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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.

Thanks and congratulations

A penny saved means thousands earned for the Student Press Law Center, thanks to some creative teachers and their energetic students.

Last year, SPLC launched “Your Voice, Your Freedom,” a grassroots fundraising campaign that enlists student journalists to help raise money and public awareness to support the Center’s programming. Students responded generously, with their time and their money. The campaign brought in more than $2,800 in its inaugural year.

The 2007 campaign was built around an escalating Penny War among high schools across the country. Two co-winners — Shawnee Mission Northwest High School in Shawnee, Kan., advised by Susan Massy; and Grand Junction High School in Grand Junction, Colo., advised by Mark Newton — shared the top prize for collecting the heaviest coin. Each publication staff celebrated with an April 8 pizza party courtesy of SPLC.

The work of these and other inventive SPLC supporters in the community is on display on the Center’s grassroots fundraising page, www.splc.org/yvyf.asp.

Newton, who is coordinating the “Your Voice” campaign in 2008, said his students helped SPLC because they value their free speech and recognize its fragility.

“If we don’t give a little to support the SPLC, who will?”

OBITUARY

Charles O’Malley, 93, friend and supporter

Scholastic journalism lost a loyal and enduring champion with the March 19 passing of Charles O’Malley, a former director of the Columbia Scholastic Press Association. He was 93.

O’Malley led the Columbia University-based association for more than a decade, from 1969 to 1981. He remained an active student press advocate for the rest of his life.

O’Malley was editor of his high school paper and associate business manager for The Columbia Spectator at Columbia College, where he earned his degree in 1944. From there, he went on to build a successful business career as a shipping company executive, as publisher of a weekly newsletter about oil shipping, and as a senior executive at a company representing TV and radio stations.

He joined the CSPA in 1968 and became its leader the next year.

“He was my friend for 38 years and we will all miss his warmth, humor and kindness,” Ed Sullivan, CSPA’s executive director, said in a written statement.

O’Malley served as an honorary chairman of the SPLC’s “Tomorrow’s Voices” endowment campaign and made the largest individual pledge to that campaign.

Mike Hiestand, legal consultant to the SPLC, said O’Malley was “a great friend of the Student Press Law Center” and “instrumental” in the endowment campaign’s success.

“We owe him a great debt, just like all student media do,” he said.
**Going it alone**

Freedom from school control can come in many forms

**BY EMILIE YAM**

A student paper in New Jersey is unable to print its first issue of the semester because the student government that funds the paper freezes its entire budget. Three editors of the student paper at a private university in Illinois resign when officials tell them they cannot publish controversial content without prior approval. A student paper in Colorado is kept in the dark about a media giant’s attempt to buy it. All these events happened this year at colleges where the student papers are still under the watchful eye of the university administration.

Even at public universities, where administrators legally cannot control a student paper’s content, attempts to censor student journalists are frequent. Legal experts agree the best way for a student paper to guarantee its own editorial and financial freedom is to separate itself from the school as much as possible.

“The more that a newspaper can rely on itself and fund itself, the better they will be ultimately,” said Lillian Lodge Kopenhaver, dean of Florida International University’s School of Journalism and Mass Communication.

**Trends**

In spring 2007, Kopenhaver and Ronald E. Spielberger, associate professor of journalism at the University of Memphis, sent out surveys to hundreds of student newspapers for a study on the status of student papers’ revenues and staff salaries. The survey replicated a similar one from spring 1999, which was reported on in the spring 2000 issue of *College Media Review*.

The survey found that student papers’ operating budgets showed little growth in eight years. All funding sources for papers, except general college funds, decreased since 1999.

The results indicate student papers are increasingly reliant on funding from their colleges, and there is less progress toward financial independence. The number of newspapers who receive their funding through advertising decreased from 85.2 percent in 1999 to 81.5 percent in 2007.

Even though most student papers are still attached to their universities to some degree, Kopenhaver said the trend seems to be toward papers trying to distance themselves more from their universities.

And in some cases, it is the schools that are considering distancing themselves from their student papers.

A Colorado State University advisory committee, for example, is considering a proposal to cut the school’s ties with its student paper by converting its entire student media department into an independent non-profit corporation. The *Rocky Mountain Collegian* garnered national attention and criticism for publishing a September editorial that simply read: “Taser this ... F*** Bush.”

The proposal, developed by Student Media Director Jeff Browne, argued that one benefit for the university would be that, if the paper were independent, the university would be freed of any liability for its content. Courts, however, have said public universities generally are not legally liable for their student media in the first place, as long as administrators do not control content. The proposal has not received final approval.

**Many forms**

In the Spring 2001 *College Media Review*, a study by Wanda Brandon categorized student newspapers into three basic structures: “under the control of the university administration, published by a publication board or a student governing body and financed in part with university and student fees, and independent of university influences.” Even though many student papers say they are independent, they still receive some support from the university, such as having a rent-free office on campus, Kopenhaver said.

Mike Hiestand, legal consultant for the Student Press Law Center, said probably fewer than 40 college papers in the country are set up as independent companies that function completely separate from the university. To gain true independence, a student paper must “go both financially and practically independent of the school,” including moving the paper’s office off campus, he said.

“You are establishing yourself as a completely separate entity from the school,” Hiestand said.

Still, there are several ways a student paper can guarantee its editorial independence without completely separating from the university. At a public university, any student media policy the university adopts “has to be consistent with the First Amendment,” Hiestand said. Even with student papers published as part of a for-credit class, students can argue the paper becomes a public forum — and thus entitled to full First Amendment protection — as soon as the paper is distributed outside of the classroom, he said.

It is possible for a paper to be truly editorially independent while still receiving school funding, but it is important for the university to formally agree to recognize the paper as a public forum for student expression, Kopenhaver said. Entering into business arrangements with the university, such as selling the university a subscription in return for the paper agreeing to distribute copies on campus for free, can also give student papers an “extra
degree of independence” and create a cleaner separation of the two, she said.

A student media board can also help ensure a paper’s editorial independence by serving as the middleman between the paper and the administration.

“A good student media board will protect the student newspaper,” Kopenhaver said. “It will be kind of the buffer if the administration tries to do something in regards to the paper.”

Possibly the most restrictive structure for a student paper is when it is directly funded by a student government, Kopenhaver said. The arrangement can become problematic because of the lack of separation between a governmental entity and the medium that is supposed to cover it objectively.

The Montclarion, the student paper at Montclair State University in New Jersey, can attest to such a problematic relationship. The student government froze the paper’s budget in January, preventing the paper from printing its first issue of the semester. The university administration had to step in and announce it would separate the paper from the student government.

At a public university, if the university does try to censor the student paper, at least the law is on the paper’s side. Hiestand said. But papers at private universities have less legal ammunition when battling censorship by their administrations because the papers are not part of a public body, and the First Amendment protects against censorship only at the hands of government.

The editor in chief and two other editors at Lewis University’s student paper resigned in February after an administrator attempted to censor the paper’s content. The dean of the College of Arts and Sciences decided the Flyer could not publish the names of students or community members involved in alleged criminal activity, could not publish the word “nigger” in a news story about the word appearing on a flier on campus, and could not run a story about a university trustee being investigated by the Securities and Exchange Commission without the dean’s approval. Unfortunately for the editors, Lewis University is a private college, and there were no student media policies in place to stop the administration from censoring. The students said they resigned because they could not do their duty of informing the public with such prior review in place.

**Going independent**

The actual process of separating a student paper from the university can take a good deal of time, energy and money. Elaine English, the attorney who represented George Washington University’s student paper, the GW Hatchet, throughout its push for independence in 1993, said the process can be difficult when students are dealing with large and slow bureaucracies.

“You need to have the commitment of a steady group of students who will see it through,” English said.

English is now serving as legal counsel for Georgetown’s student paper, The Hoya, in its quest for independence. A 2006 push for independence by leaders of the paper failed when administrators decided the paper could not keep the Hoya name if it became independent. Student Alex Schank, former chairman of the Hoya’s Board of Directors, insists this year’s attempt is different.

“I think this time around, we at least all have a clear idea of the concerns on each side,” he said.

Schank said there has been more dialogue between the paper and the university than in the past. Hoya leaders, administrators and legal counsel for both parties met in January to discuss the future of the paper, including the issue of the Hoya name, and discussions on the issue are continuing, Schank said.

The working assumption is that the university could give an independent paper a series of short-term leases for the Hoya name and set conditions for use of the name, Schank said. With or without the Hoya name, former Editor in Chief John Swan said independence remains a priority.

“I think it’s pretty much agreed that an independent paper is the ultimate goal,” Swan said. Swan’s and Schank’s terms both ended in April.

Staffers will have to decide down the road whether independence should happen even without the Hoya name, Swan said.

Schank said the university grants the paper “quite a bit of editorial freedom,” but the Hoya is expected to be consistent with Georgetown’s Catholic and Jesuit identity. For example, there is an informal policy that prevents the paper from running condom advertisements. And although the university has not directly tried to censor student media, there have been past incidents where administrators have “put pressure on editors,” Schank said. If the paper were independent, it would not have to fear retribution from the university, he said.

Another big reason for seeking independence is to have financial autonomy. The Hoya staff would be able to decide how to reinvest its profits into the paper, Swan said.

Currently, Georgetown maintains control of most of the paper’s profits. This year the Hoya staff received one-third of last year’s profits, Schank said.
English said negotiations with the George Washington administration were much easier than the current negotiations with the Georgetown administration because GW fully supported an independent Hatchet. The university even hired English to represent the students in negotiations and paid for her legal fees.

“They both at least shared that common goal,” she said. “It’s not clear that [Georgetown] itself is fully supportive of the notion of an independent newspaper.”

What it takes

If the Hoya were to become independent, there would be many logistical and financial issues to deal with. One of the most critical factors in being an independent paper is its ability to financially support itself in the short and long term.

“If they want to consider independence, the financial backing from some source is going to be critical,” English said. “A student newspaper that wants to go independent can’t overlook their financial security when they become independent.”

Schank said the Hoya is confident it will be able to stay afloat financially — the paper made about $110,000 in revenue in 2007, which covered all the paper’s expenses and generated a profit. Georgetown has also mentioned in the past that the paper could stay at its on-campus office for the first semester or year of independence, he said.

The paper also has run projections for the future and expects to turn a yearly profit, Swan said.

“We would never go independent without knowing for certain that our newspaper would survive,” he said.

One of the first major steps toward becoming independent is establishing a separate legal entity from the school. The Hatchet and many other newly independent student papers are set up as non-profit corporations, English said. The process of incorporating includes filing incorporation papers with the state, setting up a corporate structure with bylaws and officers, filing with the IRS to be recognized as a non-profit and buying libel insurance. Incorporating also can involve setting up a board to oversee the corporation and deciding whether it will be composed solely of students or a combination of students and media professionals, she said.

A paper should also negotiate some type of contract with the university to ensure the paper will have access to the university in terms of newsgathering and distribution, English said. In the Hatchet’s case, the paper entered into a formal agreement with the university. The agreement is reexamined every couple of years and requires the Hatchet to produce a minimum number of copies for distribution and the university to allow distribution on campus and pay for newspaper racks, she said.

Hoya leaders believe it’s in the university’s and students’ interests to have an independent paper, and they remain optimistic about their prospects of gaining independence this year.

“It’s a multi-dimensional kind of issue, there’s a lot at stake,” Swan said. “Hopefully there’ll be some fruits for our efforts.”

Inside independent papers

The Heights at Boston College is one of the few student papers that consider themselves truly independent from their universities. Since the 1970s, the paper has functioned as Heights Inc., a non-profit corporation in which the editor in chief serves as president and the general manager as treasurer, Heights Editor in Chief Pilar Landon said.

The corporate bylaws require a board of directors, made up of four rotating Heights alumni, to review the paper’s financial records and examine its finances.

The paper, which publishes twice a week, is funded entirely by advertisement revenue and operates on a budget of about $250,000 per year. Although the paper does not struggle financially, it currently does not have the financial means to pay its student staff, Landon said.

The Heights office is located on campus, but the paper pays rent to the university on an annual basis, she said. But despite its formal independence, the paper has had to make compromises with the school so it can continue to remain on the private campus.

“The only thing that we’re required not to do to maintain the lease is to not run advertisements dealing with birth control or excessive alcohol,” Landon said.

Boston College, a Catholic university, allows the paper to distribute on campus because there is a general understanding that the paper will not print anything against church teaching, she said. Conflict did arise several years ago when the paper wanted to run a very sexually explicit column, and the university said it would not renew the paper’s lease if it continued running the column. Staffers decided to stay on campus rather than run the column, Landon said.

“It’s always kind of a balance of what’s more worth it to us,” she said.

But the paper maintains an open relationship with the university while still fulfilling its watchdog functions.

“Being completely independent, they really respect you on a different level,” she said. “They know you have power … to call them out on things.”

The Red and Black at the University of Georgia, which has been independent since 1980, also counts the freedom to investigate the school’s administration as a major benefit to independence. For example, the daily

Degrees of freedom

Many student papers consider themselves independent, but the relationships between these papers, school officials and student governments can vary widely:

- **TOTALLY INDEPENDENT** publications do not receive student fee or other university funds. They have an office off-campus and are not influenced by the university administration, student government or faculty.

- **SCHOOL-SUPPORTED, EDITORIALLY INDEPENDENT** publications permit students to control content, but have some relationship (financial or organizational) to an institution. Such publications might receive funding through a student government, free housing on campus, or have a publications board with administrative members. At public universities in most states, officials and student government members can censor only illegal or materially disruptive content.

- **SCHOOL-CONTROLLED** publications are usually at private universities or made available only within the walls of an academic classroom. University officials may engage in prior review and can prevent such publications from printing certain content.
paper currently is working on a series of articles about professors who have violated the school’s sexual harassment policy, Red and Black Editor in Chief Juanita Cousins said.

“If we were part of the university, they would say, ‘you can’t even write this story,’” she said.

Like the Heights, the Red and Black operates as a non-profit corporation under a board of directors, which is composed of university alumni who work in media. The board approves the paper’s annual budget and selects the editor in chief, managing editor and advertising manager, Cousins said. The paper also has an adviser, who is a former professional journalist.

Unlike the Heights, the Red and Black’s office is located off-campus, and the paper makes enough advertising revenue to pay its editors, reporters and photographers. Both Landon and Cousins agree there are almost no negative aspects of being independent from their universities.

Corporate ownership

The FSView & Florida Flambeau at Florida State University and the Central Florida Future at the University of Central Florida are unique in that they are student papers independent from their universities but owned by Gannett, a media corporation that also owns USA Today.

The Gannett-owned Tallahassee Democrat bought the FSView in 2006, and Gannett bought the publishing company that owned the Future in 2007. The FSView and the Future operate as for-profit entities, but editorial control has stayed in students’ hands.

“I’ve never had trouble with Gannett,” said Liz Cox, news editor at the FSView. “They don’t try to interfere, they’re basically there to help if we need it.”

Cox said although she does not necessarily like Gannett ownership because there is a bigger focus on profits, a major perk is having the opportunity to work with professional journalists.

She has attended training sessions at the Tallahassee Democrat, and some staff members have shadowed reporters and attended weekly meetings at the paper. The experiences have been valuable since the university does not have a journalism school, she said. Gannett also pays the FSView editors per issue.

But not all students see corporate ownership as a good thing. Staffers at the Rocky Mountain Collegian were outraged when they were not allowed into a closed meeting in January between the Gannett-owned newspaper the Coloradoan and university officials. Coloradoan representatives maintained the meeting was to discuss a strategic partnership with the student paper, but Gannett spokesman Tara Connell told the Student Press Law Center in March that Gannett had been seeking to buy the Collegian.

The university created an “advisory committee” in February to review the structure of the Collegian and review any proposals made by Gannett and other parties. Aaron Hedge, Collegian news editor, said the staff was confused by Connell’s comments and questioned the purpose of the committee.

Connell said Gannett ceased communication with the university after officials told the company the paper was not for sale. However, rumors continued to swirl after the initial meeting that Gannett was still seeking some role with the Collegian. The student paper remained adamant about resisting a corporate buyout.

