TUESDAY, FEBRUARY 16, 1993
4:00 - 5:30 p.m.

CONCURRENT SESSION ONE

The Final Word on Compliance with the Drug Free Schools and Communities Act, and the Student Right to Know and Campus Security Act -- A Review of Recent Litigation Involving Media Demands for Student Records

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THE DRUG FREE SCHOOLS AND COMMUNITIES ACT AMENDMENTS OF 1989 AND THE STUDENT RIGHT-TO-KNOW AND CAMPUS SECURITY ACT

PRESENTED BY:

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Presented at the Stetson University College of Law Conference:

14th ANNUAL NATIONAL CONFERENCE ON LAW AND HIGHER EDUCATION: ISSUES IN 1993
Sheraton Sand Key Resort Hotel
Clearwater Beach, Florida
February 14-17, 1993
The Drug Free Schools and Communities Act Amendments of 1989

and

The Student Right-to-Know and Campus Security Act

by

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A. The Drug Free Schools and Communities Act Amendments of 1989 (20 USC 1145g)—require institutions who receive federal financial assistance to certify that they have adopted and implemented a drug and alcohol prevention program.

I. Regulations implementing DFSCAA (34 CFR 86) set forth what institutions are required to do under the law. However, a better source for reference is the August 16, 1990 issue of the Federal Register. This document contains the final regs and DE's response to questions that were raised concerning the proposed regulations. Thus, it provides insight into how the Department will enforce the regulations.

II. The Basic Requirements of the law mandate that each institution's prevention program include at a minimum:

a) The annual distribution in writing to each employee and to each student who is taking one or more classes for any type of academic credit, except for continuing education units, regardless of the length of the student's program of study, of --
(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, state and federal law); and a description of those sanctions up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required above. Disciplinary sanctions may include completing an appropriate rehab program.

(3) A description of applicable legal sanctions under local, state or federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(4) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol; and

(5) A description of any drug or alcohol counseling, treatment or rehab or re-entry programs that are available to employees or students.

(b) A biennial review by the IHE of its program to--

(1) Determine its effectiveness and implement changes to the program if needed; and

(2) Ensure that the disciplinary sanctions are consistently enforced.
III. The Notice is required under the regulations to be "in writing" although that requirement is not mentioned in the law. You may use whatever method you choose to distribute the notice but you must "ensure" that each student and employee receive a copy. "Merely making the materials available to those who wish to take them does not satisfy the requirements of distribution. . ." (55 Fed. Reg. 33595). What this boils down to for students is mailing the notice.

The notice must be distributed each year to each student and employee, not just new students. Thus, it needs to be included in the orientation sessions for all new personnel (including faculty) and mailed to each new student each term during the year (including all new summer school students taking at least one class for credit).

IV. Distribution of this Notice by mass mailings is the least effective and least efficient means of getting the information to students but it does meet the requirement of the law.

Research indicates that students know a great deal about the five mandated areas before they come to college and that handbooks, campus media, residence hall staff, professors, classes and even public media are where students learn the most after arriving on campus. Different areas of information are communicated more effectively using different types of transmitters. Health risks, for example, seem to be learned more in classes than rules and regulations which are communicated best in handbooks. (See Palmer, C., Gehring, D., & Guthrie, V., 1992). Student knowledge of information mandated by the 1989 Amendments to the Drug Free Schools and Communities Act. [NASPA Journal, 30(1)].
IV. **Students** are defined as those individuals enrolled in at least one course for academic credit. Those enrolled only for CEU's, and I assume CLE credit, are not considered students.

VI. **Standards of Conduct** must prohibit "...at a minimum the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities" (55 Fed. Reg. 33583).

The legal age in every state is now 21. Most states also prohibit anyone providing alcohol to minors and intoxicated persons (see Gehring, D. and Geraci, C. (1989) *Alcohol on Campus*. College Administration Pubs. Inc., Ashville, N. C.). Thus, campus codes must now include standards prohibiting possession and use by those under 21 as well as furnishing alcohol to a minor or an intoxicated person.

