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WINTER 2005-06 VOL. XXVII, NO. 1

REPORT

STUDENT PRESS LAW CENTER

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Student Press Law Center Report

Student Press Law Center Report (ISSN 0160-3825), published three times each year by the Student Press Law Center, summarizes current cases and controversies involving the rights of the student press. The SPLC Report is researched, written and produced by journalism interns and SPLC staff.

Student Press Law Center Report, Vol. XXVII, No. 1, Winter 2005-06, is published by the Student Press Law Center Inc., 1101 Wilson Boulevard, Suite 1100, Arlington, VA 22209-2275 (703) 807-1904. Copyright © 2005 Student Press Law Center. All rights reserved. Yearly subscriptions to the SPLC Report are \$15. Contributions are tax-deductible. A membership form appears on page 46.

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Texas students, adviser receive Courage in Student Journalism Awards

Four students from DeSoto High School in suburban Dallas, Texas, and student media adviser Carol Richtsmeier received the 2005 Courage in Student Journalism Awards presented by the Newseum, the Student Press Law Center and the National Scholastic Press Association.

The Courage in Student Journalism Awards are presented each year to student journalists and to a school administrator or media adviser who have demonstrated exceptional determination and support for student press freedom, despite resistance or difficult circumstances.

Students Whitney Basil, Eric Gentry, Zach Kroh and Jeremy Willis, who reported for DeSoto's student newspaper the *Eagle Eye*, share the \$5,000 student prize. Richtsmeier received a \$5,000 prize as well. The awards were presented at the National Scholastic Press Association/Journalism Education Association convention in Chicago in November.

The students were recognized for their commitment to journalistic principles and defense of press freedom. In November

2004, their school board approved a \$65,000 payment to a consultant named Project JAMS for an assessment of gang-related activity at the school. The students, suspicious that Project JAMS had overstated the level of gang-related activity at the school, launched an investigation. Delving deep into the background of the consultant, the students raised questions about the program's credibility and uncovered false claims, unfulfilled contracts and unsubstantiated statistics.

DeSoto's school board responded with threats of censorship, and Project JAMS responded with threats of legal action. Although pressured to stop their investigation, the students continued. Eventually, their efforts led to a series of town meetings and gained the attention of *local print and broadcast media*. As a result, the school board rejected the nearly \$1 million in additional funds requested by Project JAMS.

Eagle Eye student newspaper adviser Carol Richtsmeier encouraged the students throughout their investigation. Knowingly jeopardizing her position at DeSoto,

Richtsmeier stood before the school board and defended her students' coverage and their press freedom. Despite frequent public criticism by the board, Richtsmeier's unwavering support of the *Eagle Eye* staff paved the way for their investigation and set a courageous example of strong journalistic principles for her students to follow.

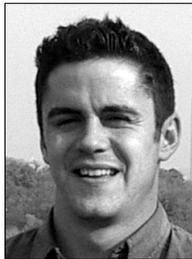
A NEW LOOK

In this issue, the Student Press Law Center *Report* begins a transformation that we hope you will appreciate. Long-time readers will notice more news briefs and a few longer stories that explore in-depth the issues confronting the student media as well as a more graphic presentation of important facts and advice. All of this, we hope, is packaged in a more user-friendly way.

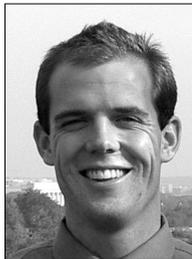
Combined with the News Flashes on our Web site (www.splc.org/newsflash.asp), the *Report* strives to give you a complete picture of developments in student press law. As always, we appreciate your suggestions and comments. E-mail your thoughts to our publications fellow, Evan Mayor, at pubfellow@splc.org. ■

Report Staff

Evan Mayor, Publications Fellow, graduated from Vanderbilt University in May 2005 with degrees in communications and political science. While at Vanderbilt, he was the editor in chief of the student newspaper, *The Vanderbilt Hustler*. He freelanced for *The Tennessean* in Nashville, Tenn., and interned as a police reporter there last summer. Mayor edited and designed the *Report*.



Clay Gaynor, journalism intern, is a graduate of James Madison University in Harrisonburg, Va. He received his degree in print journalism with a minor in human resource and development in May 2005. While at James Madison University, he wrote features, news and entertainment articles for *The Breeze*, the student newspaper there. He also served as an editor and writer for *Curio*, a regional interest feature magazine produced at the college. In addition, Gaynor worked as a freelance writer for Harrisonburg's *Daily News-Record*. Gaynor covered Internet, high school censorship and high school advisers for the *Report*.



Kyle McCarthy, journalism intern, is a junior at College of the Holy Cross in Worcester, Mass. He is pursuing a double major in political science and English. He served as the sports editor for *The Crusader*, the student newspaper at Holy Cross. He was also a staff writer for *MLSnet.com*, the official site for Major League Soccer. McCarthy plans to take over as editor in chief of *The Crusader* in the spring. McCarthy covered access, campus crime, confidentiality and libel & privacy for the *Report*.



Kim Peterson, journalism intern, is a senior at American University in Washington, D.C. She is pursuing a major in international relations and a minor in communication. She has worked as an intern for the Dow Jones Newswires in Brussels, Belgium, and the *Seattle Weekly*. She has also written for *The Eagle*, American University's student newspaper. While living in Seattle, she worked for the *Mirror*, a subsidiary of *The Seattle Times*, as a staff writer. Peterson covered college censorship, newspaper theft and college advisers for the *Report*. ■



Gender, geography affect views on expression

Females less supportive of press rights, urban students favor expression, new reports find

New reports suggest high school students have differing opinions on the First Amendment depending on their gender and where they live.

Urban students are more likely to favor greater means of expression — such as airing an unpopular opinion or reciting profanity-laced lyrics — while suburban students are more likely to believe the government should have the right to censor the press.

“The comparatively greater resources available to suburban students in the United States do not tend to translate into a greater appreciation and tolerance for the First Amendment by these students,” according to the study. “Indeed, in some cases urban and rural students tend to be much more enlightened on First Amendment issues than their suburban counterparts.”

Females are more interested in joining student media than males, but they are less supportive of press rights, including the right of the student media to publish freely, the study said.

A team of researchers at the University of Connecticut released the new findings in August and November, further distinguishing high school students’ appreciation for the First Amendment by geographic distribution and gender.

The new breakout reports are an extension of the Future of the First Amendment study released last winter, which found that more than a third of all high school students sur-

veyed believe the First Amendment “goes too far” in guaranteeing freedom of speech and freedom of the press.

Researchers for the study, funded by the John S. and James L. Knight Foundation, questioned 112,000 students, more than 8,000 teachers and more than 500 principals and school administrators nationwide.

Warren Watson, director of J-Ideas, said he was surprised with the results on geographic distribution. J-Ideas is a project out of Ball State University that distributes the research results and works to develop and encourage excellence in high school journalism, according to its Web site.

“I figured schools with the least amount of journalism education would be less sup-

portive, but it seems the opposite is true,” Watson said.

Conservative attitudes in the suburbs, political correctness and hesitancy towards risk-taking could provide reasons for

“[C]ivics education in America’s high schools must be improved....”

Eric Newton

Director of Journalism Initiatives
John S. and James L. Knight Foundation

these tendencies, he said.

Mary Arnold, head of the Journalism and Mass Communications department at South Dakota State University, said the finding that females are less supportive of press rights than males could reflect a cultural bias between males and females.

Males tend to make moralistic judgements, such as the difference between right and wrong, while females worry more about maintaining relationships, Arnold said.

“I don’t think young women are stupider or less well-read than young men,” she said.

David Yalof, a University of Connecticut professor and researcher on the study, said the overall results of the study were not surprising.

“We already had anecdotal evidence that students were not knowledgeable or appreciative of First Amendment rights,” Yalof said. “This study scientifically confirmed those findings.”

Students generally were not aware of the study’s findings, but did talk to the SPLC about their feelings on the First Amendment.



“People shouldn’t be able to go around saying things that are completely unnecessary, such as threatening people,” said Meghan Bradley, a sophomore at Norfolk County Agricultural High School in Norfolk, Mass. “But [the First Amendment is] an important freedom.”

Bradley’s older brother, Alex, a junior at Southeastern Regional Vocational Technical High School in South Easton, Mass., said he thinks protections do not go far enough.

“I think it’s good, but it is very controlled,” he said of the First Amendment.

“There isn’t much more freedom of speech anymore. There are so many limits on it.”

The Knight Foundation, a non-profit organization established in 1950 to protect free press and promote excellence in journalism, spent \$1 million over a two-year period to finance the study.

Eric Newton, director of

journalism initiatives for the Knight Foundation, said the foundation’s commitment to maintaining high standards in journalism extends to student media.

“We thought it would be important for the general public to understand how important student media is within the larger context of First

Amendment must be a focus of that improvement, and that high schools should be sure they include student media as part of that effort,” Newton said.

The Knight Foundation granted J-Ideas \$850,000 for a program designed to deliver specially designed First Amendment programs to high schools, Watson said.

The program could impact up to fifty schools over a two-year period.

Students are not taught enough about the basics of citizenry, Newton said.

“When schools teach, students learn.

It’s that simple,” he said.

Researchers said they believe increased education about the First Amendment is essential to ensure its future.

“It’s too early to tell, but if we don’t build a greater appreciation for the First Amendment among high school students, the future of the First Amendment may be in danger,” Yalof said. ■ *KM*

On the Web

- To download the full **Future of the First Amendment** report, visit firstamendment.jideas.org/downloads.php
- **J-Ideas Web site** — www.jideas.org
- **John S. and James L. Knight Foundation Web site** — www.knightfdn.org

Amendment education and the teaching of civics in schools,” Newton said.

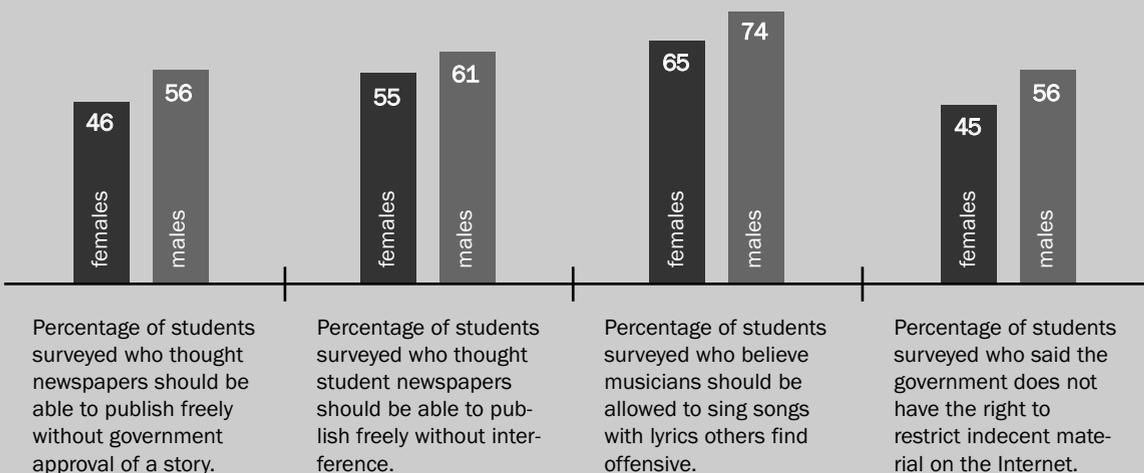
Emphasis on civics education, and particularly First Amendment issues, is necessary in order to foster citizenry, he said.

The results “confirmed that civics education in America’s high schools must be improved, that the First

Key geographic findings

- ▶ “Urban students were more likely than suburban students or rural students to think that people should be allowed to express unpopular opinions.”
- ▶ “Nearly three in four students from the Northeast and Midwest agree that musicians should be able to sing song lyrics others might find offensive. By contrast, that number is only two in three for students in the South and West.”
- ▶ “Fewer students from the South agree that newspapers should be allowed to publish freely without government approval of a story, as compared to students in the Northeast and Midwest.”
- ▶ “There exists no difference at all in support for First Amendment freedoms in so-called ‘red’ and ‘blue’ states.”

Gender findings by the numbers



Source: *Future of the First Amendment White Paper II, “Gender, and the First Amendment: Females More Interested in Joining School Media, But Also Less Supportive of Press Rights.”* For more information, visit <http://firstamendment.jideas.org/latestresearch/index.html>.

Students face challenges covering homosexuality

Some administrators supportive of articles on homosexuality, others censor gay content

Some may call it censorship. But an interception is what a school spokesperson said occurred when a Florida high school principal seized student newspapers containing an opinion column about homosexuality before it could be distributed.

Many student newspaper staffs have faced situations like this in attempting to publish stories on homosexuality. But there seems to be just as many success stories where supportive advisers and administrators have said this is an issue that students need to be able to cover.

Homosexuality 'too mature'

An e-mail to school board members from district spokesperson Darlene Mahla said Ridgeview High School principal Toni McCabe was able to "intercept" *Panther Prints*, the student newspaper with the column in question, before it could

be handed out, according to *The Florida Times-Union*.

Ridgeview senior Katie Thompson wrote the column, titled "Homosexuality is not a Choice." In her column she opined that homosexuality is a "biological stimulation in the brain" and Christian counseling cannot change an individual's sexuality.

Thompson, who is bisexual, said she was called to McCabe's office and told that her article was the reason the paper could not be distributed. Her sexuality was not mentioned in the column.

"She said, 'I'm sorry, but your article is too mature for the paper,'" said Thompson, who left the office crying. "She said she was afraid of the backlash. I don't think it offended her personally, she just didn't want to offend anybody" in a religious community.

The paper was printed again and distributed the next week without Thompson's article.

Karen Doering, an attorney at the National Center for Lesbian Rights, said it is troubling that the article was suppressed solely because of its viewpoint.

"I think it's absurd to say this is an issue not age appropriate for high school students," Doering said.

After being told by McCabe that her column would be censored, Thompson made copies of it and handed them out at lunch. She was again told to see the principal and was threatened with suspension if she continued to pass out her column.

Thompson said this is upsetting because "people need to talk about the issues that are going on; they need to be able to read stuff like that."

Doering said cases like these send a terrible message to gay students. All teens have bumpy times, she said, but it can be

worse for gay students struggling with their identities. An incident like this tells kids the mere mention of their sexuality is so unacceptable that it warrants destroying the school newspaper.

Thompson said she is not considering legal action

because it would take too much time and too many resources.

A battle in California

The staff of East Bakersfield High School's *The Kernal* also learned the difficulties of covering an issue that can make school officials uneasy.

The staff was set to run a spread on gay students at their school when Principal John Gibson ordered it pulled, even though newspaper staff had acquired permission from the parents of the students in the stories. He said he was worried that the spread could incite violence against the gay students mentioned in it.

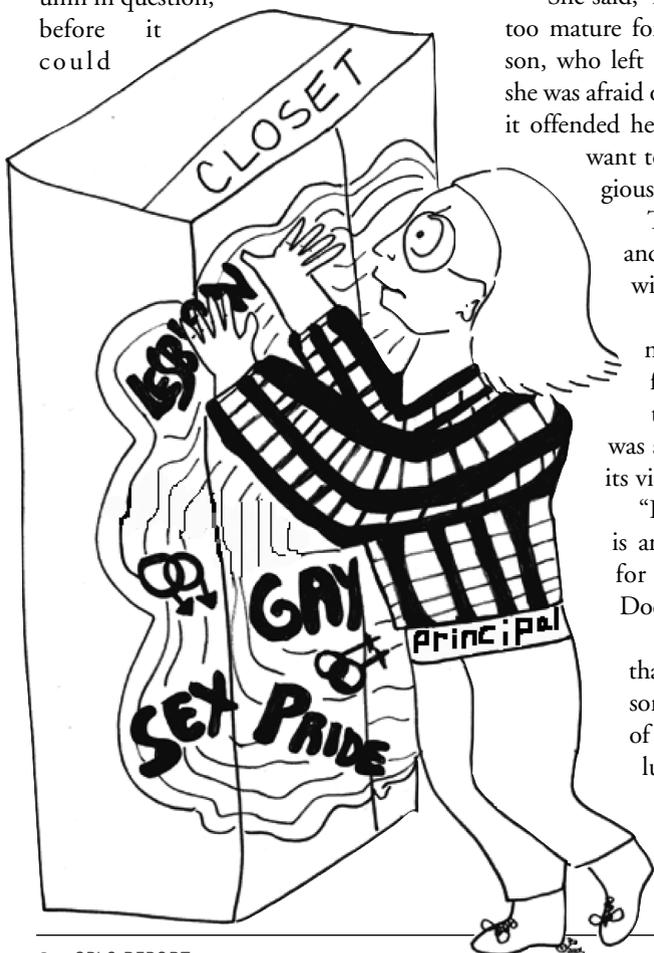
"Our campus is no more prone to violence than any other," said Maria Krauter, the current *Kernal* editor in chief and the author of one of the stories. "I think he [Gibson] underestimated the tolerance of our school and our community. I think he thought he was being cautious, but he shouldn't have pulled the articles in fear of bullies."

The spread included interviews with openly gay students, as well as conversations with students and a local pastor who expressed their anti-gay views. The entire

“Students can't just be taught freedom of the press, they need to be able to exercise it.”

Bretton Zinger

Adviser, *The Purple Tide*
Chantilly High School



feature was censored.

The articles were a well-balanced look at sexual orientation, said Christine Sun, an attorney for the American Civil Liberties Union of Southern California.

“Censoring the articles made it seem like there was something taboo about talking about sexual orientation on campus,” she said, noting that all the students in the articles were public about their sexuality. “It [homosexuality] was an issue already being discussed.”

The students sued the school district in May with the help of Sun but were denied a temporary restraining order allowing them to publish. The judge said a full hearing was needed to consider all the facts.

The students were finally allowed to print the spread in November after Gibson failed to produce evidence substantiating his claims that violence would occur.

Krauter said she did not hear any negative comments when the newspaper was distributed. She also said that the staff will continue the lawsuit.

“We’re continuing because in one month it could happen to someone else,” she said. “It won’t be a victory for student journalists everywhere until we have a precedent in the legal system.”

When students know their rights, Sun said, they can win these battles.

Getting the stories published “is a fantastic example of what happens when students fight for their rights,” she said.

Smooth sailing

Jennifer Allen, a writer at Michigan’s Dexter High School student newspaper, *The Squall*, said her paper has had no trouble writing about gay students.

“Our administrators have always been really supportive,” she said. *Squall* staff has published several articles on gay students, including Allen’s story last year about the school’s newly formed gay-straight alliance, which named members of the club.

“It’s not something you see every day in Dexter, we’re a very small community,” Allen said, noting that she did not hear of anyone who was offended by the article.

Rod Satterthwaite, Allen’s adviser, said it is important for students to be able to

cover sensitive topics.

“I kind of cringe when I read stories about administrators who shy away from these kinds of stories,” Satterthwaite said. “What are you saying when you say that kids can’t write a story about gay students? What does that tell them? These are issues that they’re dealing with on a daily basis.”

Bretton Zinger, who advises *The Purple Tide* at Chantilly High School in Virginia, agrees that student journalists need to be able to cover issues like homosexuality that are relevant to their lives.

“I think it’s important to help them to understand the role of the press,” he said. “Students can’t just be taught freedom of the press, they need to be able to exercise it.”

Zinger said *The Purple Tide* ran a story written by an openly gay student about his experience trying to donate blood. The student wrote that because he admitted having homosexual sex, he was not allowed to donate. Zinger said he expected a reaction to the article and was surprised when it was published without comment, good or bad.

Breaking new ground

When a gay-straight alliance was formed at Stevenson High School in Illinois, staffers at the student newspaper decided to run two pages about what it was like to be gay at the school, the first time the issue was covered in the paper’s 37-year history.

Barb Thill, adviser at *The Statesman*, said administrators had concerns about the article.