Students arguably should be concerned about how their free speech rights will be affected when a big corporation wants to buy their paper.

“They’re a private company and can pretty much do whatever they want,” SPLC legal consultant Hiestand said.

Private companies like Gannett are not subject to First Amendment restrictions, he said. To ensure editorial freedom, a student paper would have to enter into an agreement with its corporate owner that students should have control over the paper’s editorial content.

Similarly, a student paper and its university should have a formal agreement that the student medium is editorially autonomous. It is more difficult for university officials to justify attempts at censorship when the student paper has long been granted editorial independence.

Student journalists should also be knowledgeable about their free speech rights and the level of independence they really have from the university. Not all student papers have the resources to go fully independent from their universities, but it benefits the entire college community for a university to protect the editorial freedoms of its student publications.

Judge: State can’t ban alcohol ads in campus papers

VIRGINIA — A federal judge on March 31 struck down a state ban on alcohol advertisements in student media.

The American Civil Liberties Union of Virginia filed a lawsuit in June 2006 on behalf of two student papers: Virginia Tech University’s Collegiate Times and the University of Virginia’s Cavalier Daily.

In their complaint, filed in the U.S. District Court in Richmond, the papers estimated the ban cost each of them $30,000 a year in lost ad revenue.

U.S. Magistrate Judge M. Hannah Lauck struck down two provisions of the Virginia Administrative Code. One regulation applied to alcohol ads in all print and electronic media, limiting advertisers to specific words and phrases to describe their drinks and establishments. For example, it prohibited terms such as “happy hour.”

The other provision applied specifically to student publications, banning them from running any alcohol ads except for limited references in ads for restaurants.

Neither regulation was sufficiently effective or narrowly tailored enough to justify infringing on the free speech of the papers and advertisers, Lauck ruled.

A panel of the 3rd U.S. Circuit Court of Appeals in 2004 struck down a similar law in Pennsylvania, a ruling Lauck cited in her decision.


See College briefs, Page 8
U. of Mich. drops plan for new policy on paper distribution

MICHIGAN — The University of Michigan in March dropped a proposed policy that would have limited the distribution of publications in many campus buildings.

The draft policy would have allowed only student organizations under the Board of Student Publications or those recognized by the Michigan Student Assembly to pass out fliers or display publications in College of Literature, Science and the Arts buildings. The Michigan Daily and The Michigan Review, student papers at the university, publicized the policy in January, and editors criticized it for infringing on free-speech rights.

University officials maintained the policy was created to reduce litter in LSA buildings and set guidelines for what publications would be allowed into the buildings.

Cal State system changes conduct code to settle case

CALIFORNIA — The California State University system amended its student conduct code to settle a lawsuit filed in summer 2007 by San Francisco State’s College Republicans organization.

San Francisco State investigated the group after a 2006 anti-terrorism rally where members stomped on Hamas and Hezbollah flags displaying the name “Al-lah.” One allegation was that the group violated a conduct code provision requiring students to be “civil to one another.” The charges were dropped after the five-month investigation, but the group sued to challenge the civility provision.

The CSU Board of Trustees voted in January to amend the code to state clearly that students cannot be punished for not being “civil to one another.” CSU agreed to delete language from a San Francisco State handbook requiring student groups to act consistently with the university’s “goals, principles, and policies.” The school also must pay $300 in damages and the plaintiffs’ attorney fees.

Fraternity policy at Penn State sought to bar press contacts

PENNSYLVANIA — Penn State’s Interfraternity Council created a media policy this year that Daily Collegian editor in chief Devon Lash said prevented reporters from covering major campus events and restricted the paper’s access to about 2,500 fraternity members.

The IFC “public relations policy,” said all fraternity members had to seek approval from the IFC executive board before they could comment to the press. IFC leaders said the policy was intended to inform members on proper methods of communicating to media outlets.

Lash said the policy became a free speech issue because members feared retribution for speaking to the press.

IFC President Abe Gitterman sent an e-mail to fraternity members telling them to “NOT under any circumstances talk to the Daily Collegian about anything.” In a separate e-mail he said anyone who talked to the Collegian without permission would be held accountable by the IFC Vice President of Standards.

The Executive Board voted in March to impeach Gitterman for his conduct toward other organizations, but Gitterman resigned before the impeachment trial was held. IFC leaders said they would be looking at amending the public relations policy and want an open relationship with the media.
Campus Press under pressure

After uproar over satirical column, online paper to be freed from curriculum

By Emilie Yam

Hundreds of students at the University of Colorado rallied in February to protest hate speech and racism. During the rally, a student spoke to a crowd about campus apathy towards intolerance. "It is this attitude of complacency that has allowed the demon of injustice and intolerance to breed and creep up on us once again," senior Jarvis Fuller said.

The source of "injustice and intolerance" was a Feb. 18 column published in the Campus Press, a student publication, titled "If it's war the Asians want... It's war they'll get," by student Max Karson.

The column said Asians "hate us all" and called for a "hunt" where captured Asians would be "hog-tied" and "forced to eat bad sushi." A letter Karson wrote to the Boulder Daily Camera said the column was intended to be satire and mock "racist white people." But the satire was lost on many students and university officials who deemed it offensive and hateful. The column sent the campus reeling.

The Campus Press to this point has been a student-run online publication produced as a for-credit class in the journalism department. Although the publication has an adviser, Amy Herdy, she maintains a hands-off approach when it comes to content. The journalism department has recognized the Campus Press as editorially independent for more than 20 years, and after next fall plans to make the publication independent of the journalism curriculum.

Column aftermath

On Feb. 20, University Chancellor G.P. "Bud" Peterson released a statement apologizing to Colorado's Asian communities for the column. "The column was a poor attempt at social satire laden with offensive references, stereotypes and hateful language," Peterson wrote.

Campus Press suspended the opinion section after the public backlash for about a week to set new policies for publishing opinions. As part of the new guidelines, any opinion dealing with "race, sex, religion" or "anything that you can read and can be misconstrued" will be read by all four managing editors, said Jason Bartz, Campus Press online director and the incoming editor in chief.

And any material deemed "really controversial" will be read by the entire editorial staff before being published, he said. Staffers also agreed to set up a "Student Diversity Advisory Board" and participate in diversity-awareness workshops.

Journalism faculty met on March 3 to discuss the future of the Campus Press. At the meeting, Paul Voakes, dean of the School of Journalism and Mass Communication authorized a faculty "fact-finding" committee to examine the decision-making process that led to the publishing of Karson's column.

Students became concerned about the fairness of the "fact-finding process." Campus Press Editor in Chief Cassie Hewlings said the committee was being secretive about the process and was requesting anonymous, one-on-one interviews with students.

Voakes eventually disbanded the committee because he said "the committee felt that it was getting so little cooperation from the key figures in the Campus Press controversy."

New relationship

Journalism faculty met with Campus Press staffers on April 2 to discuss the possibility of separating the publication from the journalism department. The meeting, which was taped and posted on the Campus Press Web site, quickly became tense as Herdy commented on a lack of faculty support for an independent Campus Press.

Tom Yulsman, a journalism professor, discounted Herdy's claim and said the faculty had always supported an independent Campus Press. Students at the meeting felt the tension in the room.

“This isn't dialogue, I don't see support from you guys,” Monica Stone, a Campus Press reporter, said during the meeting. “Just the tone of voices being used … that doesn't make me feel supported as a student reporter.”

Faculty expressed concern about how the publication would survive financially and function without the educational guidance of the journalism department.

“If we cut Campus Press loose, is it going to live or die?” said Len Ackland, a journalism professor, during the meeting.

But at their April 16 meeting, the faculty voted unanimously to take the Campus Press out of its "curricular twilight zone," Voakes said. Peterson made his official announcement in an April 30 column in the Colorado Daily. A new charter should be ready by November, Voakes said, and the paper will become independent of the classroom starting in spring 2009.

Current plans call for it to retain its university budget and funding for a full-time faculty adviser, and it also will keep its space in the journalism building at least until fall 2009, Voakes said.

Although some might perceive the change as a punishment, both Voakes and Bartz said it is nothing of the sort.

“This is kind of their way of washing their hands of us,” Bartz said, “but at the same time, it’s something we always wanted."
From freeze to freedom

Montclair administration separates paper, SGA after budget dispute

BY EMILIE YAM

After years of struggling to be released from the financial reins of the Student Government Association, the student paper at Montclair State University finally gained independence from the SGA – but it was no easy feat.

The Montclarion and SGA became embroiled in a dispute this year beginning in January when the SGA froze the Montclarion’s funds and culminating in the school’s administration stepping in and announcing the paper will be separated from the SGA by July 1.

The Montclarion, which has been entirely funded by the SGA, was unable to publish its first issue of the semester when SGA leaders decided to freeze the paper’s budget on Jan. 22. A letter sent to the paper from SGA President Ron Chicken cited the “unauthorized hiring” of Montclarion attorney Sal M. Anderton, and the withholding of correspondence between the paper and Anderton, as reasons for the budget freeze. Chicken fired Anderton in November.

Chicken told the SPLC in December he fired the attorney because the contract between the Montclarion and Anderton had not been properly authorized by the SGA. But the paper reported the SGA had approved $5,000 for Montclarion legal fees in its operating budget. Anderton was advising the paper on its claim that a closed SGA session violated state open meeting laws. Montclarion Editor in Chief Karl de Vries described the budget freeze as “a petty, personal vendetta.”

During a five-hour meeting on Jan. 31, SGA legislators voted to release some of the Montclarion’s funds for 30 days – enough to print the paper and buy office supplies. Negotiations between the paper and SGA failed during their only mediation session on Feb. 26.

The next day, university President Susan A. Cole announced the Montclarion would separate from the SGA by July 1. Cole also said the school would ensure enough funds for the paper to continue printing for the rest of the semester.

“The Montclarion has come to the conclusion that its relationship to the SGA poses an unacceptable obstacle to a free press,” Cole said in a statement to the SGA. “I agree with the underlying principle that government and a free press must remain separate.”

Some SGA members were less than thrilled with Cole’s announcement and the involvement of administrators in the dispute.

“I do support them being independent, however, I do not think that this situation between the SGA and the Montclarion was ground for them to be separate,” said Diana Salameh, SGA chief of staff.

History of disagreement

The Montclarion’s relationship with SGA has also been tense in the past. In a December 2006 editorial, the Montclarion called for the resignation of former SGA treasurer Maria Soares when she was facing impeachment charges for not fulfilling her official duties. Soares remained in office and attempted to freeze the paper’s budget in February 2007, allegedly in response to the newspaper’s overspending.

The SGA president and legislators at the time overruled Soares’ decision. De Vries called for the separation of the paper from the SGA in an editorial after the incident.

The paper’s separation from the SGA had been, for years, a goal that de Vries and Montclarion editors in chief before him had fought for — efforts that had thus far been fruitless. And for his part, de Vries said he remains “cautiously optimistic” about a Montclarion independent from the SGA.

The administration and the Montclarion still are ironing out the details of

See Montclarion, Page 11

Dec. 14, 2006
Montclarion publishes editorial calling for resignation of former SGA treasurer Maria Soares, who was facing impeachment charges for not fulfilling her duties as treasurer

Feb. 5, 2007
Soares delivers letter to the Montclarion announcing the freezing of the paper’s budget.

Feb. 7
SGA overrules Soares’ decision to freeze Montclarion’s budget.

Nov. 14
Montclarion Editor in Chief Karl de Vries publicly objects to an SGA motion to go into closed session. De Vries argues it would violate New Jersey open meetings laws.

Nov. 15
SGA President Ron Chicken fires Montclarion attorney Sal M. Anderton.

Jan. 22, 2008
Chicken sends letter to Montclarion informing the paper that its funds were being frozen. Montclarion publishes issue online.

Jan. 28
SGA attorney Daniel Crowe delivers letter to Montclarion demanding the paper turn over within five days all records relating to Anderton’s services.

Jan. 30
Student legislators vote 12-0, with seven abstentions, to allow Montclarion to use some of its funds for the next 30 days. Crowe withdraws demands of Jan. 28 letter.

Feb. 6
Montclarion and SGA leaders fail to reach an agreement in their only mediation session.

Feb. 27
Montclair State President Susan A. Cole announces Montclarion will be separated from SGA by July 1. SGA legislators vote 7-7, requiring a tie-breaker from the SGA vice president, to restore the Montclarion’s entire budget.
Despite April spike, theft rate steady

By Emilie Yam

The Student Press Law Center received reports of 13 newspaper thefts from January through April. Six thefts took place in April, including four in one week. But the total number of thefts reported for the school year so far — 19 — is on par with the rate of thefts in recent years. Some student papers were able to reprint and redistribute to make up for what had been lost, but some could not afford to reprint. Five of the largest thefts this year involved more than 2,000 copies of student papers stolen.

About 2,400 copies of the Feb. 1 issue of the student newspaper at Drew University were stolen. Staffers at the weekly student paper, The Acorn, believed the theft was related to an article reporting on a campus drug bust in December. The theft resulted in a loss of about $960 in printing fees. This was the third time copies of the Acorn have been stolen in recent years.

About 4,500 copies of North Dakota State University’s student paper disappeared from campus distribution racks. The March 28 issue of the Spectrum contained a special issue that included a five-page list of the salaries of all university employees, and Editor in Chief Stephen Baird said a number of university employees called to complain about the list.

An April 8 theft of 2,500 copies of Kent State University’s student paper left Daily Kent Stater staffers puzzled over the motivations behind it. The issue had no particularly controversial content in it, said Editor in Chief Bryan Wroten. The paper filed a report with campus police, but there were no eyewitnesses to the theft.

The same week, more than 8,000 copies of the Ball State Daily News April 11 issue went missing. The Daily News, at Indiana’s Ball State University, typically prints 14,000 copies per issue. The front page featured an article about the arrest of a Ball State soccer player, which garnered negative feedback from some students. Dozens of readers commented on the story on the Daily News Web site.

Robert Fey, assistant chief of Ball State university police, said police had one witness to the theft but declined to comment on what the witness had seen. The theft was the third in a year and a half for the Daily News. The cost of printing one issue of the Daily News is about $1,000. The Daily News reprinted the entire Friday issue as a section in the next Monday’s paper.

A majority — perhaps as much as 80 percent — of the 9,000-copy print run for Oregon State University’s student paper, the Daily Barometer, was taken April 18. Editor in Chief Lauren Dillard said she suspects the theft was related to a front-page article that named six students arrested in connection with a drug-trafficking ring. The theft cost the paper about $1,100, she said.

Culprits come forward

The theft of the Campus Carrier at Berry College in Georgia was the only reported incident where the culprits turned themselves in. The entire cheerleading squad took responsibility for the theft of about 900 copies of the paper and came forward to the Student Affairs Office. The cheerleaders returned the papers to Student Affairs and redistributed them to campus buildings. An opinion column in the issue criticized the cheerleaders for their lack of passion during basketball games.

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the paper’s separation from the SGA, said Minne Ho, director of communications at Montclair State. The paper and university are developing a new charter for the Montclarion, which may include a new student media board. The university also is considering separating the student radio station, WMSC, from the SGA, Ho said.

The Montclarion “probably will be supported by student fees to begin with and then move toward a revenue-based model,” she said.

De Vries said the paper did not yet make enough advertising revenue to fund itself, and funding remains the paper’s biggest concern. The SGA will continue to fund the paper until formal separation.

“The most important thing is that the student fee is mandatory, that the newspaper is guaranteed funding,” he said. “That’s not an optional thing.”

Although the Montclarion’s relations with the SGA remain less than warm, de Vries said there is less “open hostility” between the two. De Vries will be passing on the torch to a new editor in chief in June.

“It’s difficult to say if we’ve accomplished anything so far,” he said. “There’s still plenty that could go wrong.”

