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Check out the SPLC online at www.splc.org. This month you will find more briefs, and all the documents from the SPLC’s audit for Sunshine Week. Online you will also find more information about newspaper thefts and more updates on stories.
Punching holes in FERPA secrecy

To recognize “Sunshine Week,” a national commemoration of the vital importance of transparency in government, the journalism interns at the Student Press Law Center conduct an annual “compliance audit” to test whether schools and colleges truly honor their duty to disclose public records.

This year, we focused on the disciplinary mechanisms maintained by colleges and universities to pass judgment on student misconduct complaints. We did so because these disciplinary systems at times handle cases of great public importance in secrecy. While the public probably thinks of a “student conduct” infraction as sneaking a beer in a dorm room, in fact many conduct boards handle serious allegations — including rapes — that would be punishable as felonies if referred to law enforcement.

To achieve nationwide coverage, we teamed with journalism students at three schools — Humboldt State University, the University of Wisconsin at Milwaukee and the University of North Texas — with a reputation for aggressive journalism. We thank professors Marcy Burstiner, Jessica McBride and Kathie Hinnen for throwing themselves into this undertaking and guiding their students through what at times was a frustrating search for answers.

The results of our team’s reporting are featured in this issue’s cover story (see page 6) and on our Web site. We hope that we have kindled more interest among the student journalists on these campuses — and others nationwide — in asking tough questions about the nature of cases being processed through secretive “campus courts,” and whether these mechanisms best serve the interests of public safety and justice.

One heartening result of the audit was that relatively few schools invoked the false justification of the Family Educational Rights and Privacy Act to decline open-records requests. Almost all schools we surveyed understood that FERPA confidentiality applies only to individually identifiable student records, and not to anonymous statistical data we were after.

Elsewhere, however, the news is not as encouraging. At college after college, student journalists are being told that very basic information — which most colleges give out routinely — is confidential FERPA information.

Student journalists at the University of Wisconsin at Milwaukee decided not to take their school’s unfounded invocations of FERPA lying down. Editors of the Post and for the broadcast program Panthervision are asking Wisconsin’s attorney general for a ruling that student government records are subject to disclosure under Wisconsin’s sunshine law. And SPLC volunteer counsel is working with Post Editor Jonathan Anderson on seeking a broader resolution to that school’s misapplication of FERPA.

With your support, the SPLC will continue to be the leading advocate against runaway secrecy of school records. We encourage you to let us know whenever you encounter a FERPA roadblock, so that we can continue building the case to help Congress understand the urgency of FERPA reform.

— Frank LoMonte, executive director
Press laws: For students, by students

Young journalists with help from legislators, propose Anti-Hazelwood bills to restore free press rights

**By Kate Maternowski**

Western Kentucky University sophomore Josh Moore enjoyed a rare degree of freedom as a high school journalist. He did not realize how rare until he started taking college journalism courses, learning how commonly high school journalists labor under censorship.

But Moore did not just study the situation — he is trying to fix it. "My experience was actually amazing," Moore said of his time with the student newspaper at Muhlenberg South High School in Greenville, Ky. "As editor, I had two different principals. They never looked at anything before we published. We might go to them one or two times to ask their opinions, but we were making the editorial decisions."

As he dove into journalism education classes in college and recognized the discrepancy among state laws regarding student press, Moore realized the importance of ensuring other students have the opportunity to learn and develop their skills in the kind of environment his high school had fostered.

That was the "driving force," Moore said, behind his recent efforts to introduce student free press legislation in Kentucky, his home state.

Last summer, Moore got in touch with Rep. Brent Yonts, D-Greenville, to ask his help in proposing a bill. By November, Yonts had agreed, and the work began to pile on for Moore.

"I told him that he has to carry the workload on this thing," Yonts said of House Bill 43, which was introduced in the Kentucky House of Representatives Jan. 6 and referred to the Education Committee the following day. "I have bigger fish to fry, but this is a good learning experience for Josh."

Although the bill did not become law this year, it attracted significant favorable publicity, and the efforts of Yonts and Moore may have built a foundation for a renewed push in 2010.

With steep expectations and an unfamiliar world of legislative processes to navigate, Moore hit the ground running last summer. He created a Web site to keep bill backers informed, and with the help of the Kentucky High School Journalism Association, he also sent out e-mails and letters to journalism instructors across the state enlisting support. After consulting the Student Press Law Center for ideas on generating legislation language, Moore drew up a draft bill for Yonts to bring to the House.

The proposed bill gave high school student journalists the right to free speech and press in student-produced media "whether or not the media are supported financially by the school or by the use of school facilities or are produced in conjunction with a high school class." Whereas "open forum" student publications — where students have editorial control — currently have more robust First Amendment protections than those produced in conjunction with the school, HB 43 would have put all student publications on equal footing.

Although the bill would have permitted administrators to intervene in extreme cases — libelous expression, an unwarranted invasion of privacy, or the provocation of danger or disruption on campus — HB 43 otherwise allowed students freedom in "determining the news, opinions, feature, and advertising content" for their publications. Also included was a provision protecting advisers who refuse to suppress the "protected expression of students" — a retaliation protection both California and Kansas include in their student press laws.

Moore took inspiration from the example of seven other states — Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon — that have all passed similar laws protecting high school and college media; an eighth, Illinois, has a college free press act on the books.

These laws came in response to the U.S. Supreme Court's 1988 decision in Hazelwood School District v. Kuhlmeier, which dictated that public high school newspapers not established as public forums are subject to lesser First Amendment protections.

In 2005, the Hosty v. Carter decision extended Hazelwood provisions to some college media as well. The federal 7th Circuit Court of Appeals' decision in Hosty ruled that Hazelwood is the "starting point" for college media censorship cases in the states under its jurisdiction — Illinois, Indiana and Wisconsin. Illinois has since passed a law that essentially nullifies Hosty, and states across the country are considering legislation that would override Hazelwood — and avoid a precedent like Hosty — within their borders.

Washington, for the third year in a row, considered (but failed to enact) legislation that would limit the censorship authority of school administrators over high school and college student media. The bill in Washington, like Moore's in Kentucky, was initiated by student activism.

Brian Schraum, now a graduate student in journalism at the University of Missouri, turned to his state representative in 2006 to help draft legislation for Washington.

"Even though [the Hosty] decision doesn't apply to Washington, I was concerned," Schraum said. "I wanted to preempt that law in my state."

Schraum and the ranks of supporters behind the Washington student press legislation have become very familiar with the arguments of their detractors over the past three years. They, like Moore in Kentucky,
say they are typically up against school board administrators and principals’ associations that see too much financial risk and too few constructive learning opportunities in handing editorial control completely over to students.

“Working professionally [as a journalist], you would still have an editor,” said David Baird, director of governmental relations for the Kentucky School Boards Association. “Our job is to teach kids about the real world.”

Moore responds that a student-run newsroom is very much a “real world” environment, and administrative control is a conflict of interest. Still, other student free press legislation opposition argues that, with both schools and parents absolved from liability for students’ editorial decisions, a victim of libel by student media would have no means of recourse. Students, they say, simply do not have the means to pay damages if they libel or otherwise harm someone.

Mike Hiestand, attorney for the SPLC, faced these doubts at a Senate hearing for the latest Washington student free press bill in February. The First Amendment, he said at the hearing, is intended to protect minority opinion, and “minorities often don’t have the kind of financial resources that the big boys have.”

Concern over liability issues marks just one of several sticking points for student press legislation. Bill detractors, for example, have been consistently adamant about limiting the law’s protections to college students, maintaining that high school students need more oversight and more protection from hurtful speech.

At the Senate hearing in Washington earlier this year, Jerry Bender, director of governmental relations for the Association of Washington School Principals, pointed to the student newspaper at Emerald Ridge High School in Puyallup, Wash., as an example. Last year, the paper came under fire for a package it published about the prevalence of and attitudes toward oral sex at the school, which included names of students who voluntarily participated in interviews.

“If we’re going to be there as administrators when the plane crashes, we would certainly want to be there when the plane takes off,” Bender said at the February hearing, suggesting more editorial control and supervision could help prevent controversies like that at Emerald Ridge, where the school administration and adviser voluntarily took a relative hands-off approach toward the newspaper’s content. (The Puyallup district has since imposed mandatory school review over student editorial decisions.)

Despite past failed attempts at passing legislation in Washington, Schraum and other First Amendment advocates in the state remain steadfast in their attempts.

With the close of this year’s General Assembly session in Kentucky in March, Moore also tallied one year down without his bill being passed. Seemingly undaunted by what might be a long battle, Moore said he is proud to be doing the legwork for what he sees as vital legislation for young, aspiring journalists in Kentucky.

“We expected it might take more than one try to accomplish our goals, and we can’t take a break now,” he said.
Playing open records games

Freedom of Information audit finds obstacles to overcome for lawful documents from schools

BY LISA WAANANEN

The principle behind sunshine laws is simple: Citizens of a democratic nation should be able to find out what decisions are being made by government agencies, including state universities. The reality of using these laws to obtain public documents is much more complex, especially with universities’ understaffed offices, reams of paperwork and wariness about releasing anything that might hurt the institution’s public image.

Studies show that public universities and school districts come in second only to law enforcement agencies for worst responsiveness to public records requests, said Dave Cuillier, chairman of the Society of Professional Journalists Freedom of Information Committee and an assistant professor at the University of Arizona.

“University lawyers are usually pretty good at coming up with innovative approaches to secrecy and hiding things,” he said.

Universities do not think of themselves as government agencies, said Charles Davis, executive director of the National Freedom of Information Coalition and associate professor at the University of Missouri. Academia fosters an insulated, closed culture, he said, and universities know how to keep certain records from the public eye if they want to.

“There are any number of ways to make it so painful for the requester — either through price or through process — that if you don’t give up you might just die waiting for the thing,” Davis said.

The Student Press Law Center encountered a variety of roadblocks in a project assessing institutions’ responses to public records. Working with a team of college journalism students, the SPLC sent out letters to more than 100 public and private institutions seeking information about student misconduct and discipline statistics.

Schools all received the same request letter, but some responded with detailed spreadsheets while others did not respond at all. Virginia Polytechnic Institute sent a thick packet of information a week after the request was sent; the University of Alabama responded on April 6 to say they were working on the request originally sent Feb. 5.

Navigating the law

Some differences are the product of widely varying state sunshine laws, each with its own requirements and exemptions.

“It’s important to head into these situations armed to the teeth with the nuances of the law and how far it can work for you,” said Kerry Solan, a University of North Texas student who helped with the SPLC project.

Public agencies in Colorado and Georgia have three days to respond to a request, while in Maryland they get 30 days — and in many states the law requires only that the response be “prompt.” Some states honor requests by e-mail, some do not. Some states allow hourly fees for compiling the records, others do not. In Delaware and Pennsylvania, universities are exempt from public records laws.

Complicating matters even more at colleges and universities is the federal Family Educational Rights and Privacy Act, which prohibits educational institutions from releasing students’ confidential educational records.

Unlike the state exemptions that allow agencies to withhold information if they want to, FERPA threatens institutions with loss of federal funding if they let protected information leak out. The SPLC request was tailored to FERPA stipulations by requesting only summary data with no students’ names, but the University of Texas at Austin and several other schools still cited the law as a reason for delays or denying parts of the request.

Melany Aldridge, a paralegal

University of Wisconsin at Milwaukee students Kevin Lessmiller and Dan Kwilinski, who helped with the SPLC’s open-records audit, review documents received from a university. PHOTO COURTESY OF SAM HOGERTON
Five tips for FOI requests

1. **Know the law.** Each state’s sunshine law has its own time limits, exemptions and quirks, and all colleges and universities receiving federal funding are also bound by the Family Educational Rights and Privacy Act.

2. **Do your research.** Learn about the structure and processes so you can make an informed request. A few phone calls will make sure your request gets to the right person and makes sense based on the university’s operations.

3. **Be as specific as possible.** Being too broad may get you no information or stacks of paper you did not want. Be willing to explain a little about what information you’re seeking, and the records custodian can help you hone your request.

4. **Make it a conversation.** Communicate with the person responsible for filling the request. Establishing that relationship makes it easier to know the status of your request and ensure it stays a priority. You can negotiate about a large or complex request to make sure you get the information you want in a way that is most convenient for everyone.

5. **Be persistent.** If a simple request is taking a long time or the time allowed by law has passed, contact the university to find out why and remind them you still care. If your request is denied for a reason you disagree with, you can ask for clarification. Some states allow citizens to seek an opinion from the attorney general if they believe a records request was incorrectly denied, and eventually — if necessary — you can take it to court.

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**Who fills records requests at Eastern Kentucky University in Richmond, Ky., said the legal staff has spent hours debating how much information they can release in response to certain records requests.**

“We try to make a very conscious effort to provide the information that we are required to provide, while at the same time watching out for an individual’s privacy rights,” she said.

Cuillier said the genuine concern for students’ privacy and FERPA compliance gets out of hand when schools start withholding all records that even mention students as “educational records” — even things like parking tickets or school lunch menus.

“They keep it hidden because of FERPA, and that’s just outrageous,” Cuillier said. “It’s taking FERPA and warping it into a mutant beast that’s keeping everything secret.”

The fees allowed by law also imposed a roadblock to some schools’ data. Though most institutions provided the information free of charge, the University of Georgia said the documents would cost $136 and the University of Maryland estimated $653.51. North Carolina State University sent a three-page letter explaining why the request would cost $7,577.30.

“People can use the pricing mechanism in state FOI law to their advantage in a huge way,” Davis said.

In many cases institutions acknowledged the request promptly but left the “processing” period open-ended. A month after requests were sent, the majority of schools had responded to acknowledge the request, but had not yet provided the documents.

**Making a successful request**

Opening up lines of communication is key, Cuillier said, because it is the only way to find out whether the missing records are the captive of a stonewalling university or just the victim of an overworked office.

Steve Parrott, director of university relations at the University of Iowa in Iowa City, said making a request as specific as possible is helpful since the university gets more than 200 requests each year.

“If you’re asking for a lot, be patient but persistent,” he said.

In the SPLC project, student journalists found that often the most challenging part of the process was finding out where to send the request and how to phrase it. Some universities have a “public information officer,” some have a “records custodian,” and some have no particular contact person. The department dealing with student misconduct might have a name like the “Office of Community Standards and Student Ethics” or it might just fall under the Dean of Students’ office. When a request was sent to the wrong department at the State University of New York at Binghamton, the school sent back a statistics spreadsheet full of zeroes.

“I’d say take some time and do a little research before you pick up the phone,” said Cesare Rojas, a student at the University of Wisconsin at Milwaukee who helped with the project.

After a frustrating experience getting shuffled from one official to another in the University of Wisconsin system for the SPLC project, UW-Milwaukee student Kevin Lessmiller learned the value of connecting with the person handling the request.

“It makes the process much easier when people on the other end of the records request know who you are when you call to check on the status,” he said in an e-mail.

Treating the request as a conversation would eliminate several universities’
responses that simply said there were “no documents responsive” to the request. Dropping off a request in person and letting the public records custodian look it over at the outset can make a big difference, Aldridge said.

“I think part of it is just keeping an open dialogue and not being afraid to say why you’re looking for things — you don’t have to disclose fully, but a little bit of information would be helpful,” she said.

Reporters are likely to get the most information when they are civil and patient, Davis said.

“You’re just not going to get anywhere going all ‘Woodward and Bernstein’ from the get-go,” he said. “It’s just not going to help.”

Diplomacy and persistence

Some schools responded to the SPLC’s request even when they were not bound by law. Private institutions such as Yale College, Stanford University and Duke University sent links to online data, and the University of Arkansas provided information even though Arkansas agencies are only required to respond to citizens of the state. Though Pennsylvania State University is considered a “state-related” school not subject to open records law, it sent a thick envelope of information.

Bill Huston, the interim director of Judicial Affairs at Penn State, said he takes his role seriously as a steward of private information and educational records protected under FERPA, but also does not see any reason to withhold statistical information that could be helpful for research or identifying trends.

