

INSIDE: 'Bong Hits' the Supreme Court: student expression case goes before justices, Page 8

STUDENT PRESS LAW CENTER
REPORT
SPRING 2007 VOL. XXVIII, NO. 2



Legislation on the move

States enter race to pass anti-censorship laws

Page 26

ALSO INSIDE: University of Texas media board votes to shuck prior review requirement, Page 36

AND: Presidential searches: Colleges claim closed searches bring better candidates, Page 20

STUDENT PRESS LAW CENTER
REPORT
 SPRING 2007 VOL. XXVIII, NO. 2

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INSIDE

NEWSPAPER THEFT

Newspaper thefts level out..... **4**
Newspaper theft in brief..... **4**

HIGH SCHOOL CENSORSHIP

Adviser fights for her job..... **6**
 Sex articles bring prior review..... **7**
 'Bong Hits' the Supreme Court..... **8**
 What could it mean?..... **9**
High school censorship and Internet in brief..... **14**

LIBEL & PRIVACY

Abusing FERPA..... **18**
 Taking on criminal libel..... **19**

ACCESS

Colleges close presidential searches..... **20**
Access in brief..... **23**
 Using open records..... **24**

CAMPUS CRIME

U. of Tampa gets lesson in Clery Act..... **26**

LEGAL ANALYSIS

Open season:
 Investigating athletic programs..... **27**

LEGISLATION

COVER STORY: Legislation on the move..... **30**
 Illinois takes on *Hosty*..... **31**
 Bills target 'cyber bullies'..... **36**
 The debate over academic freedom..... **39**

COLLEGE CENSORSHIP

U. of Texas-Austin finally free..... **40**
College censorship in brief..... **41**
 Prior review tussle at Grambling..... **44**

SPLC announces new student program, online Podcasts

Your Voice, Your Freedom

Support the Student Press Law Center by participating in a new program to defend student voices!

Protecting the free press rights of student journalists is the number one priority of the SPLC, and now, for the first time, the SPLC is launching a program to give high-school and college students across the country a chance to work directly with us in the effort to protect these rights.

Your Voice, Your Freedom is a chance to put your creative skills to work rallying support in your community for a free student press. We are asking you to give people an opportunity to show their support for student voices by making a contribution to support our cause. All you have to do is put together a fund-raiser for your class, school or community.

Raising funds to support student press freedom allows the SPLC to provide free support to young journalists in their efforts to report the news free from censorship. But beyond that, these fundraising events

will give you a chance to tell your school and community about the work you do in serving your school through journalism and that student free press and expression rights are important to you.

The SPLC will provide all the tools you need on our Web site at <http://www.splc.org/yvyf/> to make this activity easy. You will find posters, press releases and flyers to help promote your event. Or, you can use your Web know-how and, with a few clicks, sign up on our site to host a virtual event. You can compete with classes and schools around the country to show your dedication to the First Amendment. Top participants will be recognized nationally on our Web site and in the *SPLC Report*.

Your Voice, Your Freedom program will begin in the fall 2007, so stay tuned for additional information. In the meantime, visit our Web site www.splc.org for more information and to sign up to host a bake sale, car wash, penny war, or any other creative event you can think of.

It's a simple way to support your a free student press and the work of the Student

Press Law Center! Help us make the *Your Voice, Your Freedom* a huge success in 2007.

This is your chance to show that the First Amendment belongs to you too. Visit www.splc.org and learn more today!

Podcasts available now!

Plug in your digital music player and download our new Podcast, available monthly from the team at the Student Press Law Center!

Thanks to a generous grant from the Newspaper Association of America Foundation, the SPLC has made the leap into Podcasting, which will allow students, faculty and advocates to get their student press law news on the go.

The Podcasts will be published every month from September to May and will provide legal insight into censorship issues, legislative progress and court cases that affect the student press.

Podcasts are available now on our Web site at www.splc.org/podcasts/ and on iTunes, just search for the Student Press Law Center! ■

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



Erica Hudock, spring 2007 Scripps Howard Foundation Journalism Intern, is a senior at Mansfield University of Pennsylvania who plans to graduate in May with a degree in Mass Communication with a dual emphasis in journalism and public relations. At Mansfield, she served as a reporter, copy editor, news co-editor and editor in chief of the school's student newspaper, *The Flashlight*. Erica covered high school censorship, anti-censorship legislation, high school advisers and high school advertising for the *Report*.



Brian Hudson, spring 2007 Scripps Howard Foundation Journalism Intern, graduated from the University of North Carolina at Chapel Hill, where he majored in media production and studies. While in college Brian worked in various capacities at *The Daily Tar Heel*, including a stint as news editor. Brian covered college censorship, newspaper theft, college advisers, anti-censorship legislation and college advertising for the *Report*.



Jared Taylor, spring 2007 Louis Ingelhart Journalism Intern, is a December 2006 graduate of Iowa State University's Greenlee School of Journalism and Mass Communication with a degree in print journalism. While at Iowa State, he held several reporting and editing positions at the student newspaper, *The Iowa State Daily*. Taylor has interned for the Scripps Howard Foundation Wire in Washington, D.C., where he primarily covered the U.S. Congress. He also spent a semester studying at Universidad Internacional in Cuernavaca, Mexico, where he studied Spanish. Taylor covered Internet issues, access, campus crime, libel, privacy and confidentiality for the *Report*.



Newspaper thefts level off

Numbers show 2006-2007 to be an 'average' year

BY BRIAN HUDSON

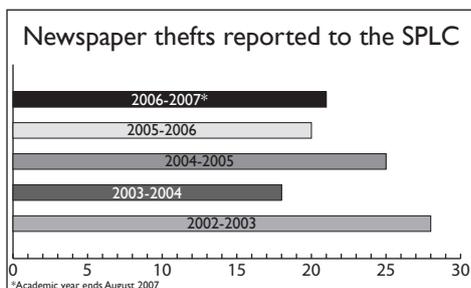
Liz Zelinski could not ignore the strikingly high number: In just a few months, editorial staffs at more than a dozen college newspapers woke up to find distribution boxes inexplicably empty, just hours after they were circulated.

So in light of the fall 2006 semester's unusually large number of college newspaper thefts, the editor in chief of *The Whit*, the student newspaper at New Jersey's Rowan University, thought her paper should have some sort of insurance against such a theft.

Zelinski established a policy in December 2006 that stated additional copies of the newspaper cost 40 cents. The policy was printed in each edition.

Just three months later, the new policy proved useful, when hundreds of copies of *The Whit* were stolen from newsstands by two students who later confessed.

But *The Whit* incident was just one of only six instances of newspaper thefts this semester — a sharp decline from the 15 news-



paper thefts reported to the Student Press Law Center in fall 2006.

After an incredibly active fall semester, the number of newspaper thefts reported to the Student Press Law Center has leveled off, keeping the year's totals in the median of thefts reported in the previous five years. Although it appeared the number was headed for a record year — the highest number since 2000 is 29 thefts in both 2000-2001 and 2001-2002 — it now appears the 2006-2007 school year will remain decidedly average when it ends after summer classes.

The inconsistency between this and last se-

mester shows how unpredictable newspaper thefts can be — and why it can be so difficult to prevent them.

"We've had as many as 40 in a school year; Some years we've had as few as 12," said SPLC Executive Director Mark Goodman. "This reflects that the popularity of this tactic ebbs and flows, but it doesn't go away."

Only California, Maryland and Colorado have laws that explicitly outlaw stealing free newspapers. Still, editors are not without options when they disappear from stands. Goodman said general theft and destruction of property statutes have been used to prosecute newspaper thieves.

Four years ago, before California had a law that outlaws newspaper theft, the mayor of Berkeley was charged with petty theft after he was seen throwing copies of the *The Daily Californian* into the trash. The University of California at Berkeley student newspaper had endorsed an opposing candidate.

The mayor pleaded guilty to the charge and paid a \$100 dollar fine, and, under pub-

NEWSPAPER THEFT IN BRIEF

Papers stolen, returned with note from 'alumni'

NORTH CAROLINA — Campus police say they found no instance of legal wrongdoing when thousands of copies of the student newspaper at the University of North Carolina at Charlotte were taken from stands in March.

After omitting the name of a student body president candidate in its pre-election coverage, copies of the April 5 issue of *The University Times* were piled at the front door of the newspaper office.

Attached to the pile of newspaper was a note that read: "We noticed there were some important omissions from your Thursday, April 5, publication of

The University Times. We thought you might like to make some corrections so we decided to return them to you."

The note was signed by "concerned and wealthy alumni" of the university.

Although campus police will continue to investigate the incident, they are not considering it a criminal matter, said William Harper, assistant chief of police and public safety at the university.

The candidate who was omitted from the newspaper, Justin Ritchie, said that he had nothing to do with the incident and that he was not upset about the error, which editors say stemmed from a miscommunication among the staff.

Ritchie said that unruly supporters not affiliated with his campaign might be responsible. ■

Explicit magazine turns up missing

NEW YORK — Hundreds of copies of the *Third Rail* were stolen from stands at the College of Staten Island in late March after the regularly provocative political magazine featured a picture of a nude man and woman on its cover.

The magazine was distributed just before the school's spring break, and editors say although some issues might have been taken legitimately, the estimated 550 copies is a large number to be taken during the class recess, when editors said the public commuter campus is a "ghost town."

Campus police confirmed that some issues were disposed of in trash bins, but

lic scrutiny, he said he would propose a city ordinance and support state legislation that would make it a crime to steal free newspapers.

Goodman said the best way to fight newspaper thefts is to take action before the crime occurs.

The first thing editors should do, he says, is include a statement in the newspaper assigning value to each issue. Such a statement might read: "The first copy of this publication is free, and subsequent copies can be purchased for 25 cents.

Also, Goodman said, editors should have a conversation with campus security and administrators before a theft to encourage an appropriate response if an incident occurs.

That conversation with administrators can be especially helpful, because schools can establish their own policies explicitly prohibiting newspaper theft. Other administrators could be urged to consider newspaper theft punishable under the school's free speech or destruction of property policy.

Either way, Goodman said, the important thing is to hold the conversation early and in the abstract, before the controversy of an actual newspaper theft.

"The problem is once they're two sides, they might be pulled in two different directions," he said.

Last semester's 15 thefts have proceeded along varying paths: some have been solved and the perpetrators disciplined, while oth-

ers have languished without any sort of progress in the investigation.

For the most part, newspapers that saw any sort of resolution saw it soon after the theft. In the incidents in which there was no immediate action or suspect, editors have generally given up hope for a conclusion.

Almost eight months after 1,200 copies of the *GuardDawg* were stolen and distribution boxes vandalized at the University of Georgia, the newspaper has realized that it will likely never know who was involved.

"There was very little hope to begin with," said publisher David Kirby. ■

Interested in newspaper thefts? Visit the SPLC's Newspaper Theft Forum online: <http://www.splc.org/newspapertheft.asp>

NEWSPAPER THEFT IN BRIEF

a review of campus security cameras did not revealed anything out of the ordinary, a university spokesman said.

Administrators issued a campus-wide e-mail notifying students of the incident and emphasizing that newspaper theft is punishable according to school policy. ■

Students steal paper to cover up friend's drug charge

NEW JERSEY — Two students confessed to stealing copies of the Rowan University campus newspaper, *The Whit*, in March to prevent students from reading about a friend's drug charge.

The two female suspects were brought in for questioning in about two weeks after the theft and "confessed immediately," the university's public safety director said.

Whit Editor in Chief Liz Zelinski said the two students, who have not been publicly identified, received community service as a penalty. They will not be charged for stealing newspapers, which cost 40 cents for each additional copy taken, according to a statement printed in each issue of the newspaper.

"They didn't think about it as a detriment to freedom of speech or stealing property," Zelinski said.

Editors initially pegged the theft at 600 copies, but the two students admitted to stealing just 44 copies. When caught they still possessed about a dozen copies of the paper, which were returned, Zelinski said.

Zelinski was unconcerned about the discrepancy about the number of issues stolen, and she said that more than anything she is glad that the clamor over the incident has dissipated. ■

Student leader uses papers for bonfire

WISCONSIN — A student leader at the University of Wisconsin at River Falls admitted to stealing and burning hundreds of copies of the weekly student newspaper in March after it reported he received an underage drinking citation.

Tory Schaaf, who is director of the school's Student Senate, took the issues of the *Student Voice* from stands soon after its March 22 distribution, and he used them as kindling for a bonfire.

Police still are investigating the incident, for which Schaaf has apologized. He said he did not take the newspapers intending to burn them, but rather to show off that his name was in the paper.

He said he did not want to prevent any students from reading the paper, and he said he took only "200" newspapers, although editors dispute that claim

and estimate the theft in the thousands.

In addition to the apology, Schaaf has said he will accept any punishment for the theft, and volunteered to deliver the newspapers to the stands each week for the remainder of the school year.

After the last newspaper theft at the university in 2003, the student held responsible received non-academic probation for a semester and 10 hours of community service. ■

Papers missing after student charged with rape's photo printed

MISSOURI — Campus police at Truman State University are investigating a March theft of about 2,300 copies of the student newspaper, which editors suspect was a retaliation for an article that identified a student charged with rape.

Index editors reported the March 2 theft to campus police, who have since conducted an investigation that has neither identified a suspect nor conclusively ruled anyone out, said a public safety official.

Sara DeGonia, editor in chief of the *Index*, conjectured that whoever took the newspapers might have been responding to the article, which included a mug shot, about a student who was charged with sexual assault. ■

Worth fighting for

A column advocating tolerance for homosexuality turned adviser Amy Sorrell's year upside down

By ERICA HUDOCK

When Megan Chase wrote her first opinion column, calling for tolerance of homosexuality, she never imagined it would trigger a war that would take the job of her newspaper adviser.

Amy Sorrell, former English teacher and adviser for Woodlan Junior-Senior High School's student newspaper, *The Tomahawk*, recently signed a settlement agreement with the school district after being placed on administrative leave. Her punishment followed nearly four months of controversy that began after Chase's article ran in the Jan. 19 issue of the *Tomahawk*.

"I can only imagine how hard it would be to come out as homosexual in today's society," Chase wrote. "I think it is so wrong to look down on those people, or to make fun of them, just because they have a different sexuality than you. There is nothing wrong with them or their brain; they're just different than you."

Chase's attack on discrimination caught the attention of Principal Edwin Yoder, who called the article "inappropriate" for younger students. One week later, he issued a prior review requirement for the entire newspaper.

On Feb. 12, Sorrell received a letter from Yoder that addressed her "insubordination" and threatened future termination, according to Assistant Superintendent Andy Melin, who said that it was not the content that prompted the letter, but that Sorrell did not advise the principal of the column.

According to the district's student publications policy, school-sponsored media are not public forums and "socially inappropriate" material can be edited or deleted by

school officials. There are no requirements for prior review. Melin and school district Attorney Tim McCaulay contended that it was Sorrell's duty to note the column's sensitivity.

"The principal had adopted a strategy for the adviser to bring articles to him that might be controversial," McCaulay said. "It's

legal questions be answered by the district's attorney.

"That's the scary part," Sorrell said. "Students have no power to appeal anything."

To maintain consistency among the district, Melin said he required all student publications in early March to publish his revised policy, marking the breaking point for the *Tomahawk* staff.

Tomahawk Editor Cortney Carpenter she and her staff agreed on March 12 to stop publication in protest of Melin's policy.

Supporting her students' decision, Sorrell used class time to teach First Amendment court cases that she said would help them offer educated policy suggestions to Melin. Sorrell's free speech teachings led to her being placed on administrative leave March 19, with a threat of contract termination.

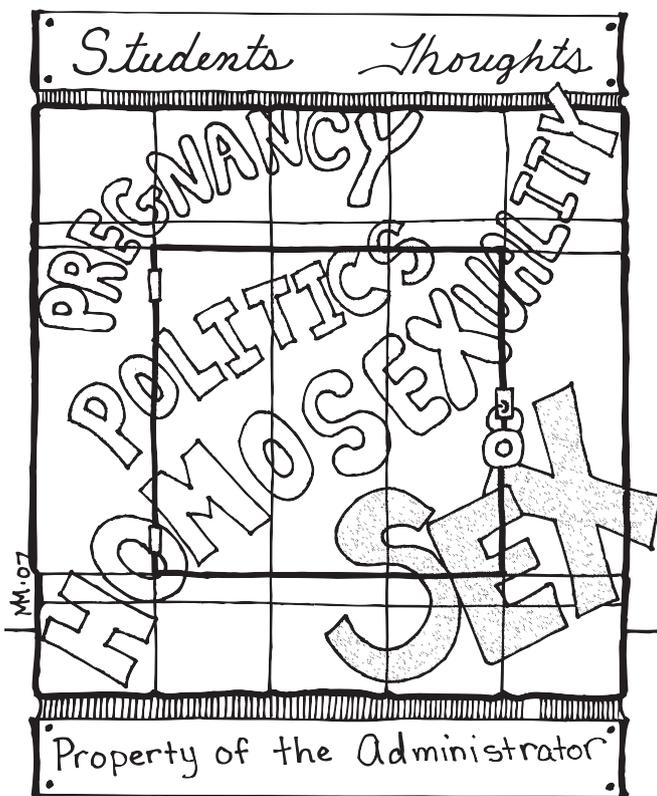
Further explanation came 10 days later from the district, listing seven violations she allegedly committed, such as insubordination, neglect of duty and engaging in "a campaign to cast East Allen County Schools and Dr. Edwin Yoder...in a false light."

In the shadow of national media reports detailing her situation, Sorrell requested a public hearing of her case by the school board. But the hearing was later cancelled in light of the settlement, which states

that Sorrell will continue to teach English at a different school in the district, but will not be permitted to teach journalism for three years.

Attorney Jim Fenton, a lawyer representing Sorrell, said she decided to settle after a board member's e-mail surfaced, demonstrating the board's opposition to Sorrell and suggested that an unfair hearing would take place.

The e-mail was in regard to Sorrell's brief



more a personnel issue than a First Amendment issue."

Sorrell and her students appealed the conflict to the school board on Feb. 20, but the superintendent suggested they resolve the situation with Melin.

Melin met with students and "revised" a district policy that was originally established in 2003. The amendments give the building principal full authority over student publications as "publisher" and required that any

Censorship case becomes open meetings suit

Sex topics lead to executive session at school board hearing; local newspaper sues

By ERICA HUDOCK

Many aspiring journalists learn about press censorship laws in a textbook or the national news, but students at Danbury High School witnessed it live when their newspapers were locked up and they were locked out of a public school board meeting.

Danbury High School's student newspaper, *The D-Town Press*, was censored by school officials for its December 2006 issue devoted to topics on sex.

The D-Town Press chose to devote its December issue to sex because, according to a survey the staff conducted, 51 percent of students at the Danbury, Texas high school are sexually active, according to adviser Kristi Piper.

Little did they realize, school officials had a much different conception of what pertinent high school issues are, Piper said. School officials contacted Piper and told her the content was "not age appropriate" and that the principal needed to review the newspaper prior to publication, even though she said she had never submitted the newspaper for prior review in her eight years of advising.

"I regret that it came to this," Piper said. "There was nothing offensive in the paper.

Had it been released, there wouldn't have been any consequences."

Although the district's policy states that all approved publications "shall be under the control of the school administration and the Board," there is no requirement for prior review.

Three students filed a formal complaint to the principal, which was denied. These were appealed through the district's appeals process to the school board where the students were scheduled to read their appeals at the March 19 meeting, Piper said.

Several parents and students joined Piper in attending the meeting, but were unexpectedly asked to leave the room so the board could "set up," Piper said. Superintendent Eric Grimmer then asked the two students who arrived to read their appeal to enter, restricting access to all audience members, including a reporter from the *Brazosport Facts*, a local newspaper in Clute, Texas.

Facts Editor and Publisher Bill Cornwell said his reporter informed the board twice that the closed meeting was not legal, but the board cited a state provision on personnel issues as its protection and continued with the executive session, voting 5-1 against the students' appeal.

"I was more shocked than upset," Piper said. "I didn't really know much about this process. Now having looked at the open meetings act, this was clearly not a personnel matter."

The Facts filed an open meetings lawsuit against the district that claimed their actions were protected by Section 551-074 of the Texas Open Meetings Act that deals with personnel issues, according to Cornwell.

Because the students were specifically addressing the newspaper conflict, Cornwell argued that the specified section does not protect the district.

"You can only go into executive session if you're discussing some type of legal action, personnel matter or property issue," Cornwell said. "We feel like that what they did was...well, they broke the law."

Superintendent Eric Grimmer did not return a phone call for comment, but he did release a statement to the *Facts*, saying, "We believe the district acted in accordance with the law in all respects. In light of pending litigation, no further comment is appropriate."

The school board approved a motion April 16 to counter-sue the newspaper for any attorney's fees should the lawsuit be resolved in the district's favor.

In regards to the withheld newspapers, Piper said the *Press* might attempt to run the articles separately in future editions of the newspaper.

"I kind of sense that they're not through," Piper said. ■

Case: *Brazosport Facts v. Danbury Indep. Sch. Dist.*, No. 42094, (Tex. Dist. Ct. Brazoria Co. filed Mar. 31, 2007).

communication with a gay and lesbian group, who had praised her efforts. The board member wrote that he wanted school officials to see "what Amy is sending out to gay/les websites" and suggested that the district "may want to address [the matter]."

Fenton also said that although he believed she could have won the fight eventually, she was concerned about the financial strain of being unemployed.

McCaulay and Melin did not return phone calls for comment on the settlement.

Fenton said that although Sorrell does not agree with the district's disciplinary actions, she had little choice in signing the settlement.

"They were threatening to take her job," Fenton said. "That's a death sentence. As a teacher with a record of alleged misconduct — what would you do? It would have probably been the end of her career. It's just another example of a school district abusing their power over restricting freedom of speech," Fenton said. ■



Embattled adviser Amy Sorrell has settled with her school district and plans to teach at another school. PHOTO BY DEAN MUSSER JR./The (Fort Wayne, Ind.) *Journal Gazette*

Landmark student expression case 'Hits' U.S. Supreme Court

Morse v. Frederick's last stand

Decision expected
this summer

BY ERICA HUDOCK

He was rushing to school that January morning after digging his car out of 10 inches of accumulated snow and ice. Somehow, his car started despite the below-zero temperatures. No matter, it was not the tardy bell he was worried about; he just wanted to make it to town in time for the parade.

Once he reached the crowds, he found a spot on a sidewalk along the parade route. Down the road, he caught a glimpse of the torchbearer heading right toward him, followed closely by the television cameras. As the torch closed in on him, he and his friends unrolled a banner with a special message for the crowd and camera: Bong Hits 4 Jesus.

This "absurdly funny" phrase was stripped from the hands of a high school student in 2002, quickly turning his prank into a censorship case. The lawsuit was thrust into the national spotlight after a high-profile defense lawyer signed on and the U.S. Supreme Court heard oral arguments last March for the case now known as *Morse v. Frederick*.

Making a statement

The day the 2002 Winter Olympics Torch Relay traveled through Juneau, Alaska, Joseph Frederick, then an 18-year-old senior at Juneau-Douglas High School, planted himself on a public sidewalk across the street from his school where he displayed his 14-foot, paper banner with "Bong Hits 4 Jesus" crudely scripted on it from a \$3 roll of Duct Tape.

Standing across the street was his principal, Deborah Morse, along with other students who were released from school that day to attend the event. She crossed the road and demanded Frederick take down the banner. When he refused, she took the sign from him and gave him a 10-day suspension, five for his banner and five for quoting Thomas Jefferson: "Speech limited is speech lost," Frederick said. Even after he appealed



Protestors hold a 'Free Speech 4 Students' banner as the court prepared to hear oral arguments in the 'Bong Hits 4 Jesus' case outside the U.S. Supreme Court Building March 16, 2007.