Other missing papers

More than a dozen student papers across the country so far this year have reported thefts. Some include:

- *Elm*, Washington College
  Copies taken: 1,000 of 1,300

  Copies taken: >600 of 2,500

- *Rebel Yell*, U. of Nevada at Las Vegas
  Copies taken: About 1,000 of 3,000

- *Driftwood*, U. of New Orleans
  Copies taken: >300

- *Loyolan*, Loyola Marymount U.
  Copies taken: >300 of 5,000

- *Counterweight*, Bucknell U.
  Copies taken: 1,500 of 3,000

- *Stylus*, SUNY at Brockport
  Copies taken: >2,000 of 5,000

Visit our Newspaper Theft Forum to learn more: [www.splc.org/newspapertheft.asp](http://www.splc.org/newspapertheft.asp)
Almost none of the area high schools had newspapers in 1984 when two Bristol Press reporters started a community newspaper written for and by teens.

Steve Collins said he and his wife, Jackie Majerus, started *The Tattoo* for local kids who had no writing outlet. But the paper is no longer local — it publishes stories on its Web site by kids who live in 22 states and 17 countries.

“Our mission is to train young writers who are interested in journalism — to try to teach them how to be good, solid reporters,” Collins said.

The first edition was one page inside the Bristol Press, but Collins said a 1996 issue about teen suicide compelled him to take the paper online so it could reach more people. Now *The Tattoo* is so big that the two reporters are forming a nonprofit so one of them can do the job full-time.

“We started off with a little kitten and now it’s like we’re trying to hold onto the tail of a tiger,” Collins said, adding that once the paper went online, more students started contacting them to write — especially students whose school papers “weren’t worth anything.”

Collins said the problem with high school journalism today, and part of the reason why students approach *The Tattoo* and other independent papers, is not necessarily what he would call “censorship.”

“In the vast majority [of high schools] … there’s no one connected to [the paper] who would even think of doing anything controversial, and that’s really the bigger problem,” he said.

Today many teens across America are taking time out of their day to write for a publication that is not affiliated with their school.

Sure, they write about friendships, community involvement, applying to college and how to be healthy. But they also write about suicide, sex, broken homes, mainstreaming and gang violence — issues some high school administrators call “controversial.”

**Wake-up call**

The Robert F. Kennedy Memorial sponsored a contest in 1970 that asked high school students to submit writing about important social issues.

According to Keith Hefner, executive director of New York City-based Youth Communication — publisher of three magazines: two by and for teens and one by parents in the foster care system — the lack of submissions said a lot about the state of high school journalism.

As a result, the RFK Memorial conducted a two-year investigation, called the Commission of Inquiry into High School Journalism. The commission asked Jack Nelson, co-author of “The Censors and the Schools” — about pressure groups that influenced the content of American schoolbooks — to compile the results into a book. The results were published in 1974’s *Captive Voices*.

“*Captive Voices* found that the high school press suffered from elitism. Kids could only get on the paper if you were in a high-track English class. … That was racial exclusion and censorship,” Hefner said. “It made the papers insipid.”

Hefner said the report called for communities to start independent, citywide papers that would not be subjected to the censorship of schools and would allow students of all backgrounds to get involved. The stories were to focus on real experiences of the students in that city, he said.

That was the goal of Chicago-based *New Expression* when it launched in 1977. Manager of Print Media Lurlene Brown said the Columbia College-based paper is now printed quarterly and has a circulation of 46,000.

Hefner followed in 1980 when he founded Youth Communication and printed the first issue of teen magazine *New Youth Connections* in 1989.
New York City. It is now printed seven times throughout the school year with a circulation of 55,000 - 70,000.

“The goal is to improve [students’] skills and give them a voice … and provide an accurate reflection of their lives,” Hefner said. “Most of our readers are poor and they don’t get that nearly anywhere.”

According to its Web site, Los-Angeles-based L.A. Youth — which has a circulation of 400,000 in Los Angeles County — formed in response to the Supreme Court’s 1988 landmark decision in Hazelwood v. Kuhlmeier. The Hazelwood ruling said school officials generally may censor items in school-sponsored student media if they can present a reasonable educational justification for doing so, and if they have not traditionally allowed students to make final content decisions.

While teen community papers work differently in terms of circulation, distribution and how they are run, they have the same goal: to give teens a voice in their community and provide them an opportunity to learn from professionals in the industry.

A wider view

Students join independent papers for several reasons. Some attend a school with no paper, others are seeking to avoid censorship, and some are just looking to get involved in an activity outside of school. A draw for many is being able to interact with professional journalists, and having the opportunity to write for a broader audience.

“The difference between high school papers and the indies is [high school papers] aren’t allowed to print anything controversial,” said Kathleen Reilly Mannix, executive director of Washington, D.C.-based Young D.C. Even when school advisers understand the importance of being independent from the administration, it is a difficult job, she added.

Jennifer A. Carcamo, a senior at High Tech High-Los Angeles, is editor in chief of her high school paper, HighTech Times. She told the SPLC in an e-mail that she founded her school’s journalism club, which led to the school’s adoption of a journalism elective. She said L.A. Youth gives her an opportunity to write about “things that matter … not just fluff news.”

“High school newspapers are more restricting than independent student newspapers like L.A. Youth. Although you are allowed to write about ‘whatever you want’ [in high school student papers], oftentimes that’s not necessarily true because it might go against the school’s mission and the school might not permit you to write about it.”

Jennifer A. Carcamo
L.A. Youth writer and high school senior

Although you are allowed to write about ‘whatever you want’ [in high school student papers], oftentimes that’s not necessarily true because it might go against the school’s mission and the school might not permit you to write about it.

Mannix said a big draw for students who work for Young D.C. is the topics they get to write about. Also, many schools require students to take the journalism course before they can write for the school newspaper, and Young D.C. does not require students to have any training. The community paper is also a good place for students to “spread their wings” and do something unrelated to school, she said.

Carcamo said her stories have ranged from an article on her family’s favorite healthy recipe to her position on the presidential elections. She has also written about her experience being censored in her high school paper.

Hefner said one advantage of working for a paper outside of school is that it offers students a certain amount of anonymity. For instance, he said, a student might want to write a personal story, but is too uncomfortable having that released in the school paper.

Writing for a paper outside of school also gives students a greater responsibility, said Lynn Sygeil, bureau director for Indianapolis-based Y-Press. Students at Y-Press have traveled to places such as Cuba, Ireland and Russia to report on issues happening outside of the United States.

“When you’re [published] in a mainstream publication, there’s a whole other layer of responsibility,” she said. “You’re not just reporting on your high school community — you’re looking for wider issues. In some ways, it’s making them literate citizens, but then it’s also making them critical citizens.”

Making it work

“Most people, when they think of something like a Y-Press, they have a profile of a young person who participates in everything … they think these are the best and the brightest,” said Sygeil, whose staff is made up of 120 young journalists. “But we really have a diverse group of people from all different backgrounds.”

Student journalists who write for community papers are from the city, the suburbs and surrounding communities or states. They write, edit, take photos, draw cartoons, choose story ideas and help design
the publication.

Most publications are volunteer-only, meaning those who participate do so after school or on the weekends. Some teen publications run inside a professional newspaper, and others are printed and distributed independently to schools, libraries and youth organizations.

*Y-Press*, which shares an 18-year-old partnership with *The Indianapolis Star* and works out of their building for $1 a year, prints in the Star’s Sunday editorial section and publishes stories on its Web site. The adult staff consists of the bureau director, a writing coach who has 20 years of journalism experience and a radio coach. *Y-Press* currently collaborates with WFYI Indianapolis, and Sygeil said students prepare a five-day, one-topic series every quarter.

Dwight Adams, copy editor and content editor for Star, edited stories for the students at *Y-Press* for two years. He said the stories were very timely and usually of interest to teens and adults alike, which he thinks broadens the Star’s audience.

“[The writers] are very curious and dedicated young journalists,” he said. “Kids and teens partially are crying out to be heard and this page helps them have their concerns noticed.”

Students who write for *The Tattoo* write stories, photograph and draw cartoons, but Collins said he and Majerus edit stories, with the help of several former *Tattoo* members. If the student writers are local, they edit the stories with them face-to-face, but those who live in different states or countries e-mail their stories for editing.

Collins said he used to recruit by speaking to high school English classes, but now students approach him when they hear about *The Tattoo* from other kids or see the Web site. The only qualification for kids to get involved is being between the ages of 12 and 18, but Collins said those who become the most involved have to be “really self-driven.”

“It’s not like I’m a teacher,” he said. “We can’t hold anything over them. It’s not like if they don’t give us a story they’ll get a bad grade.”

*The Tattoo* usually has an online issue every month, and students submit their own story ideas based on news in their own communities, including the international writers.

The most difficult part of his job, Collins said, is making sure he has the latest equipment to keep the Web site up-to-date. While Collins said he and his wife—who have two kids of their own—prefer this gig over their normal jobs, it is a very costly operation.

*Young D.C.* is funded mainly through its paper’s board of directors, who also serve as story coaches, Mannix said.

“A really dynamic board of directors should have a certain amount of money that every director brings in because they can get you in the door of a foundation,” she said. “If you’re lucky they will also still be working full time by someone who will match their donation.”

*Young D.C.* has 40-50 students who work for the 17-year-old paper, which is printed nine times a year. Mannix said she reads all content for libel and grammar, but the student staff is in charge of writing and editing. College students who once worked for the paper in high school come back and serve as editors.

North Philly Metropolis was started in 2003 as part of an after-school program at St. Elizabeth’s school in Philadelphia, according to student Editor Peak Johnson. The quarterly paper is a part of Project H.O.M.E., which wants to end homelessness and poverty in the community. Students pay a registration fee and instructors teach journalism, video, web design, visual animation, robotics and music classes.

“We want to give teens a chance — let them know that what they say really does matter and they are a part of this big world,” Jackson said. “We want to bring the community in and make a difference.”

**Filling a gap**

“The sorry state of high school journalism exists not just in urban areas but all over the entire country,” said Hefner, executive director of New York City’s Youth Communication. “It means it’s one more area in which people don’t get the chance to consume that kind of news … Part of the blame should be placed on the adult press, which never has decided to cover the high school press as much as other things that they think are important in schools.”

Ames said she has asked officials at her school, Secondary School for Journalism, about getting a student paper, but the answer she often receives is that there is not enough money.

*L.A. Youth* Executive Director and Publisher Donna C. Myrow said there is no problem distributing the paper in high schools and middle schools, because so few schools have a newspaper of their own.

“There are major budget cuts in the state. California is facing a tremendous deficit … I suspect journalism is one of the first programs to go,” she said.

Since there are so few high schools with their own newspaper, Youth Communication papers have no trouble being allowed to distribute in the schools, Hefner said. And even if a school does have a paper, the stories in independent papers are completely complementary because they do not focus specifically on high school.

Mannix said if one teacher feels “threatened” by having *Young D.C.* distributed in their school, there is always another teacher who sees value in it.

Myrow said she used to shy away from distributing *L.A. Youth* in middle schools, but now more and more teachers are requesting the paper at that level.

“We’re celebrating our 20th anniversary and we’ve certainly in that time seen a change in the community and among our readership. More and more teachers are using our paper in their classroom.”

Nelson said while there is still censorship in high schools, since Captive Voice he has seen a change in student media. Students have more outlets such as community papers, giving students more avenues to fight censorship, he said.

“It used to be that adults could just sit down on students and shut them off,” he said.

It does not look like Ames, Lujan and Carcamo will be shut off anytime soon.

“For me, joining [*L.A. Youth*] has definitely benefited me so much that I know I want to become a journalist some day,” Carcamo said.
SMOKE THIS: School pulls papers, objecting to article on hookah health effects

BY KATHLEEN FITZGERALD

Globe High School's student newspaper The Papoose was not under prior review when the 2007-08 school year began. But that changed on Dec. 7, when school officials confiscated 700 papers.

The incident led to a change in advisers, caused the student editor to lobby for a new publications policy and spurred a public disagreement between editors and administrators over what actually caused the censorship.

Co-Editor Nathan O'Neal said staff followed regular procedure when they gave the then-adviser a week to review the Dec. 7 issue. But when the adviser never completed the review, editors printed the paper anyway. Administrators pulled the papers before the staff could distribute them.

In a Feb. 7 Phoenix New Times article, student editors O'Neal and Shelby McLoughlin said Principal Sherrill Stephens told them he confiscated the papers because of one “inappropriate” headline and an editorial.

The editorial, by O'Neal, said there was a “lack of motivation” at the school, and a headline included the word “Whudafxup,” quoting from a TRUTH campaign the writer was criticizing. TRUTH is an anti-smoking campaign from the American Legacy Foundation, which runs ads on the morning TV broadcast at Globe High School.

But after the New Times article ran, the district's interim director of business operations, Robert Miller, issued a statement on the school’s Web site that said the papers were taken because of a front-page photo of someone smoking from a mouthpiece and an accompanying article on hookahs.

Miller’s statement said the paper on the front page could have been smoking tobacco, marijuana or meth. He said in his opinion, the article was about how to build and use a hookah or bong. And the article included interviews from students under the age of 18, who cannot buy tobacco legally.

“Even if the article was merely about the use of tobacco products, quotes by high school students using such products illegally could have exposed them and their parents to unnecessary and embarrassing scrutiny,” he said in the press release.

O’Neal said Miller “publicly discredited” O’Neal and McLoughlin to all district employees via e-mail and to the community through press releases and the radio by saying they misled the New Times. Both editors told the paper that they would not pursue the issue legally because they were getting ready to graduate and were ready to study journalism in college.

O’Neal told the SPLC in an e-mail that the hookah article was relevant to the student body and was written as an objective, informative piece — not as a way to promote drug use.

The article discussed how hookahs are becoming a trend, included information on the key parts of a hookah, and included several dangers of hookah smoking, including warnings from the World Health Organization.

“Considering the surplus of detrimental effects and risks to hookah-smoking, one would question why high school students insist on partaking in such a potentially dangerous form of recreation in substitute of traditional cancer-causing cigarettes,” the article read.

Miller told the SPLC that attorneys for the district advised administrators that two previous Supreme Court decisions made the censorship “prudent and allowable” — 1988’s Hazelwood School District v. Kuhlmeier and 2007’s Morse v. Frederick.

Hazelwood said school officials generally may censor items in school-sponsored outlets if they can present a reasonable educational justification for doing so and if they have not traditionally allowed students to make final content decisions. Morse said schools may punish student speech that advocates the use of illegal drugs.

Frank LoMonte, executive director of the SPLC, said the administration’s justification is not legally sufficient under either Hazelwood or Morse.

“The Supreme Court has been quite clear that, even after Morse, student speech retains First Amendment protection and that the burden is on the censor to show that the speech will genuinely impair the school's educational function,” he said. “Schools can’t properly invoke Morse to scour their news pages of every story that merely mentions drugs.”

Still, the administration devised a new procedure that involves Dean of Students Cindy Parravano reviewing content before the paper is printed.

She said she volunteered to review the paper because she has a “good rapport with the kids.” The adviser cannot make it in on Saturdays when students put the monthly paper together.

“If I felt there was an inappropriate article I would talk with the editor,” she said, adding that there has been no tension between her and the students.

O’Neal said he met with Stephens and Superintendent Timothy Trent Feb. 22 to propose a district policy that protects students against what he calls “blatant censorship and protects our individual rights.”

Trent told the SPLC that he would be meeting with Stephens and student journalists to work out a policy, but he said if an article could be considered “borderline,” there is a risk it might not run.

Parravano and O’Neal confirmed there has been no official policy change. According to the Arizona School Boards Association Web site, Globe Unified School District has a Student Publications policy that states, “Students shall be required to submit publications to the Superintendent for ap-

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**Risqué business**

**BY KATHLEEN FITZGERALD**

S -E-X — if you are a high school journalist the three-letter word often can be a quick ticket to administrative criticism.

Students in California, Ohio and Texas experienced censorship in the past few months because of content deemed inappropriate or sexual. And an Indiana high school principal brought up the possibility of prior review after a student newspaper spread included information on condoms, sexually transmitted diseases and birth control.