VII. **Sanctions** must be imposed for violations of institutional policies.

Does this requirement trigger "state action" at private institutions requiring them to provide Fourteenth Amendment rights of due process to students sanctioned for campus alcohol violations? See *Ryan v. Hofstra University*, 324 N.Y.S. 2d 964 (S. Ct. Nassau Cty. 1971) where a private college was held to be engaged in "state action" in disciplining a student who damaged a residence hall which was built with loans from the State Dormitory Authority and which required that the university have rules and regulations governing the conduct of residents.
What's the liability of the institution when its agents (RA's) fail to enforce standards and someone is injured as a result? Tort liability? Liability under 42 USC 1983?

Sanctions may include referral to a rehabilitation program. Sanctions must be consistent but facts differ, so sanctions may too. Be creative. Remember the objective is to encourage healthy lifestyles and maintain good order and discipline.

VIII. **Off-Campus Activities** are also included under the law if they are sponsored by the institution. This includes field trips [See Beach v. Utah, 726 P.2d 413 (Ut. 1987)] and could include this conference if your institution is paying registration and expenses—so don't abuse alcohol and, if you use illicit drugs, don't inhale!

World Book Dictionary (1976) defines a sponsor as "a person or group that arranges or promotes an organization meeting, or the like."

IX. **Referral for Discipline or Prosecution** is not mandated for counselors or medical personnel, nor does the law require institutions to refer those who violate its standards to civil authorities for prosecution (55 Fed. Reg. 33597). The institution may, however, do so if it so chooses.

X. **A Biennial Review** must be conducted and institutions "... shall upon request, make available to the Secretary and the public a copy of each item required..." (emphasis added) (55 Fed. Reg. 33583) implying that the review be in writing.
The regulations provide some guidance about the types of information you might include but do not mandate how the review is to be conducted. Since it is open to the public, I suggest that you not include personally identifiable information.

D.E. has used regional offices to monitor compliance. See attached check sheet. Under the law the Secretary of D.E. can make a determination to terminate federal funding or require repayment of federal funding! There is an appeal process (34 CFR 86.301).

XI. Records (including your biennial review) must be retained for three years after the fiscal year in which they were generated.

B. The Student Right-to-Know and Campus Security Acts (20 USC 1092) as amended by the Sexual Assault Victims' Bill of Rights (P.L. 101-542 as amended by P.L. 102-26 and 102-325) amends the Student Consumer Information Section (20 USC 1092) of Title IV (Student Financial Aid) of The Higher Education Act of 1965 (20 USC 1001 et seq.).

The law contains two separate Titles. Title I is the Student Right-to-Know Act and The Campus Security Act is Title II.

I. The Student Right-to-Know Act (20 USC 1092)

(a) Requirements of the Student Right-to-Know Act essentially require institutions to provide graduation rate data to current and prospective students and the graduation rates of athletes on financial aid categorized by race, sex and sport.

General graduation rates must be "readily available" to prospective and current students and the Secretary of D.E. upon request.
Information concerning graduation rates pertaining to athletes must be provided to each prospective athlete to whom an offer is made.

(b) Graduation Rates are computed in a manner specified by the law using cohorts who enter the institution between July 1 and September 30 as full-time, degree-seeking undergraduates who are first time attendees at any post-secondary institution. Students who transfer in are therefore excluded from the cohort.

(i) Excluded from the cohort are those who transfer out to a higher program for which their prior program provided substantial preparation. Also excluded from the cohort are those who enter the military, government foreign service or church service. Would the "church service" exclusion constitute a violation of First Amendment "Establishment Clause?"

(ii) Calculation of graduation rates are computed using 150 percent of the normal program length.

(c) Supplemental Data may be provided to illuminate completion rates.

(d) The Date graduation rate data must be available is July 1, 1993 and must cover the period July 1, 1991 to June 30 1992. However, where data has not been maintained, institutions may use the persistence rate of the fall 1991 cohort until a graduation rate is available. Graduation rates are expected to be available at every institution by July 1, 1998 for the 1991 cohort.
(e) **Waivers** may be applied for by institutions whose athletic conferences require substantially the same information.