PHOTO BY JARED TAYLOR

his punishment through the administrative ranks, Morse persisted that Frederick's message was in strict violation of the school's educational mission to prevent illegal drug use.

After failing to find support within the school district, Frederick filed a lawsuit against Morse and the Juneau School Board for allegedly violating his First Amendment rights and requested an injunction to have the suspension removed from his record.

A federal district court ruled in favor of the school district on the grounds that the event was "school-sponsored," which it claimed gave school officials the authority to oversee and punish the actions of students in violation of school policies.

But Frederick did not stop there. He appealed his case to the Ninth U.S. Circuit Court of Appeals where the lower court's decision was reversed in a unanimous ruling, stating that Frederick's rights were violated.

That decision was based on the 1969 U.S. Supreme Court ruling in *Tinker v. Des Moines Independent Community School Dis-*

trict, which established that students' free expression rights do not end at the "school-house gate" and school officials can only censor students if their actions are substantially disruptive or infringe on the rights of others.

Unsatisfied with the decision, the school district took the case to the U.S. Supreme Court where justices heard oral arguments on March 19. Former Independent Counsel Kenneth Starr signed on as the school district's lawyer, working for free.

Now 23 years old, Frederick has moved on from what he called his "free speech experiment" and is now studying Mandarin and Chinese history in China and teaching English to Chinese high school students. In a phone news conference held by the American Civil Liberties Union, which is providing his legal representation, he explained that he stopped his education at the University of Idaho just short of graduation to take the one-year contract offer that began in August, an obligation that kept him from attending the Supreme Court oral arguments. Freder-

ick also did not want to share his experiences in China as an American, despite the obvious political differences of individual rights.

“I sort of have a nice quiet life...it’s sort of separate from the banner incident here, and I don’t want to mix it up,” Frederick said.

Motive behind the words

With a message so vague as “Bong Hits 4 Jesus,” it may have appeared to be an impulsive act to display the banner. But Frederick explained that it was not a spur-of-the-moment demonstration. He said he became interested in First Amendment rights while studying American law and government in high school, leading him to begin a “free speech experiment” that began with his refusal to stand for the morning Pledge of Allegiance and ended with a continuous conflict with the principal.

“I found the Bill of Rights to be very interesting and important,” Frederick said. “I began to realize that it was not as clear-cut as it seems. I encountered a few contradictions in my life with what I’d studied in books.”

Frederick said he purposefully stood where he could be seen by television cameras, assuming that school officials would not attempt to inhibit his rights in view of the camera lens.

“What I was really saying was, ‘Look here. I have the right to free speech. I am asserting it, I have it and I’m using it.’”

Joseph Frederick

He was wrong.

As for his message, Frederick said that it was never meant to have a serious meaning. It was a phrase he had seen on bumper stickers and found “absurdly funny.”

“The phrase...was never meant to have any substantive meaning and it certainly wasn’t intended as a drug or religious message,” Frederick said. “It’s not even a complete statement or thought.”

Rather than looking at the cryptic message, Frederick said people should see the expression in his action. As a high school senior, he said he felt the school did not believe in First Amendment rights for its students and he wanted to prove his inalienable rights.

“If you really want to know what I meant you’ve got to consider then scenario,” Frederick said. “I stood there until the perfect moment to reveal my banner. As the public eye, the TV cameras, passed by, I knew that if I held up the banner while in front of the camera, there was nothing the school administrators could do about it. What I was really saying was, ‘Look here. I have the right to free speech. I am asserting it, I have it and I’m using it.’”

‘Strange bedfellows’ support First Amendment claim

As the case progressed, public support for the rights Frederick was asserting increased as demonstrated by the 16 organizations of varied missions and values that filed the 12 *amicus curiae*, or friend-of-the-court, briefs on behalf of his First Amendment claim before the Supreme Court. It is the idea of protecting free expression that has brought conservative, religious liberty groups such as the Alliance Defense Fund and the Liberty Counsel together with liberal-minded groups like the National Co-

See **Bong hits**, Page 10

Decision could curb student expression

Banner’s message, location contested

By BRIAN HUDSON



Photo courtesy ACLU

Nearly 40 years have passed since Mary Beth Tinker first entered the vaunted halls of the U.S. Supreme Court. Since then, the plaintiff in the landmark student expression case *Tinker v. Des Moines Independent Community School District* has heard her name invoked countless times as the gold standard protecting students’ free expression rights.

Since the 1969 ruling, the “*Tinker* standard” has been the foundation upon which all student free speech cases have relied.

The phrase was again cited before the high court in March, during oral arguments for what could be one of a select few definitive student speech cases since the Supreme Court ruled in *Tinker*’s favor 38 years ago.

The pending ruling in *Morse v. Frederick* will determine if a school had the right to discipline a student, Joseph Frederick, after he held up a 14-foot banner reading “Bong Hits 4 Jesus” across the street from his school.

But more importantly, the outcome of the case could set an important standard for regulating student speech that would be applicable to schools across the country.

Lawsuits dealing with student free expression rights have rarely been argued before the Supreme Court. Only a handful have reached the Court since *Tinker v. Des Moines*.

Depending on how the justices rule, *Frederick* could have a substantial impact on student speech, either by reaffirming the *Tinker* standard or repealing some of its protections.

In *Tinker*, justices famously declared that “students do not shed their constitutional rights to freedom of speech at the schoolhouse gate.” The suit originated when Tinker, her

See **Impact**, Page 12

From **Bong hits**, Page 9

alition Against Censorship and Students for Sensible Drug Policy. Alaska Civil Liberties Union Director Jason Brandeis pointed out that the number of briefs filed in the case reveals that his “humorous” message bears a serious side as well.

“We feel that bolsters Joe’s claims here,” Brandeis said, “and supports the notion that this case is about free speech first and foremost and it really illustrates the need to support all viewpoints that students seek to express, whether those views are political, religious or in this case, merely humorous or provocative.”

Amicus briefs filed

The following organizations either filed or participated in filing an amicus curiae, or friend-of-the-court brief, in the *Morse v. Frederick* case :

For Frederick:

Alliance Defense Fund
 American Booksellers Foundation for Free Expression
 American Center for Law and Justice
 Christian Legal Society
 Drug Policy Alliance
 Lambda Legal Defense and Education Fund, Inc.
 Liberty Counsel
 The Liberty Legal Institute
 The First Amendment Project
 Feminists for Free Expression
 The Freedom to Read Foundation
 National Coalition Against Censorship
 The Rutherford Institute
 Student Press Law Center
 Students for Sensible Drug Policy
 The Thomas Jefferson Center for the Protection of Free Expression

For Morse:

American Association of School Administrators
 DARE America
 Drug Free America Foundation, Inc.
 General Barry R. McCaffrey
 Hon. William J. Bennett
 National Association of Secondary School Principals
 National Families in Action
 National School Boards Association
 Save Our Society from Drugs
 United States of America

Brandeis’ counterpart at the American Civil Liberties Union, Steve Shapiro, agreed in that the briefs also address the “extraordinarily broad claim of authority” the school district says should permit school officials to censor any expression that opposes the school’s educational mission.

The American Center for Law and Justice is one of a few organizations that claim Frederick’s “incoherent” message should not be the focus for a case that could set a serious precedent for future student expression cases, but Jordan Lorence, senior counsel for the Alliance Defense Fund, is especially concerned about a ruling for the school district.

“Weighing in totally on the side of the public schools would give *carte blanche* to school officials...and the First Amendment [would be] meaningless [to students],” Lorence said.

He also pointed out that every group that filed a brief has at some point represented students with “controversial ideas.”

The organizations are also concerned about the exceedingly broad consequences in a ruling against Frederick, which would allow school officials the ability to censor student expression that takes place off school grounds. Even though they may not approve of the message’s allusion to illegal drug use, organizations like the Liberty Counsel, a Christian legal organization devoted to religious freedom, make it its mission to see that expressive, constitutional rights are protected from overreaching officials, according to Liberty Counsel Founder and Chairman Mathew Staver.

Jon Davidson of the Lambda Legal Defense and Education Fund, Inc., an organization that seeks to protect the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV, agreed that this shared view by different organizations is not unusual for a First Amendment case.

“It’s not about a particular position,” Davidson said. “It’s about the right to express the side of any position. And in that way it can make strange bedfellows.”

Arguing interpretation

As adamant were the *amicus* briefs, the oral arguments were even more contentious. The hour-long session at the Supreme Court became an interregation session for the justices, some of whom visibly struggled to determine the approach necessary to make a fair ruling.

“The problem, Mr. Starr, is that school boards these days take it upon themselves to broaden their mission well beyond education.”

John Roberts

Chief Justice of the United States

Starr pursued the argument that Frederick’s message was disruptive because it undermined the school’s educational mission and anti-drug policy, saying *Tinker* supported the school’s authority.

“The problem, Mr. Starr, is that school boards these days take it upon themselves to broaden their mission well beyond education or protection from illegal substances, and several briefs have pointed out school boards have adopted policies taking on the whole range of political issues,” Chief Justice John Roberts responded.

Associate Justice Ruth Bader Ginsburg also pursued Morse’s interpretation of the message and how, despite its reference to drugs, it does not clearly endorse drug use.

“But here one could look at these words and say it’s just nonsense,” Ginsburg said. “It isn’t clear that this is ‘smoke pot.’”

Edwin Kneedler, deputy solicitor general for the U.S. Department of Justice, argued in support of the school, saying that whether or not Frederick was displaying an illegal, drug-endorsing message, it is the potential public interpretation that needs to be considered.

Representing Frederick, Attorney Douglas Mertz began his argument by reiterating Frederick’s First Amendment claim and the school’s wrongful jurisdiction over non-disruptive, off-campus student expression.

Whether or not Frederick’s message was political, Roberts argued that it “undermined” the school’s mission and questioned whether schools need authority over classrooms, field trips and activities that students are trying to use as open forums.

Mertz also said that expression contradictory to what the school deems appropriate can take place so as long as it does not “interfere with the school’s own presentation of its viewpoint,” to which justices tested phrases like “Rape is fun” and “Extortion is profitable” with Mertz’s claim. But Mertz said those examples do not apply to the case.

“What it was was a person displaying

this banner in a quiet, passive manner that didn't interfere with anybody's observation," Mertz said. "The fact that he was not there in school...turns this into a pure free speech case where you have a citizen in a public place event who was not acting as a student."

A looming precedent

During the arguments, Mertz alluded to the strength of the *Tinker* decision, which has been a legal standard for student speech cases for nearly 40 years. Now with "Bong Hits" awaiting a ruling, attorneys, administrators and advocates are holding their breath for a possible new precedent and the effects to follow.

The Liberty Counsel's Staver said the fact that Frederick's off-campus speech could be prohibited is the "devastating part of this case," which is why his organization took interest and filed an *amicus* brief.

The court could establish a much narrower ruling, and add "drug speech" to the list of unprotected student speech although that is unlikely, said David Greene, executive director of First Amendment Project,

a nonprofit free speech law firm that also joined a brief in support of Frederick.

A current debate over drug possession in Alaska, a matter regularly brought before its state legislature, was mentioned by Shapiro of the American Civil Liberties Union as an example of civic, drug-related discussion for which students could be censored on or off school grounds because of the topic's conflict with the school's strict anti-drug policy.

The Alaska Supreme Court is currently reviewing a bill that would permit adults to possess small amounts of marijuana. Shapiro said that as young adults, students should be actively taking part in political debate and must be permitted to do so without regulation from schools.

"The way we do that in our system is by providing students with the information they need to be informed citizens and not by teaching them the worst civic lesson possible, namely that any speech that disagrees with the officials' speech can lead to punishment," Shapiro said.



Joseph Frederick

PHOTO COURTESY OF ACLU

Overheard in the Supreme Court...

SPLC reporters were present at the oral argument and recorded some of the more memorable moments...

"Can the student be allowed to wear a button that says 'Rape Is Fun'... 'Extortion is Profitable,' that's okay?"

Anthony Kennedy, Associate Justice

"If the kids look around and they say, well, so and so has got his bong sign again. They then return to Macbeth."

David Souter, Associate Justice

Naomi Gittens, an attorney with the National School Boards Association and contributor to the organization's *amicus* brief in favor of the school district, said that students should not be "overly concerned" about the court's ruling.

She anticipates a "narrow" ruling, a format typically favored by Roberts. Associate Justice Antonin Scalia also suggested during the arguments a "narrow enough" ruling for a school to be able to "suppress speech that advocates violation of the law" whether or not they have an established student expression policy.

One way Gittens said a narrow decision could be made would be to limit the school's authority in censoring any disruptive expression on campus and school-run activities or trips such as field trips or sporting events.

"Schools have two things in mind concerning their students: effective learning and school safety," Gittens said. She added that schools are a place for learning, "not a free-for-all."

In any situation, she said that no school administrator should be held liable for the actions of students because of the way the message was interpreted, with which Associate Justice Stephen Breyer agreed.

"[The principal's] job is to run the school," Breyer said. "What I'm worried about is a rule that...takes [Frederick's] side. We'll suddenly see people testing limits all over the place in the high schools. But a rule that against [the school's] side may really limit people's rights on free speech."

For the record

Nearing the finish line in a case that be-

gan five years ago, Frederick said he has no regrets. Maturity and a better understanding of civil liberty and freedom are two outcomes Frederick has seen within himself, despite the question of his "drug message."

"I've never professed to be perfect or to be a saint," Frederick said. "This case is about integrity and maintaining the civil rights in the United States Constitution and the Bill of Rights. And to reduce this to some sort of mudslinging or personal character assassination is just wrong."

Mertz said the allusion to drugs is far from the point of the case and that critics need to look beyond the sign.

"Debate by students on an issue of importance to them, importance to their school, importance to their country should not be cut off, should not be punished simply because school officials have a contrary viewpoint," Mertz said. "Free speech is a true core American value that everyone believes in and we're hoping that includes the members of this court."

Ultimately, Frederick's efforts have proven successful in raising questions in the First Amendment's ability to protect students. His experiment is not only pending a decision for what he claims to be a violation of his speech rights, but also a precedent that could make or break the outcome of similar cases in the future.

Frederick said that his journey helped him "mature" and become more aware of his civic responsibilities.

"I was skeptical of my own free speech rights and I...wanted to know more precisely the boundaries of my freedom, and I guess we'll get to find out that soon," Frederick said. ■

Did you know?

- The Olympic Torch Relay was held Jan. 24, 2002, in Juneau, Alaska.
- The Coca-Cola Company was the official sponsor of the relay
- Frederick made his banner with a 14-foot sheet of white paper and wrote the words “Bong Hits 4 Jesus” with a \$3 roll of Duct tape.
- He maintains to this day he does not know what ‘Bong Hits 4 Jesus’ means
- He says quoting Thomas Jefferson to his principal — “Speech limited is speech lost” — lengthened his suspension.
- Frederick went on to the University of Idaho, but is just a few credits short of his degree. He is currently in China studying and teaching English

From **Impact**, Page 9

brother and a friend wore black armbands to school to protest the Vietnam War. The ruling states that school officials may not punish or prohibit student speech unless they can reasonably forecast that it will result in a material and substantial disruption of school activities or invade the rights of others.

While the *Frederick* case contains myriad facets that might drive the Supreme Court’s decision, there are two aspects of the arguments that are direct descendents from the ruling in *Tinker*: the definition of “substantial disruption” and the concept of the “schoolhouse gate.”

Should the justices’ ruling concern either of these two aspects, Frederick’s name soon could, like *Tinker*’s, be invoked as a standard in student free speech rights. In that scenario, the *Frederick* case could become the most important ruling regarding the student press since 1988, when the court levied restrictions against many high school publications in *Hazelwood School District v. Kuhlmeier*.

What it said

Frederick has maintained that the phrase “Bong Hits 4 Jesus” was purposefully nonsensical, while the principal who disciplined

him, Deborah Morse, believes it was encouraging drug use.

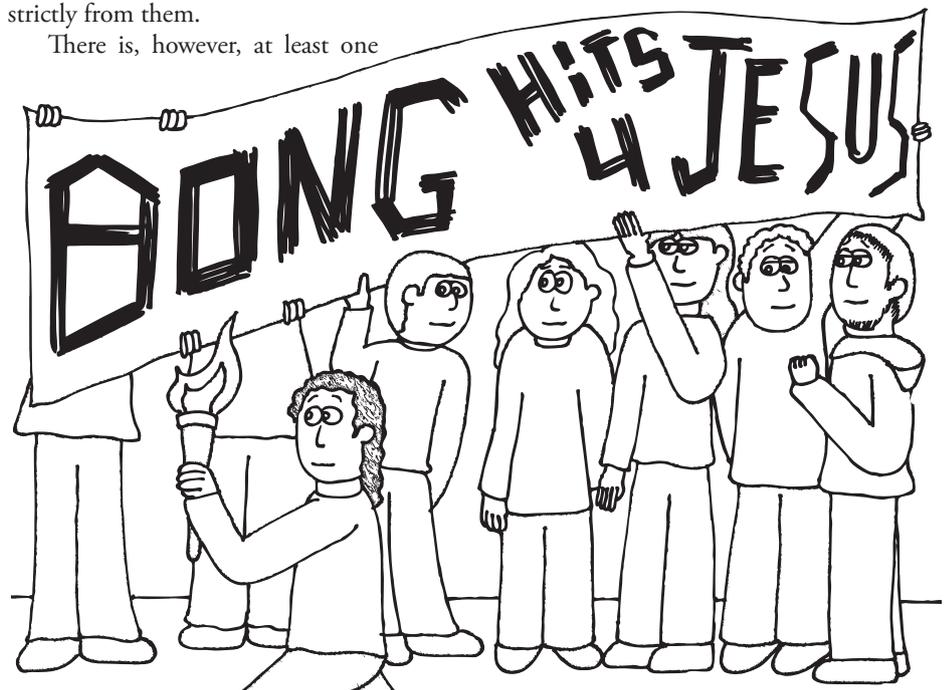
It is that interpretation which is the crux of the disagreement over what is a “substantial disruption,” as the *Tinker* standard requires. Morse’s lawyers argue that a school’s educational process is broader than classroom activity and includes instilling “the values of citizenship.” In this case, they say, the school is dedicated to teaching an anti-drug message, which Frederick undermined with his banner.

“There is an effort to prevent a message that is inconsistent with a fundamental message of the schools – which is the use of illegal drugs is simply verboten – and we believe that is permitted under *Tinker*,” Ken Starr, who is representing Morse, said in the courtroom.

If a majority of the justices agree, the notion of “substantial disruption” laid out 38 years ago in *Tinker* could be expanded to include speech that dissents from school policy. In that case, schools across the country could have a broader ability to ban independent student speech, said Adam Goldstein, attorney advocate for the Student Press Law Center.

The justices’ comments during the argument revealed possible directions the ruling could take on this argument, legal experts familiar with the proceeding said, but it would be difficult to draw a conclusion strictly from them.

There is, however, at least one



other pending court case which could be weighing on the justices’ minds. The case, *Guiles v. Marineau*, also deals with student expression and has been appealed to the Supreme Court, although justices have not ruled on whether they will hear it.

Goldstein said it is possible that justices are taking the *Guiles* case and other pending cases into consideration, and the Court’s ruling in *Frederick* could be written so that it also address *Guiles*.

The tactic is known as stacking, and it is not uncommon for the high court, he said.

“They have cases pending that are all kind of on the same topic, sort of, in a way. They decide one then reverse and remand the others,” Goldstein said.

An analysis of the *Guiles* case, therefore, perhaps could offer insight into what facets justices are focusing on during their deliberations in *Frederick*.

Guiles v. Marineau originated when Zachary Guiles, a student at Williamstown Middle School in Williamstown, Vt., wore a shirt that lampooned President Bush, referring to him as “Chicken-Hawk-in-Chief” and featuring text and drawings that alluded to his alleged past drug and alcohol abuse.

In this case, the school argued it was compelled to act because the shirt was counter to the school’s anti-drug message and

See **Decision**, Next page

From **Decision**, Page 12

therefore was “inconsistent with the district’s basic educational mission.”

“Schools are arguing that they have important missions – tolerance, anti-drug message, or whatever other messages they happen to define for themselves – and that those missions are so important they trump the Constitution,” Goldstein said. “And at least some of the justices seem inclined to agree with them, based on the oral argument in *Frederick*.”

Where it was

The court very well could completely overlook the banner’s message in its ruling and instead focus on its location – specifically, where Frederick physically was on that January morning.

When Frederick unfurled the banner as the torch passed, he was standing on a public sidewalk across from the school, and Morse had to cross a public street to discipline him. The Supreme Court has never specifically addressed the rights of students off campus, and the justices might elect to confront the issue in the *Frederick* ruling.

The majority opinion in the *Tinker* ruling deemed “the schoolhouse gate” as an

important boundary for student expression. The court made clear that its protection of student rights is in effect when students cross that threshold.

What is not clear is what rights students have before they cross the schoolhouse gate. Lower courts have traditionally split on what authority administrators have over off-campus speech,

Some simply have ruled that anything off school grounds is beyond of officials’ oversight, while others have said that officials have jurisdiction over “conduct that is directed at the school,” Goldstein said.

A ruling in *Frederick* that addresses the off-campus question would set a nationwide precedent. If the court rules for Frederick on the grounds that he was off campus and therefore out of the control of administrators, student rights could largely be unabridged while not on campus or at school-sponsored events such as field trips, Goldstein said.

But the Court could determine that administrators can regulate speech off campus. Rebecca Zeidel, a research assistant with the National Coalition Against Censorship, predicted that in that case the Internet could become an area where school officials look to exert authority over what students say or write. She cited social networking Web sites such as MySpace and Facebook as examples.

“Our fear is how far they can then go,” she said.

Student publications

During the March 19 hearing, justices and lawyers debated the case for more than an hour, but at no point did anyone mention the student press. Still, a ruling in the case has the incredible potential to affect the rights of student publications.

While a decision favoring Frederick likely will reaffirm the rights of student media, a ruling for Morse could have an adverse affect.

If the Supreme Court rules for Morse based on the content of the banner, school officials could have much broader ability to censor content they believe undermines their mission – whether that message comes in a student newspaper or a student-distributed pamphlet, Goldstein said.

If the Court rules that school officials have the right to suppress speech that diverges with school policy, student journalists

in many contexts could face tighter restrictions on their ability to criticize the school, he said.

Alternatively, should the Court determine that Morse had the right to discipline Frederick for his off-campus speech, school officials across the country would have command of speech produced even while students are not in school – possibly including independent student publications.

During the arguments, Morse’s attorneys invoked the notion of a “school-sanctioned event.” The parade outside the school was not financially sponsored by the school. However, Morse’s attorneys argued, it was a sanctioned event because students were released from class to attend, and therefore the school maintains authority over it – even the parts off campus.

The concept of “school-sanctioned event” is not new, said Sonja West, a law professor at the University of Georgia. However, she said, this is the first time that, according to her research, it has been invoked during a student free speech case.

Previously, “school-sanctioned events” was a concept indigenous to student religious expression cases, said West, who drafted a friend-of-the-court brief in support of Frederick’s claim for the SPLC and other First Amendment advocacy organizations.

If the Court agrees with the argument and rules that administrators have authority over whatever is “school-sanctioned” it could extend the damage to the student press that was first levied with 1988’s *Hazelwood School District v. Kuhlmeier*.

The court ruled then that a high-school sponsored student newspaper produced as part of a class and without a “policy or practice” establishing it as a public forum for student expression could be censored – as long as school officials demonstrated a reasonable educational justification and that their censorship was viewpoint neutral.

In essence, the *Hazelwood* ruling provided high schools with more authority over context that they sponsored. If *Frederick* introduces “school-sanctioned” into the lexicon, independently produced student publications could face oversight, Goldstein said.