**Unhappy V-Day**

Grover Cleveland High School’s principal confiscated the Valentine’s Day issue of Le Sabre when it printed a diagram of the vagina on the front page. In addition, several students were suspended the following day when they wore T-shirts opposing the censorship.

Editor in Chief Richard Edmond said the staff now has to turn in newspaper content to Assistant Principal Robert Rakauskas one week earlier than usual. He said he does not plan to fight the administration because he fears his adviser’s job would be on the line.

“It cuts away from our time and we never did anything wrong,” Edmond said. “There’s no part of it that I think is OK, but we only have two issues left until the end of the year and I’d rather just do it than get our adviser fired.”

In a Feb. 19 Los Angeles Times article, Principal Bob Marks said the Feb. 14 Le Sabre issue could have caused “a potential disruption.” But Edmond said the staff simply wanted to bring awareness to the 10th anniversary of V-Day, an annual observance dedicated to ending violence against women.

The school publications policy states that material should be prohibited if it could cause a “substantial disruption,” which is “the threat of physical violence in the school or nearby community and/or the disruption of the school’s educational program.”

Adam Goldstein, attorney advocate for the SPLC, said California’s Student Free Expression Law was designed to offer students more protection, but administrators are still allowed to review content.

“In California, the education code requires administrators to demonstrate that what they want to censor is illegal or creates a clear and present danger or disruption,” Goldstein said. “I’m sure the paper was provocative, but provocative isn’t enough.”

Coleen Bondy, adviser and English teacher, said although the school has authority to use prior review, the policy has not been enforced for years, until after the V-Day issue.

“I knew we were pushing the envelope with what we were doing,” Bondy said. “My personal feeling is that a vagina is not obscene. I thought a diagram of a vagina was something students could handle.”

But Bondy, a former newspaper reporter, said she had second thoughts after she knew of parental complaints and heard students were using the front-page picture to sexually harass others.

“The administration has made it clear that I put them in a very uncomfortable position and I’m really sympathetic about that,” she said. “On the one hand we are teaching kids about First Amendment rights … on the other hand they apparently don’t have those rights as high school students.”

Calls to Marks were not returned.

**Prior review averted**

The staff of The Electron and Franklin Community High School Principal Craig McCaffrey together proposed new guidelines to govern the Indiana school’s student paper at the March school board meeting, after a January newspaper spread on sex prompted the principal to consider prior review.

McCaffrey said because the spread — which included information on birth control, STDs and condoms — was distributed in an educational setting, editors should have included ways students could get more information.

Student Editor Ricci Warwick said she attended the February school board meeting after McCaffrey told the staff he intended to institute prior review. This prompted a mediation between McCaffrey, Warwick and the yearbook editor, which John Wales, president of the Franklin school board, said led to a “process for covering controversial topics covered by The Electron.”

In the future the staff must determine the relevance of any article to FCHS students, ensure the health and safety of stu-
High School Censorship

John Gudgel gave the student a choice: change the dialogue or do not perform the play at all. Keahy refused to change the lines, and instead students in his production read aloud a statement against censorship.

According to English teacher Diseree Nickell, the prohibited language was a part of several "suggestive" lines in the play where male construction workers were hitting on females. But Nickell said the play was meant to send an anti-sexism message by criticizing the men and what they said to the women.

Ohio's Yellow Springs News reported Feb. 21 that more than 60 students, parents and residents came to the Feb. 14 board meeting to oppose the censorship. Gudgel said at the time that school officials would initiate a process involving students and faculty, the Yellow Springs Theater Arts Association and community members to address the issue.

Nickell said Glineman is a new superintendent who might not understand that Yellow Springs is a "very liberal" and "accepting" community.

Gudgel did not return SPLC's call.

Teen moms' stories silenced

The staff of The Elk at Burleson High School was forced to throw out a yearbook article featuring two teen mothers when the principal said it did not accurately reflect the ideals and values of the community.

Editor in Chief Megan Estes and one of the girls featured in the article approached the school board in February to oppose the censorship, but Estes said The Elk's March 1 deadline did not provide her enough time to go through the formal appeals process.

"I knew it wasn't going to be published in the yearbook no matter how many steps we took, and I was so busy with our final deadline that I just couldn't deal with it anymore," she told the SPLC in an e-mail.

Estes said the yearbook article was written to show other students how the girls are coping with motherhood. She said Principal Paul Cash told her he felt the article "glamorized" the teen mothers' mistakes.

Rachel Dearinger, Burleson's yearbook and newspaper adviser, said that, "unfortunately," Texas law allows Cash to review every page of the yearbook before it is published.

The Supreme Court's 1988 decision in Hazelwood School District v. Kuhlmeier said school officials generally may censor items in school-sponsored outlets if they can present a reasonable educational justification for doing so, and if they have not traditionally allowed students to make final content decisions.

Estes is now fighting Cash on the censorship of a separate letter to the editor she sent to the school newspaper. She said Cash told her the letter regarding the "Day of Silence" could not run because it had a "political agenda." "Day of Silence" is a national, youth-run effort to protest harassment of lesbian, gay, bisexual and transgendered students.

Estes said her letter informed students of what it was and why it was important to her.

"If the problem of LGBT harassment is important to you, speak up," Estes said in her letter. "Or rather, don't speak at all. Be silent."

Cash said he would not allow the letter because he felt it was advocating a student protest. He added that he is "not required to run every letter to the editor."

"I would not run a letter to the editor speaking out against the 'Day of Silence' either — it's basically a political ad for a political protest," he said.

Cash said he understands letters to the editor are student opinions, but said there is a difference between a letter opposing censorship of the yearbook article — which he allowed — and a "call to arms for the students."

Estes said Cash also recently censored a review of the movie "Juno," because it was related to teen pregnancy. Estes said she could not understand why he would censor a PG-13 movie review, but allowed the review for R-rated "300."

"I don't feel comfortable responding to that," Cash said when asked about the movie review. "I don't feel like I have to justify everything that we do in our newspaper to you."

Show cannot go on

The censorship of a one-act play during a Feb. 8 annual Yellow Springs High School fundraiser caused community and school members to express their opposition at the February school board meeting.

Yellow Springs Schools Superintendent Norm Glineman said some lines in Peter Keahy's "Catcalls" were prohibited by the student handbook. He and Princi-
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proval prior to distribution.” But Trent said he was unaware of a current policy regarding student publications.

O’Neal said there have been no further problems with the administration.

“I know that things could have gotten more heated than they had if we had stayed and argued,” he said.

Cindy Allen, managing editor of Oklahoma’s Enid News & Eagle, is involved in her community’s “High School Media Day,” where local media professionals talk to students about their careers.

“Administrators don’t care about journalism, quite frankly,” she said in an e-mail to the SPLC. “They don’t respect journalists and, by and large, I think they fear journalists.”

Allen said while she understands why the hookah article worried Globe administrators — saying students could have written an op-ed piece about the dangers of using hookahs — she feels they were “cowardly” for pulling the paper.

“What we have here and elsewhere are classic cases of administrators not wanting to take the ‘heat’ for anything, much less an item appearing in a school newspaper.”

She said local newspapers should be advocates for student journalists. Referring to columns by other professional journalists who defend administrators in cases like Globe’s, she said it does not help students when their daily papers are “complacent about what they are going through.”

She suggested student journalists approach their school board at the beginning of the year to introduce the staff, and ask to attend a meeting to make a presentation about the journalism program and “take the initiative to start something constructive.”

“Administrators need to get more education and training on the role a newspaper plays in their school and in their students’ critical thinking skills,” she said. “This requires, however, a commitment to journalism programs by providing knowledgeable and trained advisers — not just an empty suit who doesn’t have extra duty at this time.”

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**HIGH SCHOOL CENSORSHIP**

**Court: Candy canes with Christian notes not protected speech**

MICHIGAN — The 6th U.S. Circuit Court of Appeals in January ruled that a former Handley Elementary School student’s rights were not violated when he was barred from selling candy canes that had a Christian message attached. Joel Curry wanted to sell the candy canes for a class project intended to expose students to marketing and economics.

In September 2006 the district court said Curry’s rights were violated but Principal Irene Hensinger could not be held liable. Curry appealed, but the appeals court said Curry’s rights had not been violated. Because the “speech at issue was made as part of school activities,” the court applied Hazelwood v. Kuhlmeier, a 1988 Supreme Court decision that gave officials broader power to control school sponsored speech.

“Because we conclude that Principal Hensinger’s decision … was driven by legitimate pedagogical concerns, Joel’s constitutional rights were not abridged,” the opinion read.

Curry’s lawyer, Jeff Shafer of the Alliance Defense Fund, said the opinion would mean “a student who responds to a homework assignment has no First Amendment rights.” Shafer has asked the full 6th Circuit to hear the case.


**After 1-month delay, drug use article runs with official response**

TEXAS — McNeil High School Principal Cindy Doty kept her word by allowing the student paper to publish in December an article she censored the month before, but the Trail Blazer adviser — whose staff is now under prior review — was unable to comment on the situation.

The article included anonymous interviews with students who claimed to deal and use drugs. In November Doty told the SPLC the story’s sources were not valid, while adviser Theresa Proctor said she thought the article was “okay.”

The article was reprinted in December alongside a “factual response” from Doty, which said the article “contains many generalizations, allegations and misquotes that represent student body, counselors, faculty and administration unfairly.”

JoyLynn Occhiuzzi, Round Rock Independent School District spokeswoman, said the principal has always had the right to review the student paper. Doty was not doing that, but prior review now is taking place, Occhiuzzi said.

When the SPLC called Proctor in March, she said she was “instructed” not to speak about the situation.

Occhiuzzi said district policy says no employee is allowed to talk about anything “controversial.”

**Supreme Court denies appeal in case about immigration editorial**

CALIFORNIA — The U.S. Supreme Court on Feb. 19 declined to grant a hearing to the Novato Unified School District, letting stand a May 2007 California Court of Appeals decision that a former student journalist was wrongfully punished for his controversial editorial.

Andrew Smith’s 2001 editorial in The Buzz, titled, “Immigration,” stated that he is “sick” of illegal immigrants “waltzing in and abusing our country.” The column caused a student protest. The principal collected remaining copies of the paper, sent a letter to students and parents saying the article should not have been published and instituted prior review for the paper.

The Marin County Superior Court ruled in March 2005 that the administration’s actions were justified, but the California Court of Appeals reversed that decision. The California Supreme Court denied the school’s appeal in September 2007.

Open season
Private police facing greater public scrutiny

By A. Matthew Deal

An attorney’s frustrating quest to obtain documents needed to defend her client has highlighted the difficulty that many across the nation experience in accessing police records at private universities and colleges.

Private and public colleges are both subject to the Clery Act, a federal law that mandates disclosure of some basic crime information in the form of statistics and a log but does not require the release of detailed information, such as incident reports, that would give narrative accounts of crimes at a college.

The ability to access such records is essential for crime reporting, but police forces at most private colleges and universities are not required to disclose as much information as their public counterparts — and often will not release it voluntarily.

The recent decision at Yale University, however, advances the cause of creating a culture of openness at all private schools that have a police force.

Yale opens the lid

Janet Perrotti was a New Haven public defender who was investigating possible misconduct of two officers who arrested her 16-year-old client. The teenager was riding his bicycle on a public sidewalk near Yale University when university police arrested him and charged him with breach of peace.

Looks like government — open like government?

By Emilie Yam

Twice this year, Student Government Association members at Western Illinois University used secret ballots to vote on important campus issues, an athletic fee increase and implementation of a plus and minus grading system. The SGA had been using the method for some time with seemingly good intentions — to expedite and simplify the voting process. Little did members know it was potentially illegal and a violation of the Illinois Open Meetings Act.

The secret voting also did not arouse the suspicions of the student paper’s rookie reporter, who was covering the SGA meeting. Not until an SGA senator mentioned the secret ballots in passing to Western Courier staffers did the paper research the legality of the method. After discovering the secret ballots did potentially violate state open meetings laws, the paper published an editorial to inform the SGA and the public. SGA members apologized and at their next meeting, created and passed legislation that said the organization would no longer use secret ballots.

In Western Illinois’ case, simply publicizing and informing campus that the use of secret ballots was potentially illegal led to the SGA holding more fair and open meetings. The Western Courier argued in the editorial that students could not hold their representatives accountable without open, recorded votes.

“Our role as journalists was to hold the power accountable,” said Editor in Chief Jason Nevel. “We don’t get too many opportunities to call those in power out … and actually cause a change.”

But it certainly is not easy for all student journalists trying to get public information from their student governments. In November 2007, reporters for the University of South Dakota’s student paper, The Volante, were kept out of a meeting where SGA members voted to remove the SGA president from office.

The SGA also did not reveal to the paper how each member voted. The editor in...
From Private police, Page 19

Perrotti suspected police misconduct when the youth’s account of the incident differed from that of the two officers involved. Perrotti thought that a state open-records request in July 2007 for Yale’s police department for copies of the personnel files of two officers involved in the arrest would reveal information about the applicability of the case to other situations. Mitchell Pearlman, former executive director for the Connecticut Freedom of Information Commission and current treasurer for the Connecticut Council for Freedom of Information, a non-profit advocacy group, said Yale’s situation was unique.

Yale is located in the heart of New Haven. For some reason, unlike just about any other campus police department across the country, Yale’s police department has the power to police on the streets of New Haven itself. Pearlman said. Pearlman believes that the ruling has some precedential value in situations where campus police departments can exercise police power beyond the campus into the local municipality, but he is not sure this has many implications for private colleges in general.

But Pearlman did note that most states use a legal test similar to Connecticut’s to determine if an agency is considered public for the purposes of open records requests.

Corinna Zarek, freedom of information advocate for the Reporter Committee for the Freedom of the Press, said the decision is not as binding as a court ruling but also is not a purely symbolic outcome.

“It may or may not be applicable to other schools, but it definitely does help the argument that private police records should be open to the public.”

From the ‘Crimson’ ashes…

Disagreements over access to police records are not a new phenomenon.

In 2003 the student newspaper at Har- vard University, The Harvard Crimson, filed a lawsuit against the school after it was de- nied access to police incident reports. Har- vard argued its police department was not a public entity and not subject to the Mass- achusetts open-records laws.

Several appeals and three years later, the Massachusetts Supreme Judicial Court de- cided for Harvard.

After the case ended, open-government advocates began to lobby lawmakers to pass a bill that would give the public access to police records "made or received by special state police officers and educational institutions," which would have included universities like Harvard.

Versions of this bill were introduced in the Massachusetts House and Senate in 2005, but both eventually died in commit- tees.

Two state legisla-

If the bill passes, Massachusetts will join states like Connecticut that takes that kind of action it has a tremendous spillover effect. If Massachu- setts makes the bill, it would not only apply to the state, but ‘we are doing so because we shouldn’t,’” Doherty said.

If the bill passes, Massachusetts will join two other states in which groups lobbied for a police reform law after access to police records became unsuccessful.

In 1993 The Daily Pennsylvanian student newspaper at the University of Pennsylvania, filed a lawsuit against the school after the campus police department stopped releasing names of students who had com- mitted crimes. The paper lost the suit but later successfully lobbied for legislation to allow access to police university records.

A more recent example began in 2003, when a law firm representing a student who alleged she was sexually assaulted at Mercer University requested a copy of the report on the assault.

Mercer refused to release the report, and the attorney for the student filed a lawsuit against the school. As in Virginia, the case proved unsuccessful. But in 2006 Georgia passed a law opening access to police records.

Doherty said the bill’s passage might have implica- tions for other states as well.

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From Clery, Page 21

Clery Act, which mandated that colleges and universities disclose crime statistics and other campus security information. The law has been amended twice, and was renamed the Jeanne Clery Act in 1998 in honor of the slain teen.

The Clery Act might soon be amended again with legislation currently moving through Congress. The College Opportunity and Affordability Act of 2007 contains provisions that would require schools to issue warnings to those on campus within 30 minutes of discovering a threat. The bill also adds four crimes to the list of those that schools must report statistically and requires colleges to begin reporting statistics on fire safety.