“If people are earnestly trying to obtain objective information about what’s going on, I think that’s a good thing to share,” he said.

Cuillier said these institutions understand that providing information is beneficial because it builds trust in the community. Too often the discussion about open government gets bogged down with nuances of the law instead of focusing on what makes sense to release, he said.

“I think that’s how we have to look at all this — what makes sense to be public and what should be secret,” he said.

The law is not always necessary to fight reluctant institutions, either. Filing a lawsuit for records is always an option, but journalists have other, cheaper tools. Writing editorials is effective, Davis said, and now newspapers have space on the Internet to document the entire public records process, from a copy of the original request to a calendar showing how long a school has failed to respond.

“That is extraordinarily painful for college administrations that are, at their heart, political beasts,” Davis said.

Students also found that plain old perseverance pays off. John Osborn, a recent graduate who coordinated the Humboldt State University students’ portion of the project, encouraged students to be persistent with the school officials so the request could not be purposely ignored or inadvertently lost in other paperwork.

“Every time they send you an e-mail and they give you whatever reason why they’re not going to give you the records, push them on it,” he said.
Every sports reporter knows the story is in the numbers — passes completed, free-throw percentages, batting averages. But behind the statistics diligently supplied by athletic departments is a whole squad of other numbers. How much the new stadium costs. How much the coach makes. How many NCAA violations the team got last year.

The story of college athletics does not end with the final buzzer, and public records can help journalists give their readers the full report.

“A majority of the things I cover involve public records,” said Brent Schrotenboer, a sports reporter at the San Diego Union-Tribune. “It’s very important, I think, not just for myself and what I do, but just for people in general to know what’s going on.”

Rachel Bachman, a sports enterprise reporter at the Oregonian in Portland, said coverage needs to match the growth of athletic departments, which have developed into huge operations with some of universities’ highest-paid employees.

“I think it is incumbent on sports reporters to provide the same watchdog reporting that a news reporter would when that much money is involved,” she said.

Bachman started as a sports reporter at the University of Michigan and has written plenty of game stories, but these days she has more in common with business and cops reporters than the reporters taking notes in the press box. Sometimes she gets documents to confirm what she has heard from speaking with sources, like a story several years ago about the declining grade-point average of black football players at Oregon State University. Once she heard about this data and an internal memo stating that academic support for athletes was insufficient, she was able to request the original documents. Other times, she sees what the records have to offer, like recent requests to universities about their expenditures.

“I’m starting with a kernel of knowledge — that being that I know spending has increased quite a bit — and then I request the documents to see what the specific news story is,” she said.

Schrotenboer started using public records when he was a beat reporter trying to cover his team as thoroughly as possible, and said public records are now the lifeblood of what he does. Without routinely checking local court filings, Schrotenboer would not have discovered that the operator of the Gold Coast Classic college football match-up was getting taken to court for unpaid bills, despite receiving city funding to run the event. That 2005 story led to a city audit and misdemeanor charges for the operator.

Though most public institutions are required to release documents under their states’ freedom of information laws, actually getting those documents is no trot to the end zone.

Schrotenboer said obtaining records can definitely be a fight with public agencies that see reporters as pests rather than watchdogs for taxpayer money.

“It can definitely be a tug-of-war a lot of times. It’s not always easy,” he said.

When Jan Murphy of the Patriot-News in Harrisburg, Pa., requested information about the salary of legendary Pennsylvania State University football coach Joe Paterno in 2002, the paper had to go to court to get the records. Pennsylvania’s public universities are considered “state-related” and do not have to release records like public agencies.

“For me, it was always about the principle of openness more than exposing a salary that has been a closely guarded secret,” Murphy said in an e-mail.

It took nearly five years and a Pennsylvania State Supreme Court decision to find out Paterno’s official salary, but that lawsuit and others urged legislators to finally rewrite the state’s freedom of information law. Now state-related universities are required to release, among other information, the salaries of their 25 highest-paid employees.

Typically, though, reporters can get documents without battling for years in a courtroom.

“The ‘fight’ is usually staying persistent with people who hope you’ll go away or be satisfied with a document that is less than what you re-
Looking for numbers

Most public institutions are required, under state law, to release athletic department records that may point to the stories taking place off the field:

- coaches’ contracts and expense reports
- ticket sales information
- correspondence related to NCAA infractions or eligibility
- federal tax forms from nonprofits associated with the athletic department, such as a fundraising foundation

See more ideas online and general tips about obtaining public records on page 6.
Yearbooks not so unlike newspapers

BY JACLYN HIRSCH

Senior year of high school is the time to reflect on experiences and memories with classmates, and Breanne Veney wanted to do just that. Her senior memories yearbook page was filled with recollections of her time at Cuba Rushford High School in Cuba, N.Y.

Veney used the phrases “we’re so black and everyone hates on us for it,” “my white girlfriend,” and “is it ’cause I’m black?” in her page to signify inside jokes with friends. However, when Veney’s yearbook page came across Principal Carrie Bold’s desk for approval, Veney was asked to change her words. Bold crossed out the word “white” and circled “black” both times it was used on the page.

“Please try to reword this,” Bold wrote on Veney’s page. “You may not be offended by this, but others who may read this may be!”

Veney said she did not change her senior memories because she wants them to be her own words.

“It bothers me because I would like to put in the memories that I have had with my friends over the years,” Veney said. “I don’t want to put the principal’s words in my memories.”

The student newspaper focuses on public events and issues. The literary magazine centers on young artists and poets. The student yearbook, however, encompasses every facet of the high school community. Although each of these publications differs in content, all of them typically fall under the same student publication policy set by school administrators. The role of the yearbook, however, can be a confusing one for teachers and administrators, who sometimes fail to treat the yearbook as deserving the same level of journalistic independence as a newspaper.

“Both student yearbooks and newspapers exist as forums for expressive activity, albeit with slightly different editorial missions and goals,” said Mike Hiestand, legal consultant for the Student Press Law Center. “Absent some language that specifically limits a ‘student publication’ or ‘student media’ policy to only newspapers, a student yearbook certainly falls into either of those fairly broad categories.”

Veney and her mother took the issue to the school board. They received a letter from the board president that said based on school policy and legal advice, Veney’s page needed to be changed to be in the yearbook.

The district policy, adopted June 1995, states “the district may exercise editorial control over the style and content of student speech in school-sponsored publications and activities that are part of the educational curriculum.”

Hiestand said he believes the district policy is unconstitutional.

“Essentially, it says that the school is giving itself an unlimited license to censor,” Hiestand said.

Christopher Trapp, legal counsel for Cuba-Rushford Central School District, said he does not consider asking Veney to alter her senior page to be censorship.

“I would consider this, when you are dealing with language, which can be deemed offensive, more of a liability problem for the school district and the publisher of it,” Trapp said.

But Hiestand said altering a student’s word choice because the words are “deemed offensive” is a classic case of censorship.

John Bowen, board member of the Journalism Education Association, said that censoring the content of the yearbook is like controlling the content of a school newspaper.

“They are both student publications and if they are set up where students are supposed to be making decisions and learning from what they are doing, censorship of one is no different than censorship of the other,” Bowen said.

As was the case at Cuba-Rushford, students at West Fargo High School in West Fargo, N.D., found themselves in a debate with their school over whether an administrator’s order to change the editorial content of a yearbook was in fact “censorship” at all.

Principal Gary Clark said he did not believe he was engaging in censorship when he overruled student editors’ decision to exclude coverage of a sister school, West Fargo Community High School, from the yearbook. Rather, he called it “a matter of equity.”

Abby Paul, editor-in-chief of the West Fargo yearbook, said the initial decision not to include the sister school in the publication was “so that administrators would not be able to dictate any future coverage.”

The yearbook staff was willing to take lower grades in the class to keep their book exclusive to West Fargo High School students, but after discussions, the
The First Amendment grants Americans the right to freedom of speech and freedom of press, but the exact boundaries of those rights are determined by the courts. Landmark court cases like Hazelwood School District v. Kuhlmeier and Hosty v. Carter, where the court sided with the school district, have prompted states to enact legislation that counteracts the courts’ decisions to uphold censorship of student speech. Other cases like Kincaid v. Gibson and Dean v. Utica Community Schools reaffirm the First Amendment and students’ right to freedom of the press. Each of these landmark cases is unique in the impact it had on journalism programs and student media, then and now. And behind each entry in the lawbooks is a real school with real students who took a stand to defend their right to publish.

Hazelwood School District v. Kuhlmeier

In 1983, high school journalism students at Hazelwood East High School in St. Louis, Mo., filed a lawsuit against the Hazelwood School District, claiming their First Amendment rights were violated after their principal removed two articles from an issue of the school newspaper. The principal argued that two pages in the Spectrum, which included an article relating to teen pregnancy and another concerning the impact of divorce on students at the school, had inappropriate content and failed to effectively disguise the identity of confidential sources.

Hazelwood School District v. Kuhlmeier, which was decided by the Supreme Court in 1988, ruled that administrators could censor school-sponsored student newspapers that were not “public forums” for student expression, if they could show they had a legitimate educational reason for doing so. The court decided that the student newspaper is not “characterized as a forum for public expression” and that school officials can exercise editorial control of content that is “reasonably related to legitimate pedagogical concerns.”

Mark Goodman, who was executive director of the Student Press Law Center from 1985 to 2007, said the Hazelwood decision was “demoralizing.”

“The most immediate reaction was very much a pullback by high school media in many places and an unwillingness based on fear to challenge acts of censorship that they might have been more inclined to challenge before that,” Goodman said. Several years after the Supreme Court decision, the Hazelwood School District adopted a policy that gives administrators the authority to exercise prior review — something that was not in the District’s written policies at the time of the legal challenge.

“School authorities may edit or delete material which is inconsistent with the district’s legitimate educational concerns,” the current policy states. Today, the Spectrum’s Managing Editor Jasmine Osby said the school principal is “lenient” in terms of the prior review policy. She said the principal asked the editors to remove the names of two teenage parents in an article about teenage mothers last fall — an article reminiscent of the 25-year-old court controversy — but otherwise staff writers cover controversial issues and publish editorials criticizing the school and school policies without any interference from administrators.

“There isn’t any big, ‘well we’re the Hazelwood from the Hazelwood court case so we’re going to strictly enforce this,’” Osby said. “It is censored because it goes through prior review, but at the same time, it’s not strict.”
Since the Hazelwood decision, seven states — Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, and Oregon — have enacted laws overturning the Hazelwood standard, which restored First Amendment protection for high school media.

Goodman, who is currently a professor of journalism at Kent State University in Kent, Ohio, said Hazelwood forced First Amendment advocates and student journalists to fight censorship “in the arena of public opinion.”

“The law was no longer going to be the most effective way to contest censorship,” Goodman said. “It’s sad that it took a bad Supreme Court decision to force that lesson, but that was, I believe, really valuable, and it gives us tools and tactics for things that are still going on today that have served student media well.”

**Hosty v. Carter**

In 2001, three student journalists — Margaret Hosty, Jeni Porche and Steven Barba — sued Governors State University in University Park, Ill., after school administrators stopped the newspaper, the Innovator, from printing.

Dean Patricia Carter demanded review of the Innovator’s content before consenting to pay the newspaper’s printing bill, which contradicted a university policy stating that the student newspaper staff would “determine content and format of their respective publications without censorship or advance approval.”

Initially, a district court ruled in favor of the student journalists, but the decision was overturned on appeal in the 7th U.S. Circuit Court of Appeals.

Using the Hazelwood standard, the court determined the status of the newspaper as a public forum. It ruled that the Student Communications Media Board, which acted as the publisher of the Innovator and was comprised of seven members chosen by the Student Senate, established the newspaper as a “designated public forum, where the editors were empowered to make their own decisions, wise or foolish, without fear that the administration would stop the presses.”

However, the court also established that Carter was not responsible for damages, because she could not have known whether the limitations of Hazelwood did or did not apply to college campuses.

The Innovator ceased publication in late 2000. In 2002, the Phoenix was established and currently serves as the GSU student newspaper, publishing twice monthly. Currently, the school has no official policy regarding school publications.

Goodman called Hosty “an aberration.”

“There is no other court decision like it in the country that agrees with the reasoning or the analysis that the 7th Circuit [Court of Appeals] engaged in,” Goodman said.

He said that Hosty, like Hazelwood, forced new legislation on the state level that was never discussed before.

“It, like the Hosty ruling, served as a wake-up call to college journalists and those who support them that we cannot sit back and presume the First Amendment is all we need to defend our press freedom,” Goodman said. “And the more specific consequence was getting states like Illinois, California and Oregon to enact statutes explicitly limiting censorship on the college level and protecting student press freedom. I mean that’s something that just wasn’t in the conversation before Hosty.”

In addition to the free expression laws enacted by California and Oregon, the Illinois legislature passed the College Campus Press Act, which declared any student media outlet at a public college a public forum and prohibits school officials from censoring the content of student publications.

**Kincaid v. Gibson**

Two Kentucky State University students sued the school in 1995 after Betty Gibson, the vice president for student affairs, confiscated the student yearbook, the Thoroughbred. According to court documents, Gibson felt the content of the yearbook was inappropriate and disagreed with including current events unrelated to the school in the book. She said the purple cover was unrelated to KSU because it did not represent the school colors and also objected to the theme of the book, “Destination Unknown.”

Capri Coff er, who edited the yearbook, and Charles Kincaid, a student who paid a mandatory fee and felt he was entitled to his yearbook, argued that their First Amendment rights had been violated by Gibson’s actions.

The U.S. district court ruled in favor of Kentucky State, citing Hazelwood on the basis that because the school did not establish the yearbook as a public forum, Gibson had the legal right to censor the yearbook.

However, the 6th U.S Circuit Court of Appeals reversed the decision, clearly stating that Hazelwood does not apply to college and university campuses.

“The university is a special place for
From Landmark, Page 13

purposes of First Amendment jurisprudence,” the court said, differentiating the case from Hazelwood because it occurred on a college campus. The opinion stated that “chilling individual thought and expression is especially real in the university setting, where the state acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.”

The court also determined that the KSU yearbook was a public forum, citing the actual practice of producing the publication. “Student editors, not KSU officials, not the student publications adviser and not the Student Publications Board, determined the content of KSU’s student yearbook,” the court said.

According to Goodman, the ruling was a beneficial precedent for all student media. “In this case, where they found, if you will, even a yearbook is entitled to strong First Amendment protection, that only makes the argument more strongly for other student media out there,” Goodman said.

The Thoroughbred is no longer published at Kentucky State and was last printed in 1998, according to the Kentucky State University library database.

Dean v. Utica Community Schools

In 2002, Utica High School senior Katy Dean researched and wrote a story about Utica, Mich., residents Rey and Joanne Frances, who claimed that diesel exhaust from a district-owned school-bus garage near their home caused Rey’s lung cancer.

The superintendent claimed Dean’s article lacked research and pulled it from the school’s yearbook. Dean filed suit against the district, claiming her First Amendment rights were violated.

A U.S. district court found that the school district illegally censored her story. Student journalists “must be allowed to publish viewpoints contrary to those of state authorities without intervention or censorship by the authorities themselves,” the court said. Significantly, the court went on to say that, even under the Hazelwood standard, school officials’ unwillingness to accept criticism was not a lawful basis to kill the story: “Even if the Arrow is a non-public forum, [school officials’] suppression of Dean’s article was unreasonable.”

Currently, the Utica Community School District has no policy in place regarding the Arrow or any student publications.

According to Mike Horan, former editor-in-chief of the Arrow, prior review is not a policy at Utica and the students typically have control of the publication, except for a few instances.

One example Horan described was a privacy issue regarding a column about a starting a gay and lesbian pride group at the school, but the column eventually was published.

“The students put the paper together,” Horan said. “Anything that we wanted to run … she (the principal) would back us 100 percent. … She wanted the best for the paper.”

Arrow adviser Stacy Smale said the principal meets with the staff in a press conference style monthly so they can openly ask questions and get comments for stories.