“One thing they told me was that they wouldn’t want kids to be hurt by content in the student newspaper,” she said. “I think there was just a concern that people would become the object of ridicule because of what’s in the paper.”

But with a supportive department chair in their corner, the newspaper staff ran the stories, marking the first time the words “gay” and “homosexual” were ever used in *The Statesman*.

Thill said covering an issue like this

helps both writers and readers explore and examine their world.

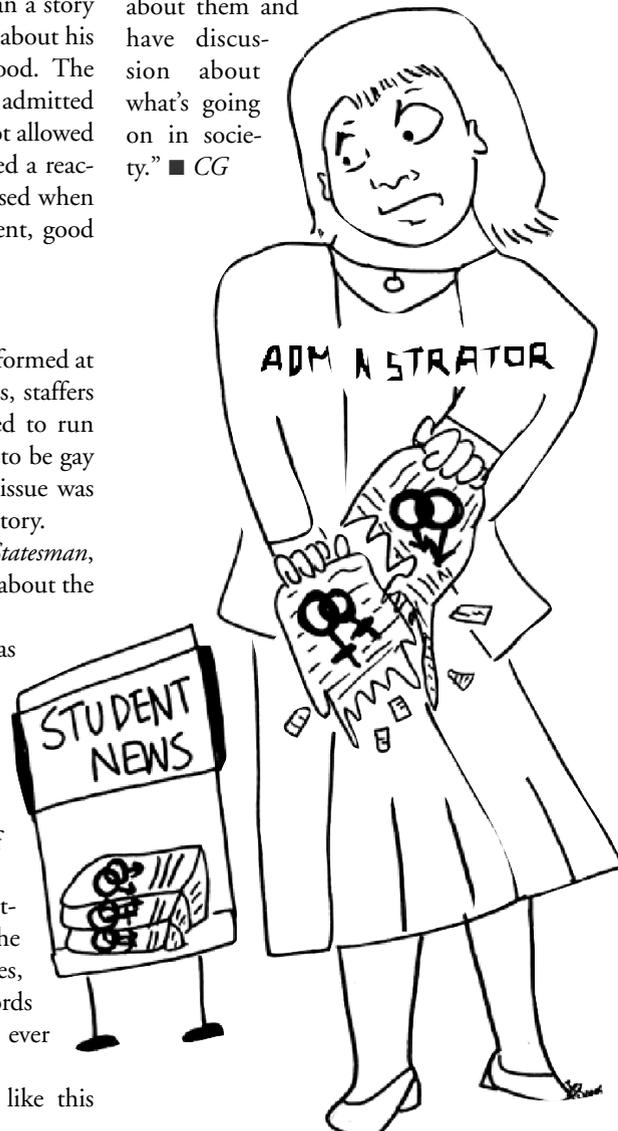
“I think doing these stories helps readers understand other people and their communities.”

A continuing issue

Sun, the ACLU attorney, said this issue is not going away. She said she hopes that cases like East Bakersfield’s will let student journalists in California and nationwide know that they have rights and can fight censorship.

“More and more students are going to want to write about sexual orientation,” she said, and student newspapers need to be able to cover it. “These are issues that affect young people, and school is the place to get educated

about them and have discussion about what’s going on in society.” ■ CG



Speech V. Safety

What started as a 'joke' ended with a \$5,000 settlement for one student. Experts talk about student expression post-Columbine.

BY CLAY GAYNOR

A new study says that the 1999 Columbine school shootings have had an impact on high school student speech — and at least one student has felt the brunt of it.

The study, put out by the First Amendment Center in September, looks at the balance between school safety and protecting students' First Amendment rights.

And Brian Conrads's case may be an example of high school administrators failing to strike that balance, some student free expression advocates say.

Conradt, a former student at Carmel High School outside Indianapolis, was suspended for five days in 1999 after a Web site he designed calling 11 teachers and administrators "Satan Worshipers" was discovered the day after Columbine.

The suspension was just the beginning for Conradt, who said he did not mean any harm with the site. School officials ordered him to issue a written apology and he was sued by three of the teachers involved. He also left Carmel after the incident.

"It was a joke — that's all it was meant to be," said Conradt, who is now a supervisor doing Web work and graphic design for a digital media company.

"It was pretty random. I went to the Carmel Web site and pulled random names," Conradt said of the faculty members named on his site, which was up and running months before Columbine.

Unfortunately for Conradt, some of those mentioned did not see the humor.

Laurie Hansen, Conradt's mother, said her son was suspended with the understanding that the school would not press charges.

But that agreement did not stop three teachers from filing their own suit against Conradt with the Indiana State Teachers Association paying their legal fees. They settled out of court for \$5,000.

"I got back from suspension and all of a sudden — thinking I'd served my time — I got sued," Conradt said.

Teacher said Web site 'not funny'

Helen Shiffer, one of the teachers who sued Conradt, said she felt threatened by the site.

"I had never seen this young man before — he only knew one

of the teachers," Shiffer said. "It was threatening. It was scary. I don't think it had anything to do with free speech."

Shiffer said the site, which also included other references to Satanism and urged viewers to tease those listed on it, was discovered when a middle school student was caught looking at it in the school library. She said the names of those posted on the site were linked to their school e-mails and that anyone could send them a message labeled "tyme-2-die."

While she would have reacted strongly regardless, Shiffer said, "I'm sure I reacted more strongly because it was after Columbine.

"It was not at all humorous. I'm sorry, but flaming pentagrams, the stuff about shunning us — that's not funny to me."

Shiffer said she and the other two teachers pursued legal action in order to set a precedent for similar cases

for what is appropriate and inappropriate and how threats to educators would be handled in the future.

Conradt, who transferred to a private school in Colorado after the incident, disagreed about the nature of the suit.

"I think they're just greedy," he said. "I think they used Columbine as leverage for filing the suit. I honestly believe they used it as an excuse for taking action. I think it was blatantly obvious it was a joke."

First Amendment advocates weigh in

It is fair to say Columbine has been a definite factor in student free expression, said David Hudson, an attorney at the First Amendment Center and the author of the study. The First Amendment Center, based in Nashville, Tenn., works to preserve First Amendment freedoms through information and education.

"I think there is a difference in a student running around saying they're going to bomb the school as opposed to violent imagery in art or a poem."

David Hudson

Attorney

First Amendment Center

Hudson's 2005 report, "Student Expression in the Age of Columbine: Securing Safety and Protecting First Amendment Rights," explores student speech post-Columbine and zero tolerance policies "that have spread from drugs and weapons to controversial student speech."

"The serious question is zero tolerance leading to zero judgement" when controversial student speech is involved, Hudson said. "There has got to be common sense. Calling someone a Satan worshipper isn't a true threat, although it may be defamatory."

Mark Goodman, executive director of the Student Press Law Center, agreed that Columbine has been a factor in student expression.

Goodman said that every time there is a violent incident at a school there is probably a spike in students punished for views that could be seen as "threatening."

"I don't know that there was a dramatic change, but I do think that there were more efforts to limit what students could publish based on concerns about violence," Goodman said. "Also, students may have been more hesitant to publish things that could be perceived as harshly critical of school officials."

"Not every circumstance is a true threat — the same goes for humor and satire."

Conradt's mother echoed that sentiment.

"They couldn't differentiate between the two, Columbine and him," Hansen said. "It was a joke. His First Amendment rights got trampled on."

Striking a balance

Because students do sometimes act on threats, experts say finding a balance between students' rights to express themselves and school safety is not an easy task.

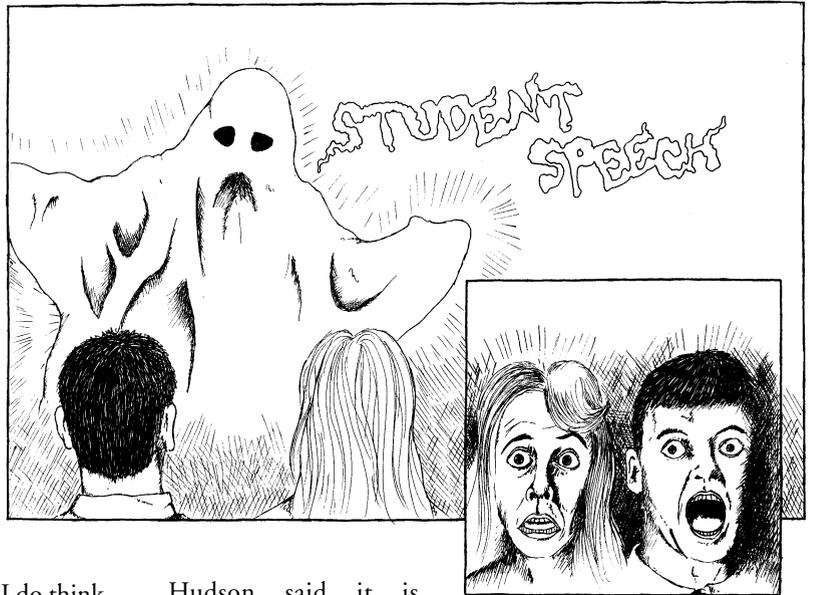
Ken Trump, a school safety expert, talked about this balance in Hudson's report.

"The key to balancing safety with First Amendment or any other rights is to have legally sound policies, reasonable and well-understood procedures, and well-trained school staff," Trump said according to Hudson's report. "In my 20-years plus of working in schools, the vast majority of educators I have worked with strive for firm, fair and consistent discipline applied with good common sense."

"Unfortunately, it is when the latter component — common sense — is missing that we tend to see anecdotal cases where students' rights are violated or questionable disciplinary actions come into place."

Goodman also said common sense is a key component when administrators are faced with controversial speech.

"Administrators using common sense and recognizing there are dangers in seeing a threat when a threat doesn't exist" is important, Goodman said. "What I fear happens is that many schools decide what they're going to censor based on what the reaction will be, not whether there's a real risk of violence."



Hudson said it is important to look at several factors when dealing with controversial student speech, whether it is verbal, in art or on the Web. These factors include the student's past disciplinary record, whether or not the recipient of the speech was truly afraid and other events going on in the student's life. He added that it is key to consider the context of the situation and to talk with the student's friends, parents and teachers.

"I think there is a difference in a student running around saying they're going to bomb the school as opposed to violent imagery in art or a poem," Hudson said. "I don't mean to suggest that students can never be punished for violent expressions, but they [school officials] can't forget that students do have constitutional rights."

Kids often just seeking attention

Jean Cirillo, a clinical psychologist who studies teen behavior, told the SPLC in a past article that administrators are overreacting when then they assume students will act in a threatening way after engaging in controversial or violent expression.

"Kids seek attention this way," Cirillo has said. "There is nothing that makes a kid feel better than scaring a powerful adult."

Hansen said her son was doing just that: seeking attention.

"Kids do things to show off," she said. "He was just showing off his ability to build a Web site to his friends."

Cirillo also told the SPLC that harsh punishments, like the one given to Conradt, do not solve anything. It would be better to talk to them about their actions than act with an iron fist, she said.

Punishments silencing student expression may not only violate students' rights, but can also prove dangerous, she said. Students are left with no way to share their feelings and administrators can miss clues revealing students who may need help.

In his report, Hudson writes, "If students feel they have no outlet, they may resort to more subversive, violent means of expressing themselves." ■

Students win fight over censorship of sex article

NEW JERSEY — Student newspaper staffers in New Jersey who won a battle over censorship of an article on teen sex proved that knowing their rights under the First Amendment pays off.

In September, the Caldwell-West Caldwell School Board in Newark, N.J., agreed to allow the publication of a previously censored article in *The Caldron*, James Caldwell High School's student newspaper. But the victory may prove temporary, as board members are considering stricter policies that could allow for greater censorship in the future.

"It was great because it was evident that students could fight unjust policies and succeed," Andrew Mangino, the former *Caldron* editor who led the fight against the school board, said of the decision. "I hope that it will be an inspiration for other students to oppose unjust censorship."

Adam Goldstein, a legal fellow at the Student Press Law Center, said this case shows other students that fighting censorship is not hopeless.

"The message to students facing similar types of censorship is that just because a school has prior review does not mean a school can censor anything they want," Goldstein said. "Prior review is just looking at the newspaper. If the school wants to take something out, there are legal standards that must be followed."

The article, "Let's Talk About Sex," was pulled from the paper's April issue after Caldwell principal Kevin Barnes deemed

it inappropriate. Barnes also forbade any mention of the article and surrounding events in any future issue of *The Caldron*. The article discussed national sexual trends and studies and compared them to Caldwell High. Many of the issues were the same as those addressed in the school's sex education curriculum.

The Caldron's efforts to appeal the censorship to the superintendent and school board were rejected.

Bennett Zurofsky, the students' attorney, wrote a letter to the school board attorney that stated neither Barnes nor Superintendent Daniel Gerardi had any legal right to censor "Let's Talk About Sex" because the school board had no policy in place that addressed the issue.

Zurofsky's letter made clear that his clients would pursue legal action if the issue could not be resolved. He said that once the school board realized they had no legal grounds for censorship and would likely be unsuccessful in court due to *The Caldron's* strong case, they were inclined to settle.

The school board and the students came to an agreement that allowed "Let's Talk About Sex" and its sidebar to be published in the October issue of *The Caldron*.

The agreement states that there will be no censorship of *The Caldron* until the Caldwell-West Caldwell Board of Education lawfully implements censorship standards in accordance with the law as written in *Tinker v. Des Moines Independent*

School District.

Goldstein said that this case is a good example of a positive outcome of students knowing, and fighting for, their rights.

"In general, an informed student journalist can avoid some pitfalls that the uninformed student journalist might fall into," Goldstein said. "When it comes to censorship, being informed about your rights is like learning to do CPR. Knowing your rights won't stop a principal from making a bad decision any more than knowing CPR will prevent someone from having a heart attack, but in either case, knowing what to do certainly makes a positive outcome more likely."

Zurofsky said the biggest worry now is that this case will prompt the Caldwell-West Caldwell School Board to implement stricter censorship guidelines for *The Caldron*.

"It certainly is a good sign that the school districts are willing to recognize the law," Zurofsky said of the agreement. But "there are certainly indications that the board is interested in passing stricter standards."

While Gerardi failed to return messages from the SPLC asking for comment, Newark's *The Star-Ledger* reported that Mary Davidson, president of the school board, said the board will consider creating a new policy to govern student publications.

After the victory, Mangino said, "It would be a shame if they did." ■ CG

Former student loses free speech lawsuit; appeals filed

CALIFORNIA — A Marin County Superior Court judge issued a written opinion in August regarding his March decision that a former student columnist's constitutional rights were not violated by the Novato Unified School District.

Former Novato High School student Andrew Smith's lawsuit claimed his right to free speech under both the First Amendment and the California Education Code was violated when district officials apologized to students and parents and

attempted to confiscate copies of *The Buzz*, Novato's student newspaper, after his article "Immigration" was printed.

David Greene, a lawyer at the First Amendment Project, said this decision could give the wrong idea to California school officials.

"Anytime a student journalist loses a case like this, it sends a message to school administrators that they have a greater power to control the student press than they actually do," Greene said.

California is one of six states with a statute protecting student free expression rights. The laws are often referred to as anti-*Hazelwood* statutes because many were a specific response to the Supreme Court's 1988 decision limiting students' rights under the First Amendment.

"Immigration" contained derogatory statements about Mexican immigrants and listed reasons why Smith thought immigration laws are ineffective.

The court found that "Immigration" led

to a student walkout, administrators meeting with angry parents and a fight between Smith and several Latino students.

In regards to the confiscation of newspapers, the court said, "there was no credible evidence that the District removed any editions of *The Buzz* after they were distributed," negating Smith's claim to the contrary. The court found that all the copies had been distributed at the time the school gave the order to confiscate them, thus thwarting their effort.

Smith also claimed his rights were breached when the publication of his second article, "Reverse Racism," was delayed so that a counter article could be written and printed alongside it. Both articles were published during the 2001-02 school year.

The court found that Smith's rights were not violated because he was ultimately allowed to publish both articles. The court also said Smith's rights were not violated when "Reverse Racism" was delayed

because it was the student newspaper staff's decision to run a counter article, not a directive of the school or district.

Stella Robertson, then-editor of *The Buzz*, told the Student Press Law Center in January 2002 that it was the principal who was delaying publication.

In addition, the court also rejected Smith's claim that the district's policy regarding student publications was a violation of state and federal law.

The district has the ability "to control publication of material which is insulting, derogatory, harassing, likely to incite violence and/or likely to cause a substantial disruption to the orderly operation of the school," according to the court's opinion, using terms found in the district's policy.

Student press advocates raised questions about the breadth of the judge's decision, saying it appeared to go beyond what California state law allows.

"The judge just ignored the fact that state law does not allow censorship for

some of these kinds of expression, in part because the terms are so vague," said SPLC Executive Director Mark Goodman. "For example, is criticizing a school official 'insulting?'"

Goodman said the decision constitutes a real diminishment of student free press rights as protected by the California Education Code.

"We hope it won't be used to justify censorship of other student expression in the future," he said.

Arthur Mark, Smith's attorney, said an appeal to the judge's decision has been filed.

"The main issue is the free speech rights of Andrew Smith and the free speech rights of the students of California," he said.

Mark said this case is important because it will have an impact on how administrators treat student speech. ■ *CG*

Case: Smith v. Novato Unified Sch. Dist., No. CV022210 (Marin Super. Ct. Aug. 26, 2005)

HIGH SCHOOL CENSORSHIP IN BRIEF

Suspension for violent, sexually explicit story did not violate student's rights, court rules

NEW YORK — A U.S. District Court for the Eastern District of New York ruled in September that school officials did not violate a student's rights when he was suspended for writing a violent and sexually explicit story using the names of his classmates.

Dylan Finkle, 13, wrote a three-chapter story titled "Costume Party," which chronicled a student who kills several of his classmates and depicts others in violent sexual situations. Finkle read the story aloud to classmates, which prompted one teacher to turn him in to the principal.

After the suspension was handed down, Dylan's father, Andrew Finkle, sued the Syosset Board of Education, superintendent Carole Hankin and

Thompson Middle School principal James Kassebaum for violating his son's First Amendment rights.

The court ruled in favor of the school, saying, "Speech that constitutes a true threat of violence, by being a 'serious expression of an intent to cause present or future harm,' may be prohibited."

The Finkles have appealed the decision, according to a secretary in Christopher Murray's office, who is the Finkle's lawyer. ■

Case: D.F. ex rel. Finkle v. Bd. of Ed. of Syosset Cent. Sch. Dist., 386 F.Supp.2d 119 (E.D.N.Y. 2005)

Student editors up in arms over restrictive publications policy

NORTH CAROLINA — Student journalists at First Flight High School's *Nighthawk News* are fighting new regulations imposed on their newspaper

over the summer.

Superintendent Sue Burgess implemented the new policy, which includes bans on images of students wearing attire that violates the student dress code, content that associates the school with anything other than neutral political stances and advertising or promotion of any product, service or activity unlawful for minors.

Nighthawk staff protested the regulations to the school board and superintendent. As a result, it was decided that the lawyer who wrote the policy in question would rewrite the regulations.

Robin Sawyer, *Nighthawk News*' adviser, said in an e-mail she is unhappy with the rewritten policy, which still gives the principal of the school ultimate authority over newspaper content.

The new proposal raises the same legal questions as the old one, said Adam Goldstein, a legal fellow at the

Student Press Law Center.

“It also appears motivated by a dislike of the newspaper’s content,” he said. ■

Principal halts publication over prior review statement

WASHINGTON — Editors and the principal of Everett High School reached a stalemate in October over publication of the student newspaper.

Claire Lueneberg, an editor at the *Kodak*, said the school’s new principal, Catherine Matthews, will not allow the paper to be printed until the staff removes an editorial statement that says students control the newspaper’s content.

Removing the statement would give Matthews the authority to review all material before it is published, Lueneberg said. The paper had been publishing the statement since last spring.