“They said the parade watching was sanctioned,” he said. “So if lunch is a school-sanctioned event, you can’t hand out your pamphlet during lunch.” ■

Tinker returns...

Among the hundreds of visitors to the Supreme Court on the morning of March 19 was Mary Beth Tinker, almost 40 years after her lawsuit established a foundation for student expression rights.

Tinker compared her message in 1965 to Frederick’s banner:

“We were speaking up for peace, and our message was very meaningful and important to us as students because we were raised in the church, and we believed in peace,” she said. “Joe Frederick has a very first important message also: It’s the First Amendment. And that’s something that we need to teach students about on a daily basis – not just in books but in practice.

“And that’s what his message was; He wanted to see in fact if in fact he had free speech rights or if it was just something that he learned on paper. And so the messages are equally important.” ■

PRIOR REVIEW

School forms committee to review publication policy

MINNESOTA — A committee to review the St. Francis High School student publications policy was formed after a photo of what appeared to be a torn American flag was censored from the student newspaper, *The Crier*.

The flag in the photo, which was actually a patterned tablecloth, became the center of controversy because of its potential to offend the community, according to Principal Paul Neubauer, who told the *Crier* it could not run the image. He also froze the newspaper's funds and threatened legal action if the photo was printed.

The photo was taken during the school's production of "The Children's Story," a political story in which a communist government takes over the United States. The play includes a scene where students vote to cut up the American flag.

The students conceded to the principal's demand, but in protest, ran a blue box where the photo would have been and printed a message for its readers: "Originally a photo was to be placed here, but was censored by the administration."

The district's current policy on student publications states, "Official school publications are free from prior restraint by officials except as provided by law."

Some discussion of policy amendments has taken place, but no major changes have been made. ■

Student paper escapes prior review policy change

PENNSYLVANIA — The student newspaper at Montrose High School escaped a drastic publications policy change at a March 19 school board meeting after an article on sex was published in its February issue.

The Meteor Chronicle published an article titled "Not Everyone Thinks 'Friends' Have 'Benefits'" that raised concerns from parents. In response, school officials decided to postpone distribution of the newspaper's March issue while the district's student publications policy was reviewed.

A public meeting to discuss the policy was held two weeks after the article was published, but the board decided to maintain its current policy on March 19, with one slight change.

School officials requested that in addition to the early distribution of the newspaper to the superintendent and school board, as done in the past, the newspaper is required to send a copy to all school administrators throughout the district to "make them aware" of what stories are being covered, Superintendent Mike Ognosky said. ■

Ohio students now subject to panel's criticism

OHIO — A central Ohio school district is now subject to non-binding criticism of an advisory panel after its two high school student newspapers received negative feedback over their articles on sex.

The advisory panel is a "short-term" plan put in place by administrators and teachers in the Olentangy School District at an April 12 meeting to address community concerns, according to Executive Director of Secondary Education Eric Gordon.

The Cannon, the student newspaper at Olentangy Liberty High School, ran a satirical piece on teenage sexuality that was supposed to point out that girls are offended by the way they are perceived by boys, according to adviser Catherine Boone. The article used "pop culture" terms that parents found inappropriate, Gordon said.

The Beacon, the student news magazine at Olentangy High School, another high school in the district, received similar feedback on its February issue devoted to articles on sex that discussed sexually transmitted diseases and oral sex.

Gordon said the panel is to offer "support" to journalism advisers who are the primary supervisors of the publications. He said that both high schools will have a panel, consisting of the building principal, journalism teachers, a sophomore and senior journalism student and a professional reporter, that review the other school's publication prior to publication. The school board president and vice president are also serving as temporary members of the panel.

Gordon said although students will not have to adhere to the criticism, he is content with offering the school and surrounding community a voice in the publications' content. ■

Magazine escapes new prior review restrictions

OHIO — Journalists at the Princeton High School student magazine escaped the specter of prior review when the superintendent decided instead to change the magazine's publication policy.

The ordeal began in December 2006 when the principal censored an article in the *Odin's Word* that criticized the football team for its losing record. The staff had to physically remove the two pages containing the column, written by junior Evan Payne, from the 2,100 copies of the magazine before distribution.

Superintendent Aaron Mackey said the principal, who has declined to comment publicly about the incident, believed that the article was journalistically unsound and that it could incite conflict between the football team and the magazine's staff.

Mackey pointed out that the article, which did not single out any player by name, did not include rebuttal from the football team. The article largely criticized coaching strategy, such as the decision to employ a passing strategy that relied on an untested freshman quarterback.

Mackey introduced a prior review policy after the article was censored. After some administrators disapproved, he scrapped his decision in favor of merely revising the magazine's publica-

tion statement.

In 2005, the editorial adviser changed the statement to designate the *Odin's Word* as an open forum. Administrators reinstated the previous policy, which does not include the public forum statement. ■

IN THE COURTS

Supreme Court denies hearing to horror story case

NEW YORK — Review was denied by the U.S. Supreme Court Jan. 22 in the case of a sixth-grader at Thompson Middle School, who was suspended because of a fictional horror story he wrote that included the names of fellow students.

Dylan Finkle wrote a story for class titled “Costume Party” that included violent, sexually explicit material and was modeled after the popular *Halloween* movies. Finkle was suspended for a total of 35 days, which led to an appeal by his parents that was denied by both the school board and state commissioner of education.

A lawsuit was filed against the district, but a federal district court ruled in favor of the school district, a decision that was affirmed by the Second U.S. Circuit Court of Appeals in May 2006.

Finkle’s attorney said the decision by the U.S. Supreme Court to deny the student’s final appeal was “unfortunate” and there is no other legal opportunity to challenge the school’s actions. ■

Case: *D.F. v. Board of Educ. of Syosset Cent. Sch. Dist.*, 386 F.Supp.2d 119 (E.D.N.Y. 2005), *aff’d*, 213 Ed. Law Rep. 154 (2d Cir. 2006), *cert. denied*, 127 S.Ct. 1170 (Jan. 22, 2007).

U.S. Supreme Court rules in anti-gay T-shirt case

WASHINGTON, D.C. — The U.S. Supreme Court vacated a federal appeals decision March 5 by an 8-1 vote in the

case of a student who was censored for wearing a T-shirt with an anti-gay message.

Tyler Chase Harper filed a lawsuit against the Poway School District in June 2004 after school administrators told him to remove his shirt that said, “Be ashamed, our school embraced what God has condemned” on the front and “Homosexuality is shameful ‘Romans 1:27’” on the back. According to Harper, the school had violated his free expression and religious freedom rights, and subsequently asked for a preliminary injunction against the school’s dress code policy so he could be permitted to wear his T-shirt.

A federal district court denied the injunction request, prompting Harper to appeal to the Ninth U.S. Circuit Court of Appeals, where his request was also denied.

A final appeal was made in October 2006 to the U.S. Supreme Court. As that request was pending, a federal district court was reviewing Harper’s permanent injunction request and First Amendment claims, and ruled in January that the claims were moot because he was no longer in school. Harper graduated in June 2006.

The court did consider the claims of Harper’s younger sister, Kelsie, who was added to the case in November 2004, but still ruled in favor of the school district.

With that ruling, the U.S. Supreme Court ordered the Ninth Circuit’s decision on the preliminary injunction request vacated. The federal district court’s ruling can, however, be appealed by Harper and his sister, who is still a student in the school district.

Kevin Theriot, Harper’s attorney from the Alliance Defense Fund, a Christian civil rights organization, said he has requested the federal district court to also reconsider its January ruling in light of the Supreme Court decision, and has filed an appeal to the federal appeals court for the Harpers’ First Amendment claims. ■

Case: *Harper v. Poway Unified Sch. Dist.*, 127 S.Ct. 1484 (Mar. 5, 2007) (granting cert., vacating, and remanding decision

on preliminary injunction with orders to dismiss as moot); *see also Harper v. Poway Unified Sch. Dist.*, No. CV-04-01103-JAH (S.D. Cal. Jan. 24, 2007) (granting in part district’s motion for summary judgment), *appeal docketed*, No. 07-55224 (9th Cir. Feb. 21, 2007).

Court rules middle schooler could hold silent protest

MICHIGAN — A federal district court granted a permanent injunction March 26, allowing a Jefferson Middle School student and his classmates to engage in a silent protest against abortion. Michael Amble-Lucas was prohibited from wearing his pro-life T-shirt and putting tape across his mouth for the Pro-Life Day of Silent Solidarity protest, a nationally recognized day that is sponsored by the Christian pro-life organization, Stand True. School officials told him his expression “was not ‘age-appropriate,’ it was ‘disruptive’ and that it was not suitable [for him] to express a pro-life message,” according to the complaint.

Amble-Lucas’ mother filed a lawsuit on behalf of her son, claiming that his First Amendment rights were violated and requested a preliminary injunction against the school, which was granted on Jan. 31. The federal district court ruled on the basis on the 1969 U.S. Supreme Court decision in *Tinker v. Des Moines Independent School District*, which prohibits censorship of student expression unless it creates a substantial disruption or infringes on the rights of others.

The school district has filed an appeal with the Sixth U.S. Circuit Court of Appeals, but Alliance Defense Fund attorneys representing Amble-Lucas are “confident” that the students’ rights will be “retained” by the court’s decision. The Alliance Defense Fund is a Christian civil rights organization. ■

Case: *M.A.L. v. Kinsland*, No. 07-10391, 2007 WL 313283 (E.D. Mich. Mar. 19, 2007), *appeal filed*, No. 07-1409 (6th Cir. docketed April 4, 2007).

Seven-year-old harassment lawsuit gets new trial

CALIFORNIA — An appeal by a former Palisades High School teacher was denied March 28 by the California Supreme Court in her a lawsuit against the school district that she claims is responsible for an underground student newspaper article claiming she was a porn star.

Teacher Janis Adams was a subject in an underground newspaper published in 2000 called “The Occasional Blow Job” that mocked her intelligence and said she was once an actress in pornography films. As a result, 11 high school students suspected to be involved with the newspaper were suspended in March 2000.

Adams claimed in her lawsuit that the Los Angeles Unified School District was responsible for sexual harassment that took place in the newspaper and did not do enough to protect her.

In March 2002, a jury awarded Adams \$4.35 million in damages, which was later vacated by a judge who said the amount was “excessive” and because of the trial’s “errors in law” that questioned the school’s legal ability to control student expression.

Adams appealed the decision, as did the school district’s attorney, who requested a new trial because the jury’s instructions were unclear in regard to state laws. With a retrial granted, Adams filed another appeal on that decision.

While her appeal was pending, legislative language changed in the state’s Fair Employment and Housing Act in 2003 to “clarify” that employers are responsible for the acts of non-employees.

With the amendment in place, a California Court of Appeal upheld the retrial in August 2004 to assure a fair trial was given according to current state law.

That decision was reversed and remanded by the California Supreme Court in October 2006, stating that the appellate court should reconsider its ruling because, in the court’s view, the new amendment did not change the original

meaning of the law.

The appellate court reaffirmed its previous ruling for a retrial on Jan. 11, 2007, to better justify that the 2002 federal district court’s ruling was flawed as a result of the amended law and a retrial would be necessary.

After review for the second time by the state Supreme Court, Adams’ appeal was denied on March 28, sending the case to the trial court level again for review. ■

Case: *Adams v. Los Angeles Unified Sch. Dist.*, 2007 WL 68104, No. B159310 (Cal. App. Jan. 11, 2007) (unpublished/nonciteable).

Student’s medieval photo to be published after settlement

RHODE ISLAND — A settlement agreement was reached on Jan. 29 after a student’s photo in medieval costume was censored from the Portsmouth High School yearbook.

Senior Patrick Agin submitted a yearbook portrait photo in which he posed with a sword, a clear violation the school’s “zero tolerance” policy on weapons, according to Principal Richard Littlefield. Agin said he submitted the picture to represent his interest in medieval history and his involvement with the Society of Creative Anachronism, an organization that studies medieval history and participates in recreational activities.

The Rhode Island Civil Liberties Union filed a lawsuit on behalf of Agin, stating that his First Amendment rights were violated.

A federal district court heard the case, but sent it to the Rhode Island Department of Education to be resolved. The state commissioner ruled in favor of Agin, stating that the yearbook allows students to express themselves even though it is not a public forum and that photos including items such as a pipe, toy gun and an axe had been published in the past without opposition.

The final agreement stated that in return for the Rhode Island Civil Liberties

Union dropping the lawsuit, the school would publish the photo and not appeal the commissioner’s ruling. ■

Case: *Agin v. Portsmouth Sch. Comm.*, No. 06-01691 (E.D. Mo. filed Nov. 21, 2006).

Injunction denied in T-shirt case involving ‘Be happy, not gay’

ILLINOIS — A preliminary injunction request was denied April 17 by a federal district court in the case of a student who was prevented from wearing a T-shirt that said, “Be happy, not gay” just two days before the “Day of Truth,” a nationwide anti-gay protest in which the student wanted permission to participate.

Heidi Zamecnik wore her T-shirt on April 20, 2006, for the “Day of Truth” that opposes the “Day of Silence,” a protest held the day before by the Gay, Lesbian and Straight Education Network.

According to the complaint, Zamecnik was taken to Dean of Students Bryan Wells who told her the T-shirt “offended some students and faculty” and that she would need to remove it.

When Zamecnik refused, Wells called her mother and the three held a conference in which a compromise was reached: the phrase would be changed to “Be happy, be straight.”

After the discussion, Zamecnik claimed that Wells went against his word and had a school counselor cross out “not gay,” leaving only the phrase “be happy.”

Zamecnik filed a lawsuit against the school district March 21 with freshman Alexander Nuxoll, who agrees with her stance.

The students’ attorneys have filed an appeal to the Seventh U.S. Circuit Court of Appeals. ■

Case: *Zamecnik v. Indian Prairie Sch. Dist. #204 Bd. of Ed.*, No. 07-1586 (N.D. Ill. prelim. inj. denied Apr. 17, 2007).

High schoolers faced harassment charges for MySpace lyrics

COLORADO — Six Loveland High School students faced criminal harassment charges after posting a threatening rap song on the Internet in February, but the charges were dropped after prosecutors concluded that the lyrics in question were not specifically directed toward anyone.

On Feb. 11, a parent of one of the students in the song notified the Loveland Police Department of the matter after her child found a link to it from a MySpace page, said Loveland Police Department Sgt. Benjamin Hurr. After the song gained attention from police and the local media, the students removed the song from the Web, Hurr said.

Hurr said the song, which was created to retaliate against another group of students, featured lyrics such as “My fists are my best friends – you’re about to meet them too” and others that threatened violence.

Jonathan McEvoy, an 18-year-old senior, and Nicholas Gagnon, a 19-year-old friend of the students, were among those responsible for creating and posting the song to the Web. The other two students involved with the offensive song are minors and police would not release their names, as are another two students who police say initially started the dispute. The harassment charges were dropped for all the students involved. ■

Students expelled for making movie settle with school district

INDIANA — Three Knightstown High School students who were expelled for making a movie off-campus about a doll that kills a teacher will share a \$69,000 settlement from the school district.

The district also agreed to remove the sophomore students’ expulsions from their records as part of the settlement in a federal lawsuit filed by the students, who said their First Amendment rights had been violated when they were expelled in October 2006.

In December 2006, an Indiana district court issued a preliminary injunction that ruled in the students favor and allowed them to return to school. The students returned to classes in January.

Students Charlie Ours, Issac Imel and Cody Overbay were expelled by the school district after creating “The Teddy Bear Master,” a movie in which students mock a teacher character with the same last name as a seventh grade teacher at the district’s middle school, according to the *Star*. The teddy bear master orders other stuffed animals to kill the teacher because of an earlier embarrassment.

A fourth student, Harrison Null, was also part of the movie production and expelled, but did not participate in the lawsuit. He was also allowed to return to school in January along with the others, according to the *Indianapolis Star*. ■

Case: *Imel v. Charles A. Beard Mem'l Sch. Corp.*, No. 06-1669 (S.D. Ind. prelim. inj. issued Dec. 22, 2006).

Indiana court rules for student MySpace page

INDIANA — A court infringed on a student’s free speech when it placed her on probation for creating an expletive-filled MySpace page that criticized a school principal, the Indiana Court of Appeals ruled.

The three-judge panel ordered the Putnam Circuit Court to relinquish its penalty against the female student, referred to as A.B. in the court’s decision.

In February 2006, Greencastle Middle School Principal Shawn Gobert discovered a Web page attributed to him on MySpace.com. The page contained postings from the student on the page that were critical of the school’s policy prohibiting body piercings. Another unnamed student created the MySpace page in which A.B. posted her criticisms.

“While we have little regard for A.B.’s use of vulgar epithets, we conclude that her overall message constitutes political speech,” the opinion states.

The state filed a delinquency petition in March alleging that A.B.’s acts would have been harassment, identity theft and

identity deception if committed by an adult, according to the Associated Press. The juvenile court dropped most of the charges, but in June found A.B. to be a delinquent child and placed her on nine months of probation after ruling the comments were obscene.

But A.B. appealed, contending that her comments were political speech protected by federal and state laws because they concerned school policy.

The Court of Appeals found that the comments were protected under the free expression provision of the Indiana Constitution, ruling that the juvenile court unconstitutionally suppressed her right of free expression. ■

Case: *A.B. v. State*, No. 67A01-0609-JV-372 (Ind. Ct. App. Apr. 9, 2007) (Slip op.)

Teen rapper receives settlement from police

PENNSYLVANIA — Anthony Latour received a \$60,000 settlement from police after being arrested at his school in April 2005 for a “battle rap” posted online.

Latour’s attorney said that the school interpreted his lyrics as a literal threat against the school because of references to staff and students at Riverside Middle School in songs like “Massacre” and “Murder, He Wrote.”

Latour was later expelled from school, but was reinstated after the Pennsylvania Civil Liberties Union filed a lawsuit against the district in August 2005, requesting a preliminary injunction to revoke the expulsion.

A \$90,000 settlement was later made with the school district, while the other sum was received from the lawsuit against the two police departments who handled his arrest in which Latour’s parents claimed false arrest and violation of their son’s First Amendment rights.

Latour later withdrew from the district and is currently being home-schooled. ■

Case: *Latour v. Riverside Beaver High Sch. Dist.*, No. 05-1076, 2005 WL 2106562 (W.D. Pa. Aug. 24, 2005).

Privacy law strikes at heart of newspapers

Louisiana State students intimidated by dean citing FERPA demands

BY BRIAN HUDSON

When Patrick Esfeller, a junior at Louisiana State University, learned he was under investigation from school administrators, he says his feelings quickly moved from shock to outrage.

He claims the investigation, which was based on charges that he had been harassing an ex-girlfriend, was unfairly targeting him, and he decided to fight it. He wanted to prepare his defense by finding out exactly what evidence the university, had. So he sought the help of the campus's authority for procuring documents: the student newspaper.

After signing a waiver allowing the newspaper to access his information, Esfeller and *The Daily Reveille* submitted a request for the records to the university. Administrators subsequently turned down the request, saying that according to federal privacy laws, the university cannot release information about student disciplinary procedures.

Such a response is not uncommon for student journalists, who for decades have been barred from accessing certain school records in the name of students' rights to privacy. Since it was passed in 1976, the Family Educational Rights and Privacy Act has prevented publicly funded schools from disclosing personal information about students, such as their grades and disciplinary history, without consent.

But recently, some administrators at the college and high school levels have taken FERPA a step further. Some are claiming that, in order to protect student privacy, they have the right to actively prevent the dissemination of information.

At two schools this semester, administrators cracked down after students gave the campus newspaper information that school officials believed was covered by FERPA. In these two situations a law originally intended to protect students was being interpreted a way that silenced their speech.

After Esfeller and the newspaper filed

the records request, an administrator sent Esfeller an e-mail saying that publicizing information about the case could be seen as an attempt to "intimidate, harass or unduly influence" those affiliated with the proceedings – an infraction that could lead to additional charges.

Among the information Esfeller passed along to the newspaper was the name of the ex-girlfriend, who lodged the complaint against him.

Esfeller responded to the administrator's e-mail with indignation and contacted the American Civil Liberties Union.

Although administrators at the university could not comment on Esfeller's allegation or the investigation because of federal privacy laws, Dean of Students K.C. White acknowledged the precarious balancing act between students' freedom of expression and the right to privacy, but defended the university's stance. While one student might be willing to impart his or her records, the disclosure could infringe another's privacy, she said.

The Daily Reveille printed the name of Esfeller's ex-girlfriend in a story detailing his quest for information.

"As an institution, we have to balance the right of all of our students," White said. "When you've got competing interests, where is the public's right to know versus the victim's privacy?"

Although administrators did not stand in the way of the information being published in the newspaper, White's position could harm the newspaper's mission, said *Daily Reveille* Editor in Chief Jeff Jeffrey.

"We fear it could create a chilling effect on campus where students are afraid to talk to the newspaper," Jeffrey said. "Getting called to the dean of student's office is like getting called to the principal's office."



In January, after a resident assistant broke up a campus party junior Staci Borel was attending, she wrote *The Daily Reveille* to complain about what she believed to be an abuse of power.

A week later, Borel was called to the dean's office where the conversation focused primarily on the letter, she said.

Like Esfeller, Borel was told that airing details of her story, specifically the name of the resident assistant, could be perceived as interfering with a judicial affairs investigation and could result in disciplinary action. The senior, months away from graduation, found the warning particularly disturbing.

"I was scared, I didn't know what was going to happen," Borel said. "I'm in a lot of organizations that are based in your academic standing with the university."

Borel expressed concern that the threat she received was not a reaction to the information she released but rather an attempt to silence her criticism of the administration.

Although Jeffrey said the university's actions might be based on the legitimate interest of preserving investigative integrity, it appears suspicious.

"What they're actually doing and how it looks may actually be different, but I think it looks pretty authoritative," he said. "That over-vigilance is becoming a problem."

While *The Daily Reveille's* content was never in jeopardy when administrators acted to protect student privacy, such an effort could lead to indirect censorship.

When the student newspaper at Campolindo High School, *La Puma*, similarly tried to report the story of a student who felt slighted by school disciplinary procedures, they saw the article initially barred from publication.

Earlier this year, the newspaper attempted to report the story of a student who claimed administrators infringed his rights when they confiscated his cell phone in class. Not only was the phone taken, the student told *La Puma*, but an administrators searched the voicemail and text messages and, based on their content, searched his locker and book bag.

Believing the school conducted an unconstitutional search, the student reported his experience to the newspaper. *La Puma* attempted to print a story about it, but it ran into trouble when administrators could not corroborate it, said Elan Lubliner, a member of the newspaper staff.

Administrators would not confirm or refute the story because they did not want to violate federal privacy laws, they said. The newspaper decided to report the story nonetheless, as an opportunity to address students' rights on campus, Lubliner said.

Ultimately, the principal censored the story because it violated the student's privacy rights, said Jim Negri, superintendent of the school district that includes Campolindo High School.

The U.S. Department of Education, which oversees FERPA enforcement, has said that it does not consider the student media subject to the act – meaning FERPA does not bar newspapers from releasing information.

Despite that, Negri said he believes the school has the authority to regulate what information the newspaper releases because the paper is produced in a class.

"Under a class all schools have control over factual information and student privacy rights," Negri said. "As a class, it's not an independent newspaper."

The *Contra Costa Times*, an area newspaper, which Lubliner also works for, ran

the article without the student's name in its opinion section, along with an introduction written by Lubliner and another student.

After the article ran in the *Contra Costa Times* administrators decided to allow the article to run, Lubliner said.

Dan Bledsoe, associate principal at Campolindo High School, refused to comment, except to say that he fails to see how the incident is noteworthy because the article was eventually published.