(f) **Regulations** to implement the law have only been published as proposed rules at this time (57 Fed. Reg. 30862, Friday, July 10, 1992). There has also been a "Dear Colleague" letter from D.E. (August, 1991, GEN-91-27) which provides the Department's explanations of how the law is to be implemented.

II. **The Campus Security Act (20 USC 1092).**

(a) **Requirements** of this part of the law are very comprehensive. Institutions must generally maintain and annually distribute campus crime statistics, policy statements and develop sexual assault programs. The policies affect at least campus law enforcement, housing, Greek life, physical plant and health services.

Crime statistics must be compiled for all reported murders, robberies, aggravated assaults, auto thefts, burglaries and sexual offenses, forcible or nonforcible, as well as arrests for weapons, drug abuse and alcohol violations.

Institutional policies with respect to crime reporting procedures, institutional responses, facilities security, enforcement of underage drinking and monitoring of criminal activity at off-campus student organizations must be disseminated to students.

Timely reports must be made to the campus community of all serious crimes reported to campus security officials or local authorities.
(b) **Sexual Assault Programs** must be provided which, at a minimum include, awareness training, possible sanctions, procedures to follow once an offense has occurred, the option of notifying local police, counseling services available and options for changing academic and living arrangements where reasonable.

(c) **Disciplinary Procedures** on campus for sexual assaults must include clear statements that the accuser shall be entitled to have others present and be informed of the outcome of the hearing.

(d) **The Buckley Amendment** was amended by this law to **allow** but not require institutions to inform the "alleged victim" of "a crime of violence" (see 18 USC 16) of the outcome of the disciplinary hearing against the "alleged perpetrator." However, note that in sexual offense discipline hearings the accuser "shall be entitled" to be informed of the outcome of the hearing.

(e) **Definitions** in the law include the term "campus" which encompasses, in addition to all university property, private property owned or controlled by student organizations recognized by the institution. Other definitions are based on the FBI's Uniform Crime Reporting (UCR).

(f) **Regulations** have only been issued in the form of proposed rules (57 Fed. Reg. 30826) and the "Dear Colleague" letter referred to above. Several national organizations have submitted written responses. These have dealt primarily with DE's inclusion of resident directors within the definition of campus security in opposition to Congressional intent.
(g) The Effective Date for providing the information required under
The Campus Security Act was September 1, 1991, but statistics
required under the law needed to be published annually,
beginning September 1, 1992. The sexual assault provisions
become effective September 1, 1993.

(h) Reporting Periods are from August 1, 1991 to July 31, 1992 and
thereafter on a calendar year basis.

NOTE: THIS OUTLINE IS PROVIDED FOR INSTRUCTIONAL PURPOSES
ONLY AND FEDERAL LAWS AND REGULATIONS SHOULD BE
REFERRED TO FOR EXACT REQUIREMENTS OF THE LAW.
COMPLIANCE CHECKLIST
Drug Free Schools and Campuses Regulations (34 CFR 86)

<table>
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- Does the institution maintain a copy of its drug prevention program? [ ] [ ]

- Does the institution provide annually to each employee and each student, who is taking one or more classes for any type of academic credit except for continuing education units, written materials that adequately describe and contain the following:
  - Standards of conduct that prohibit unlawful possession, use, or distribution of illicit drugs and alcohol on its property or as a part of its activities; [ ] [ ]
  - A description of the health risks associated with the use of illicit drugs and the abuse of alcohol; [ ] [ ]
  - A description of applicable legal sanctions under local, state, or Federal law; [ ] [ ]
  - A description of applicable counseling, treatment, or rehabilitation or re-entry programs; [ ] [ ]
  - A clear statement of the disciplinary sanctions the institution will impose on students and employees, and a description of those sanctions. [ ] [ ]

- How are the above materials distributed to students?
  - One-time mass mailing [ ] [ ]
  - Through campus post office boxes [ ] [ ]
  - Class schedules which are mailed to each student [ ] [ ]
  - During student orientation [ ] [ ]
  - In another manner (describe): ____________________________

July 1991
How are the above materials distributed to employees?