In the *Herald*, an Everett, Wash. newspaper, Matthews said she is enforcing a seven-year-old school board policy that allows, but does not require, principals to practice prior review.

Lueneberg and co-editor Sara Eccleston asked the superintendent and school board in a meeting in November to grant permission for them to publish as a student forum with the editorial statement. The board denied their requests, Lueneberg said. The editors said they are not sure what their next step is, but Lueneberg said they do not plan to remove the statement. ■

School board debates policy on administrative prior review for media

OHIO — School officials in Canton are debating their policy of administrative review for the district’s high school publications.

Principals at McKinley and Timken

High Schools currently have the final say on what goes into their schools’ newspapers and yearbooks, but that may change.

Rick Senften, an editor for *The Repository*, a Canton newspaper, said school officials admitted the policy needed to be changed. Senften, who has worked with high school journalism programs in Ohio for the last 15 years, said he was asked to help draft a new policy.

Senften said the board would not support a policy that denied school officials any review privilege, but the proposed policy does give students ultimate content control. Under the proposed policy, if a principal reviews the paper and has objections to content, a meeting with the staff must be held in which the administrator lays out his or her concerns over the material in question. The staff can elect to publish the material despite administrative concerns, but in doing so they assume all liability.

Senften said it appears likely the school board will adopt the new policy, possibly as early as December. ■

Yearbook portrait policy changed; principal still has final say on photos

FLORIDA — The Clay County School Board agreed in September to change its portrait policy for high school seniors after reaching an out-of-court settlement with a former student.

Kelli Davis’ senior photo was removed by school administrators from Fleming Island High School’s yearbook last year when she chose to wear a tuxedo instead of the traditional drape required for female students.

The National Center for Lesbian Rights filed a complaint on Davis’ behalf in May 2005 threatening legal action if the policy was not amended.

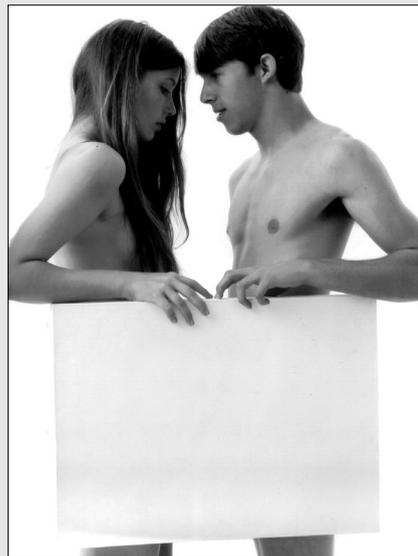
School board officials agreed to change the portrait policy.

Unfortunately for the yearbook

staff, the settlement does not contain provisions preventing administrators from having the final say on what photos are appropriate. The Settlement says, “The principal may establish dress codes for senior portraits,” but must grant “reasonable requests” for exceptions – meaning the decision of what photos appear in the yearbook remains in the principal’s hands. ■

School rejects parents’ \$1.5 million claim over ‘unauthorized’ photos

CALIFORNIA — The San Dieguito Union High School District has rejected a \$1.5 million claim filed by the parents of a 16-year-old girl who posed in her underwear for photos in a high



A photo from *First Flight* magazine of Monterey Salka with Ben Halstead.

school literary magazine.

The claim sought damages for “defamation, invasion of privacy, inadequate supervision, sexual harassment and related damages all stemming from unauthorized nude photographs...” appearing in Torrey Pines High School’s *Dialogue Spring 2005 First Flight*.

The parents’ attorney, Daniel Gilleon, told *The San Diego Union-Tribune* that they plan to proceed with a

lawsuit against the school district.

The pictures feature the girl in question, Monterey Salka, and two other students posing in their underwear or wearing flesh-colored tank tops. No genitals or breasts appear in the images. In two images, Monterey Salka appears

to be topless, but her hair is covering her breasts.

Gilleon said Salka, who has done professional modeling in the past, regrets posing for the photos.

The claim stated that at no point were Salka or her parents asked to provide consent for the pictures'

publication.

The Salkas also contend they would not have given consent to publish the photos.

Dan Shinoff, the school district's lawyer, said the entire claim is baseless.

"I think these youngsters knowingly participated in this issue," he said. "She's a model. She's all over the Internet. For someone who seeks notoriety for her own image this is very interesting."

Lynch said that despite the claim she did not anticipate any changes in how the district handles student publications. ■

Student files lawsuit to clear disciplinary record

GEORGIA — A student suspended for writing a journal entry school officials deemed threatening filed a lawsuit in October asking for her disciplinary record to be cleared.

Rachel Boim, then 14 and a student at Roswell High School, was expelled in October 2003 for a year after her art teacher confiscated her private journal when she passed it to a classmate. The school district later reduced Boim's punishment to a 10-day suspension that remains on her record.

Boim's attorney Don Keenan said Boim, now 16, will be applying to college soon and is worried about having to put the suspension on her applications.

The journal entry in question describes a girl who falls asleep in class and dreams of shooting her math teacher. The math teacher was not named.

Boim was suspended for violating the student code of conduct, which prohibits students from making threats against the school, Mitzi Edge, a Fulton schools spokeswoman, has said.

The suit seeks only \$1 in damages, Keenan said, because the Boims want to make it clear that the suit is not about money — just clearing their daughter's record. ■

Principal seizes paper over column on birth control, tattoo article

TENNESSEE — A high school principal seized all 1,800 copies of a student newspaper in November over objections to a column about birth control and an article on body art.

Oak Ridge High School Principal Becky Ervin objected to a column intended to inform students who were sexually active about birth control measures available to them, said *Oak Leaf* Editor in Chief Brittany Thomas. The column quoted a local health center physician as saying that teenagers do not need parental consent in Tennessee to obtain birth control information.

Ervin had no problem with an accompanying column encouraging abstinence, Thomas said, adding that Oak Ridge's sex education program is abstinence only.

The principal also had qualms with an article featuring photos of students showing their tattoos and body piercings, Thomas said.

Superintendent Thomas Bailey declined to comment on the situation

beyond a press release, but he did tell *The Knoxville News-Sentinel* that the article featured a photo of an unnamed student baring a tattoo that her parents did not know about, which concerned administrators.

The Oak Leaf published without the article on birth control and without the names of the students pictured in the tattoo feature in order to get the paper out, Thomas said.

But the students are not giving up.

"I think we need the same rights as everyone else," Thomas said. "We've always been responsible — this wouldn't have been a big deal if it had been released as we intended."

Thomas said that students and community members voiced their opinions on the matter at a school board meeting and that the majority of the speakers condemned the censorship. ■

Study finds Web filters block legitimate content

Legitimate content often is blocked by school and library Internet filters when students are conducting research, according to a new study by a university librarian.

Lynn Sutton, director of the Z. Smith Reynolds Library at Wake Forest University, found that many school and library filters were overzealous in their attempts to protect students from inappropriate online content. She presented her study, "Experiences of High School Students Conducting Term Paper Research Using Filtered Internet Access," Oct. 8 at the American Association of School Librarians conference in Pittsburgh.

Sutton interviewed two English classes at a Michigan high school, one advanced rhetoric and one basic composition, that had been assigned term papers to be researched on school library computers. She said almost all of the students interviewed experienced some kind of problem with legitimate sites being filtered. ■

DIALOGUE
SPRING
2005

FIRST FLIGHT

The cover of the issue containing the photos.

Saying 'yes'

What the law says about minors' ability to consent
— without parents' permission —

to stories that could invade their privacy or damage their reputation.

BY MIKE HIESTAND

During the summer following her freshman year of high school, Jane completed treatment for an eating disorder. The in-patient treatment and counseling she received helped her understand and overcome the problem that had affected her since she was about 12. Now a 17-year-old high school senior, Jane is, by all measures, successful and happy. She has never told anyone other than her family and a few close friends about her past and she is sure that many of her classmates and teachers would be shocked to hear that in between volleyball practice, her studies and a part-time job, she volunteers her time by providing telephone peer support to other young women currently undergoing treatment for potentially fatal eating disorders.

She knows that, statistically, some of her classmates are going through the same thing she did. She remembers how alone she felt and how that sense of isolation and embarrassment

prevented her from getting the help she needed until it was almost too late. It is for that reason that she has sought out *The Student Times*, the student newspaper at her school, to tell her story. Though her parents would rather she keep her past to herself, Jane is proud of having successfully confronted her eating disorder and wants to encourage others to do the same by putting a face on a problem that is too often kept a secret. She hopes to raise awareness and let others know that help is available.

Unfortunately, when school officials hear of the newspaper's plans to publish Jane's story, they order it removed. Jane, they point out, is a minor. Her story, they say, is too personal and pri-

vate to share. Despite Jane's unambiguous consent, they fear allowing the student paper to publish her story could subject the school to legal trouble, particularly since Jane's parents have been unwilling to sign a consent form.

Jane is fictional. But her experience — and the experience of *The Student Times* in trying to help her share her story — is not. Whether the story involves eating disorders, substance abuse, teenage pregnancy or some other private and sensitive personal

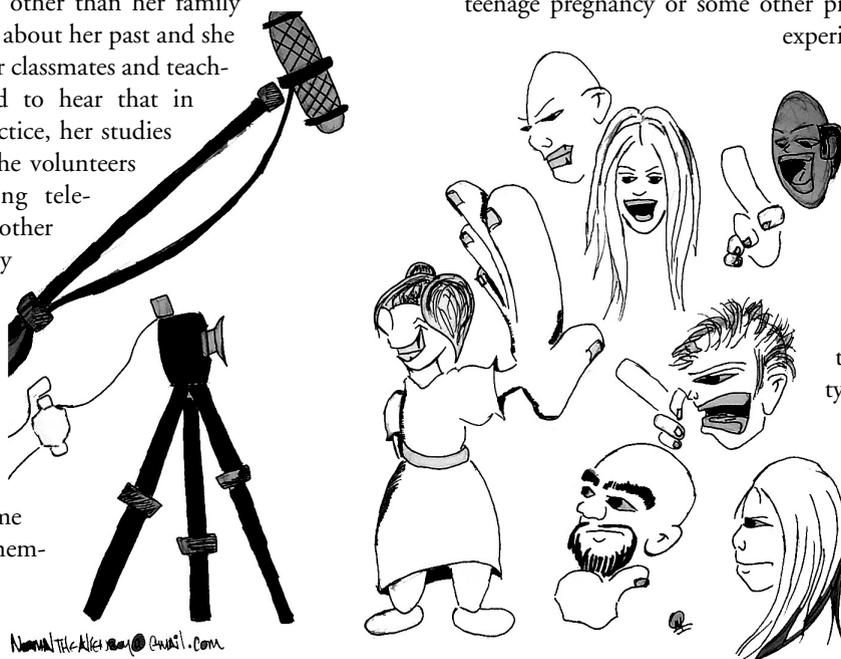
experience, student and commercial news media grapple with how best to handle stories such as Jane's and other "minors" on a regular basis.

Last spring, for example, officials at East Bakersfield High School in California censored a feature spread on homosexuality from the student newspaper. The spread included interviews with openly gay students on campus who wanted to share how they felt they were treated by others, an in-depth interview with a gay student and her mother, interviews with a student and a

local pastor who felt homosexuality was wrong, a story about the research that had been done on homosexuality and a story that listed statistics on homosexuality in America and violence against gays. Despite the fact that the students had all consented to the newspaper's use of their names and experiences, school officials censored the story claiming they were concerned for the students' safety. The case is currently in court.

The right to say 'yes'

Because so many of their subjects involve young people, a question of particular interest to student media is whether minors (in



most states defined as a person under the age of 18) can validly consent — without a parent or guardian — to the publication of stories about themselves that either could invade their privacy or could damage their reputations by libel.

While each case is unique, involving a number of factors both legal and practical that should be carefully weighed prior to publication, such thorough analysis frequently goes missing in favor of a much more rigid test, which simply asks: how old is the subject of the story? Too often the result is a knee-jerk reaction to censor or withhold publication, fearing either legal repercussions or the public criticism that may come when young people share stories or experiences involving topics that some might find uncomfortable.

Such a response is not only legally simplistic — and, in most cases, probably misguided — it also deprives young people of an opportunity to have their voices and their stories heard on topics that matter deeply to them.

The law: not simply a matter of age

The American Law Institute has noted in its *Restatement*, a widely accepted legal authority, that a person's consent should be effective as long as the person giving the consent has the legal capacity to do so.¹ In a comment on that section, the *Restatement* says a child's consent is and should be effective if he is "capable of appreciating the nature, extent and probable consequences of the conduct [to which he consents]," even if parental consent is not obtained or expressly refused.²

Courts have generally followed the reasoning of the *Restatement* in cases of invasion of privacy and defamation, finding that a minor's consent is valid when the minor seems to be sufficiently mature and capable of realizing the possible repercussions of the consent. In one case, for example, a court found that a national television talk show did not invade the privacy of a 16-year-old girl by airing her stepmother's reading of the girl's police record in response to the girl's verbal attacks on her stepmother during the same broadcast.³ The court based its holding on its finding that the minor appeared on the show's tape to be sufficiently mature and capable of realizing that by verbally attacking her stepmother on national television she would be exposing skeletons in her own closet to public airing.

"She was not so young," the court wrote, "as to be incapable of realizing that she would be in a glass house throwing stones. We need not decide at what age a child is sufficiently mature to waive her right to privacy, but 16 is old enough when no circumstances of deception or overreaching or limited competence are shown."⁴

In another case involving a minor's appearance on a television

If material is newsworthy, consent may not be required

While obtaining a minor's consent may sometimes be required to protect news media when reporting on highly sensitive or private matters in which the minor is involved, in other cases the issue of consent need not even be raised. Where a story falls within the broad definition of "newsworthy," courts have generally ruled that a minor's privacy rights are no greater than those of adults, in which case it not necessary for a publication to gain the consent of minors or their parents to report the story. In a unanimous 1979 decision, the U.S. Supreme Court ruled in *Smith v. Daily Mail* that the First Amendment protects the right of journalists to use the names of minors in newsworthy stories as long as the information is "lawfully obtained" and "truthfully" reported.¹³ Following such reasoning, a Missouri court, for example, found that a TV news crew did not violate a 15-year-old girl's right to privacy by taping her during a police search of her home. The court found the police action to be "newsworthy" and specifically rejected the teen's claim that Missouri law and public policy offered minors special protection.¹⁴

However, at least one court has recognized the limits of newsworthiness and found that when reporters deal with children, particularly those under the age of 12, they must think about the probable consequences of their conduct and operate within the bounds of basic decency.¹⁵

The need for consent, whether from a minor or parent, only arises when the information to be published is private or damaging to the person in question. For example, consent is never legally required for publishing a photo of someone in a public place or publishing information that is widely known.

talk show, a New York court found that "The Sally Jesse Raphael Show" did not defame or invade the privacy of a 15-year-old girl who represented herself as a prostitute on the show. The court found that because the girl consented to the presentation of herself as a teenage prostitute — a claim she

later denied — she could not subsequently sue the show for defamation.⁵ The court specifically rejected the girl's claim that there was an exception for minors to the general principle of consent, finding that the girl "offered no authority for this proposition, and the Court is aware of none."⁶

News v. trade

A number of court's have noted a distinction between a minor consenting to publication of information about themselves for purposes of news and information — where a minor's consent is valid — and publication for commercial or trade purposes

where a parent's or guardian's consent may be required. In fact, a number of states have passed misappropriation or "unauthorized publication" laws that make it unlawful to use a minor's image for advertising, promotional, trade or other commercial purposes without first obtaining the consent of a parent or guardian.⁷ Courts have made clear, however, that such laws "do not apply to reports of newsworthy events or matters of public interest."⁸

In most cases, it will be easy to distinguish between commercial and non-commercial use. Clearly, interviewing a student for a news story or feature would not be considered "commercial." Indeed, with the exception of using minors as models in advertising or for promotional material — where parental consent should always be obtained — most student media are unlikely to use minors' images for purposes that a court would consider commercial.

Still, in other contexts, it has been more difficult for courts to distinguish between cases involving news and those involving trade.

In Florida, for example, a federal district court rejected a 17-year-old girl's claim that the producer's of the *Girls Gone Wild* video series, in which young women are videotaped exposing themselves in public places, unlawfully violated her privacy when it sold and distributed a video of the girl voluntarily exposing her breasts to a cameraman on a Panama City public street.⁹ Even though the video was sold, the court found that the young woman was not shown endorsing or promoting a product — acts covered under Florida law — but was rather simply part of an expressive work in which she voluntarily consented.

Having found that the use of the 17-year-old's image was not a commercial use for purposes of Florida's "unauthorized publication" law, the court further went on to explicitly reject the argument that a minor could *never* consent to publication. "Florida law," the judge wrote, "has never recognized that a minor is incapable of consenting to the publication of her image and likeness where no compensation is involved."¹⁰

In a more recent case, a Texas appeals court refused to lift a temporary restraining order issued against the maker of a video game that included images of a 17-year-old girl attending Spring Break on South Padre Island.¹¹ The girl, who used a false identification card and signed a consent form, voluntarily exposed her breasts while taking part in a trivia game that was set up on a public street. After her brother told her that the video game included multiple images of her topless, she sued the company for, among

other things, invasion of privacy based on misappropriation of her name and likeness. This time the court found that the use of the girl's image in the video game might be considered a use for commercial gain and therefore could constitute an unlawful invasion of privacy by misappropriation. In such a case — which the court pointed out was different from situations that did not involve commercial gain — the minor girl's consent might be ineffective.¹² The case is ongoing.

Why it matters

There are exceptionally strong policy and legal arguments in favor of recognizing a minor's consent as valid in the right circumstances. Such reasoning is in line with that adopted by courts in determining whether a minor may consent to other kinds of actions that may harm them,¹⁶ and whether a child is responsible for injuries he causes,¹⁷ his crimes¹⁸ and confessions to crimes.¹⁹

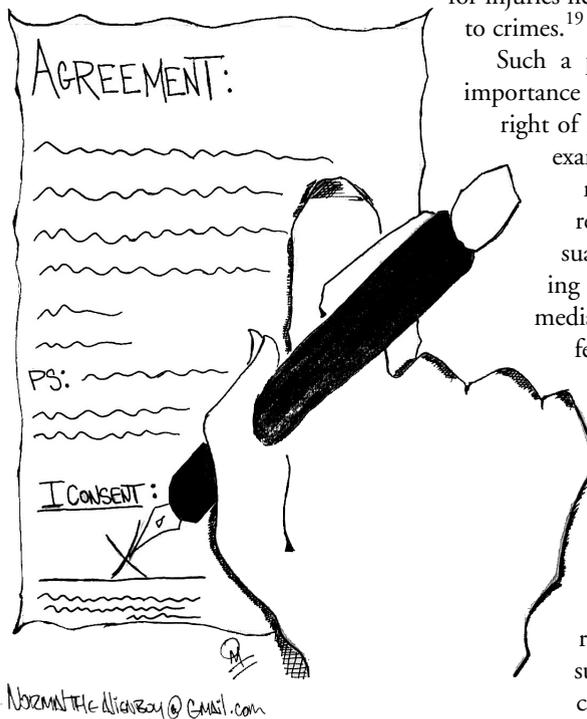
Such a position also takes into account the importance of recognizing the First Amendment right of minors to have their voices heard. For example, without legal recognition of a minor's right to consent, a 17-year-old recovering drug addict seeking to persuade other teens to "stay clean" by relating his experiences would likely find few media outlets willing to touch his story for fear of being sued by his parents or by him when he is older. The *Restatement* view strikes a sensible middle ground. It recognizes a person's age as simply one factor, among others, to be considered in determining if consent is valid. As long as a person understands what it is that he or she is consenting to and realizes the consequences of allowing such information to be published, the consent should be valid. Where a person — irrespective of age — is too immature

or is otherwise unable to appreciate the significance of giving consent, the consent is invalid. Under this view, the Student Press Law Center believes *most* high school students could provide valid consent. Most elementary-aged children, because of their immaturity, *probably* could not.

