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ALSO INSIDE: Native American tribal colleges have history of press freedom issues, Page 18
AND: Advocates say California’s Supreme Court gave private school Leonard Law death sentence, Page 24
The Student Press Law Center Report (ISSN 0160-3825), published three times each year by the Student Press Law Center, summarizes current cases and controversies involving the rights of the student press. The SPLC Report is researched, written and produced by journalism interns and SPLC staff.


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SPLC announces additions to free high school online resources

The Student Press Law Center is pleased to announce new additions to our Web site especially for high school teachers and student media advisers as well as student journalists: two new Media Law Presentations and an expansion of the Test Your Knowledge of Student Press Law online quiz.

SPLC Media Law Presentations are computer slide shows that help student journalists better understand media law. They can be downloaded for free from the SPLC Web site and come with a narrative script. Presentations covering the subjects Libel Law and Privacy Invasion join Press Law Primer, Press Freedom and Copyright Law.

The Libel Law presentation includes true-to-life examples and ends with a list of practical suggestions to help student journalists avoid common libel traps.

The Invasion of Privacy Law presentation addresses four categories of privacy invasion and uses examples and images to assist young journalists in determining where lines are drawn when confronting privacy questions. Test Your Knowledge of Student Press Law is another Web-based tool for helping student journalists better understand media law. Through a series of multiple-choice questions based on situations similar to those confronted by young news gatherers, the online quiz allows users to assess their general understanding of student press law as well as a more detailed understanding of seven specific topics: access law, libel, copyright law, press freedom, cyberlaw, invasion of privacy and reporter’s privilege.

Both the SPLC Media Law Presentations and the Test Your Knowledge of Student Press Law are linked from our Resource Center page: http://www.splc.org/resource.asp.

They can also be found by going directly to: http://www.splc.org/presentations or http://www.splc.org/hspresslawtest.

Both features were made possible by a generous grant from the Newspaper Association of America Foundation.

CORRECTIONS

— In the story “Rays of Hope Amid Dying Legislation” on page 8 of the Fall 2006 SPLC Report, Michigan state Sen. Michael Switalski’s name was misspelled.
— In the story “Settlement reached between military academy and student’s parents” on page 24 of the Fall 2006 SPLC Report, Col. Wheeler L. Baker had the wrong middle initial listed.
— The story “California Dreaming” on page 32 of the Fall 2006 SPLC Report failed to include the full name and title of Jim Ewert, legal counsel for the California Newspaper Publishers Association.
— In the story “Student government’s funding cuts jeopardize paper’s future” on page 40 of the Fall 2006 SPLC Report, Rich Ritterbusch’s name was misspelled.
— In the story “Two students named in connection with campus newspaper taking religious cartoons stolen twice” on page 42 of the Fall 2006 SPLC Report, Cathy Stablein’s name was misspelled.

The SPLC regrets the errors.

REPORT STAFF

Scott Sternberg, Publications Fellow, graduated from Louisiana State University’s Manship School of Mass Communication in May 2006 with a degree in print journalism. While at LSU, he was the editor in chief of the student newspaper, The Daily Reveille, where he led coverage in the aftermath of Hurricane Katrina. Sternberg interned and freelanced for The Times-Picayune in New Orleans, La., and several other publications in Louisiana.

Marnette Federis, fall 2006 Scripps Howard Foundation Journalism Intern, is a May 2006 graduate of University of California, San Diego with a degree in Literature/Writing. While in college, Federis worked for The Guardian, UCSD’s student paper, as an editor for the news and focus sections. She also worked as a freelance writer for the East County Californian, and was an intern for voicesofsandiago.org, a daily online newspaper in San Diego, Ca. Federis covered college censorship, newspaper theft and college adviser cases for the Report.

April Hale, fall 2006 Scripps Howard Foundation Journalism Intern, graduated from the University of New Mexico in May 2006 with a degree in print journalism. She is a member of the Navajo tribe and a 2002 graduate of the American Indian Journalism Institute, a Freedom Forum program. She has interned at the Argus Leader in Sioux Falls, S.D. and the Navajo Times in Window Rock, Ariz. Hale also is an active member of the Native American Journalists Association. Hale covered high school censorship, advertising and high school adviser cases for the Report.

Karla Yeh, fall 2006 Student Press Law Center Intern, graduated from Colgate University in May 2006, where she majored in English and film and media studies. Yeh is currently a graduate student at Northwestern University. At Colgate, she wrote for the school newspaper, The Maroon News, and presented for Colgate Television. Yeh has participated in several internship programs, including NBC News, CBS News, BBC News and BBC News. Yeh covered access, confidentiality, campus crime, Internet and libel and privacy cases for the Report.
Newspaper theft on the rise

Number of incidents reported to SPLC this fall nearly doubles from 2004, 2005 statistics

BY MARNETTE FEDERIS

The number of newspaper theft incidents is on the rise compared to previous years’ statistics, with 15 incidents reported to the Student Press Law Center thus far this school year. In 2004 and 2005, only eight incidents each year had been reported by the end of the fall semester.

While advisers and experts say they are unsure why there have been a higher number of thefts reported this fall, a variety of factors could be to blame — from the way administrators have handled theft cases in the past to an increased awareness of campus newspaper theft coverage. Many of the reported incidents were connected to controversial articles published in the papers.

“It’s a sign that the problem of newspaper theft is not going away,” said Mark Goodman, executive director of the Student Press Law Center.

Goodman also said theft is an “inappropriate response” to disagreements with a publication and that administrators can do more to prevent it.

At the University of Kentucky, about 4,000 copies of the student newspaper, The Kentucky Kernel, were taken from newsstands in November. The stolen issue featured an article about a toxicology report stating that alcohol may have been involved in the deaths of two students and an alumna earlier in the year. Student editors said they were not surprised to find copies missing because family and friends of the deceased pleaded with the editors not to print the article on the toxicology report. Campus police are still investigating the theft.

At the University of Tulsa, students took copies of The Collegian from distribution bins in November and returned them with unauthorized inserts depicting a newspaper staff member extending her middle finger. Editors believe the act was in retaliation for an article published in the issue about an investigation into the student government’s fund allocation procedures. Tulsa administrators say that they are actively pursuing the case and are investigating individuals who may have been involved.

The conservative student newspaper GuardDawg at University of Georgia had 1,200 copies of their paper stolen and their distribution bins vandalized in September. Staff members found the bins with the words “communist,” “gay” and “homo.” Editors filed a report with the university’s police department, which listed the case as criminal trespassing. Publisher David Kirby said he believed the paper was targeted because of its conservative slant. Kirby said no one has been found responsible for the theft and vandalism.

The Daily Tar Heel at University of North Carolina at Chapel Hill had 10,000 copies taken in November from newsstands by fraternity members. The stolen issue featured an article about the fraternity’s hazing violations. Leaders of the fraternity, who hours after distribution admitted to the theft, said members were under the impression that the newspaper was free and therefore could be taken. The Daily Tar Heel agreed not to press criminal charges after the fraternity agreed to apologize and pay for the stolen issues.

Jennifer Chancellor, adviser to the University of Tulsa’s Collegian, said college media publications are sometimes not taken “as seriously” as other outside publications.

“[College] newspapers have been around for decades and are established institutions just like any other legitimate newspaper,” Chancellor said. “I don’t think those students who behave in that kind of manner really understand [that].”

The correct response

Goodman said that while university officials have traditionally treated such incidents as pranks, prevention of newspaper theft depends on how well administrators handle the cases that do occur.

“I think the biggest deterrent is how college officials respond if a theft occurs,” Goodman said. “If they condemn the theft and pledge to discipline anyone caught, I think that decreases the likelihood that a theft will happen again.”

Goodman also said that there seems to be a shift in how administrators are handling theft cases this year.

“I think there’s more of an understanding among officials why [newspaper theft is] not acceptable,” Goodman said.

In Indiana, three schools reported newspaper theft incidents within a two-week period in October. Newspaper staff members

Copies of University of Georgia’s conservative newspaper, The Georgia GuardDawg, were found in trash cans around campus in September. Editors said the theft was politically motivated. PHOTO COURTESY OF THE GUARDDAWG
at Ball State University and Indiana State University reported that copies of their newspapers were stolen during homecoming week. About 7,000 copies of the Ball State Daily News and 600 copies of The Indiana Statesman were missing. No one has been found responsible for the theft at Ball State University. Two individuals at Indiana State University admitted taking copies of the Statesman to paper mache a parade float, said adviser Merv Hendricks.

Hendricks also said that in the two cases of newspaper theft that occurred at Indiana State University in the past few years, campus security has been quick in its investigation and administrators have pursued the cases through the school’s internal disciplinary system.

But Hendricks noted the difficulty in pressing criminal charges against newspaper theft perpetrators, although there seems to be more awareness of the issue. He said county prosecutors usually do not put newspaper theft within the same categories as other crimes.

Staff members of University of Southern Indiana’s student newspaper, The Shield, wanted to file a police report after 2,300 copies were stolen this year, but the school’s publications board recommended that the incident be investigated by the university.

Shield adviser Patricia Ferrier said many on the staff were unhappy with the decision, and that prosecution is important in letting readers know that student newspapers have as much credibility as their commercial counterparts. The case is still open, but Ferrier said no one has been found responsible for the theft.

Ferrier said students in one of her classes are currently looking into how to get a newspaper theft law passed in the state of Indiana. California, Maryland and Colorado are the only states that have laws making the theft of free newspapers a crime.

But other states have prosecuted newspaper thieves under general theft or destruction of property statutes.

Once a theft does occur, Goodman suggested that staff members immediately file a police report. There are also additional steps students can take to prevent newspaper theft, such as listing a monetary value somewhere on the newspapers.

After the first case of newspaper theft at Utah’s Weber State University four years ago, newspaper staff members added a disclaimer to the paper stating that while the first copy of The Signpost is free, additional papers are 50 cents each. In October, Signpost staff members reported the paper’s third theft case in the past four years. The disclaimer allowed staff members to put a value to the missing newspapers when they reported the incident to campus security. Editor in Chief Maria Villasenor said the case is still open but campus security is classifying it as “inactive.”

At Tulane University, The Hullabaloo took a different approach in dealing with a newspaper theft incident. Tired of the university’s lack of action when large numbers of newspaper copies disappear from racks, staff members billed a fraternity for taking about 400 papers to use for a party.

Editor in Chief Drew Dickson said there have been three theft incidents in the past two years at the university, but administrators have been slow in their response. Instead of filing a report and having to go through a university disciplinary process, adviser Chantal Bailliet said the Hullabaloo is treating the most recent theft as a simple “business transaction.”

Goodman said that newspaper staff members should speak to campus security and administrators before a theft happens to determine what kind of response to expect if an incident occurs.

Goodman said university administrators are beginning to have a greater understanding of why newspaper theft is unacceptable.

“I do feel there is more than just lip service when it comes to newspaper theft,” Goodman said. “There’s more objection to it than we’ve seen in past years.”

Newspaper thefts reported to SPLC in fall 2006

<table>
<thead>
<tr>
<th>Newspaper</th>
<th>No. stolen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona State University at the West Campus</td>
<td>1,800</td>
</tr>
<tr>
<td>The West Express</td>
<td></td>
</tr>
<tr>
<td>Ball State University (Indiana)</td>
<td>7,000</td>
</tr>
<tr>
<td>The Ball State Daily News</td>
<td></td>
</tr>
<tr>
<td>Bryant University (Rhode Island)</td>
<td>900</td>
</tr>
<tr>
<td>The Archway</td>
<td></td>
</tr>
<tr>
<td>DePaul University (Illinois)</td>
<td>100</td>
</tr>
<tr>
<td>The Lincoln Park Statesman</td>
<td></td>
</tr>
<tr>
<td>University of Georgia</td>
<td>1,200</td>
</tr>
<tr>
<td>The GuardDawg</td>
<td></td>
</tr>
<tr>
<td>University of Southern Indiana</td>
<td>2,300</td>
</tr>
<tr>
<td>The Shield</td>
<td></td>
</tr>
<tr>
<td>Indiana State University</td>
<td>600</td>
</tr>
<tr>
<td>The Indiana Statesman</td>
<td></td>
</tr>
<tr>
<td>University of Kentucky</td>
<td>4,500</td>
</tr>
<tr>
<td>The Kentucky Kernel</td>
<td></td>
</tr>
<tr>
<td>University of Southern Mississippi</td>
<td>2,000</td>
</tr>
<tr>
<td>The Student Printz</td>
<td></td>
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<tr>
<td>University of North Carolina at Chapel Hill</td>
<td>10,000</td>
</tr>
<tr>
<td>The Daily Tar Heel</td>
<td></td>
</tr>
<tr>
<td>Stetson University (Florida)</td>
<td>700</td>
</tr>
<tr>
<td>The Reporter</td>
<td></td>
</tr>
<tr>
<td>Texas A&amp;M University at Commerce</td>
<td>2,300</td>
</tr>
<tr>
<td>The East Texan</td>
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<tr>
<td>Tulane University (Louisiana)</td>
<td>400</td>
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<tr>
<td>The Hullabaloo</td>
<td></td>
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<tr>
<td>University of Tulsa (Oklahoma)</td>
<td>700</td>
</tr>
<tr>
<td>The Collegian</td>
<td></td>
</tr>
<tr>
<td>Weber State University (Utah)</td>
<td>1,000</td>
</tr>
<tr>
<td>The Signpost</td>
<td></td>
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Probing policies
High schools enacting policies to punish students for social networking sites created outside school

By April Hale

The skyrocketing popularity of social networking Web sites and blogs is prompting schools across the country to create discipline policies for students who publish what administrators deem as inappropriate content, even when done outside of school grounds.

Web sites such as MySpace.com and Facebook.com can offer a relaxed, online forum for students to vent about the usual adolescent quandaries — classmates, school, homework and parents — and those sites are often read by peers, and in some cases, school officials.

MySpace expert and Massachusetts Institute of Technology Director of Media Studies Henry Jenkins said that social networks provide students with core skills to “become full participants in society.”

But when the posted content sparks what school officials perceive as disruptive behavior in school, administrators see it as their duty to safeguard students. For some, establishing an Internet-use policy for outside of school has been the answer.

Schools in Indiana, Washington state and New York City are among those that have recently created policies to regulate a student’s Internet use in school and out.

The Clark-Pleasant School District in Indiana enacted a “blogging” policy in October 2006 that prohibits students from accessing social networks from school as well as posting what the school deems as harmful or threatening content outside of school.

Jim White, the Clark-Pleasant School District’s director of technology, said that the district is trying to be proactive in safeguarding the students from “online bullying” or possible libel cases.

“The policy gives students fair warning that they have responsibilities that come with freedom of speech,” said White, who authored Clark-Pleasant’s policy.