“The administration has always been very supportive,” Smale said. “I’ve certainly never had any cases of prior review or of them asking to see something before it was printed. It’s a very student-run publication.”

Goodman said that although Dean only applies in one jurisdiction, it reaffirmed the provisions of the First Amendment.

“It was reassurance that Hazelwood wasn’t the death knell that some attempted to portray it as, that quality student journalism could still be protected by the First Amendment,” Goodman said. “I think what the Dean case did was give the ability for students and others to stop censor-prone administrators in their tracks by saying ‘you don’t have a blank check when it comes to censorship. The First Amendment still creates limitations on what you can do.’”

From Yearbook, Page 11

staff agreed to include the Community High School students.

Paul said she spoke with Clark about future censorship and that he had “no desire to control any other coverage.”

Editors of the West Fargo High School student newspaper, the Packer, said that on several occasions, administrators have been critical of their content.

“I think the phrase that our principal used the most is that we give bad PR for our school,” said Megan McDougall, an editor of the Packer, “which is what bothers us the most, because as a public forum, we do not feel like we need to be a PR tool for our school.”

Several opinion columns have sparked critical comments from school officials over the past few years, McDougall said.

McDougall added that until this incident with the yearbook, the yearbook staff “had it easy.”

“Until this year, nobody had a problem with yearbook. It was always the newspaper that was ‘causing trouble’ or ‘trying to put people in bad light,’” McDougall said.

Currently, West Fargo High School has no written policy regarding control of student publications, but Clark said he is “open to discussing” the idea of creating one.

Jeremy Murphy, West Fargo High School publications adviser who oversees the newspaper and yearbook, said he teaches his students that the yearbook and newspaper fall under the same laws, but he said the administration sees it differently.

“They would never force content upon the newspaper staff because they know they don’t have that right,” Murphy said. “However, they see the yearbook staff as having different rights.”

Hiestand said that most school officials have difficulty viewing yearbooks as true journalism-based publications.

“I think part of the reason school officials may see the two as different is because of the changing role of yearbooks,” Hiestand said. “Most yearbooks of the past were not viewed as practicing real journalism because most didn’t. That is no longer the case.”
Let’s talk about Sex, etc.

Magazine lets students discuss risque topics

BY JACLYN HIRSCH

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riting about sex and sexual health issues can be precarious for high school students.

Take, for example, the situation at La Serna High School in Whittier, Calif., in 2006 when students were restrained from publishing the student newspaper after running a “sex issue” the previous month. Members of the school community were offended by some of the content in the edition, which featured a spread on student opinions on sex, a survey about sexually active teens, a word search with sex-related terms and a sexually suggestive photo (not of a student).

For student journalists in the Northeast who face issues like those at La Serna, that’s where Sex, Etc. comes in.

Sex, Etc. — the award-winning national magazine and Web site (sexitc.org) on sexual health written by teens, for teens, and published by Answer, at Rutgers University — covers a wide range of topics like birth control, emotional health, sex, and love and relationships.

From abortion to sexually transmitted diseases, teens have countless questions about sex and sexual health issues. For those teens who have discovered sexetc.org, the mysteries of sexual health and sex education have been revealed.

Although a professional staff manages the teen editors and writers, the teenagers who write for Sex, Etc. have the freedom to cover these controversial issues.

“At school or at home, we don’t really talk about some of the sexual health issues that are out there and that are a part of every teen’s life,” said Anita Modi, a teen editor for Sex, Etc. “So Sex, Etc. does become a place where we can really speak freely and get the information that we need without worrying about what we might look like in the eyes of the other people.”

Modi has written about topics like Seasonal Affective Disorder, also known as “seasonal depression” and has a strong interest in sexual health issues. Besides her work at Sex, Etc., 17-year-old Modi is the editor of her high school newspaper, the Viking Vibe. She said that although she does not write about issues pertaining to sexual health at her high school, her advice to high school journalists is to check the facts.

“I would tell those teens to make sure their information, whatever they get, is 100 percent verified from reliable sources, not from what ‘she said’ about getting pregnant or what ‘she said’ about the condom breaking,” Modi said. “If you have accurate info, I don’t think anyone has any reason to deny you printing privileges.”

Mika Padawer, also a teen editor at Sex, Etc., said the publication plays an important role in getting accurate information to teens.

“I have friends who can’t turn to their parents, and if they turn to their peers, not everyone knows the right information,” Padawer, 17, said. “You definitely need to get the right information, and that is exactly what Sex, Etc. can give you, … the right facts about practically anything they need to know.”

Padawer has written articles about various topics like birth control options, and gay, lesbian and bisexual teens who are homeless. She said her parents are supportive of the topics she chooses to write about and that her mother “sparked” her interest in writing for Sex, Etc.

According to Rana Barar, program manager for Answer, a national organization dedicated to providing and promoting comprehensive sexuality education to young people and the adults who teach them, some teen editors “become a resource for their friends.”

“I think that many teens … don’t realize how restricted this information is in other parts of the country,” Barar said. “This is a unique opportunity for them to write about these issues.”

Barar said the program recruits teens from journalism and writing classes. The teen editors go through journalism and sexual health training, and meet monthly to generate story ideas and themes for the magazine.

Sex, Etc. was formed as a “peer written resource” in the mid-1990s, Barar said, and “it was very clear at that point that there was a need and a desire from young people to have a resource that was in a language that they could relate to.

Leora Cohen-Rosenberg, a current teen editor, said her passions of writing and advocating for sex education led her to Sex, Etc.

“I really love writing, so it just seemed like the perfect marriage between advocating and writing,” Cohen-Rosenberg, 18, said. She has written on a variety of issues like cutting, HIV, and “how to talk to your parents about being gay.”

Barar said that because the content is written by teens themselves, teens around the country turn to Sex, Etc. for answers. The magazine has 500 adult subscribers who circulate 26,000 copies to the teens they work with in high schools, youth organizations and clinics.

“It grows out of the idea that teens listen to their peers when it comes to these issues,” Barar said, “and that speaking to them in their language and addressing the questions that they really have is the best way to get sexual health info across.”
Talking politics on campus

Historical election raises questions about political speech at schools

By Jaclyn Hirsch

During the year marking the 40th anniversary of the landmark Tinker v. Des Moines Independent Community School District decision that gave high school students the right to free speech inside the schoolhouse gates, controversy surrounding another historic event — the election of President Barack Obama — put Tinker’s promise of free speech under strain.

The plaintiffs in Tinker were suspended from school because they refused to remove black armbands, which were symbolic of the request for a cease-fire in the Vietnam War. The U.S. Supreme Court noted that these students were singled out among other students who wore politically charged paraphernalia in the classroom, such as buttons, and ruled that “the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.”

The Tinker decision required schools to point to some “substantial” disruption to legitimize censorship, which meant that in order for “school officials to justify prohibition of a particular expression or opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

Forty years later, the election of the nation’s first black president created controversy involving students’ right to speak about Obama while inside the schoolhouse gates.

Kevin Bright, superintendent of the Mason City School District in Mason, Ohio, sent a letter home to families of students in the district one week before President Obama’s inauguration in order to “send a message that we were going to maintain order in our schools,” he said.

“After the historic presidential election, we were proud of most of the conversations and the dialogue that took place in our schools,” Bright wrote in his letter. “Unfortunately, we also learned about some disturbing conversations and inappropriate racial comments.”

Bright said there were incidents of racial slurs at several schools immediately after the election in November, and the letter was intended to “take proactive action,” not censor students’ speech.

According to Mason High School staff, pictures portraying Obama as a terrorist were found around school, among other derogatory signage, after the presidential election.

In his letter, Bright said the administrators expected students and staff to “understand that inappropriate comments that may make other students, staff or families feel unwelcome or uncomfortable in school or on the bus will not be tolerated.” In a subsequent interview, he said that the phrase “inappropriate comments” was a cause for concern for some individuals because they felt this prohibited students from expressing themselves.

“It was not a situation where we were trying to withhold a student’s freedom of speech,” he said. “We weren’t out to violate any student rights … it had nothing to do with politics.”

Bright said he received more than 70 e-mails from activists and concerned citizens around the country after the Dayton Daily News reported on the content of his letter. After the fact, Bright said he would have handled the situation differently.

“If we had it to do all over again, we probably would have been more specific and less general when we say ‘inappropriate comments,’” Bright said. “People took offense thinking that they might have been political comments of people that were opposed to the election of Obama or the inauguration of Obama, or opposed to us taking time to watch the inauguration.”

Keith Werhan, chair in constitutional law at Tulane University Law School in New Orleans, La., said that Tinker clearly gave students First Amendment rights and limited school officials’ power to censor student speech.
“You couldn’t punish students because they were making a non-disruptive political statement simply because administrators or other students may disagree with that point of view,” Werhan said.

Bright was not the only superintendent to send a letter after the presidential election regarding political speech.

Gayle Sloan, superintendent of St. Tammany Parish School District in Covington, La., sent letters to the local media, parents and employees of the district after post-Election Day racially charged situations arose at several schools in the district.

“At some of our schools, we had black students getting off the buses, and they were saying some things that were kind of immature,” Sloan said. “There were some cases where students were saying things like, to white students, ‘now you’re our slaves,’ and white students ... were saying things back like ‘well not for long because he’ll be killed.’”

There were reports of teachers in the school district banning Obama’s name from being mentioned in the classroom after he won the election. Some reports said students were threatened with punishment if they mentioned his name, although Sloan said no student was ever punished for talking about the presidential election. These reports leaked to the local media, which prompted Sloan to write the letters.

In her letters, Sloan admitted that teachers were wrong in censoring student speech.

“Insensitive remarks made by students as they returned to classrooms following Election Day caused some school officials to discourage discussions that might cause animosity and disruption to the learning environment,” Sloan wrote. “Some students and their parents were upset that students were stifled in this way and saw the reason differently. Any employees who directed students not to speak about the election because they disagreed with the election results were clearly wrong to do so.”

Months later, she said she does not believe the teachers in the school district intended to stifle student speech.

“If you don’t agree with the election, I think you have the right to say that, but I think there is a way to say it and a way not to say it,” Sloan said. “And I think that the teachers felt a line had been crossed with the way things were being said. ... Those kinds of inflammatory remarks, I think, go beyond the pale of free speech in a public school classroom.”

Werhan said although Tinker has been narrowed since the decision in 1969, “school administrators essentially can’t censor their students’ expression simply because they disapprove of political messages or because they think other students may disapprove of it.”

Because of issues similar to those in St. Tammany Parish, Marjorie Esman, executive director of the American Civil Liberties Union of Louisiana, sent “an open letter to Louisiana school superintendents” in mid-January.

Esman said she was prompted to send the letter after the ACLU heard reports of incidents following Election Day where students were banned from speaking about the election or mentioning Obama’s name on school grounds.

“We had some concerns that at the time of the inauguration there may be similar kinds of issues come up,” Esman said.

Her letter addressed the historic nature of the election of the first black president and noted some reports of students being punished for mentioning Obama’s name in school and on buses.

“We write to remind you that your students and staff must have the equal right to express their views of this election and inauguration, and must be encouraged to respect the President and the office of the Presidency, whether or not they agree with the individual or his policies,” Esman wrote.

Werhan said that these situations push the limits of the Tinker standard.

“Tinker remains strong as a principle that a school can’t censor the political speech of its students, so if it truly is political speech, if the speech is occurring in a context which is not disruptive of the educational mission of the school or other school activities, then these cases really kind of put Tinker to the test,” Werhan said.

Esman said she received no response from her letter but added that the ACLU did not hear of any problems after the inauguration surrounding political speech.

“To restrict students from talking about the man who is elected president of the United States seems to be a clear violation of free speech rights, and also a very bad educational policy,” Esman said. “I mean what are you going to do, say for eight years or four years we’re not going to talk about the president? You can’t mention his name? That’s craziness.”

Esman commended Sloan for addressing the issue of student speech being stifled in the school district and said it is important to “encourage students to be engaged in the political process.” Esman’s sentiment mirrored that of the Tinker decision — that each student has the right to his or her opinion.

“In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression,” the Tinker decision said.

Other students in the country have faced censorship of political speech over Obama’s election.

The principal of Sumter High Hills Elementary School in Sumter, S.C., forbade a fifth grade boy from wearing an Obama T-shirt before the inauguration because she did not want to cause conflict, according to the student’s mother. It was reported that the principal also said the student could wear the shirt after the inauguration.

In Pearl, Miss., a school bus driver and coach at Pearl Junior High School banned students from saying Obama’s name. Both adults were disciplined.

In Spring, Texas, students reportedly were banned from wearing T-shirts reading “Obama Loves Osama BFF” at Klein Oak High School. A school official said students were allowed to wear shirts supporting a presidential candidate, but not if the message creates a disruption.

Werhan said that these situations are a cause for concern about free expression in the schoolhouse.

“If Tinker has any vitality, each of these restrictions on student expression are problematic under the First Amendment,” Werhan said. “If anything, the black armbands at issue in Tinker, which students had worn to protest Vietnam War policies, were more provocative than a T-shirt supporting a presidential candidate.”
Censorship comes from all over

By Jaclyn Hirsch

It was a typical last day of classes at Summerville High School in Tuolumne, Calif., for sophomore Chiara Gustafson.

She went from class to class turning in final assignments and counting down the hours until summer vacation. Gustafson submitted her final article, “Wrestling Gay,” a satire about wrestlers being gay, in her journalism class. The assignment was to create several “spoof” editions of the newspaper, the Bear Tracks — but when the finished products reached the hands of administrators, it was no laughing matter.

“What I wrote about the wrestlers being gay, obviously it was supposed to be a joke,” Gustafson said. “That was the whole point.”

When Gustafson arrived home from her last day of sophomore year, her mother said, the administration called home to say Gustafson was going to be punished for writing the article.

“I was shocked,” Gustafson said. “I’m in trouble for what I did in class.”

The students in the class faced suspension, but were permitted to complete community service instead. Student editors were given 20 hours of community service, and writers were punished based on how administrators gauged the severity of their articles. Gustafson served eight hours of community service.

The spoof editions were never intended to be distributed and were merely a class project. School officials found out about the satire articles from students outside of the journalism class who had one of the assignments and brought it to the administration.

Adam Kissel, director of the Individual Rights Defense Program at Foundation for Individual Rights in Education (FIRE), said the impetus for censorship typically comes from administrators rather than students.

“When a student wants to censor, they can act illegally to tear down a poster or to steal newspapers, but more often, if a student wants something censored, they’ll go to the administration and try to get the administration to do it,” Kissel said. “And all too often, the administration complies.”

Censorship or oversight of student publications typically stems from school policies or directives. School boards nationwide impose regulations like prior review of content before publication, but cases involving students’ rights to expression go beyond the censorship of student media. From wearing a T-shirt supporting gay rights to keeping a profane bumper sticker on the back of a truck, students like Gustafson fight censorship in many different forms.

“I wrote this article in class and then they suspend me,” Gustafson said. “I wasn’t disrupting class activity, I wasn’t threatening anyone.”

As the Gustafson case illustrates, censorship of student speech goes beyond the pages of student publications. District and federal courts nationwide have heard cases involving students who claimed their right to free expression was violated by high school administrators banning politically charged T-shirts, armbands, buttons and other paraphernalia bearing messages.

In 2003, a U.S. district court in Michigan ruled that a high school student had the right to wear a T-shirt with a picture of then-President George W. Bush and a caption reading “International Terrorist.” The student filed the lawsuit after administrators asked him to turn the shirt inside-out or go home from school. The student went home.

In 2002, a federal district court in Massachusetts ruled that students at Westfield High School had the right to distribute candy canes that included a reminder about the school’s Bible club meeting and a scripture verse. The club members served a one-day suspension after distributing the candy canes because the principal believed that others could deem the message offensive.

Kissel said that even since the Tinker v. Des Moines Independent Community School District decision, which said that administrators do not have the authority to stifle student speech unless it is disruptive to the educational process, the limits of free speech at the high school level are unclear.