The Clery Act, which applies to practically all colleges and universities, has been an important tool for campus safety and access to information. Two recent events, the shootings at Northern Illinois University and a Department of Education fine levied against Eastern Michigan University, highlight how critical the dissemination of crime information at college campuses can be.

Worst fears realized again

In the months following the tragic shooting at Virginia Tech there were several studies, commissions and recommendations for changing policies to help prevent or mitigate future school shootings.

One such panel in Virginia, commissioned by Gov. Tim Kaine, documented the administrative and communication breakdowns that occurred at Virginia Tech. Among the report’s findings was that the university was too slow to issue a warning about the initial shooting that occurred on campus.

Seung-Hui Cho shot two students at 7:15 a.m. in West Ambler Johnston dormitory, but the administration did not warn the campus about the shooting until more than two hours later, at 9:26 a.m. The warning was issued only minutes before Cho began a second series of shootings that killed an additional 30 people before Cho killed himself.

The language of the Clery Act orders that institutions of higher education issue a “timely” warning about crimes considered a threat to students or employees on campus. But under current law, the definition of timely is murky.

Daniel Carter, vice president of Security on Campus, said most schools did some form of self-assessment of their emergency response procedures in the aftermath of Virginia Tech shootings and that this was crucial in the response to the recent shooting at Northern Illinois University.

On Feb. 14 Steven Kazmierczak, a former NIU graduate student, walked into a large lecture hall and opened fire upon students, killing five and wounding 21 before killing himself. Kazmierczak began shooting shortly after 3 p.m.; 20 minutes later, the campus was alerted in several ways, including via the campus Web site, e-mail, voice mail and a public address system.

Melanie Magara, assistant vice president for public affairs at Northern Illinois University, said the university was already focused on its emergency response, but continued to reevaluate polices after the Virginia Tech shootings.

“We literally went line by line of the Virginia Tech report,” Magara said. Magara explained that the university formed committees and generated a dialogue among the campus community to develop its emergency response plans to alert campus.

“I don’t know of any of my colleagues from other universities that did not see Virginia Tech as a huge wake up call,” Magara said.

Carter said the changes NIU implemented in response to the Virginia Tech shootings ultimately meant saving more lives.

“ Issuing a warning within 20 minutes, that goes far beyond [the requirements] for the Clery Act,” Carter said.

Lessons not learned

In contrast to NIU’s meeting and exceeding Clery Act requirements, a Department of Education investigation found that Eastern Michigan University fell far short of its Clery Act obligations.

In a December 2007 letter, the department informed the school it was being fined $357,500 — the largest amount ever fined under the Clery Act — for 13 violations, including failing to issue a timely warning after the on-campus death of an EMU student.

The Department of Education conducted an investigation of Eastern Michigan in April 2007 in response to the death of 22-year-old Laura Dickinson, who in December 2006 was discovered dead in her dorm room, naked from the waist down with a pillow over her head. The university’s subsequent press release informed the campus there was “no reason to suspect foul play” and Dickinson’s family was informed that she died of natural causes.

Nearly 10 weeks later, on Feb. 23, another Eastern Michigan University student, Orange Taylor III, was arrested and charged with her murder. Taylor’s second trial for the rape and murder of Dickinson resulted in a jury finding him guilty on April 7; Taylor’s first trial resulted in a hung jury. He was scheduled to be sentenced May 7.

Among the violations cited by the DOE were the failure to provide a timely warning in the death of Dickinson, lack of oversight and structure to comply with the Clery Act, and failure to properly disclose crime statistics.

“EMU’s response to the student’s death was an egregious violation of the regulations and of its responsibility to its students, employees, parents and the public,” the DOE letter stated.

The Department of Education issued the maximum fine, $27,500, for each violation, for a total of $357,500.

Carter said part of the problem is that enforcement of the Clery Act has been spotty. Despite the law’s existence for nearly 20 years, only one school had paid a significant fine for a violation of the act before Eastern Michigan University.

“There is no real pressure [to comply], the odds of getting caught are so low,” Carter said.

Carter also said the death of Dickinson is strikingly similar to the death of another college student: Jeanne Clery.

“That’s what’s stressing the Clerys, that you could have incidents like this nearly 20 years later and nearly no notice to students that it happened,” Carter said.

Eastern Michigan University has requested a hearing with Department of Education to “discuss its concerns regarding the fine action with the appropriate U.S. De-
departmen of Education (DOE) officials.” Kenneth McKanders, general counsel for Eastern Michigan University, said he did not want discuss what those concerns were until a hearing date is set.

Some speculate that EMU could be requesting the fines be reduced, but Carter said that would be a mistake.

“They’ve made changes, and we respect that,” Carter said. “That doesn’t excuse the severity of their actions. Their only defense would be ‘we didn’t do anything wrong’, but the fact is they did do these things.”

Calling for change

With campus safety remaining an important topic in the public consciousness, there is no surprise that some are calling for updates on current laws.

The U.S. House of Representatives passed the College Opportunity and Affordability Act of 2007, a hodgepodge of provisions related to higher education. The bill would amend portions of the Clery Act, widening the information that colleges would need to record and disclose, and clarifying what is considered a timely warning in the event of a threat to a college campus.

Under the Clery Act colleges and universities are required to maintain statistics on 11 specified crimes that occur on or near campus. The new bill would add four new offenses to that list.

The bill’s most noteworthy provision would require colleges to take no more than 30 minutes to release a warning to students and faculty in the event of a threat on campus. Supporters of this provision cite the slow warnings issued at Virginia Tech and EMU. Proponents of this bill, such as Security On Campus, say the current law is unclear about what is considered timely.

But some groups, such as the International Association of Campus Law Enforcement Administrators, say the provision would not have its intended effect and would make campuses less safe in the event of an emergency.

“Every one of these situations is unique and they evolve over time, such as the Virginia Tech shooting did,” said Christopher Blake, associate director for IACLEA.

Blake said that creating a 30-minute time limit for administrators to issue a warning to a campus could open the door to a hearing of abuse.

See Clery, Page 25

BY A. MATTHEW DEAL

Three states have passed significant pieces of legislation this semester affecting public access to government information. Some of these bills have increased access to information for high school and college journalists while others have decreased it.

In Pennsylvania, the Governor Edward Rendell signed a bill Feb. 17 that updated the state’s more-than-50-year-old open records law. The old version was regarded as one of the worst in the nation.

Pennsylvania attorney Craig Staudenmaier said the main problem with the older law was its assumption that government records were closed unless requestors could prove documents fit into narrow categories that mandated their disclosure—such as proving that records concerned an agency’s use of public funds.

The updated Right-To-Know Law now shifts the burden, making all records open unless a public entity can prove the information should be exempt from release.

The new law will go into effect in January 2009 and requires that public institutions designate one person to handle open-records requests. It also creates a new agency, the Office of Open Records, to mediate conflicts over record requests.

Not all state-supported colleges are subject to the law’s access requirements. The new law designates Temple University, Lincoln University, University of Pittsburgh and Pennsylvania State University as “state-related” institutions, which are subject to relaxed requirements. These schools must submit annual reports that disclose administrative salaries and tax information.

While Pennsylvania passed sweeping and long-overdue amendments to its open-records law, Virginia eroded a small part of its law.

Gov. Tim Kaine in March signed HB 407, which will allow Virginia State University, the University of Virginia, and the University of Virginia’s College at Wise to affect private colleges or private security departments, including public college or university police departments; it will not affect private colleges or private security forces that do not have the power to arrest.

The law requires that incident reports include “the name and identification of each person charged with and arrested for the alleged offense, the time, the date and location of the alleged offense, and the property involved, to the extent this information is known.”

states revise access laws

Defining public data

Several states so far this year have changed their open-records laws. Among them:

Mississippi

defined incident reports made by public police departments as subject to the state Public Records Act and set the minimum information that must be included in incident reports.

Pennsylvania

established the assumption that government documents are public unless they fall under defined exceptions.

Virginia

permitted state universities to withhold some data about donors who ask to remain anonymous.

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Proponents argued that the bill would guarantee that donors requesting anonymity would continue to give to the universities. Opponents argued that it cripples oversight of the university and could allow anonymous donors to influence these universities for personal gain.

Open-government advocates in Mississippi were successful, after trying for several years, in passing HB 474, an update to the state’s Public Records Act that will allow greater public access to police incident reports, which previously were not specified as public.

The law, signed by Gov. Haley Barbour March 31, will apply to all public police departments, including public college or university police departments; it will not affect private colleges or private security forces that do not have the power to arrest.

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Chief of the Volante filed an open meetings violation complaint with the state attorney’s office on Nov. 16.

In 2004, the University of Northern Colorado’s student paper sued the student government, asking a Colorado district court to nullify three student government meetings that violated the open meetings law. The paper won the lawsuit — the court agreed the student government, as a state-operated body, was subject to state open meetings law.

**Gray areas**

Arguably, student governments at public universities should be subject to state open meetings and open records laws because, in most cases, they allocate university funds and make decisions on behalf of the student body — both governmental functions, said Charles Davis, executive director of the National Freedom of Information Coalition. However, student governments in most states fall in a gray area.

Only California, Nevada and Washington have statutes that specifically mention student governments as public bodies subject to sunshine laws. Student governments may also be covered under statutes that say “subunits” or “committees” of a public body should be open, like those in Colorado, Massachusetts and Ohio. A stronger argument can also be made for a student government being a public body if a public university’s board of regents has delegated power to a student government, Davis said. Student governments may also be covered under statutes in states, such as Alabama, Illinois and Virginia, that say bodies spending public money or tax revenue should be open.

**Gaining access**

Although it may not be clear in most states if state sunshine laws apply to student governments at public universities, student journalists have several options if they are denied access to meetings or records that should be public.

To begin with, student journalists should be aware of what their access rights are, said Peter Scheer, executive director of the California First Amendment Coalition. After all, there are exemptions to all state sunshine laws. In California, for example, public bodies can close meetings where they discuss pending litigation or when discussing performance reviews of employees. But only on rare occasions could a student government at a public California university legally go into closed session, Scheer said.

If student reporters feel they are being unlawfully denied access to a student government meeting, they should first object to being kept out and make sure the meeting record reflects the objection. Reporters then should request an explanation for why student government officials think reporters can legally be excluded, Scheer said.

Student journalists can then write a letter of appeal to the student government and its faculty adviser, said Mike Hiestand, SPLC legal consultant. It may also help to appeal to the dean of students or university chancellor. University officials should also be contacted, if the school has one.

“It’s his or her job to worry about the school getting sued,” Scheer said.

A growing number of states have established Freedom of Information offices where student reporters can get free advisory opinions on how state open-meeting laws apply, Hiestand said. Offices such as Florida’s Commission on Open Government Reform and New York’s Committee on Open Government are granted authority from the state to issue these advisory opinions. In states that do not have FOI ombudsmen, student reporters may be able to seek a legal opinion from the state attorney general’s office.

When requesting records such as meeting minutes or budgets from student governments, student journalists can submit a formal Freedom of Information Act request if verbal requests do not work. In most states, the appeals process for open records is clearer than with open meetings, Hiestand said.

The last recourse for a student journalist if the student government repeatedly refuses to release certain information is to file suit. Organizations like the Student Press Law Center can advise student journalists and help them get legal representation.

“You have to decide for yourself how important it is to pursue it,” Hiestand said.

**Private universities**

Private universities generally are not required by law to provide most records to journalists with the exception of some campus crime statistics, federal nonprofit tax returns (IRS Form 990) and other federally mandated reports that include information, for example, on graduation rates, athletic budgets and foreign investments. Student governments at private universities are not required by state law to grant student reporters access to records and meetings.

“Your legal options are really, really limited,” Hiestand said.

However, if there is a formal agreement that requires a private university’s student government to allow press access, student journalists can force the student governments to honor that agreement, he said.

And whether at a public or private university, a student reporter at least has the power of the press to publicize if a student government is denying the student body access to relevant information. Writing news stories and editorials can “draw attention to both the violation and the fact that the student organization is afraid to do whatever it’s trying to do in front of the public,” Scheer said.
From *Clergy*, Page 23

for abuse of the system. An IACLEA policy statement gives examples of false threats made by telephone that would require issuing a campus warning even though many ultimately are not genuine threats.

“We are concerned that this [30-minute time limit] is just an arbitrary number instead of relying on the judgment of trained professionals,” Blake said.

The House version of the bill, H.R. 4137, passed through that chamber Feb. 7, was sent to the Senate and is currently in the Health, Education, Labor and Pension committee.

Another version of the bill, S. 1642, originated in the Senate but has been stalled in committee since July 2007. Unlike H.R. 4137, it does not have the 30-minute mandate or add to the list of reportable crimes. Both the House and Senate bills would order schools to begin recording statistical information on fire safety similar to the crime statistics currently required by the Clery Act.

### Compliance and confusion

In 2005, Kevin T. Colaner, associate vice president for Student Services at California State Polytechnic University at Pomona, conducted a study on the Clery Act as part of his dissertation. Colaner surveyed 14,000 higher education professionals, all members of professional organizations such as the American College Personnel Association and the National Association of Student Personnel Administrators. The 53-item survey asked participants questions related to campus safety and knowledge of the Clery Act.

Colaner found that of the 1,347 usable survey respondents, 16.2% reported they were aware of the Clery Act, 7.9 percent said they were not aware of the details and 43.5 percent said they were only “somewhat familiar” with the law.

Colaner wrote that while awareness of the law was very high, the familiarity and depth of knowledge about the Clery Act was “very limited.”

The Student Press Law Center periodically conducts open records requests of public agencies, often during Sunshine Week, an initiative designed to highlight open government issues. One test conducted recently sought information mandated under the Clery Act. SPLC contacted 21 colleges and universities in seven states and requested (in addition to information not required under the Clery Act), a copy of the crime statistics and crime log that the Act requires.

The SPLC found that most officials were knowledgeable about the Clery Act. Often administrators would readily provide records themselves or the means of getting access to the school’s crime statistics (frequently found on college Web sites). Occasionally, however, it took some explaining to receive a copy of the crime log, mainly because administrators did not immediately identify this information as being associated with the Clery Act. Ultimately, SPLC did get of both types of information from all but two of the institutions surveyed.

One issue raised by opponents of the Clery Act amendments illuminates a critical factor in Clery compliance: federal education and assistance on how to comply with the act.

“Most of us are concerned that this provision is not sufficiently clear...”

### Clery’s impact

Student journalism is in a prime position to specialize in reporting newsworthy information: crime on campus that affects student safety.

A great example of this happened in April at Southern Methodist University, where two students — using Clery Act data — wrote an article for *The Daily Campus* documenting an increase in the number of rapes on campus from three in 2005 to 13 in 2006.

Erin Eidenshink, one of the students, said she discovered the information as part of a class on investigative journalism. The Clery Act is essential for accurate reporting on crime information, she said.

“It is one of the only laws that sets guidelines about crime statistics. Any changes that would allow for more information or more timely information is a good thing.”

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**Nov. 8, 1990**

Crime Awareness and Campus Security Act signed into law.

**Oct. 7, 1998**

Campus Security Act expanded and renamed for Jeanne Clery.

**April 7, 2005**

Salem International University settles with DOE, becoming first school to pay a six-figure Clery Act fine.

**Dec. 14, 2007**

DOE informs Eastern Michigan the department plans to levy a record $357,500 fine for Clery violations. A hearing on the size of the fine is pending.

**April 5, 1986**

Jeanne Clery raped and murdered at Lehigh University. Her parents later start advocacy group Security on Campus.

**Dec. 15, 2006**

Student Laura Dickinson found raped and murdered in her dorm room at Eastern Michigan University. School says there is “no reason to suspect foul play.”

**Sources:** SPLC archives, Security on Campus
Calif. advisers could get new shield

BY Kathleen Fitzgerald

High school and college journalism advisers in California — with the help of Sen. Leland Yee (D-San Francisco/San Mateo) — could soon receive more protection against administrators who are irked by student newspaper content.

The state Senate on April 21 approved Yee's SB 1370, which would "prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against" for protecting student speech. The bill will now go to the House.