Although the policy is written specifically to regulate blogs, White said that it includes any electronic communication, whether it is a Web site, social network or online blogging community.

Tom Galovic, principal of Indiana’s Whiteland Community High School in the Clark-Pleasant district, said his school’s policy, which was passed unanimously by the school board on Oct. 17, has yet to be implemented district-wide.

But Whiteland junior Andrea Beck said the policy is “a bit strict” and students “should be able to speak [their] mind.”

Beck also said she understands part of the reason for the policy because she would not want a “post going around about me or someone I cared about.”

Beck said she is active on the MySpace, Facebook and Xanga social networks, which she said she accesses from home.

But, “If we are outside of school, the school shouldn’t regulate what we post,” Beck said.

But Galovic said he believes that the policies are how schools of the future will deal with Internet use.

“Schools always had the ability to regulate speech and actions that disrupt the educational environment,” Galovic said.

Anita Ramasastry, a law professor at the University of Washington, said she believes that content that is posted on a social networking site that is not threatening or disruptive to the educational rights of other students is protected by the First Amendment.

“When students post content on social networking sites outside of school, there is still a lot of uncertainty as to when a school may take action,” Ramasastry said.

These policies, though legally questionable, may help to clarify or supplement existing school conduct codes and other policies by dealing with a new phenomenon, Ramasastry said.

In 2000, a federal court in Washington state ruled that a Web site created by a student outside of school “was entirely outside of the school’s supervision or control.” A federal appeals court reached a similar conclusion in a 1979 case involving an underground newspaper distributed off campus.

“[T]he First Amendment forbids public school administrators and teachers from regulating the material to which a child is exposed after he leaves school each afternoon,” that court said.

Ramasastry, also a columnist for Findlaw.com, wrote an article on May 1 specific to social networking and its impact in schools.

In her column she said she believed that “[t]he First Amendment will protect many student postings, as long as they do not ‘materially disrupt’ school activities — and as long as the students attend public, not private, schools.”

Galovic said that his staff does not plan to play “cyber police,” and that disruptions and threats “are brought to our attention
Calling for backup

Georgia police use subpoena to track down high school students

BY KARLA L. YEH

In a September search for the anonymous authors of a sexually explicit MySpace page, a Georgia high school pulled out all the stops, using a police-issued subpoena to track down two students.

North Oconee High School Principal John Osborne said he remembers the day as "tumultuous" and "a nightmare" when his students discovered they had been mentioned on an anonymous MySpace page containing sexually explicit gossip and rumors.

Osborne said he immediately moved to find the students responsible.

“I felt it appropriate to get involved in this one because of the magnitude of the disruption during the course of the school day,” Osborne said.

As a result of the Web page, several students sought counseling in school while others missed school days, causing a "major disruption" in school, Osborne said.

It turned out that two 15-year old female students created the page, titled "NOHS Gossip," posting graphic details of alleged sexual interactions between their classmates.

“This blog was way out of bounds,” Osborne said. “I have been doing this for 22 years and I have never seen anything like what was written on that blog.”

Osborne refused to disclose exactly what was written on the Web page, but described the comments as “very much inflammatory and derogatory toward many students” in school.

“Nobody knows how true any of it was,” Osborne said. “The students posted some pretty bad things about several students.”

The anonymity of the creators of the MySpace page prompted an investigation in which the principal sought help from Lt. David Kilpatrick of the Oconee County Sheriff’s Office. When the investigation came up short, the police issued a subpoena to trace the blog’s activity. Although officials said they had no intent to file criminal charges, subpoenas were issued to telephone company BellSouth as well as Web sites MySpace.com and Yahoo.com.

Osborne said throughout the investigation, officials kept in mind “we weren’t dealing with criminals; we were dealing with kids.”

The anonymity of the creators of the MySpace page prompted an investigation in which the principal sought help from Lt. David Kilpatrick of the Oconee County Sheriff’s Office. When the investigation came up short, the police issued a subpoena to trace the blog’s activity. Although officials said they had no intent to file criminal charges, subpoenas were issued to telephone company BellSouth as well as Web sites MySpace.com and Yahoo.com.

Osborne said throughout the investigation, officials kept in mind “we weren’t dealing with criminals; we were dealing with kids.”

The police found that the students created the MySpace page from a computer at a parent’s home in Clark County, an area outside of Oconee County, where the high school is located.

Kilpatrick said both students initially tried to blame each other for the Web page after police identified them, but both were suspended.

See Internet policies, Page 9

See North Oconee, Page 8
Osborne said the high school's conduct code covers circumstances under which the administration can regulate student activity in or out of school, including expression that would normally be protected under the First Amendment.

The school's conduct code states it is applicable to students on and off school grounds if they participate in activity that "if committed at school or during a school-related activity, would endanger the health, safety, and well-being of other students, teachers, and school personnel or would disrupt the educational process."

However, a number of courts have rejected schools' efforts to punish students for expression that occurs outside of school.

"I agree [the blog] is freedom of expression, I have no problem with that," Osborne said. "But when false statements are made against students under the name of the school, then I'd very much argue that it's my job to defend those kids."

While Osborne, a self-proclaimed proponent of free speech and freedom of expression, said the students "crossed the line" in creating the blog, experts questioned whether the school and the sheriff's office overstepped their bounds in employing subpoena power to track down the students for expression they engaged in outside of school.

"Nothing illegal was done," said Douglas Lee, a legal correspondent for the Washington, D.C.-based Freedom Forum First Amendment Center. "But the school used the police as a mechanism to get information they couldn't get."

A subpoena is an order issued by a court typically at the request of a law enforcement agency or a private litigant in a court case.

In this situation, the police department said it did not intend to file criminal charges, Kilpatrick said.

But Osborne said that the sheriff's department "could actually have filed charges."

"We have a good working relationship with them," Osborne said. "We weren't dealing with felony criminal acts as much as a distraction in school."

Kilpatrick referred to subpoenas as "fact-finders" and said that probable cause of illegal acts provided sufficient reason to "dig deeper."

Kilpatrick said the subpoena was obtained under title 16-12.103 of the Georgia Code, which states that it is unlawful to display sexually explicit images in "any book, pamphlet, magazine, printed matter however reproduced, or sound recording" accessible by minors. The law does not mention the Internet.

Adam Goldstein, attorney advocate for the Student Press Law Center, said the subpoena use in this situation "especially bizarre."

"Subpoenas are for law enforcement purposes, not to unmask enemies," Goldstein said.

The State Bar of Georgia warns against the misuse of subpoenas in an advisory opinion issued on Sept. 24, 1984, according to its Web site.

...A subpoena issued pursuant to O.C.GA ... (a) should only be issued for actual hearings and trials and should not be requested when in fact no hearing or trial has been scheduled. Likewise, a subpoena issued pursuant to Rule 45 of the Civil Practice Act should be requested and issued only for depositions which have been actually scheduled by agreement between parties or where a notice of deposition has been filed and served upon all parties, and should not be issued when no deposition has been scheduled.

### Misuse of subpoenas

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Lee said he would caution against this process becoming the norm.

"It's the school using the police for what it couldn't do otherwise; it makes it look a little suspect," he said. "But it depends on your perspective."

Shana Kemp, spokesperson for the National Association of Secondary School Principals, said dealing with student activity on the Internet is unfamiliar ground for schools, but each district has its own rules to handle "those types of situations."

"We are seeing a greater trend where kids are using the Internet to express themselves," Kemp said. "It's something that schools need to take into consideration to deal with derogatory comments."

Kemp said she has received several calls claiming that principals are "cracking down" on student Web sites, but there is no agreed-upon policy between schools to deal with rising student Internet activity.

American Association of School Administrators Attorney Robert Ashmore said he has noticed an increase in actions taken by school administrators to teach students, parents and teachers about Internet responsibility.

"I'd like to see the schools fulfilling the function of educating students and parents to both their rights and their risks of improper use and how that can hurt students as well as others," Ashmore said. "Schools should have a comprehensive policy that would discuss the parameters of proper use as well as the areas that would be considered over the line."

Ashmore said school administrators need to acknowledge that as more students are prone to write "the wrong thing without thinking through" the consequences.

"Generally, schools [intervene] if there has been substantial disruption [of the school] — that would be the way to draw the line," Ashmore said.

Goldstein said he questions the ease with which information regarding student activity on the Internet was obtained.

"The point of a subpoena is to gather information for law enforcement or court
presents,” Goldstein said. “They should not be used to vindicate rights that don’t exist in court or criminal law.”

Education the key

The two students are now singing a bittersweet tune after dodging a potentially bad situation that could have landed them in jail, Kilpatrick said.

“Their biggest defense is that they are juveniles,” Kilpatrick said. “If they had been 17, they would have been locked up.”

The students, whose names could not be obtained because they are juveniles, faced a disciplinary hearing on Oct. 17 that included Oconee School District Assistant Superintendent John Jackson.

Jackson refused to comment on the outcome of the disciplinary hearing because of the students’ ages, but said the hearing might be an example for other students potentially involved in future investigations.

Osborne said all parties involved supported the outcome of the hearing and are “tickled to death with the way it turned out.”

Carol Knopes, director of education projects at the Radio-Television Directors Association & Foundation, emphasized how important it is for students to understand the possible repercussions of their speech in order to avoid disciplinary action in school.

“Students need to have some journalistic [education] to learn the responsibility to use a very large megaphone like MySpace,” Knopes said. “They will express themselves no matter what. What we have to do is to make sure we are creating good citizens and that they are learning the responsibilities that come with First Amendment rights.”

Phil Hartley, general counsel for the Georgia School Boards Association, said he would not comment on the case, but that social networking Web sites have the potential to cause major disruptions in school.

“Schools are having a real difficulty finding ways to deal with the problems that get created when students utilize that type of resource which, by its very character, has a wide impact and implication,” Hartley said.

The “NOHS Gossip” MySpace page has been removed from the site since the “major disruption” it caused in school, Osborne said.

He also said he has no reservations in taking the same measures if this situation arises again in the future.

“[The situation] could have been handled a lot differently if people were honest,” Osborne said. “I would do it again if I needed to.”

A lawyer’s perspective

The Student Press Law Center contacted Peter C. Canfield, Esq., an Atlanta-based media lawyer with Dow Lohnes, LLC, to ask his take on the North Oconee incident.

SPLC: What does a situation in which a school and police department use subpoena power to track down students mean for student bloggers?

Peter Canfield: Certainly there are times when it’s appropriate [for school officials] to go to police and for police to help them, but what’s disturbing is when police methods are used for non-criminal matters. ... It seems dangerous for the police to agree to use criminal investigative methods when no crime has occurred.

SPLC: What if school officials claim that student speech is causing a disruption in school?

PC: The exercise of first amendment rights often and should make people uncomfortable, but the police shouldn’t get involved every time someone is made uncomfortable. ... Just because there is disruption doesn’t mean they need to get police involved.

SPLC: If a situation involves extracurricular behavior, what would happen to students when no crime has occurred.

PC: The New York City Department of Education’s Internet policy went into effect that allows suspension of students for content that does not contain threats. ... It seems dangerous for the police to agree to use criminal investigative methods when no crime has occurred.

The New York Civil Liberties Union argued that the policy change was inappropriate, citing the landmark 1969 Tinker v. Des Moines Independent Community School District case that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Boyd, the MySpace researcher, also said teachers cannot expect students to behave the same way out of class as they would in class.

“It’s like asking a teacher to act like they’re in a classroom whenever they go out drinking with their friends,” Boyd said.

The New York City Department of Education’s Internet policy went into effect with the new school year in September, and to date no serious incidents have been reported, said Jay Worona, the New York State School Board Association’s general counsel.

Worona also said that a school policy that allows suspension of students for content that does not contain threats is an issue “to be debated in court.”

Ramasastry also said that the Internet is still an untested area and court litigation is important in setting precedent for future cases.

But Boyd said she believes education is the key to creating workable Internet policies.

“To educate requires understanding, why youth are doing what they’re doing,” Boyd said. “Instead of punishing students for their extracurricular behavior, what would happen if teachers would learn from their acts?”

From Internet policies, Page 7

or literature containing a threat of violence, injury or harm (e.g., including posting such material on the Internet)” on and off campus.

The new provision, adopted for this school year, increases the possible punishment for violating the policy to a six- to 90-day suspension or possible expulsion.

Although the policy is defined to cover threats, Ramasastry warned of the slippery slope these policies create.

“Even if rules are not broken, the postings may still trigger administrators to want to take punitive action such as suspension, expulsion or putting a note on the student’s record that may harm his or her chances of college admission, or on the job market.”

Ramasastry’s Findlaw.com column said.

The New York Civil Liberties Union argued that the policy change was an infringement on students’ First Amendment rights, citing the landmark 1969 Tinker v. Des Moines Independent Community School District case that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

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"It would be tragic if schools prevented students from blogging. ... A better approach is to teach them to blog well, how to understand their rights and what the principles are surrounding journalism."

Kurt Opsahl
staff attorney, Electronic Frontier Foundation

Dangerous minds
Texas lawsuit raises questions about student blogs and libel issues

BY KARLA L. YEH

Anna Draker says she is passionate about teaching valuable lessons to her students, and has been doing so for years. The high school assistant principal also says that is why, after a publicized flap over a fake MySpace profile of her, she decided to sue two of her students for libel.

Murphy Klasing, Draker’s attorney, said the married mother of two wants accountability from Benjamin Schreiber and Ryan Todd, the two 16-year-old Clark High School students who created a fake profile page for her on the Web site MySpace.com, to ensure that they do not “get away” with the emotional and physical damage she experienced.

A school official alerted Draker to the MySpace page in April 2006, a month after the page was created. Klasing said the students created the profile “in her voice” and posted false information, including doctored photographs, fabricated quotes and information indicating Draker was a lesbian.

Klasing said Draker was “devastated” and “petrified” when she discovered the MySpace page, causing her to miss days of work. He also said Draker received telephone calls from strangers requesting to meet her as a result of the posted information.

After “thinking long and hard about what to do,” Klasing said Draker decided to file a libel suit as well as a negligence claim against them.

“Anna’s biggest concern is that these kids, in a couple of years, will be adults, and they will have been taught that they can humiliate someone like this and get away with it,” Klasing said. “We’re hoping that these kids will learn when you do something that is hurtful, there’s a consequence.”

But in order for Draker to prove libel, she must show that those who read the page believed the statements about her were true and not just an attempt at humor at her expense.

Libel lawsuits are also notoriously difficult to win, especially when the person suing is a public official.

Several First Amendment organizations dedicated to protecting student rights recognize that in the Internet age, it is even more important that students understand the possible consequences of their speech.