- One-time mass mailing
- Through campus post office boxes
- Desk - Desk by hand
- During new employees orientation
- In another manner (describe):

Does the means of distribution provide adequate assurance that each student and employee receives the materials?

Does the institution's distribution plan make provisions for providing these materials to students who enroll at some date after the initial distribution?

How does the institution conduct biennial reviews of its drug prevention program to determine effectiveness, implement necessary changes, and ensure that disciplinary sanctions are enforced?

- Survey its student body and employees
- Evaluate comments obtained from a suggestion box
- Evaluate documented cases of drug treatment referrals and disciplinary sanctions imposed on students and employees
- Other (please list)

Is requested, has the institution made liable, to the Secretary and the public, copy of each required item in the drug prevention program and the results of the biennial review?

COMMENTS

July 1991
RECENT LITIGATION INVOLVING MEDIA DEMANDS FOR STUDENT RECORDS STUDELSKA V. DULY, ET AL - A CASE STUDY

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Presented at the Stetson University
College of Law Conference:

14th ANNUAL NATIONAL CONFERENCE ON LAW AND HIGHER EDUCATION: ISSUES IN 1993
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On May 15, 1992, Studelska filed a lawsuit in United States District Court for the District of Minnesota against the President of BSU, various BSU officials and members of the Minnesota State University Board. Studelska's complaint sought an injunction ordering defendants not to deny Studelska access to BSU Security Services records. Studelska also sought a declaration that Minn. Stat. § 13.32, subd. 1(a) (1990) does not authorize denial of access to crime data which would otherwise be made public pursuant to Minn. Stat. § 13.82 (1990 and Supplement 1991). In the alternative, Studelska sought a declaration that Minn. Stat. § 13.32, subd. 1(a) (1990) violated the First and Fourteenth Amendments of the United States Constitution.

MINNESOTA STATE LAW

The records maintained by BSU Security Services are classified as "confidential" by Minn. Stat. § 13.32, subd. 1(a) (1990) which provides, in relevant part:

Records of a law enforcement unit of a public educational agency or institution which are maintained apart from education data and are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officials of the jurisdiction are confidential; provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

Under this statute, BSU Security Services records maintained apart from education data and maintained solely for law enforcement purposes and not disclosed to individuals other than law enforcement officials of the jurisdiction are confidential.
When access to data classified as confidential is requested, the duty of the person responsible for the data is governed by Minn. Stat. § 13.02, subd. 3 (Supp. 1991) which provides:

If the responsible authority or designee determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person of the determination either orally at the time of the request or in writing as soon after that time as possible, and shall cite the specific section, temporary classification, or specific provision of federal law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

Minnesota law provides for heavy sanctions in the event that confidential data is disclosed in violation of the Minnesota Government Data Practices Act. Minn. Stat. § 13.09 (1990) makes violation of the Act a misdemeanor, and willful violation by a public employee constitutes just cause for suspension without pay or dismissal of the public employee. In addition, a violator is subject to civil suit for damages, as well as exemplary damages of between $100 and $10,000 for each violation. Minn. Stat. § 13.08, subd. 1 (1990). The civil suit may also seek injunctive relief or constitute an action to compel compliance. Minn. Stat. § 13.08, subds. 2 and 4 (1990).

Access to data in the hands of law enforcement officials generally is subject to Minn. Stat. § 13.82 (1990) which provides in part:

This section shall apply to agencies which carry on a law enforcement function, including but not limited to municipal police departments, county sheriff departments, fire departments, the bureau of criminal apprehension, the Minnesota state patrol, the board of peace officer standards and training and the department of commerce.

