the chief before the planned release.

The students filed suit to force the release of the names and in a preliminary ruling the lower court ruled in

their favor, stating the public has the right to know the officers' names.

The Hawaii Supreme Court then denied the officers' immediate appeal, but said the names could not be released until the circuit court made a decision on the students' case to force the city to release the names.

The Supreme Court ruling, in effect, gave the union time to lobby the state legislature to change the open records law.

Now, with the new law in place, the SPJ is faced with the fact that an already difficult case is now even harder to win.

"Even if we win in the trial court [Nov. 13], eventually the argument will be 'why release the information if the policy has changed?'" Kato said. "I think the Supreme Court may go along with keeping things secret in the end.

"But what do you do?" he asked. "We're not going to lay down and die here." ■

# Editor loses fight for access to election vote totals

VIRGINIA — In Lucas Wall's eyes, it's not just whether you win or lose that counts.

It's how much you win by.

Wall, the editor in chief of *Centreville Sentinel*, Centreville High School's newspaper, has been battling school officials since May for access to the vote totals of the student government elections.

He has met with little success.

In the *Centreville Sentinel v. Fairfax County School Board*, No. 40698 (4th Cir. May 4, 1995) decision, Fairfax Circuit Court Judge Gerald Lee ruled May 11 that the vote totals were "scholastic records," exempt from the Virginia Freedom of Information Act.

Scholastic records are defined as records that contain information about a specific student and are maintained by the school system. They are exempt from disclosure pursuant to the Virginia Freedom of Information Act.

Wall filed for a motion for reconsideration and rehearing with Judge Lee on May 30 and at press time was still waiting for a response.

"I believe it [the vote totals] should be public knowledge," Wall said. "The school is doing everything it can to simulate a general election, and we're hoping to do the same for election coverage. But one of the most important parts of the



election is the results."

The school has never disclosed vote totals in the past, but Wall said this year was supposed to be different. Pamela Latt, the school's principal, told Wall prior to the elections that she would disclose the vote totals for the first time, provided each candidate knew that the totals could be public knowledge when he or she decided to run.

Candidates signed forms acknowledging that full disclosure (See CENTREVILLE, page 17)





## Judge orders university officials to disclose NCAA inquiry letter

**ALABAMA** — *The Birmingham News* scored a legal touchdown in May when a Tuscaloosa County Court judge ordered the immediate disclosure of a letter of inquiry from the NCAA concerning possible violations by the University of Alabama's football program.

Stating that "the interests of the public in having the University afforded a full and fair opportunity to pursue all leads and avenues of investigation ... have been duly served," Judge Robert B. Harwood ordered University of Alabama President Roger Sayers on May 16 to disclose the entire letter.

*The News* sued Sayers in March, citing Alabama open records laws, after the school made public only the NCAA's summary of the letter, which leaves out specific allegations of violations by the football program.

Sayers maintained throughout the lawsuit that he would eventually release the entire letter of inquiry, but not until "we have completed our inquiry and prepared our response," because "release of the summary before that time

would impede the university's ability to complete its inquiry and prepare its response," according to the *Birmingham News* memorandum.

The newspaper argued, however, that the citizens of Alabama "whose many contributions, financial and otherwise, provide the fundamental support for The University — have both a right and a need to know what those charges are so that they can understand and evaluate the functioning of this public university."

Sayers said the alleged violations are that a university booster helped former player Gene Jelks obtain a loan and that university officials did not respond properly when another former player, Antonio Langham, had contact with a sports agent after the 1992 Sugar Bowl.

Judge Harwood said that some delay in disclosure was justifiable. But because the inquiry could continue for "months down the road," he ruled the letter be made public immediately. ■

## Centreville

(Continued from page 16)

was possible, and Latt said she would disclose the totals.

However, Latt said she changed her mind after she found out no other schools in the county release the vote totals.

She told Wall in a letter that "common sense" supports her decision to keep the totals a secret.

"A student who does not prevail in an election need not be embarrassed by the disclosure of the number of votes he or she received," she wrote. "Moreover, I want to ensure that students are not discouraged from participating in the election process by the prospect of the release of individual vote totals."

Wall said it is "totally ridiculous" to keep secret the results to protect students' feelings.

"If someone is so insecure about the vote totals being printed, what happens when that person is elected and they have to give a speech or make a presentation in front of a class or go before a board and ask for funding or equipment?" he asked. "What happens if they get criticized?"

"I think it benefits us when insecure students don't run for office," he added. "It saves us further problems down the road."

Wall said he ran for several student government positions in the past and lost.

"If the vote totals were released, yeah I'd be discouraged, but I'd get over it and move on," he said. "It's very speculative to just say everyone would be completely upset."

"When the paper prints the results of a wrestling match, the wrestler might be a little embarrassed or hurt, but after a while they'll say 'Oh well. It happens, life goes on.' You've got to learn to deal with defeat or you're going to have big problems."

Judge Lee denied Wall's motion for reconsideration in July. Bill Wall, Lucas' attorney, said he filed a petition requesting permission to appeal to the Virginia Supreme Court. However, since appeals of civil cases are not automatic, the supreme court could decline to hear the case. ■



## Times-Picayune seeking Tulane scholarship forms

LOUISIANA — The year-old hide-and-seek game continues between *The Times-Picayune*, Louisiana's largest newspaper, and Tulane University.

The university hides records, the newspaper seeks them.

After winning access to five state legislators' scholarship nominating forms for Tulane more than a year ago, the newspaper is now suing the university for refusing to disclose those same records.

The Louisiana Civil District Court declared the nominating forms open records in a January 1994 decision, and the state Court of Appeals for the Fourth District upheld the decision in October.

The court, however, stopped short of ordering the legislators to turn over the forms, stating that since the forms were declared open records, it could not simply assume the legislators would refuse to comply with the law.

But this time it's the university refusing to comply. The legislators have authorized Tulane, which now possesses the records, to respond to public records requests seeking access to the forms. But Tulane refused a June 7 request by *The Times-Picayune* to inspect the records, landing the newspaper right back where it started — in court.

"We need to enforce our rights against Tulane," said Jack Weiss, the newspaper's attorney.

The nomination forms first became a matter of public interest in 1993 when reporters for *The Times-Picayune* learned that New Orleans Mayor Sidney Barthelemy

awarded the approximately \$17,000 a year tuition waiver to his son, Sidney Barthelemy II. The public learned about the scholarship when it was recognized in a graduation program.

The newspaper also reported that the mayor granted scholarships to his nephew, the daughter of a city councilman and some children of friends and political allies.

A law dating back to 1884 provides each state legislator the privilege of nominating one student to have his or her tuition waived at Tulane, and the mayor can award scholarships without review.

After discovering the mayor's choice for nomination, *Times-Picayune* reporter Jack Nicholas filed freedom of information requests to one senator and five representatives for access to and copies of all nominating forms. The senator complied, but the representatives did not, prompting Nicholas to file suit.

A year after the court ruled in *The Times-Picayune's* favor, the paper has yet to see the forms, and it is not giving up.

Tyler Bridges, a reporter for *The Times-Picayune* has taken Nicholas's place as the plaintiff and is requesting that Tulane afford the newspaper "the opportunity to inspect and copy all forms, letters or other documents in the defendants' custody by which the present members of the Louisiana Legislature have nominated individuals for tuition free scholarships to attend Tulane."

A court date has not yet been set. ■

## Judge orders university to open search meetings

MICHIGAN — Stating that choosing a university president behind closed doors lacks "common sense," a circuit court judge June ordered Oakland University to make its searches accessible to the public.

"The court is puzzled as to why, in a society that in general trusts government, . . . a unit of government funded by public money . . . would want to be so secretive in the selection of a person to head that organization," Judge Gene Schnelz stated. "It lacks an essential element of education — common sense."

The ruling was made in response to a lawsuit filed in March by *Oakland Press*, after the university announced its plans to conduct closed meetings of a presidential search advisory committee. The newspaper sued, arguing the method violated Michigan's open meetings act. But the university said the meetings could remain closed because the group could not actually hire a chosen presidential candidate.

Schnelz ruled in the newspaper's favor and went on to say that government secrecy should be especially condemned in light of the April 19 bombing of a federal building in Oklahoma City.

Dawn Phillips, the attorney for the Michigan Newspaper Association, said the university appealed the court's decision, and the case is awaiting briefing and argument in the Michigan Court of Appeals.

Phillips said the board of trustees voted to cut short its search for a president until the appeal is ruled on or until the state legislature passes senate bills 211 and 212, which close university presidential searches until search committees have narrowed the field down to three candidates. The bill passed out of the senate and has been referred to the Council of Higher Education.

In a related case, a lawsuit filed in 1993 by *The Lansing State Journal* and *The Detroit News* against Michigan State University closing its presidential searches is still pending before the Michigan Court of Appeals. ■

# Gaining Access To Faculty Disciplinary Records

*As watchdogs for employee misconduct, journalists may find their work either helped or hindered by their respective state open records laws*

**Y**our campus newspaper receives a detailed letter from a student alleging several incidents of sexual harassment by one of your school's professors. The letter indicates the student reported the incidents to the proper administrative office. Yet, according to the student, the harassment has continued, raising doubts as to whether the university has taken any action at all.

You decide to pursue the story. You find that over the past few years there have been other rumors — all unsubstantiated — of students having similar problems with this particular faculty member. During an in-depth interview, you find the student and the charges to be credible. Unfortunately, however,

as is normally the situation in cases of sexual harassment, most of what allegedly happened took place behind closed doors. There were no witnesses. The school refuses to comment even as to the existence of a complaint. Without further corroboration, you know that your newspaper runs a substantial risk in publishing the student's account. It is a risk that most student news media may not be willing to take based on a single source. So what do you do? For many student reporters the answer may lie in a state open records law.

In addition to the federal Freedom of Information Act (FOIA), which applies to agencies of the federal government, each of the fifty states has its own open records law. Each, in essence, proclaims that it is the public's right to know what state

lawmakers and other government officials (including public school officials) are up to. An open records law recognizes that one of the most effective ways citizens can do this is by being provided access to most of the records and documents generated by public bodies or agencies. Some states have taken this commitment to openness seriously. These states have allowed few exceptions to their law and have adopted enforcement measures that encourage compliance. Other states have been notoriously lax in following through on their promises to open up the governmental process to public scrutiny. These states have allowed for broad, seemingly catch-all exemptions, that have allowed government officials to skirt the law with very little threat of penalty. Most states, however, fall somewhere in the middle.

Whether the charge is sexual harassment, improper use of university funds or a similar serious violation, most would agree that at some point the public has a right and a need to know about government employee misconduct. Particularly at a state-funded university, those footing the bill for faculty and administrative salaries — state taxpayers and tuition-paying students — ought to have the right to know that their money is being wisely spent, and that the people they bankroll are reasonably doing the jobs for which they are being paid.

## Making a Request

Requesting records relating to em-



ployee disciplinary action or misconduct is simple. Just write a letter. In the letter you will want to reasonably describe the records you are looking for, cite the state open records law and ask that you be provided with a written explanation should your request be denied. The Student Press Law Center can provide you with a sample letter tailored to each of the fifty states.

You can contact SPLC at the address or telephone number listed at the end of this article. Once your letter is complete, submit it to the office that you believe is responsible for maintaining the records you seek (for example, your school's personnel office.) Many of the laws require agencies to respond to your request within a specified time (generally 3 - 10 working days); others only require a response with a "reasonable" time.