Goodman said the SPLC is frequently referring students to the libel and privacy page in the resource center section of the SPLC Web site, as well as to SPLC publications such as the book Law of the Student Press. On Nov. 30, the SPLC, with a grant from the Newspaper Association of America Foundation, released a new Power Point presentation on libel law that students and teachers can download for free from the SPLC Web site.

Blog creators are often unaware of the consequences of posting comments subject to libel lawsuits because they are ordinary people, and are not necessarily media law experts, according to the USA Today article titled “Courts are asked to crack down on bloggers, Websites.”

Of the more than 50 libel-related lawsuits from the past two years listed on the SPLC Web site, medialaw.org, four, including Draker’s, pertain to student expression.

While the number of Internet lawsuits involving students is small, media experts suggest that the increasing number of student blogs could indicate a growing number of students who will be sued.
Learn about libel

Libel is defined as the publication — in words, photos, pictures or symbols — of false statements of fact that harm another’s reputation.

- The PHIF checklist:
  If you are sued for libel, there are four elements that the person suing must establish to prove he has been defamed by the defendant. If he cannot prove each of the following, the claim will fail:
  - He must show that the statement was published.
  - He must be able to prove that a sufficient number of people believe he was identified.
  - He must prove that the statement harmed his or her reputation in some way.
  - He must show that the defendant was at fault in publishing the statement, and knew it was probably untrue.

- Public officials and public figures:
  The 1964 U.S. Supreme Court case New York Times Company v. Sullivan established that public officials must also prove “actual malice,” or that the publisher knew the statement was false or was reckless in verifying its accuracy. This was later extended to public figures.

- Remember:
  The absolute defense for libel is truth. If a statement is true — the person making the statement cannot be held liable.

- The following are examples of “Red Flag” statements that should be given special attention before publication:
  - Statements regarding improper sexual conduct, sexual promiscuity or pregnancy.
  - Statements that associate someone with a socially stigmatizing disease.
  - Statements that accuse someone of committing a crime or other illegal behavior.
  - Statements that hurt a person’s ability to engage in his livelihood, business or profession.
  - Statements that attack a person’s honesty or integrity.
  - Negative statements about grades or academic ability.
  - Statements that allege racial or religious bigotry.
  - Statements that accuse a person of associating with criminals, “shady characters” or publicly disfavored groups.
  - Statements that question a person’s creditworthiness, financial stability or economic status.
  - Any negative statement about a lawyer.

Source: Law of the Student Press, Student Press Law Center (1994)
Crawford said she encourages students to continue expressing their thoughts through blogs, but while using caution. “Students are people who have strong views and it’s a good idea for them to be bloggers and not be chilled by litigation,” Crawford said. “I hate to have legal consideration shape what people do, but if you upset someone sufficiently, they may go out and hire a lawyer.”

Crawford said she would direct any students seeking information about what is libelous to Internet resources such as the Electronic Frontier Foundation Web site, eff.org.

The Electronic Frontier Foundation’s Web site also offers an online guide for defamation law that provides bloggers with answers to frequently asked questions pertaining to libel.

Electronic Frontier Foundation Staff Attorney Kurt Opsahl said the Web site guides students through many blogging issues that may arise.

Opsahl said students are not always aware that libel is a concern and that they can run into difficulties by expressing false statements as fact.

He also said that teaching students about their rights and responsibilities on the Internet is incredibly important. “It would be tragic if schools prevented students from blogging,” Opsahl said. “A better approach is to teach them to blog well, how to understand their rights and what the principles are surrounding journalism.”

Draker’s attorney filed her lawsuit in August and does not yet have a court date. Shortly after the suit was filed, Schreiber, one of the students named in the lawsuit, wrote a letter to Draker admitting that he created the MySpace page with other students.

The letter, a copy of which was provided to the Report by Klasing, suggests that Schreiber did not understand libel and its consequences.

In 2007, Sandy Woodcock, the director of the Newspaper Association of America Foundation, said her organization plans to collaborate with the Student Press Law Center in a Podcasting project to address the need for increased education in issues such as libel.

“We really need to educate everyone, not just student journalists,” Woodcock said.

Before Draker’s lawsuit was filed, Schreiber was criminally charged with fraudulent use of identifying information, a misdemeanor.

Jill Mata, the Bexar County district attorney, said Schreiber’s court hearing took place on Oct. 16. He was placed on informal probation and is required to report to a probation officer, perform community service and participate in counseling for no longer than six months.

Schreiber and Todd, as well as their families and lawyers, could not be reached for comment.

Interested in student press law issues?

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Administrative records more open in California

Court decision sheds light on superintendent’s firing

By Karla L. Yeh

A California Court of Appeal’s decision to open investigative reports regarding a former school administrator to a local newspaper is a victory for both professional and student journalists in the state, the paper’s editor said.

The 3rd District Court of Appeal required Dunsmuir Joint Union High School to open investigative reports compiled by Diane Davis, who was hired by the school board in May 2004 to investigate allegations of abuse and bullying against former Superintendent and Principal Bob Morris.

“I think [the case] breaks new ground in several areas,” said John Kelly, attorney for the high school. “The courts do their best to come up with a solution, and one I don’t necessarily agree with on all aspects, but they did what they did.”

The “solution” sheds new light on the definition of what records can become public after an investigation in California.

The court’s decision differentiated between high-profile public officials and ordinary citizens, saying that holding the position of superintendent is high-profile enough to warrant public access to information.

Complaints surfaced after Pam Padula, whose daughter attended the high school, alleged that Morris bullied her daughter in school.

Davis’ reports included several interviews with parents and students regarding Morris’ behavior. She turned her reports over to the school in June 2004.

Two months later, Morris took a leave of absence until his official resignation at the end of the year.

The reports detailed Morris’s resignation, including the school giving him a raise by $5,000 and buying out his contract, which the court referred to in its decision to open the records as a “sweetheart deal.”

The school had sealed the documents to the investigation and refused to disclose them when the Record Searchlight, the local newspaper in Redding, Calif., a town south of Dunsmuir, requested them. The newspaper sued in August 2004.

“The taxpayers should have a right to know what the deal was, what the allegations were and so on,” Record Searchlight Editor Kelly Brewer said.

In February 2005, the Siskiyou County Superior Court ruled that the reports were public, but also said that parts of the reports could be redacted.

In June 2005, the same court ruled only portions of the reports could be disclosed.

After a lengthy appeals process, the newspaper was finally granted full access to the reports and awarded $30,000 in court and attorney’s fees.

Clearing up the law

But school officials appealed to the California Supreme Court in November, asking it to reconsider the lower court’s decision to release the reports in full, citing its need to “maintain the confidentiality of student records.”

Superintendent and Principal Len Foreman said the school board is reluctant to turn over the full records because it is concerned about maintaining the privacy of students named in the documents.

“With a small student body of only 106 students, the [school] board made [its] decision based entirely upon maintaining the privacy of students,” Foreman said. “Certainly not [the privacy of] Mr. Morris.”

The school
board also asked to not pay the $30,000 awarded to the Record Searchlight because of its declining budget.

Despite the recent petition for review, Brewer said she remains confident that the case will stand because of its importance.

“We thought we could clear up some murky law in California if we got this thing decided,” Brewer said.

Walter McNeil, the newspaper’s attorney, said he agrees that the case paves the way for access to more records dealing with public and school officials.

“A person who has deliberately made themselves a public figure can’t expect the same degree of privacy about how they carry out their job than an ordinary person would expect,” McNeil said.

Although open records laws differ from state to state, all journalists, including students, have the opportunity to request access to public records. Unfortunately, Dunsmuir Joint Union student journalists are unable to benefit from the case, because the school did not produce a 2006-2007 student newspaper.

The paper’s former adviser, Scott Porter, said it was “a matter of numbers” and “the school board’s decision.”

Porter declined to comment on the case.

While student journalists are not always successful in their efforts to access school records, advocates from First Amendment organizations said this court decision could spur students to renew certain efforts involving high-profile school officials when their initial records requests were denied.

David Hudson, a First Amendment Center research attorney, said the case is “good for student media” and very significant.

“California is certainly influential.”

Karl Olson, attorney, Levy, Ram & Olson

It’s going to be most influential in California, but other states have public records acts and I think California is certainly influential.

ACCESS IN BRIEF

South Dakota judge orders university interviews opened

SOUTH DAKOTA — A student editor in chief still plans to file a complaint against the South Dakota Board of Regents for attempting to close meetings to all media, even after a judge ordered that student journalists should be allowed to sit in on interviews with a school’s presidential candidates in September.

South Dakota State University Collegian Editor in Chief Jeremy Fugleberg said the board of regents invited students to attend candidate forums scheduled for Sept. 14 and Sept. 15, but said student journalists would be asked to leave, which prompted him to take legal action.

A South Dakota Circuit Court judge issued a seven-day restraining order requiring the university to open the meetings, because student journalists would “suffer the immediate and irreparable injury of being unable to attend and/or report on the forums.”

Wyoming high court declares audio tape public record

WYOMING — A former University of Wyoming employee was granted access to a secret tape recording detailing the grounds of her termination after the state supreme court declared the recording public record.

University Transportation and Parking Services Manager Corinne Sheaffer was fired in 2004 after a university employee secretly recorded a meeting between other university employees about Sheaffer’s “serious misconduct” and turned the recording over to administrators.

Sheaffer then requested a copy of the recording under the Wyoming Public Records Act, but the university refused.

A court sided with the university that the tape was not public record because it was part of a personnel investigation.

The state supreme court reversed the lower court’s decision and granted Sheaffer access to the tape because it was recorded prior to the school’s employee-conduct investigation.


Appeals court declares Maryland school flier policy ‘too broad’

MARYLAND — A policy that governed public school officials’ authority to deter-
Privacy concerns

As principal of Dunsmuir High School, Foreman said he understands the public’s desire to know about high-profile dealings.

He said he feared this case could breach student privacy, but the high school will not implement any new policies to combat those concerns in the future.

“This case is not the norm in our community,” Foreman said. “I don’t think we need to have new policies enforced.”

According to California First Amendment Coalition Executive Director Peter Scheer, schools across the country commonly refuse to disclose reports explaining changes in positions of local officials.

Scheer said that more often than not, school officials will not say or release anything about such matters, benefiting themselves, not the public.

“They’ll use whatever legal tricks are available because the impulse to keep things secret is a strong one,” Scheer said. “They are excessively worried about liability and intimidated by lawyers representing school officials.”

Scheer said he commends the efforts of the newspaper in Redding and referred to the ruling as “a well thought-through appellate decision” in which the court balanced “the private interest in keeping information confidential versus the public interest in the public domain,” which he said, “clearly favors disclosure.”

Brewer said she also advocates for further action in ensuring public records remain as they are – public.

“As student and professional journalists, we have a duty to press these issues, to keep records open. I hope it encourages people to take action when they see things that don’t look right,” Brewer said.

“We do this on behalf of the public, especially journalists and student journalists, because we can and we should.”

Case: Child Evangelism Fellowship

ACCESS IN BRIEF


Court rules University of California system compensation votes must be public

CALIFORNIA — A state court ruled in August that the University of California Board of Regents cannot decide how much to pay university administrators in meetings that are not open to the public.

The board can, however, debate the matters in private, but no votes can be taken, the court said.

“Education Code section 92032 authorizes the Regent’s compensation committees to consider or discuss compensation proposals of top University officers in closed session,” the opinion said. “However, when ‘action’ is taken by the committees, it must be in open session.”

The decision comes after the San Francisco Chronicle filed a lawsuit requesting the board of regents’ compensation committee decide on executive pay in open meetings.

Two of the Chronicle’s claims, one that the university be required to release records from previous meetings held in private and another requiring future private meetings to be videotaped, were denied.

At the request of a state senator, the California state legislature’s legal counsel sent a 12-page opinion to the board of regents in May that also said voting on compensation in closed meetings was a violation of state law.

University of California General Counsel Jeff Blair told the University of California at Berkeley’s student newspaper, The Daily Californian, that it did not intend to appeal any portion of the ruling.

Taking the Plunge

After taking their weekly newspaper exclusively online, staff members at one college publication encountered a funding threat

BY MARNETTE FEDERIS

When students at Eastern Connecticut State University arrived for school in September, copies of The Campus Lantern, the school’s student newspaper, were noticeably missing from news racks, replaced only with fliers that read “Where Is It?”

The cryptic message was not a prank, but rather part of a campaign to let students know that the newspaper was switching from its weekly printed editions to an online-only daily. The clever advertising campaign created the buzz staff members of The Campus Lantern were looking for.

“It got the campus talking, it was really great,” Editor in Chief James Gibson said. “We [also] got the administration talking, they’ve never seen a campaign like that.”

Since its launch in September — the campuslantern.com — boasting news, opinion, entertainment and sports sections has recorded about 72,000 individual pages viewed.

As media sources increasingly use technology and the Internet to disseminate up-to-the-second information, experts say that student media groups may lead the way. While many student newspapers have online versions of their paper, The Campus Lantern is the first college student media organization to cease print publication and create an online-only daily newspaper, said Consultant Bryan Murley from The Center for Innovation of College Media, a think tank assisting student media in adapting and flourishing in the new media environment.

But the road from print to online has been anything but smooth. Staff members clashed with members of their Student Government Association, which initially withheld funding for The Campus Lantern after they learned of the change. Student government leaders objected to the fact that the newspaper was switching from its weekly printed editions to an online-only daily. The clever advertising campaign created the buzz staff members of The Campus Lantern were looking for.

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While the student government eventually restored some funding, the debate continues on the advantages of new media both on and off Eastern Connecticut State University’s campus. Some are also asking whether controlling the medium a student media organization uses can be classified as a form of censorship.

Murley said that the student government’s funding cut could be called “indirect” censorship.

“The student government is attempting to exercise control over a decision that should rightfully be the decision of student editors — how to disseminate content,” Murley said. “That plays out, ultimately, in content decisions.”

Campus Lantern staff members first decided to make the leap to the web to create room in the budget to pay staff. In the 61-year history of the newspaper, writers and photographers had never been compensated. An online newspaper, they thought, could use money allocated to printing costs toward paying the staff. Gibson said over the years the lack of pay has often resulted in the newspaper losing quality writers and photographers.

Gibson said the staff went to work quickly, extensively researching online resources. He said the facts pointed to an increase in consumers getting their news online.

“If all these signs are pointing to the fact that advertising dollars are going down for [print] newspapers, that people our age aren’t reading newspapers,” Gibson said. “Then why are we perpetuating this printed media?”

Editors created a test site in August and began experimenting on how an online news site would function. The Campus Lantern bought a domain name and software that allowed staff members to turn in work from any location.