Fighting the censorship

While students at Campolindo High School were able to get around the administrative censorship, students at Louisiana State University had fewer options.

The ACLU of Louisiana expressed interest in Esfeller's case, but a spokesman told him they would not take the case unless the administration took some punitive action.

Although the Education Department oversees the implementation of

FERPA, a spokesman said it would not become involved, even if it is found that administrators wrongfully interpreted the act in order to censor student expression.

"We're talking about disclosure of information that comes not from an education record but is disclosed by a student," said Jim Bradshaw, an Education Department spokesman. "We would only take notice if it were a school official that was releasing the information improperly."

Students would not find any more help in legal precedents for autobiographical speech – the conflict over which still is in its infancy – said Sonja West, an assistant professor of law at the University of Georgia.

In an article scheduled to be published this spring in the *Washington University Law Review*, West calls for increased constitutional protection for autobiographical speech.

"Courts and commentators have paid basically no attention to the constitutional protection of autobiographical speech," she wrote. "The right to tell your own life story has received only passing reference in a handful of lower court decisions." ■

Criminal libel laws battled out West

By JARED TAYLOR

10th Circuit Court denies N. Colorado student's criminal libel appeal over Web site

A federal appeals court has affirmed a lower court's dismissal of claims made in a lawsuit that challenged the state's criminal libel statute that was filed by a former University of Northern Colorado student.

But Thomas Mink, who was investigated by police for publishing a satirical online journal, may be eligible to receive damages from the assistant district attorney who approved a search warrant for his home, the 10th U.S. Circuit Court of Appeals ruled April 16.

Greeley Police searched Mink's home in December 2003 and confiscated his computer after University of Northern Colorado Professor Junius Peake filed a complaint after a doctored photo of him was published in the online journal, according to the ruling.

Days after the search, officers told Mink's attorney they were pursuing charges under the state's criminal libel law, which makes it a crime to maliciously publish false, damaging information about someone who is not a public figure.

Mink filed a federal lawsuit that said the criminal libel law violated his constitutional right to free speech and that he was seeking damages for the search and seizure of his property. A federal district court dismissed Mink's case in October 2004, saying his claims against prosecutors were protected by absolute immunity, and as he was never charged under the criminal libel law, he lacked standing to challenge it.

Mink appealed the district court ruling, and the federal appeals court ruled he did not have standing to challenge the criminal libel law because the district attorney stated he would not pursue the charges. The panel

See **Criminal libel**, Page 45

“We fear it could create a chilling effect on campus ... Getting called to the dean of students' office is like getting called to the principal's office.”

Jeff Jeffrey

editor in chief, *The Daily Reveille*, Louisiana State University

Discretionary searches

College and universities looking for new leadership insist that secrecy is the only way to attract the best candidates

BY JARED TAYLOR

Jim Lewers said it was “pretty simple.”

The Iowa Board of Regents violated state open meetings laws during its search for a new president for the University of Iowa, he contends.

“They had a regular meeting ... and at the end of the meeting they didn’t officially adjourn and they met both in person and by telephone several times over the next several days,” said Lewers, managing editor of the *Iowa City Press-Citizen*.

And he’s not alone in his concerns. Lewers’ concerns about transparency in public university presidential searches are shared around the country, as large public universities such as Ohio State University, Oklahoma State University, Purdue University and the University of Iowa, among others, are looking for new leadership. Indiana University announced its new president in March after a completely closed search.

Lewers and the *Press-Citizen* filed a lawsuit against the Regents, alleging that members illegally gathered in closed session without notice several times from Nov. 10 to Nov. 17, 2006, to discuss public matters regarding the presidential search.

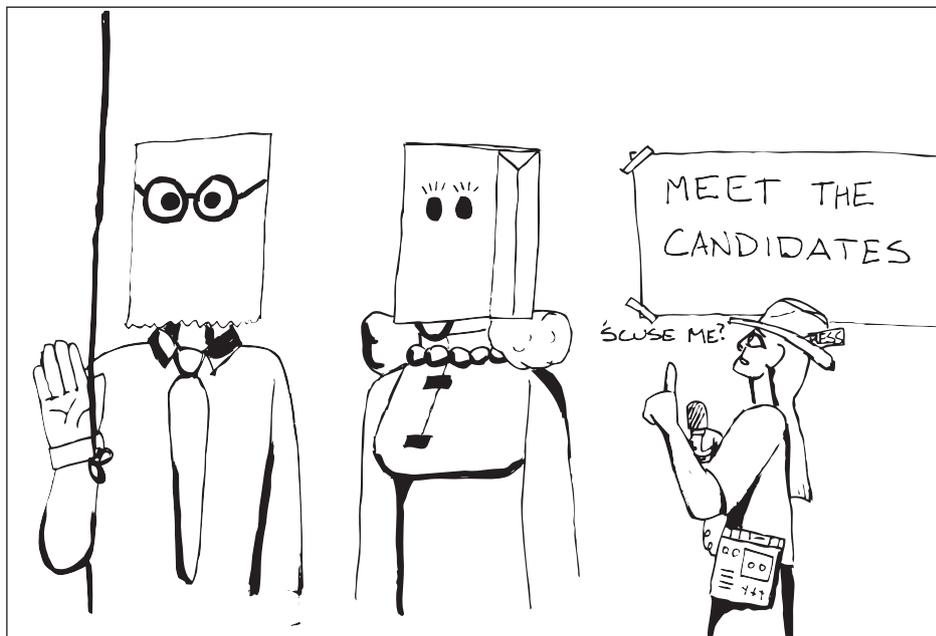
“They contend it was one big meeting — a continuation of the meeting,” he said.

Michael Gartner, executive director of the Iowa Board of Regents and a former newspaper editor, said the discussions were “one adjourned meeting to discuss a personnel issue.”

Gartner said the board operated within Iowa open meetings regulations because they gave notice of the closed session during its Nov. 9 meeting.

The meeting, which the regents claimed lasted until Nov. 17, 2006, remained closed to the public because some of the four presidential finalists did not want their identities revealed, Gartner said.

“I wouldn’t have minded disclosing them, but the candidates didn’t want them



disclosed,” Gartner said.

Open or closed?

While freedom of information advocates contend that administrator searches at state universities should be as open to the public as possible, higher education advocates say searches must have at least some confidentiality to attract the best candidates, who may fear that looking elsewhere could jeopardize their current job.

Claire Van Ummerson is the vice president for the Center for Effective Leadership at the American Council on Education, a Washington-based higher education advocacy group.

She said for a public university to lure the best leaders to its campus, identities should not be disclosed until finalists are named.

“If you’re trying to attract people who are [currently] presidents...you need to give them some level of confidentiality,” said Van Ummerson, who has also served as president of Cleveland State University and

chancellor of the University System of New Hampshire.

Charles Davis, executive director of the National Freedom of Information Center in Columbia, Mo., has performed research on how public university searches are performed. He said closed searches for public university administrators are “scandalous.”

“A search committee and a headhunter working for the search committee have a vested interest in getting the job done,” Davis said. “They want to get the job done right, but they have a [primary] interest in getting someone in that job.”

According to a recent survey conducted by the American Council on Education, 52 percent of universities relied on external search firms to find new leaders in 2006, an amount that has “close to doubled in the last 20 years,” Van Ummerson said.

Much of the rise in closed presidential searches has come from increased use of private search firms — or headhunters — to pursue talent, just as major corporations would search for a new high-level executive.

Bill Funk is one of those headhunters.

Funk has been in the higher education recruiting business for more than two decades and today heads his own search firm. He and his associates are responsible for finding more than 60 sitting presidents at universities across the country, from Washington to Massachusetts and plenty of public and private institutions in between.

Funk says that “probably 60 percent” of the searches his firm conducts today are open — that is, the names of candidates who are finalists are revealed before hiring decisions are made.

“If you’re a provost, vice president or other dean, there’s a pretty widely accepted notion that you will be revealed,” Funk said.

But if a public university wants to bring a sitting president at another school to lead its campus, the recruitment process needs to be closed until the candidate is hired, Funk said.

“If their names are revealed before they are a finalist, they will drop out,” he said.

When finalists’ names are revealed in searches, “essentially you wipe out the sitting president possibilities” because of the negative image that revelation sends back to their current campuses.

“It will scare away sitting presidents — your pool will be skewed,” Funk said.

Back at the University of Iowa, Gartner said the Regents “conformed with all aspects of the law” because the closed session was used to discuss the presidential candidates.

“No action was taken because you can’t take action in a closed meeting,” Gartner said.

On Nov. 17, 2006, the Iowa state Board of Regents emerged from the private meeting and voted to scrap the Regent-led presidential search and restart the process.

A new presidential search led by the university’s faculty commenced in December 2006.

Van Ummerson said if the University of Iowa chooses to disclose its finalists, it could hinder its quality of candidates.

“They won’t probably end up with a sitting president, but there are many sitting in provost positions throughout the country who are well-trained and well-prepared to take these roles,” she said.

Davis said by closing the search at pub-

lic universities, the process becomes easier for the committees and consultants while shortchanging the public’s right to be informed.

“It helps them control the field and hand pick the finalists,” Davis said. “If they can close it to public scrutiny, then they can be dealing with a lot fewer people.”

Much of the controversy that surrounds how presidential searches are conducted is rooted in traditions of different levels in the university hierarchy, Funk said.

When most public universities look for a new department leader or college dean, the vast majority of searches are out in the open, Funk said. But when many of the same faculty members are appointed to look for a new president, more is at stake.

“The ethos changes as you move up the ladder of executive rank” to demand a more closed search, Funk said. “We try to tell them at the presidential level there’s a different reaction.”

Davis says there’s a more basic reason for how things are done at the top.

“There’s an economic food chain in institutions of higher learning and university presidents want to climb up,” he said. “Everybody in a market economy wants to move up in terms of prestige and pay and responsibility. I don’t see how open searches are going hurt that.”

When a provost is revealed as a presidential finalist and not hired, they can find themselves on the hot seat and could lose their jobs back home, Funk said.

“Over the 25 years I’ve been doing this, what happens usually is that is not the reason they are ultimately let go,” Funk said, “but it becomes, if you will, the catalyst and they find reasons over the next six to 12 months to move them out.”

Davis said he disagreed.

“If you’re incredibly popular at home, it doesn’t hurt a bit,” he said. “But if you are slinking around in the dark back at home with one foot on a banana peel, you’re probably going to be in trouble anyway.”

Playing on tradition

But much of whether a

presidential search will spark an open access controversy on campus depends on how it was done in the past, Funk said.

“The first thing we inquire about is what is [the hiring school’s] tradition and what is your history of doing things,” he said. “We try to counsel them about the ramifications” of open or closed searches.

In 2000, Funk recruited Martin Jischke, who was president of Iowa State University, to the same position at Purdue University, a public institution in Indiana.

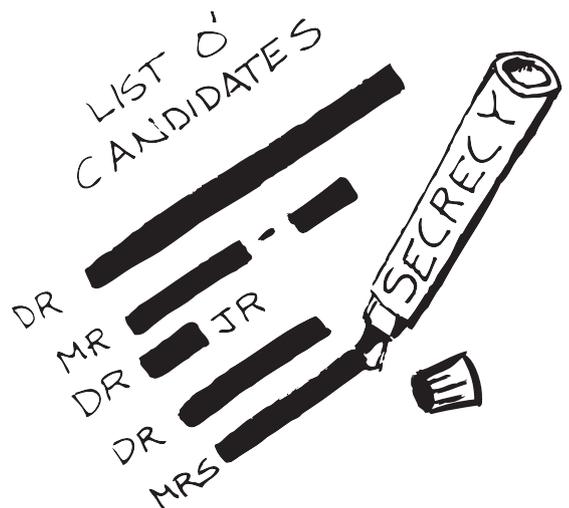
That search was completely closed, as is the current one headed by Funk to replace the retiring Jischke at Purdue, who earned \$880,950 during the 2006-07 school year — the second-highest salary among all public institutions, according to *The Chronicle of Higher Education*.

“They really did want to look at sitting presidents because they felt they were at [that] stage,” Funk said. “That process really helped them.”

“The reason it’s not problematic at Purdue is that is how that’s how they’ve always done it.”

Davis said regardless of tradition, closed searches are simply a bad practice.

“I think everybody is trying to apply a private sector model into a public sector job,” Davis said. “They use all sorts of corporate terminology to make it sound like these guys are going to be running a bank or something instead of a flagship institution that is funded by the public.”



Sunshine State lives up to its nickname

State laws vary about how open public university presidential searches need to be conducted, Van Ummerson said. Typically, presidential searches can remain closed until finalists for the position are named, she said.

But in Florida, all public university presidential candidates' names are made public before and throughout the search process, regardless of whether the candidate applies for the job or is nominated by someone else.

Sandra Chance, executive director of the Brechner Center for Freedom of Information at the University of Florida, said the state's sunshine laws lets the public "make sure we have the best pool, but also the most diverse pool," and that public university presidential candidates know they will be made public before decisions are made.

Davis said Florida's law shows that transparent searches can succeed.

"You can have a completely open search from day one until the hire and guess what? Florida hasn't fallen into the ocean yet," Davis said. "There's not evidence — anecdotal or otherwise — to say that it has harmed the caliber of presidents found in that state."

But as a result, Van Ummerson said "a lot of sitting presidents don't look for positions in Florida" to avoid controversy at their own campus, should they not be selected for the job.

"It's very hard to go back to your campus and say 'I didn't want this job anyway,'" she said.

But even with some of the most open sunshine laws in the country regarding administrator searches, the public does not always know the full story.

Funk, who recruited the current presidents at Florida State University and the University of West Florida, where he said, "no shenanigans were involved," has "observed some cases where the sunshine law worked in reverse of what it was intended to do."

Sometimes search committees make unofficial decisions in private, Funk said.

"What happens is they decide who they want before they announce that final group and promise that person [the job] before

they go public," Funk said. "What's really unfortunate is you have four or five other people who are out there. I think it's kind of a sham."

"It's one of the ways you can get sitting presidents in there."

While Florida's law attracts presidential candidates in the open, other states likely will not adopt similar policies any time soon, Davis said.

"I don't see a lot of states moving in that direction to say the least," Davis said. "I see more states falling to the headhunter argument saying they have to close these things."

The future

With a shrinking pool of talent, the stakes could become higher as annual presidential salaries approach \$1 million.

More public university presidential searches are closed as a result of aging leadership among university leaders, Van Ummerson said. She said that nearly half of

university presidents were at least 61-years-old in 2006 — more than three times greater than twenty years earlier.

"There's going to be a lot of retirements. Depending on hiring a sitting president isn't going to work," Van Ummerson said. "It is not just individuals changing jobs, it is individuals who are retiring so the pool is not as robust it used to be, in terms of numbers."

"In terms of numbers, there's going to be higher competition for the people."

But just because there is greater competition for new university leaders, that does not mean searches have to be less open, Davis said.

"It's very much the case that there is a shrinking talent pool," he said. "Where I get off the bus is I don't see how secrecy helps that any."

At the University of Iowa, faculty members are leading a search that has been more open than the last, with posted meeting times and minutes at the university Web site, although David Johnsen, committee

U. of Tennessee promotes open presidential searches

After losing two presidents in as many years, the University of Tennessee System needed to find a way to bring a new leader to its campuses who would be able to stick around for a while.

When former President John Shumaker resigned amid financial and personal controversy in 2003, the University of Tennessee Board of Trustees set out to find a new president in a way that would allow stakeholders to scrutinize candidates and hopefully avoid future scandals.

"It resulted in people from across our long narrow state feeling reengaged and reenergized," Andrea Loughry, vice chair of the University of Tennessee Board of Trustees, said of the ensuing presidential search.

During the six months that led up to the hiring of current University of Tennessee System President John Petersen, the search committee conducted one of the most open presidential searches higher education has ever seen, she said.

Loughry said despite the higher overhead costs for a completely open search that included live Web casts of candidate interviews and larger meeting rooms to accommodate the public, "it was definitely worth it."

"It more costly, but the results we feel were beneficial particularly in terms of the process enhancing the amount of growth in communication among our stakeholders," which includes students, faculty and staff, Loughry said.

But conducting a search out in the open can have its drawbacks.

With other private searches going on at other large public universities at the time, some candidates did not want to be considered for the Tennessee job, Loughry said.

"The sitting president's comment to our executive director was... 'Why would I put myself through the public search going on at Tennessee when I can participate in these other searches?'" Loughry said. ■

chairman and dean of the College of Dentistry, said the committee has not decided whether to disclose presidential finalists' names to the public.

Funk said he was not surprised to see the public outcry surrounding the private search at Iowa.

"You could have almost predicted that was going to be a slippery slope," said Funk, who recruited Iowa's previous two presidents. "They had a tradition of how they did these presidential searches" in the open.

Keeping a search open does not mean a university will end up with an unqualified candidate, Funk said.

"The only difference is you're going to have no or certainly fewer sitting presidents in your pool because they are worried about confidentiality because it could hurt their

jobs," Funk said.

Today, the *Press-Citizen's* lawsuit is pending in Polk County District Court and the University of Iowa is still without a permanent president, but has set a July 1 hiring deadline.

Past critics have praised the new search process as being more open than the first, with meeting notices and minutes published on the university Web site.

Sheldon Kurtz, faculty senate president at the University of Iowa, led a "no confidence" vote of the Regents after the first presidential search failed.

He said the new search committee, composed of university faculty, staff and students, has been more accessible and transparent than the first.

"I think it's going quite well, based

upon the fact that they are keeping people apprised on what has been happening," Kurtz said.

Still, the presidential finalists may not be disclosed to the public, said David Johnsen, the search committee's chairman and dean of the College of Dentistry. He said the finalists could face anything from "extensive campus interviews" or "could even be a closed process," as the committee has not decided.

But Kurtz said presidential candidates at the University of Iowa should not be afraid of publicizing their candidacy to lead other universities.

"We can't worry about them, we've got to worry about us," Kurtz said. "We're a public institution. They've got to learn that they have to be out in the public." ■

ACCESS IN BRIEF

LEGISLATION

California senator pushes bill to make presidential salary discussions public

CALIFORNIA — A bill that has unanimously passed California State Senate would allow greater public access to the state's public university governing board meetings.

Introduced by Sen. Leland Yee (D-San Francisco/San Mateo), SB 190 would require executive compensation packages drafted by the California State University Board of Trustees and the University of California Board of Regents to be discussed and voted on in public.

The California State Assembly will now consider the bill.

SB 190 was drafted after lawsuits and audits revealed that top administrators in the state's university systems were being paid more than the amount made public.

"SB 190 will bring much needed sunshine to these discussions, provide members of the media the democratic

access they deserve, and help restore the public's trust," Yee said in a statement.

A California court ruled in August 2006 that while the University of California Board of Regents can discuss administrator pay in private, no final decision could be made. The decision came in a lawsuit filed by the *San Francisco Chronicle* to stop the board from making those decisions in closed sessions.

Yee also introduced legislation that was signed into law by Gov. Arnold Schwarzenegger in August 2006 explicitly prohibiting censorship of college student newspapers. ■

U. of Alabama student journalists say new interview policy too restrictive

ALABAMA — Student journalists at the University of Alabama said they are unable to easily interview school officials after the university implemented an unwritten policy that requires reporters to contact the school's media relations office for access to university faculty and staff.

The controversy went public after a

story published March 8 in the student newspaper, *The Crimson White*, detailed student journalists' frustrations with the policy, which the story said started last summer when the university reshaped its public relations office.

Crimson White Editor in Chief Marlin Caddell said the since the new policy has been in place at the Tuscaloosa campus, it has "filtered" information from all levels of campus administrators — from low-level department directors to the university president.

University spokeswoman Cathy Andreen disputed Caddell's claims, saying that all news outlets have to contact media relations to interview campus officials.

"Some people in the university prefer that all media — not just student media — go through media relations office for interviews," Andreen said.

Caddell said his newspaper has complied with the policy until now, but obeying the policy would hurt student journalists' ability to learn and build relationships with sources on campus.

"There will be nobody who remembers how things used to be and an that this is an accepted way of doing things," he said. ■

A culture of open records

This spring, the SPLC celebrated Sunshine Week, an annual event that encourages organizations to promote open government

Although Sunshine Week is celebrated in March, advocates and journalists agree that open government should be an everyday occurrence.

BY BRIAN HUDSON

Student newspapers are essentially community newspapers, but with one trait that sets them apart from their commercial counterparts.

Student publications, which are often fueled by a volunteer work force, can field a larger staff. They can have a quicker response time. What students lack in experience, they can make up for with tenacity for chasing down provocative stories.

But that determination might lack direction, and even the most seasoned reporters can run short of story ideas. To avoid that, all reporters should be well versed in accessing public records.

These records can foster the kind of articles that both attract reader attention as well as hold leaders accountable. Each year hundreds of news organizations participate in Sunshine Week, which is specifically designed to underscore the importance of access to government records.

More than 700 groups were involved in the week this year, which ran from March 11-17, 2007. Organizations participated in a new nationwide audit where they worked to obtain the same public document from many local governments.

But the week itself is not the end goal. Rather, the purpose is to focus attention on open government and records access that can be carried over to the entire year, said Debra Gersh Hernandez, coordinator for the week's events.

"If you look at the myriad stories that come from public records ... it just shows how important it is to protect access" she said.

Pulitzer Prize-winning reporter Bill Stith advocates that sort of perpetual dedication to investigative reporting. Stith, who writes for *The (Raleigh, N.C.) News and Observer*, is an expert in the use of electronic databases – used in newsrooms across the country as computer-assisted reporting.

He advises establishing a permanent mechanism in the newsroom that will create an investigative culture which, when nurtured by curiosity and dedication will allow writers to naturally consider how information from open records can be used

That kind of diligence to culling open records worked for reporters at *The Daily Tar Heel*, the student newspaper at the University of North Carolina. In fall 2005, after an editor became curious how much the university spent on printing costs.

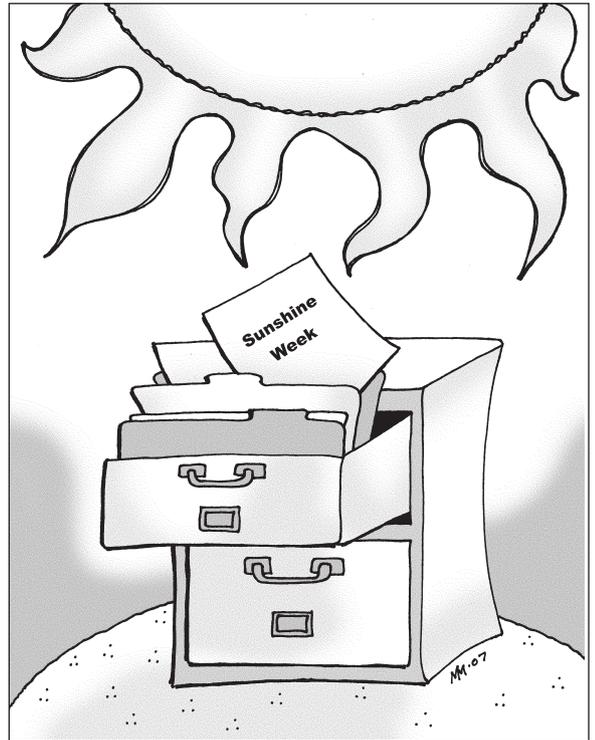
A reporter made an open records request, and with that data discovered that at the campus's computer lab, where printing was free, students used more than 2 million sheets of paper each month, costing students and the university thousands of dollars.

The incredible amount of paper being used on campus, documented by a November 2005 article, caught the attention of student leaders at the university, who began a push for quotas to limit students' printing totals.

An investigative culture in your newsroom will in the same way allow you to harvest stories from open records. It is a resource that gives reporters the ability to translate natural curiosity into thorough investigative articles.