## What is available?

What, if any, information related to employee misconduct or discipline will be publicly available depends largely on the wording and judicial interpretation of your state's open records law. Fortunately, few states completely deny access to the documents that would pertain to employee misconduct; on the other hand, only a handful of states give a requester unchecked access to university or school employee records. No matter where you live, however, it is helpful to consider a few preliminary questions that are necessary to determine if a persuasive argument for the release of such records can be made:

(1) Is the entity holding the records a "government body"? This question is of primary importance because, as a general rule, only records held by government agencies are covered by the act. Therefore, if legislation or case law labels the body as "private," it is likely that the particular organization is under no obligation to release its records to the public.

(2) Is the record a "public record?" Certain records, even when originating from a recognized public body, are categorically exempt from state open records

laws. A common example of this type of "private" record would be records containing personal medical information compiled by a state health agency. In the context of personnel records, some states have said that personnel evaluations are off-limits.<sup>1</sup> And, as pointed out below, some states have declared that any records related to the discipline of a state em-

take a more eclectic approach than these categories might suggest and combine more than one of the "prototype" models in reaching their decision.<sup>3</sup> Where states have employed more than one approach, they are listed in each category.

## I. Categorical closure of personal information

A number of states, by way of statutory language, close all records concerning "personnel" matters.<sup>4</sup> These states include: Alaska, California, Idaho, Iowa, Kansas, Maryland, Mississippi, Nebraska, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia and Wyoming.

Statutes usually specifically include in the umbrella of personnel matters the documentation of disciplinary allegations, investi-

gations and actions. A state may further seal off these records by making the confidentiality provisions of the open records act mandatory, instead of giving government officials the discretion to open the records, as is usually the case. As a result, even a compelling public purpose would not be enough to overcome the statutory exemption. Of the two goals identified by most open records laws - openness and protection of personal privacy - the states following this restrictive approach appear to have sacrificed one goal for another in the context of information concerning state employees. While some states do allow for the release of exempted records after a certain number of years, whether "private" information under this regime ever comes to light is questionable.<sup>5</sup>

## II. Access after a final determination is made

States that fall in this category require that an agency's records must represent the final stage in the particular investigation or decision-making procedure that is in progress before they can be released.<sup>6</sup> Accordingly, one state authority held that an accusation of faculty sexual harassment was automatically available to the public when the governing board made a final determination as to the appropriate

---

*What, if any, information related to employee misconduct or discipline will be publicly available depends largely on the wording and judicial interpretation of your state's open records law.*

---

ployee are confidential.

Finally, most state statutes specifically say that a public agency is not expected to create previously non-existent records simply because the information is sought.<sup>2</sup> In the age of electronic information, however, it is important to note that most laws cover records in every type of physical form.

(3) Is the record exempt from open records requirements? For a number of reasons, state open records laws may routinely exempt certain types of otherwise public information. Many of the exemptions are an attempt to protect information the general public would regard as private. Other exemptions are theoretically aimed at encouraging unimpeded decision-making, such as those that cover internal memos.

## Analyzing Your State's Law

A 1995 survey by the Student Press Law Center found that the states' treatment of employee disciplinary records fell into roughly four categories. Because the issue of access to disciplinary records has not been specifically addressed in many states, what follows is often simply the Center's best guess as to how state courts would analyze such a request. It is important to remember that states often

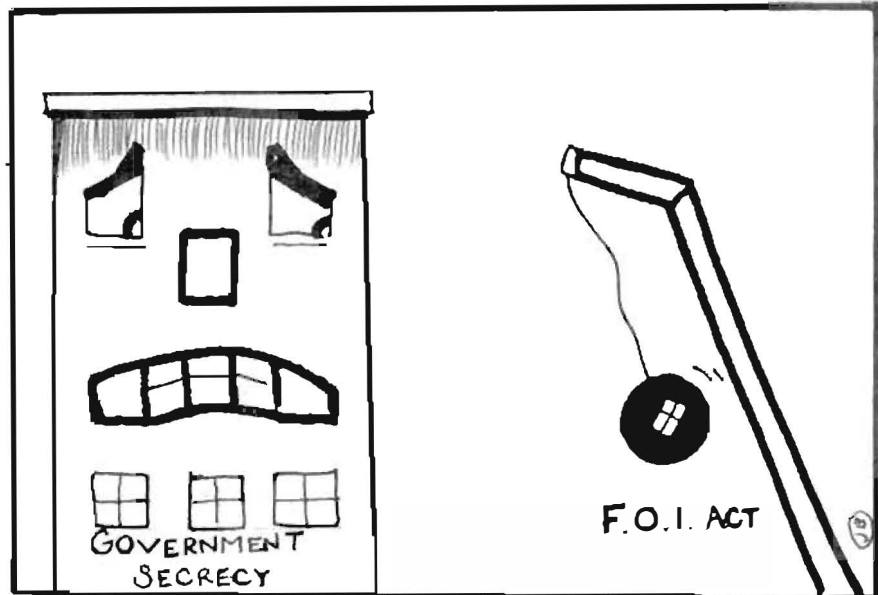
course of action to take.<sup>7</sup> However, agencies may still claim non-disclosure under certain state statutes for various reasons, including situations where there is no finding of guilt.<sup>8</sup> Accessibility of personnel records would in most cases be allowed at the time of a board-announced employee suspension, or at the point it determined not to pursue allegations. Presumably, the final determination requirement is imposed to prevent the release of incomplete information that could unfairly malign an employee or jeopardize an investigation. Among the states that appear to follow this approach are: Arkansas, Florida, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas and Utah.

### III. Common law balancing test

By far the most common approach to the question of whether to release employee disciplinary information is what can be identified as a "traditional" balancing test.<sup>9</sup> An agency or court weighs the privacy interests of the employee against the general public's need to know the information in question; the interest that is most significant will either suggest protection of the records or disclosure. Factors often considered include: (1) the seriousness of the offense or alleged wrongdoing, (2) the likelihood that the knowledge of this information would lower the employee in the esteem of others, (3) and the actual benefit to society in the release of the information.<sup>10</sup> For example, one court held that the public need for information concerning a teacher's sexual misconduct with students was significant enough to cancel out any corresponding privacy interest.<sup>11</sup>

The personal benefit the requester expects to receive is usually irrelevant. Generally, only a significant public purpose or an equally low privacy interest will be sufficient to compel the release of "private" employee records.<sup>12</sup>

States that follow or appear to follow the balancing approach include: Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Montana, New Hampshire, New Jersey, New Mexico, New York, Oregon, South



Carolina, Texas, Vermont, Washington, West Virginia and Wisconsin.

### IV. Records are generally open

A small minority of states support the presumption that records are always available with a marked lack of release restrictions, both in the statute and in case law.<sup>13</sup> A possible explanation for this may be that the more ambiguous issues of public access have not yet arisen in the particular state's courts. Until the issue is specifically addressed, requesters in these states should take advantage of their relatively unimpeded access, which few citizens share.

These states include: Nevada, North Dakota and Tennessee.

### If your request is denied

If denied, a requester has several options to pursue that may eventually lead to the release of all or at least some of the information originally requested.

Regardless of how restrictive a state may be in how it deals with the accessibility of employee records, a compromise almost always exists: When a questionable request is received, the agency can excise the "sensitive" or private materials from the record, which can leave information that is still pertinent and helpful to an individual trying to piece together events that are still unconfirmed.<sup>14</sup> While the specific details, especially names and other identifying facts, may be unavailable, the

information concerning numbers and events may be as important for purposes of a news story. As a time-saving device, it is good practice to ask for segregable materials in the alternative of the full records requested at the initial application.

Another approach a requester might consider is finding a way to access the same information in ways that avoid offending the state's restricted categories. An example of where this technique might be successful is in the case of allegations of gross financial mismanagement. While one route to the information might involve the identification of disciplinary actions against a specific administrator, another less objectionable method might be the request for all financial records from the administrator's office for a designated time period.

Another "back door" approach to accessing personnel information, especially in the case of disciplinary hearings and actions, might be an attempt to secure the information through the state's open meetings provisions. Like open records laws, variations from state to state can be significant, but it is possible that a state might have open meetings requirements that allow for greater accessibility than is true for agency records.<sup>15</sup>

If, after trying to work with the agency, you feel your request is still being unreasonably denied, you may be forced to file an appeal. Prior to court, most states re-

# Legal Analysis

quire a direct appeal to the agency in question, and then possibly to a state freedom of information office, if one exists.<sup>16</sup>

Because of the time and cost involved, information requesters should avoid litigation when possible. However, successful suits for denial of access can lead to the release of the information, as well as court-imposed remedies. In many states, for example, unjustified denial of requested information is a misdemeanor under the statute, which can result in fines, court costs, and the assessment of attorney's fees against the state agency.

Unfortunately, however, there are cases where a denial may leave the requester with little hope of obtaining the information. Due to a lack of

substantial information to confirm suspicions or beliefs, an individual may find it impossible to effectively educate the public with information that is of legitimate concern: If school or university employee misconduct has taken place, the citizens of the state have an interest in the occurrences and outcomes.

At the very least, requesters can inform the public that the school is keeping information about the misconduct of its employees secret. In addition to giving the school a public relations headache that might encourage a change in policy, this publicity might also encourage people involved to come forward—even if off the record—to perhaps fill in some of the details that are otherwise inaccessible.

## Conclusion

Citizens of every state — as students, parents, and taxpayers — have both the right and obligation to know of the activities conducted by public employees in their course of their employment, especially when those activities are unethical, dangerous to students, or are otherwise violations of the public trust. Records pertaining to personnel matters, the best source for information concerning disciplinary investigations and actions, are often necessary to effectively tell these important stories.

The fight for access to these records can present a challenge. The biggest obstacle

may be that states often make the argument that the information is too bound up in privacy issues to release to the public; the logical counter to this argument is recognized in many states, which allow for a balancing of the interests of personal privacy versus newsworthiness.

Regardless of how restrictive or permissive a state's public records laws are,

(finding that although a school district contract settlement was subject to disclosure, related investigatory records were not).

<sup>9</sup> See, e.g., *Judiciary Comm. of Gen. Assembly of Freedom of Information Comm'n*, 473 A.2d 1248 (Conn. Super. Ct. 1983).

<sup>10</sup> See, e.g., *Denver Post Corp. v. Univ. of Colo.*, 739 P.2d 874 (Colo. Ct. App. 1987) (holding that the right of the public to know of a state official's illegal activities outweighed his privacy interests), *Webb v. City of Shreveport*, 371 So.2d 316 (La. Ct. App. 1979), writ denied, 374 So.2d 657 (La. 1979) (prohibiting disclosure of information that would

---

*The biggest obstacle may be that states often make the argument that the information is too bound up in privacy issues to release to the public.*

---

the responsibility lies with the public, and with the media in particular, to vigorously fight for information that touches on issues that are relevant to the people of the state. ■

<sup>1</sup> See, e.g., Idaho Code § 9-340 (36) (1990).

<sup>2</sup> See, e.g., Utah Code Ann. § 63-2-201(8)(a) (1993).

<sup>3</sup> See, e.g., *Collins v. Camden County Dep't of Health*, 491 A.2d 66 (N.J. Super. 1984) (utilizing a privacy interest balancing test); *Trenton Times Corp. v. Bd. of Educ. of City of Trenton*, 351 A.2d 30 (N.J. Super. 1976) (requiring finality of decisions before documents must be disclosed).

<sup>4</sup> See, e.g., Md. State Gov't Code Ann. § 10-624(a) (1993).

<sup>5</sup> See, e.g., N.C. Gen. Stat. § 126-122 (1993) (stating that information in personnel files does not have to be disclosed until the end of ten years after an employee's term of employment).

<sup>6</sup> See, e.g., Fla. Stat. §§ 231.262(4), 231.291(3) (1987).