Law enforcement data subject to Minn. Stat. § 13.82 (1990) is, with only narrow exceptions, generally available to the public. The preliminary issue in Studelska was simply a matter of statutory construction. Plaintiff took the position that the incident reports prepared by the BSU Security Office were law enforcement data subject to Minn.
Stat. § 13.82 (1990) and, therefore, available to the public. At the beginning of the oral argument, the judge stated that as a matter of pure statutory construction, the incidents reports were records of a law enforcement unit of a public educational agency subject to Minn. Stat. § 13.32, subd. 1(a) (1990) and, therefore, confidential. The only basis for plaintiff's claim to access to the incident reports, therefore, remains in the constitutional challenge to the statutory scheme.

**FIRST AMENDMENT FREEDOM OF THE PRESS CLAIM**

The First Amendment to the United States Constitution states, in relevant part: "Congress shall make no law . . . abridging the freedom of speech, or of the press." The Fourteenth Amendment extends this preclusion of actions by the states. Studelska argued that limiting access to BSU's Security Services incident reports was an unconstitutional abridgement of freedom of the press. BSU argued, on the other hand, that the language constrains the government but does not place an affirmative obligation upon the government to supply information. In *Pell v. Procunier*, 417 U.S. 817, 833-34, 94 S. Ct. 2800, 2809-10 (1974), the Court held that although the First Amendment protects the press' right to "seek out sources of information not available to members of the general public." it does not "impose upon government the affirmative duty to make available to journalists sources of information not available to members of the public generally."

§ 552(b)(1). The court "firmly reject[ed] the effort to imply a Constitutional right to disclosure of Government files." 358 F. Supp. at 1321. The court said:

The First Amendment cannot be said to impose an affirmative duty on the part of the government to assist in that research or to disclose Government files. Plaintiffs' interests here are statutory in nature and have been accorded due consideration as such.

Houchins v. KQED, Inc., 438 U.S. 1, 98 S. Ct. 2588 (1978), did not involve access to government documents, but the principles announced in the case have been applied by the courts in determining First Amendment claims relating to government documents other than documents associated with court proceedings. In Houchins, a broadcasting company sought access to a portion of a county jail where a suicide reportedly had occurred and where conditions were allegedly responsible for prisoners' problems. Although prison officials denied access to this particular area, there were a number of other routes through which the plaintiffs could have obtained information about prison conditions under current prison mail, visitation, and phone call regulations. The Court said:

The public importance of conditions in penal facilities and the media's role of providing information afford no basis for reading into the Constitution a right of the public or the media to enter these institutions, with camera equipment, and take moving and still pictures of inmates for broadcast purposes. This Court has never intimated a First Amendment guarantee of access to all sources of information within government control.

438 U.S. at 9, 98 S. Ct. at 2593-94 (emphasis supplied). Justice Stewart, concurring, also wrote: The First and Fourteenth Amendments do not guarantee the public a right of access to information generated or controlled by the government. " Id. at 16, 98 S. Ct. at 2597. The Court's majority opinion noted that the respondents' argument "invites the Court to involve itself in what is clearly a legislative task which the Constitution has left to the political processes." Id. at 12, 98 S. Ct. at 2595. The Court gave much weight to the fact that there is "no discernible basis for a constitutional duty to disclose, or for
standards governing disclosure of or access to information." Id. at 14, 98 S. Ct. at 2596.

The Court stated:

Because the Constitution affords no guidelines, absent statutory standards, hundreds of judges would, under the Court of Appeals' approach, be at large to fashion ad hoc standards, in individual cases, according to their own ideas of what seems "desirable" or "expedient."

Id. The Court, quoting Stewart, "Or of the Press," 26 Hastings L. J. 631, 636, stated:

The public's interest in knowing about its government is protected by the guarantee of a Free Press, but the protection is indirect. The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.

Id. The Court's holding in Houchins is broad: "Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control." Id. at 15, 98 S. Ct. at 2597.

Studelska, on the other hand, relied heavily on the analysis used in Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S. Ct. 2814 (1980) and Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 102 S. Ct. 2613 (1982) (hereinafter "Richmond-Globe analysis"). These cases define the scope of the First Amendment access to criminal trials and certain criminal proceedings. In response, BSU contended that the Richmond-Globe analysis was not applicable to the access to Security Services incident reports. BSU noted that the Eighth Circuit observed in In re Search Warrant for Secretarial Area-Gunn, 855 F.2d 569, 573 (8th Cir. 1988): "The [United States] Supreme Court has not addressed the question of whether the first amendment right of public access extends to documents." (Emphasis in original).