“We don’t really know what the limits of freedom of speech are for high school students for sure,” Kissel said. “You still get due process as a high school student. You still need to have a certain amount of notice that certain types of activities are banned, especially when it comes to your First Amendment rights.”

Gustafson is not alone in facing censorship in extraordinary forms.

A student at Walla Walla High School in Walla Walla, Wash., was suspended for profane bumper stickers on her truck. One sticker, which read, “I fucked your boyfriend,” was on Megan White’s truck for more than a year before the school administration raised the issue.

After administrators asked White to remove the sticker, she added a second one to the truck, which read, “Go fuck yourself.” She was suspended after refusing to remove both stickers.

“It clearly was not interfering with the educational mission of the school,” said Brian Pickett, Youth Programs Coordinator for the National Coalition Against Censorship, who advocated on behalf of White. “We felt like the school was overstepping the bounds of its authority by requiring her to remove it from the car.”

White eventually complied with the administration’s request to cover the stickers.

Unlike White, a student at Ponce de Leon High School in Ponce de Leon, Fla., took her dispute over censorship of a more substantive political message to court — and won.

Heather Gillman filed a lawsuit against...

News of the Weird
the School Board of Holmes County after then-Principal David Davis prohibited students from wearing clothing, stickers and buttons supporting gay rights.

According to court documents, Davis told a senior student that homosexuality is a sin and told the girl’s parents that she is a lesbian. Gillman and other students began a gay-rights movement at school by wearing rainbows and pink triangles, writing “Gay Pride” or “GP” on their bodies, and wearing clothing with slogans like “Gay? Fine By Me,” “I’m Straight, But I Vote Pro-Gay,” and “God Loves Me Straight, But I Vote Pro-Lesbian.”

Students at Summerville High School wore clothing with slogans “Gay Pride” or “GP” on their bodies, and the School Board of Holmes County, suspending by Davis, in response to several articles criticizing administrators. Instances of administrators censoring newspaper content prompted the Ithaca Community School District in an ongoing legal battle alleging censorship of the student newspaper.

In January 2005, Ithaca High School Principal Joe Wilson imposed new prior review guidelines on the student newspaper, in response to several articles criticizing administrators. Instances of administrators censoring newspaper content prompted the outgoing staff of the Tattler to file suit.

Although the court’s partial denial of summary judgment allows the case to go to trial, the judge ruled that the Tattler is a “limited public forum,” which in his view, limits the First Amendment protection for student journalists.

Student photographer told to delete photos

ILLINOIS — A broken window at Alton High School in Alton, Ill., is at the center of a debate involving a student’s right to freedom of the press.

After senior George Fiorini heard a brick was thrown through a window at the school cafeteria, he rushed to take pictures for the student newspaper and yearbook. Later that day, the window was covered up, and Fiorini had the only photos of the vandalism.

According to Fiorini, the school resource officer asked for a copy of the pictures for evidence, and Fiorini agreed. When he went back to take more pictures, an administrator banned him from using his camera, and called a meeting with the principal and school resource officer, during which they asked him to delete the photos.

He said he deleted the pictures because he was told “since it was school property during school hours, the pictures belong to [the school] ... They broke me down to thinking that I had no rights whatsoever.”

Fiorini said he had permission from his journalism teacher to take the photos, but Principal Barbara Gillian said he never asked permission.

III. board approves prior review policy

ILLINOIS — After three months of review, the Harrisburg, Ill., school board approved a prior review policy that gives Harrisburg High School Principal Karen Crank authority to review the student newspaper, the Purple Clarion, 48 hours before publication.

Purple Clarion Adviser Cathy Wall voiced displeasure with the policy changes.

“Instead of teaching [the students] to think freely and independently — to watch their government with a critical eye and speak out when something is amiss — we are teaching them to accept the role of government censorship because the principal is a government employee,” Wall said in an e-mail.

Judy Cape, member of Harrisburg Community Unit #3 Board of Education, said there is not much change from the past policy and she does not believe the new policy is censorship.

Cape said the school board was advised by legal counsel that the school district is legally responsible for the content of the newspaper, and the decision to impose prior review was meant to “assure that someone in a position of authority within the district looks at the paper.”

Talks of revamping the policy began last December when the school board issued a directive asking writers to use courtesy titles in opinion and editorial content after the Purple Clarion published an article criticizing Crank.

Judge: Student paper is limited public forum

NEW YORK — A federal judge partially denied and partially granted summary judgment to the Ithaca Community School District in an ongoing legal battle alleging censorship of the student newspaper.

In a March ruling, Judge Norman Mordue dismissed the claims that the school illegally censored a cartoon and articles from being published, but refused to dismiss a claim that publication guidelines imposed on the newspaper violate the First Amendment.

In January 2005, Ithaca High School Principal Joe Wilson imposed new prior review guidelines on the Tattler, the student newspaper, in response to several articles criticizing administrators. Instances of administrators censoring newspaper content prompted the outgoing staff of the Tattler to file suit.

Although the court’s partial denial of summary judgment allows the case to go to trial, the judge ruled that the Tattler is a “limited public forum,” which in his view, limits the First Amendment protection for student journalists.
FAQ
SPLC’s legal geniuses answer the most asked questions.

Libel
Does including “in my opinion” protect me from a libel or defamation suit?
Including the phrase “In my opinion” (for example, “In my opinion the principal illegally used school buses for a family vacation”) does not create an automatic shield to libel. Neither does simply reprinting what someone else has said (for example, “The principal used school buses for a family vacation,” said John Doe.).

Advertising
Can student media refuse to publish a lawful advertisement?
Yes, as long as students — and students alone — are responsible for rejecting the ad. Where public school officials, including an adviser, play a role in refusing the ad, the law can get a bit murky since they are government officials subject to the First Amendment. But students are private individuals and can accept or reject ads for virtually any reason. Student media or private schools are not subject to First Amendment restrictions and can generally accept or reject advertisements.

Internet
Is my newspaper legally responsible for online comments?
Generally no. The Safe Harbor of the Communications Decency Act says that no provider of a Web site is responsible for text provided by a non-staff user, except when the user has infringed copyright.

Access
Do I have to give a reason for asking for information under a Freedom of Information request?
Generally, you do not have to disclose your purpose for requesting public records.

Can I, as a student reporter, violate Family Educational Rights and Privacy Act (FERPA)?
Where it applies, the federal Family Educational Rights and Privacy Act (FERPA) restricts only school officials or those acting as an “agents” for the school — not student journalists from disclosing information about students without student (or parent, if the student is a minor) consent. Student journalists are not school employees or agents of the school and are not subject to FERPA’s restrictions.

I am a student journalist at a private school, can I use Freedom of Information laws?
Absolutely! You can submit requests to obtain information from public agencies. However, because your school is private, it will likely not be subject to your state’s FOI laws, and you’ll need to look elsewhere for information about it or school administrators. While your school may not be required to hand over records about its cafeteria inspection, the government agency that conducted the inspection will have to release the report. Also, there are “pockets” of both state and federal law that require disclosure of reports or documents compiled by private schools.

College censorship
Student government just cut the paper’s budget in half. Isn’t that a First Amendment violation?
It depends. First question: Is student government even a “state actor” subject to the First Amendment? Luckily, most courts say yes — especially when its role is allocating student fee dollars. Second: is the newspaper taking a hit because of its editorial content? The state can’t penalize editors’ content decisions by denying student activity fee support (at least, as long as the content is legal). Budget decisionmakers often hide behind the pretext of “quality,” but if “quality” is a smokescreen for punishing the publication’s support of an event that’s unlawful. One key that courts will look for: Did the publication take a hit grossly out of whack with comparable student organizations?

Privacy invasion
Do I need written permission to use a photo or a name of a minor?
Not if it’s for news purposes, though written permission doesn’t hurt. You need permission from the copyright holder if you didn’t take the photo, of course, and you need written permission if you want to use the name or photo for advertising purposes. But the Supreme Court has said it’s legal to print the name of a minor when the name is “fairly obtained” and “truthfully reported.”

College censorship
What is the Clery Act?
It is a federal law that requires institutions that receive federal funding to publish an annual “Clery Report.” The report includes statistics for crimes committed on campus. It was named in honor of Washington University student Kathryn Smart. The families of students murdered and injured by criminals on college campuses have formed the National Center for Campus Safety.

Can I publish a minor’s name online?
Yes. Despite rumors to the contrary, having a student’s name online doesn’t typically lead to horrifying consequences, and there isn’t a law designed to avoid the non-existent consequences.

Do I have to ask permission to tape a conversation, a meeting?
It depends on state law. Check out “Can We Tape?” from the Reporters Committee for Freedom of the Press, online at http://www.rcfp.org/taping/index.html.

Copyright
Can I use music or videos in our student broadcast or podcast?
It depends on how/why you are using it. As a general rule, if you didn’t create the music yourself, you must obtain permission from the copyright owner to use the music in any way. Contrary to popular myth, there is no “30-second” or “200-word” exception that allows you to use a set amount of copyrighted material without permission. This includes the use of background music. The only true exception to the rule is “fair use.” The Fair Use exception allows for the limited use of copyrighted material without permission when engaged in bona fide news reporting, commentary or critique, or in class educational research.

For example, a review of a CD on your TV news program could be accompanied by a short clip from a music video.

Newspaper theft
What should we do if someone steals our newspapers?
While the evidence is still warm, gather information about the theft. Determine how many copies were taken. Where were they taken? Were there witnesses or cameras? Is there information regarding the thieves’ motives? If you have reason to believe thefts may still be occurring, dispatch a photographer to take pictures. As soon as you have established basic information, contact campus and/or local law enforcement officials to file a formal police report and to ask for assistance in tracking down the thieves. If you need help convincing them that the theft of “free” newspapers is, in fact, a crime, the Student Press Law Center has collected documents from successful prosecutions of newspaper thieves on our Web site.

High school censorship
Does Hazelwood mean my principal can prior review my school newspaper?
This is a difficult question to answer because Hazelwood and prior review aren’t directly related. Prior review means only looking at the newspaper before it is published. In most cases, a school has the right to institute prior review, except where it is doing so in retaliation for content that was previously published, or, in some states, where the newspaper is totally independent. But Hazelwood really talks about when a school can engage in prior review — that is, when the school can actually remove content from the newspaper. Answer: only if the school has a legitimate educational reason.

Broadcast
Can I use music or videos in our student broadcast or podcast?
It depends on how/why you are using it. As a general rule, if you didn’t create the music yourself, you must obtain permission from the copyright owner to use the music in any way. Contrary to popular myth, there is no “30-second” or “200-word” exception that allows you to use a set amount of copyrighted material without permission. This includes the use of background music. The only true exception to the rule is “fair use.” The Fair Use exception allows for the limited use of copyrighted material without permission when engaged in bona fide news reporting, commentary or critique, or in class educational research.

For example, a review of a CD on your TV news program could be accompanied by a short clip from a music video.
FAQ

Con’t

If you have a question that you do not find the answer to here, call the SPLC’s legal hotline at (703) 807-1904.

Copyright

Can I use a picture from the Internet, Facebook or MySpace in the newspaper or yearbook?

Sometimes, but not usually, and you need to do some research to figure out whether or not you can. There are two primary areas of the law you need to worry about: copyright and privacy. From the copyright perspective, you need to be making a fair use of the work, or you need permission from the owner.

Check the SPLC Web site to read up on these topics — they’re too long to do in a general rule, unless you know who owns the image and how they’re using it, you can’t make a fair use. In other words, Google image search will almost never provide a useful result.

Can I use a picture from the Internet if I credit where it came from?

This is a common misconception. As much as journalism cares about crediting images, the law really doesn’t. Nothing in copyright law will give you any greater right to use an image just because you credited it. It’s nice to credit it correctly, but it’s not something copyright law has any interest in, at least as far as publications are concerned.

Can we use titles like “Days of Our Lives” as themes or headlines in the yearbook?

You can use the words, but using the words along with images from the work you’re referencing could be a copyright problem. The reason is that, while a title itself is not protected by copyright, associating the title with images related to the theme of the underlying work can serve to make the yearbook appear as a derivative work, and only a copyright holder can lawfully make or authorize a derivative work. So “Days of Our Lives” as a headline is fine — but if you combine it with images of an hourglass and drawings of actresses with big hair staring at strong-jawed actors, you might be in trouble.
Fighting the past
Private school’s editors battled with school for right to keep archive story online

When the box finally arrived, *Falcon* editors knew it was more than the server they needed to get their Web site back online. It was a victory.

It was the end of a yearlong conflict at Seattle Pacific University between the university administration and the student newspaper — a standoff symbolized by the server, but entrenched in heavier questions about student journalists’ right to control their own content at a private university and the consequences of journalism in the age of Google.

The root of the conflict was a decade-old story about a student expelled from SPU in 1998 after a woman accused him of attempted sexual assault. Now an attorney, Shakespeare Feyissa was never charged with a crime, and the woman recanted her statement. But the allegations stuck with him, Feyissa said, reliably reappearing in the old *Falcon* article with each Google search of his name. The story has no factual inaccuracies, but Feyissa says it emphasizes the accusations against him, and hurts his business and personal relationships.

"I didn’t want this incomplete and untrue statement online, because I don’t get a chance to explain to everybody," he said. "People see that and then make their own opinion, and as a black person walking around, people think I’m already a criminal anyways."

Tired of taking Feyissa’s calls demanding the story be taken down, administrators first asked the *Falcon* about removing the article in 2005. They asked editors in following years, and each time *Falcon* editors said no.

"It’s true, factual, and a matter of public record," former Editor-in-Chief Chris Durr said in an e-mail. "If journalists started censoring past archives, it would have a chilling effect on our society."

Because SPU is a private school, the administration could order editors to take down content without running afoul of the First Amendment. Instead, Vice President for Academic Affairs Les Steele said he presented the question of stewardship to the editors, because student tuition dollars go to fighting Feyissa’s complaints, and if it were a professional newspaper, the *Falcon* would have to grapple with that cost.

It was also a question of ethics and balancing freedom of the press with other community values, said Don Mortenson, vice president for business and finance.

"The bigger issue for us is not a freedom of the press issue, but whether someone’s past errors or mistakes get to be dropped," he said. "Do they forever need to haunt somebody?"

The editors still said no, so the article was online in spring 2008 when editors realized the server hosting their Web site was dying. They wrote proposals for a replacement. Editors were concerned when a memo Steele sent to lay out guidelines for a new server or off-campus hosting said that all parties must reaffirm SPU as the publisher and final authority on *Falcon* content.

"We ask that all parties indicate their affirmation of this by signing a contract," the memo said in regard to off-campus hosting. "… the Associate Vice President for Academic Affairs and Dean of Students and the Assistant Vice President of Technology Services must have access to the server and the web site."

Administrators say the Feyissa article and the server were completely separate issues, but the *Falcon* editors saw Steele’s memo as a threat to their archives. The *Falcon* staff knows SPU always has final say. Editor-in-Chief Christina Ghan said — but the newspaper could not just agree to a request that went against the journalism principles taught in their classes.

"Signing a contract that gave the illusion of consent — that we thought it was OK to take down stories that were accurate and true of consent — that we thought it was OK to lay out guidelines for a new server or off-campus hosting said that all parties must reaffirm SPU as the publisher and final authority on *Falcon* content."

After collecting donations from Feyissa about the article, an SPU attorney wrote a letter to Feyissa agreeing to remove the story from the online archives.

The server at Seattle Pacific University became a symbol of student editors’ autonomy at the West Coast private school.

**January 1998** - SPU student Shakespeare Feyissa suspended indefinitely. He felt he was punished more harshly because of his race, and filed a complaint with the U.S. Department of Education’s Office for Civil Rights.

**October 1998** - The *Falcon* published a story about Feyissa and the results of the DOE investigation, which cleared SPU of wrongdoing.

**September 2006** - After fielding persistent calls from Feyissa about the article, an SPU attorney wrote a letter to Feyissa agreeing to remove the article. *Falcon* editors refused.