During this year's Sunshine Week, the Student Press Law Center offered student journalists examples of stories they could cover that would help create a culture of using open records in the newsroom. Here are a few stories from that week – some that were published online and others published for the first time here.

Try them out, or develop your own investigation using public records and share your successes. ■



— The next Sunshine Week is March 16-22, 2008, visit www.sunshineweek.org —

Do it too!

SPLC reporters sought records of interest to students by requesting information from governmental agencies near our office.

Use our free state freedom of information letter generator!
Access it online at
www.splc.org/foiletter.asp

Salary Information

Examining salary information at your school can be a great way to uncover interesting stories.

Typically, only public schools have to disclose salary information under state open records laws. At private schools, you may find some salaries for top administrators by requesting the school's Form 990 tax form.

Before slapping an open records request letter down on an administrator's desk, ask to see the salary information first. Use letters only when one is requested or if a verbal request is denied.

You can write an open record request letter by visiting the State Open Records Law Letter Generator on the SPLC Web site.

To find out how area schools handle salary requests, the SPLC decided to contact the University of Maryland and Montgomery County (Md.) Public Schools and ask for salary information.

We contacted the Montgomery County Public Schools for teacher salaries at JFK High School.

After exchanging e-mails to clarify what we wanted to obtain, a public information officer provided us with a spreadsheet file of all the high school teachers' salaries.

At the University of Maryland, Dale Anderson, director of university human resources, said his office discloses salary information it is obligated to share whenever a person provides an open records request letter, but typically charges for requests.

Anderson said that student newspaper *The Diamondback* requests salary information from his office every year. *Diamondback* editors said the salaries are a popular feature.

While the numbers alone might not make the story, the information can be handy to have around when that next big story breaks. ■

Health Inspections

Food service establishments across the country are subject to routine health inspections, and those reports – be they from a school cafeteria or five-star restaurant – are almost always open to the public under state open records laws.

Health inspection grades likely are available at your county's environmental health office, as are past copies of inspectors' reports. In some counties, the information is even posted online.

We reviewed the health inspection history of a dozen restaurants in Rosslyn, the Arlington, Va., neighborhood where the SPLC is located. The records themselves may not be a story, but within the reports journalists can find trends and investigate local hangouts and eateries.

For example, one Rosslyn establishment that has been particularly prone to health code offenses tallied 68 critical violations during the 12

inspections it has had since February 2003. Those violations accounted for almost 20 percent of all critical violations in the area's restaurants in that time span.

The restaurant was cited five times for the presence of vermin between January 2004 and April 2005 before the problem was rectified. One question for health officials, for instance, would be why it took five consecutive health inspections for the restaurant to correct its vermin problem.

A health inspector explained that a restaurant is closed when there is found to be an imminent health-hazard such as vermin infestation, which occurs when pests are present "in the food, basically."

"If it's critical enough, we'll take action," he said. "It's judgmental: How many mice droppings do you get in trouble for?" ■

Bus Maintenance

In seeking bus maintenance information in Arlington, Va., the Student Press Law Center contacted the Washington Metropolitan Area Transit Authority, which runs the bus system in Arlington, and Arlington Public Schools, which maintains school buses in the district.

The WMATA offers policy procedures online, but we called to request a fee waiver, which is sometimes permitted by law for non-profits or the media. We were redirected to the Office of the General Counsel where a waiver was verbally granted for a request under 100 pages. A detailed e-mail request for maintenance records concerning a particularly bus route was sent Feb. 13 and our request was granted March 13.

Unfortunately, a waiver was not available from Arlington County Schools. A district representative said while she "commends" the research, the

district rarely endorses a waiver. A request was submitted on Feb. 15 and a follow-up call was made 10 working days later, when we learned our waiver had been denied. An official there said it would take up to eight hours of professional work to obtain the records in a specialized computer program for the district's 125 buses — totaling more than \$300.

A search or copying fee can often be minimized by reducing your request to a particular route or a narrow time period. ■

Learn about your right to access athletic department records at your school!
Read about it on page 27.

— Read coverage from this and past year's Sunshine Weeks on www.splc.org —

Incident highlights importance of Clery Act

Editors say Tampa police inaccurately reported campus rape

BY JARED TAYLOR

After University of Tampa officials had failed to notify students and the student newspaper about a rape reported on campus, the university is reviewing its crime reporting procedures to ensure they are in accordance with federal statutes.

No campus crime alerts were issued after the alleged rape was reported to police on Jan. 27, and the incident was not included in the university's campus crime log sent to *The Minaret*, the University of Tampa's student newspaper.

Victor O'Brien, editor in chief of *The Minaret*, said a flyer was posted in each dormitory on campus four days after police learned of the rape, but the newspaper and other students on campus did not learn of the crime until Feb. 9, nearly two weeks after the incident was first reported.

O'Brien said the rape was initially reported as a less serious crime.

"We checked the police logs and it was posted as sexual assault instead of sexual battery," he said. "They sent us that and we kind of trusted them to be accurate."

University officials said they did not initially report a campus security alert because of the possibility the incident was a date rape, although they admitted the crime was not reported in a timely enough fashion, according to the *St. Petersburg Times*.

Dean of Students Robert Ruday defended the university's position in a message sent to all campus e-mail addresses.

"The primary question for authorities on the scene after they secured the safety of the victim was to decide if there was a continuing danger to the campus at large," the e-mail said. "In this particular instance, the university followed what we believed to be appropriate protocols and fully cooperated with local law enforcement."

O'Brien said that students needed to know about the incident soon after it was reported.

"They didn't want to make a situation with mass hysteria, but we should have known and women should have known to

watch out," he said.

The federal Jeanne Clery Act requires both public and private colleges and universities nationwide to issue crime alerts in a timely manner when major crimes — such as rapes — are reported.

The U.S. Dept. of Education sent an e-mail inquiry to the university about how the crime was reported after Security on Campus, a non-profit Clery Act advocacy organization, sent an e-mail to the university and the Department of Education about the situation.

Daniel Carter, senior vice president of Security on Campus, said regardless of whether the incident was a date rape, the University of Tampa officials failed to comply with the Clery Act, which requires all colleges and universities disclose crimes reported on campus.

"An institution can not fully comply with Clery by having the default position, as you say UT does, that timely warnings will never be issued in an acquaintance rape case," Carter wrote in an e-mail to Donaldson.

The alleged rape occurred after a man accompanied an intoxicated University of Tampa student back to her dorm room. The man grabbed his clothes and fled the student's room when another student showed up. Security cameras captured the man's blurry image when he left and the woman reported the incident to police soon afterward.

During a telephone interview, Carter said timely crime warnings are "important because it is the thing that will allow students to empower themselves" against crime.

Under the Clery Act, university officials should have issued a campus security alert within hours of the incident being reported, Carter said. He said even though the suspected rapist remains at large, the university still has not issued an official crime alert, which is generally provided via e-mail or with flyers posted on campus.

"At this point, it probably wouldn't make much sense, given how far out it is and the information is well known," Carter said.

O'Brien said university officials are reviewing the university's crime alert notifica-

tion methods with help from Security on Campus and the U.S. Department of Education. The Dean of Students Office was to provide a report about disclosing campus security information to the university president by March 30, but that deadline has been extended until May 30.

O'Brien said the university has more readily reported crimes with fliers on campus since the incident — after another rape occurred on campus and following a report of a person seen allegedly carrying a gun on campus.

"I'm not sure if it was their own definite effort to keep it secret but I do think that they [now] realize that they have to notify people," O'Brien said.

Carter also said student journalists should check crime reports in person rather than rely on summaries or reports sent to local media by campus security or police.

O'Brien said *Minaret* reporters have started checking the campus police log themselves, in addition to relying on the e-mailed reports. ■

More about the Clery Act

The federal law, last amended in 1998, requires that colleges and universities report crimes in the following seven major categories:

- Criminal homicide, including murder and manslaughter
- Sex offenses, including rape and non-forcible sex offenses
- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft and arson
- Schools are also required to report liquor law violations, drug law violations and illegal weapons possession. Statistics are also broken down geographically, and must indicate if any crime was a "hate crime."

— Information compiled from the Security on Campus, Inc. Web site, www.securityoncampus.org

Open records season

College athletic programs, subject to open records laws, maintain data that can lead to stories

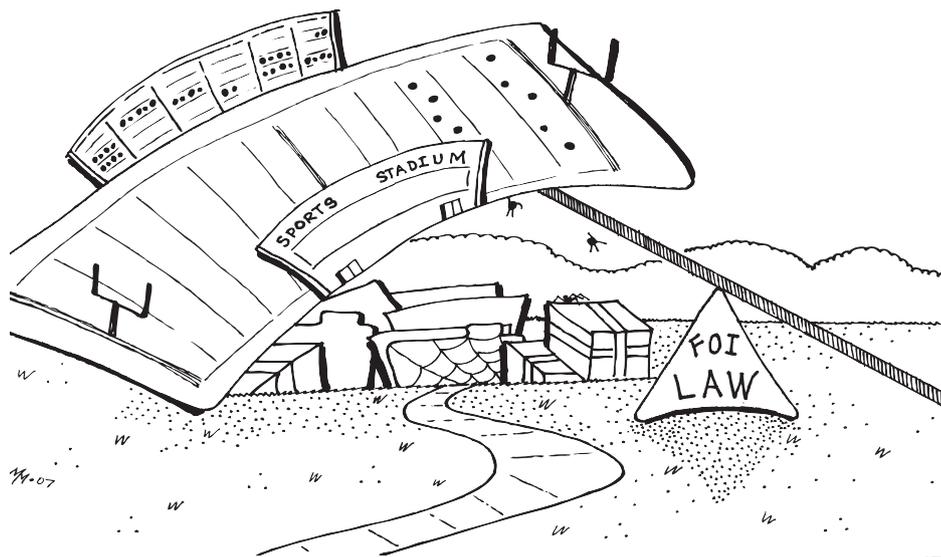
Scoopy Doo, ace reporter for *The Paper* at Highbrow College, heard from his inside source, Bad Breath, that the nationally ranked men's foosball team at Highbrow received \$250,000 of new equipment last year while funding for the women's team was cut for the third year in a row. He also tells Scoopy that nearly half of the players from the team are in danger of flunking out because of poor grades. Frankly, Scoopy has often wondered how some of them were ever admitted to academically competitive Highbrow College in the first place. Finally, Bad Breath says that the school plans to raise tuition next year to cover a shortfall in the athletic department's budget. Given that Scoopy and his classmates already pay \$50 for a foosball match ticket and \$10 for a stadium hot dog (not to mention the \$1 surcharge for ketchup), Scoopy wonders where all of the athletic department's money goes.

Scoopy knows from past experience that Bad Breath's leads can only be trusted so far. He will need independent confirmation. Unfortunately, he knows that the tight-lipped public information officer will once again simply point to the framed "No Comment" sign on her wall when Scoopy approaches her.

Fortunately for Scoopy, much of the information he seeks is available because of: 1) federal legislation, 2) traditional state open records laws or 3) the National Collegiate Athletic Association (NCAA).

While students attending a public school have probably always had — and continue to have — a right to much of the information Scoopy needs by using their state open records law, private school students were generally out of luck.

However, Congress and the NCAA, reacting to charges of administrative abuse and poor academic performance by student athletes in some college athletic programs, have sought to more closely monitor the situation by enacting laws and regulations that require schools to compile and disclose detailed information about the administration of their college athletic programs. For example, the Student Right-to-Know Act and NCAA regulations grant students and the general public access to college and university reports regarding enrollment and graduation rates of student athletes. The Equity in Athletics Act requires schools to compile and make available to the public annual reports comparing the amount of money spent on varsity programs for both men and women. And federally mandated "Program Participation Agreements" compel schools to gener-



ate budget reports listing such information as athletic staff salaries, revenues from sporting events and total program expenditures.

As college athletics become an ever-bigger enterprise at many schools, the student media has an ever-growing obligation to monitor their programs. The following guide should provide you — and Scoopy — with valuable tools for obtaining the information you need to do your job.

Student athlete graduation rates, admissions standards and financial aid information

The Student Right to Know Act, a federal law passed in 1990 to remedy the perceived abuse surrounding athletic scholarships and other athletically related financial aid, is one avenue for getting access to this information. The law was also aimed at improving retention and graduation rates.

It requires most colleges and universities to issue an annual report to the U.S. Department of Education. This report must compare the graduation rates of student-athletes to that of other students, broken down by race and gender. It also must contain the total number of students at each institution compared with the total number receiving athletically related student aid participating in various sports.

Who must comply and what is the penalty for noncompliance with the Student Right to Know Act?

All postsecondary schools that receive federal financial assistance (for example, institutional research grants, federal work-study assistance or other grants for students and National Direct Student Loans) and offer athletically related financial aid must comply with the act. This includes almost all postsecondary schools issuing athletic scholarships since virtually every postsecondary school — public and private — receives some form of federal financial assistance.

(Note, however, that because NCAA Division III schools cannot offer athletically related financial aid, they will not be required by this law to provide graduation rate information specifically for student athletes. They are, however, required to provide the overall graduation rate for students at their school.) Schools that fail to submit a report to the Department of Education would risk losing their eligibility for federal aid or face other penalties for noncompliance.

Where can I get this information?

Reports required under this law must be filed with the Department of Education by July 1 of each year. All schools must report the data that they have (for example, the number of students attending, those receiving athletically related aid, etc.) regardless of whether or not they publish graduation rates. The Department of Education is then supposed to summarize the data and indicate how schools rank nationally.

According to Department of Education regulations, schools are supposed to make their report reasonably available to the public through appropriate mailings and publications. Reports should also be kept on file for students or the general public to review upon request and must be distributed directly to prospective student-athletes. Alternatively, this information should also be available by making a request (either informal or under the federal Freedom of Information Act) to the U.S. Department of Education.

In addition to requirements under the Student Right-to-Know Act, universities and colleges participating in NCAA competition are required by NCAA regulations, to make graduation rate (number of students graduating within six years of enrollment) or persistence rate (a measure of how many students in a given class return to school for the following year) data, broken down by race and gender, publicly available. Division I schools must issue graduation rate data for the classes entering six years prior to the current year. Division II and III schools are required to issue either graduation or persistence rate data annually as to how many students are enrolled.

These reports must list the number of entering student-athletes receiving athletically related aid in various sports, the total number of students in the school and the average graduation or persistence rates of previous classes for athletes and non-athletes. Division I schools are also required to report: 1) high school grade point averages for the collective group of entering student-athletes receiving

athletic aid broken down by major sport, 2) average college board scores, 3) courses of study and 4) average time spent to graduate by athletes and non-athletes.

Who must comply and what is the penalty for noncompliance with NCAA regulations?

All colleges and universities participating in NCAA competition are subject to the NCAA's regulations. Schools that fail to submit the required information by the July 1st deadline will not be allowed to enter a team or individual in any NCAA championship event.

Where can I get NCAA information?

The NCAA makes this information available on its Web site, at http://www.ncaa.org/grad_rates/. You can find it by selecting an NCAA Division and then an individual school.

The Web site also includes data on NCAA Graduation Success Rate (GSR) and the Academic Success Rate (ASR). According to the NCAA, the GSR measures graduation rates at Division I institutions and includes students transferring into the institutions. The GSR also allows institutions to subtract student-athletes who leave their institutions prior to graduation as long as they would have been academically eligible to compete had they remained.

The ASR measures graduation rates at Division II institutions and is very similar to the GSR. The difference is that the ASR also includes freshmen who were recruited to the institution but did not receive athletics financial aid.

Financial data for men's & women's sports

Athletic program financial data broken down by gender can be obtained using the Equity in Athletics Disclosure Act (EADA), a federal law passed in 1994 to address the unequal resources traditionally allocated to men's and women's athletics.

It requires every coeducational college and university that receives federal funding and that participates in intercollegiate athletics to make an annual report publicly available. This report should compare the amount of money spent on men's varsity sports programs to that spent on women's, as well as list the revenues and expenditures for each team.

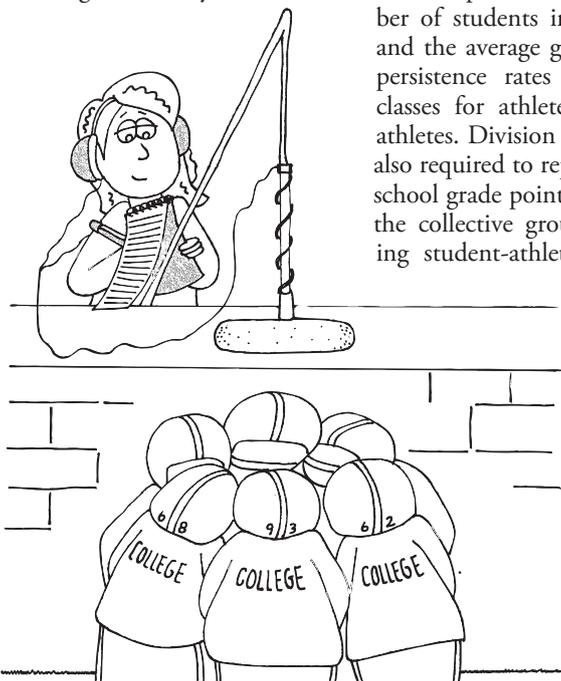
The EADA report must also include: (1) a comparison of the amount of athletically related student aid awarded to student-athletes by gender, (2) the amount of money and other resources spent on recruiting student-athletes, (3) the amount of annual revenue generated by varsity teams and (4) the average annual salaries of the head coaches and assistant coaches of varsity teams.

Who must comply and what is the penalty for noncompliance?

Every coeducational college and university — public and private — with an intercollegiate athletic program that receives federal financial assistance (for example, institutional research grants, federal work-study assistance or other grants for students and National Direct Student Loans) is subject to this law. Schools that do not comply with this provision risk losing their federal funding.

Where can I get this information?

There is no regulation indicating where the report must be made available. However, the Department of Education suggested in its regulations that if copies were left at the intercollegiate athletic offices, admissions offices, libraries or sent to each student by e-mail, this requirement would be satisfied. Students, prospective students, parents or coaches may not be charged for this information. Members of the general public can be charged reasonable copy fees.



FOI law in action

Indiana reporter uses law to dig up athletic program reports on 164 Division I public colleges

Universities and students contributed \$1 billion to university athletic departments in 2005, according to a story by Mark Alesia of the *Indianapolis Star*.

How did the *Star* get this scoop? Working with a team of several other reporters, Alesia sent requests to 215 Division I public schools under each of the state's open records law. (You can submit your own using the SPLC's open records law request letter generator at: <http://www.splc.org/foiletter>).

They asked for financial information on everything from ticket sales to student contributions, broken down by sport.

This information is all part of each school's NCAA/EADA report — which provides a bit different information than the

federal EADA report — which schools are required to file with the NCAA by January 16 of each year. Alesia ended up with information from 164 schools, a response rate of 76 percent. With this information, the *Star* reporters were able to ask tough questions about the cost of college sports programs, and the article came out in time for the 2006 Final Four.

The *Star*'s NCAA Financial Information Database is available online, with all of the information gathered from the 2004-05 school year. You can find it at http://www2.indystar.com/NCAA_financial_reports/

Check out your school today. And make it a habit to ask for this information annually. ■

This law requires schools to inform students of their right to obtain the information included in the reports but the Department of Education will not regulate this requirement. The Department does, however, recommend that notice of the reports' availability be given at least once annually in a widely circulated school publication, such as an institution bulletin or newsletter.

Alternatively, this information is also kept by the Department of Education. You can find it online at <http://ope.ed.gov/athletics/>, or it should be available by submitting a request, either informally or under the federal Freedom of Information Act.

Athletic department budgets

Detailed financial information about a school's sports program can be obtained by invoking rights under another federal law, which requires schools to compile program participation agreements. This law was passed in 1992, like the Student Right-to-Know Act, to combat perceived abuse concerning athletic funding. It requires most colleges or universities to compile annual reports that detail the revenues and expenditures that can be attributed to their school's sports programs.

Revenues include, but are not limited to: 1) gate receipts, 2) broadcast revenues, 3) appearance guarantees and options and 4) concessions and advertising. Among the expenses that must be reported are: 1) grants-in-aid 2) salaries 3) travel, 4) equipment and 5) supplies.

Who must comply and what is the penalty for noncompliance?

Every coeducational college and university — public and private — with an intercollegiate athletic program that receives federal financial assistance and offers athletically related student aid (does not include Division III schools) is subject to this law. Schools that do not comply with this provision risk losing their federal funding.

Where can I get this information?

The Department of Education has said that schools may imple-

ment their own reasonable guidelines for making these documents available to the public. For example, they may establish special times to view them or require an appointment. Such guidelines, however, may not impose an unreasonable burden on the requester.

These records will probably be kept at the athletic department offices or with the school's financial officers. Due to the flexibility given to institutions in maintaining this information, there are various places that these reports may be kept.

What should I do if I have problems or questions obtaining any of the records described above?

While you should be courteous and understanding, you should also be firm. You — and your readers — are entitled to this information. While it is hoped that most schools will be cooperative, inevitably some reporters will run into roadblocks.

In the event of trouble, it will be important to put all requests in writing. Generating a paper trail is necessary for both personal reference and for holding individuals account-

able. Initial problems can be directed to the Student Press Law Center (<http://www.splc.org>).

For more specific questions or concerns about the federal laws discussed above you may want to contact one of the Department of Education's Freedom of Information Act Public Liaisons at (202) 245-6651.

To request information directly from the Department of Education, using the Freedom of Information act, you can send an e-mail to: EDFOIManager@ed.gov, or a fax to: (202) 245-6623.

Finally, if you use the methods suggested by these parties and are still having trouble, you may want to consider filing a formal, written complaint against your school with the Inspector General's office at the Department of Education. You can write to the office at: U.S. Department of Education, Office of the Inspector General, 400 Maryland Avenue SW, Washington, DC 20202-1510, e-mail to: oig.hotline@ed.gov or call: (800) 647-8733

For more information about the NCAA regulations, you can contact: Eric Hartung, Associate Director of Research, National Collegiate Athletic Association, at chartung@ncaa.org or (317)917-6222.

There is a vast amount of information that college athletic programs are required to disclose. With knowledge and persistence, an enterprising student reporter should be able to dig it up. ■

Jay Hathaway, a law student at Rutgers School of Law in Camden, N.J. and a 2006 graduate of Knox College, where he served as editor-in-chief of The Knox Student, helped update and revise this article.

1. 20 U.S.C. § 1092 (e).
2. 20 U.S.C. § 1092(a)(1)(L).
3. 5 U.S.C. § 552
4. For more information, see Student Assistance General Provisions; Final Rule (Student Right-to-Know Act regulations), 34 C.F.R. 668.48)
5. N.C.A.A. regs. 13.3 (2006) and 30.1 (2004)
6. 20 U.S.C. § 1092(g).
7. For more information, see Student Assistance General Provisions; Final Rule (Equity in Athletics Disclosure Act regulations), 34 C.F.R. 668.45(a)(1), and 34 C.F.R. 668.47.
8. 20 U.S.C. § 1092(g).

COVER STORY

Legislation on the move

Student free expression proposals sweep legislatures from coast to coast, some survive, but others meet an early end

BY ERICA HUDOCK

Claire Lueneburg and Sara Eccleston were just seniors at Everett High School when they filed a federal lawsuit against their school.

The Washington state high school in Everett was hiring a new principal and, as editors of their high school newspaper, *The Kodak*, Lueneburg and Eccleston assigned the staff to carefully report the selection process. When a candidate was chosen for the position, the student editors became suspicious; the selection committee's student members had ranked two candidates above her.