The cases cited by Studelska demonstrated that some lower courts extended the Richmond-Globe analysis to documents filed in court proceedings in criminal cases.1

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1. In re Search Warrant (qualified right of access to documents filed in support of search warrant applications): Seattle Times v. U.S. Dist. Ct., 845 F.2d 1513, 1517 (9th Cir. 1988) (qualified right of access to pretrial release proceedings and documents filed therein); U.S. v. Haller, 837 F.2d 84, 86-87 (2d Cir. 1988) (qualified right of access to plea hearings and plea agreements); Matter of New York Times Co., 828 F.2d 100 (2d Cir. 1987), cert. denied sub nom. Esposito v.
and other lower courts have extended it to civil court proceedings and documents filed in civil court proceedings. However, none of the cases cited by Studelska extended the two-part Richmond-Globe analysis to documents not involved in a criminal or civil proceeding.²

Studelska relied heavily on Bauer v. Kincaid 759 F. Supp. 575 (S.D. Mo. 1991), in which the facts were very similar to those facing the BSU. In Bauer an action was brought by the editor of a student newspaper against State University officials alleging violations of Civil Rights pursuant to 42 U.S.C. § 1983 including violations of the First, Fifth and Fourteenth Amendments to the U.S. Constitution. The plaintiff also alleged a violation of the Missouri version of a government data practices act. The Court first addressed the impact of Missouri statutes and interpreted the statutes to allow access to the records. Since the Missouri statute was not very similar to the Minnesota statute, the

Footnote 1 Cont.


2. Cable News Network v. American Broadcasting, 518 F. Supp. 1238 (N.D. Ga. 1981), involved a White House order excluding television media representatives from attending "limited coverage" events at the White House. The Tenth Circuit called the validity of the Cable News case into doubt by noting that the Supreme Court, in Nixon v. Warner Communications, Inc., 435 U.S. 589, 609-10, 98 S. Ct. 1306, 1317-18 (1978), rejected a First Amendment attack on court rules limiting television coverage in the courtroom. Combined Communications Corp. v. Finesilver, 672 F.2d 818, 821 (10th Cir. 1982). In Society of Professional Journalists v. Sec’y of Labor, 832 F.2d 1180 (10th Cir. 1987), concerning the right to attend a formal administrative hearing of a federal administrative agency, the Tenth Circuit ordered the district court to vacate its judgment and withdraw its memorandum decision and order (reported at 616 F. Supp. 569 (D.C. Utah 1985)). Studelska also cites WJW-TV, Inc. v. Cleveland, 686 F. Supp. 177 (N.D. Ohio 1988), vacated as moot, 870 F.2d 658 (6th Cir. 1989) (table), reported in full, 878 F.2d 906, cert. denied, 493 U.S. 819 (1989), concerning closure of a city council meeting; this case has no precedential value because the 6th Circuit vacated and remanded with instruction to dismiss the complaint. Finally, the holding of League of Women Voters v. Adams, 13 Med. L. Rep. 1433 (Super. Ct. 1986), in which the court found an implied right of access to legislative committee meetings based on the Alaska Constitution, was reversed sub nom. Abood v. League of Women Voters, 743 P.2d 333 (Alaska 1987).
argument moved directly to the second issue in Bauer which was the constitutional challenge. Although the court granted access to the incident reports under the constitutional analysis, it also noted, "It is not entirely clear whether Richmond Newspapers recognized a First Amendment right of access to government information which is newsworthy." As the court in Capital Cities Media, Inc. v. Chester, 797 F.2d 1164, 1173 (3d Cir. 1986) observed:

While these cases [Richmond; Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 102 S. Ct. 2614 (1982); Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 104 S. Ct. 819 (1984)] clearly represent a significant development, they do not expressly or impliedly overrule Houchins. These cases hold no more than that the government may not close government proceedings which historically have been open unless public access contributes nothing of significant value to that process or unless there is a compelling state interest in closure and a carefully tailored resolution of the conflict between the interest and First Amendment concerns.