<sup>7</sup> Ark. Op. Atty Gen. No. 88-162 (1988).

<sup>8</sup> See, e.g., *Des Moines Indep. Community School Dist. Pub. Records v. Des Moines Register and Tribune Co.*, 487 N.W.2d 666 (Iowa 1992)

affect future employment or cause embarrassment).

<sup>11</sup> *Brouliet v. Cowles Publishing Co.*, 791 P.2d 526 (Wash. 1990).

<sup>12</sup> See, e.g., *City of Louisville v. Courier-Journal*, 637 S.W.2d 658 (Ky. Ct. App. 1982).

<sup>13</sup> See, e.g., N.D. Cent. Code § 44-04-04-17 (1993).

<sup>14</sup> See, e.g., Haw. Rev. Stat. § 92F-42(13) (Supp. 1991).

<sup>15</sup> See, e.g., *Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990), Alaska Stat. § 14.40.160(a) (1994) (stating that the Open Meetings Act has no express exceptions to the general policy of disclosure).

<sup>16</sup> See, e.g., Mass. Gen. Laws Ann. ch. 66, § 10(b) (1988); *contra*, see S.C. Code Ann. § 30-4-100 (1991).

*Note: For a more detailed, state-by-state analysis of public access to school employee disciplinary records, the Student Press Law Center has compiled a new packet, "Access to Employee Disciplinary Records," available for \$2/copy by contacting the SPLC at 1101 Wilson Blvd., Suite 1910, Arlington, VA 22209, (703) 807-1904.*

# Student Right-to-Know Act put on hold

*Schools not required to release graduation rates of student athletes*

WASHINGTON, D.C.— One avenue for uncovering the graduation rates of college students and student-athletes has been put on hold indefinitely as a result of a technical amendment to the Student Right-to-Know Act and a presidential directive on reinventing government, according to a Department of Education official.

The Student Right-to-Know Act, 20 U.S.C. §1092(c), which was passed by Congress in 1990, would have required colleges and universities receiving federal financial assistance and offering athletically-related financial aid to annually issue a report to the Secretary of Education that compared the graduation rates of student-athletes to that of other students; the report was to be broken down by race and gender.

The report was also to include the number of students receiving athletically-related aid, also broken down by race and gender.

Once compiled, the Education Department was to issue a report indicating how schools ranked nationally.

However, the law once hailed as "landmark consumer legislation for students and student-athletes" is now on hold indefinitely. Enforcement of the law, which was originally to take effect on July 1, 1993, was delayed by the Higher Education Technical Amendments of 1993, §1092(e)(9).

Now the law will not be enforced until after the DOE issues its final regulations, which DOE officials

say will not be anytime soon because of other priorities in the Department.

Establishing regulations for section

1092(e) is currently being enforced, schools need not issue a report to the Department detailing their graduation rates.

But as far as when the regulations for section 1092(e) will be in place, she said: "We have no timetable just yet."

Since section 1092(e) is not currently being enforced, schools need not issue a report to the Department detailing their graduation rates.

However, there may be alternative ways to obtain some schools' graduation rate information.

For example, graduation rate reports compiled by public schools may be available under state open records laws.

Another way to obtain graduation rate data, which would include a breakdown by race and gender and a comparison with the graduation rates of student-athletes similar to that required by section 1092(e), is available for schools who compete in National Collegiate Athletic Association competition.

Universities and colleges participating in NCAA competition must make graduation rate data or similar information publicly available under an NCAA regulation passed in 1990.

The NCAA compiles two books on graduation rate data, one for Division I schools and one for Division II and III schools.

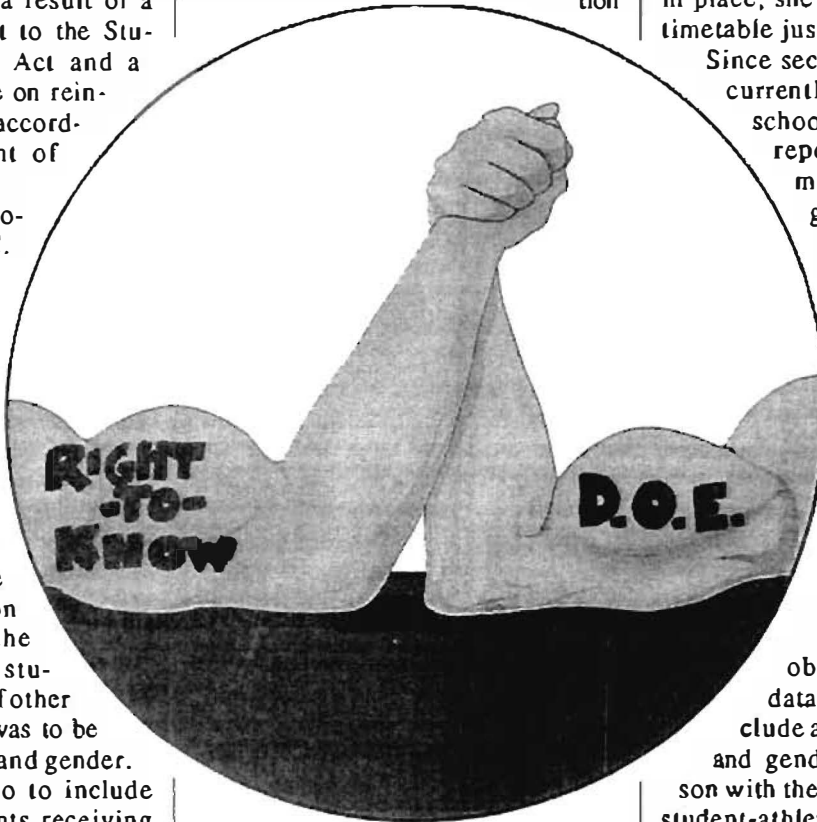
These books may be purchased from the NCAA's main office in Overland Park, Kan., by calling (913) 339-8900.■

"We're trying to make the law easy to implement," said Husselmann. "We want to make the annual re-

1092(e) is currently "not a priority," said Paula Husselmann, Education Department senior program specialist. She explained that the Department's first priority is to fulfill a presidential directive to review all Department regulations in order to reduce the regulatory burden.

As part of the presidential directive, however, Husselmann said that the DOE is working on making its regulations, including those for section 1092(e), less burdensome for the schools to follow.

"We want to make the annual re-



# Protecting Those Who Offend

A series of hate messages tests just how far the First Amendment can stretch

A racist message encoded in the pages of a Greenwich High School yearbook has outraged students, shocked administrators and catapulted the well-to-do Connecticut town into the national limelight.

But is the message protected under the First Amendment?

According to school officials, five white males conspired for months to place the statement "Kill all niggers" in the yearbook by placing each word or portion of a word under their pictures. Concluding the caption under Keith Dianis's picture is the word "kill." At the end of Patrick Fox's picture is the word "ALL." Ed Oberbeck ends his caption with "ni," Robert Texiere with "gg," and Aaron Valenti completes the message with "ERS." The photos and captions were spread over several pages in the yearbook.

And Greenwich High School is not alone. In New York, two high schools have seen alleged hate messages pop up recently in their yearbooks.

At Tuckahoe High School in White Plains the senior class president recently came under fire for allegedly placing the misspelled word "crematoriums" under his yearbook picture — a supposed reference to the ovens used to kill Jews in concentration camps during World War II. The student, Robert Pisano Jr., claims the word alluded to his friend's brother who digs graves and would have a lighter work load if more people were cremated.

At Midwood High School in Brook-

lyn, two Jewish students were linked to a advertisement in the yearbook interpreted to be anti-Semitic and anti-black. According to a spokesman for the school's chancellor, the advertisement contained the passages: "I hate all J—. Kill all Kusheem. Kill all J."

The cases illustrate a larger problem faced by student publications that allow students, especially those who are not members of the publication staff, to submit their own material for publication.

Erica Friedlander, co-editor of the Greenwich High School yearbook, told *The New York Times* she and other editors edited portions of some students' messages, but it would be impossible to "go through and pick everyone's quote apart."

Some argue the actions are an "affront to the entire educational system," punishable by fines and/or imprisonment.

Richard Blumenthal, the Connecticut attorney general, announced in June his office would pursue both criminal and civil charges against the Greenwich High School students under the state's hate crime statute.

Others say the messages are a form of expression, and therefore protected from prosecution under the First Amendment.

William Olds, executive director of the Connecticut American Civil Liberties Union, said the attorney general's office would have a hard time convicting the Greenwich High School boys.

"I think the Connecticut hate-crime statute suffers from vagueness," he said. "I think the statute itself probably violates the First Amendment."

Olds cited the 1992 Supreme Court decision *RAV v. St. Paul, Minnesota* in defense of the boys' First Amendment rights.

That decision ruled unconstitutional a municipal law that made placing a symbol that would "arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender" a misdemeanor.

In the majority opinion, Justice Antonin Scalia wrote "The First Amendment does not permit... prohibitions on those speakers who express views on disfavored subjects."

Olds said criminally charging students for alleged hate messages would have "an intimidating effect on free speech."

"It would make illegal remarks that blacks make about whites," he said. "Blacks could no longer call whites 'honkie.' Gays could no longer call evangelical ministers bigoted. Clearly, there would be First Amendment problems."

Blumenthal refused to comment.

But even if they escape criminal prosecution, the students may not avoid school punishment.

The Greenwich High School students are required to complete a "Congress of Racial Equality Civil Rights Boot Camp" program, in which they will visit New York City neighborhoods and read books about black history and write essays on them. Once they complete the program, they can take their final exams and receive their diplomas.

The Tuckahoe High School student was asked not to attend his graduation ceremonies, but went anyway. He faces no criminal or civil charges.

The Midwood High School students were also barred from graduation, but will receive their diplomas. They face no criminal or civil charges. ■





## Internet prank costs student scholarship

**CALIFORNIA** — When Newport High School principal Karin Cathey didn't like what senior Paul Kim had to say, she took matters into her own hands.

Not amused by Kim's creation of "The Unofficial Newport High School Home Page" on the Internet, Cathey withdrew her recommendation of Kim for a National Merit Scholarship and wrote to the colleges where he had applied, stating the administration was withdrawing any letters of recommendation it had submitted on his behalf.

The satirical creation, meant to poke fun at Kim's classmates for being preoccupied with sex, included links to areas of the Internet that offered sexually explicit material, including a *Playboy* centerfold photograph and articles about oral sex and masturbation.

Kim created the page on his own time and included a disclaimer that "no one associated with the school" was responsible for it but himself. He also signed his name to the page.

However, when Cathey obtained a copy of the document, she withdrew her endorsement for Kim to receive a \$2,000 college scholarship and, without his knowledge, faxed letters to seven universities to which he had applied.

"I have no idea what her motivation was," Kim said. "She seemed to make very rash judgments. There was a lack of reasoning."

The American Civil Liberties Union has now taken Kim's case, arguing that Cathey violated his right to free speech.

Douglas Honig, the ACLU's public education director, said they have met several times with lawyers from the school district to try to decide on a settlement.

If the school does not offer appropriate compensation, Honig said, Kim will file a lawsuit.

(See NEWPORT, page 26)

## 'Coed Naked' shirts spark debate over law

**MASSACHUSETTS** — When Jeffrey Pyle's mother bought him a shirt for Christmas stating: "COED NAKED BAND — DO IT TO THE RHYTHM," she probably wasn't anticipating the reaction it would receive.

Although Jeffrey found the shirt amusing and donned it at South Hadley High School, his gym teacher felt otherwise.

"The use of [Coed Naked] T-shirts creates an environment that is less comfortable and safe, particularly for female students," Susan Tyler said. "As an employee, I have the right to be in a space free of sexist language and sexual innuendoes, and as an instructor I have an obligation to provide that for students."