Articles suggesting that the student voices had been neglected were printed in the *Kodak*, which prompted the school principal to establish future prior review of the publication. She also asked the students to remove the phrase describing the paper as a "student forum" from the *Kodak's* masthead.

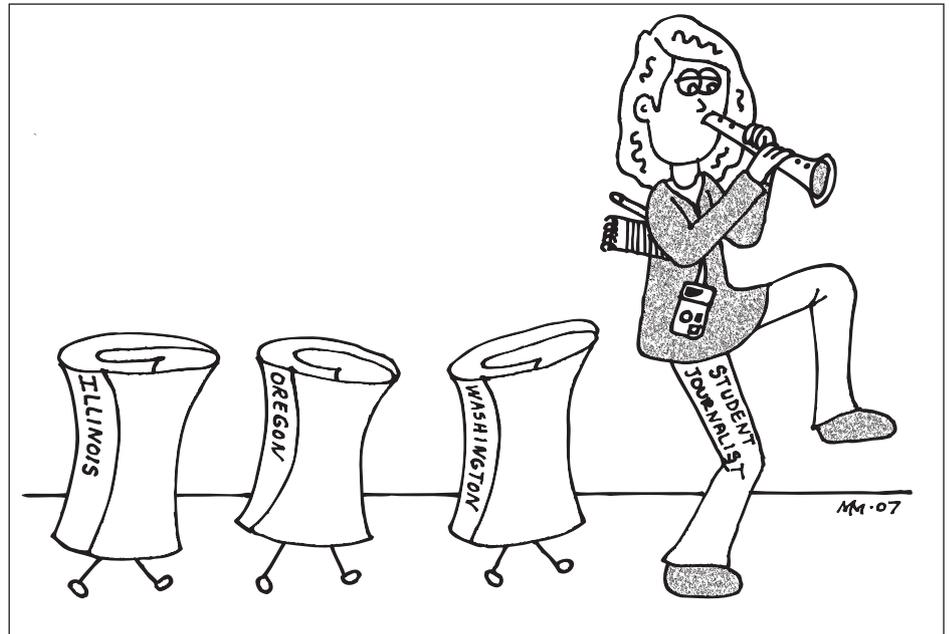
The editors responded by refusing to print the next edition. When matters did not improve, they protested by means of a blank, four-page publication that only included a statement about the incident and one photo: Lueneburg and Eccleston posing with their hands behind their backs and tape across their mouths.

Incidents like the one in Everett have attracted the attention of not only the media, but also politicians, students and journalism teachers who are taking steps to enact state legislation and that would protect student press rights.

Student press freedom 2007

In the spotlight of this movement are a number of student press freedom bills introduced this year, a trend that began in Washington state with one student's vision.

Washington State University student Brian Schraum found opposition at his former school, Green River Community College, in establishing a publications policy that would protect students from admin-



istrative censorship. When he confronted opposition from school administrators, he turned to state Rep. Dave Uptegrove (D-Des Moines), and the two focused on drafting a bill to protect both high school and college students under one statute and also the first student free press proposal in the state in more than 15 years.

Arkansas, California, Colorado, Iowa, Kansas and Massachusetts have laws that protect high school students, the last enacted in 1995. California also passed a law specifically protecting college students from censorship in August 2006.

The majority of these laws and the recent state proposals stem from two major court cases — decided decades apart. The first case, decided in 1988, was the U.S. Supreme Court's decision in *Hazelwood School District v. Kuhlmeier*. The incident spawning the fight for the student press began in Missouri when a Hazelwood East High School principal censored two articles on the impact of divorce on students and teenage pregnancy.

A federal district court ruled in favor of

the school district, but that decision was later reversed by the Eighth U.S. Circuit Court of Appeals, stating the school could not meet the Supreme Court's 1969 *Tinker* standard, which required showing substantial disruption of the school activities or invasion of the rights of others. The U.S. Supreme Court decided otherwise, reversing the decision one last time in favor of the school district and stating that school officials have some authority to impose prior review and censor content for school-sponsored publications that are not public forums. In *Hazelwood*, the Court set a less protective standard for some school-sponsored publications.

But the *Hazelwood* ruling still does not sit well with some.

A heightened concern for college student press freedom came after the 2005 Seventh U.S. Circuit Court of Appeals' decision in *Hosty v. Carter*, which said college student newspapers in Illinois, Indiana and Wisconsin could be subjected to the same restrictions set by *Hazelwood*. It was the *Hosty* decision that prompted Schraum to push for

student press protection in his state.

Over the past several months, Upthegrove's bill, HB 1307, faced opposition including aggressive amendments and party-line voting, ending with the bill's death in the state Senate where it was not brought up for vote prior to the legislative deadline.

Despite its sudden ending, advocates say the track record for the bill is an impressive one. From the start, the bill gained 19 additional sponsors, all of whom were Democrats, and enough supporters to make any political candidate jealous.

The bill's first hearing with the House of Representatives Judiciary Committee on Jan. 26 attracted a crowd of students and advocates too large for the room. Despite some disparaging words from the Washington State School Administrators Association and the Association of Washington School Principals, the committee appeared to be moved by the words of the students and teachers with stories of censorship in their 7-4 vote. The committee also voted to defeat an amendment that was proposed by Rep. Jay Rodne (R-North Bend) that would have cut high school students from the bill.

Rodne's amendment surfaced and was defeated for the second time on the House floor, and a victorious 58-37 vote sent the bill to the state Senate just before a legislative deadline. Still concerned about partisan voting, Upthegrove and advocates sought to gain as much support as possible.

Although crowds of supporters for the bill attended the March 27 state Senate Judiciary Committee hearing, Sen. Rodney Tom's (D-Medina) amendment to strike high school students from the bill was approved in an executive session on March 30. The committee had initially killed the whole bill, but with Upthegrove's persuasion, consented to vote on it after striking the protection for high school students and gaining Upthegrove's written agreement to not attempt to re-amend the bill on the Senate floor.

Upthegrove was "hopeful" about getting the college portion of his original bill signed as it held less controversy than the high school guidelines, but many bills often meet this fate, he said. Of the 2,700 bills that were introduced in the 2007 session, only 540 were successful in making it to the governor's desk, according to the Washington legislature's office.

See **Legislation**, Page 32

Illinois takes on Hosty

BY BRIAN HUDSON

When the Seventh U.S. Circuit Court of Appeals handed down its decision in *Hosty v. Carter* two years ago, it was heralded as the greatest blow against student press rights in almost two decades.

After *Hosty*, college student journalists in Indiana, Illinois and Wisconsin for the first time could be subjected to the same administrative oversight as their high school counterparts, according to the court's ruling.

Advisers and student journalists across the country breathed a sigh of relief when the U.S. Supreme Court declined to review the Seventh Circuit's ruling, which, if upheld, would have opened the ruling to the entire country.

But in the last several months, a silver lining to the *Hosty* ruling has appeared, as lawmakers have begun proposing safeguards for student press rights. The relief, however, has originated not in the courtroom, where most student expression protections are established, but rather in state legislatures.

Three legislatures, including one in the Seventh Circuit, have considered bills this protect the collegiate press from prior review and restraint, and California has had such a law on the books since August 2006. In each state, legislators said their bills were a response to the 2005 *Hosty* decision.

But the efforts have largely been separate from one another, and the bills have taken different routes through their respective state legislatures. A noticeable common thread among the bills that garner the most support are those that frame the issue as matter of civic education, rather than simply as one of student press rights.

As one First Amendment advocate put it, the successful bills are those that are portrayed as "pro-citizenship," rather than "anti-*Hosty*."



The *Hosty* ruling

Hosty v. Carter, which has been the impetus for the recent rash of legislation, originated with a dispute between three student journalists at Illinois' Governors State University and a dean who demanded prior approval of the student publication, *The Innovator*.

A lawsuit was filed and the Seventh U.S. Circuit Court of Appeals ultimately ruled for the administration, in doing so applying the 1988 Supreme Court ruling in *Hazelwood School District v. Kuhlmeier* that previously had only been applied to high school publications.

The *Hazelwood* decision declared that unless a student publication is designated a public forum for student expression, it could be censored when school officials demonstrated a reasonable educational justification and their censorship was viewpoint neutral.

In their response to *Hosty*, some lawmakers have gone beyond merely counteracting the effects of the ruling. Legislators in Oregon have introduced a bill that also would negate the *Hazelwood* ruling in high schools.

The reaction has actually gone a step farther to protect the student press and restore some of the rights to high school journalists that have long since been stripped away. If this trend catches on in other states, the

See **Hosty**, Page 34

From **Legislation**, Page 31

In retrospect, Upthegrove said greater success might have been achieved through more communication with Republicans prior to the session, as the bill's support was split down party lines.

"One of the senators even indicated that to me, 'You've made some good points, but I've committed my vote,'" Upthegrove said.

Although this has been a setback for the bill, Upthegrove said "it's not a matter of if, it's a matter of when" he will reintroduce a bill in the near future that would protect high school students.

"I feel like we've stated a movement to some degree," Upthegrove said. "We shouldn't view the bill as an ending place."

Jumping on the bandwagon

Whether the motivation for state student press legislation came from Upthegrove's lead or on-campus conflicts, evidence of a student press freedom legislation movement is apparent.

Oregon state Rep. Larry Galizio (D-Tigard) caught the fever from the north and proposed a bill, HB 3279, that would protect high school and higher education students in Oregon and encourage them "to become educated, informed and responsible members of society," according to the bill. Oregon state law gives free expression rights to all citizens, but Galizio said students need further protection from those who might read that law too broadly.

"Because of the sensitive nature of high school students and concerns in smaller towns, there can be situations where a student or students are writing an article that is not perceived favorable by administrators or interests in the community," Galizio said.

Similar efforts to protect student publications have been progressing in Illinois where Sen. Susan Garrett (D-Lake Forest) introduced the College Campus Press Act, SB 729, in February, which would protect state public college and university students from the *Hosky* decision. That ruling only applies in the Seventh Circuit, which is comprised of Indiana, Illinois and Wisconsin public schools.

The College Campus Press Act, initiated by the Illinois Civil Liberties Union, was quickly passed through the state Senate with the help of a unanimous vote from the Senate Rules Committee. In the state House of

Editorial battle

Papers in Washington state spar over legislation

Most newspapers are carefully crafted documents that result from a lengthy process of interviewing, writing, editing, fact checking and more editing. Once those steps are completed, a chief editor typically reviews the material before the paper goes to print.

Because this laborious means of production requires care and attention, many professional journalists agree that students aspiring to be reporters and editors deserve the opportunity to produce their own publications to gain a foundation of experience.

In light of the recent student press freedom bill introduced in Washington state, the *Seattle Times*, the *Seattle Post-Intelligencer* and other Washington commercial newspapers have battled over this issue, firing salvos through editorials and columns.

State Rep. Dave Upthegrove (D-Des Moines) introduced a bill that originally called for the protection of public high school and college students from censorship and prior review.

Offering his support and testimony at the state House of Representatives hearing Jan. 26, *Post-Intelligencer* Associate Publisher Kenneth Bunting challenged a committee to vote in favor of the bill, stating that Washington would set a notable precedent for the nation as a supporter of free student press.

Bunting also said in an interview that educators and advocates around the country view Upthegrove's bill as a "model" to "reinvigorate the ideals" that have protected student expression in the past.

His editorial, published the morning of the hearing, alluded to those standards by quoting the 1969 U.S. Supreme Court decision in *Tinker v. Des Moines Independent Community School District*, which said that students "do not shed their constitutional rights at the schoolhouse gate."

A rebuttal came six days later from *Times* Associate Editorial Page Editor Ryan Blethen in his editorial, "Young journalists, meet your editors." The son of the newspaper's publisher and fifth-generation contributor to the newspaper, Blethen wrote an editorial stating Upthegrove's bill "goes too far to correct a problem that could be solved collaboratively."

"The daily life of a journalist and editor is one of give and take," Blethen wrote. "The best journalists become so by a constant head-butting collaboration with editors. Student journalists would be well-served by learning to collaborate with superior rather than bypassing them."

Times editorial columnist Bruce Ramsey echoed Blethen's statement in a Feb. 7 column, suggesting that the bill is in need of a "good editor" because students should only have the rights that he as a professional has.

"I was kind of offended at the idea that a high school student who is still just a kid could have a right that a professional didn't have and wouldn't be expected to have," Ramsey said in an interview.

Ramsey contends that student newspapers do not belong to the students, as they are educational tools for students to use.

"The paper belongs to the school and its function is educational and its function is to, number one, teach journalism," Ramsey said.

Other Washington newspapers including the *Yakima Herald-Republic* and the *Walla Walla Union-Bulletin*, both owned and operated by the *Times*, also ran disparaging editorials against the bill.

Union-Bulletin Editor Rick Doyle said in a January editorial that he is "emphatically" opposed to censorship, but views ownership as the foremost right in the news business: "That's the real world, folks."

"Student journalists — and every member of the public — are entitled to the full protection of the First Amendment," Doyle said. "But they — like professional journalists — aren't entitled to usurp the rights of the publisher/owner."

Doyle also said that a true "student newspaper" is one independent of school funding.

Student Press Law Center Executive Director Mark Goodman counter-argued a school's authority over student publications in his response to Blethen's *Times* editorial.

"What these editors don't seem able to grasp is the fact that the school is a government agency and a private newspaper is not," Goodman said. "The First Amendment was specifically created to limit the government's ability to censor. The school is not the 'owner' of these publications, the people are."

As director of student media at Oregon State University and executive director of the Northwest Scholastic Press Association, Frank Ragulsky said he and his colleagues do not "take their roles lightly as teachers."

"I don't think teachers are going to let students run amuck and be blatantly irresponsible," Ragulsky said. "I think that even at the high school level, student journalists take their roles pretty responsibly. With the proper teachers, there are going to be huge learning opportunities for them." ■

Representatives, the bill has been assigned to the House Rules Committee and also gained bipartisan sponsorship from two representatives: Rep. Naomi Jakobsson (D-Champaign) and Rep. Dan Brady (R-Bloomington).

Carrying the bill relay east, Michigan state Sen. Michael Switalski (D-Roseville) made his second attempt at a student press freedom bill by introducing SB 352 on March 15. The bill was referred to the state Senate Education Committee. His previous bill, which was sent to the same committee, was heard on April 14, 2005, but ran out of time before a vote could be taken.

Despite a process parallel thus far to his first attempt, Switalski remains optimistic.

"I believe this legislation addresses fundamental issues of the First Amendment to freedom of speech and the free exercise of the press," Switalski said. "This bill has a better chance of passing than in the past because it is being considered by a new legislature."

Not only does he hope to see SB 352 enacted into law, Switalski is looking to educate students that a free press is a "basic freedom" for Americans. He cited a 2005 survey funded by the John S. and James L. Knight Foundation, which revealed that nearly one half of American high school students surveyed believe media content should be approved by the government prior to publishing.

"I believe Senate Bill 352 would further help educate students on their First Amendment rights and allow students to use their creative talents to further their educational experiences," Switalski said.

Taking the next step

Although becoming involved in politics may be far from a budding reporter's mind, many student journalists around the country are taking an interest in the legislative process as a result of school-inflicted censorship.

Such is the case in St. Francis, Minn. for staff members of *The Crier*, a student newspaper at St. Francis High School. The staff ran a photograph of a student holding what appeared to be a torn American flag. It was in fact a tablecloth patterned with the stars and stripes that was used for a scene in the school's play.

When the principal found out about the photo, he halted printing and said the photo was more of a political statement that could be viewed as offensive to community mem-

bers. After some opposition, the students complied, but printed a blue box containing the words, "Originally a photo was to be placed here, but it was censored by the administration."

Crier Editor in Chief Eric Sheforgen said that as the conflict escalated to levels of policy change, he began doing his own research. Amidst his reading of *Hazelwood*, Sheforgen also found that the last legislative attempt in his state to nullify the ruling was nearly 15 years ago. Fortunately for him, the original authors of the 1992 bill are still members of the state legislature.

With the current efforts of Washington's advocates, Sheforgen said he wants to make the attempt as well and says he is making headway.

"A lot of the problem at Eric's school is that the principals do not understand...that giving the students the freedom to be journalists isn't going to mean they're going to be irresponsible journalists," Minnesota High School Press Association Program Assistant Sarah Rice said.

Rice said she and Sheforgen are developing a plan of action to develop one for their state, beginning with a comparison of the Washington and Oregon bills. While she developed a memo to contact members of the state legislature, Rice said Sheforgen researched to find potential sponsors who are interested in student expression and First Amendment issues. Further support was sought by contacting teachers and principals in Rice's organization. As did Washington with its bill, Rice anticipates potential partisanship and opposition.

"Minnesota is a progressive state and has a lot of forward-thinking ideas," Rice said. "The challenge...is the state doesn't have really active journalism schools. Maybe it could unite the journalism programs in the state."

For now, Sheforgen is also informing other students about censorship through workshops to emphasize that high school journalism is just as important as the collegiate and professional press.

"Prior review is teaching students that they're not responsible for choosing their content," Sheforgen said. "Teachers are saying, 'You can write it, but we're in control.'"

He said he has hopes for even more efforts by students across the country, but expects it will take a crisis at their own school to motivate them to take action.

"As soon as you combine censorship, the

flag and school, those three things combined make for a big issue," Sheforgen said. "Looking back on this, it's better to ask for forgiveness than to give in. I absolutely would have printed it."

Other organizations like the Indiana High School Press Association are seeking supporters for student press legislation through other means. IHSPA Executive Director Diana Hadley headed a First Amendment Symposium that took place March 6 where students, legislators, advisers and administrators discussed student censorship in the state.

The IHSPA is currently is looking for a sponsor to introduce legislation because "it takes a village to move forward on something like this," Hadley said.

In addition to Minnesota and Indiana, Student Press Law Center Executive Director Mark Goodman said he is aware of three other states where similar legislation is being pursued.

Are they 'just students'?

Those in opposition say that high school students do not have the capability to responsibly publish a newspaper and maintain consistent content quality.

A bill introduced in February by Kansas Rep. Don Myers (R-Derby) was designed to allow the school and community to monitor the content of high school publications, without conflicting with the Kansas Student Publications Act, Myers said. Established in 1992, the law grants student editors full responsibility and states that "material shall not be suppressed solely because it involves political or controversial subject matter."

Myers said he in no way wants to change that statute, but simply wants to offer "older peer review" of what topics are appropriate under community standards by means of a committee consisting of a school board member, the superintendent and a parent within the district.

"It is permissive on the part of the committee that they review publications and it's not required that the students go along," Myers said.

Student press advocates are speaking against the bill, claiming that its measures are an "extreme" attempt to "gain outside control of the publication."

Washington alone has seen at least three

See **Legislation**, Page 35

From *Hosty*, Page 31

decision in *Hosty v. Carter* could, in its own way, be a boon for student journalists at high schools and colleges.

Fighting *Hosty*

California is the first – and thus far only – state to pass a bill in response to the *Hosty* ruling. The bill, sponsored by California Sen. Leland Yee (D-San Francisco), explicitly prohibits prior restraint and other forms of censorship of the college press.

Yee said in a recent interview that he focuses on First Amendment issues, and when he learned of the *Hosty* decision he was compelled to act.

The bill was intended to ensure the preservation of First Amendment rights for the next generation of journalists, Yee said.

“Young people in school, learning that it is OK to exercise prior restraint, sets a dangerous precedent,” he said.

But the law is a somewhat symbolic response to the *Hosty* ruling because decisions in the Seventh Circuit do not apply to California. Rather, the *Hosty* decision only applies in the Illinois, Indiana and Wisconsin, although just one of these states has seen progress in the legislature to combat the ruling.

In Illinois, legislators are considering a bill that would effectively nullify the 2005 court ruling.

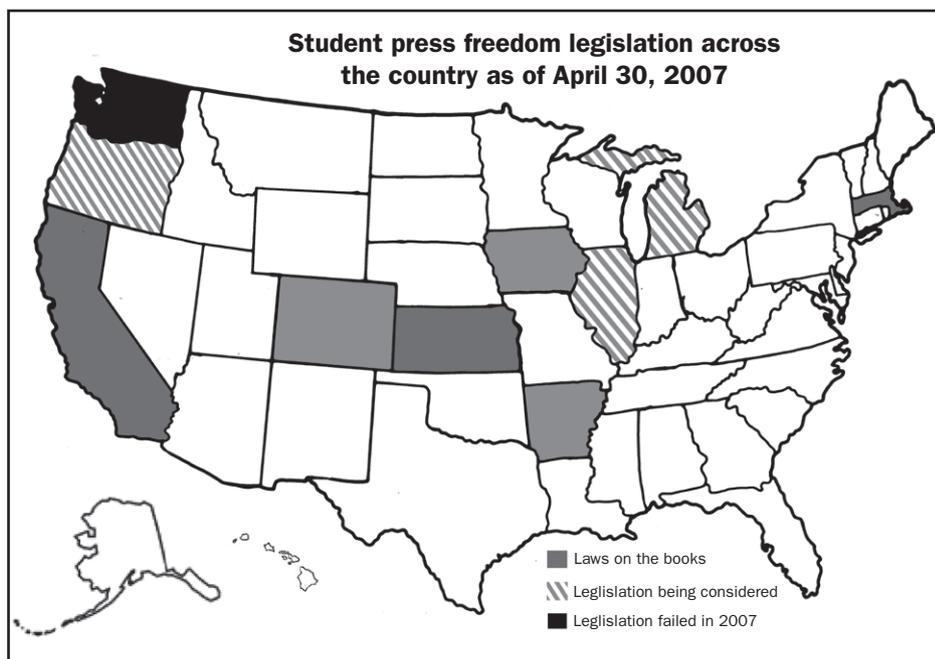
The various legislatures do not have the authority to overturn a federal court ruling, but through deft political maneuvering, they can negate its impact.

Because *Hosty* declared that only publications that are not classified open forums for student expression can face censorship, the Illinois bill simply declares every publicly funded college newspaper such a forum.

So far the bill has steamrolled through the Illinois Senate, receiving unanimous support both in committee and in a floor vote in March. It is now on its way to the Illinois House of Representatives, where it likely will receive a similarly welcome reception, representatives predict.

“I don’t think censorship has that many supporters from the General Assembly,” said Illinois Rep. Kevin McCarthy (D-Orland Park), who is chairman of the committee that will review the bill in May.

That sentiment speaks to the underlying reason why the answer to fighting *Hosty*



might lie in legislative, rather than judicial, action.

Lawmakers, as elected officials, are more accessible to citizens and the concerns they bear. That relationship with constituents is evident in the origin of the bills in Illinois and Washington, where both got their start with the lobbying efforts of First Amendment advocates.

A student in Washington, after failing to persuade administrators at his school to change their policies, lobbied Washington State Rep. Dave Upthegrove (D-Des Moines) to intervene to protect student press rights. In Illinois, the American Civil Liberties Union was the catalyst behind the legislation.

The Illinois chapter got involved last year after the U.S. Supreme Court declined to hear *Hosty v. Carter*. That decision ruled out the possibility that *Hosty* would be overturned in the courts, so the ACLU worked with Illinois Sen. Susan Garrett (D-Lake Forest) to introduce the bill.

If the bill continues through the Illinois legislature without opposition, it could be signed into law as early as this summer.

It is not yet clear whether the legislative success so far in Illinois will be replicated in other states within the Seventh Circuit.

Because the various chapters of the ACLU operate in a network of independent state branches, it is not always clear what activity will translate from one state to another, said Ed Wyohnka, director of

communications and public policy for the ACLU of Illinois.

In the past, such communal efforts often are organized casually – at conference meetings or through online communiqués – he said.

“There’s some activity that happens in one state or another, then it gets picked up,” Wyohnka said. “It’s a pretty informal process the way in which that works.”