**May 2008** - *Falcon* editors realized their server was failing and created a funding proposal for off-site Web hosting. When student government officials raised questions of increased liability with an off-campus server, the vice president for academic affairs sent out a memo that said all parties must sign a contract affirming SPU as the publisher of the *Falcon* and giving several administrators access to *Falcon* content.

**August 2008** - A Seattle Times story about Feyissa’s desire to have the article removed and *Falcon* editors’ refusal inspired some faculty members to donate money for a new server.

**September 2008** - The server died and no content — old or new — was accessible online.

**January 2009** - After collecting donations offered by faculty and others, *Falcon* editors determined they had enough money to purchase a new server on their own.

**February 2009** - With rumors of the new server starting to spread, the *Falcon* staff decided to tell administrators. The Finance Committee subsequently seized the server and slapped the newspaper with violations of the student groups finance policy for the unreported donations and unapproved purchase of the server. The money meant for a server was put into a general fund controlled by student government.

**March 2009** - *Falcon* editors and administrators reached a compromise and signed an agreement that says all parties affirm the 2008-09 Board of Student Media guidelines. The *Falcon* rushed a proposal to the student government, and funding for a new server was approved.

**April 2009** - The *Falcon* published online for the first time in seven months.

*See Falcon, Page 25*
Critics: Cyberbullying hysteria is beating up First Amendment protections for students

By Lisa Waananen

Katherine Evans was a frustrated high school student when she posted a rant about a teacher in November 2007 and invited others to "express your feelings of hatred." The three responding comments all supported the teacher instead, and Evans removed the message. But her writing still came to the school's attention — she was accused of violating the school's policy against cyberbullying and suspended for three days.

Parents and educators trying to crack down on "cyberbullying" tell painful stories about students harassing their classmates with text messages and posting hurtful rumors online — but as Evans found out, laws and policies against cyberbullying could open new routes to attack substantive student speech.

In the first major case to appeal cyberbullying charges on First Amendment grounds, Evans is suing to get her disciplinary record cleared. Maria Kayanan, associate legal director at the American Civil Liberties Union of Florida, is working on the case. She said policies targeted at "mean girls and mean boys" are dangerous because they include conduct that happens away from school grounds.

"There's clearly a place for protecting children in schools from each other, because sometimes the bullying can pose imminent physical harm," Kayanan said. "But when you talk about the speech like [Evans'] or something that's published in a student newspaper critical of, say, the school administration or a teacher, under many schools' definitions of cyberbullying that would be prohibited. So it's a real smashup between the First Amendment and legitimate concerns, in some instances, to protect children."

Educators and legislators are tackling this new schoolyard menace with a flurry of policies that give administrators control over students' electronic expression. In response to concern about the now-defunct JuicyCampus.com, the New Jersey attorney general told colleges and universities in the state to make sure their codes of conduct included the topic of "cyber-harassment."

Mary-Rose Papandrea, an assistant professor at the Boston College Law School, said the national focus on students cyberbullying each other is a diversion from the actual First Amendment issues, because most cases so far involve a student who posted something offensive about a teacher or administrator.

"It's not really about protecting kids from other kids — and that could raise a whole host of other issues," she said. "When it is involving students who are poking fun at their teachers, the teachers and principals just need to have a thicker skin."

Even policies created with good intentions like "promoting a safe environment" or "making all students comfortable" could open the door for censorship, said Will Creeley, director of legal and public advocacy for the Foundation for Individual Rights in Education.

It is not clear whether policies aimed at harassing e-mails and text messages could be used to censor online newspapers, students' blogs or comments from readers. One thing is for certain, Creeley said — some administrator somewhere will try.

"All of these understandable rationales for restricting speech, in the end, lead to abuse," he said.

Harassment policies — the low-tech older sibling of cyberbullying policies — have been used to justify censorship of students' opinions, Creeley said. At Tufts University in 2007, a conservative student paper was found guilty of violating the Bedford, Mass., school's harassment policy for satirical articles offensive to minority students. It would not be surprising to see cyberbullying policies used in the same way against online publications, Creeley said.

"Our concern about passing more legislation and much of the cyberbullying legislation we've seen is that it's broadly written, it's typically very vague, and it does threaten to swallow protected speech," he said.

FIRE and the New Jersey chapter of the Society of Professional Journalists joined the Student Press Law Center in a letter of concern to New Jersey Attorney General Anne Milgram about the vagueness of her directive to the state's higher education institutions.

"An open-ended directive that colleges enact codes of conduct that punish the use of computers for 'bullying' will invariably cause some administrators to penalize lawful speech that falls within the protection of the First Amendment," the groups wrote in November 2008.

In contrast to traditional publications, administrators may be even more concerned about online speech because of its potentially global audience.

"A lot of the reasons schools are getting up in arms about the Internet speech are because they feel it reflects badly on the school," Papandrea said.

The ramifications of this new medium are perplexing judges trying to apply old precedents to new kinds of speech, she said — and other people are conflicted about how they feel, too. Student newspapers that were read and promptly recycled in the past are now available to the whole world online, potentially forever.

"Before, if it's on the bathroom wall, you erase it. If it's in the kid's notebook, you throw it away. But this medium is different," said Clay Calvert, a professor and co-director of the Pennsylvania Center for the First Amendment at Pennsylvania State University.

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INterNet IN BrIef

Judge drops libel suit against LSU paper for online comments

LOUISIANA — A former student tried to sue the Louisiana State University student newspaper for comments on its Web site, but a district court judge dismissed the case because the newspaper cannot be held liable for users’ content under Section 230 of the federal Communications Decency Act.

Patrick Esfeller sued the Daily Reveille — along with its top editors, adviser and other university administrators — for negative comments posted about him, including one that referred to him as “Louisiana’s next serial killer on the loose.”

Section 230 of the Communications Decency Act states that “interactive computer service providers” cannot be treated as the speaker or publisher of information posted by users, and courts have held that this protection applies to newspapers’ online comment sections.

Esfeller said he plans to file a lawsuit against the person or people who made the comments — posted between February 2008 and January 2009 — by filing a lawsuit against “Doe,” which allows him to use the discovery process to obtain IP addresses and other identifying information.

Judge gives immunity in ‘douchebag’ case

CONNECTICUT — In a Jan. 15 ruling, a U.S. District Court judge ruled that administrators are not liable for a former high school student’s claim that her First Amendment rights were violated in 2007 when she was punished for a critical blog post.

U.S. District Court Judge Mark Kravitz decided Karissa Niehoff, principal of Lewis S. Mills High School in Burlington, Conn., and Superintendent Paula Schwartz were entitled to qualified immunity, which protects public officials from lawsuits for damages unless their actions violate “clearly established law.” Kravitz said in the ruling that because there is no clear legal precedent about whether online speech written off-campus can be punished in school, Niehoff could not have known what legal standard applied.

“If courts and legal scholars cannot discern the contours of the First Amendment protections for student Internet speech, then it is certainly unreasonable to expect school administrators, such as Defendants, to predict where the line between on- and off-campus speech will be drawn in this new digital era,” Kravitz said in his opinion.

Former student Avery Doninger filed the First Amendment lawsuit in July 2007 after Niehoff barred her from class office because of a blog entry that referred to the administrators in the office as “douchebags.” Doninger claims the principal violated her First Amendment rights by punishing her for off-campus speech.

Although Kravitz decided the case based on qualified immunity, his decision debated whether Doninger’s First Amendment rights were violated because the punishment she received — removal from class office — deprived her only of a “privilege,” not a right.

The case will go to trial to decide a related claim that contends the school violated Doninger’s rights by not allowing her and other students to wear “Team Avery” protest shirts to an assembly where student candidates gave speeches.

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— would be violating those standards,” Ghan said.

In September 2008 the old server finally sputtered and died. The original article about Feyissa was still available online on at least one blog, but the rest of the Falcon’s stories — new and archived — were not.

Concern spread among the faculty after the Seattle Times published a story about the situation, and a number of faculty members started asking the Falcon how they could help fund a new, stipulation-free server.

History professor Mike Hamilton, who supported the Falcon, said new challenges presented by the Internet are not a reason to abandon the American tradition of preserving the historical record published in newspapers. He said there are cases when educators may be justified in wanting to remove misguided student content, but the Feyissa article is not such a case.

“There was a whole host of reasons to keep this piece up,” he said, “and no good reasons to pull it down other than placating a troublemaker.”

Finally, with the school year waning and faculty concern mounting, the Falcon and the administration reached a compromise in late March. It sounded like the same old ultimatum: Sign this document if you want to get the server. But this time it was an “agreement” instead of a “contract,” and required the editors only to affirm the 2008-09 Board of Student Media guidelines. Gone was the stipulation allowing administrators access to the server.

So after nearly a year of frustration on both sides, Ghan signed the agreement. The Falcon successfully presented a new server proposal to the finance committee the next day, and the Falcon was publishing online again in early April.

Though everyone finally agreed on at least one point — thank goodness it got resolved — questions about the Falcon’s online archives still linger. Steele said he hopes there will be no need to revive the issue with future editors, but he would welcome a decision to make the article inaccessible to Internet search engines. Student government President Joel VanderHoek, who participated in negotiations throughout the year, said he would like to see a policy in place so any requests to alter archived content would come before the Board of Student Media.

And though Feyissa still disagrees with leaving the story online, even he is weary of the battle.

“I don’t know if I’m going to continue to fight it,” he said, “because at some point you just have to move on.”

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State University. “And frankly the kids know the medium far better than many administrators do, and that’s probably scary, too.”

This underlying perception that technology makes unpleasant or offensive speech “worse” is part of what is troubling about this push to discipline cyberbullying, SPLC Director Frank LoMonte said.

“The fact is that more people are likely to see graffiti on a bathroom stall at school than a student’s blog entry, and as adults we ought not to be feeding the frenzy of vulnerable young people that, just because something is accessible electronically, it means ‘the whole world’ is reading it and believing it,” LoMonte said. “Adults ought to be teaching kids exactly the opposite — that their value as people is not in any way defined by an anonymous insult on a social-networking page.”
Looking for an alternative

Independent papers give students more voices

BY KATE MATERNOWSKI

As mainstream student media across the country fight censorship battles with their school administrations, alternative publications are popping up in steady numbers in response to their own disfavored symbols of authority — official student newspapers.

Often utilizing the newest and most innovative means to broadcast their views, student journalists at alternative campus publications are finding a fertile landscape of both resources and audiences.

“Basically, a segment of the alternative student press is comprised of those turned off by their experiences at a mainstream student media outlet, normally the campus newspaper,” said Dan Reimold, a Fulbright scholar who studies student media and operates a student journalism blog, College Media Matters. “They felt their views were not being heard, the content being created was subpar, the difference they felt they were making was slight, and the staff culture was in some way anathema to who they are.”

While students retreating underground to counter a political bias at mainstream publications is nothing new, student journalists who feel censored from the campus paper are pioneering original ways of getting messages out. Student Newspaper, for example, is a student-run publication at the University of Nebraska at Lincoln that caters to subscribers with print editions, e-mail updates and RSS feeds.

The founders are not shy about their motivations — from a tagline of “A conservative newspaper, biased toward the truth,” to a self-described conservative agenda in their explanatory blog posts.

“The Student Newspaper was started as a defense against the encroaching liberal bias of the media: The present campus newspaper (funded by student fees) claims to be neutral, but presents a strongly liberal bias,” Tobias Davis, founding editor, writes on the blog. “Instead of pretending to be unbiased, the main team behind the Student Newspaper has a strong traditional Christian conservative political view and is not afraid to say so.”

According to Davis, being transparent about the publication’s motives has mixed effects on their readership.

“On the one hand, it does help readership with the people that are similarly minded or are interested to know what our side is about. They know they can get it [at Student Newspaper],” he said. “But it also keeps us in the niche because those who are opposed don’t really read the paper.”

Even as a budding publication — started just last semester — 500 copies are distributed about once a week, and the blog and e-mail supplements add about 200 views per issue, Davis said.

With most of their costs offset by the donation of printer use by a local supporter, Student Newspaper editors are finding the alternative publication model to be an effective way of getting their voices out.

“I don’t think I’d be able to say the things that I wanted to be said through their medium,” Davis said, referring to UNL’s mainstream paper. “So we started our own … it isn’t too expensive for us to do.”

For other students antsy to launch an alternative who are not as secure with finances, a few national organizations trying to promote student journalism — and sometimes a certain political cause — are available for help with funding and training.

The Collegiate Network is a non-profit organization that supports independent student newspapers with operating grants, mentoring visits, on-call advice, conferences and internships. Doling out membership benefits to more than 100 newspapers every year, the Collegiate Network is funded by the Intercollegiate Studies Institute, a national educational organization that seeks to “enhance the rising generation’s knowledge of our nation’s founding principles — limited government, individual liberty, personal responsibility, the rule of law, market economy, and moral norms,” according to its Web site.

On the other end of the political spectrum, Campus Progress offers funding, training and mentorship to “campus progressive publications.”

“While some portray U.S. campuses as bastions of liberalism, 30 years of heavily-funded conservative organizing has made its mark,” Campus Progress’ mission statement reads. “Campus Progress is helping young progressives come together, win the battle of ideas, and turn their ideas into action.”

While many publications affiliated with these organizations, and others that are not — like Student Newspaper — formed in response to very specific perceived biases, the impetus for an independent news Web site at Michigan State University in East Lansing was mostly preemptive. An experiment in online, independent student journalism, the SpartanEdge seeks to publish what its school’s newspaper cannot.

“It would be nice to have something of a

See Alternative, Page 32
Preaching community, censoring news

BY KATE MATERNOWSKI

Late last year, Gerian Steven Moore was terminated from his position as adviser to Chicago State University’s student newspaper, following what he describes as administrative retaliation for his unwillingness to censor the paper’s content.

While his story is not wholly unlike other censorship cases that perennially arise at colleges across the country, he said, there is another factor at play with CSU and its newspaper, the Tempo. CSU is a Predominantly Black Institution (PBI).

“The idea [at historically black colleges and PBIs] is that you protect the image of the president and the image of the university,” Moore said. “They don’t want to be embarrassed and cause people to question what they’re doing, especially if that may affect their funding.”

More so than at other universities, Moore continued, administrators at Historically Black Colleges and Universities (HBCUs) and PBIs are bound by a pervasive sense of loyalty and defensiveness — something they expect their student press to share, he said. Content critical of the school is often seen not only as hurtful to the school’s reputation, but hurtful to the black community in general.

The motif of censorship at black universities, Moore said, is especially hypocritical given the institutions’ and administrators’ claims of allegiance to the civil rights cause.

“They would say they believe in the idea of democratic society, but do they support democratic institutions?” Moore said. “I don’t think they do.”

“One of the cornerstones of any democratic society is information,” he continued. “The press is what keeps everybody informed. But the values involved in the freedom of the press and democracy itself are not seen the same way in black institution as they are in mainstream institutions. [Post-segregation], they really had to gauge how they were being seen by state legislatures [to ensure funding]. This has carried over.”

HBCUs were mostly founded by state legislatures or private organizations following the 13th Amendment’s abolition of slavery and Reconstruction in the American South. According to the White House Initiative on Historically Black Colleges and Universities, 103 HBCUs exist today. Funding support slowly began to trickle in from the government and private donors after the first HBCUs’ inception, but many are still plagued with financial woes, Moore said. Anxious to stave off funding cuts, Moore said, administrators at black colleges are often very protective of the school’s image.

Tempo’s current editor, sophomore George Providence II, said he believes the school administration envisions the student paper more as a public relations tool than an independent news organization.

“What the African American community often talks about is having a situation where you can control the product,” he said. And while he does not see Tempo’s role just as a finger-pointer, Providence continued, he is unwilling to succumb to the university’s calls to stop muddying its reputation.