In August 1993, a U.S. District Court judge upheld Tyler's right to censor "vulgar" expression by the students. And when Pyle appealed the decision in April before the U.S. Court of Appeals for the First Circuit [*Pyle v. South Hadley School Committee*, 861 F. Supp. 157 (D.Mass. 1994), question certified, 55 F.3d 20 (1st Cir. 1995)], the court declined to rule, sending the case to the Supreme Judicial Court of Massachusetts to determine the following:

Do Massachusetts public high school students have the right under the Massachusetts student free expression law to engage in non-school sponsored expression that may reasonably be considered vulgar, but causes no disruption or disorder?

The decision will mark the first time the court will rule whether the Massachusetts law protects "vulgar" language and could affect student publications

in the state as well.

The law, passed in 1988 as a response to the Supreme Court's *Hazelwood* decision, prohibits school officials from censoring student expression.

Specifically, the law states that the right of students to express themselves in public schools can not be abridged, provided the expression doesn't cause disruption or disorder within the school.

The law allows students to "express their views through speech and symbols, to write, publish and disseminate their views [and] to assemble peacefully on school property for the purpose of expressing their opinions."

Until it determines if this law protects "vulgar" T-shirts, the federal court will not rule.

"In the absence of any state court interpretation, we would be in the position of dictating state-wide policy to local school officials at the behest of two students," Judge Conrad K. Cyr wrote in the decision of the federal appellate court.

The question is pending before the Supreme Judicial Court.

The case marks the second time this year that a court has been faced with the decision whether to limit students expression based on its "vulgarity."

In California, a state court of appeals in May upheld a decision allowing a school to censor profane language from a school-sponsored video drama despite the existence of the state student free expression law (See TULARE, page 30.) None of the four other states that have such

(See S. HADLEY, page 26)

## Principal fears racial tension, confiscates 1,000 newspapers

INDIANA — Pike High School students came up empty-handed in a search for their bi-weekly newspaper April 21 after school administrators confiscated more than a thousand copies of *The Pike Hi-Life* for fear that a controversial column would incite racial tension.

The column, written by then-senior Najma Tappin, was titled "Open Your Eyes" and criticized African-American underclassmen at the school for being "boisterous, rowdy, obnoxious, in-the-way students."

"Black underclassmen act like they have no sense," Tappin, who is black, wrote. "Our ancestors are turning in their graves. The hard work and planning that they have accomplished should not be in

vain . . . People have prejudices already about how blacks act and you are making those true."

Pike High School Principal Tom Dohrmann said although he was out of the building when Pike Township Superintendent Eric Witherspoon ordered the newspapers to be confiscated, he stands by Witherspoon's decision.

"The article was nicely written, but it contained two or three inflammatory sentences that would've incited problems," Dohrmann said.

Dohrmann said the column was eventually published in a local newspaper and caused "an uproar" in the community. He said a similar reaction from students

(See PIKE, page 27)

## Newport

(Continued from page 25)

"Obviously we're looking for them to indicate that they don't have the right to discipline people for free speech activities they do on their own time," Honig said.

But regardless of the settlement, Kim said, the damage is done.

The scholarship has already been offered to someone else, and several of Kim's top choices for college denied him admission.

"Even with compensation and an apology letter, the damage is irreversible," Kim said.

"It's really a shame," he said. "I do want to seek justice."

An official at Newport High School said Carthey "is not making any public statements." ■

## S. Hadley

(Continued from page 25)

laws have ruled on the issue. The South Hadley saga began in 1993 when Tyler exercised her "right" and "obligation" to prohibit Pyle from wearing the "Coed Naked" T-shirt to her gym class.

Pyle answered the demand by wearing the shirt on several more occasions and was served with three detentions as a result. He appealed the detentions to the school committee and urged them to draft a formal dress code because he believed the current one to be too vague.

Shortly thereafter, the committee adopted a dress code which forbids students to wear clothing that "has comments or designs that are obscene, lewd or vulgar, is directed toward or intended to harass . . . an individual or group of individuals, because of sex, color, race, religion, handicap, national origin, or

sexual orientation, or advertises alcoholic beverages, tobacco products or illegal drugs."

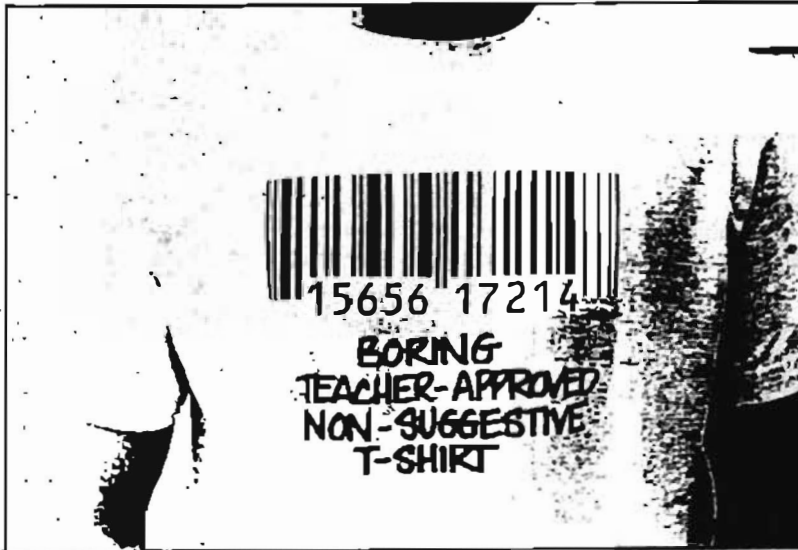
Pyle and his brother Jonathan tested the dress code by wearing "controversial"

When the brothers were continually sent to the principal's office for approval or disapproval of their daily shirt choices, they took the school to court.

"There's no difference between the censorship of a T-shirt and the censorship of a newspaper, a yearbook, the confiscation of library books—they all revolve around the same theme," said Jeffrey Pyle, now a junior at Trinity College in Connecticut. "This whole case isn't about T-shirts at all. It's about having the right to express yourself in a way that others might find offensive."

Jonathan Pyle, who just graduated from South Hadley, said he hopes the court's ruling is "consistent with the Constitution."

"If you give kids rights while they're students, they're more likely to use them well when they're adults," he said. "It will teach them to express when they feel something is right and when something is wrong." ■



T-shirt worn by Jeffrey and Jonathan Pyle to protest dress code.

shirts including "Coed Naked Civil Liberties: Do It To The Amendment," worn by Jeffrey, and "See Dick Drink. See Dick Drive. See Dick Die. Don't Be A Dick," worn by Jonathan.

PRINCIPAL



## Pike

(Continued from page 26)

would've likely occurred had the column run in *The Pike Hi-Life*.

Tappin disagreed, saying she received positive response from black and white students, faculty and parents who read the column in *The Pike Register*.

"I believe a black columnist writing about black people can't be racist," she said. "I received more positive response to it than negative response."

Dennis Cripe, executive director of the Indiana High School Press Association, said he read portions of the column and it "didn't appear to be so inflammatory that the administrators worst concerns would've happened."

Cripe said it was wrong for the administrators to confiscate the newspapers. "I have problems with the way the whole thing was done," he said. "I think there needs to be some educated rationale for such action."

Because of the 1988 *Hazelwood* decision, Cripe said, high school students' First Amendment rights "can't be assumed."

"Issues can come up when the tone of an article can be paramount," he said. "High school is such a vacuum and rights can vary from school to school. I hate that, but it's just a reality we have to face."

Tappin said she considered taking legal action against the school, but her adviser

told her she would probably lose in court because school administrators claimed the column would incite riots if it were published.

The Supreme Court ruled in its landmark 1969 *Tinker v. Des Moines Independent Community School District* decision that student speech that "materially disrupts classwork or involves substantial disorder is ... not immunized by the constitutional guarantee of freedom of speech."

Tappin called the administrators claims "very ridiculous."

"That was a cop out," she said. "[Riots] would not have happened."

Dohrmann said to avoid future controversy, the school is establishing a prior review board which will review every issue of the newspaper before it is published.

"Hopefully the paper will begin to represent the ethos of the community, because when you're doing a student newspaper I think that's extremely important," Dohrmann said.

"If you are wanting to print everything and anything in a conservative community, your life may not be very long," he said. "However, if you live in a more liberal, open community, there may be different implications."

Dohrmann said the newspaper adviser who approved the column, Jill Strawder, "didn't understand the ethos of the community."

Strawder declined to comment on the issue. ■

## Ore. court dismisses portion of Tigard case

OREGON — In a ruling that the lawyers involved called "confusing," the Oregon Supreme Court dismissed as moot part of a Tigard High School censorship case and sent another part to the lower court to rule on.

Students at the school initially filed the lawsuit in January 1992 when editors of an unofficial newspaper, *Low-Spots*, were suspended, and an editorial in the official newspaper, *Hi-Spots*, supporting the suspended students was censored.

A state circuit court ruled in September 1992 that the students' First Amendment rights were violated and said the school policy of reviewing underground publications prior to distribution was unconstitutional. The court failed to rule on a claim that the school's actions violated the Oregon state constitution. Both sides appealed.

In April 1994, an appeals court ruled that the case should have been dismissed once the students graduated. Not happy with this decision, the students appealed it to the Oregon Supreme Court.

The supreme court upheld the lower court's ruling that some claims in the case for future relief should have been thrown out when the students graduated, but ruled that the lower court should rule on whether the students are entitled to relief for the censorship they experienced, a potential violation of their First Amendment rights [*Barcik v. Kubiaczyk*, 895 P.2d 765 (Or.1995)].

The court also ruled on two specific plaintiffs, Scott Barcik and Kay Kostur, who were awarded relief under federal law by the circuit court.

The Supreme Court ruled that Barcik alone could request relief under the Oregon Constitution because a record of his punishment for distributing the underground paper was included in his school

(See *TIGARD*, page 29)

# Editor barred from graduation ceremony

*Principal suspends editor for allowing hidden message to be published*

KANSAS — Lansing High School's commencement ceremonies had all the makings of a typical graduation celebration this year, minus one minor detail.

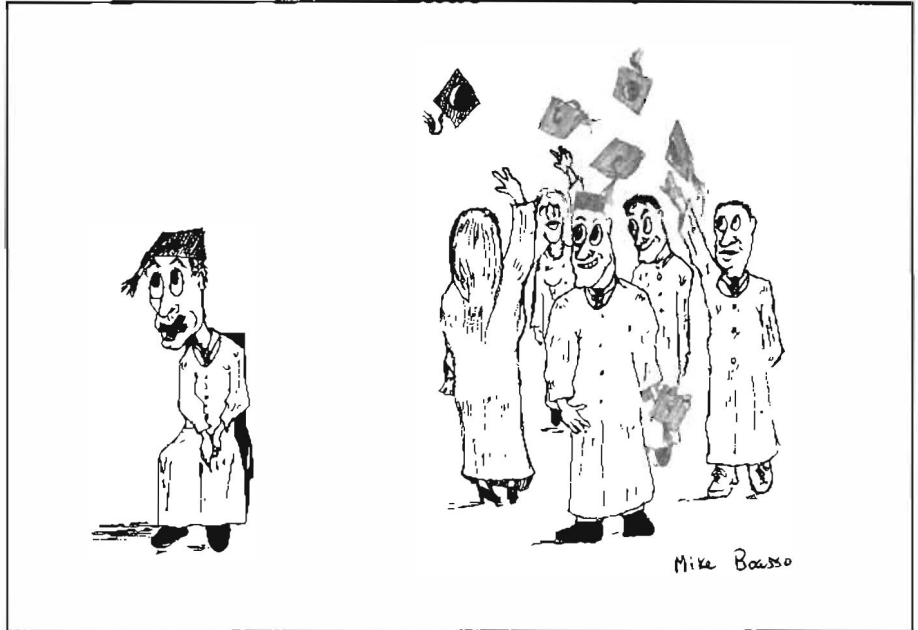
The valedictorian.