So while he said he would not be surprised if Illinois College Campus Press Act was replicated in other states, he said it is difficult to tell whether it will be picked up groups Wisconsin and Indiana.

Tim Withers, a lobbyist with the ACLU of Indiana, said that so far there has been no effort to introduce a similar bill in that state, and he expressed doubt as to whether one would succeed in the current legislative atmosphere.

Republicans hold two-thirds of the seats in the Indiana Senate, and Democrats control the state House of Representatives by a slim majority.

“Given the split, it would ultimately boil down to a partisan issue,” Withers said, adding that Republicans have largely been opposed to legislation establishing public forums. “That wouldn’t gain much traction.”

Wisconsin’s legislature is not contemplating a bill either, said Bill Ahmuty, executive director of the ACLU in that state. Also, the ACLU in Wisconsin does not have a dedicated lobbyist in the state house like

the Illinois branch, and Ahmuty said that inconsistency could hinder the translation of legislative success.

The starkly different political atmospheres in the Seventh Circuit – where collegiate free expression bill has been unopposed in Illinois while eliciting doubts in Wisconsin and Indiana – underscores the precarious nature of these efforts.

The conditions in each state differ greatly, and political tactics that succeed in one state might fail in another.

It is in part because of these dissimilarities that no one has ever produced a definitive guide for effectively producing student free expression legislation, said Mark Goodman, executive director of the Student Press Law Center.

“It is so much dependent on the circumstances,” Goodman said.

In most cases, however, there are resources that can be used to the advantage of student press advocates.

For example, he said, an endorsement of support from a free speech or journalism organization, such as the American Society of Newspaper Editors or the Society of Professional Journalists, can legitimize a lobbying effort and garner media attention.

Also, many of those who have lobbied for student expression rights have found success by developing a specific framing of the issue. In political terms, this rhetorical

Hosty in Louisiana?

Administrators at Grambling State U. recently tried to apply the *Hosty v. Carter* decision to their student newspaper, even though Louisiana is not in the Seventh Circuit, which is composed of Illinois, Indiana and Wisconsin.

Read about it on page 40.

strategy can build a stronger argument and sets the tone for ensuing debate.

Despite its failure, the Washington state bill is the best recent example of a successful rhetorical strategy, said Warren Watson, who is director of J-Ideas, Ball State University’s national First Amendment and student journalism institute.

Watson, who with J-Ideas has closely followed the efforts to protect student free expression rights, said the Washington state bill was the spark that has been the impetus for similar bills in other states: “A rising tide lifts all boats,” he noted.

While California was the first state to introduce a bill in response to *Hosty*, Washington state’s bill has attracted more attention from the press, and has been supported and attacked on the opinion pages of Seattle’s newspapers.

Watson said the bill attracted the at-

ention because the issue was rhetorically framed not just as a matter of journalism, but one of citizenship.

“It pointed out that journalism is an application of civics, and it’s more than kids being able to write what they want,” Watson said. “That has to be a precursor for any successful bill.”

When framed in that light, the bill drew the support of a broader base of lawmakers, and the debate over the Oregon bill has the same tone.

“It captures the meaning of journalism as the vehicle by which people learn to be citizens,” Watson said. “This is how you learn to be in a democracy.”

In that same context, proponents need to highlight that principals would not be held responsible for student-produced content, he said.

That argument is often cited by advocates of student publication prior review, and it was often invoked by opponents of the Washington state bill.

Watson recommended underscoring the contributions of the newspaper adviser, which can not only provide more insight on sound journalism practice than most principals, but can do so without having to censor.

“Each effort needs to show there’s responsibility and accountability in each school.” ■

From **Legislation**, Page 33

highly publicized incidents of student censorship in recent years, including that of Lueneburg and Eccleston, who were awarded the 2006 Courage in Student Journalism Award by the Newseum, the Student Press Law Center and the National Scholastic Press Association.

In March, students at Lake Stevens High School were censored from running an article critical of an English teacher’s class, while Vashon High School students were stopped from printing a piece criticizing the *Hazelwood* ruling that can permit school officials to censor.

Winnings to be gained

Despite the controversy, these legislative examples have proven to be learning experiences for students and educators, and demonstrate the growing concerns about censorship. Many advocates claim that one

advantage from these proactive steps toward student press protection is a more open discussion between students and school officials.

Frank Ragulsky, executive director of the Northwest Scholastic Press Association, an organization of student media advisers in Alaska, Idaho, Montana, Oregon, Washington and Wyoming, said that “focus groups” could be created to open communication between the community and school publications.

Stephen Matsen, the Northwest director for the Journalism Education Association, said that the Washington bill was “fortunate” enough to be supported by the recent acts of censorship in the state, which proved the need for legislative action.

Ragulsky hopes that the publicity and indirect support of other bills will lead to the collective strengthening of student press protection in all states.

“If more states get involved, then I think

it affirms the high school students’ First Amendment rights and it could take *Hazelwood* out of the driver’s seat,” Ragulsky said, also adding that this movement is also affecting the college student publications as seen in the Washington, Oregon and Illinois bills.

Although deadlines cut the life of the Washington bill short, morale remains high for the next opportunity to reintroduce the bill. Uptegrove said he has been inspired by the “patience, persistence and motivation” of the people with whom he worked.

“We’ve really started a movement for student press freedom rights that started a fire around the country,” Uptegrove said. “I always try to look at the positive in things. One positive thing is we’ve started a movement in Washington state that is going to continue after this year. Next year we’ll be back. We’ve started a large coalition in this state against the abuse of school administrators. This is just the beginning.” ■

Legislation targets 'cyber bullies'

But student press advocates worry new laws could inhibit student expression

BY JARED TAYLOR

State lawmakers across the country are introducing bills intended to curtail bullying in schools via text messaging and the Internet, but critics charge that the legislation could trample students' rights to free expression.

Bills that mandate public schools create policies against so-called "cyberbullying" have been considered by legislatures in Arkansas, Florida, Minnesota, Nebraska, Oregon and Washington. Laws have already been enacted in South Carolina and Iowa.

As described in the bills, instances of cyberbullying can range from posting offensive content on personal Web sites to sending harassing e-mails or text messages via cellular phones.

Proponents of the measures say they are necessary to protect children's emotional well-being, but opponents remain wary that vague language in the legislation could limit legitimate student expression.

Cabell Gathman, a researcher at the Massachusetts Institute of Technology who specializes in social networking sites such as MySpace and Facebook, said most cyberbullying on the Web arises when users publish inflammatory comments on other users' profiles.

"You can delete things [from your profile], but you can only delete it when you know it's there," Gathman said. "There's no screening system that makes [posts] invisible."

Robin Kowalski, a professor of psychology at Clemson University who has researched cyberbullying's effects on children, said in a survey she conducted with 3,500 middle school students, 18 percent of respondents said they had been victims of cyberbullying.

Like traditional face-to-face bullying, cyberbullying can have a broad range of effects, from minor depression to severe drops

in class grades — even remote instances of suicide, Kowalski said.

"The damage being done to these kids who are being cyberbullied is just unbelievable," said Kowalski.

Because it is a new phenomenon, the long-term effects of cyberbullying on children are unknown, Kowalski said.

"We don't know the psychological effects that cyberbullying can have," Kowalski said. "We think that they can have the same effects as traditional bullying."

Henry Jenkins, director of comparative media studies at the Massachusetts Institute of Technology, said the indirect nature of the MySpace and other social networking Web sites makes it easier for people to post derogatory comments online.

"MySpace can be like the local locker room, on occasion. The kid who is isolated can be picked on [by several people] all at once," Jenkin said. "If you can't see that pain on their face, you may push farther and deeper."

Critics of cyberbullying legislation say that dealing with bullies is part of growing up.

Bennett Haselton, founder of Peacefire, a youth free speech advocacy group, said students have encountered bullies "since people have been passing notes in schools."

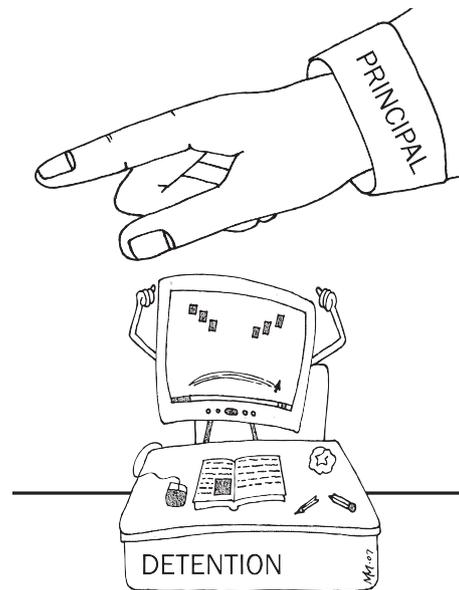
"Now it's in a form that is visible to administrators, but that doesn't mean that kids haven't been dealing with it for a long time," he said.

Mark Goodman, executive director of the Student Press Law Center, said that children need to learn how to handle criticism from their peers.

"What some people refer to as bullying is simply criticism, and we do our children no favors if we protect them from the criticism that is a part of life in this world," Goodman said. "Speech that's harsh or critical has to be protected by the First Amendment whether it's being expressed by a 16 year old or a 60 year old."

Kowalski said while she supports policies that prohibit all forms of bullying, schools need to remain cognizant of student rights.

"You kind of have got to balance First Amendment rights, which I don't want to



discount in any way with the mental health of kids in the school," she said.

Free speech or harassment?

Justin Layshock has experienced the consequences of being accused of cyberbullying firsthand.

But rather than being charged with victimizing another student during his senior year at Hickory High School in Hermitage, Pa., Layshock was punished in December 2005 for creating a parody of principal Eric Trosch on MySpace, a popular social networking Web site.

"Any person with brain function that's not, like, a small child, knows that this wasn't done [by Trosch] himself," Layshock said.

Layshock's situation shows that cyberbullying does not always involve student-on-student intimidation.

The MySpace page included a photo of Trosch and included short responses to an online survey, which Trosch alleged has defamed his reputation. He said he created the page on a computer at his grandmother's house because he "was bored and just joking around."

Other students created different false profiles of Trosch on MySpace at the time, but Layshock said he was the only student who admitted to creating one of the pages,

and felt pressured into taking responsibility.

"I think they just wanted someone's head on the platter to make an example," he said. "[The administration] had the same amount of proof [about the others] as they did with me, but [the other students] didn't get caught because they didn't admit to it,"

Layshock was given a 10-day suspension from school after admitting to creating the page and spent two months in alternative classes. He and his parents have sued the school district for violating his First Amendment free speech rights, excessive punishment and interfering with his parents' right to judge how to raise their son.

Today, Layshock has graduated and currently studies at St. John's University in New York. But new legal matters surrounding the phony page continue to unfold.

In April 2007, Trosch filed a lawsuit against Layshock and former students Thomas Cooper, and brothers Christopher and Brendan Gephart for creating different false MySpace pages that he claims defamed his reputation.

If he could go back, Layshock said he would not have participated at all.

"It's caused a lot of trouble for me and my family, a lot of unneeded stress," he said. "If [others] want to do something like this, be ready for the consequences."

What divides harassment from protected free expression by students on the Internet remains uncertain. States have been aiming to make that definition more clear.

In general, language in anti-cyberbullying legislation would call for school boards to draft policies against electronic harassment that involves students and school employees — on school grounds or during school activities.

Governors in South Carolina and Iowa have already signed laws that prohibit cyberbullying in schools.

Similar to antibullying legislation in states such as Washington, Oregon and Arkansas, the Iowa law mandates school districts to adopt a policy that prohibits school employees, volunteers and students from "harassment and bullying in schools, on school property, and at any school function or school-sponsored activity regardless of its location."

Looking closer at the Iowa statute, harassment and bullying includes "any elec-

tronic, written, verbal or physical act" that creates a hostile school environment. It defines "electronic" as communication that "includes but is not limited to communication via electronic mail, Internet-based communications, pager service, cell phones and electronic text messaging."

Layshock said administrators should be able to govern what goes on at schools.

"I think that if [bullying is] done at school using school computers, of course [administrators] should have some right to govern what's going on there," Layshock said. "But if it's done outside of school I don't see what kind of right they have on it."

Most of the bills do not cover bullying that occurs off of school property or outside of school, except in Minnesota, where the bill simply reads that school policies "shall address intimidation and bullying in all forms, including, but not limited to, electronic forms and forms involving Internet use." The bill passed the Minnesota Senate and has moved to the state's House of Representatives.

In Florida, a bill under consideration states that school cyberbullying policies must be approved by the state Department of Education as prerequisites to receive state funding. The bill was approved by the Florida House of Representatives in April, but did not pass through the state Senate before the legislative session ended.

But schools have to walk a tightrope between stepping on student rights and protecting bullied students, said Thomas Hutton, staff attorney with the National School Boards Association.

"Lots of forms of harassment are in the forms of expression — so school districts have to evaluate where you draw those lines to avoid encroaching on expression you just don't like — but then they have to consider the well being of all the students under their care," Hutton said.

Jenkins said many schools already prohibit access to social networking sites on school computers, but he says sites such as MySpace.com and Facebook.com "are a place where young people learn how to network."

"It's much better to teach kids how to use them in a rational way rather than lock them away," Jenkins said.

Goodman said that unlike harassment

laws, which have "legal ways" to define harassment language, cyberbullying bills leave much to be interpreted and could step on student rights.

"I don't think many people would oppose the idea of legal limitations on actual harassments," Goodman said, "but the difficulty with these proposals is the language is vague enough that it's not entirely clear what would be covered."

Haselton said while harassment laws already define unprotected speech, the anonymity of the Internet would make it virtually impossible to find those responsible.

"If it's something that's insulting somebody anonymously, that's not illegal and generally not trackable," Haselton said.

Effective legislation?

Anti-cyberbullying advocates say that states need to change their anti-bullying policies to include electronic speech, such as phone text messages or on the Web. But critics say that vague language in the laws could allow administrators to use the policy to censor protected speech.

A bill in Washington would require cyberbullying prohibition to be included in school districts' conduct policies initially would have also attempted to regulate student behavior outside of school grounds. The state's House and Senate have passed the bill.

But after the state's American Civil Liberties Union chapter raised its concerns about school administrators potentially overstepping their bounds, the bill was amended and addresses behavior that occurs during school hours and on school grounds.

Doug Honig, spokesman for the ACLU of Washington, said he sees the bill as "taking the typical school concerns about bullying and adding speech in cyberspace at school."

"Schools don't have authority to control what students say off campus on their own time," Honig said. "They do have ability to and the authority to say what happens at school" when it crosses a legal boundary.

Haselton said bills that look to curb cyberbullying at school would do little to stop it.

"It's a case of them saying they can't prevent it — they just don't want to be accountable," Haselton said. "It's not a case of them

preventing something from happening, it's just them wanting to wash their hands of it."

Goodman said laws that were intended to stop bullying could open the door for other forms of muting student expression in schools.

"Under some of these bills, I think school officials would feel empowered to justify acts of censorship of expression simply because they could claim it is harassment in some way," Goodman said. "I think most people would say if we don't have the right to criticize our government officials, we have no meaningful First Amendment rights at all."

And with the constant changes of how social networking sites have developed on the Web, legislation could quickly become outdated, Jenkins said.

"You're trying to fix into law something that is constantly in flux and you're never going to be able to adapt," Jenkins said. "You've got a system that starts out rational and becomes irrational very quickly."

Making the call

Cyberbullying policy decisions should be left to local school boards — as prescribed in much of the states' current legislation — otherwise problems for schools could arise, Hutton said.

"It can put a school board in a very tricky situation where if you follow the law handed down by state legislature, it could you get sued," Hutton said. "The more prescriptive [legislation] gets, there are some liability tradeoffs that school districts have to think about, and that decision is left best at the local level."

Hutton said while he is not opposed to state governments examining a continuously changing area such as the Internet and cyberbullying, but drafting policies that affect students should be left to the schools.

"It's a lot easier for a school board to change a policy than a state legislature to change a statute," Hutton said. "I don't mean to be suggesting that states have no business doing this, but there's a lot of things that need to be thought about."

Any law that would curb online expression could not keep up with technology, Jenkins said.

Any attempts — at the state or local level — to stop anonymous speech on the Web

“You’re trying to fix into law something that is constantly in flux and you’re never going to be able to adapt.”

Henry Jenkins

Director of Comparative Media Studies,
Massachusetts Institute of Technology

will likely prove to be ineffective, Haselton said.

"As long as it's something that students can just as easily do from home as they could from school, it's just for show, anyway," Haselton said. "You wouldn't usually be able to find out who it was no matter what laws they pass."

Past decisions

A deciding factor in student Internet expression cases has involved whether the controversial expression took place on or off school grounds.

In *Beussink v. Woodland R-IV School District*, a federal district court ruled that school officials violated student Brandon Beussink's First Amendment rights when they suspended him for 10 days for creating a Web page that contained vulgar language that was critical of the school.

The judge cited *Tinker v. Des Moines Independent Community School District*, a landmark U.S. Supreme Court decision that said administrators may not censor student expression unless it causes a substantial disruption of school activities or violates the right of others.

"Disliking or being upset by the content of a student's speech is not an acceptable justification for limiting student speech under *Tinker*," the *Beussink* decision read.

But in *J.S. v. Bethlehem Area School District*, an unidentified 8th grade student who created a Web site at home that criticized his math teacher and principal, comparing the teacher to Adolf Hitler, the case was decided very differently.

The student was expelled for the site after the school said it inflicted emotional distress upon the teacher and caused a disruption among students at the school. The student sued the school district, saying his Web site was protected speech, but the Pennsylvania Supreme Court sided with the school.

"We hold that where speech that is

aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator, the speech will be considered on-campus speech," the decision read.

Hutton said school districts think carefully before creating policies on constitutional matters.

"Once you've asserted your authority to do something, there's an argument that you've asserted the responsibility to do something," he said.

Looking ahead

As more cyberbullying bills become cyberbullying laws, students will likely encounter free expression problems, Goodman said.

Kowalski said schools could attempt to create policies against cyberbullying outside of school, although parents would have to sign off on such a proposal.

"Once they're signed and agreed upon, then they are enforceable," she said.

Jenkins said with restrictions against expression that could be interpreted as bullying, an environment could develop where administrators "encroach on more speech than they mean to," such as statements that are critical of political or ideological viewpoints.

"All of those will be abuses of the [anti-bullying] laws on the books and the consequences will be severe on young peoples' free expression rights," Jenkins said.

Ultimately, Goodman said the deciding line between free expression and cyberbullying could be left to the courts, should the bills become law.

"What I think we're going to see later is there's going to be cases in court testing the constitutionality of these restrictions," he said. "I think it may end with the courts ultimately rejecting some of these provisions."

Hutton said while the Internet has revolutionized learning, cyberbullying is "the dark side of it."

"It's unfortunate if the way we have to figure this stuff out is because of lawsuits, because the money comes out of some kid's education," Hutton said. "It's fortunate in how it's revolutionizing the way we live and how schools can teach and [cyberbullying] is sort of the dark side of it, but the upside is very powerful." ■

Freedom to teach?

Academic freedom legislation could tie professor's tongues, and student's rights, opponents argue

BY JARED TAYLOR

A sweep of legislation from Arizona to Massachusetts aims to reshape the principles of academic freedom, which some say could limit free expression on campus.

Since 2005, 28 states have introduced so-called "academic freedom" bills based on a broad spectrum of concerns, from assessing "intellectual diversity" on campus to restricting public university professors from grading based on personal opinions and expressing opinions in class without presenting alternative positions. Among those states, bills in only four state legislatures — Arizona, Missouri, Montana and South Dakota — have made it past committees before being voted down.

Opponents of the legislation say that creating an environment that monitors free expression would discourage professors from sharing their true opinions with the student media. They also contend that the bills are unnecessary and safeguards already are in place at colleges and universities.

Megan Fitzgerald, program director of the Center for Campus Free Speech, an organization that promotes free student expression, said the bills are aimed to limit professors' sharing personal opinions in class, which in turn would limit student expression.

"Most of the bills don't directly deal with student expression, but they certainly deal with what students learn," Fitzgerald said.

Although none of the bills proposed have passed, lawmakers have continued to introduce academic freedom legislation, with 11 new bills introduced since January 2007. The bills' opponents maintain that the bills would create more problems than solutions in the classroom.

Six of the 11 current academic freedom bills introduced in state legislatures this year are based on the "Academic Bill of Rights," which was first published by conservative author David Horowitz in 2003.

Partially based on the 1915 *General Report of the Committee on Academic Freedom and Tenure* by the American Association of University Professors, which established

protection for the academic pursuit of independent ideas, Horowitz's Academic Bill of Rights would establish guidelines on how professors present material in classes.

"While teachers are and should be free to pursue their own findings and perspectives in presenting their views, they should consider and make their students aware of other viewpoints," according to the Academic Bill of Rights. "Academic disciplines should welcome a diversity of approaches to unsettled questions."

Horowitz's bill also states "no faculty shall be hired or fired or denied promotion or tenure on the basis of his or her political or religious beliefs," which opponents say is unnecessary legislation because professors at universities are already protected from discrimination based on their opinions.

Craig Smith, spokesman for Free Exchange on Campus, an advocacy group against academic freedom legislation, said most of the legislation introduced regarding the Academic Bill of Rights came from Horowitz's group and not state lawmakers.

"We want to make sure people get the facts about this, that they understand the bill is coming from a political organization outside their state — not faculty, not administrators, not students," Smith said.

Horowitz's critics charge that his Academic Bill of Rights would create a chilling effect on how professors present courses, rather than promote diverse opinions.

Nicole Berg, spokeswoman for the American Association of University Professors, said the bills' language is misleading because "it would stifle debate rather than protect it."

"When you read some of the language,



it seems innocuous," Berg said, but "what the bills would create is against what they are trying to protect."

Smith said while conservative state legislators in Arizona, Kentucky, Massachusetts, New York, Oregon, Texas and West Virginia have pitched Academic Freedom legislation this year, "no states have passed any of these laws," in 2007 or any other year.

"It's just really nothing more than a political distraction," Smith said.

In Arizona, lawmakers in 2006 voted down a bill based on the Academic Bill of Rights. But a new version of the bill that was introduced by Sen. Thayer Verschoor (R-Gilbert) in February 2007 would apply to state colleges and universities as well as the all grades in the state's public schools — unlike any other bill based on the Horowitz language. Verschoor could not be reached for comment.

If the bill becomes law, instructors in Arizona state schools and institutions found advocating any social, political or cultural issue in class would be subject to a \$500 fine and suspension or termination of employment, which is also unprecedented among academic freedom legislation.

Serena Unrein, executive director of the Arizona Students' Association, said the bill "would restrict the free exchange of ideas on

See **Academic freedom**, Page 45

Prior review nears end at U. of Texas

By BRIAN HUDSON

Every school night for more than 35 years, *The Daily Texan* had to make a detour on its way to the printer. Before a single drop of ink met newsprint, an adviser was required to comb through every word in the newspaper, searching for any legal gaffes editors might have let slip by.

But for the first time this year, student journalists at the University of Texas at Austin will shed that buffer and join virtually all of their college media counterparts, ending one of the most high-profile policies of prior review in the country.

The policy was part of a 1971 trust agreement, which the Texas Board of Regents scrapped in February in favor of a new policy that relinquishes control over University of Texas student-produced newspaper, magazines, radio station and other programs to the Texas Student Media Board.

The regents no longer assume liability for content, although they will maintain control of student publication assets. Now that responsibility officially lies with the media board, and it has set out to revise the student media policy handbook.

After the new trust agreement was adopted, one of the media board's first tasks was to scrap the prior review policy, which it unanimously agreed to do during its March 2, 2007, meeting.

But *The Daily Texan* student editors are not yet editorially autonomous; an adviser still reviews the paper each night before it goes to print and will continue to do so at least until the newspaper's summer edition.