But as editors prepared to launch the site in September, they received word that members of the university’s Student Government Association were unhappy with the paper’s plans to go online. Student government members argued that The Campus Lantern should have first consulted the student body about the change.

Student Government Association President Benjamin Sanborn said that because editors did not communicate their plans, funding for The Campus Lantern was withheld.

“If it’s more the process they went about it,” Sanborn said. “It was deceiving because they were passing it off as if they were printing a newspaper, but there is no newspaper.”

At a meeting between the two parties, Gibson said student government members raised concerns about students’ computer access and whether students would appreciate the change. Gibson called the student government’s reluctance to give the newspaper its yearly funding “baffling,” and reflecting an attachment to the physical newspaper.

Sanborn said there were negative consequences with the change — students who were paid to deliver copies of the newspaper to news stands, for example, lost their jobs.
But Sanborn said the new site does allow for quicker and more regular news updates. “I've heard both positive and negative,” Sanborn said. “I heard some people who say that since the newspaper went online, I've never checked it.”

But Gibson said that student government members ultimately disliked how staff members bypassed the group in the decision to move exclusively online. “It was kind of like a loss of power,” Gibson said. “They don't like the fact that we're not printing a newspaper.”

The initial launch of the Web site was funded through the newspaper’s advertising revenue, Gibson said. But The Campus Lantern was still tied to a $19,000 contract with its printer, which allowed them to print 13 issues during the school year. Staff members decided to create a quarterly magazine in order to meet its contractual obligations to the printer.

In October, the student government voted to allocate funding just for the magazine, but not new equipment, cutting the total amount given to the newspaper from about $15,000 to $10,000 per semester. “It's kind of like a slap in the face because essentially they're saying we're not going to pay for anything except for something in print,” Gibson said.

Sanborn said the student government is not allowed to give funding to organizations specifically for equipment. The Campus Lantern got lower funding because the requests were made later in the year, he said.

Gibson said The Campus Lantern still has does not have the money to pay its staff and is currently using its own funds to buy new equipment and to sustain the Web site. Gibson said there is a possibility that the student government will amend its policies to include funding for equipment and stipends for next semester. The Campus Lantern is also seeking a way to void its printing contract.

Meanwhile, Gibson said the current cut in funding has created another obstacle for his staff members, who are increasingly becoming frustrated with the lack of pay.

At Eastern Connecticut State University, both student editors and student leaders said that the funding conflict has nothing to do with content. But Murley, who follows new media trends in college media, said he sees potential censorship issues arising from the user-generated content of online newspapers. Online student newspapers might host forums where students can criticize student government leaders or administrators. The “holder of the purse strings,” could then decide to cut funding, he said.

“Already we sometimes see schools that have been averse to putting up student media Web sites because of the potential for negative publicity about campus crime, administration and student behavior,” Murley said.

Roger Soenksen, media law committee chair of the College Media Advisers, a national association of professionals who advise media organizations, said censorship occurs when a student government starts using the “purse strings” to dictate a newspaper either through content or its ability to deliver news.

“Any type of budget control over student media has, at least on the perception level, the ability to create a chilling effect as far as the media being able to communicate to students,” Soenksen said.

Murley said that the key in new media success is finding ways to engage readers, something that is already showing through in the revamped Campus Lantern.

“If you look at the discussion and comments about the SGA funding on the Web site,” Murley said, “you can see editors and students are responding and engaging in the news — it’s something you can’t do in a newspaper.” Gibson said that the new online format engages the campus community more than a print edition. Previously, it was difficult to gauge readership, he said, but with an online format, staff members get faster feedback from students. Gibson said comments come minutes after an article is published and staff members can see which articles get the most reads.

“It’s amazing what data we can collect now,” Gibson said. “I can’t imagine going back to print.”

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Is it censorship?

By Adam Goldstein, SPLC attorney advocate

The ability of students to legally choose the medium in which they publish is complicated because of two simple legal doctrines that intersect in an unusual way: the right of students to be free from censorship, and the right of schools to choose how money is allocated as long as they are doing so for non-content reasons.

Because denying the right to publish content in a new medium is a limitation on the ability to disseminate that content, it is a form of censorship to deny the right to publish in that new medium. But schools are not obligated to fund every new venture.

Determining the right to publish in a particular medium requires analyzing the relationship between the publication and the school and the allocation of funding. You should call the SPLC to discuss your particular situation, but here are three general rules to keep in mind.

A school CANNOT force you to publish in a medium you DO NOT want to use. Under basic First Amendment law, you cannot be compelled to speak against your will. That does not mean the school is obligated to pay for your new medium; it only means you need not provide your words to the old medium.

A school CANNOT prohibit you from publishing in a medium you DO want to use. As editors at a public college, you have the right to determine how to disseminate your work. For example, while a school is not obligated to provide funding for an online publication, it could not deny funding to an existing print publication because the editors wanted to publish the content online as well.

A school CAN allocate funds to a specific type of medium. If a publication submits a budget for the next year that includes printing costs, it cannot take the money allocated for printing and use it for buying a server to host its digital edition. This is not a media issue; if someone is granted funding for a volleyball team, they couldn’t take the money and fund a basketball team.
Native American tribal colleges have a history of censorship, small support for journalism programs

By April Hale

Native American tribal colleges are unique. Most of them are located on tribal lands, sovereign from the United States, yet are funded with federal dollars. Some are more vocational than academic, and few offer four-year degrees. Only a handful have a student-produced publication, and none have a journalism program.

In tribal college media, student journalists and their advocates say they treasure independence, and they know that in the past, freedom of the press has been considered optional by school officials.

Almost two decades ago, school administrators in Lawrence, Kan., censored the oldest tribal college student-produced publication, Haskell Indian Nations University’s Indian Leader, because of an article it published about the university president’s involvement in a money mismanagement investigation.

The article was actually a compilation of facts from several stories published in other area newspapers, but after publication the administrators froze the Leader’s account in 1989 and students could not print any issues for several months. Marcel Stevens, then managing editor of the Leader, and seven other students filed a lawsuit after the Leader’s adviser and his son tried to print a “counterfeit” issue with what were described as “biased, one-sided” articles.

Out of print for six months, a federal judge granted a temporary injunction in favor of Stevens’ group that stopped publication of the so-called “counterfeit” issues.

In court, the students’ lawyer argued that “even one publication of ‘counterfeit’ issues would irreparably violate Stevens’ First Amendment rights, as well as damage the newspaper’s reputation and ability to publish ‘timely’ news.”

In September of 1989, the students and school reached a settlement that gave the Indian Leader staff autonomous control.

After the Leader had resumed publication, Stevens wrote an editorial giving his reasons for filing the lawsuit.

“We decided to bring this action to protect your First Amendment right to read uncensored news written and edited by Haskell students without any interference or pressure from the administration,” Stevens wrote in 1989.

Today, the Indian Leader staff has complete control over the content of the paper. “If the university wants to respond to an article, we’ll have to do it through a letter to the editor and even then it’s up to the staff to print it or not,” said Haskell Vice President of Academic Affairs Venida Chenault.

Gerald Gipp, Haskell’s president at the time of the incident, said he was cleared of all allegations and was “surprised” when the censorship lawsuit occurred.

Gipp said he was “not aware of the censorship incident” and he was “not on campus” during the time of the incident because he had been relocated to Washington, D.C., by the school’s board during the investigation.

Censorship Policy

In Santa Fe, N.M., the Institute of American Indian Arts’ student newspaper, the IAIA Chronicle, faced strong administrative pressure of its own in the mid-1990s when the school faced budget cuts from the U.S. Congress and many employees were laid off. Several employees filed lawsuits, which started a long bout of negative publicity for the school.

The Chronicle, under tight administrative control, did not publish any articles regarding the lawsuit, for fear of censorship, said Chronicle adviser Evelina Lucero, a member of the Isleta and Ohkay Owingeh Pueblos of New Mexico.

“Because of the negative publicity they were receiving in the local newspapers the school permitted statements to the press through the president’s office only,” said Lucero.
cero, which made it difficult for Chronicle reporters to gather information. The school's president also demanded to review a Chronicle reporter's story on the school's budget, but both the reporter and Lucero refused.

"I explained to the president that we did not allow [prior review] but would be happy to verify all quotes by her for accuracy," Lucero said. "If we didn't state a policy and stand by it, administrators would attempt to censor the paper."

The Chronicle's editorial policy refers to the First Amendment of the U.S. Constitution to guarantee the right of freedom of the press. It also cites the 1957 U.S. Supreme Court decision in Roth v. U.S. that ensures the "unfettered interchange of ideas for bringing about the political and social changes desired by the people."

In adherence to the idea that it is a public forum, the IAIA Chronicle will not shy away from coverage of controversial topics, Lucero said, but instead will seek to cover all stories fairly and accurately.

"Censorship is repressive and the opposite of what educational institutions seek to teach," Lucero said.

The Chronicle covers a variety of issues, ranging from drug abuse on the reservation to art shows, legislation in the state and education on a national level, Lucero said.

"After the first attempt at censorship by the administration the distrust of the student media disappeared," Lucero said.

But Denny McAuliffe, University of Montana journalism professor and founder of Reznetnews.org, a Web site designed to promote journalism among Native American youth, said tribal college newspapers simply do not tackle hard-hitting issues, which is why tribal colleges are rarely subject to censorship.

In Lawrence, current Indian Leader Editor Robert Smith said the problem is of personnel.

"It would be nice if the Leader had a bit more of an edge, but the truth is we are severely understaffed," Smith said. "I can put anything that I feel appropriate [in] the paper."

**More Free**

Tribal college newspapers are often not directed by the tribal council, and therefore are not subject to the same tribal restrictions as community tribal publications, said McAuliffe, a member of the Osage tribe of Oklahoma.

McAuliffe said that shows tribal college newspapers are in one way more free than the professional newspapers owned by the tribe. Autonomy protects tribal college newspapers from censorship by tribal council members that are unhappy with stories in the paper.

"Theoretically, freedom of press can exist on tribal lands if you use tribal college newspapers," McAuliffe said.

Technically, the first Amendment does not apply to all tribal lands, McAuliffe said.

In the 1896 case *Talton v. Mayes*, a court decided that the U.S. Constitution does not apply to tribal land and its members, said Thomas Birdbear, lawyer and adjunct lecturer at the University of New Mexico Native American Studies Department.

Yet, all tribes are subject to the Indian Civil Rights Act of 1968, which includes a free and independent press, but it is "up to the tribes to exercise this right," Birdbear said.

The 1978 *Santa Clara Pueblo v. Martinez* decision stated again that the U.S. Constitution does not apply to tribal land, because tribes are sovereign nations with their own government and law, and also that tribes pre-date the Constitution.

"It's a misnomer that freedom of press is a right in Indian country, unless a tribe writes it into its constitution," Birdbear said.

Tribal courts could also assert a freedom of the press guarantee, but a case would have to be filed and not many tribes have taken such a proactive approach, Birdbear said.

"You're dealing with an area that doesn't have a lot of legal precedent in tribal judicial law, which makes objective writing difficult," said Paul DeMain, editor of the independently owned tribal publication *News From Indian Country*.

The two largest Native tribes, the Cherokee and the Navajo nations, have a freedom of the press law written into their constitutions. Both tribes have a free press independent from the tribal government, said Tom Arviso, Jr., publisher of the *Navajo Times.*

**Education and Censorship**

Gipp, who is now the executive director of the American Indian Higher Education Consortium, which oversees all tribal colleges, said press freedom at tribal colleges is important, but journalism programs are not a tribal college priority.

But advocates say the two are linked. Of the 34 tribal colleges across the country, only 10 have a student-produced newspaper — online or print — a television station, radio station or even a journalism program.

Pam Wynea of the Sisseton Wahpeton College in northeastern South Dakota said it is difficult to find a faculty member interested in taking on the task of advising a student paper or journalism program.

"It's really personality driven," Wynea said.

Blackfeet Community College in Montana offers a few journalism classes through its liberal arts program, but does not have a student publication.

Communications Coordinator Marion Salaway said a journalism program is "something we're discussing. We just haven't had the resources and mainly the personnel and money for a publication."

Funding for printing and distribution is a problem for many tribal colleges as well. But the Salish Kootenai College in
Montana has eliminated the printing and distribution process and gone digital with an online publication called the Camp Crier.

With the help of McAuliffe, Salish Kootenai was able to set up a Web site that includes articles about the school and two galleries showcasing students’ artwork and photographs.

A recent graduate of Salish Kootenai, Wayne Smith, Jr., said he recalls a short article he wrote for the Camp Crier about being a child unaware of conflicts and war. Wayne Smith, also a veteran, referred to his own letters and said the content was “innocent.”

The photo that accompanied the story was of a woman breastfeeding an infant.

David Spear, the Camp Crier’s adviser, said the community surrounding the reservation is conservative and the group was concerned about backlash from community members.

“We thought the administration wasn’t going to let us run it, but they did,” Wayne Smith said.

Wayne Smith said the college president stood “completely behind” the publication.

Wayne Smith, a member of the Blackfeet tribe of Montana, is also a graduate of the American Indian Journalism Institute, which is a three-week intensive course sponsored by the Freedom Forum at the University of South Dakota at Vermillion.

Wayne is now attending the University of Montana’s journalism school.

Cynthia Hernandez, of the Prairie Band Potawatomi tribe and Travis Coleman, of the Ponca tribe of Nebraska, both former editors of Haskell’s Indian Leader and graduates of American Indian Journalism Institute, said the Native American journalism movement is progressing.

“In the next five to 10 years young Native American journalists will flood mainstream newsrooms,” Coleman said.

Coleman, Hernandez and Wayne Smith are the only three tribal college students that he knows of who have moved on to larger universities to pursue a writing degree, McAuliffe said.

McAuliffe referred to them as trailblazers. All three of the students contribute to McAuliffe’s Reznetnews.org news Web site.

“A lot of Native kids have an opinion but they don’t have a forum,” Wayne Smith said. “Without an outlet we sit silenced.”

The Difference

The disconnection between professionals and students is obvious, McAuliffe said, and tribal college newspapers are not getting the job done.

“Tribal college newspapers are not designed to teach journalism or even promote journalism,” McAuliffe said.

Coleman went on to write for the University of South Dakota publication, the Volante. In comparison of the two school papers, Coleman said the Volante was much more structured, the coverage was more legitimate and deadlines were quicker.

“I fostered my journalism career at Haskell, it was a low-pressure environment,” Coleman said.

But McAuliffe said that news coverage and deadlines are not the only difference between public and tribal college publications.

McAuliffe said public college newspapers are usually separate businesses or fall under a student government’s control. He said the president’s office or an academic department controls tribal colleges publications.