College students in California are already protected by a law Yee sponsored in 2006, AB 2581, which prohibits administrators from "subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication" that would be protected by the state or federal constitutions outside of school. The bill would also prohibit its provisions from being construed to authorize any prior restraint of the student press.

Yee's communications director, Adam Keigwin, said SB 1370 is a reaction to an increased number of instances in which administrators pressure, and in some cases retaliate against, advisers over student speech.

"We have had at least a dozen cases that we know about throughout the state where teachers have been retaliated against for some reason, so we see a huge need for this bill," he said.

Laura W. Preston, a lobbyist for the Association of California School Administrators, said ACSA is opposed to SB 1370 because it increases red tape.

"SB 1370 will add more layers to bureaucracy and create numerous problems within our collective bargaining agreements adding to an already burdensome bureaucracy that public education in California faces," she said.

She also said she does not know if the bill will fix anything since California teachers are already able to argue against assignments they do not support.

Eight California teachers — seven of whom have been removed from their position as journalism advisers — have gone public with their stories of criticism for what they say is administrative retaliation against the student press.

Janet Ewell, who in 2005 was removed as journalism teacher and adviser for Rancho Alamitos High School, has been active in getting the teachers' case studies together for SB 1370. Ewell said all previous administrators had praised her work in journalism, and because the principal had said he disapproved of staff editorials, she believes she was removed because of newspaper content. She is now teaching only English.

"All we can do is hope that [SB 1370] gets passed and that it might act as a small rudder that will turn the ship that is headed in a very odd direction right now," Ewell said. "Education seems to be less and less concerned with creating people who can function in a democracy and more and more concerned about test scores."

Becca Feeney was the journalism teacher and adviser of Claremont High School’s The Wolfpacket for nine years when she was removed in 2007. A letter from the principal said Feeney was “irresponsible, manipulative and negligent” in allowing certain articles to run.

“They’re saying it’s a personnel issue,” she said. “They’re denying that they removed me for this reason.”

Feeney, who now teaches only English, said her union representative told her she had no case to fight the removal because it is the principal's job to assign advisers. She said when an adviser is removed because of newspaper content, the students feel they are to blame, and it causes them to second-guess themselves.

Jim Ewert, legal counsel for the California Newspaper Publishers Association, said his organization asked Yee to sponsor SB 1370.

“Since the administrators can't [censor], they're attempting to bully advisers into

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Student speech bill stalls for second year in Wash. legislature

WASHINGTON — A bill intended to protect student free-speech rights died in early February after the state Senate’s Judiciary Committee decided not to hold a hearing on the bill.

SB 6449 would have made student editors responsible for content in all school-sponsored media at public high schools and colleges, even if the outlets are school-funded or operate as part of a class. By making clear that students are the ultimate decision makers, the bill would have limited the ability of administrators to censor content. It was the second year in a row the bill failed to get a vote before the full Senate, but proponents of the bill said they had made significant headway in changing the minds of groups that opposed the bill last year.

The main push for the bill came from the Washington Coalition for Responsible Student Expression, a group of 18 media and journalism organizations. Brian Schraum, a coordinator for the group, said he believes a version of the bill will pass eventually.

Sen. Joe McDermott, the bill’s main sponsor, has not decided if he will reintroduce the bill next year.
‘Douchebags’ case will go on

By A. Matthew Deal

High school students and administrators often have very different ideas about what kind of language is appropriate. On school grounds administrators usually have the last word, but questions are being raised when the speech occurs off campus and not on school time.

Such was the case with Avery Doninger, a senior at Lewis S. Mills High School in Connecticut, who filed suit against administrators in July 2007 after she was barred from seeking reelection for class secretary, a position she had held for the past three years.

Doninger was removed from her post and prohibited from running again in May after Karissa Niehoff, the school principal, found an entry Avery wrote on Livejournal.com, an online diary.

In her blog, Doninger wrote about a dispute between school administrators and students over “Jamfest,” a battle of the bands contest that she helped coordinate and plan. Doninger, believing the concert was going to be canceled, wrote it was “due to the douchebags in central office.” Doninger also urged students to write or call Superintendent Paula Schwartz’s office about the event “to piss her off.”

Doninger was banned from running in the May election; she received the most votes in a write-in campaign but was not al-

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Adviser loses post after criticizing plan to review paper policy

ILLINOIS — Naperville Central High School’s journalism adviser of 19 years was told in March that this will be her last year in the position, after the principal said a February newspaper spread on marijuana use “seemed to glorify drug use” and included unnecessary profanity.

In a March article in the Daily Herald commercial newspaper that announced Principal Jim Caudill’s decision to review the editorial policy, adviser Linda Kane said administrators “don’t know squat” about First Amendment law.

Shortly after, she received a letter of reprimand, which she said included “silly” reasons for her removal, including the comments she made to the Daily Herald. The following week she was given a formal letter telling her she would be removed as adviser.

Caudill told the SPLC in an e-mail that she is speaking with a lawyer about legal options, and she will be teaching only English next year. Caudill said the current assistant adviser will take over Kane’s position.

In 2005, Kane threatened to resign if administrators instituted a prior review policy. That dispute ended with an agreement that the Central Times staff would meet with administrators once a month to discuss upcoming stories. In early February Kane told the SPLC the new process was working out well.

Agreement reinstates teacher who helped underground paper

WASHINGTON — The Everett School District reached a settlement April 11 with a former Cascade High School teacher who was fired in November for helping students produce two underground publications on school computers. Students moved the papers underground in 2005 to avoid prior review.

Powers’ attorney Mitch Coghill said the district’s investigation “almost ruined students’ academic years” and officials treated Powers unfairly.

Francke said the Stehekin in chief of the Stehekin, said she decided to take the paper underground because the district’s attempt at prior review was “against our constitutional rights.” She said the district’s investigation “almost ruined students’ academic years” and officials treated Powers unfairly.

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Advisers in Brief

Kane was told she violated district policies after helping students produce two underground publications on school computers. Students moved the papers underground in 2005 to avoid prior review.
Twelve states have laws against cyber-bullying, requiring schools to develop Internet safety programs or policies to control the electronic harassment that many believe is becoming more prevalent. Still, First Amendment advocates and attorneys have expressed concern over the laws’ broad definitions of “bullying” and whether schools should get involved in incidents that happen outside school.

If Maryland’s governor signs HB 199, school districts will have to come up with policies to report, control and provide student counseling in response to cyber-bullying incidents that create a “substantial disruption” at the school — even if the incident takes place off school grounds.

Sometimes a fatal incident causes lawmakers to see a need for cyber-bullying awareness and legislation. The Chicago Tribune reported March 12 that Sen. Ira Silverstein’s (D-Chicago) bill, which passed a state Senate panel March 11, came out of a suburban St. Louis incident in which a 13-year-old girl committed suicide after receiving harassing e-mails. Missouri’s bill, a result of that same incident, was approved by the Senate in February.

And in Florida, both houses of the state legislature recently approved a bill named for 15-year-old Jeffrey Johnston, who committed suicide in 2005; that bill now awaits the governor’s approval.

But bills in other states, such as Rhode Island and Utah, are experiencing problems. Sen. John Tassoni Jr.’s (D-Smithfield) Rhode Island bill, S 2012, was introduced in January, but on April 2 a Senate committee recommended it be held for further study. The bill “would expand the definition of student discipline codes to include electronic communications.”

Utah’s Deseret Morning News reported Feb. 13 that the state House put Rep. Carol Spackman Moss’ (D-Holladay) bill on hold because members felt the definitions of bullying were too broad.

David Hudson of the First Amendment Center said if the laws do not narrowly define what bullying is, administrators will run into challenges.

“This will depend on whether a court applies a full-fledged First Amendment analysis or whether they feel this is narrowly tailored enough to apply to speech that is harassment and a substantial disruption,” Hudson said.

Trying to regulate what bullying is seems to be an intractable problem, said John Morris of the Center for Democracy and Technology.

Morris, general counsel and director of the Internet Standards, Technology and Policy Project, said some exchanges among students contain “friendly banter,” and there is a mutual understanding between both parties about what the conversation is about. Those harmless conversations could be misconstrued as bullying, he said.

“And if two people engage in a posting on Facebook, it’s not at all clear to me that [it] has anything to do with the school,” Morris said.

Elliot Zimmerman, a Florida cyberlaw attorney, said schools are not equipped to handle cyber-bullying matters that happen off-campus. If one student wants to sue another over slander on MySpace, this is a matter between two individuals and their parents, he said.

But Bonnie Jasso, a counselor at Emporia Middle School in Kansas, said sometimes cyber-bullying that starts at home can create a disruption at school.

“A lot of what’s going on here is outside of school, but the angry feelings and the discussion about it is brought to school,” she said.

Kansas’ Bullying Prevention Policy, which includes electronic bullying, required all schools to have their own policy by Jan. 1. The Emporia School Board policy says it prohibits bullying “in any form on school property.”
Jasso said as long as the incident happens on school grounds, such as on school computers or on a bus, the school can take disciplinary action. Even though school policy prohibits cell phone use during school, Jasso said text messaging is one of the biggest mediums for cyber-bullying. Students also use YouTube — a popular video-sharing Web site — to post embarrassing pictures of their peers and videos of students fighting, she said.

Students have been caught sending threatening e-mails on school computers, which results in taking away e-mail access and sometimes a detention. If a direct threat is involved, the student is suspended, she said.

Cyber-bullying that rises to this level might be better handled by courts than schools, some officials have concluded.

Silverstein said he decided it was better to leave the schools out of his Illinois bill, which amends the Harassing and Obscene Communications Act.

“I thought it was the best way, constitutionally, to do it,” Silverstein said. “It’s a criminal matter so I didn’t want any conflicts with it in education.”

In March, The Eagle-Tribune reported that a juvenile was arrested in Kingston, N.H. for cyber-bullying after a school resource officer reported the incident.

Lucy Carrillo, cyber-crime prosecutor with the New Hampshire Attorney General’s Office, said the state has no law specifically outlawing cyber-bullying. But when someone makes a “direct threat,” which she said may have been the case in this incident, the person can be charged with “criminal threatening” under the state’s crime code.

Carrillo visits schools to educate students on cyber issues, and said cyber-bullying is becoming “very, very prevalent.” Several schools have asked the attorney general’s office to draft them a cyber-bullying policy, she said.

Carrillo said cyber-bullying can actually be more detrimental than in-person bullying “because it can go on all day and all night.”

But Morris said Facebook postings are not significantly different than what was being said on the playground 30 years ago.

“Kids have always mistreated other kids using whatever way is available to them, and perhaps we should all take a deep breath and not be as concerned about it and really focus on education and the impact of one’s words,” he said.

And those words are not always aimed at students. Charles Kyte, executive director of the Minnesota Association of School Administrators, said cyber-bullying directed at school administrators and teachers is a growing problem in the state. There are a number of cases where people comment on a newspaper’s online comments section under an article about one of the schools, he said.

“They are making anonymous and sometimes flagrant comments about [school officials],” he said.

Kyte said he is planning a meeting with the attorneys for the Minnesota Newspapers Association to explore solutions to the problem.

“We’re very possibly beginning to bring suit against somebody if we can find the right case,” Kyte said, adding that while the newspapers’ attorneys are protective of their clients’ First Amendment rights, “they recognize that this whole business of electronic postings is on the edge of what is appropriate and what’s not.”

Society is still getting used to the “immediacy and widespread communication of the Internet,” Morris said, which leads to another question.

“The fact that it’s on the Internet — is that a reason why we should be more concerned with it? Or should we be less concerned? It can really cut both ways.”

More than 40 percent of U.S. teens say they have been cyber-bullied, according to a National Crime Prevention Council survey released in February 2007. The survey defines cyber-bullying as “use of the Internet, cell phones, or other technology to send or post text or images to hurt or embarrass another person.”

Almost half of those surveyed think teens engage in cyber-bullying because they do not perceive any real consequences, and most teens do not think schools should address the issue. They feel that much “customary school intervention (large assemblies, etc.) would be largely ineffective.”

Aside from the 12 laws enacted, at least five other states are considering cyber-bullying bills.

Courts have ruled differently in past cases involving students’ First Amendment rights on the Internet. In 1998, Beusink v. Woodland R-IV School District, a federal district court said school officials violated a student’s rights by suspending him for a Web page that was critical of the school.

But in J.S. v. Bethlehem Area School District, the Pennsylvania Supreme Court ruled in 2002 that an 8th-grader’s rights were not violated when he was expelled for creating a Web site that school officials said caused a teacher emotional distress.

In 2005’s Neal, et al. v. Efurd, a federal court ruled that students were wrongfully punished for comments they made on their personal Web sites, which they accessed off campus. And in 2007’s Laysbock v. Hermitage School District, a U.S. district court ruled that the school district violated a student’s rights when they suspended him for creating a satirical profile of his principal on MySpace.

Lauren Gelman, law professor and executive director of Stanford’s Center for Internet and Society, said it is unclear which direction courts are taking when deciding these cases.

“There’s a strong speech interest that students have that schools shouldn’t punish them for, and with these major changes that have happened with technology, schools are going to have to learn how to address these issues,” she said.
Cutting off the grapevine

Some students are asking schools to block access to anonymous gossip sites

BY A. MATTHEW DEAL

It is not unusual to hear stories about administrators in higher education censoring student media; what is strange is when the students ask officials to censor content.

Juicy Campus, a controversial and self-proclaimed gossip Web site, has drawn wide attention and criticism from students and administrators for hosting user-created content that many consider libelous.

Many of the site’s discussions center on topics considered to be vulgar, from “Who are the biggest sluts on campus?” to “The boys most likely to send you home with an STD.”

While benign discussions exist, the site generally is a sounding board for airing taboo topics about students, frequently calling them out by name.

Its critics say Juicy Campus should be liable for the site’s content. But Matt Zimmerman, senior staff attorney for the Electronic Frontier Foundation, said Juicy Campus is protected under the federal Communications Decency Act, and cannot be held liable for content posted by visitors rather than the site’s owners.

“The short answer is that it is not responsible for content that it didn’t create,” Zimmerman said.

This, however, has not stopped the site’s critics from trying to reduce Juicy Campus’s influence.

In January, the Student Government Association at Pepperdine University passed a resolution asking the administration to ban the Web site from the campus network, quickly prompting student governments elsewhere to consider similar resolutions.

As of yet, no school is known to have banned the site from its campus network. At the two schools where the student government passed such legislation — Pepperdine and Baylor University — campus administrators have refused to block the site.

“I find it hard to believe that universities are going to take the suggestion seriously,” Zimmerman said.

Lori Fogleman, director of media communications at Baylor University, said Juicy Campus is “predicated on anonymous gossip and is full of malicious, hateful, dishonest and degrading things,” but that Baylor does not block any Web sites except those devoted to pornography.

However, Fogleman also said, “The University is considering what options we might have to force the site to remove references to Baylor.”

When asked if universities legally could block content like Juicy Campus, Zimmerman said public college and universities would find it difficult to block content without violating the First Amendment.

Zimmerman said that even with indecent content, courts have raised First Amendment concerns about libraries filtering out content at public colleges and universities.

Zimmerman said that private universities would function like other Internet service providers and have the power to decide whether they want to block content.

With little support from administrators to block the site, students have adopted different forms of protest, such as the creation of anti-Juicy Campus groups on Facebook and posting large blocks of literary text to disrupt the message threads.

Still other campuses adopted different approaches, such as Princeton University’s “Own What You Think” campaign that was highlighted in The Daily Princetonian.

The initiative urged students to sign a petition that declared actions like “posting malicious gossip and opinions on online websites” as “particularly cowardly.” The campaign also targeted actions like the tearing down of posters at Princeton and writing hateful messages in common areas of campus.

The Princeton model represents a departure from calls for the Web site to be blocked from campuses.

“I don’t think the university should have that power,” said Conner Dieman-Yauman, Class of 2010 president and an organizer of the campaign. “I think it is a real slippery slope and could encourage censorship and what we could access.”
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owed to take office.