The transition of oversight from the regents to the media board has been arduous, and three months after the regents' decision to forfeit control, media board members still are working out precisely how they will manage the university's myriad publications.

Many of the intricacies of the new arrangement remain unresolved. Even the exact date for the prior review policy to officially end is still not certain.

While most anticipate that prior review will be scrapped for the first issue of *The Daily Texan's* summer edition in June 2007, that deadline is contingent on whether the board purchases libel insurance by then.

Since the new trust was adopted in February, the media board has had the discretion to end the prior review policy whenever it wanted, but the board opted to wait until the newspaper was insured.

If the media board still does not have libel insurance by this summer, some on the board very well could vote to hold on to prior review temporarily, said Kathy Lawrence, who as director of student media is charged with carrying out the board's decisions.

After a long battle to free the newspaper from administrative oversight, students are anxious to be finished, yet patient for a resolution – partly because it seems inevitable.

"The university is a bureaucratic mess, and, you know, it takes a while," said media board President A.J. Bauer, who is also a former *Daily Texan* editor and a Student Press Law Center board member.

While no adviser since 1971 has changed any aspect of the newspaper's content without an editor's approval, without the prior review policy, future editors will never have to worry that an adviser might interfere, Editor in Chief JJ Hermes said.

"It's just trying to make sure things are as healthy as possible for the future students at *The Texan*," Hermes said.

The current adviser, Richard Finnell, said that of his 12 years in the position, he could recall reviewing only one news article that could have been libelous.

Finnell said the newspaper has been able to avoid more instances of libel in part because of programs like his staff-wide lecture on media law each semester, aimed at training the staff to spot libel and other legal mistakes themselves.

After the prior review practice ends, he says he will continue to help the newspaper staff maintain sound journalistic practice,



but early in the news cycle, rather than at the end.

Finnell's job is a rare one among public college newspapers, where prior review largely is an outdated policy.

Lawrence, a former president of College Media Advisers, the national organization of professional media advisers, said she is unaware of any other major public college that requires a newspaper be reviewed before publication.

Because of that, *The Daily Texan* has been cited by proponents of prior review across the country, who say that the policy at a major, award-winning daily student newspaper justifies similar policies elsewhere, Lawrence said.

But *Daily Texan* editors are reserving their celebration of the end of the policy.

Hermes said he was apprehensive that after so much work, there still might be some unforeseen complication that could keep the policy in place.

"It's got momentum in the right direction," he said. "But [the regents] have the ability to change momentum whenever they want."

Lawrence was confident that the dismantling of the prior review policy would be carried out successfully, and she foresees nothing that would "muck it up." Her concerns, she says, are the less glamorous aspects of the transition – such as accounting and personnel issues – which still must

be worked out between the regents and the media board.

The end of prior review at Texas is the culmination of a work stretching over decades, during which editors worked to gradually dismantle the policy.

Until the effort of one editor about 10 years ago, the prior review policy was more expansive, requiring the adviser to police for certain political content the newspaper was prohibited from including.

The opportunity to finally eliminate prior review appeared about two years ago, when the Board of Regents developed an interest in analyzing the more than 30-year-old policy.

During that time, the media board had

the opportunity to renegotiate the trust agreement and develop a new agreement that was satisfactory to both sides.

And, Lawrence said, it helped that the regents were open to acknowledging that University of Texas media was responsible for its content.

“There were people on the board of regents at this time who understood the First Amendment,” Lawrence said wryly.

The duration of this effort highlights the complications a student newspaper may face when trying to renegotiate its relationship with the school.

The ordeal has been long and complicated, and it will extend beyond the current editors’ time at the university, Hermes said.

For example, the new agreement between the newspaper and the regents includes a provision that could allow the newspaper to become an independent non-profit entity – separate from the Board of Regents’ oversight.

The provision requires that the media board establish an endowment of at least \$5 million, but it will likely be several years before the newspaper will be able to establish such a fund, Hermes said.

The experience has been exhausting, consuming countless hours, Hermes said.

“There’s so much else going on down here in the newsroom,” he said. “I’m glad I’m finally at a point where I don’t have to deal with this anymore.” ■

COLLEGE CENSORSHIP IN BRIEF

IN THE COURTS

Students settle lawsuit after being fired for video

NEW YORK — The C.W. Post campus of Long Island University settled in February a lawsuit filed by five students who claimed the private university was wrong when it fired them from their resident assistant posts because they made a video alleged to be offensive to Muslims.

The out-of-court settlement, the details of which were not publicly released, was reached to the “mutual satisfaction of all parties,” according to a joint statement from the university and the students’ attorney.

During the two-minute video, titled “A Duck Napping,” four of the students appear in ski masks holding a rubber duck as “hostage.” They make ransom demands in broken English while Middle Eastern-sounding music is played in the background, and the words “Muhammad” and “jihad” are heard.

The five students filed a \$2.5 million lawsuit in a state court, but it was not been revealed whether the settlement awarded the students money or allowed them to keep their jobs. ■

Case: *McDermott v. Long Island Univ.*, No. 002521/2007 (NY Sup. Ct. Nassau County dismissed Mar. 22, 2007).

State college’s legal motion tries to shirk First Amendment

RHODE ISLAND — An attorney representing Rhode Island College filed in February a motion asserting that the college is not an entity of the government and therefore is not subject to the First Amendment.

The motion remained on the books for just five days before the attorney, facing pressure from the Rhode Island Board of Governors, withdrew it. A spokesman for the board said the motion did not reflect the views of the board.

The motion was an attempt to dismiss a lawsuit filed by the American Civil Liberties Union behalf of a campus group, which is contending that the college violated the group’s rights when administrators removed their signs advocating abortion rights.

The college is under the oversight of the Rhode Island Board of Governors for Higher Education, and this academic year the school received \$126 million in state funds – accounting for about a third of its budget. ■

Case: *Women’s Studies Org. of R.I. Coll. v. R.I. Coll.*, No. 06-00525 (D. R.I. filed Dec. 4, 2006).

SATIRE AND SPOOFS

Satire article leads to editorial review from administration

CONNECTICUT — After outcry over a satirical newspaper article advocating rape in February, the president of Central Connecticut State University created a committee to review the publication’s operating procedures and determine how it can better practice “journalistic integrity.”

The committee will review *The Recorder’s* constitution, the roles of its editors and adviser as well as its funding model, and it will compare these aspects to peer institutions. The committee will then make a recommendation to the university community, President Jack Miller said in a Feb. 22 statement.

Miller maintains that the committee is not an attempt to censor the newspaper, but rather is an effort to ensure that “students have the opportunity to learn

See **College briefs**, Page 42

that journalism is far more than putting on paper whatever thoughts come to mind.”

The committee was prompted by a Feb. 7 article titled “Rape Only Hurts If You Fight It,” in which the author satirically claimed that rape has been a positive force in Western civilization and benefits “ugly women.” In his statement, Miller said that the committee is addressing long-standing concerns that the editorial “brought to light.” ■

Threat of lawsuit no fun for spoof issue

NEW JERSEY — A spoof edition published by the Princeton University newspaper that mocked members of the campus community drew ire in January and, at least initially, the possibility of legal action.

The Daily Princetonian’s spoof issue, published Jan. 17 under the banner *The Gaily Prints anything*, included an article that described a romantic tryst between Professor Robert George and a gay prostitute.

After the satirical issue came under fire for multiple articles, George told *The Philadelphia Inquirer* that he had consulted an attorney about the matter.

By April, much of the clamor over the spoof issue had died down, an editor said, and George has not publicly pursued the matter further. George did not return phone calls from the SPLC. ■

STUDENT GOVERNMENTS

Student gov’t reshaped after threatening press

FLORIDA — Just more than a year after the student government at Florida Atlantic University tried to cut student media funding, administrators have approved new measures that they hope will prevent any future acts of censorship.

The new student government constitution, approved by the university’s board of trustees on Jan. 21, adds additional checks on student power that are meant to encourage a better decision-

making process among student leaders.

Among the new provisions is an administrator veto of student government actions, which should prevent disputes like last year’s student media funding cut, said Charles Brown, vice president of student affairs.

In February 2006, student leaders voted to cut \$63,000 from the student newspaper and television station budget — an action that many saw as retribution for content critical of the student government. Brown said he probably would have vetoed the funding cut. ■

Paper’s ultimatum fails to return funding

MISSOURI — Almost three months after a delivering an ultimatum to administrators calling for their intervention, the University of Missouri at Rolla student newspaper’s efforts to restore its funding have stalled.

In November 2006, the student government at the predominately engineering school voted to slash the budget of *The Missouri Miner* by nearly a third.

Editors say they were told at the time that the funds were being cut in part because the newspaper’s content was grammatically incorrect and biased — an act of censorship, they say.

The budget cut was part of the student government’s annual budget allocation, which was later approved by the administration. In February, the newspaper delivered an ultimatum to campus officials, saying that if its funding was not restored it would pursue legal action.

Although the university prefers to remain uninvolved in such disagreements and let students govern themselves, a spokesman said, the administrators investigated the newspaper’s allegation.

Within a week, administrators reported they found no evidence that any of the budget decisions were based on “the views expressed in *The Missouri Miner*,” and it concluded that the student council’s actions were based on legitimate financial considerations, according to a letter delivered to the newspaper.

As promised in its ultimatum, the newspaper set out to pursue legal action, but editors have been unable to raise the money to hire an attorney or to find one who will waive legal fees. ■

Editor looks to secure financial autonomy

NEW JERSEY — After a dispute this year with student government, the editor of Montclair State University’s weekly newspaper is taking the steps toward making the publication financially independent from the university.

In March, campus leaders reached an agreement with the *The Montclarion* that would reduce the amount of student fees the newspaper retains, while allowing the newspaper to keep all of its advertising revenue.

The intention to gain financial autonomy was announced in a Feb. 8 editorial, in which Editor in Chief Karl de Vries said the impetus for the announcement was Student Government Treasurer Maria Soares’ attempt to cut the \$103,000 in student fees from the newspaper’s budget.

de Vries said he believes the attempt to slash the budget was motivated by a personal vendetta, while Soares said the decision to cut funding, which has since been overruled by the student body president and legislature, was a response to the newspaper’s overspending.

Under a new agreement, the newspaper will receive 40 percent less money from student government. To make up for the funding gap, the paper will be able to retain all of its advertising revenue.

The funding structure will allow the newspaper to begin to accumulate a “nest egg,” de Vries said, which could one day be put toward buying off-campus office space.

Since its inception more than 70 years ago the newspaper has relied on the university’s support, and de Vries, who will be editor in chief again next year, admitted that the process of making the newspaper independent will require diligence. ■

Attempt to cut funding falls flat

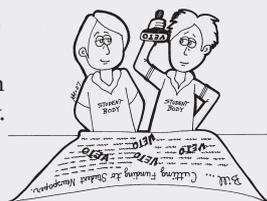
CALIFORNIA — The student newspaper at the University of California at Santa Barbara faced a weeklong standoff with student leaders in January, when the legislative council voted to suspend the newspaper's budget.

The impasse was resolved when the student body president vetoed the legislature's measure.

Students in the legislative council say *The Daily Nexus* deserved to lose its funding after it sold advertisements to a company facing a campus-wide boycott.

The company came under fire from student government for its involvement in a real estate deal that evicted tenants of a 55-unit apartment complex near the campus. The legislative council levied a boycott against the company and declared that any student group under its funding umbrella, the Associated Students, could lose its funding if it does business with the company.

Although *The Daily Nexus* receives almost \$50,000 from the legislative council, the publication has not been a member of the Associated Students for almost 30 years. ■



MISCELLANEOUS BRIEFS

Va. Tech photographer detained, equipment confiscated

VIRGINIA — Amid the chaos following the April 16 shooting massacre at Virginia Tech, state police apprehended a student photographer and confiscated his equipment while he was covering the story for the campus newspaper.

Shaozhuo Cui, photo editor for the *Collegiate Times*, was taking pictures as police evacuated Norris Hall, where a student gunman shot and killed 30 students and professors before taking his own life, when two police officers

ordered him to leave. He says he was heading away from the area when they "changed their mind," ordered him to his knees and handcuffed him.

Cui said one officer said into his radio, "We've got a suspect matching the profile," according to an article in the *Collegiate Times*. Both Cui and the gunman, Seung-Hui Cho, are of Asian descent.

Cui was released two hours later, but without his camera, camera bag and the two forms of ID police had taken from him. He said he was told his possessions would be returned to him at a later time.

After he was released the *Collegiate Times* set out to retrieve Cui's equipment, but during the chaotic ensuing days editors were not able to contact anyone with the state police that could speak about the camera confiscation.

The newspaper's editors have said they hope to resolve the situation soon. ■

Retired president admits involvement in censorship

CALIFORNIA — The former president of Glendale Community College admitted late last year to telling campus police in June 2006 to hold copies of the campus newspaper because of an article that discussed depression and suicide.

According to a December 2006 article in the student newspaper, *El Vaquero*, former President John Davitt had copies of the June 9, 2006, issue pulled because the article and an accompanying cartoon were "slanderous to [the] nursing department."

The June article named one of the two nursing students who committed suicide during the previous school year, and Davitt found that to be offensive, *El Vaquero* reported. He said the article gave the impression that it was the "rigor of the [nursing] program [that] contributed to [the students'] suicide," according to the newspaper.

Soon after distribution, the staff noticed that papers were disappearing at an "alarming rate," said Jane Pojawa, editor in chief of the newspaper at the time. She said in June 2006 that she suspected

administrators had stolen the newspapers, a claim Davitt initially denied.

While he admitted then that he had problems with the ethics of the story, Davitt denied being responsible for taking the papers and instead surmised that a custodian or an angry faculty member could have been responsible.

With the help of two anonymous sources, *El Vaquero* was able to convince Davitt to admit that he told campus police to "hold" the newspaper until he could discuss the article with the staff and adviser. ■

USC institutes former editor's proposals

CALIFORNIA — Administrators at the University of Southern California agreed to implement a former editor's suggestions for changes at the newspaper, weeks after they rejected his application for reappointment.

The changes include increased salaries for the staff and more transparency regarding *The Daily Trojan's* budget. Former Editor in Chief Zach Fox offered the suggestions in his platform when he was vying for a second term as editor, which was ultimately rejected by the university's media board.

In making the changes, administrators are also disputing the claim that the denial of Fox's application was motivated by the objections he raised in his platform.

The editorial board's decision to block Fox's potential second term was met by outrage from college newspapers across the country, at least 20 of which published an editorial in December 2006 chastising the university and questioning whether the decision was because of Fox's "probing questions."

A university spokesman said that the editorials had misconstrued the situation and that Fox's second term was denied because he was seeking to make changes to the position of editor at the same time he was applying for the job. The university established a task force to review Fox's proposals, most of which were approved in January. ■

Grambling administrators implement prior review

BY JARED TAYLOR

After a semester that saw Grambling State University administrators shut down and reinstate the student newspaper, the student editor in chief says the weekly publication's operations have resumed without conflict, and now wonders if the paper's battle was all "for nothing."

Citing concerns about the newspaper's content, Grambling State Provost Robert Dixon shut down operations at student newspaper *The Gramblinite* in mid-January.

The newspaper was reinstated by the end of the month with review by a faculty adviser prior to publication, which was later removed following complaints from student journalists and free speech advocates.

Since then, *Gramblinite* Editor in Chief Darryl Smith says that "everything has been running smoothly."

"The stories we have come up with this whole semester have been original," Smith said. "We haven't had any problems with publishing the paper."

But the student journalists' ability to publish comes only after administrators started the spring semester with a strong-armed attempt to take control the newspaper's editorial operations.

In a Jan. 17 memorandum sent to faculty Publication Director Wanda Peters, Dixon wrote that the newspaper was suspended for the remainder of the month or until administrators were satisfied that better "quality assurance" was in place. Dixon also stated that he wanted mass communication instructors to assume a greater role in the paper's production.

Smith said in January that Dixon told him the paper had been suspended after negative stories that upset Dixon.

Smith said he complied with the suspension to protect the two newspaper advisers' jobs, which he felt were threatened by the administration.

"It's an issue where we want to fight for the First Amendment, but at the same time we don't want to see two advisers lose their jobs," Smith said.

Smith said that in a meeting with Dixon during the suspension Dixon told him that administrators believed they could suspend

the paper's production based on the 2005 *Hosty v. Carter* decision. In that decision, the Seventh U.S. Circuit Court of Appeals ruled that limited freedom of expression rights applicable to high school newspapers could be extended to college campuses.

But the *Hosty* ruling does not apply to *The Gramblinite*, as Louisiana is part of the Fifth Circuit.

Smith said Dixon also justified the suspension because students use state-owned equipment to produce the paper.

Courts at both the state and federal level have held that the First Amendment forbids almost all censorship of student-edited college publications, regardless of whether the equipment is owned by the school. In the 1975 case *Schiff v. Williams*, the Fifth U.S. Circuit Court of Appeals recognized strong free press protections for college student newspapers and rejected acts of censorship based on concerns about "quality."

After *The Gramblinite's* shutdown on Jan. 24 gained attention from area media outlets, less than 24 hours later, Dixon met with *Gramblinite* editors, who were allowed to resume publishing the newspaper with new guidelines — and a catch.

Smith said he looked forward to new measures such as a new copy editing course and workshops with faculty.

But the university also imposed a measure that required a faculty adviser to review all content before it was to be published.

College Media Advisers Inc., a national organization of student media advisers, the Society of Professional Journalists and the Student Press Law Center immediately criticized the administrators' actions.

"No faculty or staff adviser to the publication should be asked to engage in such censorship or be held responsible for the content decisions student reporters and editors are legally authorized to make," CMA said in a statement released Jan. 26.

Student Press Law Center Executive Director Mark Goodman called the prior review "clearly unconstitutional."

"University officials may say that it's only to catch grammar and spelling mistakes, but before you know it the unlucky employee forced into this position will be editing things out that reflect the university or its



administration in a less-than-positive light," Goodman said. "That's the end of journalism and the beginning of propaganda."

Smith said that with the support of local media and national advocates, he issued a formal request with Dixon's office to have the prior review policy revoked and for the university to adopt a policy that protects students' freedom of expression.

Not only did Dixon remove the prior review policy, but he also scrapped the other recommendations, such as the copy editing courses and workshops, Smith said.

"They basically said all of the measures have been thrown out," Smith said. "We wanted a copy editing class and we wanted the mass communication faculty to help."

"It's like we went through the suspension for nothing."

Smith said he remains concerned that the university has not adopted any policies regarding student free expression rights.

"I think they really want this to die on its own," Smith said. "If you let it die on its own without any rules or regulations put in place, it only leaves the door open for it to happen again."

But for Smith, who said he will graduate in May, the process of having *The Gramblinite* suspended and reinstated by the Grambling State administration affirmed with him that standing up for your beliefs can pay off.

"You've got to keep your head up against the university and keep fighting for what's right," Smith said. ■

From **Academic freedom**, Page 39

Arizona's state campuses," both in classes and with the student media.

"I think that faculty would self-censor themselves and avoid having conversations with students and avoid the media if they felt it could cost them their job or \$500," Unrein said.

Brad Shipp is the national field director for Students for Academic Freedom, an organization that supports legislation based on the Academic Bill of Rights.

"We are not telling the professor to not have an opinion. We're not telling a professor to not express their opinion," Shipp said. "What we're simply asking is they don't indoctrinate their students on one side of a controversial subject."

Unrein said any bill that would impose requisites about opinions in classes would chill discussion among students and professors, even if proponents say it would do the opposite.

"In order to have a vibrant marketplace of ideas at universities, [students and professors] have to be able to freely exchange ideas and thoughts," she said. "This bill would really restrict that from happening."

But Shipp said he does not think that ensuring academic freedom at universities "is a legislator's job."

"The university systems need to do this on their own," Shipp said. "We feel that the university system ought to take the academic freedom language, whatever academic language they want to use, and include students in it."

Smith said states have voted down academic freedom legislation because it is not needed.

"When [state lawmakers] sit down and look at what's going on in their institutions, they say we really don't need to legislate this," Smith said. "If there is a grievance, we

feel like you already have [measures] in place and legislating is being very heavy-handed and redundant."

While states have considered adopting Horowitz's proposal, others are looking at policies that would examine and protect "intellectual diversity" at state universities.

With language adopted from the report *Intellectual Diversity: Time for Action* published by the Washington D.C.-based American Council of Trustees and Alumni, the bills contain provisions that would recommend eliminating speech codes that restrict freedom of speech, creating student press freedom protections and prohibiting viewpoint discrimination while distributing student funds, among others.

But the bills based on the report also call for regular studies to assess intellectual diversity at state university campuses, which opponents say would create a similar environment as the one pitched by proponents of Horowitz's Academic Bill of Rights.

"You can only have the marketplace of ideas that makes critical thinking and higher education possible when everyone in the classroom is able to bring up positions that are relevant, without the legislature clamping down on them," Fitzgerald said.

But Charles Mitchell, spokesman for the American Council of Trustees and Alumni, said that regular intellectual diversity studies conducted by the universities would not stifle free expression on college campuses.

"One of the best things that we think institutions can do is to just do a self-study," Mitchell said. "There's absolutely no reason to not ask students what they think about this every year."

Lawmakers in Montana and Virginia have defeated intellectual diversity bills, but legislation is also being considered Georgia and Missouri, where the state's house of representatives passed an intellectual diversity bill in April.

Similar to the legislation based on Horowitz's Academic Bill of Rights, the intellectual diversity bills include language that recommends barring political bias during the hiring and promoting of professors.

Mitchell said when an instructor advocates an opinion that is unrelated to a class, "that's not professional behavior."

"That's not teaching, that's not relevant, that's not helpful, that's not professional behavior," Mitchell said.

Fitzgerald said that professors may present different opinions in order to stimulate debate in classes.

"Students generally want to be challenged, that's how they learn and professors are professionals that deeply care about educating students," she said.

Mitchell said that intellectual diversity legislation would not stifle free speech on campuses.

"We don't want to see that problem and attempt to fix that problem and create a bunch of other problems," Mitchell said.

But with the Academic Bill of Rights and intellectual diversity legislation, opponents say solutions are being proposed to problems that do not exist.

Unrein said greater problems exist in higher education today, such as high tuition rates.

"I think there are a lot of real problems in education, but we are talking about these issues that don't seem to be an actual problem," Unrein said.

Fitzgerald said if a state or university were to adopt restrictions proposed in the Academic Bill of Rights or intellectual diversity policies, the "long term impact would be a lower quality of higher education."

"A free exchange of ideas is absolutely critical to education, inside and out," she said. "The only way you get that free exchange of ideas is an environment without restrictions." ■

From **Criminal libel**, Page 19

also ruled that the prosecutor did not have absolute immunity for investigative decisions and sent the case back to the federal district court for consideration.

In April 2005, the Student Press Law Center joined with the Silha Center for the Study of Media Ethics and Law in filing an *amicus curiae* — or "friend-of-the-court" — brief with the 10th U.S. Circuit Court of

Appeals in the case urging that all criminal libel laws be recognized as unconstitutional.

Utah eliminates criminal libel

Gov. Jon Huntsman Jr. signed a bill abolishing the Utah's antiquated criminal libel laws in March.

The bill comes after the Utah Supreme Court ruled in the case *I.M.L. v. State of Utah* in November 2002 that the state's criminal libel laws were unconstitutional.

In that case, Ian Lake, a 16-year-old high school student at Milford High School, was arrested and charged with one count of criminal libel after posting derogatory comments about the school's principal and other students on his Web site.

Sixteen states have a criminal libel law, which is different from the civil libel laws in all 50 states that allow victims of allegedly defamatory statements to seek damages from speakers in civil court. ■



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