Obtaining consent

Remember, the need for consent, whether from a minor or parent, only arises when the information to be published is private or damaging to the person in question. For example, consent is never legally required for publishing a photo of someone in a public place or publishing information that is widely known or not embarrassing or hurtful.

But when the material to be published could constitute an



invasion of privacy or libel, consent is an important safeguard for a news organization. When obtaining consent from a minor, it is essential that journalists take extra precautions to insure that the minor is fully informed of what is taking place. First, make sure that the minor understands that you are a reporter working on a story that will be published. If you are a student journalist, tell him what your story will be about and how you intend to use the information he provides. Let him know that your publication is read not only by other students, but also by parents, faculty, neighbors, potential employers and even other larger media, which could pick up on the story. When the information is especially “sensitive,” you should convey to him some of the possible consequences — both immediate and future — of publishing his information. Most importantly, tell him he is under no obligation to give you the information you are requesting. You may also want to suggest that he talk with a parent or some other adult before proceeding.

While not necessary to be legally enforceable, the Student Press Law Center strongly encourages that you obtain the minor’s consent in writing. The written consent should note how the minor’s information will be used. It should also state that the reporter and minor discussed the implications of giving consent and that the minor attests that he fully understands what he is doing when he signs the consent statement.

Finally, even if it appears the minor is capable of giving valid consent (and assuming the minor does not object), it never hurts to obtain the consent of a parent or guardian (if one is willing to provide it) as well. Certainly, as discussed above, if the publication involves any sort of trade or commercial use, parental or guardian permission *must* be obtained.

Summary

Recognizing the validity of a minor’s consent is an issue too important to be left to a simple, one-size-fits-all age test. Where a young person is capable of understanding the nature and consequences of publicly disclosing personal or sensitive information about themselves, such informed consent should be valid. While news media should also carefully weigh the pros and cons of publishing information about a minor, they — just like courts, school officials, parents and others — need to keep in mind that young

people often have important stories to tell and respect their right to choose to share them. ■

1 Restatement (Second) of Torts § 892A.

2 *Id.* at cmt. on (2).

3 See *Howell v. Tribune Entm’t Co.*, 106 F.3d 215 (7th Cir. 1997).

4 *Id.* at 221.

5 *Weber v. Multimedia Entm’t Co.*, No. 97 Civ. 0682(JGK), 2000 WL 526726 (S.D.N.Y. May 2, 2000), *reconsideration denied*, 2000 WL 724003 (S.D.N.Y. June 5, 2000).

6 *Id.* at 7.

7 For example, California’s law provides that “[a]ny person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. CAL. CIVIL CODE § 3344(a) (emphasis added). New York law states that “[a] person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.” N.Y. CIV. RIGHTS LAW § 50 (emphasis added).

8 *Weber*, 2000 WL 526726 at 5.

9 *Lane v. MRA Holdings*, 242 F.Supp.2d 1205 (M.D. Fla. 2002).

10 *Id.* at 1218.

11 *Topheavy Studios, Inc. v. Doe*, NO. 03-05-00022-CV, 2005 WL 1940159 (Tex. App. Austin Aug 11, 2005), *reh’g overruled*, (Sep 14, 2005).

12 2005 WL 1940159 at 5.

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

14 *Parker v. Multimedia KSDK, Inc.*, 27 Med. L. Rptr. 2305 (Mo. Cir. Ct. 1999) (The court also suggested that girl’s failure to object to TV news crew’s filming of police search of family’s home constituted a valid waiver of her right to privacy). Note that in 1999 the U.S. Supreme Court issued rulings in a set of cases that cast some doubt on the legality of some so-called police “ride-alongs.” For more information — and list of practical suggestions when considering a ride-along, see: Reporter’s Committee for Freedom of the Press, *From The Hotline, NEWS MEDIA AND THE LAW*, Summer 2003, <http://rcfp.org/news/mag/27-3/hot-fromthel.html>.

15 In *KOVR-TV, Inc. v. Superior Court*, 31 Cal.App.4th 1023 (Cal. Ct. App. 1995), the court held that a reporter intentionally and negligently inflicted emotional distress upon three girls, ages 11, 7 and 5, by coming to their home uninvited and telling them of the murders of two of their playmates, who lived next-door. At the time, the girls did not know of their friends’ violent deaths, and the reporter told the children that their friends’ mother had killed her children and then herself. *Id.* at 1027. The court found that the reporter told the children of the murders in such a manner as to cause them emotional distress that would be demonstrative to the TV audience. The reporter also questioned the girls about the murdered family on camera and intruded uninvited into the minors’ home though fully aware that the children’s parents were not home. The court found that the reporter acted with an “alarming absence of sensitivity and civility” and was therefore guilty of intentional infliction of emotional distress. *Id.* at 1028.

16 See, e.g., *Leonhard v. United States*, 633 F.2d 599 (2d Cir. 1980), *cert. denied*, 451 U.S. 908 (1981) (children who consented to being taken into hiding with stepfather under the federal witness protection program could not later sue the government for abduction and false imprisonment); *Westbrook v. Hutchinson*, 10 S.E.2d 145 (1940) (court implied that woman sued for false imprisonment by 11-year-old would have defense if she proved child stayed with her voluntarily).

17 *Gibbs v. State Farm Mut. Ins. Co.*, 544 F.2d 423 (9th Cir. 1976).

18 *Redman v. State*, 580 S.W.2d 945 (Ark. 1979).

19 *Gallegos v. Colo.*, 370 U.S. 49 (1962), *reh’g denied*, 370 U.S. 965 (1962).

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Using faces from Facebook

Student editors talk about using social networking sites as sources; experts say approach sites with caution

BY CLAY GAYNOR

With deadline only two hours away, the staff of *The Reflector*, Mississippi State University's student newspaper, was at a crossroads.

A freshman student had been in a car accident, striking and killing a sophomore, and was charged with driving under the influence of alcohol. Unable to obtain her booking mug shot, the newspaper staff was considering running a photo of the charged student from Facebook.com. Facebook is an online directory that connects people through social networks at schools. Students can post photos and profiles of themselves on the site, and the accused driver appeared to have done just that.

Editor in Chief Elizabeth Crisp thought the newsworthiness of the story merited running the photo, which she said would have given the coverage a hard-hitting personal element.

"I think it puts a face onto it," Crisp said. "It made it a little more real."

Frances McDavid, *The Reflector's* adviser, recommended the students consider the risks involved with running the photo.

News Editor Sara McAdory said the staff had two main worries: misidentification and copyright issues.

"We didn't want the wrong picture up there," McAdory said. "The issue was whether or not it was really the girl. We were pretty sure it was but you never know. People can post anything."

The other question, McDavid said, was who held the photo's copyright and would the paper's use of it

constitute a "fair use."

With no clear answers available before deadline, *Reflector* staff said they decided not to publish the student's picture.

A different approach

When staff at *The Miami Hurricane* was faced with a similar situation they decided to run photos from Facebook.

In November, photos of several University of Miami students who indicated they went swimming in a campus lake — an act forbidden by the university — appeared on a fellow student's Facebook profile. Patricia Mazzei, *Hurricane* editor in chief, did not hesitate to run them, accompanied by the headline, "Caught on Facebook."

Mazzei said the staff considered the pros and cons of running potentially copyrighted material but decided "the story's importance outweighed any other risks."

"We thought it was newsworthy. It was a matter of public safety — we've had two students drown [in the campus lake] before," she said.

Officials at Facebook disagreed, as evidenced by a letter their attorney, Chris Kelly, sent to Mazzei.

"The mere assertion that something is newsworthy does not invalidate the copyright," Kelly said.

The letter stated that *The Hurricane* had no right to publish the material from Facebook and must immediately remove it from their Web site. *Hurricane* editors have not complied with the request as of early December.

Facebook also objected to *The Hurricane's* decision to tag the photos and profiles taken from their site with

The screenshot shows a Facebook profile for 'Houston Ruck's Profile (This is you)'. The profile picture is a black and white photo of a young man. The 'Information' section includes fields for Account Info (Name, Member Since, Last Update), Basic Info (Geography, School, Status, Sex, Concentration, Birthday, Home Town, High School), Contact Info (Contact Email, School Email, Screenshot, Mobile, Phone, Current Address), and Personal Info (Looking For, Interested In, Relationship Status, Political Views). The 'Connection' section shows 'This is you.' The 'Access' section indicates 'Houston is currently logged in from a non-residential location.' The 'Friends at Vanderbilt' section shows 'Houston has 38 Vanderbilt friends.'

A snapshot of Houston Ruck's profile on Facebook.com. Ruck, as well as the photographer, gave the SPLC permission to use the photo.

“Courtesy of Facebook.com,” which Kelly said implied that Facebook supported or endorsed the article.

Mazzei said the paper ran a follow-up article in its next issue clarifying that Facebook had nothing to do with the story.

In addition, Kelly said the use of the material violated the copyright interests of Facebook and the user who posted the photos, as well as the privacy interest of those in the photos. It also constituted a breach of Facebook’s terms of service, which all users agree to when becoming a member of the Web site.

Kelly said he is confident his client would be successful in a lawsuit against *The Hurricane*, citing Facebook’s copyright interest in the overall look and feel of their Web site. But he said filing a claim is not necessarily the route Facebook plans on taking.

Mark Goodman, executive director of the Student Press Law Center, said it is doubtful Facebook’s claims based on its own copyright would hold up in court.

“I think it unlikely that a court would find the use of an image of a Web page that is accessible to thousands of people, for illustration of a story about the controversial activity depicted on that Web page, an infringement of Facebook’s copyright,” Goodman said. “This seems like a pretty clear ‘fair use’ to me.”

Copyright issues

However, even in a newsworthy situation, printing a photo taken from a social networking Web site could violate the copyright of the owner of the photo, said Dona Gilliam, a professor at James Madison University and an attorney who specializes in entertainment law and intellectual property law, including copyright and multimedia.

“The pictures put up on the Web are owned by the person who took them,” Gilliam said, “and that person maintains copyright for life plus 70 years.”

Gilliam said it is better to err on the side of caution unless the rightful owner of the picture can be asked permission to use it. She added even that can be tricky when Facebook, or similar sites like MySpace.com and Friendster.com, are involved because “there is no way to know who put it there.”

“Just because people upload things doesn’t mean they give consent for use [of their copy-



SPLC advice

Social networking Web sites can be a useful resource to student journalists looking for information on a deadline, but sometimes, taking and reprinting pictures from or images of Web pages from these sites can ruffle feathers and may trigger legal problems. The two most likely complaints are invasion of privacy and copyright infringement.

Privacy

The individuals in a photograph posted to a social networking site are unlikely to have any right of privacy in the picture because the picture has already been published online to a broad potential audience. Unlike private Web sites that may limit access to those the user designates, social networking sites typically offer access of the images to a wide range of registered users. If journalists who do not know the photographer or subject of the picture are able to view the picture, it is hard to imagine how the picture could qualify as “private,” assuming it ever was.

Copyright

Copyright problems can arise in two different ways: the Web site’s copyright in the design and original content of its pages, and the copyright in the photographs placed by users in their own listings on the site. Copyright owners have the right to control the use of their works by other people, but this right is limited by a concept called “Fair Use.” While determining whether something is a fair use is often difficult and often should be done in consultation with an attorney or other expert, generally speaking, a fair use occurs when someone uses another person’s copyrighted work in a way that does minimal harm to the copyright owner’s economic interest while offering some substantial benefit to the public.

Although the owners of a social networking site (like any other Web site owner) have a copyright interest in the design and layout of their pages, student journalists have a fair use right to use an image of the page to accompany a story about the site itself or a newsworthy event taking place on the site. Such a use does not interfere with the value of the copyright while providing important information to the public.

The user-provided images hosted on the social networking site may or may not be available under fair use, however. These photographs will generally be owned by the individuals who took them, and whether or not you can claim fair use will depend both on how the owner intends to use the photographs and on what use you have in mind. For example, it would probably be a fair use to reprint an image from a social networking site in a news report about a crime where the image itself was of the crime in progress and the photograph was taken by a participant. On the other hand, it probably would not be a fair use to take the same photograph for the same story if the photographer was another journalist who posted the photograph to show her work. Contact the SPLC to discuss your specific situation and whether you can make a fair use claim regarding a copyrighted image. ■ AG

ON THE WEB

For more information about copyright law, read the SPLC’s Student Media Guide to Copyright Law online at www.splc.org/legalresearch.asp?id=32.

righted work],” Gilliam said. Since 1989 all original works are copyrighted whether they have a copyright notice or not, Gilliam said.

But there are some instances where permission may not be necessary because using the copyrighted image would be a “fair use.”

Facebook in the newsroom

The Reflector and *The Hurricane* are not the only collegiate newspapers using Web sites like Facebook as a resource in the newsroom.

“It’s an invaluable tool,” said Amber Corrin, editor in chief at West Virginia University’s *The Daily Athenaeum*. “It’s like any other piece of technology – you wonder how you got along without it before.”

Corrin said her reporters use Facebook only as a way to find sources. The Web site makes finding sources infinitely easier for reporters, she said, but *The Daily Athenaeum* would never publish a photo from the site or take any posted information as fact.

“That’s pretty questionable,” Corrin said of running Facebook photos. “It’s not credible enough to use for anything other than sourcing.”

David Cross, editor of *The Lantern*, Ohio State University’s daily newspaper, said he agreed that social networking Web sites are a good way to find sources.

Cross said *The Lantern* used Facebook to find sources for the paper’s stories on Julie Popovich, a part-time Ohio State student who disappeared earlier this year from a campus-area bar. Even though Popovich was not listed in the school’s student directory, Cross said *Lantern* staff members were able to find her friends and subsequently who she was with the night of her disappearance using her profile on Facebook.

Despite the usefulness of social networking Web sites, Cross, like Corrin, has doubts about using them for anything other than a way to find sources.

“We’ve never used a picture from Facebook,” Cross said, because he said he is not sure the Web site is always accurate.

Corrin, Crisp, Cross, McAdory and McDavid all said Facebook is a legitimate newsroom tool.

“I look at it as an extension of the campus directory,” Crisp said. She added that no source has had a problem when they find

out they were tracked down using Facebook.

McDavid agreed.

“It’s put out there for the public to consume,” she said.

What the Web sites say

Kelly, Facebook’s lawyer, said the Web site has a license from users through its terms of service that allows his client to use the material members post, including photos. But that license does not grant Facebook the right to allow others to use it.

“As a matter of policy we would not sublicense users’ material, even for the student press,” Kelly said, referring to the *Hurricane* article.

Gilliam said the above statement about reproducing photos means Facebook is claiming a nonexclusive license to display photos on its Web site. Facebook is not taking an assignment of rights, she said, just a license.

“An assignment of rights would transfer the copyright of the photo to the publisher in exchange for royalties ... [This] is a mere license to use not a transfer of copyright,” Gilliam said, meaning whoever took the picture owns it, despite the fact it is displayed on the Internet.

Gilliam said it is important that Facebook users remember to be careful when posting photos on the Internet.

Even with Facebook’s user agreement and copyright law, Gilliam said, there is no one to stop people from using Facebook photos for reasons the poster may never have thought of, like having a newspaper print it in conjunction with a news story.

As to privacy concerns for using photos posted by Facebook users, Facebook Spokesman Chris Hughes said, “There is no general waiver of privacy when a photo is posted, but users do clearly know and intend that their photos will be viewed by others.”

A continuing issue

As more students become Facebook users, it appears inevitable that questions and problems regarding its use as a newsroom tool will continue to occur.

The Daily Athenaeum’s Corrin may have summed it up best.

“I think the scope of it definitely remains to be seen because it’s such a new thing,” she said. “It’s definitely something to be weary of.” ■

Fast facts on some social networking sites

FACEBOOK.COM

More than 8.5 million members

Founded by Harvard student Mark Zuckerberg in February 2004

Based in Palo Alto, Calif.

Available to anyone with “.edu” e-mails and students at all accredited high schools

source: Chris Hughes, Facebook spokesman

FRIENDSTER.COM

More than 21 million members

Founded by entrepreneur Jonathan Abrams in 2002

Based in San Francisco

Available to anyone over 16 years of age

source: Friendster.com

MYSPACE.COM

More than 32 million members

Founded in 2003

News Corp. media mogul Rupert Murdoch recently orchestrated a \$580 million buy-out of the company, based in Los Angeles

Available to anyone over 14 years of age

source: www.WebProNews.com

Students increasingly punished for Internet postings

New technology makes freedom of expression issues more complicated, experts say

In what some student free-expression advocates say is an alarming trend, students at both public and private schools are being punished for Internet postings made off school grounds on Web sites not affiliated with the schools.

Punishing students for Web posts "sets a tone of intolerance that can very well chill other expression," said Warren Watson, director of J-Ideas at Ball State University, a program that works to develop and encourage excellence in high school journalism. "It's definitely a disturbing trend."

Incidents of students being punished for or forced to remove Web posts recently occurred at two New Jersey high schools.

In October, students at Pope John XXIII Regional High School in Sparta were ordered to erase all blogs and personal profiles from the Internet. Rev. Kieran McHugh, the private school's principal, threatened those who refused to comply with suspension.

McHugh told the *Daily Record*, a newspaper serving Sparta, that Web sites such as MySpace.com, where members can share photos and journals with a network of friends, are fertile breeding grounds for sexual predators to gather information about students.

McHugh's decision angered students, who felt the ban infringed on free speech and attempted to control their actions at home, according to the *Record*.

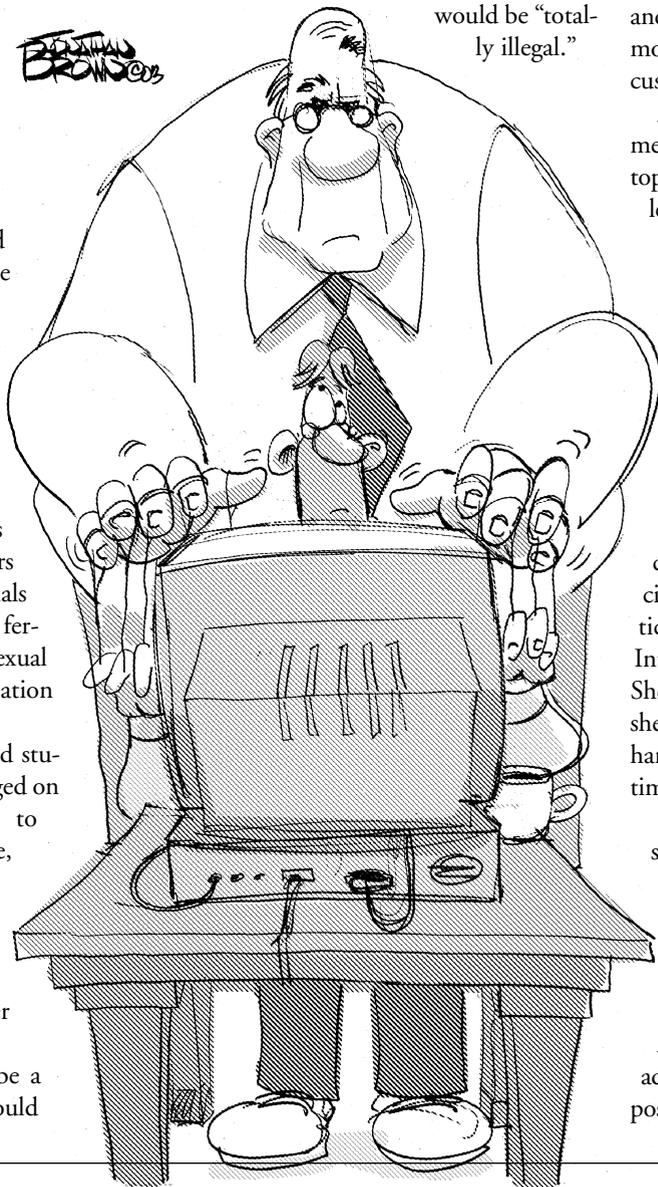
People who posted messages to a MySpace.com group dedicated to the school voiced concerns over the new policy.