Brian Smith, 17, was suspended from school, barred from participating in any of the school's end-of-the-year celebrations for graduating seniors and not allowed to deliver his valedictory address because he allowed a coded message to appear in the May 11 edition of the school newspaper, *The Maeline*.

Smith was the editor of the newspaper at the time.

The message in question appeared in an editorial written by a staff writer. The first letter of each of the editorial's 10 paragraphs spelled out the message "F-U-C-K-Y-O-U-A-L-L" when placed together in sequence.

Although Smith had no part in writing the editorial containing the message, Principal Rita Greenamyre called him to her office May 12 and told him he was suspended effective immediately for the content of the



editorial. Under the suspension, Smith was prohibited from attending all graduation activities, from student field trips and award presentation ceremonies to the graduation

ceremony itself. The student who wrote the editorial was also suspended.

In the notice of suspension, Greenamyre (See LANSING, page 29)

## Art teacher takes school to court for permission to distribute tape of safety and health violations

RHODE ISLAND — Citing concern for the safety and welfare of Johnston High School students and teachers, a district court judge in June granted a temporary restraining order allowing a teacher to distribute a videotape she made of the health and safety violations at the school [Cirelli v. Johnston School District No. 95-231 (1st Cir. June 13, 1995)].

Marie Cirelli, an art teacher at the school, sued the Johnston school district in April when it wouldn't allow her to distribute her tape—exposing Rhode Island Health and Safety Code violations such as a broken exhaust fan and blocked vents on a kiln—to media outlets to show the public the poor conditions of the school.

Cirelli videotaped the violations after attempting unsuccessfully to get school officials to repair the hazards.

Mark Gursky, one of Cirelli's attorneys, said the school district practiced prior restraint by prohibiting Cirelli from sharing the videotape with others because videotapes of plays, athletics and other events in the school were never prohibited from being distributed.

Judge Raymond J. Pettine ruled that in light of the restraint, "it is clear that [Cirelli's] First Amendment right to speech has been

implicated in some measure."

The court granted Cirelli a temporary restraining order forbidding the school district from further "violating [Cirelli's] First Amendment rights."

"I am hard pressed to imagine what function of the school would be impaired by public exposure of the existing safety violations at the school, where the function of the school presumably includes the commitment to provide a safe learning environment," Pettine wrote in the memorandum granting the order.

A preliminary injunction hearing was held June 26, but a final ruling was not reached. Fidelma Fitzpatrick, Cirelli's other attorney, said both parties will submit the remaining evidence by affidavit and that Pettine will rule accordingly. She said she is not sure when the decision will be made.

In the meantime, the temporary restraining order is in effect, and Cirelli has submitted her videotape to a local television station, Fitzpatrick said.

Fitzpatrick said she is confident the judge will rule in Cirelli's favor, effectively turning the temporary restraining order into a permanent one. ■

## 'I love you' symbol banned from school paper

IOWA — What do the sign language symbol for "I love you" and the symbol for a street gang have in common?

A lot, according to Burlington High School principal Barry Crist.

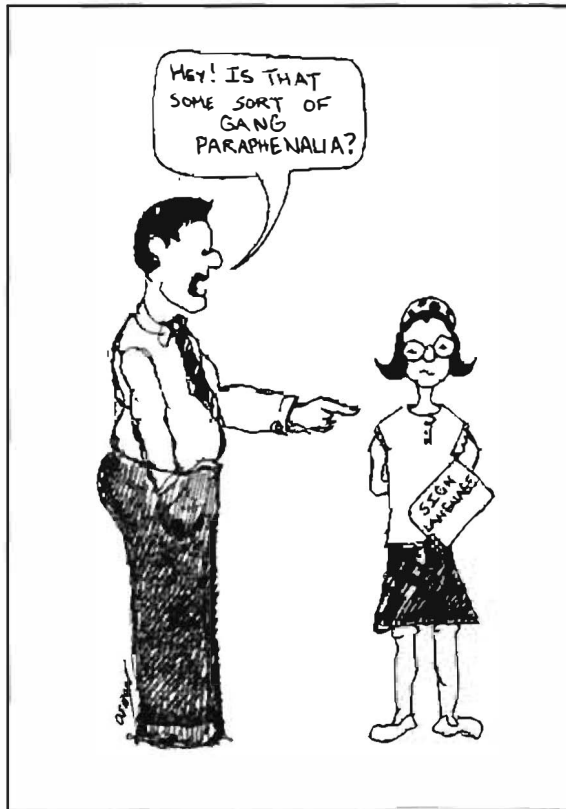
So much, in fact, that he prohibited the student newspaper, *The Purple & Gray*, from running a picture of the "I love you" symbol.

The students wanted to run the symbol on the newspaper's editorial page above a feature on students' likes and dislikes. The "I love you" symbol would be placed above the likes, next to a face with a tongue sticking out to symbolize the dislikes.

But Crist said no go.

Members of a street gang called the Latin Kings use the "I love you" symbol with the hand facing backward to represent their three-point crown, according to an article in *The Hawk Eye*, Burlington's daily newspaper.

Jessi Dehl, features editor of *The Purple & Gray* at the time of the censorship, said Crist has made censorship a regular practice.



Dehl said Crist forbid her from running an editorial stating that the Drug Awareness and Resistance Education (D.A.R.E.) program was ineffective, and the school should try a new approach to curbing drug use.

"He said it wasn't factual," Dehl said. "That's dumb because it was an editorial, it attributed my opinion. He is not the one to make those kinds of decisions."

Dehl said the newspaper's adviser, Karen Hartman, shows copies of the newspaper to Crist for his approval before they are published. If Crist dislikes something, he instructs Hartman to remove it, and she does so without informing students, Dehl said.

"The issue here is that we're not informed of the process to go through," Dehl said, referring to occasions when students may not agree with administrators' judgment on what should be censored.

A 1989 Iowa law governing student (See BURLINGTON, page 30)

## Lansing

(Continued from page 28)

called the message "willful or malicious destruction or defacement of the school newspaper."

"This written message created a school wide disruption, humiliated and embarrassed other students, teachers, administrators, school board members, parents and the community as a whole," she wrote.

Smith filed suit against Unified School District 469, alleging the suspension violated his right to free speech.

The Kansas Student Publications Act, enacted in 1992, states that student editors of student publications are responsible for determining the news, opinion and advertising content of their publications, and material in the publications "shall not be suppressed solely because it involves political or controversial subject matter."

But federal judge Thomas Van Bebber

upheld Greenamyre's decision in the U.S. District Court of Kansas May 19 and denied Smith's motion for a temporary order restraining the principal from applying the suspension and barring him from delivering the valedictory address [Smith v. Unified School District 469, No. 95-2231-GTV (10th Cir. May 18, 1995)].

Jeff Baxter, Smith's attorney, said he did not cite the Kansas Student Publications Act in his argument because he was not aware of its existence at the time. He said he did not have a great deal of time to research the case because he wanted to argue it before the graduation ceremony was over.

The act also states that "expression that is libelous, slanderous or obscene ... is not protected by this law."

Baxter said the court did not rule whether the message was considered obscene, but simply denied the motion for a restraining order.

"They just applied the criteria in the *Hazelwood* case and didn't make a specific ruling whether it was obscene," he said. ■

## Tigard

(Continued from page 27)

records.

The court ruled, however, that Kostur, who claimed as a junior high school student she would one day be affected by the high school's regulations, could not request relief because she could not prove that she "was, or will be in any way harmed by the challenged regulations."

The court's decision prevents the possibility that the state constitutional claim by students on the school-sponsored newspaper could have given those students greater rights than they are entitled to under the First Amendment after the Supreme Court's 1988 *Hazelwood* decision.

The Supreme Court in July denied a motion for reconsideration filed by Michael Harting, the students' attorney. ■

## Judge rules censorship of profane words is OK

CALIFORNIA — Tulare Valley High School students can address the serious and widespread issue of teenage pregnancy, provided they do it politely.

Soruled California's Fifth Appellate District Court of Appeals in May, in *Lopez v. Tulare Joint Union High School District* (Super. Ct. May 8, 1995), when it upheld a superior court decision allowing the school board to censor profane language from a video drama that the students created in their film arts class under California's student free expression law.

The video told the fictional story of two struggling teenagers as they learn the intricacies of parenting.

In the video, which won "Best High School Drama" in a state-wide contest, several characters use phrases such as "fuck," "shit," "bitch," "son-of-a-bitch," "ass" and "tit."

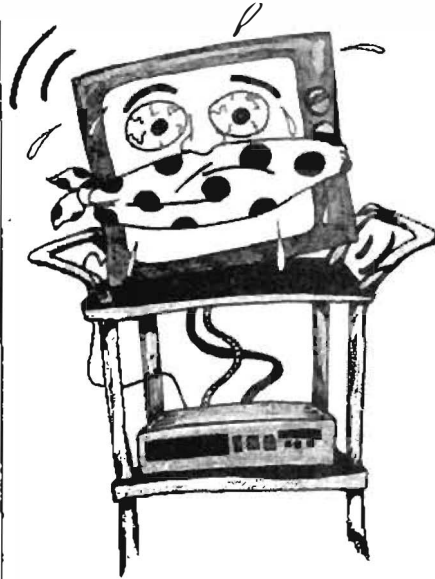
In January 1992, Principal Dan Neppel read the script before the students began production of the drama and said he would not allow it to be released or shown if the profanities were not deleted. The school board stood behind Neppel and required that the words in question be deleted.

The students, with the help of the American Civil Liberties Union, took the board of trustees to court, claiming their freedom of expression rights were being infringed upon. Superior Court Judge Gerald Sevier ruled that the board could prohibit the phrases under California Education Code section 48907, one of only six state laws in the country protecting student free expression rights.

Section 48907 provides "Students of the public schools shall have the right to exercise freedom of speech and of the press ... except that expression shall be prohibited which is obscene, libelous or slanderous" or incites substantial disruption.

The appellate court ruled that the phrases in question were not legally obscene, but could be censored because of language in the law that allowed publication advisers to "maintain professional standards of English and journalism" in official school publications.

The board did not censor the expression of ideas, the court ruled, but rather "the expres-



KLEINHANS 1995

sion of those ideas by the use of profane language."

Neil Shapiro, an attorney from the ACLU who represented the students, said the decision has several shortcomings.

"The court ruled that the students can be made to express [their message] in a fashion consistent to that of a professional paper," he said. "In theory, a professional paper would have the right to use those words, but they just don't [use them]."

Shapiro said the court should also have considered that the language was in a video rather than a newspaper.

"In looking at the video, the court still seemed to apply the quote 'professional standards of journalism' to a video," he said. "That's a tough comparison. I would argue you should apply the professional standards of film making, and that medium allows for broader word usage than [print] journalism typically does."

But the court ruled the video was "conceptually no different than a school yearbook or newspaper" in that it "served as an avenue of student expression on a topic of interest to students."

Ned Kehrl, superintendent of Tulare Valley schools, said free expression has to be limited to a point.

"I agree with the statement that kids don't leave their rights at the school house

door," he said. "However, you don't yell 'fire' in a crowded theater. There is a point where free expression has to be limited to certain constraints."

Shapiro said the students will not appeal the decision because "they wouldn't have much chance of winning."