“All the Chicago State students want is for Chicago State to recover our reputation as a good institution for higher learning,” he said. “I’ve made any number of different efforts … saying that I have no problem where there’s a difficult story we’re working on to give [the administration] a heads up because I want the school to do right, but they have not responded to that invitation. And I won’t leave it unreported.”

This dissonance came to a head when, Moore said, he lost his adviser position for refusing to follow administrative directives to fully review the Tempo before it went to print — what he and Providence believed constituted unlawful prior review. Moore and Providence jointly filed suit against members of the CSU administration, and in February tacked on another grievance when the Tempo’s new adviser pulled an issue from the presses.

While lawsuits may not be the norm, student newspapers at HBCUs across the country have experienced similar tensions with school administrators.

Pearl Stewart, founder and editor of Black College Wire, said censorship issues at HBCUs are “becoming pervasive.” She pointed to several cases to prove the trend, including two stemming directly from a school administration worried about its reputation.

In 2003 at Hampton University, in Hampton, Va., the Hampton Script defied the school president’s orders to print a front-page administrative memo, putting it on page three instead. The administration confiscated the entire press run before it could be distributed. The memo, and the initial article that prompted it, dealt with health-code violations in the cafeteria.

More recently, the Collegian at South Carolina State University in Orangeburg faced similar censorship threats when a March issue set to include an advertisement for adult-themed slumber parties prompted a university official to call for a production halt. According to Dervedia Thomas, Collegian editor-in-chief, the administrator’s original complaint against the advertisement was that “it was not in keeping with the image they were trying to present of the university.”

While Hampton Script editors stood by their publication decision, and eventually negotiated new governing policies with the university in regard to the paper, Thomas decided to remove the contentious advertisement with a promise from the administration for further discussion about the school’s relationship with the Collegian.

According to Stewart, the severity and duration of tensions between student editors and administrators can depend on how “persistent” and “bold” students are in pursuing censorship issues.

J.J. McCorvey, former managing editor for Tuskegee University’s Campus Digest, took the “persistent” route and spoke out in his senior year in several venues about ongoing problems between his paper and the school administration. Operating with inadequate resources,
Editors speak out
The SPLC asked college editors to sound off on their views about printing controversial material and exercising their First Amendment rights. Here is what a few had to say:

David Grant, editor-in-chief of the Collegiate Times at Virginia Polytechnic Institute and State University in Blacksburg, Va. Last December, the Collegiate Times published documents relating to the April 16, 2007, shootings at Virginia Tech before the school released them to the public.

“At the end of the day, we decided to electronically publish the documents in December because we believed our organizing and sorting of such documents was an aid to the public discussion ... and that we could do so while not affecting the university’s concern for a victim’s propriety as we did not publish any documents relating to individual victims.”

Grant went on to say that “as soon as one starts to think of their newspaper as (primarily) a vessel for proving First Amendment rights or being controversial, they should have quit last week.”

Terry Casey, editor-in-chief of the Daily Collegian at Pennslyvania State University in University Park, Pa.

“First Amendment rights are most important to members of our profession. We at the Collegian know this as well as anyone; a staff photographer is currently involved in a court battle that we believe violates his rights. But to deliberately publish controversial content rarely accomplishes much more than a public relations battle, and I am of the school of thought that believes newspapers should not insert themselves into the news.”

Katie Wells, editor-in-chief of the VanCougar at Washington State University at Vancouver.

“I understand [purposely running controversial content] completely for a business type newspaper to do that as a way to encourage more readers to purchase their publication, but as far as campus-type publications go, I don’t think it’s a good idea. … The previous Editor-in-Chief was asked to step down from his position after repeatedly writing and publishing stories that were manipulated as a way to provide more controversy.”

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Emotional coverage

BY KATE MATERNOWSKI

On Dec. 1 of last year, the University of Washington’s Daily doubled the usual size of its Monday edition, but none of the extra column inches included staff-member bylines. Instead, seven full pages were dedicated to reader letters in response to a column printed the prior week.

The article and accompanying graphic that drew such widespread attention was one side of a point-counterpoint opinion package addressing gay marriage in the wake of California voters’ approval of the anti-gay marriage Proposition 8. UW senior John Fay authored the anti-gay marriage position, arguing that homosexuality is an emotional tendency “that needs to be dealt with, not denied,” and that “once you’ve legalized gay marriage, why not polygamy, incest, bestiality or any other form of union?”

Printed alongside Fay’s column was a silhouette of a man and a sheep, presumably illustrating Fay’s argument that legalizing gay marriage could lead to bestiality. Along with the pro-gay marriage piece, written by another student columnist, was a similar silhouette of two women holding hands.

The explosive public reaction to the illustration exemplifies how sensitive issues can touch a nerve, and how publications can respond to prevent a controversy from causing lasting harm.

“The university president, student life vice-provost, editor and myself received several phone calls and e-mails from local and long-distance readers of the piece,” Kristin Millis, UW director of student publications, said in an e-mail. “There were a few threats … Personal addresses were published encouraging those who were outraged by the opinion piece to inflict bodily harm on the author and our editors.”

Tensions culminated at an on-campus rally organized by members of a group formed on Facebook called “Students for a Hate Free Daily,” which tallied upwards of 1,000 members just days after the controversial article ran.

While rally leaders maintained they wanted to address students hurt by the column, not censor the paper, other UW students were unwilling to allay blame for the Daily. The UW Graduate and Professional Student Senate (GPSS), for example, called for either a printed apology from the Editorial Board or the resignation of Editor-in-Chief Sarah Jeglum and opinion editor Natalie Sikavi.

A week after the controversial column was published, UW President Mark Emmert took out a half-page ad in the Daily, where he extolled the university’s commitment to tolerance, diversity and free expression on campus.

“The response to the column in The Daily demonstrates to me that the free exchange of ideas at our University is alive and well and doing what it is supposed to do,” Emmert wrote.

Following the GPSS resolution calling for her resignation, Jeglum spoke in front of an open forum organized by the Associated Students of the University of Washington. She said she would not apologize and she would not resign. While she admitted the graphic choice was ill-advised, Jeglum said she stood by her decision to run Fay’s column as one side of a debate about an issue of clear importance to the UW community — an importance evidenced by the campus’ colossal response.

Apologizing for the column would amount to censorship of the views of a segment of the
“People have called it hate speech, and I just don’t think it is,” she said. “If I could do it again, I would run the article but with a different illustration or none at all. I talked to the illustrator and he said he chose to portray the furthest out argument possible, the slippery slope argument. . . . I’ve talked to him since then and he said that it wasn’t the right place for editorializing.”

According to Mike Hiestand, Student Press Law Center attorney, being transparent about decisions can be “what keeps controversies from becoming avalanches.”

In describing the Daily’s handling of the recent publishing controversy, Mills said she was particularly proud of the staff for its concurrent allegiance to both integrity and accountability. Editors were unyielding in their paper’s defense, she said, but were also willing to explain their decision to protestors and dissenters.

“First of all, be accessible,” Jeglum said when asked how she would advise other student journalists in handling controversial publication decisions.

Jeglum not only gave the go-ahead to print several additional pages of reader letters in the Daily, but also wrote an explanatory editorial in the paper’s opinion pages and spoke at student forums organized in response to Fay’s column.

Jeglum also advises fellow student editors — a lesson she

See Daily, Page 31

From HBCU, Page 27

McCorvey said, was just the beginning of the paper’s challenges. The Campus Digest’s primary difficulty was invasive administrative oversight and an unspoken pressure not to “bite the hand that feeds you,” he said.

“When a photographer is reprimanded for an honest picture of one of the school’s dilapidated buildings; or a reporter is told that an article might ‘incite protest;’ or the editors are told which stories should be on the front page of the newspaper, there is a problem,” McCorvey wrote in an editorial for Black College Wire.

While resource and equipment setbacks have been at least addressed, if not resolved, at the Campus Digest since McCorvey’s critical 2007 editorials, he said he is concerned issues with printing delays and prior review persist.

Janene Tate, adviser to the Campus Digest and also a public affairs specialist at the university, located in Tuskegee, Ala., said the newspaper, since McCorvey graduated, has not been plagued with the administrative oversight problems he bemoaned.

Student editors go to her for advice, Tate said, and she is careful to direct them in producing fair and balanced stories without pressuring their editorial decisions.

“I am a former journalist myself,” Tate said. “I would recognize censorship in a heartbeat.”

Tate also said that, while she concurrently serves the university’s public affairs department and the student newspaper, she perceives those roles as being separated by “a big bold line.”

But others in higher education see a conflict of interest in a double placement like Tate’s. Moore, for example, said departments are set up that way intentionally, and, once established, the structure only works to promote problems of wrongful administrative meddling in the student press.

Even if the administrative oversight is well-intentioned, Providence said, it is not an effective way to teach journalism or improve the school’s reputation.

“The folks I encountered at Chicago State are much more interested in the finer points of spin control than in making substantive changes that would bring about the positive changes they’re looking for,” she said.

For McCorvey, too, the final goal is improvement in both the university and its student newspaper.

“At historically black colleges, a lot of times there’s this hush-hush type of mentality that we want to put out best face forward,” he said. “But the administration doesn’t realize that if you keep these issues from getting out, you keep them from getting worked on.”

Stewart said while a heightened sensitivity to bad press, both from their student newspaper and professional media, is part of the censorship problem — some HBCU administrators believe “they are the target of misrepresentation in the mainstream media more often than white administrators” — there is more to it.

“One of the major issues, it’s not one that is discussed very often, is that . . . some of the content in the [HBCU] student newspapers at times can be embarrassing not because of any criticism of the administration, but in some cases it can reflect the lack of skill that the students have, the fact that the students have not learned enough journalism to do justice to the story,” Stewart said. “If it looks like the students can’t write or edit, it reflects badly on the university.”

Stewart and Moore agree censorship issues with HBCU student papers can often be traced back to staffing and curricular problems — misguided or poorly led journalism programs.

“I’m in any way suggesting that those problems are justification for censorship,” Stewart said. “I’m suggesting that those problems need to be addressed as strongly as the problems of censorship. Taking action against advisers and editors is counterproductive. They need the practice in order to learn and improve.”

Of course, Stewart said, the level of journalism education and the severity of student press censorship varies among HBCUs.

Spelman College, an all-female HBCU in Atlanta, does not have a journalism program, for example, and its student publication is “barely operational,” according to Spelman’s Interim Director of Student Activities, Maria Lumpkin. Spelman’s aspiring journalists who choose not to write for the Spotlight, the school publication, often join the staff of nearby Morehouse College’s student paper, the Maroon Tiger.

“They’re both private, both are good schools, but they have opposite approaches to student journalism,” Stewart said.

Other HBCU student newspapers, Stewart continued, have enjoyed relative editorial freedom from their universities. Journalists at the Famuan, student newspaper at Florida Agricultural and Mechanical University in Tallahassee, have experienced the “little scuffles” any student editors would have with their school’s administration, she said, but generally “they have access they need, they can go into meetings, they cover the campus and the administration freely.”

Overall, Stewart stressed, there are several factors affecting the current state of student journalism at HBCUs and PBs — and a remedy to censorship issues at those schools must be equally multifaceted.

“We need to sit down and figure out a way to improve the quality and skill level of the students, and get the administrators in line with journalistic practices, without infringing on First Amendment rights,” she said.
Trying not to forget

Keeping memories of censorship alive tough with constant newsroom turnover

BY LISA WAANANEN

It has been five years since Kansas State University administrators fired the adviser of the student newspaper, alleging it had not printed enough coverage of diversity events. It has been five years since Daily Collegian editors Katie Lane and Sarah Rice filed a suit against Kansas State claiming the Manhattan, Kan., school violated their First Amendment rights. It has been five years, and most journalists who edit and work in the Collegian newsroom these days do not even know it happened.

In the collective memory of an ever-changing college newsroom, five years is a long time.

"I was editor my last semester, and by that time there was just a handful — less than 10 people — who had been there at the same time," Rice said. "By the time I graduated there was barely anybody left that would even remember the initial incident."

Constant staff turnover may be a fact of life at student publications, but it puts student journalists at a disadvantage when facing censorship and other conflicts. In the Kansas State case, the 10th U.S. Circuit Court of Appeals ruled in 2007 that Lane and Rice did not have standing as plaintiffs specifically because they were no longer students. In relying on graduates unless they ask about it.

"The Mirror fought for its freedom in order to provide UNC the best information available, not to gloat about being right," she said in an e-mail.

Urie said he is glad to know the lawsuit still has an effect, though he understands the memory will fade as each year's editors leave their college years behind.

"I certainly hope they are remembering what happened when I was there and are able to apply the results of that lawsuit," he said. "But I think there's just that reality that we move on from those things."

It is a reality that challenges editors of the Daily Orange, the completely independent student newspaper at Syracuse University in Syracuse, N.Y. Former Editor-in-Chief Tito Bottitta has been gone for more than five years now, but some of his ideas to strengthen institutional memory are still in place.

Bottitta had only been top editor for a few weeks in the spring of 2002 when the newspaper published a cartoon, intended to depict a robber wearing a dark-colored ski mask, that some people at Syracuse saw as racist. A history of racially insensitive cartoons had earned the Daily Orange’s nickname “Daily Oppressor” among some campus groups. One cartoon depicting the student body’s black president led to protests on the Daily Orange’s lawn the spring before Bottitta started at Syracuse.

"I remember being kind of shocked to learn, oh, that happened the semester before I got there. That happened within months of my setting foot on the campus," he said. "I think the paper was sort of ashamed of it, so it wasn’t sued the student government for open meetings violations and the board of trustees for approving a 40 percent funding cut for the Mirror proposed by the student government.

The Mirror won both cases — the resulting agreement means the newspaper now has a contract directly with the university for its funding, and Student Representative Council members have open meetings law training every year.

"We knew that the changes needed to happen and it needed to be a long-term solution, which is why that agreement was written the way it was," said Heath Urie, who was the incoming editor-in-chief when the lawsuits were filed.

Romero told section editors about the lawsuit, but she said it is not something she tells staff members unless they ask about it.

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something they made a big a deal of or talked to the staff enough about."

Rather than hiding the paper’s shameful moments, Bottitta created the “Don’t Do This” wall near the editors’ offices by posting mistakes and controversial content from the archives. Bottitta said the hope was that a young reporter walking by might stop and ask an older editor about it.

“We wanted people thinking about those things when they were making decisions, and thinking the way our readers may well be thinking,” he said.

Bottitta also started the “D.O. Palooza” tradition, which brings D.O. alumni back to campus to lead seminars and tell stories from way back when. It is one opportunity to talk to current students about the lessons of the past, Bottitta said, though he no longer thinks preventing future conflicts is possible — or beneficial.

“I still do think institutional memory is important,” he said, “but I actually think the experience of going through it is just as invaluable.”

The Daily Orange’s independence means the staff is free to learn and relearn those lessons without fear of university interference, though it also leaves them without an adviser or permanent staff member to help pass on knowledge. The adviser serves as the font of institutional memory at many organizations, Goodman said, and that is what makes the Kansas State ruling so frightening: It suggests schools can get away with reassigning advisers for content-related issues.

In the wake of the Collegian adviser’s dismissal, College Media Advisers censured Kansas State — the advocacy organization’s most drastic action against universities deemed hostile to student journalists and their advisers. This is one way to prevent the conflict from fading away and make sure something positive comes out of it, said Kathy Lawrence, who was CMA president at the time Kansas State was censured and now chairs the group’s Adviser Advocate Committee. When a conflict arises, CMA advocates try to work with the university to develop policies more supportive of student media.

“Those advisers have often by that time moved on, but what we hope to have in place is a structure that will protect future advisers and future students,” Lawrence said.

Kansas State has worked hard to remove the censure — rewriting student media bylaws, restructuring the board, gathering statements in support of student media and generally strengthening the organization, Kansas State Director of Student Publications Linda Putney said.

“These are all very positive things, and we’re glad we’ve been able to do this,” she said. “But we’ve got bruises, too.”