Journalism couple Valencia Tso-Yazzie and Dulbert Yazzie said they value the right to freedom of the press at the IAIA Chronicle, whose publication is under the creative writing department.

Valencia, the Chronicle’s student editor and Dulbert, a reporter, are both members of the Navajo nation, and said that it is not in the paper’s “interest to silence anyone.”

Dulbert said that informing the community is important to the entire staff and each reporter strives to be accurate and fair with every story.

Dulbert said the tribal student newspaper does not feel the need to hold back its opinions, either.

“Students can often feel disempowered in institutions of education, and student newspapers can be an effective tool for them to address and challenge controversial issues,” Dulbert said.
FAirfield University’s orientation program was awkward for incoming freshman Mike Gianelle. He said he recalls receiving class information, looking at majors and learning about the dangers of alcohol. He does not remember the student newspaper, The Mirror, because he never received a copy. In fact, Gianelle did not even know the paper existed. Unbeknownst to him, Fairfield administrators pulled copies of a freshman guide put out by The Mirror before new students and their parents arrived for the orientation program in June.

Orientation issues are a staple for most college student newspapers and often offer freshmen a first glimpse into college life. But it is the audience that these freshman guides target — new students and their parents — that student editors say makes school administrators especially wary about content.

At two universities this past summer, administrators pulled copies of orientation issues from the racks, citing content that they deemed “inappropriate” for orientation. The incidents are raising concerns among students and faculty alike who worry that administrators are putting the school’s image before the rights of student media to publish the truth.

Student press advocates also say that because parents are possible sources for donations in the future, administrators become more determined to portray the university in the best light. And orientation issues, which might feature a list of the best professors to take classes from alongside stories of late-night parties, might not fit the mold.

"Any self-respecting college newspaper is not a public relations vehicle for the administration," said James Simon, adviser for The Mirror. "You can easily see the best interest of a newspaper, which is different from the interest of the administration."

Officials at Fairfield, a small Jesuit college, pulled the issue after several articles were found to be “inappropriate,” The Mirror reported. The articles in question were student columns — one mentioned the local bar scene, another elaborated on the upperclassmen fascination with freshman girls. The last controversial column gave a male student’s observations about the opposite sex.

At Boston College, also a Catholic school, an administrator ordered copies of the student paper, The Heights, pulled away from the footpath of parents and incoming freshmen before orientation began in June. Copies of the newspaper were later found in trash cans. The head of the of the school’s orientation program objected to a student column describing orientation as “miserable.”

Heights Editor in Chief Tom Wiedeman said he worries administrators do not seem to understand that orientation guides offer a unique student perspective unavailable in other forums.

“We’re here to inform students,” Wiedeman said. “As much as [administrators] believe they were acting lightly, I hope they realize our intention with the guide was also to help students.”

Editors at public universities have also encountered similar conflicts with administrators. Front-page photos published in past orientation issues of The Daily Nebraskan, the student newspaper at the University of Nebraska, have also stirred some controversy, so much so that administrators contemplated pulling copies of the newspaper, but did not, according to adviser Dan Shattil.

At the University of Nebraska, orientation guides are placed in auditorium seats where students and parents listen to remarks at orientation. In 2001, a parent complained to the university because of a cover photo of a martini glass. Shattil said the parent was worried about the photo because he did not want his daughter exposed to alcohol.

Shattil said the incident shows that because the orientation guides’ target audience is comprised of students and parents, there can be more anxiety over them.

“Administrators are concerned about the image the university projects more than [with] regular issue, which is primarily focused on existing students and faculty,” Shattil said.

An Image

At campuses across the country, publishing an orientation issue has become a balancing act. Student journalists who want to portray real college life have clashed with administrators who want another image of the university projected.

“I think that any college administration walks a tight rope,” Simon said. “Wanting to encourage critical thinking, exposing students to a lot of points of view, but some of those might not be so positive.”

University of Nebraska Associate Dean of Admissions Pat McBride, who runs the school’s orientation program, said orientation guides at his school face more scrutiny from administrators because they are placed
in the seats of every program participant.

"Anything that goes out is definitely looked at more carefully," McBride said. "[Orientation guides] are different from other issues."

McBride said he faced a tough decision during his first year as orientation director, when the newspaper published a photo that some described as sexist. McBride said the orientation committee discussed whether the publication should be pulled, but in the end, the orientation issue stayed.

Boston College’s First Year Experience Director, Rev. Joseph Marchese, gave the order to move the freshman guides at his school, and said the issue had some information that would have diminished the credibility of the school’s orientation program. The most contentious article for him was an editorial from Wiedeman, which described the orientation process as ‘miserable.’

“We’re trying to get the students’ attention, trying to give validity in what the orientation leader is saying,” Marchese said. “And [the article] doesn’t help.”

Marchese said Wiedeman’s column countered the mission of his program and would confuse students on information they would receive from orientation leaders.

But free press advocates argue that these freshman guides should not be treated differently from regular issues.

“To change the rules from a student perspective on what incoming students need is not only unwise but it also sends a troubling message to the whole campus,” said Paul McMasters, an ombudsman for the Freedom Forum.

Gret Lukianoff, president of the advocacy group Foundation for Individual Rights in Education, said that the act of removing orientation issues is not any different from other types of censorship he has seen.

“It’s rationalizing censoring a newspaper because they think about the opportunity of future sources of giving, including parents,” Lukianoff said. “It’s a chance to raise funds and [removing issues] is not seen as something negative.”

But Marchese said the question lies in exactly what role student publications should play in orientation programs that have a specific, and perhaps different, mission.

“There are a lot of other avenues where these other points of view can come in,” Marchese said. “There are many agencies, individual professors or outside vendors who come to present there, but we don’t see that constructed into the orientation program.”

Role of Orientation Issues

While it is unclear for some administrators whether freshman guides should play a specific role in orientation programs, some student editors see a bigger purpose for the special issues.

“It’s part of our mission to inform the community,” said Michael Zennie, editor in chief of Indiana University at Bloomington’s student newspaper, The Indiana Daily Student. “It’s especially important to reach out to the freshmen who are the most susceptible to being left in the dark about things that are going on.”

The Daily Student publishes a freshman guide, called The Orienter, annually.

For many student newspapers, producing orientation issues has other benefits. The guides might entice freshmen to become staff members. The pages, filled with advertisements from businesses trying to cash in on the freshman market, provide ad revenues, which become a substantial portion of newspaper’s budgets.

Wiedeman said The Heights lost advertising revenue, which he said was more than what the newspaper gets for regular issues, when administrators removed the guides from news stands.

“Advertisers want to get their teeth into freshmen early, so we did have a fair amount of revenue that would have been generated,” Wiedeman said. “We decided to not charge the advertisers in the end because we did not feel it was fair.”

At The Daily Nebraskan, ad revenues for orientation issue make up about 38 percent of the newspaper’s summer sales. The 60-page freshman guides at Northwestern University’s The Daily Northwestern carry about 70 percent ads and include in-depth features.

“We’re trying to give them useful information that they might have to learn through trial and error,” Ryan Wenzel, editor in chief of The Daily Northwestern, said. “It’s more about experienced people on staff letting freshman know some of their secrets.”

Michelle Manchir, editor of last year’s Orienter at Indiana, described the process of publishing the 80-page publication as a “five-week long project.” Manchir said that at one point she encountered some concerns from administrators over an article about the university’s ranking as one of the top party schools in the nation. The article ran, but Manchir said universities want to appear as “the perfect school” for kids and parents.

“But [orientation issues] are important because it’s by students for students,” Manchir said. “They’re about what we know about campus and its traditions.”

Working together

While the goals of a student newspaper and administrators often differ for orientation programs, some have found ways to come together as part of producing freshman guides. Melanie Payne, associate director of orientation programs at Indiana University, said she and staff members of The Orienter have a “nice relationship” and collaborate on the guide.

“I don’t necessarily assume input on the articles, but I have, in the past, suggested topics and issues that would be of interest or important for new students,” Payne said.

Likewise at Boston College, Marchese said his relationship with the newspaper has always been harmonious, until the incident in June.

“We sort of had this informal relationship,” Marchese said. “They would do the [orientation] issue, but we didn’t present the [orientation] edition as anything official, more informational.”
Simon said it might be useful for newspaper staff members to set clear guidelines with administrators to define what the purpose of the orientation issue is. At Boston College, Wiedeman said he plans to meet with administrators to discuss the role of orientation issues in the future.

“We're currently working proactively in terms of next summer,” Wiedeman said. “How exactly does the university interpret our role in orientation and what role can we play?”

At Fairfield University, the academic council, the governing body of the university’s general faculty, created a committee to investigate the censorship incident this past summer.

“The academic council decided to get serious,” Simon said. “They’re going to take testimonies to figure out who knew what and when.”

Simon also said students need to be careful that the special editions are not weakened, because they can build the reputation of a newspaper.

“Students shouldn’t put out a mush orientation issue,” Simon said. “It’s the first thing [new students] are going to see, it sets the tone to how they’re going to see the newspaper.”

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**College papers around the country run editorial to support USC editor**

**By Marnette Federis**

Student newspapers around the country published an editorial last month condemning the University of Southern California for creating a “chilling effect” on college media by blocking the re-election of USC Daily Trojan Editor in Chief Zach Fox.

Eighteen college newspapers published the same editorial on Dec. 5 in support of Fox, who had been re-elected by the Daily Trojan’s staff but was not approved by the university’s media board.

“This was a very clear case where any of us, as a journalists, felt our journalistic integrity would have been compromised, if the same thing happened in our school,” said Harvard Crimson Co-Editorial Chair Michael Broukhim, one of the editorial’s writer.

Fox resigned from his fall position in protest of the board’s decision and Jeremy Beecher, who was serving as the Daily Trojan’s editorial director, was approved to take his place.

The editorial questioned whether the university’s action was in retaliation for changes proposed by Fox, including “probing questions” into the newspaper’s budget and a push for financial transparency. Fox also wanted to reorganize student editor positions.

During his tenure, Fox said he requested more information from the university about the Daily Trojan’s finances. He said he was repeatedly rejected but continued to advocate for financial transparency.

“As a journalist, I’m always pushing to get things revealed to people,” Fox said. “I think an editor can only effectively lead the paper if he knows where the resources are and where to allocate them.”

Fox also said he saw a need for the editor in chief to focus on what he calls “bigger picture goals” for the Daily Trojan. Some of the changes he proposed included creating another managing editor position for day-to-day production, which would allow the editor in chief to focus on long-term goals.

Fox’s application also said his proposals would “keep editors sane, but also improve the newspaper.”

He said his staff was supportive of his ideas and he was eventually re-elected to the position. Adviser Larry Pryor stated in a memo that the vote for Fox was 37 to 28, indicating a lack of unanimous support.

The university’s media board still had to approve Fox’s re-election. The board, which consists of students, faculty and administrators, approves policy affecting the Daily Trojan.

But Fox’s application never reached the group. Michael L. Jackson, the university’s

See USC editorial, Page 28
Ineffective protections

A recent court decision has rendered California’s private college free-expression law useless, advocates say

BY MARNETTE FEDERIS

First Amendment advocates say a recent California Supreme Court decision not to hear an appeal from a former Occidental College radio host has left a gaping hole in California’s Leonard Law, which affords freedom of expression protection to private college students.

The case centered on former shock jock Jason Antebi, who claimed the university violated his rights under the California Education Code section 94367 (frequently referred to as the Leonard Law after its sponsor, former state Sen. Bill Leonard), a statute designed to protect free expression at private colleges. Similar California laws provide protections to high school and public college students. A lower court’s ruling said that Antebi could not make the claim because the statute only applies to current students. Antebi did not file his lawsuit until after he graduated from the college, almost a year after he was fired over comments made on his popular student radio show.

Reaction in California has been mixed, with some student editors and student media advisers doubting that the decision will have much of an impact. But others say they worry that the state supreme court’s refusal to review the case now renders the Leonard Law ineffective, and paves the way for administrators to censor.

“The one law meant to protect students at private campuses from being punished for speech is demolished and useless,” Antebi said. “It’s devastating for any student media, any student who has an opinion that could be deemed offensive to the administration.”

Antebi asked the state supreme court to review the previous ruling because he says it allows administrators to censor students by simply kicking them out of school so they will not have legal grounds to challenge the censorship in court.

“I think that this interpretation of the Leonard Law creates a huge loophole in the statute allowing colleges to engage in behavior they shouldn’t,” said Christopher Arledge, the lawyer who represented Antebi in the lawsuit.

One part of Antebi’s lawsuit, alleging defamation against a university official, is still pending. The judges also rejected a request from the First Amendment Project, an advocacy group in Oakland, and the Student Press Law Center to de-publish the opinion from the lower court’s ruling. A California Court of Appeal’s ruling is legal precedent if it is published.

Stuart Tochner, who represented Occidental College in the case, said he is pleased with the California Supreme Court’s decision, and is prepared to defend the defamation claims against his clients. Meanwhile, Antebi said he will continue to pursue his cause in the state legislature, where wording of the Leonard Law could be changed to apply to both current and former students.

“I was hoping throughout all of this that Oxy wouldn’t have gotten away with what they did, but in the end I guess they did,” Antebi said. “I would hate to see private colleges in California to use the ruling in my case to stifle speech.”

Antebi’s case

An Occidental College student from 2000 to 2004, Antebi was active in the student council and had his own show at the student-run radio station.

Antebi said decisions he made in 2004 on the student council and comments he made on his show angered some students who eventually engaged in a recall effort against him. Court documents state that his opponents called Antebi a “racist,” that he “sexually harassed women” and that he was anti-Semitic.

Antebi claimed he tried to report the incidents to administrators, but was told he “would have to fight [his] own battles.”

On March 11, 2004, Antebi used his radio show to mock and criticize his opponents. In the two weeks after Antebi made his comments, three students filed sexual harassment complaints against him based on the on-air remarks and he was fired.

Maryanne Horowitz, Occidental College’s Title IX officer, investigated the complaint and found that the March 11 program had violated the university’s policy against creating a hostile environment and sexual harassment. Her report recommended that Antebi apologize to the complainants, to the college community and seek
counseling.

Antebi appealed the findings within the university. Rameen Talesh, associate dean of students, conducted a disciplinary conference with Antebi and ordered censure until May 17, 2004. Antebi also appealed Talesh's findings to the university president and the college's board of trustees, but only after the deadline to do so passed. Antebi graduated from the university in the spring of 2004.

In his lawsuit filed in March 2005, Antebi claimed that his termination violated the Leonard Law. The law says private schools may not punish a student for expression that would be protected by the First Amendment off-campus.

The lower court rejected Antebi's claims, saying that because he had already graduated from Occidental College when he filed the lawsuit, he could not sue the school because the law only applies to students "enrolled" in school despite the fact that he had been a student when the punishment occurred.