"The California Supreme Court is not strong on issues such as free expression," he said.

The decision applies only to schools in California's fifth appellate district, which includes Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare and Tuolumne counties. ■

## Burlington

(Continued from page 29)

publications states "students must be informed of the appeal procedure in case they disagree with an administrative judgment."

The law also gives public school students the right to exercise "freedom of speech, including the right of expression in official school publications."

Iowa state law allows administrators to censor materials that could disrupt orderly conduct, that are obscene, libelous or slanderous, or that encourage students to commit unlawful acts or violate school regulations.

But Dehl said Hartman and Crist censored numerous items and denied Dehl the executive editor's position because of her opposition to the censorship.

"Before all this she [Hartman] said I had the editorship all sewn up," she said. "Then she told me she wasn't threatening me, but the editorship might be in jeopardy because of decisions I made."

Hartman denies telling Dehl that and says she didn't offer Dehl the editorship because her application "didn't make the standards."

"It had nothing to do with [the censorship of the sign language symbol] at all," Hartman said.

Crist declined to comment on the censorship, stating it is "a moot issue." ■

# Missouri passes law sealing investigative reports

*Incident reports still open to public; police call law 'excellent move'*

**MISSOURI** — Members of the press and law enforcement agents reached an agreement recently with the signing of a bill aimed at deciphering, once and for all, which police records are open to the public and which are for police eyes only.

House Bill 135, signed by Missouri Gov. Mel Carnahan in July, defines the difference between investigative reports, which are closed to the public until the investigation is complete, and incident reports, which are always open to the public.

An incident report is defined as "a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident including any logs of reported crimes, accidents and complaints maintained by that agency."

An investigative report is defined as "a record, other than an arrest or incident report prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties."

Jean Maneke, attorney for the Missouri Press Association, called the bill "good in a way and bad in a way."

"It clearly says what are open records and what are not, but it gives members of the law enforcement a door for there to be things going on that shouldn't be," she said. "The public should assume it's impossible to get its hands on investigative reports."

The bill explicitly states that "All incident reports and arrest reports shall be open records. However . . . investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive."

The bill defines inactive as "an inves-

tigation in which no further action will be taken by a law enforcement agency or officer" for several reasons.

Carl Wolf, legislative chairman of the Missouri Police Chiefs Association, said the legislation is "a good all-around bill."

"I think it's an excellent move for law enforcement, and I don't think it hinders the press' ability to report news or hurts the public in getting information," Wolf said. "It gives the media what they need to know."

Doug Crews, executive director of the Missouri Press Association, was less enthusiastic.

"I don't think it's the perfect bill," Crews said. "It was somewhat of a compromise, but I've been talking to newspapers around the state and we all agree that from the press's perspective it could've been a little better."

Crews said he is happy, however, to see the bill address the accessibility of 911 calls.

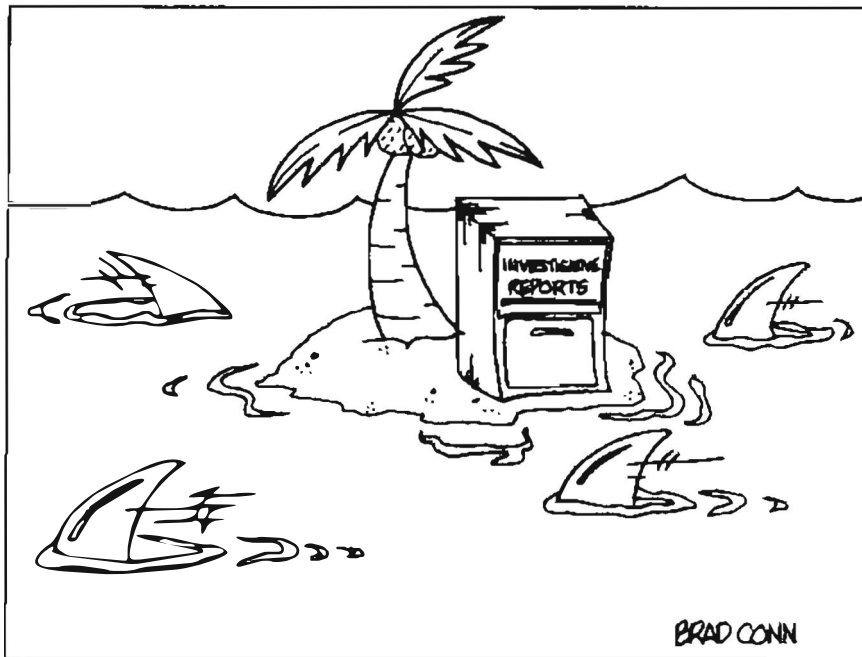
The bill states that "any information acquired by a law enforcement agency by way of a complaint or

report of a crime made by telephone contact using . . . '911' shall be inaccessible to the general public. However, information consisting of the date, time, specific location and immediate facts and circumstances surrounding the initial report . . . shall be considered an incident report," and therefore open to the public.

Crews said the bill is also beneficial because it states that if a law enforcement officer or agency has purposely violated the open records section of the bill, the officer or agency can be fined up to \$500.

Tim Jackson, executive director of the Missouri Police Chiefs Association said the bill is reasonable and a "pretty good compromise."

"There's always the debate as to open information of whether you just trust the media to not print everything if it may cause damage or if you just trust the law enforcement agency to do its job," he said. "We think this bill will work for law enforcement and the media as well." ■



BRAD CONN

## Student sues paper for labeling her HIV positive

OHIO — A student at Ohio State University is suing the school newspaper, *The Lantern*, for running a classified advertisement stating she is bi-sexual and HIV positive.

Chaundra Tyson is suing the newspaper for libel, intentional infliction of emotional distress and invasion of privacy. She is seeking at least \$25,000 in compensatory and punitive damages as well as costs and attorneys' fees.

Becky Cool, classified advertising manager at *The Lantern*, contends that Tyson called the newspaper and asked to place a classified advertisement stating: "My name's Chaundra Tyson. I'm bi-sexual. I recently tested positive for the HIV (AIDS) virus. If you or you know of anyone that has had sexual contact with me. Send letters to P.O. Box 10373, Columbus Ohio 43210-7373 or call the health department A.S.A.P."

The advertisement ran in the Sept. 26, 1991, edition of *The Lantern*, but Tyson insists she wasn't the one who placed it.

Cool's attorney refused to comment on the case, but Tyson's attorney, Mark Reynolds, said he believed Cool is planning to argue that "she believed the caller was Chaundra because it was so improbable that someone would call up and make up something like that."

Reynolds said he believes the defense will argue that Tyson did place the call and is now suing "to try to get money."

The university filed a motion for summary judgment in April, but the court denied the motion, stating that "genuine issues of material fact remain in dispute."

The case is scheduled to be heard Sept. 25 by the Court of

Claims of Ohio.

Tyson claims in the lawsuit that the advertisement was "published either willfully, wantonly, intentionally, maliciously, with reckless disregard for the truth or with the lack of reasonable attempts to discover the truth or falsity or defamatory character of the publication."

As a result of the advertisement, the lawsuit states, Tyson "was injured in her education and reputation and suffered embarrassment, humiliation, physical and psychological harm and will continue to suffer from such in the future."

*The Lantern* claims no responsibility for the damages allegedly suffered by Tyson.

*The Lantern* denies that any of the actions were committed intentionally or recklessly and says, in its response to the complaint, that any damages suffered by Tyson are the direct result of Tyson's "contributory negligence" or the "negligence and/or actions of a third party" over which *The Lantern* had no control.

In an added twist to the story, Darrel Durham, the director of marketing services at *The Columbus Dispatch*, said a woman claiming to be Tyson attempted to place a similar advertisement in that newspaper, but the newspaper refused her.

"She brought it to us, but we rejected it because we didn't get any information verifying who she was," Durham said. "So far as I know, we've never heard from her again."

Durham said he hasn't "the slightest idea" whether he would go to court if subpoenaed to testify in the case. ■

## School district faces lawsuit after student finds ad offensive

CALIFORNIA — Michelle McGinthy says she is fed up.

After years of quietly suffering verbal and physical abuse from a fellow schoolmate, she says, she is suing Modesto City school district for allowing the boy to place an advertisement in the school newspaper that she says is aimed at her.

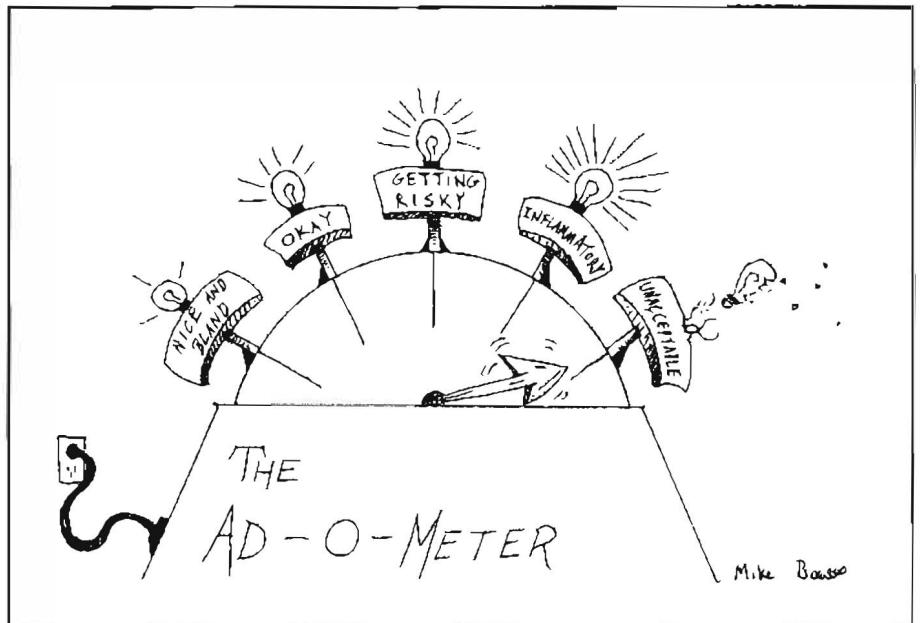
"He's cruel, he's manipulative, he gets off on making people hurt," she said.

The fellow schoolmate sings a different tune.

"She dug her own grave," Rob Reynaga contends. "She's always trying to get in the spotlight. She saw a window of opportunity with this ad, and she took it. But it had nothing to do with her."

The advertisement ran in the June 3 edition of the *Viking Voice* and read "Anyways-B-Grateful that you have two working eyeballs and all the rest of that good stuff."

McGinthy, whose left eye was removed when she was 18 months old, states in the lawsuit that the advertisement was directed



toward her and "intended to ridicule, humiliate, a abuse and disparage" her.

The lawsuit contends that the teaching and

administrative staff at Peter Johansen High School knew about the advertisement be-

(See *MODESTO*, page 33)



# Court refuses to hear student editor's case

WASHINGTON — In June the Washington Supreme Court denied an expedited hearing in a case involving a high school student who faces contempt charges for failing to surrender photos to police.

Stacey Burns, editor of the Mountlake Terrace High School newspaper, the *Hawkeye*, was subpoenaed in February to hand over photos of a campus fight to police. The police planned to use the photos to determine the identity of those involved in the fight, which had as many as 20 participants and between 50 to 150 witnesses. The pictures, taken by two student photographers, were not published in the newspaper.

In April the trial court ruled that Burns had to surrender the pictures or else face a contempt charge. The judge, however, agreed to delay the contempt hearing until the appeals court could decide whether or not Burn's First Amendment rights were violated by the subpoena.