A CMA censure is all that remains of a standoff at Le Moyne College, also in Syracuse, after a longtime adviser was removed almost four years ago. The administration cited poor quality and grammar errors, but Dolphin editors suspected the decision not to renew Alan Fischer’s contract in fall 2005 was in response to controversial content. In protest, they halted publication for more than a year.

“We were drastic from the beginning. We said we’re going to halt publication and protest what you’re doing,” said Andrew Brenner, who was editor-in-chief at the time.

Finally, administrators commanded the newspaper by disbanding the student group and reregistering it the following day with different students.

“The student newspaper that had been put in place as the Dolphin really just was press releases for the school. It wasn’t a student newspaper,” Brenner said.

Current co-managing editor Michael Bersani admits that the Dolphin his freshman year was more like a newsletter as the new Dolphin staff started from scratch.

“That first year was tough,” he said. “You look back at the paper now and you sort of cringe a little bit.”

Since then, Brenner and all the former Dolphin staff members have moved on, and Le Moyne has a new president, too. The alternative paper Brenner started, Democracy, still publishes, though much of its original passion left with its founder.

After working at the Dolphin since his freshman year and seeing the newspaper improve each year, Bersani said he plans to step down from the top role next year so progress is lost in the transition to new editors.

“We’re careful that once we graduate as seniors the paper doesn’t fall flat on its face,” he said.

Shawn Ward, vice president for student development at Le Moyne, said the college would certainly like to get the censure taken away, but it is not easily done. He said the last time Le Moyne reached out to CMA they were told the censure would not be removed unless Fischer was reinstated as adviser, so there have not been efforts recently.

But students working at the Dolphin now See Memory, Page 33

From Daily, Page 29
said has been most formative in her leadership following the controversy — to do everything possible to “educate yourself and your staff.”

The staff of the Daily has, enlisted the help of experts on LGBT issues to provide training in ways to approach the topic with sensitivity. And according to Jeglum, this type of training will be an ongoing part of staff orientation.

“We have to educate ourselves as best we can, and then continue with the mindset that we’re never going to know everything,” she said.

“I think what worried me the most about the controversy and the threats … was that the staff here would become afraid to cover or be a forum for gay rights issues, whether in news coverage or the opinion section. I want us to feel like we can broach these controversial topics on campus without being afraid.”

According to Hiestand, college newspaper staffs would be wise to establish publishing philosophies long before an incendiary column slides across their desks.

“Is the newspaper a public bulletin board where anything goes,” Hiestand said, “or is there some obligation to your readers to perhaps protect them from information that might be misleading? I don’t know if one is a better answer, but it is something a news staff has to think about.”

From Editors, Page 28
Shane Kitzman, editor-in-chief of the Aquin at the University of St. Thomas in St. Paul, Minn.

“We have published controversial material. From Desmond Tutu being denied attendance to the university to writing about the problems with local bars. We stay objective and tell the truth and let the quotes speak volumes.”

Leah Finnegan, editor-in-chief of the Daily Texan at the University of Texas at Austin.

“I have one columnist who is now well-known around campus for writing incredibly incendiary political pieces. I often get criticized for ‘supporting’ or ‘endorsing’ his viewpoint. But my publishing him really serves a subliminal purpose — to prove that viewpoints like his exist in the minds of literate, educated (give or take) Americans. I realize this gets lost on most readers. But each time one of this guy’s columns lands in my inbox, my jaw drops and I think — how could I NOT share this with the university? They need to see what I’m seeing. Not letting them read and react with me would be the real disservice.”
From **Alternative**, Page 26

budget, but we don’t believe that journalists working for college publications should be paid by the school,” the weekly-updated Web site states. “Once the school starts handing money to a college paper or publication, then the paper is automatically compromised in what it can, or feels necessary, to report.”

According to student Editor-in-Chief Amanda Peterka, SpartanEdge began as a project by a now-retired journalism instructor and a team of students committed to publishing — in a new medium — the stories left unreported by the mainstream paper.

“Most of the articles seemed like press releases for the university,” Peterka said of the State News, MSU’s official student paper. “Really heavy with administration quotes and not student analysis. Because we are independent, we are able to give that analysis. Personally, if we think something is wrong and unfair to the students, it’s OK to be critical of that.”

According to State News Editor-in-Chief Kristen Daum, the only funding State News receives apart from its self-generated revenue comes from a student subscription fee, which is refundable upon request within 10 days of the start of each semester.

“[T]he student tax is not university funding,” Daum said in an e-mail. “Being independent from the university, State News editors and reporters feel no pressure from university officials against running potentially controversial stories. In recent years, we’ve published investigative pieces into possible secret meetings by the Board of Trustees, and we even sued the university after they failed to release a police report under the Freedom of Information Act.”

Independent news coverage aside, Peterka said there are other benefits gleaned from the label “alternative.” She wants her writers, for example, to embrace their independent freedom by experimenting with writing styles. Pointed and satirical language is a luxury of independent publication, she said, and her goal is for the SpartanEdge to use that liberty to more accurately reflect students’ perspective.

The type of writing Peterka envisions is similar to what Reimold sees beginning to color the student blogosphere. These Web sites and blogs — the NYU Local is a good example, he says — are not alternative in name only.

“They are truly trying to embrace Journalism 2.0 — presenting news and views as they pop up, scrounging for more underground events and issues that are not being pitched at student newspaper story meetings, and presenting content in an informal, at times in-your-

face style that resonates with readers used to the personal touch of blogs,” he said.

Cody Brown, publisher of **NYU Local**, told Reimold that his “24 hour” Web site’s mission is to be a collage of writers’ and readers’ input.

[“W]e think the journalistic ideal of objectivity is a corrosive myth. We value perspective. We don’t try to hide it in a style of writing that acts as the neutral party,” Brown told collegemediamatters.com. “Further, stories don’t end after they are published, and sometimes we will post a story even if we don’t have a great hold on it because we want to turn it over to the collected expertise of our readers — comments are always enabled.”

Brown said this model mirrors what happens in newsrooms as stories are vetted and developed. It is a nontraditional format, but it is honest, intelligent journalism, he said.

Along with the innovative freedom and niche perspectives many alternative publications adopt, there also often comes an uphill climb into campus relevance.

As Davis said, his publication’s political leanings sometimes make it difficult to garner student attention. What is worse, he said, one-sided papers are prone to theft problems.

“People just go grab them as soon as they’re out there,” he said. “I tracked down the main guy who was [stealing issues]. He’s a radical liberal and opposed to our views.”

According to Frank LoMonte, executive director of the Student Press Law Center, the Student Newspaper’s ideological bent — and $0 price tag — does not exclude it from theft protections. Similarly, LoMonte explained that alternative student publications out of public universities share all the same legal freedoms as the campus paper. Aside from reasonable time, place and manner restrictions, both the recognized school paper and any alternative publications are free to distribute on public campuses, which are governed by the First Amendment.

For the many new alternative publications taking advantage of online resources — and the low overhead costs associated with a virtual office and nonexistent printing budget — hard-copy distribution problems are off their radar.

Instead, for today’s alternative publications, staying relevant is the goal and the challenge.

“In this respect, the key is … ensuring students young and old feel a sense of ownership in what is being created,” Reimold said. “And they should. The alternative student press is a spectacular complement to the mainstream student press. It is innovative. It is influential. It is an essential part of journalism’s reinvention. And it is here to stay.”

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**COLLEGE ADVISERS IN BRIEF**

**Journalism professor, adviser loses tenure**

**WASHINGTON** — The sole journalism professor at Clark College in Vancouver, Wash., was denied tenure in March by the school’s Board of Trustees, effectively firing her by June.

Christina Kopinski received a faculty committee recommendation for tenure by a vote of 3-0 with one abstention, but was then denied her job security by board members who, she said, have yet to provide her with a reason for denial.

Kopinski suspects board members are unhappy with the investigative approach she teaches in her journalism classes and encourages at the student newspaper she advises. Hired to develop a journalism program at the college, Kopinski teaches every journalism course, advises the student paper, the Independent, and has been working to establish a journalism certificate curriculum.

“All I’m doing is what my job description says and doing what I’m supposed to do to gain tenure,” Kopinski said.

Kopinski cited several stories in the Independent critical of the two-year private college that have upset school officials in the past. When school officials tell her that students should not be reporting on issues that are potentially damaging to the college’s reputation, Kopinski said, she responds that it is not in her purview to dictate what the paper can and cannot cover.

Kopinski, along with the faculty union, is currently pursuing a grievance process with the school. Members of the faculty union and other colleagues of Kopinski have told several news outlets there is nothing in her performance reviews that would justify denying tenure. Student editors have also stood in support of Kopinski, who they say is suffering unfair blame for administrators’ grievances with the Independent.

Clark College board members maintain the Independent’s coverage had nothing to do with Kopinski’s tenure decision.
From Memory, Page 31

are satisfied and the newspaper is prospering, Ward said, so the censure no longer accurately represents students media at the college.

“It reflects an incident that occurred historically,” Ward said, “but looking at the contemporary situation and looking forward, it doesn’t reflect what we’re doing or where we’re going.”

It is still a painful memory for Fischer, who said it has not been the same teaching at Le Moyne since then. He has rarely looked at a copy of the Dolphin since it resumed publishing. Brenner, too, said the conflict left a stain on his college years and might have influenced his decisions to pursue public policy in graduate school rather than journalism.

“It’s true colleges can just wait students out. At the end of the day they have far more power than students ever would, especially at a private school,” Brenner said. “That being said, though, I don’t think students should just give in.”

At Kansas State, the ongoing lawsuit was still a cloud hanging over the newsroom when Collegian Editor-in-Chief Sheila Ellis started reporting as a freshman in 2005, the fall after Rice graduated. Ellis was routinely assigned to cover the Black Student Union and events she said might not have been covered in past years.

“I noticed I was getting a lot of the BSU stories — a lot of the stories they weren’t covering in the past,” she said. “And ironically I was the only black reporter.”

Tired of getting pigeonholed for the “black beat,” Ellis quit reporting. She was approached by administrators about starting a separate publication for minority students, but Ellis said that seemed like running away from the problem instead of fixing it. The lack of diversity coverage was an ongoing problem at the Collegian long before the conflicts that led to the lawsuit, Ellis said. During her sophomore year, she discovered an old Kansas State alternative newspaper printed by black journalists for two decades.

“They felt like they needed to do something because the student newspaper didn’t have any of their viewpoints in it,” Ellis said.

Determined to finally overcome that history, Ellis started a group for minority students pursuing media careers, and brought along a diverse group of reporters when she returned to the Collegian.

These days most staff members have no knowledge of the former editors’ lawsuit, Ellis said. CMA plans to remove the censure against Kansas State soon, and the Collegian journalists have moved on.

“It’s not really something that we talk about very much because it’s really not relevant anymore to us,” Ellis said. “Most of our staff writers and reporters have no idea, or have no knowledge of what happened because it doesn’t really affect us.”

Former adviser Ron Johnson, who worked at Kansas State for 19 years before moving to Indiana University as the director of student media, said the implications of the court case should worry student journalists. He said the real test at Kansas State will not come until the Collegian is again confronted about its content — maybe not this semester or the next, but someday.

Rice said it is a shame current and future Collegian staff members will not feel connected to the paper’s alumni the way she did when letters and support poured in from past editors during the lawsuit.

“We felt like we were part of a bigger organization just because we had all that support from people who had been there before,” Rice said. “I feel bad that those at the Collegian now probably won’t have that.”

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Law professor calls college sex column ‘unprofessional’

MONTANA — A University of Montana law professor upset over content in the campus newspaper’s sex column is calling on the paper to establish written guidelines for hiring and editorial decision-making.

Late last fall, the Kaimin began publishing UM senior Bess Davis’ “Bess Sex Column,” which touches on topics from Facebook relationship statuses to oral sex practices. Her writing style and content drew both positive and negative attention, the latter being voiced most vigorously by UM law Professor Kristen Juras.

In February, the Kaimin published a letter from Juras in which she called the column “embarrassingly unprofessional.” Juras met with Kaimin Editor-in-Chief Bill Oram to relay her concern about the paper’s hiring policies, saying she will “go through all of the administrative levels” to get the column stopped, according to Oram.

Juras said that, because the Kaimin is taxpayer- and tuition-funded, it necessarily has an educational purpose. In writing about sex, Juras said, the columnist should have some kind of expertise in the subject.

According to Oram, demanding expertise from a student writer before granting her column inches is simply not viable.

“We’re in pursuit of our degrees here, so we expect us to be experts in any area is unrealistic,” he said.

Juras told Oram she would appeal to the Associated Students of UM to step in if the paper chooses to continue the column. Oram did not proceed with establishing hiring and publishing guidelines.

Student reporters go on strike as school searches for publisher

OREGON — After nearly a month of deliberations between the University of Oregon’s student newspaper and its board of directors, the two sides in March announced a mediated agreement regarding concerns over editorial independence.

The gridlock began earlier this year when the paper’s supervisory board decided to hire a publisher for the Daily Emerald, one element in a plan to improve the paper’s long-term stability. Included in the publisher’s tentative job description was oversight of the paper’s editorial content and the possibility of employment in the university’s journalism school.

On March 4, the newsroom officially went on strike in protest of what editors deemed a trampling of the Daily Emerald’s independence. Publication resumed the following Monday after the board agreed to enter mediation sessions with the paper staff.

By the end of March, the board and the Emerald staff agreed to a compromise. The plan calls for the board to conduct a national search for a new publisher who will be charged with only business-related duties — not editorial control. The new publisher will also be forbidden from teaching journalism courses.

Both professional and student papers across the country opined on the Emerald’s strike, and within days of the walkout, 33 college papers signed onto and ran an editorial in support of their peer paper in Eugene, Ore.
Between the devil and the sea

While independent college media faces bleak financial prospects, most prefer cutbacks over risking autonomy by seeking a bailout from universities

BY KATE MATERNOWSKI

For the handful of college newspapers able to attain it, financial independence from the university is often considered the highest guarantee of editorial freedom. With economic pressures weighing on the revenue streams of these few and proud, though, editors are being forced to follow the lead of today’s banks and automakers and define their breaking points — and sometimes even ask for a bailout.

The Daily Californian at the University of California at Berkeley is one of those papers. The 137-year-old publication gained independence in 1971, and has operated with no financial help from its university since that time. Just last year, though, a loss in advertising revenue that has plagued both peer and professional papers nationwide hit the Daily Cal hard, and last semester it became the first of several student publications to cut a day of print.

Slashing Wednesdays from their production schedule was just one of the ways Daily Cal leadership has coped with dire financial straits; across-the-board pay cuts also topped the list of survival strategies. And while Editor-in-Chief Bryan Thomas is hopeful these and other financial maneuvers will lead to a more stable future for the paper, he has had to prepare for the worst.

But for Thomas, unlike some other editors and publishers at financially independent college newspapers, appealing to the university for funding rescue is not the worst possible scenario.

“Our independence is very critical to us, but we also have to be practical,” Thomas said. “If the question is whether we would rather stop printing or go back to the university [for funding help], while all of us would hate doing it, it wouldn’t be the most responsible thing to say we’re above it.”

Thomas said fiscal independence ensures the university could not censor content or otherwise intervene in newspaper affairs — it secures the democratic freedom intended for newspapers to diligently pursue the stories most important to their readership, which are sometimes critical of the school.

All the way across the country, some East Coast editors shared Thomas’ sentiment about the importance of independence, if not his potential willingness to risk it in the name of survival.

JR Santo, publisher of Dartmouth College’s the Dartmouth, put it bluntly: “Asking Dartmouth College for money is not even an option we would ever consider.”

Financial independence is simply too crucial to the paper’s mission, he said. It is “absolutely, without a doubt” what allows Dartmouth editors to put out many of their stories, especially considering Dartmouth College, located in Hanover, N.H., is a private institution that is not constitutionally bound to uphold the same press rights that apply to newspapers at public schools. And while a financial lifeline from the school might not result in immediate censorship, a simple phone call to pressure an editorial decision might be where their control would start, and that input is a conflict of interest, he said.