Antebi and the Leonard Law

In his petition for review to the California state Supreme Court, Antebi claimed that the lower court's ruling eviscerates the protections offered by the Leonard Law.

Foundation for Individual Rights in Education President Greg Lukianoff said the ruling will make way for administrative abuse of power.

"The court's interpretation of the law actually creates incentives for private colleges to kick students out when [administrators] want to violate their free speech rights," Lukianoff said.

Lower courts said they interpreted the Leonard Law by its plain language, which states, "any students enrolled may commence a civil action." The courts also said that the legislature could have extended the application of the statute to "any student enrolled or who was enrolled," when the law was created in 1992, but did not.

But in the debates that led to the passage of Leonard Law, clarifying who the law would apply to was never discussed, former state Sen. Leonard said. He said that his intent was to provide free speech protections to all students, even those that have graduated.

"It's irrelevant whether or not they're still a student, if they are wrongfully disciplined for free speech, then they have right to sue," Leonard said. "It doesn't even matter if [the student] drops out or has graduated."

Leonard also said that the Antebi case is exactly the type of situation his law was created for. "It's quiet clear he was disciplined for something he said related to the campus and the campus disciplined him," Leonard said. "That's the situation the Leonard Law was designed to cover."

Student media reaction

In the wake of the California state Supreme Court's decision, some worry how the Leonard Law's interpretation will affect California private school student media. David Greene, executive director of the First Amendment Project, said he was especially disappointed with the court's decision not to de-publish the opinion from the lower court's ruling.

"It's a shame," Greene said. "[If the opinion is published], it's a powerful thing and has life of its own beyond the case."

But opponents of the lawsuit dispute that the court of appeal's previous ruling will have the impact Antebi is claiming. Nothing has changed, they say.

"As it stands, a party needs to be an existing student in or-
History of the Leonard Law
Pioneering law has stood for more than a decade

The California state Legislature passed the Leonard Law in 1992, the first statute of its kind affording free speech protections to students enrolled in private colleges.

Leonard, a Republican from San Bernardino, said he introduced the law after student groups approached him claiming that their schools were trying to restrict their rights to free speech through codes and policies.

“Schools are not arbiters of proper language,” Leonard said. “We found that schools were trying to do just that.”

Leonard said the bill faced opposition from schools, who defended their codes and claimed that their policies did not restrict free speech.

“It’s the attitude of some private schools that they have more control over free speech,” Leonard said.

The bill was eventually approved through support from both Democratic and Republican speech advocates, Leonard said, and was signed by former Gov. Pete Wilson.

Leonard, no longer a state senator, is now a member of the California State Board of Equalization.

COLLEGE CENSORSHIP IN BRIEF

NEWSPAPER THEFT

Morehead State editor, adviser drop case against alleged newspaper thieves

KENTUCKY — An editor and adviser at Morehead State University have complied with the university president’s request to drop a criminal complaint against three students who allegedly stole approximately 7,000 copies of the student newspaper in October 2005.

Ashley Sorrell, editor in chief of The Trail Blazer, and Joan Atkins, her adviser, initially asked for criminal charges against students Danielle Brown, Andrea Sharp and Jennie Williams.

Each was charged with third degree criminal mischief, but those charges were later dropped once university President Wayne Andrews found out that one of the students had hired a lawyer.

Sorrell said she was instructed to withdraw her complaint because university officials “just didn’t want to deal with a lawsuit.”

Sharp contended that she did not commit newspaper theft because she only took 15 copies and recycled them.

In April 2006, Andrews held a meeting with Department of Communication and Theatre Chairman Bob Willenbrink and Atkins to negotiate a resolution for the charges, but did not allow Sorrell to attend, she said.

Sorrell said she remains frustrated that the Leonard Law has not dampened Antebi’s spirits, though, and he said he hopes to convince the state legislature to change the wording of the Leonard Law.

He said he is optimistic about lobbying state legislators to take up the issue.

“There is little doubt we will pursue this in the state legislature,” Antebi said. “The trend in California has been on the side of free speech and we look forward to working with anyone who is willing to help us.”

COLLEGE CENSORSHIP

der to file as a plaintiff and allege a violation of the Leonard Law,” Tochner said. “That’s the way the legislature wrote the law.”

Some student editors and advisers in California said they are also uncertain whether the case will dramatically lessen students’ rights — that administrators can now easily expel students they want to censor.

Michelle Carter, an adviser from Notre Dame de Namur University in Belmont, Calif., said that expulsion at her school is not an easy process.

“Every school I’m aware of has in place procedures for appealing an expulsion,” Carter said. “I would expect that during the appeal process, the real reason for the expulsion would be discovered and the expulsion would be overturned.”

Airan Scruby, news editor for Pepperdine University’s student newspaper The Graphic, said that while the Leonard Law is important, he does not think Antebi’s case will affect him.

“The case strikes less of a chord for me,” Scruby said. “My concerns about Leonard Law focus on whether I will be protected … while I am a student and able to publish in the newspaper, not whether I will be able to sue when I have graduated.”

But Lukianoff warned against the thinking that Antebi’s case would not set a precedent or that it would not impact student media groups around the state.

“Fundamentally, that decision is precedent for everyone” Lukianoff said. “This decision is a legal precedent that will haunt student organizations around California.”

Natalie Zanzucchi, editor in chief of University of San Diego’s student newspaper, The Vista, called diminishing the rights of student publications in private schools “frightening.” She also said she disagrees that the Leonard Law should only apply to enrolled students.

 “[Antebi] was a student at the time the university fired him, the application of the Leonard Law should be when the incident happened,” Zanzucchi said.

Tom Nelson, Loyola Marymount University’s director of student media, stressed the importance of the Leonard Law and said that anything that weakens the statute should raise concerns.

“Anything that waters down or is perceived as a loophole [in the law] is detrimental to the freedom of the student press,” Nelson said.

The California Supreme Court’s decision has not dampened Antebi’s spirits, though, and he said he hopes to convince the state legislature to change the wording of the Leonard Law.

He said he is optimistic about lobbying state legislators to take up the issue.

“There is little doubt we will pursue this in the state legislature,” Antebi said. “The trend in California has been on the side of free speech and we look forward to working with anyone who is willing to help us.”

FNH
Johns Hopkins initiates new distribution policy after recent theft

MARYLAND — New policies created by Johns Hopkins University regarding where student publications can be distributed are raising concern among some students and advocates following an incident where newspapers were removed from residence halls last spring.

Copies of the conservative campus newspaper The Carrollton Record were found missing from distribution spots in 2005 after a story criticizing another student organization was published.

Administrators said they removed about 300 issues from residence halls because the residential life department did not properly approve the paper. Another 700 copies went missing at other spots on campus and are still unaccounted for.

Last summer, administrators created new guidelines for distributing campus publications.

Until the new policy, publications can only be distributed in pre-designated areas, including the library, academic halls and residential dining facilities.

But Greg Lukianoff, president of the advocacy group Foundation for Individual Rights in Education, said restricting the distribution of publications to certain areas on campus is just another way of limiting the rights of student press.

Jered Ede, the editor in chief of The Carrollton Record, said the newspaper will comply with the new regulations, but will pay close attention to how the policy is implemented.

He also is looking at legal options to address the additional 700 copies of the newspaper that are still unaccounted for.

Daily Texan board looks to end prior review policy

TEXAS — University of Texas at Austin student journalists and the university's student publications board are awaiting a response from the Texas Board of Regents as to whether the Daily Texan will remain what many believe is the only major daily college student newspaper that is subject to prior review of its content by an adviser.

The board of regents had proposed in the fall a re-declaration of trust with the student newspaper that not only kept prior review in place, but also would have expanded it to all student media on campus, including radio and television.

Daily Texan Editor in Chief J.J. Hermes said he was surprised at the board of regents' changes, but the Texas Student Publications Board submitted a revised version of the board of regents' agreement eliminating prior review and allowing TSP board members to take on the role of advising the newspaper.

TSP Director Kathy Lawrence said she thinks members of the board of regents are currently conducting informal meetings that pertain to changes in the agreement, but she said she does not expect anything to formulate until a formal meeting at the beginning of February 2007.

Faulty headline causes president to pull college paper

FLORIDA — Editors of the Gargoyle, Flagler College's student newspaper, are calling university President William Abare's actions inappropriate when he pulled copies of the paper from racks in September because of a faulty headline.

According to Brian Thompson, director of public information for the university and adviser to the newspaper, Abare made the decision to pull the issues the night the paper published.

By morning, the empty racks caused some to suspect censorship, he said.

But Thompson said the only reason Abare ordered the papers removed was because the headline read “Campus Growth Forces Tuition Hike.”

Gargoyle Co-Editor Glenn Judah admitted that the original headline was a mistake because it indicated an increase in tuition had already been approved by the administration.

But Judah said the university should have allowed staff members to correct the mistake themselves.

He said 3,000 copies of the paper were later reprinted with a new headline along with a formal correction.

Thompson said Gargoyle staff members will be taking a look at their system in order to prevent similar mistakes.

FAU president sends scathing letter to student government

FLORIDA — Florida Atlantic University President Frank Brogan sent a scathing letter to student leaders in October after the Student Government Association at the Boca Raton campus attempted to shut down OWL Radio, the student-run station.

Brogan wrote in his letter that the student government had been acting in a “selfish, immature and potentially unethical manner.”

OWL Radio workers were asked to turn in their keys because student leaders said no one was being held accountable for the station's equipment.

But students and administrators have called the act an attempt to shut down the station because of an ongoing feud between the two entities.

Current Productions Director Josh Wetherington, a volunteer radio station staff member, said that students have been forced to volunteer status because the student government cut the budget by $20,000 this year.

Wetherington said the cuts eliminated three main positions.

There also is currently no station manager or permanent adviser for the station.

Student workers at the station said administrators instructed them to keep their keys and to continue running the station.

A petition is being circulated asking the student government to fully restore the station's funding.

See College briefs, Page 28
Although they said we would be able to do that while achieving what it took to run the paper, and I thought current job description would not have been informed about what part of the position’s application. He also said he has not been radical that it warranted the rejection of his approach.”

It was determined that it was not the wisest job and then wanted to drastically change proposals “inappropriate” because they had not been properly discussed.

“No one else has ever applied for the job and then wanted to drastically change it,” Grant said. “It has never come up and it was determined that it was not the wisest approach.”

But Fox said his proposals were not so radical that it warranted the rejection of his application. He also said he has not been informed about what part of the position’s current job description would not have been fulfilled with the proposed changes.

“I knew what the job entailed, knew what it took to run the paper, and I thought we would be able to do that while achieving more goals,” Fox said.

USC journalism professor Bryce Nelson, who is also a member of the media board, said he disagreed with how the university went against the votes of the student staff.

“I think students should be the people to pick their editor,” Nelson said. “The administration should be careful in overruling the wishes of the newspaper staff.”

Grant also said the university has taken Fox’s proposals seriously. The Student Newspaper Task Force, created to analyze some of Fox’s proposed goals, recently published a report recommending that the editor in chief and other senior editors have more input on the Daily Trojan’s annual operational budget. The report also stated that there is a need for its leadership to “re-examine the roles” of the editorial staff in order to update job descriptions as necessary.

Fox said he hopes that the recommendations will be approved and implemented.

In a statement, Jackson said he would consider the task force’s recommendation and make a decision in January.

**Banding together**

Among the student newspapers that collaborated on and ran the editorial regarding editor selection at the University of Southern California were:

- The Brown Daily Herald
- The Cavalier Daily (U. Virginia)
- The Cornell Daily Sun
- The Daily Californian (California-Berkley)
- The Daily Evergreen (Washington State)
- The Daily Illini (U. Illinois)
- The Daily Orange (Syracuse U.)
- The Daily Pennsylvanian
- The Daily Princetonian
- The Daily Reveille (Louisiana State U.)
- The Daily Sundial
- The Daily Texan (U. Texas)
- The Daily Trojan (Southern California)
- The Harvard Crimson
- The Michigan Daily
- The Oregon Daily Emerald
- The Stanford Daily
- The Yale Daily News

**Grambling journalists denied passes to homecoming events**

LOUISIANA — The Gramblinite, Grambling State University’s student newspaper, cancelled its coverage of the school’s homecoming week after members said student leaders and administrators denied them access to events.

Each year, The Gramblinite publishes an issue highlighting activities throughout homecoming week, and usually receives at least six passes for its staff members to use, Editor in Chief Darryl Smith said. This year, staff members were only given one pass, which they assumed could be used by at least two people. But when staff members tried to cover a concert, they were told only one person could use the pass. At another event, staff members were again told two people could not use one pass.

Smith, calling the incident “censorship,” said Gramblinite staff members made a unanimous decision to cancel coverage of any homecoming activities the student union board sponsored. Smith said the denial of passes was in retaliation for a “mid-term report card” the Gramblinite published, which criticized the school’s student union board and the Student Government Association.

**UCLA student reporters allegedly struck by police**

CALIFORNIA — Although they said they clearly identified themselves as members of the media, student reporters from the University of California at Los Angeles’ Daily Bruin said they were hit with batons by city police officers who were trying to clear a small riot near campus on Dec. 3.

Editors say an all-night celebration of the UCLA football team’s Dec. 2 victory over the University of Southern California got out of hand as a crowd burned couches and newspapers in the streets.

Four Daily Bruin student reporters were at the scene, interviewing people and taking notes Assistant News Editor Anthony Pesce said.

Pesce said Los Angeles officers wearing riot gear formed a line and began to move through the street in order to clear the area Pesce said he and the other reporters held out their press passes and shouted that they were reporters. The police ignored their shouts and they were hit with batons and shoved, he said.

The student reporters eventually moved to another street where another police line formed. Pesce said they again identified themselves as members of the press and one reporter held out a press pass. They were again ignored and one officer told a reporter that the pass did not “mean shit,” Pesce said.

Sgt. Lee Sands, a spokesperson for the Los Angeles Police Department, said any complaints filed are taken “very seriously” and will be investigated. Sands also said the department recognizes “any legitimate media.”

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vice president of student affairs and chair of the board, refused to pass on Fox’s application to the media board stating that Fox’s goals were “irreconcilable with the media board’s outline for the role,” according to the Dec. 5 editorial.

James Grant, a spokesperson for the university, said that Jackson deemed Fox’s proposals “inappropriate” because they had not been properly discussed.

“No one else has ever applied for the job and then wanted to drastically change it,” Grant said. “It has never come up and it was determined that it was not the wisest approach.”

But Fox said his proposals were not so radical that it warranted the rejection of his application. He also said he has not been informed about what part of the position’s current job description would not have been fulfilled with the proposed changes.