Burns' attorney, Howard Stambor, submitted the case to the Washington Supreme Court with the hope that the court would accept the case although it had not yet traveled through the state appeals court. Stambor said that this "fast-track" process is granted if the court believes the case in question to be urgent or if a major error has been made in a decision handed down by a lower court.

The state Supreme Court ruled there was no indication that the trial judge made such an error and therefore the case was not worthy of the "fast-track" appeal process. The case has been sent back to a lower court to follow the normal appeal procedure. ■



## Modesto

(Continued from page 32)

fore it was published and knew that it was directed at McGinthy. The suit maintains that the staff "deliberately published" the issue containing the advertisement in "reckless disregard" for its effect on McGinthy.

"I know what was printed was aimed exactly at me," McGinthy said.

As a result of the advertisement, according to the suit, McGinthy has suffered "severe mental and emotional distress . . . and deep depression and will continue to suffer such severe mental and emotional distress and depression for an indeterminate period of time in the future."

Reynaga, who doesn't go

to Johansen High School, is not named in the suit, but his girlfriend, who placed the advertisement for him, is.

McGinthy said she just wants the school administration to "be more responsible."

"I've done everything I could, and then some," she said. "They did not stand behind me once."

Howard Neyens, who is representing the school district, declined to comment on the case except to say he is "real confident" about the school's defense.

In 1990, a California court threw out a claim by a high school teacher that he had suffered "humiliation, mental anguish and mental distress" because of an article in the student newspaper labeling him a "babbling" and the "worst teacher in school."

A date has not been set for McGinthy's trial. ■

## Photographer settles case for undisclosed amount

MISSOURI— A lawsuit filed by a student photojournalist at Pittsburgh State University against five Missouri deputy sheriffs was settled out of court in April for an undisclosed amount.

The case stemmed from a 1992 incident in which student Cyprian Sanchez, assigned to cover a speech by then-President George Bush in Joplin, Mo., for his journalism class, was detained by sheriff's deputies and asked to surrender his film.

Sanchez was in the process of taking pictures of Bush hecklers being led away from the main rally to an area behind police barri-

ades.

The officers also confiscated anti-Bush signs from the protesters.

Deputy sheriffs approached Sanchez and ordered him to stop taking photographs and demanded his film. Sanchez refused and was escorted out of the area by officers.

The anti-Bush protesters were allowed to leave the police barricade after Bush completed his speech and left the campus.

Sanchez, along with three other rally attendants, filed suit against the deputies in early 1993 for violating their right to freedom of expression. ■



# Texas student publication bill dropped

TEXAS — A bill intended to subject college student publications to racial quotas was removed from consideration in April.

Rep. Ron Wilson (D-Houston) proposed the bill in November 1994, which called for the "editorial governing board and staff of each student publication of an institution of higher education [to] reflect the racial and ethnic diversity of this state."

Wilson, who is black, filed the bill in response to an editorial cartoon in the Texas A & M University's newspaper,

*The Battalion*, which depicted him as a small dog yapping at the heel of an A & M Corps of Cadets boot. The caption read "State Rep. Ron Wilson throws his weight around at Texas A & M."

Wilson, who is black, reportedly received a copy of the cartoon with a derogatory letter he considered racist in tone. The letter was signed, "Your friends at Texas A & M."

In response, Wilson proposed House Bill 63. The proposed bill was criticized by student journalists for unfairly targeting them and no other student orga-

nizations.

Tanya Eisner, the editor of the University of Houston's student newspaper when the bill was introduced, said the bill was also unfair because it did not allow leeway for institutions that are predominately one race.

Eisner cited Texas Southern University as an example, where 85 percent of the students are black. Under the proposed bill, the publication staff would have to reflect the state's 89.1 percent non-black population. ■

## Dambrot

(Continued from page 34)

cause his speech was "not a matter of public concern," and thus not protected by the First Amendment.

The U.S. Court of Appeals upheld both of the lower court's rulings.

"The language of this policy is sweeping and seemingly drafted to include as much and as many types of conduct as possible," the court ruled. "On its face, the policy reaches a substantial amount of constitutionally protected speech."

The court ruled that the policy's language presents a "realistic danger" to the protection afforded by the First Amendment.

"[T]here is nothing to ensure the University will not violate First Amendment rights even if that is not their intention," the court ruled. "It is clear from the text of the policy that language or writing, intentional or unintentional regardless of political value, can be prohibited upon

the initiative of the university."

The court ruled the policy vague because it doesn't provide fair notice of what speech will violate the policy, leaving it solely up to university officials to decide.

constitutes "content discrimination" by requiring the university to assess "the racial or ethnic content of the speech."

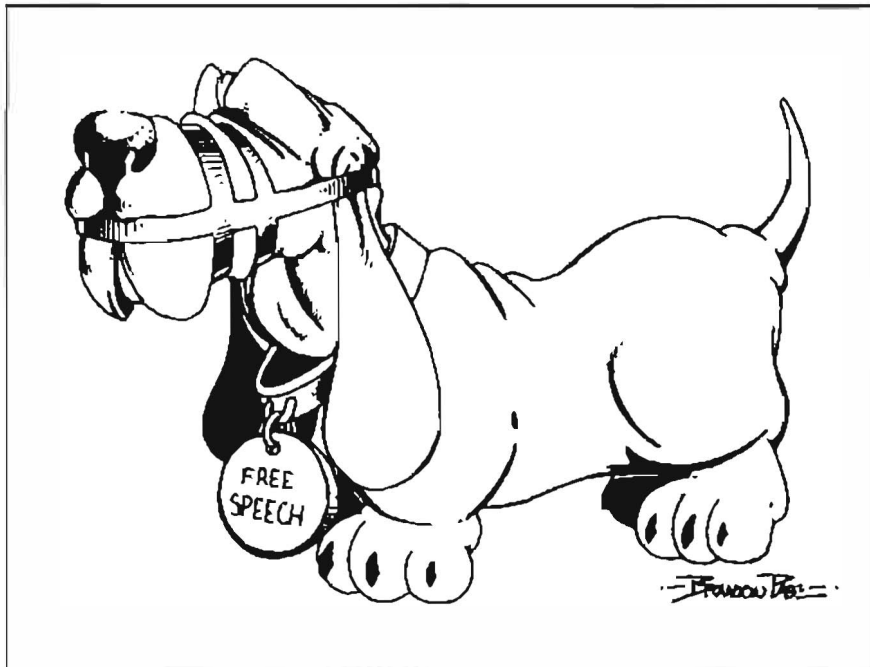
James Schuster, Dambrot's attorney, said by upholding the university's decision to fire Dambrot, the court is still limiting speech.

"It limits speech on campus to administrative oversight," he said. "It was an incident where the coach and the players were having a conversation, an interchange, and now the court has ruled the administration can control that."

According to the court opinion, the language in question was used in a January 1993 locker room session after the team had lost a game. Dambrot criticized the team for not playing hard

enough and said "Do you mind if I use the N-word?" When several players said they didn't mind, Dambrot allegedly said, "You know, we need to have more niggers on this team."

Schuster said Dambrot now plans to file a lawsuit against the university in Michigan state court for reverse discrimination and defamation. ■



CMU argued that the policy prohibits "fighting words," but the court found those too to be constitutionally protected. Citing the 1992 Supreme Court case *R.A.V. v. St. Paul*, which ruled unconstitutional a city ordinance that placed limitations on "those speakers who express views on disfavored subjects," the court ruled that CMU's policy

## Adviser, manager fired after controversial issue

COLORADO — Acting as an adviser or manager to a student newspaper may be hazardous to your job.

Robert Jaross, general manager of the *Mirror*, and adviser Lori Lamb were informed by University of Northern Colorado officials in April that their contracts would not be renewed. The announcement came shortly after publication of a controversial April Fool's edition of the paper that contained several satirical stories. One story featured a fake source who was quoted as saying school President Herman Lujan was undergoing a sex change, leaving school and "should take all the rest of them Mexicans with him."

Another story, written by fictional writer "John Kike" also received a less-than-enthusiastic response from students who believed it was a racial slur against Jews. These students submitted a list of demands to the Student Media Corporation, the organization that oversees production of the newspaper, and requested that the school take action against the publication.

The school decided not to punish the

newspaper staff. Student Media Corporation board member William Duff said the university must realize that the *Mirror* is a student newspaper designed to be a learning experience for the student journalist. Therefore, he said, the school must be tolerant of mistakes.

But newspaper staff members believe Jaross and Lamb lost their jobs as a direct result of the satirical issue. Arts and Entertainment editor Amy Marsing said it is evident to her and others on the staff that the April issue was responsible for Jaross and Lamb's removal.

"I personally found the timing very ironic," Marsing said. "The board said it was a coincidence that [Jaross and Lamb] were fired right after (See MICHIGAN, page 37)



## Professor fights school for job

WISCONSIN — After leading his students to victory in their quest to publish faculty evaluations, University of Wisconsin - River Falls professor David Pearce Demers is fighting for his job.

Demers, who has taught at River Falls for three-and-a-half years, served as adviser to the student newspaper, *Student Voice*, which he helped gain access to students' evaluations of faculty.

Demers serves as faculty adviser to the campus chapter of the Society of Professional Journalists (SPJ), which sued the university last year to make the records public. The Wisconsin attorney general supported the newspaper's First Amendment rights and refused to defend the university.

Later the *Student Voice* added more (See DEMERS, page 37)

## Adviser blames newspaper conflict for loss of teaching job

ALABAMA — This year has not been an easy one for adviser Melanie Patrick.

First she became embroiled in a public debate, complete with local press coverage, with high school principal Connie Williams over Williams' right to review the student newspaper prior to publication. Then, a few months later, Patrick was notified that her teaching contract was not being renewed.

Patrick said she began having trouble with school officials when the student newspaper, *Hoover Voice*, began printing articles and editorials that were critical of various school policies.

According to Patrick, one such editorial, which criticized the decision to hold the junior/senior prom in the cafeteria, drew criticism from Williams, who suggested the staff change the editorial and write another focusing on the advantages of having the prom

in the cafeteria.

Williams has stated she only asked that the students change a sentence that was factually incorrect in the original piece and to give the other side of the issue equal consideration.

According to Patrick, similar situations continued throughout the school year with Williams proposing changes in newspaper content over Patrick's objections.

In April, Patrick was informed her teaching contract would not be renewed. She has said that throughout the year she received excellent teaching evaluations of her classes. Furthermore, she claims the school told her she was fired on the basis of evaluations of her journalism class, which she claims was never evaluated.

"I was working for freedom of the (See HOOVER, page 37)

# Anti-Hazelwood legislation stalls in three states

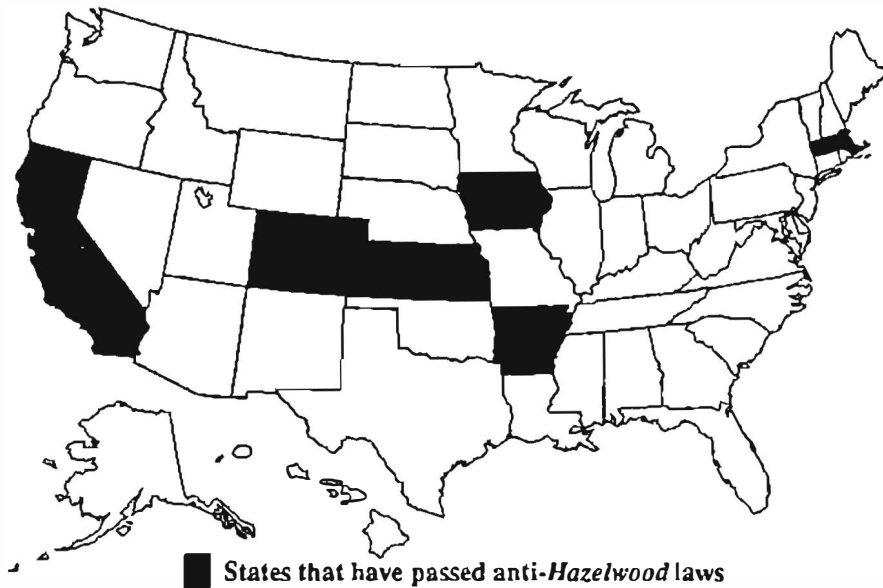
Although two states are not ready to give up the fight when it comes to anti-Hazelwood legislation, their battles have been temporarily postponed.