One person claiming to be a student said the school should

allow students to continue to use MySpace.com.

"Schools should only be concerned of 2 things: a student's education and a student's safety but only if it is in the boundaries of the school," the user said. "It is not as if we are doing anything obscene [sic], we are just expressing who we are in a web page."

Kevin Bankston, an attorney at the Electronic Frontier Foundation, said unfortunately private schools can do what they want, but a blanket ban such as this one at a public school would be "totally illegal."



“...if a student is only making fun of a school official, courts have said schools must remain hands off.”

Wat Hopkins

communication law professor
Virginia Tech

Educating students about being safe and responsible Internet citizens is much more productive than banning online discussion, Bankston said.

The issue of whether the First Amendment protects bloggers is a hot-button topic right now and it will eventually trickle down to students, Watson said.

"This illustrates how new technology is making these issues of freedom of expression more complicated," he said.

At Paramus High School, junior Laura Iacovacci was suspended in October for three days over a post she made to another student on MySpace deemed harassing by the school.

Joe Iacovacci, her father, said school officials took a sentence from an online conversation out of context. School officials said that if Laura continued to participate in harassing behavior on the Internet she would be suspended again. She could also be transferred out of classes she attends with the student she allegedly harassed, who Joe Iacovacci said is a long-time friend of his daughter's.

But it was not all bad news for New Jersey students who have been punished for Web related issues.

In November, school officials in Oceanport agreed to pay a former student \$117,500 to settle a lawsuit the student filed claiming his First Amendment rights were violated after administrators punished him for material posted on his Web site.

The settlement comes as a result of an April 3 decision in which a U.S. District Court found Oceanport School District officials violated Ryan Dwyer's right to free speech.

Dwyer was an eighth grader at Maple Place Middle School in 2003 when school officials suspended him for a week, removed him from the school baseball team for a month and barred him from a class trip because of his "Anti-Maple Place" Web site. The site described the school as "downright boring" and urged visitors to sign a guest book to express their hatred for the school.

In Iowa, a student who faced a felony charge of threatening a terrorist act of violence for material he published online pled guilty to a lesser charge in October.

Paul Wainwright, who posted what officials found to be a threatening message on an Internet discussion board used by students and alumni at Grinnell College, put in a guilty plea to a serious misdemeanor of willful disturbance.

Wainwright's attorney, Al Willett, said his client was sentenced to two years of probation and received a suspended jail sentence of 120 days.

Willett said Wainwright could have faced up to five years in prison and a \$7,500 fine if he had been found guilty on the original felony charge.

The message board was not affiliated with the school.

In Pennsylvania, a student at Pittsburgh's Duquesne University was ordered in October to write a 10-page essay on the pros and cons of homosexuality after officials said a post he made on Facebook.com violated the private school's code on discrimination based on sexual orientation. Facebook is an online directory that connects people through social networks at schools.

Ryan Miner referred to homosexuals as "subhuman" on a Facebook group protesting a gay-straight alliance some students are trying to start on the Catholic campus.

"They [administrators] have no right to police Facebook — it's like saying they can police your thoughts," Miner said. "People may not like it, but I have a right to say it. I should be able to have my First Amend-

ment right."

After Miner appealed his punishment to Duquesne's judicial affairs office, the essay was shortened to eight pages and the topic was changed from homosexuality to the dignity of all human beings regardless of race, religion, gender or sexual orientation.

Miner said he is unsure if he will write the essay, which is due Dec. 15, saying the school did not tell him what would happen if he refused to comply with the punishment.

Also in Pennsylvania, the Columbia Central School Board said in August that school district officials can punish students for actions that take place off school grounds.

Superintendent Harry Mathias told The Associated Press the new policy would help the district discipline students who use the Internet to threaten other students.

According to the policy, students have the right to express themselves unless it "materially or substantially" interferes with other school policies or activities.

Off-campus and after hours speech "likely to materially and substantially" disrupt school activities is considered unprotected expression, according to the policy.

The policy says unprotected expression is defined as libel, advertising substances or materials to endanger students, threats against students or administrators, profanity in any form, encouraging violations of state law and school policy and speech or actions affecting normal school functions or

property.

In North Carolina, a student at Charlotte's Butler High School was suspended for 10 days in October for posting an altered picture of his school's assistant principal, Calvin Easter, on MySpace.

Dimitri Arethas posted a photo of Easter's head on top of Robocop's body, according to an article in *Creative Loafing*, an alternative weekly newspaper serving Charlotte, N.C. *The Charlotte Observer* said the picture also included a racially offensive "thought bubble."

"If a student is at home posting threatening stuff then obviously those kinds of things can be investigated and punished," said Wat Hopkins, who teaches journalism and communication law at Virginia Tech. "But if a student is only making fun of a school official, courts have said schools must remain hands off."

Principal Joel Ritchie was alerted to the photo by several students who printed it



out and showed it to him. *Creative Loafing* reported those students had to have looked at the picture off of school grounds because Ritchie said MySpace is blocked on the school's computer system.

Even though Arethas apologized and removed the photo, Ritchie suspended Arethas for 10 days based on a Charlotte-Mecklenberg School System rule against "any inappropriate information, relating in any way to school issues or school personnel, distributed from home or school computers," according to *Creative Loafing*. The suspension was later reduced to two days.

But not all school officials have decided that censoring students' Web posts is the best way to combat content they deem inappropriate.

In **South Carolina**, officials decided

punishment was not the best answer when they were faced with controversial Internet posts from students in November.

The State, a Columbia newspaper, reported that University of South Carolina administrators decided not to block a Web site which contained racist remarks about the first black fraternity house to be built in the school's Greek village.

Dennis Pruitt, vice president for student affairs, said the university did not want to set a precedent for blocking sites, according to *The State*. Instead, the school applied pressure on the site operator and the Greek community to monitor its members and Web sites.

Robert O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression, commended the university's

handling of the situation, telling *The State* that codes that attempt to regulate or prohibit certain types of speech are notoriously ineffective and face high constitutional hurdles. He also said such measures often drive hateful speech underground.

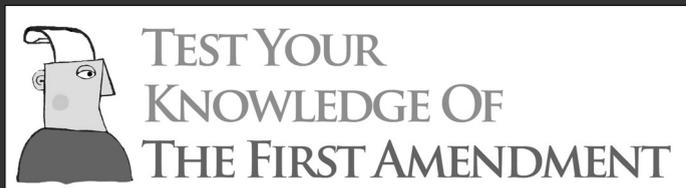
Tom Eveslage, chairman of the journalism department at Temple University, said cases like these will continue to occur.

"I don't suppose that there's any chance these cases are going to diminish," Eveslage said. "People are going to be more brazen about what they say online and school officials are going to flex their muscles a little more strongly to curb them from doing that.

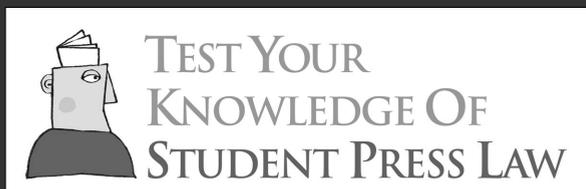
"Journalism instructors, and teachers in general, need to educate about responsibility as well as freedom." ■ *CG*

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High Court shows

More than 35 organizations file three briefs

BY KIM PETERSON

Bone chilling. That is how Charles Davis from the Missouri School of Journalism described the *Hosty v. Carter* decision out of the 7th U.S. Circuit Court of Appeals.

Davis' school along with 35 other college journalism programs, free expression advocacy groups and national media organizations were represented in three briefs filed in October asking the U.S. Supreme to hear the *Hosty* case.

It is a case that makes student journalism advocates like Davis cringe — a case that is already being used as an excuse for administrators to censor student newspapers, regardless of whether or not the school is in the 7th Circuit.

And student media advocates are hoping the Supreme Court will hear the case and set the record straight on student free press rights.

So what has all of these organizations so worked up?

On June 20, the 7th Circuit held that college administrators can censor school-sponsored student publications using the standards set by the 1988 Supreme Court decision in *Hazelwood School District v. Kuhlmeier*. That case dealt with the rights of high school students.

The case arose in the fall of 2000 when Dean Patricia Carter at Governors State University in Illinois demanded that she or another GSU official be allowed to read and approve the student newspaper prior to publication.

Carter's directive was issued despite a university policy that said the student newspaper staff "will determine content and for-

mat of their respective publications without censorship or advance approval."

The newspaper's student editors, who had published stories and editorials critical of the administration, refused the administrator's demands and their newspaper stopped publishing.

Court shows some interest

In October the Supreme Court requested that Carter file a response to the students' petition, a move some say shows the Court is interested in case.

The deadline for Carter's response was scheduled for Dec. 28, 2005.

Lisa Madigan, the Illinois Attorney General, had previously waived her right to file a response to the petition filed by the students asking for Supreme Court review.

This action may force Madigan to make clear her position on college press freedom, an issue that prompted debate before she

received a national freedom of information award from the Society of Professional Journalists.

Long-time Supreme Court reporter Lyle Denniston wrote on his blog in October that the letter shows "the Supreme Court is showing some interest in the case." Denniston has covered the Court for various newspapers such as *The Baltimore Sun* and *The Boston Globe* over the course of nearly 50 years.

"This does not assure review by the justices, but it does indicate an interest in the question at stake," Denniston wrote on his blog.

Four of the nine Supreme Court justices must vote to grant a

"At a time when robust debate on campus is too often threatened by the campus thought police, this case risks undermining even further the right and ability of college students to express their viewpoints."

Anne Neal
President

American Council of Trustees and Alumni

Hosty timeline

Nov. 1, 2000

Patricia Carter, Governors State University dean of students, tells the company that prints *The Innovator* to stop printing the student newspaper without prior administrative review.

Jan. 19, 2001

Margaret Hosty and Jeni Porche, editors of *The Innovator*, file a lawsuit against Governors State University in U.S. District Court seeking more than \$1 million in damages.

Nov. 18, 2001

A federal trial court judge drops three administrators from the lawsuit, saying they qualify for immunity as government actors. The judge allows the case to go forward against Carter, however, saying she does not qualify for immunity. She later appeals this decision.

May 3, 2002

James Ryan, then attorney general of Illinois, files a brief claiming that the 1988 U.S. Supreme Court case, *Hazelwood v. Kuhlmeier*, does apply to university and college publications. The *Hazelwood* decision gave high school administrators greater control over school-sponsored publications.

interest in *Hosty*

with U.S. Supreme Court in support of students

writ of *certiorari*. A decision about whether or not the Court will hear the case is expected in early 2006.

What the petition says

The students' petition argues that several past court cases have upheld strong First Amendment protections at the university level.

Among them is the 1972 *Healy v. James* case in which the Supreme Court decided unanimously that universities could not refuse to recognize controversial campus groups or speakers. A year later, in the decision of *Papish v. Board of Curators of University of Missouri*, the Court extended the strong First Amendment protections recognized in *Healy* to a student newspaper.

"In more than three decades following *Healy* and *Papish*, this Court has never deviated from this view of the First Amendment's proper application in the college and university setting," the petition stated.

The students argue that because the cases mentioned above are not mentioned in the 7th Circuit ruling and because the federal appellate courts have conflicting decisions on the relevance of the *Hazelwood* decision to colleges, the Supreme Court should hear the case.

Furthermore, they point out that the *Hazelwood* ruling on which the court based much of its decision addressed only the rights of high school students. The students' petition argues that university students are rarely minors and university publications seldom part of a curriculum-based class. Therefore, because these circumstances differ from the circumstances of *Hazelwood*, the

Supreme Court should make a separate ruling that applies directly to college students.

Organizations show support

Each of the three briefs filed in support of the students presented a unique argument representing the wide range of groups and interests named in the briefs.

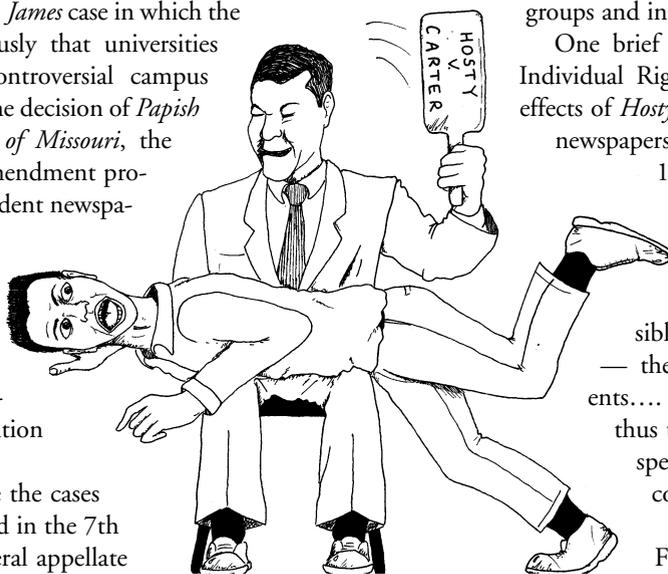
One brief submitted by the Foundation for Individual Rights in Education argued that the effects of *Hosty* could extend well beyond student newspapers. FIRE filed the brief on behalf of 10 other organizations including several that have defended the rights of campus conservatives.

"Under the logic of *Hosty*, a state university would be responsible for — and theoretically control — the speech of all student fee recipients.... The entire student fee structure is thus transformed from an engine of free speech into a pretext for institutional control," according to the brief.

Some organizations joining FIRE's brief focused primarily on a student's right to free expression.

"At a time when robust debate on campus is too often threatened by campus thought police, this case risks undermining even further the right and ability of college students to express their viewpoints," said Anne Neal in a press release. Neal is the president of the American Council of Trustees and Alumni, one of the groups that signed on to FIRE's brief.

Sarah Dogan, national campus director of Students for Academic Freedom, said that while her organization is not directly involved



April 10, 2003

A three-judge panel of the 7th U.S. Circuit Court of Appeals, after hearing Carter's appeal, rules that the *Hazelwood* standard cannot be applied to colleges and universities.

June 25, 2003

The 7th Circuit throws out the three-judge panel decision and agrees to rehear the case before a full panel of judges after Illinois Attorney General Lisa Madigan files a petition asking the 7th Circuit to rehear the case.

June 20, 2005

An 11-judge panel of the 7th Circuit rules that *Hazelwood* can be applied to colleges and universities if the student media are not designated public forums. This decision marked the first time *Hazelwood* was applied to college student publications.

Sept. 16, 2005

The students file a petition for writ of *certiorari* asking the U.S. Supreme Court to hear their case. In October three briefs were filed in support of the students' petition.

For the most up-to-date information on *Hosty*, visit www.splic.org/gsu

with student journalists, it joined the brief to uphold the right to free speech and the right to free association.

“The civil exchange of ideas is important... it seems like a very, very dangerous decision,” Dogan said.

Veronica Vera from Feminists for Free expression said her organization joined the brief because freedom of expression is important to the cause of feminism.

“The job of the newspaper is to check the administration, not to be checked by the administration,” Vera said.

The Student Press Law Center’s brief, on the other hand, focuses on how the *Hazelwood* decision has been misused by high school administrators.

Fourteen national student and professional news media organizations joined the SPLC’s brief.

“Seventeen years of living with *Hazelwood* have shown that school officials and other state actors... [use] it to justify the regulation of virtually any form of teacher and student speech... there is no doubt university administrators are poised to take advantage of their new censorship powers,” the brief stated.

Marsha Schuler from the National Federation of Press Women said that her organization joined the SPLC brief in part to show solidarity.

“We need to support those who are supporting the First Amendment on the front lines,” Schuler said.

Tonda Rush, speaking for the National Newspaper Association, said the organization joined the SPLC brief because she said it is essential that aspiring journalists learn the importance of the First Amendment.

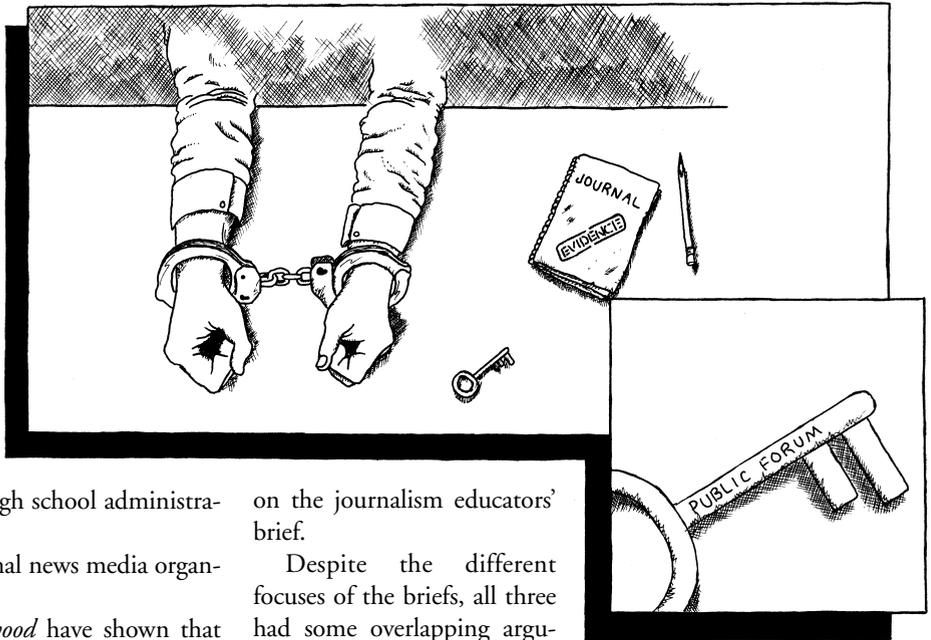
“We are finding a future where we may be turning out students who don’t have an appreciation for the role of the press and are willing to accept authority almost without question.... [Professional newspapers] want to hire student journalists who know what the First Amendment is about,” Rush said.

The third brief, filed by journalism educators, focused that argument.

“If university administrators can impose prior restraint on campus newspapers, college journalists will fail to learn the importance of autonomy and professional responsibility because they will be neither autonomous nor responsible,” the brief said.

Journalism educators said there is no substitute for experience.

“We want students who can go out into the field and have the same experience as what they’ll see as professional journalists,” said Jennifer McGill, executive director of the Association of Schools of Journalism and Mass Communication, another group



on the journalism educators’ brief.

Despite the different focuses of the briefs, all three had some overlapping arguments. Each brief mentioned that college student journalists should not be treated the same as high school student journalists.

“We believe it’s wrong to extend what’s going on in the high school level to the collegiate level... college journalists deserve the same First Amendment rights that professional journalists deserve,” said Scott Bosley, executive director of the American Society of Newspaper Editors, which joined the SPLC brief.

Two successes in an ongoing campaign

When the 7th U.S. Circuit Court of Appeals made its decision that college newspapers could be subject to the same First Amendment restrictions as high school journalists, the court left the door open for student journalists to protect themselves. If the student newspaper is a designated public forum at the university level, then it cannot be subject to high school standards of control.

On Sept. 15, Illinois State University became the first school in the 7th Circuit to explicitly designate its student newspaper a public forum in response to the *Hosty* decision. By doing so, the *Daily Vidette* cannot be subject to prior review by administrators that is now permissible in Illinois, Wisconsin and Indiana under the *Hosty* decision.

“It was a pretty simple process for us... [President Bowman] signed it no problem,” said *Vidette* Editor in Chief Suzanne Bell.

She said that since the signing of the statement, she has gotten calls from other newspapers asking about the statement, and some calls come from newspapers in other states, even outside of the 7th Circuit.

Less than a month later, University of Southern Indiana Presi-

What’s next?