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**From College briefs**, Page 27

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Lawsuits explore religion, freedom of expression

Administrators often afraid of religious speech, advocates say

By April Hale

Several recent court cases involving religious speech in public schools show that school administrators are overly sensitive to religious speech and do not have proper knowledge of the law, advocates say.

In September, a federal court ruled that Saginaw School District in Michigan had violated the First Amendment rights of Hadley Elementary School student Joel Curry when the school did not allow him to hand out an ornament with a religious message attached.

Curry, then a fifth-grade student, was given an assignment to make a product to sell during a school project, called “Classroom City,” which was intended to teach students civics through marketing, literature and government.

With the help of his parents Curry made a candy cane-like ornament and attached a note explaining the religious meaning of the candy cane. Part of the note read, “The stripes: remind us of Jesus’ suffering — his crown of thorns, the wounds in his hands and feet; and the cross on which he died.”

School administrators said the product was unacceptable because the attached message referred to Jesus and that Classroom City was considered “instructional time.”

Charles Haynes, a senior scholar at the First Amendment Center, said the law allows students to share their religious views in classroom assignments as long as it meets the teacher’s criteria.

Jeff Shafer, Curry’s lawyer, said Curry simply complied with the guidelines of the assignment and made a creative product.

School Principal Irene Hensinger said Curry could sell the ornament with the religious note outside in the parking lot after school, but not in Classroom City. Curry chose not to sell the product outside.

The judge said that Classroom City was a school project, but it still resembled a “limited public forum” for free speech, and ruled that Curry was well within his right to sell a religious product.

“Student religious speech is protected to the same extent as any other kind of speech,” said Shafer, also a lawyer for the Alliance Defense Fund, an Arizona group that advocates for religious freedom. “A school’s restriction on religious expression is not only unlawful, but it is oppressive.”

Shafer also said censorship of religious speech is often a “product of ignorance.”

The judge also granted qualified immunity to Hensinger, which would prevent Curry from taking further legal action against her.

In October, the Curry family decided to appeal the judge’s qualified immunity ruling.

Shafer said the court made an “error in its qualified immunity determination.”

The Alliance Defense Fund also recently won a First Amendment case that involved an elementary school student who was prohibited by her school from singing the popular Christian song “Awesome God” during a school-sponsored talent show.

School administrators said the song was “overtly religious” and of a “proselytizing nature.”

Shafer, also one of the lawyers in that case, said the student had the right to sing the gospel song during a school talent show because the school also created a “limited public forum.”

School administrators also said they did not allow the student to sing the song to avoid violation of the establishment clause of the U.S. Constitution, which requires the separation of the church and state.

The court did not agree, stating in the order that “even if the school sponsored and promoted the talent show as an event, the school did not promote plaintiff’s — or any other student’s — individual performance or speech.”

The required separation of church and state is a defense often mistakenly used by schools in freedom of religion cases, Shafer said.

“It is a worn-out, misused and ambiguous phrase,” Shafer said. “Censorship of a student’s religious speech is an issue of either ignorance of the law or intentional suppression of speech that the school officials oppose.”

Haynes also said school administrators need to educate themselves on the establishment clause and its appropriate application.

John Whitehead, president of the Rutherford Institute, a Virginia-based non-profit civil liberties group, said all too often school administrators are ignorant to the law and a student’s rights.

“The truth is teachers just don’t know the law and that may hinder a student’s free speech,” Whitehead said.

The Rutherford Institute is representing seventh-grade student Amber Mangum in a lawsuit against a Maryland School District after the school’s vice principal allegedly threatened to suspend Mangum for reading her bible during the lunch hour.

Mangum’s school, Dwight D. Eisenhower Middle School, has a policy that states students may engage in activities that “do not cause disruption” during “non-instructional” time, which includes the lunch
hour.

The policy says that “students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable, non-disruptive activities.”

But student-initiated religious speech is generally not problematic, said Lisa Soronen, staff attorney for the National School Boards Association, adding that it is a “matter of separation of church and state.”

When school officials themselves express religious viewpoints, or coerce it from students, is when the conflicts arise.

Jeremy Leaming, spokesperson for the Americans United for Separation of Church and State organization, said that student-volunteered religious speech in public schools is protect by the First Amendment but that right is not absolute.

“Public school officials have the duty to ensure that a secular education is met,” Leaming said. “They have to be cognizant of the curriculum and make sure not to advocate one religion over another.”

But Whitehead said the issue of the separation of church and state should not appear in the classroom unless a teacher is advocating certain religious views or telling the students that they are all “going to hell.”

If a student initiates religious dialogue, then it is entitled to First Amendment protection, Whitehead said.

“Free speech is a citizen speaking on matters of private concerns with no backing from the government,” Whitehead said. “If the government or school administrators are involved then the establishment clause comes into play.”

Whitehead said he believes a school’s restriction on religious speech is a hamper to a student’s preparation for participation in American society.

“You can’t have diversity and freedom in the classroom if everybody is saying the same thing,” Whitehead said.
difference for student journalists all over the state,” Hamm said. ■


**Former student sues school for prohibiting Confederate apparel**

**MISSOURI** — A former Farmington High School student is suing the school district claiming that officials violated his First Amendment rights when he was not allowed to wear clothing with Confederate symbols.

According to the lawsuit, Bryce Archambo arrived at the high school Sept. 27 wearing a baseball cap with an emblem of the Confederate States of America that the school described as the “rebel flag.”

Archambo, who again wore a t-shirt and belt-buckle with Confederate emblems the next day and was disciplined by officials, was permanently removed from the school by his mother after the suspension, the lawsuit says.

The complaint, filed in federal district court, calls the actions of the school officials “unconstitutional,” “overbroad” and discriminatory.” The lawsuit also states that the wearing of clothing with the Confederate flag is a form of protected speech under the First Amendment.

Tom Mickes, who represents the school district, said that the school’s actions were taken in order to ensure an educational environment free from “intimidation.” Mickes also said the school never suspended Archambo but merely told him to turn his shirt inside out. ■

**Case:** Archambo v. Farmington R-7 Sch. Dist., No. 06-01691 (E.D. Mo. filed Nov. 21, 2006).

**MISCELLANEOUS BRIEFS**

**Settlement moves high school station to lower frequency**

**WASHINGTON** — A high school radio station is no longer in danger of being bumped off-air by a commercial station after a settlement was reached in November.

KMIH, Mercer Island High School’s student-run radio station, will change its frequency and a commercial station will move into its old spot on the radio dial as well as pay for several years of legal proceedings totaling approximately $100,000, the settlement says.

Although KMIH will remain on air, the station will relocate from 104.5 FM to 88.9 FM and KMCQ, the contesting contemporary adult commercial radio station, will move to the area and broadcast at 104.5 FM, ending five years of dispute and litigation.

The Federal Communications Commission ruled in 2004 that KMCQ could move into the area, and that KMIH, “would be required to suspend operation” if its broadcast interfered with KMCQ’s.

KMIH Attorney Howard Barr said the station privately negotiated with the FCC to relocate to 88.9 FM. Barr said three other area radio stations that broadcast at 88.9 FM granted KMIH’s relocation because there was minimal potential interference.

Barr and KMCQ Attorney Dominic Monahan said the settlement was favorable for all parties. ■

**Florida high school newspapers passed out with a hole**

**FLORIDA** — Hillsborough High School students stayed after school in October and physically cut out an article from every issue of the student newspaper before distribution at the request of the principal.

William Orr said he objected to an article written in the Red & Black student newspaper about an achievement gap in state test scores between white and minority students at his school.

The article, which Orr was quoted in, showed the significant difference between white and black students’ reading scores in Florida’s Comprehensive Assessment Test.

The article reported that 69 percent of white students passed the reading portion of the test while only 16 percent of the black students passed.

The students received the information, which is public record, from the school.

The administration initially offered to pay the cost of a reprint, but newspaper adviser Joseph Humphrey said the staff’s first concern was getting the paper published and distributed on time.

Humphrey said the staff is handling the situation well while “trying to move on.” ■

**High school paper pulled for content school administrator deemed controversial**

**CALIFORNIA** — Two issues of a high school student newspaper that allegedly included problematic editorials were confiscated by a school administrator two weeks in a row.

While Carson High School administrators said they considered remarks made in the articles offensive and inappropriate, California law does not allow administrators to limit student expression because it is deemed offensive.

The Nov. 21 edition in the Trailblazer, the monthly student newspaper, titled “Looks like the circus is in town,” described the unnamed author’s frustrations with the apparent chaos at a local Taco Bell restaurant. The author said the crowd in the restaurant was predomi-
LEGISLATION

Washington state legislator, student collaborate on student press bill

WASHINGTON – The legislative process has begun for a bill drafted by a Washington state legislator that would ensure free press protections for both high school and college journalists in one statute.

The proposed bill ensures that “no school officials nor the governing board of the school or school district” will interfere with students’ free speech and free press rights, and that student media will not be subject to mandatory prior review.

Brian Schraum, a former student at Green River Community College who is now a student at Washington State University, said he contacted state Rep. Dave Upthegrove (D-SeaTac) to talk about proposing a state-wide anti-censorship law in light of the Seventh U.S. Circuit Court of Appeals’ decision in Hosty v. Carter.

Schraum, the former editor in chief of The Current, Green River Community College’s student newspaper, said he wanted to protect the newspaper after the Hosty decision.

If the bill is made law, Washington will become the seventh state with laws supporting a free student press.

The proposed bill is unique from other states’ laws because it would protect speech at both the high school and college levels under one statute.

The earliest date that the bill can be filed is Dec. 18, 2006 and state Rep. Upthegrove will request a hearing for the bill when the legislative session reopens on Jan. 8, 2007, according to a spokesperson from his office.

LIBEL

Judge dismisses former St. Cloud dean’s libel suit

MINNESOTA – A former dean who sued a university student newspaper after it published comments that implicated him as being anti-Semitic and a racist is deciding whether he will appeal a court’s October dismissal of his case.

The court opinion said that although the published comments were admittedly wrong, Richard D. Lewis, former dean of St. Cloud State University’s College of Social Sciences, is a public figure and could not prove actual malice, a libel standard for public figures.

In the fall of 2003, following the settlement of a discrimination lawsuit involving Jewish faculty members, the university reassigned Lewis from his position as dean. The newspaper’s article chronicling his troubles was published Oct. 27, 2003, and Lewis sued the university, claiming defamation. The article contained an interview with Robbi Hoy, a former student involved in a previous dispute with Lewis, who said she overheard Lewis making racial and derogatory comments.

After publication, Hoy told the Chronicle reporter that the remarks she heard came from another professor, not Lewis. The newspaper published a retraction in November 2003, but Lewis continued the libel lawsuit.

In March 2005, a state appeals court dismissed Lewis’ claim against the school. Lewis refiled his lawsuit against the newspaper itself in September.

Lewis had until the end of December to decide to appeal. No decision had been made as of press time.


CONFIDENTIALITY

Oklahoma State U. journalists not required to sign agreement

OKLAHOMA – Students and faculty involved in Oklahoma State University’s student publications no longer have to sign a controversial confidentiality agreement the university proposed in August.

The university distributed the agreement and a list of students at The Daily O’Collegian who were required to sign it before they could be paid.

The confidentiality agreement prohibited student and faculty employees from disclosing unspecified confidential information, determined by the university, about the stories they were covering.

Employees were skeptical of the broad and unspecified measures of confidentiality and refused to sign the documents.

Oklahoma State University Director of Communications Gary Shutt said the purpose of the original agreement was to protect sensitive student information, including grades and social security numbers.

Student journalists at the newspaper said they viewed the agreement as a breach of their First Amendment rights.

Shutt said the university has since developed mandatory online confidentiality training sessions meant to teach employees about handling confidentiality.

Shutt said the university was simply “trying to make our employees aware that there is information that has to be kept confidential,” said.
IN THE COURTS

New Jersey adviser back at work, plans to continue lawsuit

NEW JERSEY — Karen Bosley is back to work as the adviser of the Ocean County College Viking News after a federal judge granted a preliminary injunction in her student’s pending lawsuit, and students say her return has been essential to the paper’s production.

Bosley was reinstated as the newspaper’s adviser in August by the college’s board of trustees after a federal judge ordered a preliminary injunction against the college’s attempt to remove her from the position. Bosley and her students have two separate lawsuits pending. Bosley’s lawsuit alleges removal was a result of age discrimination and retaliation for articles that appeared in the paper critical of the college’s administration.

The battle between the students and the college’s administration began last year when three editors from the paper filed a lawsuit claiming several actions taken by the college administration, including Bosley’s removal, were a form of censorship and unconstitutional.

Bosley, who has been the Viking News’ adviser for 35 years and is a former member of the Student Press Law Center’s board of directors, has said she will continue her lawsuit.


Court hears oral arguments in Kansas State adviser case

COLORADO — The 10th U.S. Circuit Court of Appeals heard oral arguments Nov. 13 in its review of a lower court’s ruling that upheld the 2004 dismissal of a Kansas State University student newspaper adviser.

Former adviser Ron Johnson was reassigned from his position as adviser in 2004 after the university conducted a content analysis of The Collegian and found the “overall quality” of the newspaper to be lacking.

Former Collegian editors Sarah Rice and Katie Lane filed a lawsuit claiming the university’s actions violated their First Amendment rights. Rice and Johnson, who both attended the hearing, said they were impressed with the amount of knowledge the judges had about the case.

A group of nine national student and professional media and civil rights groups led by The Student Press Law Center filed a friend-of-the-court brief in support of the students’ claim.

At the end of the hearing, Rice said presiding Judge Carlos Lucero made a comment about the broad implications of the case and how its effects might go beyond student newspapers.

Johnson said he was pleased that the judge brought up the larger consequences of the case. A decision is not expected for another five to six months.


Le Moyne student paper resumes publication with new student staff, adviser

NEW YORK — Le Moyne College’s student newspaper, The Dolphin, resumed publication with a new adviser and new staff members 10 months after its former staff voted to halt publication.

Andrew Brenner, the paper’s former editor in chief, says the change in staffing and a new adviser was the university’s way of removing students who have opposed the administration and its refusal to renew former adviser Alan Fischler’s contract.

Staff members have been in protest since Fischler left his position last year. While the university has said that Fischler’s contract was not renewed because of the quality of the newspaper, Brenner said that the university was actually unhappy that certain articles critical of the administration were published.

Olivia Martin, the new co-managing editor, said that during the protest, there was no forum for discussion and that most editors were not involved with the communication going on between Brenner and the university. Martin was the news editor during Brenner’s tenure, and has decided to work with the new adviser.

Brenner said he will continue his protest and is looking into his legal options.