BSU argued that in finding a First Amendment right to access to campus security records, the court in Bauer supra relied on an overbroad reading of Richmond supra establishing a First Amendment right to "receive information and ideas." Id. at 593. The court also relied on the 1975 Texas Court of Civil Appeals decision in Houston Chronicle. BSU also noted, the United States Supreme Court has not applied Richmond to government documents, and Houston Chronicle's First Amendment holding was not sustained by the Texas Supreme Court. In addition, at least one other court has criticized the holding in Bauer. In Norwood v. Slammons, 788 F. Supp. 1020, 1027 (W.D. Ark. 1991), aff'd, No. 91-2407 (8th Cir., February 11, 1992) (unpublished opinion), the court stated:

With all due respect to the Bauer court, this court finds no support for such a proposition in the cases of the Supreme Court nor in the cases from the Eighth Circuit.

3. The Bauer court did not use the two-part Richmond-Globe analysis in reaching its conclusion on the First Amendment issue.
Finally, BSU contended that as a district court decision relying on faulty analysis to make
a finding of a First Amendment right to campus security records, the decision in Bauer is
neither binding nor persuasive.

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAIM

Studelska also alleged that BSU violated her right to equal protection guaranteed
by the Fourteenth Amendment to the United States Constitution because under the
Minnesota Government Data Practices Act, crime reports compiled by BSU Security
Services are confidential under Minn. Stat. § 13.32, subd. 1(a) (1990), while the same or
substantially the same information collected off-campus by local police is available to the
statutes impermissibly discriminates between "students" and "non-students." Id., ¶ 28.

The Equal Protection Clause of the Fourteenth Amendment to the United States
Constitution provides "nor shall any State . . . deny to any person within its jurisdiction
the equal protection of the laws." As the United States Supreme Court stated in

Of course, most laws differentiate in some fashion between classes of
persons. The Equal Protection Clause does not forbid classification. It
simply keeps governmental decisionmakers from treating differently
persons who are in all relevant respects alike.

(Emphasis supplied.) A state may make legislative classifications if the legislation make
"neither an invidious nor irrational distinction among [the state's] residents." Hooper v.

BSU argued that Studelska's equal protection claim does not even fall within the
ambit of the Fourteenth Amendment because the statutes at issue do not create different
classes of persons or groups of persons. Instead, the statutes create classes of data
which determine the availability of those data equally to all persons. For those data
classified as confidential under Minn. Stat. § 13.32, subd. 1(a) (1990), the data are
equally unavailable to all persons. For those data which are classified as public under minn. stat. § 13.32 (1990 and Supp. 1991), the data are equally accessible to all persons.

The plaintiff's equal protection claim mirrored the equal protection claim of the plaintiff in Student Law Press Center v. Alexander, 778 F. Supp. 1227 (D.D.C. 1991). In that case, campus police withheld campus crime information which was available to the public through the police department. Studelska claimed that the law under which campus police withheld information restricted access to "information that is uniquely interesting to the campus community." Id. at 1233. In ruling on a motion for preliminary injunction with respect to the likelihood that the plaintiff would prevail on the merits of her equal protection claim, the court stated:

There is no precedent to support plaintiff's claim, and the student press suffers no restriction that does not apply to the public as a whole. Therefore, plaintiffs have not shown that the [statute] implicates equal protection concerns.

Id. Similarly, Minn. Stat. §§ 13.32, subd. 1(a) (1990) and 13.82 (1990 and Supp. 1991) do not implicate equal protection because the statutes treat all members of the public the same. Students and non-students alike have the same access to information.

**CONCLUSION**

As I noted at the beginning of this document, I had hoped to be able to outline the decision of the U.S. District Court in this matter. It is important to note, however, that the recent proliferation of litigation by the student press involving challenges to statutes that limit access to campus security records does not appear to have abated. It is likely that there will be ample opportunity in the near future to summarize the decisions of a number of courts in this area of the law.