“It would have been easy to say ‘Oh well, it happened get over it,’ but standing up for your rights is very important, it prevents democracy from becoming eroded,” Doninger said.

Avery Doninger’s suit, filed by her mother, Lauren Doninger, on her behalf, sought a preliminary injunction that would mandate a new election at the high school.

U.S. District Court Judge Mark Kravitz denied this request Aug. 31.

Kravitz wrote that “Avery must show a ‘clear’ or ‘substantial’ likelihood of success” because granting the injunction would remove the current class secretary.

The court ruled that she did not have a high likelihood of success of proving that her First Amendment rights had been violated because as a class leader she submitted herself to higher standards than other students. She was barred from running because she violated those standards by using vulgar language, not because the administration wished to punish her for disagreeing with them, Kravitz ruled.

Kravitz also wrote that the court “need not — and does not — decide in this case whether and when a school can suspend, discipline, or remove a student because of the content of a blog or e-mail the student prepared off-campus.”

Christine Chinni, an attorney for the school district, said they believe that Kravitz’s decision was correct. Chinni said she could not comment further due to federal privacy law.

Doninger appealed the district court decision to the 2nd U.S. Circuit Court of Appeals.

Jon L. Schoenhorn, the attorney for the Doningers, told the Student Press Law Center in April that the family is still awaiting a decision from the appeals court, which heard oral arguments in March. The suit seeks an injunction to prevent the school from denying Avery her right to speak at the school’s June 20 graduation as the class secretary.

“They did recognize the urgency of a decision before June,” Schoenhorn said.

Lauren Doninger said she will “definitely” continue to pursue the case, even if no decision is reached by graduation.

Schoenhorn said that a post-graduation decision will still be significant, but the practical benefit to Avery Doninger would be lost. The Donings’ suit also seeks unspecified compensatory and punitive damages.

“If it is just a damages action the value you place on First Amendment rights is hard to quantify,” Schoenhorn said. “How much is the denial of free speech worth?”

“I am definitely going to be devastated if a decision doesn’t come before my graduation, however, I think that the case should continue no matter what,” Avery Doninger said.

Schoenhorn said the case could have lasting implications for all students.

“The message by the lower court judge, in this case, is no less than students have no rights when they communicate on the Internet if it is disrespectful of authority and is likely to get back to the school,” Schoenhorn said. “It essentially overrules Tinker v. Des Moines, the 40-year-old precedent that is what gives students First Amendment rights.”

Avery said this experience has shown her the value of civic engagement.

“This case isn’t just about me wanting to become my class secretary, there is a way bigger issue involved and that is student speech rights,” Avery Doninger said.

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engaging in these behaviors,” he said. “[Administrators] have disciplined or removed advisers — often very experienced advisers — from newspapers and replaced them with folks who are either brand new teachers or have little or no journalism background.”

Ronnie Campagna had been the journalism teacher and adviser at San Marin High School for 18 years until the principal told her in 2003 that another teacher would be taking over the class. The personnel director had previously tried unsuccessfully to restrict the paper’s distribution on campus and three times tried to transfer Campagna to a middle school. She was eventually removed from her position in 2003. She now works at NOVA Independent Study, an alternative K-12 school.

“I needed to get out of there because I couldn’t stand teaching in a school where I wasn’t the journalism teacher,” Campagna said.

Of the seven states that have laws protecting student speech, Colorado and Kansas are the only two with provisions extending protection to journalism advisers. If passed, SB 1370 would be the first law enacted solely to protect journalism advisers.

Since it was enacted in 1977, California’s Student Free Expression Law has provided students of California public schools with more protection against censorship than federal courts have provided. But the law still prohibits expression that is “obscene, libelous, or slanderous.” Also prohibited is material that encourages the violation of lawful school regulations or creates a substantial disruption, or that which “incites students as to create a clear and present danger of the commission of unlawful acts on school premises.”

Spring 2008
Getting in the game
Restrictive coverage rules can sideline media, but reporters should know when to call foul

BY FRANK LOMONTE

Media organizations are crying “foul” over a movement among sports leagues, from high schools to the pros, to restrict how newspapers and broadcasters use — and re-use — the pictures and information gathered at games.

In recent months, photographers have been shooed from the sidelines, and bloggers ejected from the press box, because sports leagues wanted tighter control over the way words and pictures of sporting events are distributed.

Leagues argue that they’re simply protecting their investment — and the investment of the broadcasters who pay big money for the right to air their sporting events. And the leagues contend that the media’s right to report on a news event doesn’t include the right to profit from off the event, such as by selling souvenir prints of sports photos. But media organizations fear they’re being asked to compromise their editorial independence by surrendering greater and greater control — even ownership of their own photographs and video — to the athletic leagues they cover.

The clash came to a head recently in Illinois, when that state’s high school athletics association tried to prevent news organizations from selling reprints of photos taken at football games. The newspapers responded with a lawsuit, two pieces of hostile legislation, and a torrent of bad publicity. That confrontation recently concluded with a negotiated settlement. But similar restrictions remain on the books in other states, including Pennsylvania, and it’s likely that courts will have the final say.

The legal right of a journalist to demand unrestricted access to a sports competition — and the legal right of a sports league to control how journalists use the fruits of their newsgathering — is highly unsettled. Further controversies are unavoidable, so sports journalists must tread carefully when they step into the arena.

Going on the offense

Anyone who watches sports is familiar with the standard legal-ese disclaimer that has been appearing on television broadcasts for over half a century. Typically, it goes something like this: "The accounts, pictures and descriptions of this game may not be used without the express written consent of the commissioner." But few people stop to think about how much control a sports league truly does (or doesn’t) have over how information and images from sporting events can be shared.

Since the earliest days of broadcasting, organizers have recognized that a sports competition is a valuable entertainment property, and have made fortunes selling the right to broadcast games. The key to the value of broadcast rights is exclusivity; after all, no one would pay the National Football League or the International Olympic Committee billions of dollars for broadcast rights if a competitor could simply set up its own cameras and carry the same broadcast for free.

To protect the value of these exclusive rights, sports leagues have tried to block or restrict media access by anyone other than the official rights-holder. As far back as the 1930s, the Pittsburgh Pirates successfully sued a radio station for stationing spotters at strategic places around the Pirates’ ballpark so they could relay the action back to the station for a delayed play-by-play broadcast, competing with the “official” radio station that had paid big money for the contract to broadcast Pirates baseball.

In recent years, athletic organizations have become even more aggressive about protecting the value of their on-the-field performances, for two reasons. First, the value of exclusive broadcasting contracts has skyrocketed. And second, sports leagues and conferences are themselves getting into the business of broadcasting and webcasting their events. At the college level, for example, UCLA and USC are selling subscription packages that allow viewers worldwide — for a fee — to watch streaming online video of everything from baseball to water polo, including press conferences and post-game interviews. This means that other professional and student media outlets, once viewed as sources of valuable publicity, are now potential competitors.

Besides trying to restrict the resale of photos, as in Illinois, sports organizations at the college and high-school levels have imposed numerous restrictions on the freedom of journalists to gather news and images, and on how that material can be distributed. There have been several recent run-ins between the media and scholastic sports organizations over who can have access to games, what they can publish and when.

In March, a UCLA student operating an online radio station with a listenership of only about 500 people in the university community was denied a media credential to cover UCLA’s appearance in the NCAA basketball tournament, even though he’d been allowed to broadcast games during the regular season. The NCAA cited concerns that competing broadcasts could detract from the value of the exclusive broadcast rights belonging to CBS Sports.

In June 2007, the NCAA ejected a Louisville Courier-Journal reporter from a college baseball tournament, because the reporter was posting updates on a blog that — according to the NCAA — could have drawn viewers away from the official rights-holder’s TV broadcast. After the reporter’s expulsion prompted an outcry from the sports media, the NCAA clarified that press boxes aren’t a
blog-free zone, as long as bloggers obey the restrictions set out in the association’s media credentialing policy. The policy for NCAA championship events puts numerous restrictions on media blog sites: They must be free of charge, must display an NCAA-approved logo, and must include no more than a specified number of updated posts per match, with the number varying by sport.

Controversy over media credentialing, and on league attempts to restrict media coverage, is in no way limited to high-school and college sports. From women’s professional golf to cricket, sports leagues around the world are clashing with the media over league attempts to slap conditions on the use of photos and video.

The National Football League is in a contentious dispute with national media organizations over NFL broadcasting policies, including a ban on sideline reporting by TV news crews from stations other than official rights-holder networks. One of the most contentious points is a new league rule limiting the use of player and coach interview footage. The rule says TV and Web broadcasts — by anyone other than the network with broadcast rights — can carry no more than 45 seconds’ worth of interviews, and that any such video must be pulled down from the Web after 24 hours. A Houston paper’s Web site ridiculed the rule by posting a mock video of breathless, high-speed interviews, each cut off in mid-sentence when a timekeeper clicks a stopwatch.

NCAA restrictions on news broadcasting also inspired a parody from an NBC-TV affiliate in Raleigh, N.C. NCAA rules governing the “March Madness” basketball championship prevent television stations from broadcasting highlights from one tournament game while a later game is being broadcast. So a sportscaster on Raleigh’s WNCN-TV figured out a way to show fans the key scoring plays in Duke and North Carolina games — by reenacting the plays using his daughter’s stuffed toys.

**Shuttering the competition**

Normally, the law governing photography is quite clear: As long as the photographer is standing in a place that she has a legal right to be (e.g., a park, a sidewalk, the open spaces in a public building), and as long as the subject of the photo can be seen with the naked eye (e.g., not using devices such as nighttime infrared lenses), then the photographer can snap away, and the images she captures are hers to publish or sell. When a photographer enters a ticketed event that is not freely accessible to the general public, however, the organizer of the event generally has greater leeway to impose preconditions in exchange for admittance.

That’s what the Illinois High Schools Association (“IHSA”) has been trying to do with the athletic events it governs — most notably, football.

Last fall, the IHSA imposed a rule prohibiting sports photographers or their employees from selling reproductions of photos shot at interscholastic sporting events; agreement to the no-resale rule was required as a condition of receiving press credentials. The IHSA has a licensing agreement with a Wisconsin company to be its official photographer. The company has the exclusive right to sell photographs taken at state championship events. In November, several media outlets that refused to sign the agreement were banned from shooting from the sidelines at the state high school football championships.

According to the Illinois Press Association, an industry group that represents newspapers, the sale of photos from high-school football wasn’t a hugely profitable business; papers made no more than a few thousand dollars a year, perhaps enough to pay the expense of sending a shooter to the games. But the sales were a popular means of building reader goodwill with parents who wanted action shots of their kids.

Illinois newspapers met the restrictions with overwhelming force. They persuaded legislators to introduce two bills, one in the House and one in the Senate, which declared that neither schools nor the IHSA could interfere in any way with media coverage of their sporting events. The Illinois Senate overwhelmingly passed its version of the bill on March 31, sending it to the House.

The press association and two Illinois daily newspapers also filed suit in Sangamon County Circuit Court on November 1, 2007, alleging that IHSA restrictions were an unconstitutional restraint on publishers’ First Amendment rights. The suit also alleged that the athletic association’s preferential treatment of its own contract photographer violated the papers’ equal-protection rights.

On April 11, the IHSA and the Illinois Press Association announced a settlement, under which the sports association dropped its restrictions on the use of photos; the association can limit the number of credentials based on space and safety concerns, but not based on what the photographer plans to do with her pictures. In return, the newspaper industry agreed to drop its lawsuit and to stop pressing for passage of the legislation.

Although it appears that the Illinois credentialing restrictions will no longer be enforced, similar restrictions remain on the books in several other states, including Wisconsin and Pennsylvania. It is not clear what impact the outcome in Illinois may have on other athletic associations’ willingness to confront the media over the legality of re-
restrictions on credentialing.

**Pushing through the blockers**

Every state has a “sunshine” law that requires government meetings to be open to the public and accessible for media coverage. But a school athletic event — even though it is a publicly funded program taking place in a publicly funded venue — is not a “meeting” that would typically fall within the coverage of an open-meetings statute. So journalists seeking to cover sporting events must look elsewhere for a legal basis to insist on unfettered access in the face of resistance from the sports leagues.

One possible recourse is under the First Amendment. While it is unlikely that a court would say that student journalists always have a First Amendment right to demand access to the event of their choosing, once a sporting event in a publicly funded venue (such as a school stadium) is held open for some media coverage, other media outlets can’t be refused credentials arbitrarily — and credentials can’t legally be withheld merely because the organizers of the event dislike the content of the publication. Further, where an event is accessible to the public (even to ticketed members of the public), the organizer must at least be able to point to some legitimate basis for placing special restrictions on the media that aren’t placed on the general public. For example, if the general public is allowed to bring cameras into an event, the First Amendment would not allow organizers to prohibit the media from shooting the same event without some justification.

Importantly, at least one appeals court has recognized that, when it comes to the use of photos from a newsworthy sporting event, the media’s First Amendment rights trump the rights of the athlete to control the use of his likeness.

After the San Francisco 49ers throttled the Denver Broncos in Super Bowl XXIV in 1990, the San Jose Mercury News printed and sold a special souvenir edition commemorating the Niners’ back-to-back championships, then printed and sold posters carrying a reproduction of the special edition’s cover. Niners’ quarterback Joe Montana, who was featured in the special edition and poster, sued the newspaper for misappropriation of his likeness. A California appeals court battled down Montana’s attempt.

The court held that the First Amendment protected the newspapers’ right to reproduce and sell images of newsworthy events. Importantly, the court found that the right to publish also encompasses the right to promote the paper’s coverage — and the use of news photographers’ work in the special edition and in the poster was a way of promoting the print edition of the paper. The quarterback, the court said, could no more complain about being featured in the special edition or poster than he could complain if the newspaper reprinted that day’s front page in a house ad encouraging people to subscribe to the paper.

The Montana case involved a media outlet using the First Amendment defensively — that is, to block a claim of unfair use of a famous player’s photo. It is less certain how a First Amendment claim will fare when used offensively — that is, to demand access to a sporting event free from unwanted restraints on coverage.

A First Amendment claim will work most readily in a publicly funded stadium, because the First Amendment protects against government censorship, not action by private companies. But a surprising number of sports venues — including New York’s Yankee Stadium — have been found to be “public” in nature, either because of direct government ownership or because government is closely involved in the operation of the venue and collects money from the proceeds of sporting events.

There are significant limits, however, that make it difficult to obtain unrestricted access to a sporting event based on a claim that the organizer is violating the First Amendment. Courts have held that, while the First Amendment strongly protects the right to publish the news, there is no comparably strong First Amendment right to gain access to a news event, or to record or photograph the event. Also, unlike the more commonplace First Amendment claim of unlawful government censorship, a First Amendment claim based on denial of access to a sporting event will receive lesser court scrutiny. The hurdle that a government agency must overcome to justify indirect censorship — by denial of sports credentials — is lower than the hurdle the agency would face if it censored a publication directly. The operator of a sports facility may be able to justify its conduct merely by showing that unrestricted media access would hurt the facility economically — for example, that fewer people would buy tickets if the event could be seen on TV or on the Web.

If faced with a First Amendment claim, a sports organizing entity likely would argue that it is a private organization and not a “state actor.” If the entity doing the censoring is not a government agency, then its actions fall outside of the First Amendment, and any restraint on speech can’t be challenged as unconstitutional. Proving that an organization should be treated as a government actor is not always easy. The Supreme Court has so far been reluctant to hold that the NCAA is a state actor, even though NCAA member institutions are public colleges and the organization reaps substantial revenue from dues paid by public institutions.

Similarly, because many state high school athletic associations are set up as nonprofit corporations, they would likely argue — if faced with a First Amendment claim of denied access — that they are merely private business entities, and thus don’t operate under First Amendment limits. That argument may not wash, however, when the association is delegated authority by the public schools to set the ground rules for publicly funded events in publicly funded stadiums.