The Supreme Court has asked Carter to respond to the students’ petition by Dec. 28. After the response is received, four of the nine Supreme Court justices must vote to grant a writ of *certiorari*. A decision about whether or not the Court will hear the case is expected in early 2006.

dent Ray Hoops signed a statement designating the student media and a student-run television show on his campus as public forums.

"The university administration have always been very supportive and hands off, but it just shows great support that they put it in writing," said Shyloh Karshner, editor of *The Shield*, the university's student newspaper.

The designation of these two schools is part of an effort by the SPLC to declare the student media at all universities and colleges in the 7th Circuit public forums, but there are still many to go. More than 80 universities and colleges in the 7th Circuit have not taken a stand either way.

Officials from the journalism department of Vincennes University in Indiana are working to have *The Trailblazer*, the student newspaper, declared a public forum.

"We're very nervous," said Mark Stalcup, the journalism department chair at Vincennes University. On Nov. 29 he met with the president of the university and hoped to have a statement signed soon after that meeting.

The Trailblazer has had a history of problems with administrative intervention with the newspaper. A former adviser is currently suing the school because he claims he was dismissed after the paper ran articles criticizing the administration. Campus Editor Lindsey Owens is skeptical that a court case or policy change would help the paper because she said if the administration wants to censor the paper, they will just do it.

"I don't really think on our campus it'll have much effect," Owens said.

Some student newspaper editors in the *Hosty* states said they aren't worried about the decision because it doesn't apply to them.

James Monteleone, editor in chief of the *Chicago Flame*, said he has never heard of the *Hosty* decision. But he said since the newspaper is entirely independent from the University of Illinois in Chicago, he did not think it affected him.

Pressure felt outside the 7th Circuit:

While the *Hosty* decision only applies in three Midwest states, student editors have felt the effects of it from coast to coast in the six months since the decision was handed down.

The University of North Carolina at Chapel Hill's Chancellor signed a statement affirming the editorial independence of its student media Sept. 27.

Ryan Tuck, editor of *The Daily Tar Heel*, UNC's student newspaper, said staff members drafted the statement after they heard the student plaintiffs in *Hosty* had petitioned for the case to be heard by the Supreme Court.

"As student journalists and First Amendment advocates, we were outraged," Tuck said of the *Hosty* decision.

The 7th Circuit decision has also been felt on the other side of the country in California.

Ten days after the ruling, a memo was sent to presidents of the California State University system that included a discussion of the case's possible impact on the Golden State.

"[T]he case appears to signal that CSU campuses may have more latitude than previously believed to censor the content of subsidized student newspapers, provided that there is an established practice of regularized content review and approval for pedagogical purposes," wrote CSU general counsel Christine Helwick.

Helwick's memo has prompted an effort to declare student publications in California public forums.

See **Hosty**, PAGE 32

Hosty Talk

MUSTANG DAILY

"Universities are using the *Hosty* case as an excuse to censor,"

said Dan Watson, editor in chief of the *Mustang Daily*, California Polytechnic State University's student newspaper, in an editor's column on Nov. 8.

The Cornell Daily Sun

"*Hosty v. Carter*. Add those to the growing list of names you need to remember to track the government's restrictions of the First Amendment,"

said Andy Guess in an opinion piece in *The Cornell Daily Sun*, Cornell University's student newspaper, on Oct. 24.

THE INDIANAPOLIS STAR

"Students who want more free press protection than they get inside the school should strike out on their own. Set up a Web site or blog about school issues from home,"

said Jeffrey McCall in a column in *The Indianapolis Star*, a community newspaper, on Sept. 24.

THE DAILY TEXAN

"A college population is one of legal adults without need of censoring parents or administrators...Prior review would allow university administrators around the country to check over news content, thereby castrating the media and its role as a watchdog,"

said an unsigned editorial in *The Daily Texan*, the University of Texas at Austin's student newspaper, on June 22.

The Daily Tar Heel

"Even if we had an editorial group that I didn't trust, that I thought were actually poor journalists and making bad judgments, and (in) the most extreme case, abusing their privilege of putting ink on paper, I still think that's not grounds for our stepping in to censor a newspaper,"

said the University of North Carolina at Chapel Hill's Chancellor James Moeser as quoted in an unsigned editorial in *The Daily Tar Heel* on Sept. 29. In light of the *Hosty* decision and at the request of student journalists, Moeser signed a statement Sept. 27 affirming the independence of all student media on campus.

COLLEGE CENSORSHIP IN BRIEF

Student files suit after Troy university censors nude photographs

ALABAMA — The Foundation for Individual Rights in Education, a group that advocates students' free expression rights, filed a federal lawsuit Oct. 31 against Troy University for a speech code FIRE's President David French called "incompatible with a free society."

The lawsuit was filed on behalf of Blake Dews, a senior art major at Troy's main campus. In the fall of 2003, he designed a photographic display for an assignment about birth, photographing nude models. The artwork did not meet the definition of obscenity under federal or state law, but several photos were taken off display anyway, FIRE's press release said.

"The photographs in question displayed male full frontal nudity and the university did not consider the photographs to be consistent with our community's standards," wrote Clif Lusk, coordinator of Troy University media relations, in a statement.

Lusk said in the statement that the university's attorneys are looking into the matter and beyond that he had no further comment. ■

Faculty panel overturns chancellor's move to shut down TV station

NEW YORK — A faculty panel at Syracuse University in November partially overturned Chancellor Nancy Cantor's decision to disband the school's student-run television station.

But Cantor's move has created a "bitter, emotional, very divided" debate on campus pitting free speech advocates against those who supported Cantor's decision, said journalism professor Charlotte Grimes.

Instead of disbanding the station, the panel said it could begin airing shows in February provided station managers fulfill a number of restructuring requirements.

Cantor disbanded the station in October after some students expressed outrage over an entertainment show modeled after "The Daily Show with Jon Stewart." The show made light of eating disorders, date rape and lynching, among other issues.

Some students say the chancellor's actions as well as the faculty panel's decision may chill unpopular viewpoints on campus.

Syracuse feels "much more like a junior high school than a top tier university," said Jared Novack, editor in chief of *The Daily Orange*, the university's student newspaper.

Because Syracuse is a private university, administrators there do not have the same constitutional limitations in censoring student media found at public institutions.

Ironically, the journalism school at Syracuse joined a brief supporting student press freedom before the U.S. Supreme Court in October (See *Hosty* coverage, Page 24). ■

Speech zone policy OK, appeals court rules

MARYLAND — A three-judge panel of the 4th U.S. Circuit Court of Appeals decided Sept. 12 that the University of Maryland at College Park could keep its policy confining speakers who are not students or faculty to specified "free-speech zones."

The appeal dealt only with the rights of non-student speakers. Two years ago the university settled an initial lawsuit by rewriting its Event Management Handbook to allow students and faculty to speak and distribute literature in any outdoor area of the campus.

A lawyer representing the two students who originally filed the lawsuit against the University of Maryland said that his clients will not appeal the decision regarding non-student speakers. ■

Case: *ACLU v. Mote*, 423 F.3d 438 (4th Cir. 2005)

Student leaders try to require student paper to run column by president

TENNESSEE — Student government leaders revised a resolution at the end of September that would have forced a student newspaper to run a weekly column by the student body president after a lawyer advised them that the resolution was not legal.

The original senate resolution, passed by the student government at the University of Tennessee at Martin, required that *The Pacer* "publish a weekly editorial, which is to be entitled Student Government Association's Corner, which is to be published without any changes or alterations by *Pacer* staff."

On Sept. 22, the student government president proposed an amendment to resolve the legal problems with the resolution, which passed without dissent, said Tomi Parrish, *The Pacer's* adviser. The new version encourages the student newspaper to publish a student government column, but does not require it to do so. ■

Officials say they will not appeal 5th Circuit pamphlet decision

TEXAS — University of Texas at Austin officials said they have decided not to appeal a court decision that found a policy banning the distribution by students of anonymous pamphlets on campus is unconstitutional.

The 5th U.S. Circuit Court of

Appeals upheld on May 27 a district court ruling that the anti-abortion student group Justice for All should have been allowed to hand out pamphlets on campus, even though they did not list a campus group responsible for them. A U.S. District Court ruled in Justice for All's favor in February 2004.

The school's policy required all handouts to have a school-affiliated person or group responsible for distributing the handouts listed on the materials. ■

Case: *Justice For All v. Faulkner*, 410 F.3d 760 (5th Cir. 2005)

Both charges dropped against student protestor

VIRGINIA — Prosecutors dropped charges Nov. 16 against a George Mason University student who was arrested by campus police for protesting military recruiters.

Tariq Khan said he was protesting Marine recruiters at a student center on campus at lunch in September when campus police told him he had to leave the area because he did not have a permit.

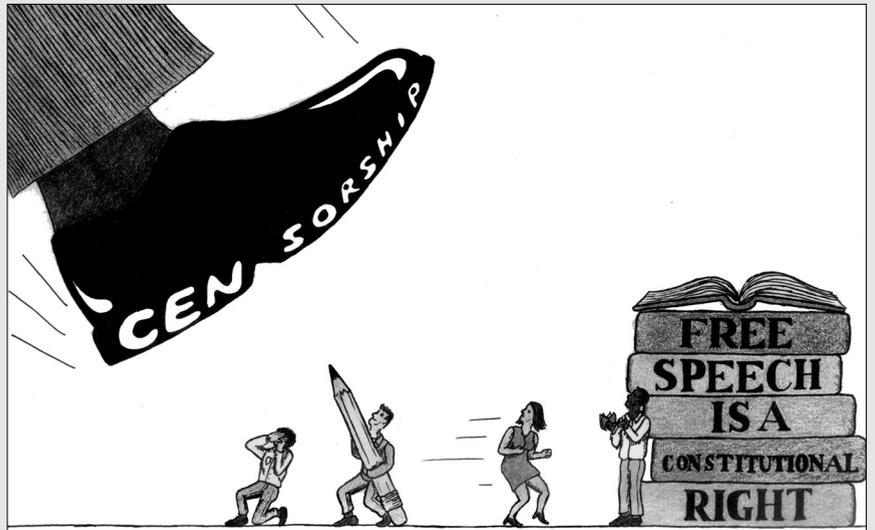
Khan said that although he was glad the trespassing and disorderly conduct charges were dropped, he still has a "big problem" with the university.

"They still have a long way to go because the university administration and the police still won't admit any wrongdoing," said Khan, a junior sociology major.

University officials have concluded that the police did not do anything wrong after conducting two internal investigations of the incident, said university spokesman Daniel Walsch.

Khan, who was represented by the American Civil Liberties Union of Virginia in court Nov. 14, said he is considering legal action against the university.

"He never should have been charged in the first place," said Rebecca Glenberg, legal director of the Virginia ACLU. "We are looking forward to see what GMU does to revise its policies to



ensure students' free speech rights are protected." ■

Official says Ball State violated open records act in refusing document

INDIANA — Ball State University administrators violated the state's Access to Public Records Act when they refused to give the student newspaper documents they made available to the rest of the campus community, according to a Nov. 10 decision by the state's public access counselor.

Faculty, staff and students were allowed to see the provost candidate evaluation forms, but they first had to sign a document saying they would not distribute the information publicly.

The forms were evaluations of the provost candidates filled out by administrators, faculty, staff and students who interviewed the candidates.

Administrators denied editors at *The Ball State Daily News* their original requests for the evaluation forms. But in light of the public access counselor's decision, university officials have since turned over the forms.

A provost was not selected from the search in question. Administrators have started a new provost search and have said they will not make the evaluation

forms public to anyone this time around. ■

Former college radio host to appeal decision

CALIFORNIA — A former student radio host who sued Occidental College for \$10 million has decided to appeal a Los Angeles superior court's decision that dismissed his lawsuit. In the lawsuit, Jason Antebi claimed that his rights were violated when school officials fired him for content he aired.

"The primary reason [for the appeal] is that we think the court got it wrong," said Christopher Arledge, Antebi's attorney.

The court ruled Aug. 1 that California's Leonard Law, which gives students at private colleges some of the same First Amendment protections enjoyed by students at public schools, can only be used by students who are enrolled in school at the time they file a lawsuit.

The court dismissed Antebi's lawsuit against Occidental College because he filed the suit eight months after he graduated from the institution.

Arledge said the ruling made the Leonard Law ineffective because administrators can avoid the law by expelling students.

See **Briefs**, PAGE 32

‘Covert’ Censorship

In cases where censorship is not clear, the question becomes, ‘Was content a motivating factor?’

BY KIM PETERSON

Confiscating newspapers. Requiring prior review. Removing objectionable material. These are all actions courts have prohibited public college administrators from taking against student newspapers.

But when school officials attempt to censor by cutting funds, firing editors or some other indirect means, student journalists can have a more difficult time demonstrating they have a First Amendment case.

“If you’re dealing with overt censorship you know what the rules are and what you’re dealing with. When it’s covert censorship it’s harder,” said Kathy Lawrence, president of College Media Advisers, an organization of advisers designed to help student media leaders improve their media operations. “At least with overt censorship you know what’s going on.”

And in these “covert” censorship cases, it all comes down to the motivation behind administrators’ actions — which is very difficult to prove in some cases, student press law experts say. In many cases, content motivation is easily identified. There are a number of cases, however, where administrators or student government leaders insist that their decisions regarding student newspapers were not based on content, while the student editors involved suspect that content was a factor.

“It’s a tough call to make. You see those kind of subtle attempts to curb student opinion. And we get a little suspicious about what’s behind it,” said Tom Rolnicki, executive director of the Associated Collegiate Press, a nonprofit educational membership association that provides professional services to student members.

A court ruled in a recent case out of the State University of New York at Albany that a student government’s attempt to cut funding for a conservative student newspaper was content motivated and therefore violated the student editor’s First Amendment rights.

In a recent incident at Catholic University of America in Washington, D.C., student editors and administrators disagreed on the reasoning behind a decision to cut scholarship money for the newspaper’s editors.

Mark Goodman, executive director of the Student Press Law Center, said the two most important elements of making a successful First Amendment claim are that the action taken is detrimental to the student publication and is a result of the publication’s content.

“Sometimes courts describe it as: was the content a motivating

factor?” Goodman said.

But even when content cannot be proven as a motivating factor for administrators’ decisions regarding a student newspaper, those decisions can still adversely affect the student publication.

The case at Catholic

Starting in fall 2004, Catholic University of America’s President David O’Connell and the university spokesman refused to speak to or meet with *The Tower*, the university’s student paper.

On Feb. 4, *The Tower* ran a story about O’Connell and spokesman Victor Nakas’ refusal to comment.

Editors said shortly after the article ran, Vice President of Enrollment W. Michael Hendricks announced that \$80,000 in scholarships given to the student newspaper, yearbook and student government would be reallocated as merit and need-based scholarships, ending a 40-year tradition at Catholic.

Nakas said that the change was a “business decision” to increase merit and need-based scholarships.

While Nakas said that the tensions between the administrators and the change in scholarship funding were completely separate incidents, the students involved viewed the situation differently.

“For me, it seems very coincidental that the administration takes an action...after a contentious year between the two of us.... This is very much a free speech issue,” said Phil Essington, former editor in chief of *The Tower* in an interview with the SPLC last year.

Because Catholic University is private, it does not have the same constitutional limitations in censoring students that apply to public institutions. But even if Catholic University was public, students would have had to have proven that content was a motivating factor in Hendricks’ decision to cut scholarship money to have a First Amendment claim against the school.

The case at SUNY Albany

When funding cuts are based on content, the law is on the side of the student publications. A student’s lawsuit against the State University of New York at Albany illustrates this point.

A New York District judge ruled in August that the student government had wrongly denied Jeff Barea’s conservative newspaper funding in what Barea considers a victory for student funded press.

Barea said he believes the council refused to fund the paper because of its conservative content, a contention the court agreed with.

"This sets the standard for New York State that freedom of the press exists," Barea said.

Nicholas Chiuchiolo, chairman of the senate, said in response to the lawsuit the school has been working to fund school groups without bias. He said the senate has done so by requiring student government members to attend workshops about how to make funding decisions that are viewpoint neutral. But Chiuchiolo said the student government plans to appeal the decision.

The case at Essex County College

At Essex County College in Newark, N.J., student editors have said administrators have made it very difficult for the student newspaper to publish.

After their adviser quit last spring, *Observer* staff published its May issue without one. Shortly after, Dean of Students Susan Mulligan informed the staff that they could not publish their paper without an adviser.

Student editors Joel Shofar and Melinda Hernandez found an adviser, but Mulligan rejected him as unfit for the job.

Despite Mulligan's rejection, *Observer* staff moved forward with their graduation issue anyway. When Mulligan found out the students still planned to publish the issue, she told the newspaper's printer that the school would not authorize payment.

The students published the issue without school authorization or funds.

Hernandez said student editors and administrators agreed on a new adviser in late October, but the paper would not put out its first issue until January.

"They have made things very difficult in working with us," Hernandez said.

Mulligan admits that the paper has had a problem publishing, but insists that the problem has nothing to do with censorship.

"I have no content-related issues," Mulligan said.

Preventing covert censorship

It is easy to prove the negative affects an administrator's or a student government leader's actions can have on a student publication, but proving motivation can be much more difficult.

The clearer the First Amendment protections for the college media have become, the more clever school officials have been in their effort to censor, Goodman said. In these covert censorship cases, student editors are often at odds with administrators on why a decision was made. This conflict can result from a misunderstanding or bad communication between students and administrators.

"When there is a misunderstanding, that in itself is a sign of a problem,

that the administration is not being clear with the students," Goodman said.

And mending lines of communication could be a first step in preventing covert censorship.

Hernandez said she's noticed that Essex's problems with the student newspaper come and go.

"We had a similar issue in the late 90s. It isn't new that the college has a problem with the paper... but as of right now they [the administrators] seem to be getting better," she said.

Kate McGovern, current editor of *The Tower* at Catholic University, is working to improve relations between the student newspaper and administrators, and she said it seems to be working because the president gave his first statement to the newspaper in nearly a year for an October issue.

"I tried to rebuild some bridges this year and I think things are definitely getting better," she said.

Lawrence pointed out, however, that there should be some tension between administrators and the student editors.

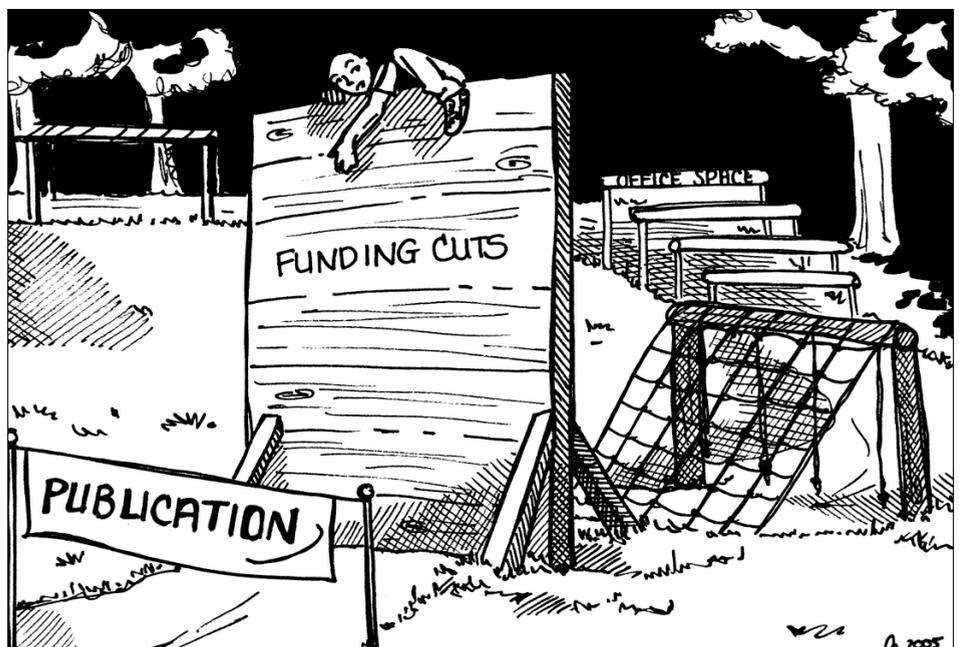
"If they [the student media] do have a very harmonious relationship, they may not be doing their jobs," Lawrence said. "But there does need to be mutual respect on both sides."