Of the very few financially independent student newspapers that dot the rest of the country, allegiance to self-sufficiency can mostly be characterized as strong and stronger.

Mary Cory, publisher of the Daily Illini at the University of Illinois at Urbana-Champaign, which went off-campus and fully financially independent three years ago, said they are “glad to not be in that position where [they] would have to worry about [going to the university].”

The University of Wisconsin at Madison’s Badger Herald, produced every day just hours north of Daily Illini headquarters, has a longer history of financial independence and a more deeply rooted dedication to independence to match.

“Under no circumstances would we ever, ever go to the university,” said Nick Penzestadler, Badger Herald publisher.

Amid the collection of student newspapers that would vow never to give their financial independence up to their universities, the Daily Cal is seemingly the first and, so far, only paper with a current budget dire enough to force the consideration of that option.

“Our office space is one area where we’re looking for a bailout,” Thomas said. “We pay rent to the university for the space, and we’re asking them to reduce our rent.”

On the one hand, Thomas said, a rent reduction can be seen as an impediment to the paper’s independence. At the same time, though, it is not uncommon for businesses under financial pressures to
If the question is whether we would rather stop printing or go back to the university [for funding help], while all of us would hate doing it, it wouldn’t be the most responsible thing to say we’re above it.”

Bryan Thomas
editor-in-chief, The Daily Californian of the University of California at Berkeley

Student newspapers hit by theft nationwide

Often overlooked as a criminal act, theft of free student newspapers is one of the most common means of censorship in college media. Three states already have laws criminalizing free newspaper theft, and one more – Nevada – considered similar legislation this year.

The SPLC reports on nearly two dozen cases of newspaper theft every school year, and 2009 is so far not bucking the trend. Since January, at least six college papers have reported issues dumped from newstands.

Two campus police officers at the Massachusetts Institute of Technology in Cambridge, Mass., owned up to recycling 300 issues of an MIT Tech issue that featured a front-page story about a fellow officer arrested on charges of drug trafficking.

This February at Gustavus Adolphus College, the student paper reported on “Case Day,” when students at the private college in Saint Peter, Minn., attempt to drink 24 cans of beer in 24 hours. The issue hit newstands a day before an admissions event for potential scholarship candidates, and stacks of papers were found in a trash bin outside the admissions office sometime after that event.

In response to an editorial error in the University of Nevada at Reno’s Insight magazine, an aggrieved reader gathered up more than 100 copies, hand-corrected them, and returned the magazines to the publication’s office this March.

Nearly 3,000 copies of Catholic University of America’s student newspaper, the Tower, were found tossed around the Washington, D.C., campus in late March, and an editorial cartoon commenting on the paper’s gay-rights coverage was ripped from that issue and posted on the Tower’s office door. Upon contacting local police, editors were initially told theft of free newspapers is not a crime, but school officials are investigating.

Campus police at Virginia Commonwealth University in Richmond, Va., are investigating the theft of approximately 2,500 copies of an April issue of the student paper, which featured a controversial photo depicting a man violently grabbing a woman’s face in scene from a campus play. The Commonwealth Times’ managing editor called it “blatant censorship.”

At Utah Valley University this March, more than 3,000 copies – almost the entire press run – of the UVU Review mysteriously went missing from news racks on campus in Orem, Utah. While some editors suspected censorship, two women soon confessed to taking the issues for use in a youth-group art project.
Getting your day in court

Due process claims may succeed where First Amendment fails

BY KRISTA GESAMAN

When Jill Snyder, an eighth grade student at Blue Mountain Middle School in Orwigsburg, Pa., was reprimanded for violating the school dress code, she decided to take matters into her own hands. After school, Snyder went home to create a mock MySpace page ridiculing her school principal. With the click of a mouse and punch of a keyboard, Snyder described her principal as a “married, bisexual man . . . who enjoys hitting on students and their parents . . . and watching the Playboy channel,” among other derisive comments. When news of the parody profile spread to the school administrators, she received a 10-day out-of-school suspension.

Snyder challenged her suspension on First Amendment grounds, alleging that the school overstepped its authority by penalizing purely off-campus speech with no physical nexus to the school. A U.S. district judge disagreed and dismissed her claims; however, the case currently is on appeal to the 3rd U.S. Circuit Court of Appeals.

The lines between off-campus and on-campus student speech are becoming blurred, and some courts have ruled that actions that occur outside the schoolhouse gate can still be punished in the principal’s office. In Snyder v. Blue Mountain School District, the student was unable to convince the court that the First Amendment protected her against punishment. However, as the facts unfolded, it became clear that a different legal theory — violation of the student’s due process rights — might have fared better.

Due Process

Due process requires notice and a hearing before an individual is deprived of a protected interest. The Fourteenth Amendment of the United States Constitution forbids a state from depriving life, liberty or property without due process of law. “Property” under the due process clause is defined as any interest to which the government has given someone an entitlement.

In San Antonio Independent School District v. Rodriguez, the Supreme Court held that high school students don’t have a federal constitutional right to a public education. However, rights not defined in the Constitution can still be protected by the states.

State Education Statutes

All 50 states have enacted laws that provide for free public education to young state residents. For example, Ohio provides for free education to individuals between the ages of five and twenty-one, and a compulsory attendance law requires students to attend school for no less than 32 weeks.

Because states have decided to extend the right to a public education to individuals within a certain age range, the states cannot take those rights away without notice and a hearing. The Supreme Court held that a student has a property interest in receiving a public education subject to the due process clause when a state establishes and maintains a public school system.

No Fair Notice

The leading case involving student due process rights is Goss v. Lopez. Nine students in Columbus, Ohio, were given a 10-day suspension for a variety of disruptive or disobedient behavior. For example, Dwight Lopez was suspended for damaging school property during a lunchroom commotion. Lopez claimed he was not involved in the disturbance and was simply an innocent bystander. He never had the opportunity to explain his side of the story to school administrators and was subsequently suspended. All nine students were suspended without a hearing prior to the suspension or within a reasonable time after.

The Supreme Court held that a 10-day suspension from school is not de minimis and may not be imposed in complete disregard of the Due Process Clause. Notice and a hearing is essential to make sure that a student is not excluded from the educational process based on a mistake or misunderstanding.

Notice and a Hearing

The requirement of notice and a hearing is an extremely flexible legal concept. “The requirements of due process vary with each situation because they involve a balancing test wherein a person’s rights, such as school attendance, are weighed against the government’s authority, such as maintaining discipline in schools.”

The extent to which notice and a hearing is required depends upon the amount of time that a student is expelled or suspended from school. The longer an individual is denied his or her right to attend public school, the more he or she is entitled to detailed notice and an in-depth hearing.

In general, notice requires that a school administrator inform a student what she is accused of doing and what evidence exists to support the accusation. Notice can be given orally or in writing.

A hearing provides students the opportunity to defend themselves against wrongful claims. It can be an informal conversation that occurs directly after a student has been accused of breaking a school rule, or it can be a formal process in front of the school board. A student simply deserves the opportunity to rebut any claims.

In Wood v. Strickland, two girls were expelled from school on charges that they spiked the punch at an extracurricular home economics meeting. Both girls admitted to possessing alcohol at a school event, in violation of school policy. The principal informed the students that they would be suspended subject to a final decision by the school board, but the principal never informed the girls or their parents about where or when the meeting would take place. The court held that the principal violated the students’ due process rights when he failed to give them adequate notice about the school board meeting.

No Fair Notice

Before a student can be punished for misconduct, there must be some provision or regulation notifying the student of the prohibited activity. School regulations are normally published in student handbooks. In some instances, however, school policies are overbroad or unclear, and students may not know they are violating school rules.
Donald Miller sued Penn Manor School District in Pennsylvania after he was prohibited from wearing a T-shirt which displayed images of automatic handguns and anti-terrorism comments. The T-shirt was a gift from Miller's uncle who was enlisted in the Army and stationed in Iraq. The school district had a policy prohibiting attire that was “a distraction to the education environment,” and the district claimed Miller's T-shirt promoted violence. The court disagreed with the school's assertion and held the policy was unconstitutionally vague because it did not give students adequate notice regarding what articles of clothing were prohibited.

To use the Snyder case as an illustration, Blue Mountain Middle School has a general computer usage policy that requires students to use good behavior when operating school or lab computers. The school’s Internet policy informs students that they cannot use the Internet computer network for illegal, inappropriate or unethical purposes. Neither policy addresses how students should operate their personal computers at home. Consequently, under the Miller case, it appears that the school district’s punishment violated Snyder's due process rights.

### Expulsion versus Suspension

An expulsion occurs when a student is removed from school for more than ten days. A student can be expelled for a variety of infractions including fighting, possessing weapons, sexual misconduct or making bomb threats. Because expulsions include more severe offenses, students are generally provided detailed notice and a more elaborate hearing.

Students who are suspended normally commit a lesser infraction than a student who is expelled. A student who is suspended may temporarily be denied access to class courses and school-related activities. Typically, suspensions don’t last for more than ten school days.

The key issue surrounding due process claims is whether the deprivation suffered by the student resulted in “the total exclusion from the educational process for more than a trivial period.” Society as a whole receives a benefit when its citizens are educated, so it’s important for students to attend school as often as possible.

### In-School and Out-of-School Suspensions

Some courts make a serious distinction between in-school and out-of-school suspensions. When a student receives an in-school suspension he or she is required to complete any academic requirements or homework in the school setting. For this reason, in-school suspensions don’t take away a student's opportunity to learn.

Victoria Laney, an eighth-grade student at West Wilson Middle School in Mount Juliet, Tenn., was sent to the principal's office after her cell phone rang during class. The school district had a strict policy regarding cell phone use during school hours, and students who violated this policy were required to serve one day of in-school suspension. Laney filed suit against the school district claiming she was denied her due process property interest in public education because she was forced to miss one day of school. The court ruled that an in-school suspension did not deprive Laney of educational benefits because she was required to complete class work during the suspension.

Out-of-school suspensions require students to completely disconnect from the educational process, so students are entitled to more formal notice and hearing procedures. For example, “a three-day out-of-school suspension has been held legally significant because class-time missed cannot be made up and suspensions are noted on a student's school records which are often available to prospective employers and college admissions personnel.”

### Expulsion

Expulsions, like out-of-school suspensions, completely separate students from the educational process. Most expulsions require students to stay off school grounds for a specified number of days. Because expulsions deprive students from attending school for a long period of time, students are entitled to a more formal hearing.

In Bogle-Assegai v. Bloomfield Board of Education, a female student physically assaulted a male student who had a broken leg. After a school board hearing, the female student was expelled from school for 180 days. She claimed she was not afforded necessary procedural due process rights at the school board hearing, but the court disagreed. The female student was provided with formal notice about the expulsion hearing, given the opportunity to be represented by counsel, afforded opening arguments, a presentation of evidence, and was given the opportunity to cross-examine witnesses.

### Time Outs

Can a student who is subject to repeated time outs claim he has been denied a property interest in his education? The 10th U.S. Circuit Court of Appeals was forced to examine this issue in Couture v. Board of Education of the Albuquerque Public Schools.

After a traumatic kindergarten and first-grade year, M.C. was designated an “emotionally disturbed” child with a defiant personality. After positive reinforcement techniques failed to break M.C. of his bad habits, he was placed in “supervised time outs” where he was encouraged to calm down and reflect upon his actions. M.C.'s mother claimed that M.C.'s procedural due process rights were violated when he was excluded from the classroom without a hearing. The court stated that at some point the excessive use of time outs might become the functional equivalent of a suspension, but that was not the case in this instance. Placement in a timeout or temporary removal from the classroom constitutes only a de minimis loss of one's property rights.

### Extracurricular Activities

What process is due when a student is denied the opportunity to play sports, participate in the marching band, or run for class president? Many courts note that school activities are essential to a well-rounded educational experience, yet courts continue to hold that participation in these activities is not constitutionally protected.

In Lowery v. Euwanard, four varsity athletes circulated a petition to replace the head football coach. When the coach caught wind of the petition, he decided to meet individually with each player. Players who signed the petition but not constitutionally protected. The court held that school officials did not violate the students' First Amendment right to free speech by removing players who participated in the petition. The main purpose of high school is to learn science, the liberal arts and vocational studies, not to play football and basketball.

One court stated that the right to participate in an athletic program was an expectation and not an entitlement. Most courts refuse to recognize a property interest in extra-curricular activities, fearing it
would result in a plethora of litigation.\textsuperscript{29}

**Liberty Interest in Reputation**

School suspensions and expulsions can have long-lasting effects for some students, specifically on their academic record. The due process clause is designed to make sure that a person’s name, reputation or integrity isn’t tarnished by a false allegation.\textsuperscript{30} In *Goss v. Lopez*, the students asserted that four of the 12 randomly selected colleges in the state of Ohio inquire whether the applicant has ever been suspended.\textsuperscript{31}

Not only do students have a property interest in their education, but they also have a liberty interest in preserving their reputation.\textsuperscript{32} Suspensions and expulsions should be taken seriously because these disciplinary acts can interfere with a student’s ability to pursue higher education and employment opportunities.

**Removal Without Notice or a Hearing**

A student can be removed from the educational process without notice or a hearing in extreme circumstances when that student poses a threat to himself, other students, or the academic process.\textsuperscript{33} In these situations notice and a hearing should be provided in a reasonable time after the removal.\textsuperscript{34}

School administrators at Shore Regional High School in New Jersey grew concerned when a sophomore student attacked and stabbed a 5-year-old girl after school.\textsuperscript{35} The student had been involved in many conflicts with fellow classmates, and school officials thought it would be best to suspend the student until the next board of education meeting. The student was not afforded a preliminary hearing prior to his suspension. The court held that when school officials believe that a student “presents a danger to himself; to others or to school property, they may temporarily suspend the student for a short period of time pending a full hearing which will afford such student procedural due process.”

**Admission of Guilt**

The purpose of notice and a hearing is to give students the opportunity to defend themselves against a mistake or misunderstanding. If a student openly admits his guilt, that student ultimately waives his right to a hearing.

In *Cole v. Newton Special Municipal School District*, a high school student wore sunglasses to school in violation of school policy and was given a one-day suspension.\textsuperscript{36} The student later admitted that she refused to obey her teacher and remove her sunglasses. The court held that “when a student admits to the conduct ... the need for a due process hearing is obviated, since the purpose of a hearing is to safeguard against punishment of students who are innocent of the accusations against them.”

**Right to Counsel**

A student in the midst of a potential expulsion isn’t guaranteed the same rights as an individual who is arrested. Students have no right to *Miranda* warnings and rarely have the opportunity to be represented by legal counsel.\textsuperscript{37} Court-like proceedings for minor disciplinary infractions could pose a major burden and expense on school districts.

This doesn’t mean that students are never afforded the opportunity to have legal counsel present. Some courts, including the one in the *Bogle-Assegai* case, are beginning to give students the right to hire counsel and cross-examine witnesses in serious circumstances.

**Conclusion**

The law is clear that students should be afforded notice and a hearing prior to being excluded from the educational process. But student due process cases don’t take acookie-cutter form. The facts and circumstances surrounding each case play a vital role in the outcome, and as case law demonstrates, it’s difficult to determine when courts will rule in favor of students or the school district.

Because it’s impossible to predict how a judge will rule, it’s imperative for students to assert all potential legal claims. Alleging a violation of one’s due process rights may be the key to prevailing in the courtroom.

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*Attorney Krista Gesaman is pursuing an L.L.M. degree at American University’s Washington College of Law. She wrote this story while working as a volunteer law clerk for the SPLC.*

**Endnotes**

8. Id. at 569.
11. Id. at 581.
12. Id. at 582.
26. Lowery v. Euvard, 497 F.3d 584, 585 (6th Cir. 2007).
29. Block, supra note 25.
30. See Laney, 501 F.3d 577 (6th Cir. 2007).
32. See Laney, 501 F.3d 577 (6th Cir. 2007).
34. Id.
37. Goss, 419 U.S. at 583.
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