CMA censures Oklahoma Baptist U. after adviser contract not renewed

OKLAHOMA — College Media Advisers, a national association of professionals who advise college media organizations, censured Oklahoma Baptist University after it did not renew the student newspaper adviser’s contract because of his objections to prior review.

CMA began its investigation after the university decided not to renew Philip Todd’s contract in the spring of 2005. Todd had worked with the student newspaper, The Bison, for four years starting in 2000. A year after his hiring, the college president began asking Todd to edit every issue of the newspaper, the association said. According to CMA President Lance Speere, the group found that Todd was hired for the job with the understanding that the position did not entail prior review.

In its censure, CMA also said that the university’s student handbook and The Bison’s policy manual ensured students’ freedom to make content decisions. CMA’s investigation found that administrators tried to change Todd’s job description to require prior review but were rejected by the dean and the publications committee.

Got a story tip?

Fill out our feedback form at www.splc.org
Good high school journalists take seriously the obligation to cover their peers in meaningful ways. As student publications struggle to provide both a voice for other students and serve as a watchdog of student misbehavior, many reporters and editors are facing challenges when it comes to telling student stories that some would rather not be told. A growing number of young journalists are being asked by school administrators to leave out information that identifies individual students. And many, questioning the wisdom and legality of these restrictions, have begun to ask why.

What the courts say

In a unanimous 1979 decision, the U.S. Supreme Court ruled in Smith v. Daily Mail that the First Amendment protects the right of journalists to use the names of minors in newsworthy stories as long as the information is “lawfully obtained” and “truthfully” reported. In that case, the Court struck down a West Virginia law that had been used to prosecute two West Virginia newspapers that printed the name of a 14-year-old junior high school student alleged to have shot and killed a 15-year-old classmate.

Following the Daily Mail ruling, other courts have, for example, ruled that newspapers can publish the name of a minor charged with unauthorized use of a motor vehicle and hit-and-run driving, the name of a juvenile who was kidnapped and sexually assaulted, the name of a high school student viciously attacked by his classmates at school, the name and photograph of a 12-year-old who was charged with the attempted murder of a police officer, the names of juveniles who testified in a trial in which the adult defendants were charged with supplying alcohol to minors, the photograph of a minor child taken while in the arms of her mother on the courthouse steps following a much-publicized paternity hearing and the name and course of mental health treatment of an individual.
convicted of sexual assault when he was 14, but who was no longer a minor at the time of publication.

Even where a court proceeding or government record can be lawfully closed by government officials, courts have generally said that the government may not restrict the press from publishing newsworthy information from such records or proceedings — including minor names — when such information has been lawfully obtained through other means. However, where a reporter voluntarily makes an agreement ahead of time that allows them to obtain access to information that would otherwise be off-limits, that agreement must generally be honored.

For example, in most states juvenile court proceedings and records can be closed to the public. Some states also allow judges to close down the portions of adult trials that require juvenile testimony or evidence. In such cases, the decision of whether to allow access is often left to the discretion of a judge.

As a result, judges have occasionally placed conditions on reporters’ access to otherwise closed juvenile proceedings by allowing reporters in — but only after they have promised not to disclose certain information about minor participants that might be revealed during the proceeding. Such conditions are probably valid.

But even in such cases, the power of judges to restrict press coverage is limited. For example, a California appellate court struck down an order that prohibited reporters admitted to a juvenile custody proceeding from revealing virtually any information about the minors involved, including a ban on interviewing the minors without an attorney present, interviewing their caretakers with the minors present, interviewing any mental health professional to whom the minors had been referred or “doing any act in the future that might interfere with reunification or have a negative impact upon the providing of reunification services.”

While the media could have been denied access to the proceeding altogether, the appeals court said, it was beyond the juvenile court’s power to restrict the press’ right to investigate and publish information it had lawfully obtained outside of the courtroom.

Despite the Supreme Court’s clear ruling in Daily Mail and the lower court cases that have followed, the misconception that juvenile names are strictly “off-limits” persists. Student journalists continue to battle — and educate — school officials over their right to publish student names or other identifying information as part of their regular news coverage. This seems to be particularly true when students seek to publish “student information” (information about student grades, discipline, etc.) or when they publish online.

Of course, the same invasion of privacy rules that limit the publication of identifying information about adults in certain situations apply to information about minors as well. But these limitations are based on restrictions that apply to all, not just minors.

**Student Information and FERPA**

Many school officials — predominately at the high school level — have become particularly squeamish about allowing student journalists to publish information about their classmates. In some cases they have even required parents to sign consent forms before their child’s name or photo can be published in student-edited media. In rare instances they have simply banned the use of student names or photos entirely. Often, they justify their censorship or restrictions by pointing to a federal law known as the Family Educational Rights and Privacy Act (FERPA), also sometimes called the Buckley Amendment. While their intentions in such cases is usually not sinister, their interpretation of the law is misguided.

FERPA was enacted in 1974 after Congress found that some school officials were mishandling student records. The law has two parts. First, the law requires that students and parents be given access to the students’ own school records. Second — and this is the provision that causes most of the confusion — FERPA penalizes schools that indiscriminately release certain student “education records” to third parties.

Where the policies directed at student media miss the mark is that FERPA only restricts the release of information by school officials or those acting for them. Outside parties — including student reporters, who are neither state actors, employees nor agents of the school — are not restricted by the law. Unfortunately, school
and government officials sometimes do not understand — or simply choose to ignore — this distinction.

While it is entirely appropriate, for example, that school districts create a policy regarding a principal’s disclosure of protected student information to a student reporter (or anyone else) during an interview, it is wrong for the school to impose the same limitations on student-edited media, prohibiting them from disclosing to their readers accurate information lawfully obtained by student journalists during the newsgathering process. Despite the claims of some school officials, any policy that imposed such a flat ban on the publication of accurate, newsworthy and lawfully obtained information by student media would almost certainly be unconstitutional.

For example, in the only published court decision to address the issue, a New York federal court refused to extend FERPA to cover the release of student information published in a high school student newspaper, ruling “the prohibitions of the amendment cannot be deemed to extend to information which is derived from a source independent of school records.”

Requiring student media to limit news coverage to “approved” students destroys the student media’s reputation as a credible source of news. It also creates a logistical nightmare, forcing staff to consult an ever-changing master list of “approved” students who had consented to coverage before writing or publishing a story about them or including their photo in the yearbook. Under such a complicated scheme it is inevitable that students or school officials will make mistakes. “Unapproved” names or photos will be published in some cases and “approved” students mistakenly omitted from student publications such as the yearbook in others. Such mistakes could expose a school district to liability — or certainly accusations of incompetence — that had previously not existed.

Student news organizations have published millions of individual publications — full of student names and photos — without incident. In FERPA’s 30-plus years in force, no school has ever been fined under the law because of anything published in a student publication. It is unclear why school district lawyers and administrators now believe it necessary to enforce such policy changes. FERPA does not require it, the Constitution certainly prohibits it — and common sense suggests the system is both fraught with problems and just plain stupid.

Online Publications

From the moment the first high school student media Web sites went online in the mid-1990’s, school officials began imposing special restrictions on their use by student journalists. Among the more common restrictions were limitations, or outright bans, on the posting of student photos or names in the online version of student-edited publications. Such policies were often justified by pointing to some unspecified privacy or safety concern, often accompanied by a blanket claim that the law required such restrictions.

In fact, there are no laws that require school officials to prohibit or restrict student journalists from publishing the names or photos of students in their online publications when that information is lawfully obtained, accurate and newsworthy. Where information can be lawfully published in the print version of a publication, it can be lawfully published online as well. And contrary to all the dire warnings, there remains no hard evidence to suggest that online student publications pose any more of a danger to students than their print-based counterparts. But no matter, a fear of the unknown has always accompanied the introduction of new technology and media and, until the dust settles, such battles are regrettable, but probably inevitable.

Besides merely being silly, though, such policies could have serious legal implications for the student media and school districts. Every libel law primer begins with essentially the same advice: publish only complete and accurate information. By requiring the publication of misleading or incomplete information, a strong argument can be made that the policies prohibiting the use of full names or other identifiers like photos increase, not decrease, the odds that student media — and possibly the school district that created such a faulty system — will be subjected to libel or invasion of privacy lawsuits because of misidentifications created from the confusion. Such policies — which have been criticized by various journalism groups — also hurt an online publication’s reputation as a serious and credible news source.

The decision to publish or not publish

Even though there should generally be no across-the-board legal barriers to student media publishing minor names — in print or online — there are valid reasons for not doing so in some circumstances. For example, many news organizations do not, as a rule, publish the names of young people accused of less serious crimes. Children, the thinking goes, should not be stigmatized for the rest of their lives for an error in judgment they made while growing up.
The Poynter Institute’s Al Tompkins, who has written widely on media ethics, has created a list of useful questions and factors that student journalists may want to consider when deciding whether or not to identify juveniles, particularly those involved in criminal activities.

Among them: (1) Who is served by identifying the juvenile? (2) How newsworthy is the story? (3) What is the juvenile’s history? (4) Would others be harmed if the minor was not named or if rumors were allowed to circulate unchecked?

The decision about when and how to identify young people involved in news stories can sometimes be tough. In the end, however, the decision should be an editorial and ethical choice—not one dictated by law.

1. Smith v. Daily Mail, 443 U.S. 97 (1979). See also Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977). Supreme Court lifted an injunction that prohibited publication of the name or photograph of an 11-year-old boy charged with second-degree murder. A narrow variation to this general rule may exist in cases involving the publication of the names of minors obtained during otherwise closed hearings. Where reporters have agreed not to disclose information as preconditions to attending such proceedings, they may be legally bound to honor their agreement (see discussion, below).


7. Heath v. Playboy Enterprises Inc., 732 S.E.2d 1145 (S.D. Fla. 1999) (men’s magazine’s publication of photograph of minor child—the grandson of former talk show host Johnny Carson—did not give rise to private facts case brought by child’s court-appointed guardian despite lack of consent to photo by child).


9. See, e.g., In re H.N., 632 A.2d 537 (N.J. Super. Ct. App. Div. 1993) (New Jersey appellate court upheld the right of a newspaper to publish the name and other identifying information about a 16-year-old charged with murdering her two-month-old nephew to death while bathing him. The court noted that the information was lawfully obtained from press conferences and other disclosures made by law enforcement officials.)


13. 20 U.S.C. Sec. 1252g.

14. See, e.g., Ossian Independent School District No. 1-01 v. Fabo, 122 S.Ct. 934, 939 (2002) (a student is not a “person acting for” educational institution for purposes of FERPA); Yoe v. Lexington, 131 F.2d 241 (1st Cir. 1947) (en banc), cert. denied, 524 U.S. 904 (1998)(student editors of high school yearbook were not “state actors” and their editorial acts must be judged apart from school administrators); McFadd v. City University of New York, 635 N.Y.S.2d 4 (1995). See also, Sevier County Bd. Of Educ. v. Wooten, 1994 WL 666026 (Tenn.App. 1994)(distinguishing between information about students obtained by reporter and student records maintained by the school and protected from disclosure by state’s version of FERPA). The U.S. Department of Education, the agency charged with enforcing FERPA, has said “FERPA was not intended to apply to campus newspapers or records maintained by campus newspapers. Rather, FERPA applies to ‘education records’ maintained by an educational agency or institution, or by a person acting for such an agency or institution. Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, U.S. Department of Education (Sep. 1993).


18. There has been some question about whether a provision in the Children’s Internet Protection Act (CIPA), 47 U.S.C. § 254, could be construed to prohibit school-sponsored online student publications from publishing identifiable information about students. CIPA, a federal law that requires schools and libraries receiving subsidized rates for Internet access to install filtering software on their computers, contains a provision that requires schools to adopt and implement an Internet safety policy that addresses unauthorized disclosure of personal identification information regarding minors. 47 U.S.C. Sec. 254(b)(1)(A)(iv). Some school districts have interpreted this provision as prohibiting the publication of minor’s names or photos in student-edited publications that are hosted by school Web sites. In fact, the Federal Communications Commission has offered no guidance as to what constitutes personal identification information—but it “has repeatedly expressed its concern that the … Internet safety policies will be most appropriate for their relevant communities.” Federal-State Joint Board on Universal Service: Children’s Internet Protection Act, 47 C.F.R. Sec. 54.1 (2001). This vague directive—and the lack of a mandated definition regarding what constitutes “personal identification information”—hardly supports the argument by some school school administrators that CIPA compels them to prohibit the publication of students’ names or photos on school Web sites. Where school officials remain uncertain, however, students may want to explore alternatives to school-sponsored Web sites, such as the free Web site hosting services offered by the American Society of Newspaper Editors. (http://my.highschooljournalism.org/intro.cfm) (last viewed Dec. 4, 2006) since CIPA does not apply to private Web-hosting services.

19. See, e.g., “School districts carefully weigh using online images,” Associated Press, April 29, 2001 (reporting that there have been “no known cases where child online pornography could be traced to a school Web site”).


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**From High School briefs, Page 31:**

nantly black and referred to them as “a pack of monkeys.”

The Los Angeles Times reported on Dec. 2 that Principal Kenneth Keener postponed the issue that was due out on Nov. 27, which contained editorials advocating for legalized marijuana, calling marijuana “America’s favorite forbidden pastime” and promoting sexual freedom for teens.

Keener said the editorials needed to be better written and include alternative viewpoints.

*TribBlazer* Adviser Gregory Vieira and Editor in Chief Alex De Vera said they agreed with the school’s reaction to the first article, but told the *Times* they may “fight back” on the recent delay.

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**High school principal delays newspaper to ‘discuss articles’**

**FLORIDA** — A high school administrator delayed the release of a student newspaper in October because he said several articles required prior review and discussion with student journalists.

The Oct. 27 issue of Deltona High School’s *PawPrint* was not released until early November because Principal Gary Marks “wanted to meet with [student journalists] and talk about concerns” he had about the stories, he said.

Marks flagged eight articles after he said he found “some issues” with them.

One of the articles criticized the school for purchasing a $700 television for the front office instead of spending the money on “better purposes.”

Senior sports writer Eric Ritter said the school should have spent the money on cleaning the bathrooms and school supplies.

*PawPrint* adviser Joe Malley said that situations like this make student journalists “realize the limits of their First Amendment rights.”

Students are reminded they publish at a school where prior review is the norm, he said.

Marks said that students are only held to their responsibility to “write articles that are journalistically sound.”

Malley said he anticipates little change in the prior review policy.
As a not-for-profit organization, the SPLC is entirely dependent on contributions from those who are committed to our work. Your gifts support the publication of the SPLC Report, our legal assistance hotline, internships for college students, the SPLC Web site and many other activities on behalf of the student media. Support the Student Press Law Center through our Web site (www.splc.org/give) or by mailing your check to:

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