Gregory Roberts, executive director of College Student Educators International, said student media leaders and administrators need to build a relationship to communicate effectively and minimize misunderstandings. Roberts' organization works with college administrators to foster student learning.

"I think it should be a very open one," Roberts said of an ideal relationship. "You have an opportunity to build a relationship. Just communicate what is the expectation."

Goodman said clear expectations are the best way for student media to avoid covert forms of censorship.

"The key in most cases is to create an attitude among officials on campus that a free press is important," he said. ■



From **Briefs**, PAGE 29

Arledge said Antebi is in the process of appealing. ■

Station suspended indefinitely

CALIFORNIA — A one-night hiatus for the student-run television station at the University of California at San Diego has turned into an indefinite suspension.

Student government officials, worried the station was planning to air unscreened material on Nov. 3 in violation of a recent amendment to the station's charter, asked the university to pull the station off the air for the night, according to *The San Diego Union-Tribune*.

School administrators would not turn the station back on when student government officials asked them to a day later, said student government president Christopher Sweeten.

"It's completely censorship," said station manager Tiffany Rapp, who said students now see this as a free speech issue.

"This is not about censorship," school spokeswoman Stacie Spector told *The Union-Tribune*. "This is about ensuring student safety, security and the effective enforcement of rules and regulations."

The television station should not face censorship from the student government or the school, Rapp said.

University officials have said the station will not be put back on the air until a programming board is established, among other prerequisites. Sweeten said rewriting the station's charter to meet administrators' could take months. ■

From **Hosty**, PAGE 27

On the statewide level, the California Newspaper Publishers Association is currently drafting a bill that would designate all student media at public schools in California as public forums.

Jim Ewert, a lawyer with the organization, said that the CNPA originally was not too concerned about the *Hosty* decision because it did not apply in California. However, when Helwick's memo became public, "That kind of sent up a red flag, maybe they'll use *Hosty* as an argument [in California]."

Ewert said that the bill is still in the drafting stage, and a final proposal of the bill will not come out before the California legislature reconvenes in January.

This fall, administrators delayed a plan to revise Riverside Community College District's campus speech policy and eventually adopted an amended revision to address concerns that the new policy could lead to censorship of the district's student newspapers.

The speech policy revision provoked concern because it declared that Riverside Community College was not a public forum.

The revision to the speech code was a move to comply with recent court rulings in California, said Linda Lacy, vice chancellor of student services. Lacy also said that the policy only applied to protesting and distributing flyers on campus and that the newspaper has a different policy.

Still, student editors and advisers in the district said they were already worried about the possible effects of *Hosty*.

"Right after we heard about [*Hosty*] and were nervous about it, then we find out that

they want to designate Riverside a non-public forum," said Matt Hendrickson, editor in chief of the *Norco Voice*, one of the three student-run newspapers in the Riverside Community College District.

What you can do to respond to *Hosty*

Free press advocates say the best way for student newspapers to protect themselves from censorship is to be proactive.

Rather than waiting for the Supreme Court to hear the case or for the effect of the 7th Circuit's decision to be felt on other campuses, the Student Press Law Center is calling for college and university presidents and chancellors to declare their student media as public forums with complete editorial independence.

"We are urging student journalists to ask their school administrator to immediately adopt a statement that recognizes campus student news organizations are designated public forums," said SPLC Executive Director Mark Goodman. The SPLC suggests language similar to one of the following:

[Name of student news media organization] is a designated public forum. Student editors have the authority to make all content decisions without censorship or advance approval.

If using this version, a separate statement will be needed to protect each student news organizations on campus.

Or protect all media with a single statement:

All student-edited campus media are recognized as designated public forums. Student editors have the authority to make all content decisions without censorship or advance approval.

The SPLC recommends that a school administrator signs such a policy statement. Verbal statements will not necessarily indicate a clear intent, nor will existing policies whose language significantly differs from what is suggested above.

For more information, visit www.splc.org/publicforumcolleges

So far, administrators have put a footnote in the speech policy specifying that it does not apply to the student media. In addition, administrators have agreed to review the school's student publication policy, said Sharyn Obsatz, adviser to the *Norco Voice*. ■

Crime under wraps

A look at why administrators at some prestigious schools are reluctant to give out incident reports.

BY KYLE MCCARTHY

For student journalists at *The Harvard Crimson*, Harvard University's student newspaper, struggling with the campus police department to obtain records is commonplace.

Crimson editors have appealed all the way to the Massachusetts Supreme Judicial Court in a fight to gain access to incident reports they say campus police have routinely denied the paper.

"If that uniformed, badge-wearing gentleman on the corner looks like a policeman, carries a gun like a policeman, stops, searches, questions, and arrests students and non-students alike like a policeman, and executes warrants like a policeman, then he's probably a policeman," said an unsigned editorial summing up the logic of *The Crimson's* lawsuit. The editorial ran Nov. 14, four days after justices for the Massachusetts Supreme Judicial Court heard oral arguments in the case.

The student journalists' plight at Harvard parallels the problems student editors have at other private universities that are attempting to balance the public's right to know about campus crime with institutional pressure to maintain student privacy.

And some open records advocates said concern about maintaining the school's prestigious reputation further complicates efforts to obtain police records.

Factoring in reputation

James Herms, a partner at the Student-Alumni Committee on Institutional Policy, a Cambridge, Mass.-based non-profit firm that consults with schools on security policy, said he believes reputation is a significant factor in obtaining records at prominent private schools.

"Harvard will get international publicity" if a significant incident hits the press, he said, noting that the school draws significant coverage globally.

"Parents of students can say 'Gee, there haven't been any of these issues at Stanford or MIT'," Herms said. "If there was publicity, would people want to send their kids to the school?"

Harvard University spokesman Joe Wrinn said concerns about

the school's reputation do not play a role in determining which records the campus police department releases to the *Crimson* or to the public.

But former *Crimson* President Amit Paley said concern for reputation could factor in the decision to release information.

"I think that Harvard is very cautious about releasing information that might make it look bad," said Paley, who now works for *The Washington Post*. "Some speculated that was why the university did not want to release certain types of crime information. But I don't know for sure why administrators decided not to release records to us."

Institutional pressures

The role of campus administrators in maintaining the school's public image can lead to institutional pressure for the police department to restrict access to certain crime records.

"Although we had good relationships with individual officers and received information from them, there was an institutional decision not to release certain information that was crucial to public safety and keeping the campus informed about crime," Paley said.

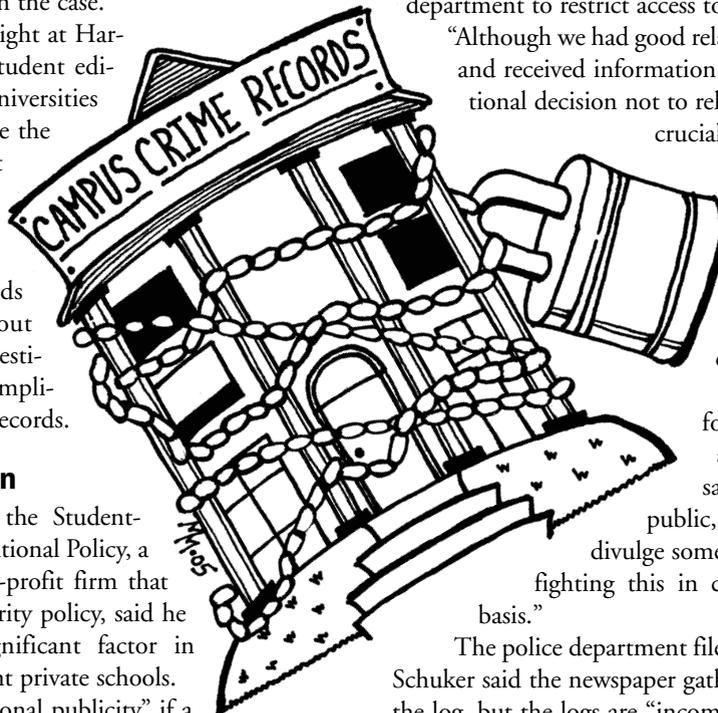
Concern about student privacy is the basis for the lack of cooperation in some circumstances, said Lauren Schuker, current *Crimson* president.

"The department has been forthcoming in some situations and less so in others," Schuker said. "Since their records are not public, they are simply not allowed to divulge some information. This is why we are fighting this in court rather than on a personal basis."

The police department files daily crime logs on its Web site. Schuker said the newspaper gathers most of its information from the log, but the logs are "incomplete" and lack detailed information.

When outside groups raise legal issues with campus police department policies, officials are more willing to listen, Herms said.

After Herms' group consulted with the Harvard University Police Department over compliance with the Clery Act, the



department enhanced its logs, offering a hard copy and an online version.

The Clery Act, which passed in 1990 and has been amended several times since then, requires all public and private colleges and universities that participate in federal financial aid programs to release information about campus crime and safety including annual campus crime statistics and a campus security department crime log.

Herms said his organization worked with Harvard to improve its public police logs to comply with federal law in 2004 and 2005 because the logs used to omit dates and report crime locations from where the student phoned in a crime rather than where the crime actually occurred.

“They now have the best online log” of universities with which he is familiar, Herms said.

While the police department now offers an updated log, it refuses to offer incident reports. The crime log offers minimal information, including date, time and place of an incident, but it does not include the officer’s detailed report.

Harvard spokesman Joe Wrinn said the school created an internal advisory group to review police department policies. According to the final report issued by the group in May 2004, the group did not favor the release of incident reports because of privacy and other concerns. A student-attached addendum written by Paley and two other student members of the committee dissented from the report issued.

Public schools a different ballgame

If Harvard journalists attended a public institution, access to records would fall under state open records laws, Herms said.

Herms cited the University of Massachusetts at Amherst as an example of how a public records system can work.

The school’s police chief has had “no problems” with the open records policy, he said.

Any member of the public can request files and expect a response in approximately ten days, Herms said. If the request is approved and a check for copying costs is sent to the department, the person requesting the files can expect the files in a reasonable time period.

If a police department denies the request, students can appeal to a supervisor of public records. The request will be heard within three to four weeks, he said.

The appeals process is particularly useful for schools in controversial situations, because campus police officials can deny the request to appease administrators, passing along the responsibility of granting access to the records to the state officials, Herms said.

The public’s right to know

Leading campus security experts argue the public’s right to know crime information outweighs any harm caused to the school’s reputation.

Releasing records at a private university “would not affect student privacy for 99.5% of students” because their private discipli-

Clery Act Q&A

What is the Clery Act?

Passed by Congress in 1990, the law forces all schools receiving federal funding to provide a daily campus crime log, an annual statistical report and “timely reports” regarding crimes presenting an ongoing threat to the campus community.

What information has to be included in the log?

The log must include the nature, date, time, general location and the disposition of the complaint. However, it does not have to include the names of the people involved.

Do officials have to provide a photocopy of the log?

No, although state laws usually require public schools to do so.

When must the log be made available?

The log must be available to the public during normal business hours Monday through Friday.

When must information be added to the log?

Within two business days of the initial report.

How long must campus officials keep old logs?

60 days.

What crimes must be included?

All crimes reported to a campus police or security department.

For more information: visit www.splc.org/cleryact to read the SPLC’s legal research page on the Clery Act.

nary records are not public, Herms said.

Police should make incident reports available in cases where the community would be better served if its members were aware of the information, he said.

In order for the records to be released to the public, Herms said, there must be overriding public interest.

Daniel Carter, senior vice president of Security on Campus, a non-profit organization created to increase transparency in campus crime records, said Harvard is in a unique position because its officers are considered deputy sheriffs for two Massachusetts counties. State law gives them the authority law enforcement officials, not just that of private security officers.

The designation allows officers to make arrests off school grounds, but those files may fall under Harvard privacy laws, he said.

“Viewing HUPD as a professional police force it is claimed to be, and not merely a private security detail, requires it to be treated as its ‘real world counterparts are,” the *Crimson* editorial said. “Among the benefits the Harvard community could hope to gain from greater University openness are a more complete knowledge of crime trends and information on why people are stopped, questioned and arrested.”

Harvard thinks the students who get in trouble deserve special

protection, Carter said, but other students end up with less protection because they have less information about potential crimes.

“To afford a select number of special protections, they are subjecting others” to a dearth of uncensored information, Carter said.

Paley said the community needs the records to hold Harvard police accountable.

“I think it is crucial that the campus and the surrounding community have access to the crime documents that Harvard is required to release under state law,” he said. “The documents give citizens important information that can help them stay safe.”

Similar institutions, similar problems

Student editors at other prestigious institutions have encountered similar problems.

At Cornell University in Ithaca, New York, *The Cornell Daily Sun* Editor In Chief Erica Temel said tension affects the relationship between her reporters and the university police department.

“Our relationship isn’t that great,” Temel said. “They are not that eager for us to get involved.”

The Sun interacts with the Cornell University Police Department frequently while compiling a weekly crime log and covering other Ithaca crime news.

Temel said she believes privacy is the foremost concern for the police department, which she said is not subject to open records laws despite state funding for the university’s agricultural school.

The university police department does not make incident reports available to the newspaper, said former *Sun* crime reporter and current news editor Michael Morisy.

The Daily Pennsylvanian Managing Editor Garrett Young said the relationship between the University of Pennsylvania Division of Public Safety and the student newspaper is tenuous.

“Sometimes, both sides get frustrated with each other trying to do their jobs,” Young said.

The newspaper runs a weekly crime log with the aid of an online database compiled by the police department. A sergeant helps student reporters file through a more extensive paper crime log if reporters need additional information, Young said.

The flow of information between the department and the newspaper “depends on the situation and depends on the officer,” he said.

When students fall under investigation, the flow of information slows.

“They aren’t keen to divulge details of an ongoing investigation,” Young said.

What about your police?

If your campus police are covered by a state open records law, they will often have to release some detailed crime records, including incident reports.

- ▶ If you are at a public college or university and the campus police are employees of the school, you should be covered.
- ▶ If you attend a public college or university where security services are contracted through a private company, it is likely records will fall under open records law.
- ▶ If you are at a private college or university where the campus police have “law enforcement authority,” such as the ability to make arrests, records could fall under the law.
- ▶ If you are at a private college or university that does not have “law enforcement authority,” you may get access to records required under federal law, but state statutes rarely require the release of information.

For more information: visit www.splc.org/cc to download the SPLC’s campus crime booklet (requires Adobe Acrobat).

Incident reports are not available to *Pennsylvanian* staffers, although police officials do read and give details from the report when speaking with reporters, he said.

The Crimson’s day in court

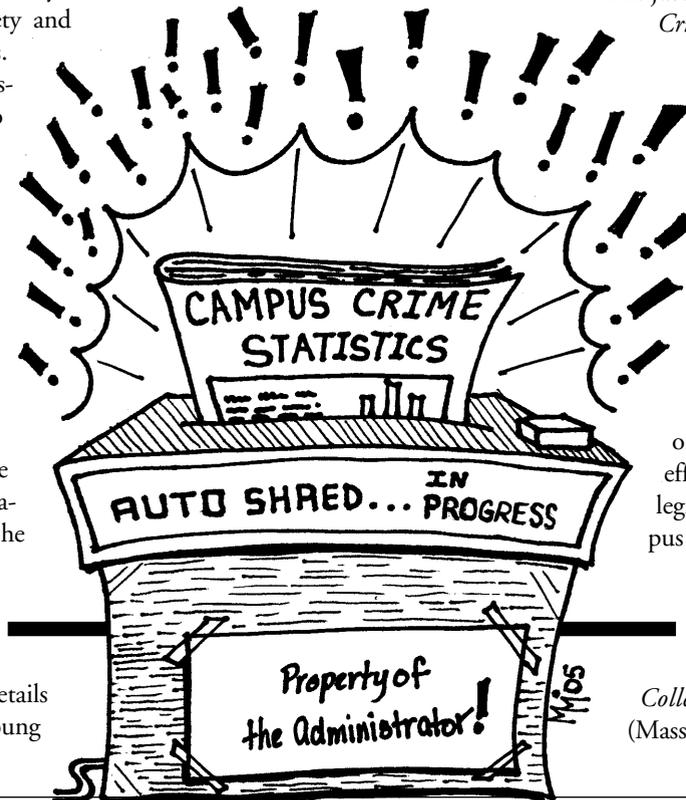
The justices “aggressively questioned” *The Crimson*’s case during oral arguments, said Herms, who was in the courtroom.

Justices were more receptive to Harvard’s case and sat back and let Harvard lawyers explain the school’s side, he said.

“My impression is that they are leaning towards a narrow application of the law,” Carter said.

Even if the court rules in favor of the university, Carter said, efforts are underway in the state legislature to pass a bill forcing campus police at private institutions to release all records under public records law. ■

Case: Harvard Crimson, Inc. v. President & Fellows of Harvard College, et al., No. 2004-4-0774 (Mass. Nov. 7, 2005)



Court rejects students' request for meeting access

Question of whether university boards are exempt from Open Meetings Act unanswered

MICHIGAN — A state court of appeals in August rejected an appeal from the *Oakland Post*, Oakland University's student paper, to force university officials to reveal details from a private meeting between members of the board of trustees and lobbyists.

But a prominent journalism academic said the court did not address the issue the student newspaper had wanted answered: whether Michigan public university governing boards are constitutionally exempt from the state's open meetings act.

"The appellate decision has extremely limited application," said Jane Briggs-Bunting, former *Post* adviser and current director of the journalism school at Michigan State University. "The appeals court said that under the particular facts of the case, the session with the lobbyist was not a meeting."

In an opinion issued Aug. 30, the appellate panel based its findings on a 1999 Michigan Supreme Court decision, *Federated Publications, Inc. v. Michigan State University Bd. of Trustees*.

That case, which stemmed from Michigan State University's refusal to furnish records from a presidential search, established state precedent allowing higher education governing bodies more latitude in making decisions without public access if such access would "unconstitutionally infringe the governing board's power to supervise the institution."

Because public universities have a special status under the state constitution, the court said they could not be subject to some provisions of the state freedom of information laws.

The appeals court found parallels

between the two cases in dismissing the appeal.

"In *Federated Publications*, the presidential selection committee meetings were not 'formal' board meetings," according to the decision. "Similarly, here, plaintiff does not argue that the defendant's meeting with its lobbyist firm was a 'formal' session. Instead, because the meeting was informal, the Legislature is constitutionally precluded from requiring compliance with [the Open Meetings Act]."

But Briggs-Bunting said the court ducked the issue of whether university governing boards are exempt from all provisions of the state's open meetings act.

"That's the question we had hoped to resolve," she said.

Post adviser Holly Gilbert said the decision baffled the newspaper's staff.

"It's frustrating," Gilbert said. "We're kind of scratching our heads, wondering what the courts are thinking."

Gilbert said that the university does not foster press freedoms on campus.

"The paper can't serve its function if it can't have access to meetings and financial information," she said. "Press freedom doesn't seem to be very high on this administration's agenda."

But director of media relations Ted Montgomery said the university is committed to open access.

"The only thing I would say is to reiterate that the Oakland University board of trustees has always and will continue to conduct the business of the university in open meetings," Montgomery said.

Roqaya Eshmaew, current editor in chief of the *Post*, said the newspaper has access to monthly board meetings and

covers these meetings on a regular basis.

Eshmaew said gaining access to certain closed meetings is important because reporters need to know the reasoning behind controversial budget decisions to better inform readers of the impact of those decisions.