**A trust that’s tough to bust**

Media companies have tried, without much luck, to overcome limits placed on their coverage of sporting events by arguing that the promoters of the event are monopolists, in violation of antitrust laws. Antitrust law prohibits businesses from engaging in various forms of unfair competition, such as cutting off access to a facility that a competitor must have to be able to compete.

In theory, at least some courts have recognized that access to the press box of a sporting event is so essential to competition that a sports promoter cannot choke off access to the press box as a way of shutting down potential competition. But antitrust claims against sporting leagues have proven to be difficult to win.

One of the most famous recent sports/antitrust cases is *Morris Communications v. PGA Tour*. In *Morris Communications*, a newspaper publishing company challenged the rules of a professional golfing league, which provided that — as a condition for receiving media credentials to cover top golf tournaments — media outlets agree to delay publishing updated scores online until after the scores had first been posted on the golf
league’s own Web site. The newspapers argued that, because only the PGA Tour could provide real-time golf scores, its policies were choking off any possible competition, in violation of federal antitrust laws.

A U.S. District Court found no unlawful monopolistic conduct by the PGA Tour, and the 11th U.S. Circuit Court of Appeals agreed. The 11th Circuit decided that, even if the Tour had monopolized access to real-time scores, there was a valid business justification for doing so. The Morris newspapers were piggybacking on the PGA Tour’s system of on-the-course spotters, who gathered and relayed the results of each golf shot as it happened. Because the “product” that Morris wanted to sell was recycled from the PGAs labor and investment, the court ruled that the PGA was entitled to protect its investment by preventing others from re-selling real-time results. It was important to the court’s decision that the PGA was willing to provide Morris with real-time scoring results — for a fee. Had the PGA refused to make the scores available for sale at any price and insisted on exclusive control over them, the court’s ruling might well have been different.

The Morris Communications case and others show the difficulty of challenging a sports league’s control over the images and descriptions of a sporting event under antitrust law. At the same time, because the Morris case involved a product created by the league — in that case, a scoring relay system — the outcome in Morris does not necessarily mean that a league can control or monopolize a product, such as a news photograph, that is the result of someone else’s effort and creativity.

Whose right is it, anyway?

Sports promoters’ efforts to protect their “product” from unwanted use by media outlets raises an interesting and unclear legal issue: What exactly is the “product,” and who exactly owns it?

Copyright law protects only ideas that are captured in some tangible form, like a drawing or a recording. So the act of John Smoltz throwing a fastball, or Randy Moss catching a touchdown pass, isn’t recognized as copyright-protected material, just as Mariah Carey doesn’t hold a copyright on the live performance of a song onstage. But once their performances are recorded digitally or on tape or on film, the recording belongs to someone — and owning the copyright means having the right to decide how and when that recording can be used.

Sports leagues should not be able to invoke copyright law to stop journalists from relaying real-time scores as games are in progress. A federal appeals court addressed that issue in a dispute between the National Basketball Association and Motorola. Back before just about everyone was walking around with handheld Internet access, Motorola launched what was, at that time, a cutting-edge service to beam updated NBA scores and news flashes to people’s pagers. Beeper-wearers paid Motorola a subscription fee to receive their minute-by-minute basketball “fix.” The NBA tried to say that Motorola was violating the league’s copyright, because the league had its own real-time scoring service and was hoping to compete with Motorola. But the 2nd U.S. Circuit Court of Appeals in New York found no harm and no foul.

Only the NBA’s scoring system — not the scores themselves — could be copyrighted, the court decided. Unlike the Morris newspapers, Motorola was gathering the scores using its own spotters, not freeloaders on the NBA’s copyrighted scoring system. Thus, there was no copyright violation. Further, the court found, the NBA did not show that receiving scores downloaded to a pager was causing people to stop watching or attending games, so Motorola’s service wasn’t hurting the league’s bottom line.

The Motorola decision, and others like it, are important because they indicate that a sports league can’t use copyright law to stop someone from re-reporting his observations of a sports event, as long as whatever reports the person creates are his own original work. It is therefore unlikely that, if the NCAA tried to ban all blogging at college sporting events, a court would find that posting updated descriptions of game action violated anyone’s copyright.

Whether on-the-field sporting activity can be copyrighted is a hot issue between sports leagues and the operators of fantasy sports competitions. Fantasy sports are a $4-billion-plus industry that has spawned some 30,000 Web sites devoted to everything from fantasy baseball to fantasy cricket to fantasy bass fishing. The essence of fantasy sports — that competitors score points based on the performance of their selected athletes — requires the use of real-world athletes’ names and statistics. If sports leagues (or the athletes themselves) could claim ownership of team rosters, or player statistics, fantasy competitors could be forced to pay up for the privilege of using information that is now theirs for free.

Copyright or copy-wrong?

Even though courts have yet to recognize that a sports league can copyright the on-field performance of athletes, at least one state is trying to stake control over journalists’ photos of high school sports from the moment a picture is snapped.

The Pennsylvania Interscholastic Athletic Association, Inc. (“PIAA”) introduced a new policy in 2007 that asserts: “PIAA is the owner of the rights to and the copyright holder of all Contests conducted under its jurisdiction.” Under that policy, the Association asserts that members of the media can neither sell, nor give away for free, reprints of photos of athletic contests, unless the reprint is requested by a student or by the student’s school. The policy also provides that video clips of Pennsylvania high-school sporting events may be used to show excerpts only as “part of a regularly scheduled sports or news program and for no other reason.” If literally enforced, that policy would appear to preclude Web-posting video clips for continuous access. Further, the policy attempts to limit television broadcasters to airing no more than 3½ minutes of footage from any particular game. Additionally, the policy says no local news station may air a “live report” of a PIAA-administered sporting event while the live broadcast of the contest by the broadcast rights-holder is still in progress.

There are no known cases of the PIAA attempting to enforce these restrictions against either student or professional media, according to Melissa Melewsky, Pennsylvania Newspaper Association media law attorney. The newspaper association sent a letter of protest to the athletic association after the 2007 rules changes were circulated, arguing that the PIAA is exceeding its legal authority. The PIAA offered to discuss the matter with the newspaper industry, but Melewsky said no talks have yet been held or scheduled.

The newspaper publishers pointed out that the copyright to any particular creative work belongs to the creator of the work (or, if the work is done for-hire, to the creator’s employer). Since the “work” in this case is the photograph — not the throwing of a touchdown pass — the law would appear to recognize the photographer’s employer,
not the PIAA, as the rightful holder of the photo’s copyright.

Although it is always possible for a copyright-holder to sign away the rights to a work, Melewsky said merely requiring a reporter or photographer to sign a waiver or release when picking up a sports credential might not hold up in court as a legally effective waiver.

“Of course, the individual photographer doesn’t have authority to bind the newspaper to a copyright agreement, so that’s a huge legal barrier in our minds. ... That would create a world of headache if every newspaper photographer who attended an event could sign away a right that belongs to the newspaper. Their [PIAA] policy doesn’t appear to recognize that distinction.”

### When suing isn’t the answer

The lesson from the Illinois experience is that, when faced with resistance to unimpeded media coverage, student journalists should look to their natural allies. In the case of Illinois sporting events, it was the parents of the athletes who feared they’d miss out on action shots of their kids performing on the field. Those parents shared the interest of journalists in making sure that photographers from multiple media outlets could freely cover games and make their photographs available for sale. It was parental lobbying that got the Illinois legislature interested in the issue, and that brought the Illinois High School Association to the negotiating table.

Another potential ally is the professional media. Sports access restrictions rarely will single out the student media for special disfavored treatment (and in fact, the reverse may be true), so if your student publication is suffering from coverage restrictions, the local and national media probably are, too. Sports coverage is big business to the professional media, so student publications may be able to ride on the coattails of larger publications’ legal challenges.

Publicity, when used carefully and respectfully, can also be an asset. Sports leagues depend on public goodwill to sell their tickets, foam fingers, and $9 hot dogs. If readers think unfavorably of the local team because its coverage policies are unfair or mean-spirited, then the team’s bottom line can suffer — and elected officials can sense a popular issue and may get involved as well. A barrage of negative publicity, and the prospect that the professional media might refuse to cover games, convinced the Louisiana High School Athletic Association to abandon enforcement of a restrictive credentialing system similar to Illinois’.

Individual journalists covering sporting events can take common-sense precautions to minimize the risk of a credentialing dispute. One precaution is simply to keep a low profile when covering an event. Reporters and photographers are more likely to be left alone to do their jobs if they are unobtrusive, reasonably quiet, and professional.

Be careful about signing any forms or releases before entering a sporting or entertainment event. If a sports league or school wants to impose conditions on the receipt of a credential, the league should work that out in advance with an editor; restrictions shouldn’t be sprung suddenly on game day. If you are shown something unfamiliar, insist on keeping a copy of it.

If you are told that you can’t be admitted to a sporting or entertainment event without signing away rights, try to get in touch with an editor — or a lawyer. Some sporting events will waive conditions, in particular for student media, if they are asked politely (or if they sense trouble).

If your publication is covering a sports league for the first time, do some homework and become informed about the league’s credentialing policies so there are no unpleasant surprises.

Read carefully any wording on a media credential itself or on any handout material you are given as part of the credentialing process. These materials may attempt to impose implied restrictions, of which you should be aware.

If you think you have been singled out improperly for denial of press credentials, or for special limits or conditions imposed on your credentials, get in touch with an attorney or with the Student Press Law Center at (703) 807-1904, splc@splc.org.

In the end, however, it is the reporter or photographer’s first responsibility to get the story or capture the image. Unless the conditions being imposed are unbearable — e.g., the league says you can take pictures only if you stand in the same spot for three hours without moving, drinking or going to the bathroom — it’s probably best to sign a credentialing agreement if the alternative is to be kicked out of the stadium, since there’s a good possibility that a court would hold the agreement unenforceable anyway.

### Endnotes

1) The NFL has television contracts with three major networks, a cable sports channel, and DirecTV worth close to $25 billion through 2013. Kevin Goheen and Rick Bird, Restrictions Have Local Stations Unhappy, The Cincinnati Post, May 12, 2006 at B1.

2) Pittsburgh Athletic Co. v. KQV Broadcasting Co., 24 F. Supp. 490 (W.D. Pa. 1938). See also National Exhibition Co. v. Fas, 143 N.Y.S. 2d 767 (Supreme Court, N.Y. County 1955) (ordering teletype operator to stop transcribing radio reports of New York Giants baseball games for re-sale to radio stations, which used the transcripts for delayed play-by-play broadcasts).

3) Greg Johnson and Larry Stewart, Online channels feed college sports fans, Los Angeles Times, December 24, 2007 at 11.


5) D`Amario v. Providence Civic Center, 639 F. Supp. 1538 (D. R.I. 1986). But note that in the D`Amario case, which involved a ban on photographing rock concerts in a public arena, the court found that the government’s restrictions were reasonable, because the government was merely honoring the contractual demands of musical acts that refused to perform if their performances could be photographed and reproduced in the media.


8) See Foto USA v. Florida Board of Regents, (11th Cir. 1998) (rejecting a photography company’s claim that there is a First Amendment right to record or photograph graduation ceremonies at a public university).

9) See, e.g., Post Newsweek Stations-Connecticut, Inc. v. Travelers Ins. Co., 510 F. Supp. 81 (D. Conn. 1981). In the Post Newsweek case, a federal court upheld the City of Hartford’s restriction on broadcast credentials that required local TV stations to agree not to telecast figure-skating highlights until after the exclusive broadcast contract-holder had aired the event. Because the City was functioning like any other business in the operation of its civic center — a “proprietary” rather than “governmental” function — the City’s actions were not reviewed under the same demanding scrutiny that would be required if the City were acting as a government regulator. It was enough that the
City’s restriction was not arbitrary, because the City could rationally believe that a telecast of highlights would detract from the later broadcast of the full event. The court stated that coverage of athletic or entertainment events was “on the periphery of protected speech” and not entitled to the same importance as if the City had restricted television coverage of a political event.


12) For instance, when home-school parents challenged Michigan’s eligibility rules for interscholastic sports as unlawfully discriminatory, a Michigan court held that the acts of the Michigan High School Athletic Association are state action, and thus can be struck down as unconstitutional unless supported by a “compelling” justification. Reid v. Kenowa Hills Public Schools, 261 Mich.App. 17, 26, 680 N.W.2d 62, 68 (Mich. Ct. App. 2004).

13) See Phone Programs Illinois v. National Jockey Club, 692 F. Supp. 879 (N.D. Ill. 1988) (finding that a company that wanted to distribute horse-racing results could prevail on an antitrust claim alleging that three racetracks unlawfully conspired together to deny the company access to their racetracks, and that denial of access to press box facilities could be the basis of an unfair competition claim).

14) 364 F.3d 1288 (11th Cir. 2004).

15) National Basketball Ass’n v. Motorola, Inc., 105 F.3d 841 (2d Cir. 1997).


18) Courts also tend to look unfavorably on “take-it-or-leave-it” agreements in which one side of the so-called “bargain” is given no real choice (these are known in the law as “contracts of adhesion”). Although a contract of adhesion is not always void, a court will view the agreement skepticaly, and may find that the agreement is unenforceable if its terms seem especially lopsided or unfair.

State high court denies former dean’s appeal in libel suit

MINNESOTA — A state Supreme Court refused to hear a former dean’s libel lawsuit against St. Cloud State University’s student newspaper, the University Chronicle.

In October 2003, the Chronicle published a story that quoted a past student of the former dean, Richard D. Lewis. The student alleged Lewis mistreated her by changing her grade from an A to an incomplete, and that Lewis was anti-Semitic and used racial slurs. The Chronicle in November 2003 issued a partial retraction recanting statements that implied Lewis was anti-Semitic.

Lewis originally filed a defamation suit against St. Cloud State University and the university system. Both the state district court and the Court of Appeals ruled that the school was not liable because students, not school officials, controlled the content of the paper. The Minnesota Supreme Court declined to hear Lewis’ appeal in June 2005. Lewis then filed a suit against the Chronicle.

The district court dismissed Lewis’ case, ruling that he was a public figure, thus requiring him to prove the paper published the article with reckless disregard for its truth in order to win. The Court of Appeals upheld this decision in January, and the state Supreme Court turned down the case April 17.


Prosecutor’s appeal denied in suit over criminal libel charge

WASHINGTON, D.C. — The U.S. Supreme Court declined to hear an appeal from a former prosecutor who authorized a warrant to search a student’s home during an investigation into whether he had violated Colorado’s criminal libel statute.

In 2003 Susan Knox, a Colorado prosecutor, started investigating a Northern Colorado University student, Thomas Mink, after a university professor alleged that Mink’s online journal published doctored photos and parody columns defaming him. Knox signed off on a warrant allowing police to search Mink’s home and seize his computer. The state’s criminal libel law makes it a criminal offense to publish maliciously false, damaging information about someone who is not a public figure. Mink ultimately was not charged.

In 2004, Mink filed suit arguing the criminal libel law violated the First Amendment. He also sued Knox for damages because she approved the warrant. Mink’s appeal to the 10th U.S. Circuit Court of Appeals was unsuccessful, but the Court ruled that he might be able to continue the suit if Knox was not entitled to qualified immunity, which protects public officials from being personally sued for actions that are part of their official duties.

The appeals court ruled Knox did not act as an advocate of the state when issuing the warrant and was not entitled to absolute immunity, a stronger form of protection against lawsuits. Knox took the case to the Supreme Court, which declined to hear the case Jan. 22.

The case returns to the U.S. District Court in Denver, where Knox can seek to prove she is entitled to immunity by showing that probable cause existed to justify the warrant or that it was unclear how previous Supreme Court cases related to the criminal libel statute.

Supporting student voices through
The Student Press Law Center

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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Student Press Law Center Membership

Knowledge is the Best Defense and Membership is the First Step

The Student Press Law Center now offers annual memberships.* The SPLC is the only national, nonprofit resource center that educates and assists student journalists and their teachers/advisers on media law, censorship and other free-expression issues. Since its founding in 1974, the SPLC has been a leading advocate for student press rights and responsibilities in secondary schools, colleges and universities throughout the United States.

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