In Missouri, a bill designed to restore freedoms taken away from student journalists in the Supreme Court's 1988 *Hazelwood* decision died in February before it reached the House floor for debate and vote.

Jackie Rost, aide to bill sponsor Rep. Joan Bray (D-University City), said the bill would be reintroduced during the next session, which begins in January 1996.

The Oregon legislature also failed to pass a bill granting greater protection to student journalists. The bill may be reintroduced during the next session, which begins in January 1997.

In Nebraska a similar bill met a similar fate. Amendments to the Student Freedom of Expression Bill caused delays that kept the bill stranded in committee when the session ended in June. The bill will be



carried over to the January 1996 session where supporters of the bill believe it will be passed.

First Amendment activists in Florida

recently began organizing support for anti-Hazelwood legislation and are hoping to find a sponsor for next year's legislature. ■

## Michigan

(Continued from page 36)

the issue came out, but this would have never happened if they hadn't been offended by that issue. I know one board member in particular went on and on about how offended he was about the content."

At an executive meeting of the board held on April 21, the decision was made not to renew Jaross' contract, to restructure his position and begin a national search for a replacement. Lamb, who has worked without a written contract since she began in 1994, was informed that she would not be rehired.

In a letter to *Mirror* editor Thomas Martinez, board chairwoman Beth Hellwig-Olson wrote, "I want to make it clear in writing that no member of the Board nor I have made any personnel decisions based on the March 31st edition."

Board members have stated that both Lamb and Jaross are welcome to reapply for the positions. Jaross said he has no intention of reapplying for the position he once filled.

"If they had wanted me to stay they wouldn't be looking for somebody else," he said.

According to Jaross and Lamb, at a board meeting earlier in the year both were asked whether or not they practiced prior review to check for mistakes in grammar and spelling. Jaross and Lamb said they did not read copy before it was printed because such action would be a violation of student's rights.

Marsing said she believes the board wants to replace Jaross and Lamb with someone new in an effort to gain prior review of the newspaper.

University officials could not be reached for comment. ■

## Hoover

(Continued from page 36)

press for students who wanted to create a pretty innocuous paper and not a public relations vehicle for Hoover High School," Patrick said. "I did the right thing. From a practical standpoint it may have been stupid since I've got to feed my kids, but I believe that strongly that [Williams] was interfering with the student's right to a free press."

While Williams admits she did review the newspaper prior to publication, she said it was only to ensure the quality of the publication was "where it should be," and that as principal she felt it her right to do so.

Williams said she could not discuss the reasons behind Patrick's dismissal. ■

## Demers

(Continued from page 36)

fuel to the fire by publishing faculty salaries. In April, the newspaper reported that on average, female faculty members earned \$1,700 less than male faculty.

River Falls Chancellor Gary Thibodeau criticized the *Student Voice* study and said it was not "complex enough."

In spring, journalism department committees voted against recommending Demers for promotion and for retention in the 1996-97 school year. Demers has hired an attorney to represent him in the termination review process and is considering filing a federal civil rights lawsuit against the university. Thibodeau refused to comment on the case. ■

## Friends

The Student Press Law Center gratefully acknowledges the generous support of the following institutions and individuals without whose support defending the free press rights of student journalists would be a far more difficult task. As a not-for-profit organization, the SPLC is entirely dependent on donations from those who are committed to its work. All contributions are tax-deductible.

(Contributions from April 22 to August 2, 1995)

### Benefactors (More than \$500)

Associated Collegiate Press  
Association for Education in Journalism & Mass Communication—Law Division  
Association for Education in Journalism & Mass Communication—Scholastic Journalism Division  
College Media Advisers  
John S. and James L. Knight Foundation  
Minnesota High School Press Association  
National Scholastic Press Association  
Newspaper Association of America Foundation  
*Oregon Daily Emerald*  
Quill and Scroll  
Southwestern Journalism Congress  
*The Washington Post* (DC)

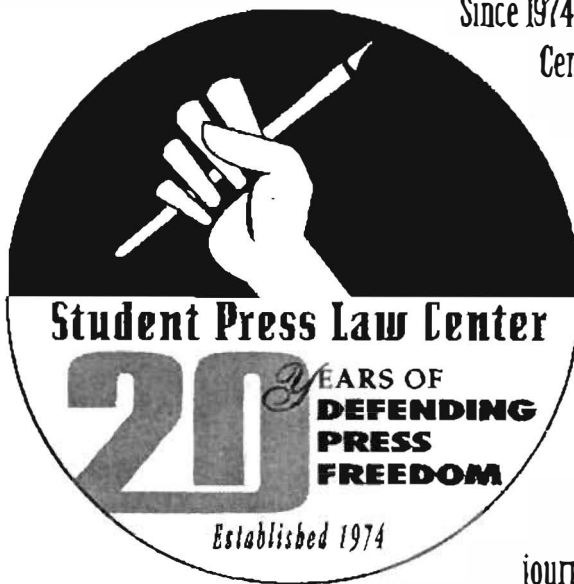
### Supporters (\$100-499)

Garden State Scholastic Press Association (NJ)  
Nebraska High School Press Association  
*The Pitt News*, University of Pittsburgh (PA)  
The Red and Black Publishing Company (GA)  
Roz Stark (VA)  
Student Publications, Inc., Kansas State University  
West Senior High School (IA)

### Contributors (\$25-99)

Columbine High School (CO)  
William Elsen (VA)  
*The Hawkeye* (WA)  
Donald P. Parker (NY)  
Libertyville Community High School (IL)  
Petoskey Public High School (MI)  
*The Slant*, Madison Area Technical College, Truax (WI)

# An American Tradition



Since 1974, the Student Press Law Center has been the only organization devoted to defending your free press rights and helping you learn about the law.

When you have a question about your legal rights as a student journalist or media adviser, call or write us.

Take a stand and join in our effort to make student press freedom an American tradition.

*The Stinger*, Inno High School (SC)  
Student Publications, University of Texas-Pan American  
*The Thoroughbred News*, Kentucky State University

### Order SPLC Publications

All publications listed are \$2 per copy. Send your order to the SPLC.

- Rights, Restrictions and Responsibilities: Legal and Ethical Issues for the Yearbook Journalist
- Access to Campus Crime Reports
- Freedom of Information Law Primer
- IRS Form 990: A Public Record for the Private School Journalist
- Access to Executive Personnel Searches
- Access to Campus Crime Statistics
- Access to College Foundations
- Access to Student Government Meetings

### Internship opportunities

with the SPLC are available each school semester and during the summer for college and law students with an interest in media law. Interns write and produce the *Report*, handle requests for information on student press rights and conduct research on legal issues. Interested individuals are encouraged to write or call the SPLC for more information.

### Drawings, cartoons and news tips

are welcome and needed by the *Report* staff. Help us inform the student journalism community by contributing your skills and information. Write or call us at:

Student Press Law Center  
1101 Wilson Blvd., Suite 1910  
Arlington, VA 22209  
(703) 807-1904

## Subscription Form

student press law center  
**report**  
Spring 1995 Vol. XVI, No. 2



# Unlock free expression

## Your subscription supports the work of the Student Press Law Center.

The Student Press Law Center is the only national organization devoted exclusively to protecting the First Amendment rights of high school and college journalists.

The Center serves as a national legal aid agency providing legal assistance and information to students and faculty advisers experiencing censorship or other legal problems.

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

Defending your rights isn't cheap. Subscription dollars form a large part of our budget.

Your subscription and contribution will help us continue to serve as the national advocate for the rights of student journalists. All contributions are tax-deductible.

All orders must be accompanied by a check, money order or signed school purchase order.

If you have a legal question or problem relating to your rights as a student journalist or faculty adviser, call the Student Press Law Center at (703) 807-1904.

Please enter my subscription to the *SPLC Report*

1 year for \$15

Along with this blank I have enclosed a check, money order or signed purchase order payable to:

Student Press Law Center  
1101 Wilson Blvd., Suite 1910  
Arlington, VA 22209

Name \_\_\_\_\_

Title or position \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I wish to support the work of the Student Press Law Center with a tax-deductible contribution in the following amount: \_\_\_\_\_

Total enclosed: \_\_\_\_\_

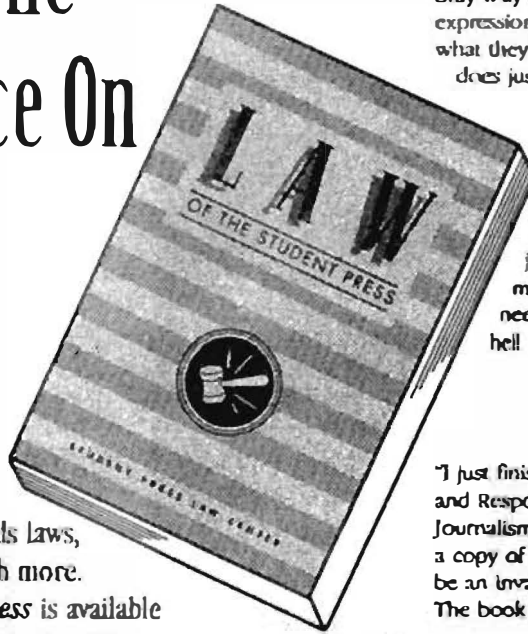
**NEW EDITION**

# A New Version Of The Most-Used Resource On Student Press Law Is Now Available.

Nineteen chapters of information about press freedom, libel, privacy invasion, copyright, confidential sources, adviser's rights, open records laws, advertising acceptability and much more.



*Law of the Student Press* is available for \$15. (\$12.50 plus \$2.50 shipping. Virginia residents send \$15.68 to include sales tax.) Send your check or purchase order today!



**269 PAGES  
PAPERBACK**

"The new *Law of the Student Press* is a must for publication advisers and their staffs. In this post-*Hazelwood* era, the only way students can protect their free expression rights is to know clearly what they are, and this new edition does just that."

— **Candace Perkins,**  
President, Journalism  
Education Association

"Had such a publication existed when I was a student journalist it would have kept me (1) informed on matters I needed to know and (2) out of a hell of a lot of trouble."

— **John Selgenthaler**  
former editor and publisher  
*The Nashville Tennessean*

"I just finished teaching a unit on Rights and Responsibilities to my Beginning Journalism Class. How I wish I had had a copy of the book before hand. It will be an invaluable resource in the future. The book is a must ...."

— **H.L. Hall**  
Newspaper Advisor  
Kirkwood High School,  
Kirkwood, MO

Student Press Law Center • 1101 Wilson Blvd. • Suite 1910 • Arlington, VA 22209 • (703) 807-1904

## **STUDENT PRESS LAW CENTER**

1101 Wilson Blvd., Suite 1910  
Arlington, VA 22209  
(703) 807-1904

e-mail: [spic@capaccess.org](mailto:spic@capaccess.org)

Non-profit Org.  
U.S. Postage Paid  
Washington, DC  
Permit No. 4702

**ATTENTION: STUDENT MEDIA**