Representatives from the *Post* filed suit in Oakland Circuit Court in November 2003 to protest a closed-door meeting held between members of the board of trustees and lobbyists to discuss potential fundraising options in the wake of government spending cuts.

Newspaper staff members said they believed access to the meeting was mandated under the Michigan Open Meetings Act.

After the court found in favor of the school on Oct. 30, 2003, the editors of the *Post* appealed.

Student newspaper staffers are not planning on appealing the decision, said *Post* lawyer Marshall Fink.

It may take another set of circumstances for the court to make a broader decision concerning university boards and the Open Meetings Act, Briggs-Bunting said.

"The college and commercial press need to be very conscious of covering governing boards and the closed pre-meetings that seem to be occurring with alarming regularity across the state," she said. "That's the issue that needs to be addressed. With a different set of facts, it likely will be." ■ KM

Case: *The Oakland Sail v. Oakland University Bd. of Trustees*, No.252391, 2005 WL 2086134 (Mich. App. Aug. 30, 2005) (unpublished)

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ACCESS IN BRIEF

Student newspaper wins fight for incident report

OKLAHOMA — After two years and a lengthy court battle, the *Daily O'Collegian*, the student newspaper at Oklahoma State University in Stillwater, obtained an incident report on a recent graduate who is now an NFL running back.

The school had refused to release records relating to a 2003 incident involving former college football star Vernand Morency. Morency, who now plays for the Houston Texans, was accused of rape, but school investigators could not substantiate the claim.

A court ordered the school to release the records in January. Morency appealed, but filed a motion to dismiss on Aug. 29, thereby releasing the documents to the newspaper. The paper ran a story on the records Aug. 31.

"It was a victory for collegiate journalism and something I'm proud of being a part of, if only on the fringes," said former *Daily O'Collegian* Editor in Chief Jared Janes. ■

Police confiscate two cameras at mall protest

MICHIGAN — Two photographers assigned to cover a protest Nov. 3 outside of a local Victoria's Secret in Meridian Township were given a choice by local police officers: delete the photos they had taken of the protest or follow police officers back to the police station.

Student photographers Jill Woodbeck and Merissa Ferguson chose the latter option, following the officers back to the station. After the officers consulted with superiors, the cameras were released with the pictures fully intact, according an Associated Press article.

The pictures were of three students protesting the use of non-recycled paper in Victoria's Secret's catalogs, said *Central Michigan Life* Editor in Chief

Chad Livengood. Woodbeck and Ferguson were covering the event for the Central Michigan University student newspaper.

"It was not our best police work," Meridian Township Police Chief David Hall told The Associated Press.

Livengood said he believes the incident infringed upon a journalist's right to report on the news.

"At the end of the day, government can't step on our toes and force us to self-censor ourselves because it thinks a corporation doesn't like what we're doing," he said. ■

Newspaper files lawsuit to gain access to murder records of two students

GEORGIA — A local newspaper filed a lawsuit against the local police on Sept. 9 in Clarke County Superior Court under the Georgia Open Records Act to gain access to information on the murders of two University of Georgia students.

Athens Banner-Herald reporters want to investigate the pair of unsolved murders using police files, but their efforts have encountered resistance from the Athens-Clarke County Police Department.



"We disagree with the police department on their definition of ongoing investigation," *Banner-Herald* executive editor Jason Winders told the *Red & Black*, the student newspaper at the University of Georgia.

Sandi Turner, a spokeswoman for the county speaking on behalf of the police department, said the department does not comment on pending litigation.

Campus police officer seizes student's film

ILLINOIS — Southern Illinois University at Carbondale officials denied a Freedom of Information Act request from a student whose film was seized after photographing an arrest in October.

Matthew Bowie, a junior photojournalism major, requested a copy of the incident report from campus police after an officer demanded that he turn over film from his camera on Sept. 14.

The request was denied because of an ongoing investigation, Bowie said.

Bowie said he was riding his bicycle on campus when he saw a campus police officer making an arrest. He stopped and took photographs of the incident. The police officer then demanded his film, threatening him with arrest and school suspension if he refused to comply.

The officer visited Bowie that night, telling him he was an undercover officer and did not want to see his face on the Internet. The officer also told Bowie he could pick up his film the next morning, Bowie said.

Bowie said he wrote a letter to school officials to ask for an official apology, but as of November he had not received one.

"The only thing I ever wanted from this investigation was an apology," Bowie said. "There was wrong done here and someone should take responsibility."

See **Access**, PAGE 43

Four face charges for stealing student papers

Prosecutors have been tough on student newspaper thieves this school year, pressing charges against four people accused of stealing newspapers in two unrelated cases — all in one month.

The charges are particularly noteworthy because out of 129 newspaper thefts reported to the SPLC over the past five years, there has only been one successful criminal prosecution of a newspaper theft during that time.

Strong evidence may be the principle reason these newspaper thefts led to criminal charges. However, in the case at University of Wisconsin in Milwaukee, a policy advocated by the Student Press Law Center in which the price for taking more than one newspaper is placed on copies of free distribution newspapers may have been a determining factor in the decision to press charges.

The case in Kentucky

Rowan County officials in Kentucky

showed they take newspaper theft seriously when three students were charged in October with criminal mischief for allegedly stealing 7,000 copies of *The Trailblazer*, Morehead State University's student newspaper.

Danielle Brown, 22, Andrea Sharp, 22, and Jennie Williams, 20, were charged with third degree criminal mischief for their alleged involvement in the newspaper theft, according to the criminal complaint.

The three women "voluntarily came in and signed a written statement, admitted to the offense," the complaint said.

However, at a hearing on Oct. 19, the three girls pled not guilty to the charges in a Rowan County district court.

"I'm just really confused," said Ashley Sorrell, editor in chief of *The Trailblazer*. Sorrell said she thought the girls had made a deal with the district attorney to plead guilty.

The district attorney said he could not comment about an ongoing case.

Successful prosecutions

- ▶ University of California at Berkeley, 2003
- ▶ University of Kentucky, 1997
- ▶ University of Texas at Austin, 1995
- ▶ Pennsylvania State University, 1994
- ▶ University of Florida, 1988

For more information: visit our Newspaper Theft Forum at www.splc.org/newspapertheft.asp.

An article in *The Trailblazer* reported that Keith McCormick, Sharp's lawyer, had requested a separate plea for her, because the facts in her case were different from the other two. The judge denied the request, and all three pled not guilty.

The theft that brought about the charges took place on Sept. 22. That evening 7,000 copies of the paper were stolen from 31 on-campus and 15 off-campus newspaper racks.

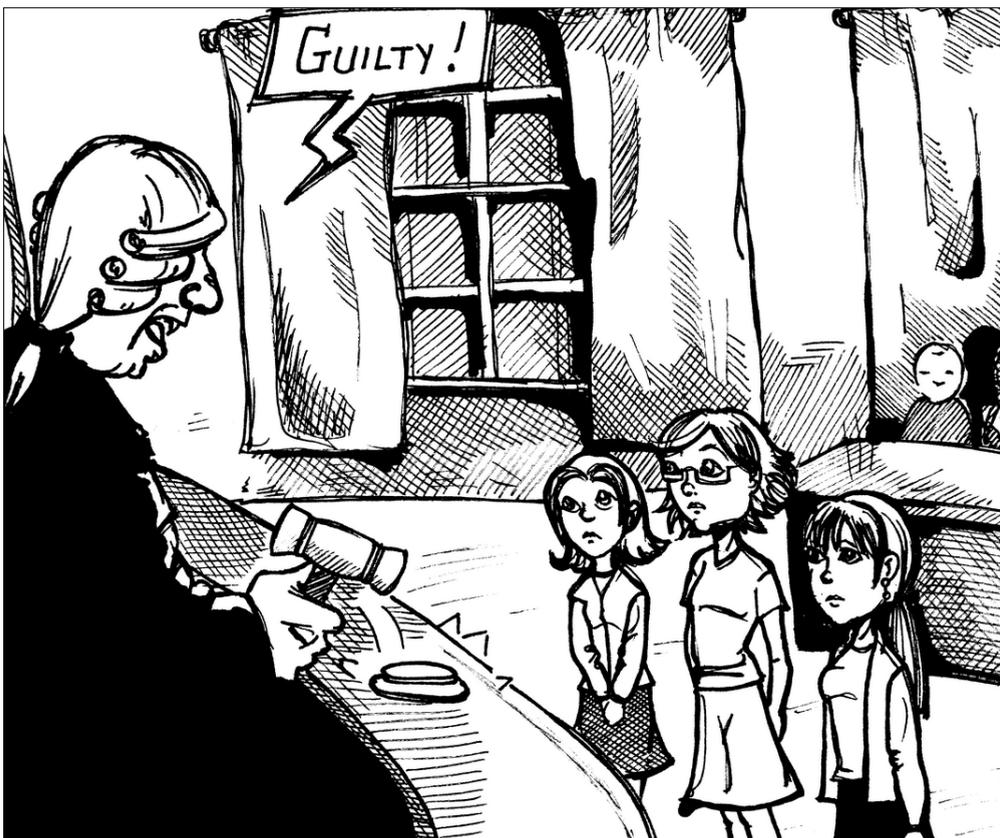
"Every single one put out for public consumption was taken," said Joan Atkins, *The Trailblazer's* adviser.

Editors of the paper said they believe the papers were stolen by members of fraternities and sororities in reaction to a story about a sexual assault in an off-campus house.

"There was a phone call to our editor's line [Sept. 21] by a student who told us we needed to retract the story or we'll destroy the papers, but we didn't think they'd really do it," Atkins said. The caller did not identify herself, and campus police said they have not yet identified the caller.

The maximum penalty for a third degree criminal mischief charge — a class B misdemeanor — is a \$250 fine and less than 90 days in jail, said Lt. James Frazier, a detective working the case for the campus police department.

The pre-trial hearing was scheduled for Dec. 14.



While criminal charges against student newspaper thieves are rare, this is not the first time that a prosecutor in Kentucky has filed charges against suspects of newspaper theft. In 1997, a Fayette County prosecutor filed criminal mischief charges against three University of Kentucky students for stealing approximately 11,000 copies of *The Kentucky Kernel*, the student newspaper there. The students received community service for the offense.

“There have been cases in other states where judges have struggled with the value of free newspapers. That’s not the case in Kentucky,” McCormick said.

The case in Wisconsin

After allegedly stealing 2,500 copies of *The Leader*, a student newspaper at the University of Wisconsin in Milwaukee, Christopher Brown faced class A misdemeanor charges.

Brown is accused of stealing copies of the Sept. 28 issue of *The Leader*, which contained a story about him being fired from his position on the student government and vandalizing a rented van, said

Leader News Editor Joe Ahlers, who wrote the story.

Ahlers said that Brown took about 500 copies of the paper when he was asked to stop by the campus police. Later in the day Ahlers said staff members saw Brown take an additional 2,000 copies of the paper from the newspaper office and douse the papers with water. Campus police arrested Brown after the dousing, but he was not charged at that time.

During that incident, Ahlers said Brown threatened him.

Leader staff filed a report with the police on Sept. 29.

“I took it seriously,” said Art Koch, detective sergeant of the UWM police. “The information out there is something everybody should have access to.”

The campus police, working with the Milwaukee County District Attorney’s Office, charged Brown with two class A misdemeanors, criminal damage to property and theft of movable property.

If found guilty, the penalty for a class A misdemeanor is a fine of up to \$10,000 or as much as nine months in jail or both.

By the numbers

- ▶ **25** thefts reported in 2004-05.
- ▶ **18** thefts reported in 2003-04.
- ▶ **28** thefts reported in 2002-03.
- ▶ **29** thefts reported in 2001-02.
- ▶ **29** thefts reported in 2000-01.

Source: Student Press Law Center — number of student newspaper thefts reported to the center in the last five years.

Brown is scheduled to appear in court Jan. 4, according to the Milwaukee County Circuit Court’s Web site.

Ahlers said that while he was researching how other states and schools deal with newspaper theft he came across the fact that two states, Colorado and Maryland, have passed legislation specifically identifying free distribution newspaper theft a crime.

Ahlers said that he plans to research the laws, and intends to lobby lawmakers in Wisconsin to pass a similar law.

A policy that works

The Leader is a free newspaper. However, on an inside page a policy indicates that while the first newspaper is free, additional copies cost 76 cents.

Ahlers said having the policy in place was an important factor in Brown being criminally charged.

“[Law enforcement officials] were telling us was that [policy] was one reason we could get away with charging him,” Ahlers said.

“I just looked at the circumstances and made my decision based on that,” said Assistant District Attorney Anthony White.

The criminal complaint recounting the events specifically mentions the editorial policy two different times.

In both of the cases where charges have been filed for newspaper theft, the three common denominators were obvious suspects, campus police willing to fully investigate and a prosecutor willing to press charges. ■ *KP*

Quick facts & advice

- ▶ Possible **criminal charges** for a student newspaper theft include: larceny, petty theft, criminal mischief or destruction of property.
- ▶ **Special laws** in Maryland and Colorado criminalize the taking of free newspapers.
- ▶ Depending on the amount of loss (frequently a maximum of \$2,500), student media may be able to pursue a **civil claim** in small claims court for minimum cost and without the expense of an attorney. You will need to have carefully documented evidence of your losses.
- ▶ Even if there is insufficient evidence or grounds for criminal prosecution, newspaper thieves can be **punished by campus officials** for their misbehavior.
- ▶ **Include a price tag** in your student newspaper. The Student Press Law Center recommends including a statement in the newspaper’s flag that reads: “Single copy free.” In your masthead and rate card include additional information indicating additional copies may be available for purchase by contacting the newspaper’s business office. For example: “Because of high production costs, members of the State University community are permitted one copy per issue. Where available, additional copies may be purchased with prior approval for 50 cents each by contacting the Student Times business office. Newspaper theft is a crime. Those who violate the single copy rule may be subject to civil and criminal prosecution and/or subject to university discipline.” Of course, determining the actual price is up to you. It is not necessary that you always collect the money. You remain free to give copies away when you feel it is appropriate.

For more information: visit our Newspaper Theft Forum at www.splc.org/newspapertheft.asp

NEWSPAPER THEFT IN BRIEF

Editor says fraternity attempted to censor letter on hazing

UTAH — More than 8,500 copies of *The Daily Utah Chronicle* were stolen from campus bins at the University of Utah in November in what newspaper staff said was an effort by the fraternity Pi Kappa Alpha to censor a letter to the editor about hazing.

A security camera recorded one student taking stacks of newspapers. Shortly after leaders of Pi Kappa Alpha were shown the tape, fraternity members came back to the office to apologize, said the paper's editor in chief, Steve Gehrke.

Gehrke said he thought the motive was a letter to the editor in which a student had recounted a hazing experience with the fraternity. He estimated that more than 8,500 copies of a total press run of 15,000 were stolen.

Campus police said they are investigating. The newspaper staff estimates the loss from the theft at \$900. ■

Suspects identified in *Maneater* theft

MISSOURI — Campus police have identified seven suspects in the early December theft of 1,650 copies of *The Maneater*, the student newspaper at the University of Missouri at Columbia.

The chapter president of the Phi Kappa Psi fraternity said the suspects were members of the fraternity, a story in *The Maneater* reported.

Editor in Chief Jenna Youngs said she believes the newspapers were stolen because the issue included an article about a former president of the fraternity who is being sued by a current Phi Kappa Psi member for allegedly sexually assaulting him in 2003.

She said that the cost of the theft was \$240 for printing the stolen papers,

not taking into account the lost advertising revenue. The total press run for the newspaper is 9,000.

Youngs said campus investigators told the newspaper staff that charges are likely. She went on to say that in addition to possible legal charges, the suspects will face punishment by the fraternity and by the university. ■

\$2,000 press run stolen, no motive, editor says

UTAH — The entire press run of *The Globe*, Salt Lake Community College's student newspaper, was stolen from the delivery dock on Oct. 19.

"It wasn't an easy or quick theft," said Quentin Wells, facility manager of the student media center. He said the theft cost the newspaper \$2,000 in advertising that had to be rerun or refunded.

Wells said the newspaper staff reported the theft and campus police were investigating, but that there had not been any leads or suspects so far.

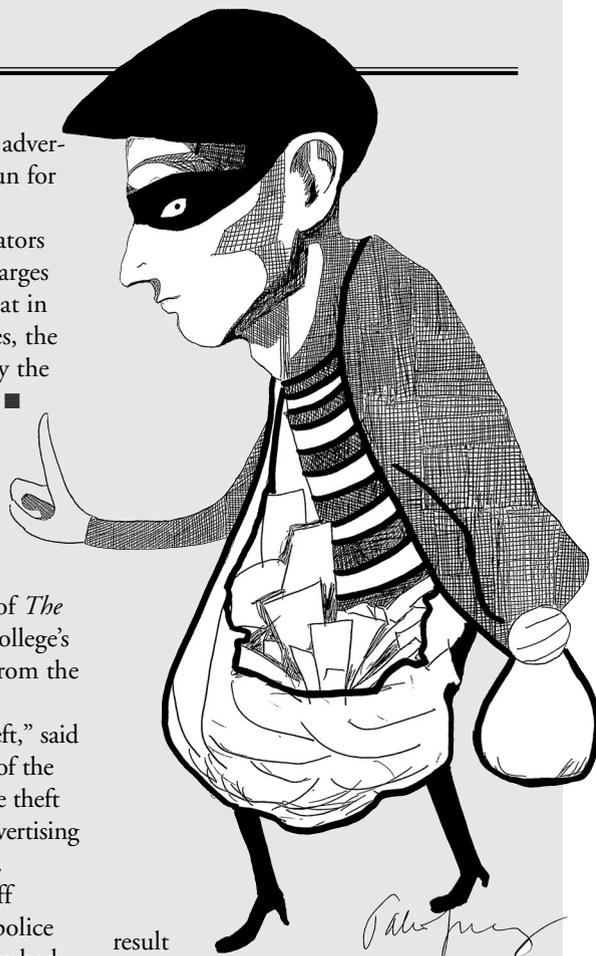
"We know of no controversial article in the paper that might have precipitated the theft, and no other motive is evident," he said. ■

Halloween issue stolen

ILLINOIS — A string of newspaper thefts at Illinois State University culminated at the end of October with a larger theft of 1,000 copies of *The Indy*, a progressive student newspaper.

On Nov. 1, editors of *The Indy* filed a complaint with campus police when approximately 1,000 copies of the paper's Halloween issue were stolen over the course of the week. *Indy* co-editor Anthony DiMaggio estimated the cost of the theft at around \$100.

DiMaggio said that he does not know of any specific suspects so far, but said he believes that the theft was a



result of the general ideology of the paper rather than a specific article since it has been a consistent problem. ■

Editor reports thieves take '50 here, 20 there'

OREGON — A newspaper distribution bin and 100 copies of *The Liberty*, a student newspaper at Oregon State University, were stolen from a rack outside the school's library the weekend of Oct. 17. By the end of the month 500 more newspapers had been stolen.

Editor in Chief Luke Sheahan of *The Liberty* said he noticed the bin and the newspapers were missing Oct. 17 and filed a report with the campus police Oct. 19. Sheahan said that every press run several hundred newspapers are stolen in small quantities, "50 here, 20 there," out of a total press run of 4,000. ■

“It’s unfortunate that there are members of our community that are so overcome with intolerance that they will sink to petty theft to suppress ideas that they disagree with,” Sheahan said in a press release.

He said that no suspects have been identified. He said he repeatedly asked the university’s president to publicly denounce the theft, but so far neither he nor any member of the administration has done so. ■

Theft article could have caused theft, says editor

ARKANSAS — An estimated 3,000 copies of the University of Central Arkansas’ student newspaper were stolen in mid-November, said *Echo* Associate Editor Traci Waller.

Staffers distributed 5,500 papers at locations around campus Nov. 15, but more than half of the papers were gone when Waller arrived on campus the next day, she said.

Editor in Chief Kim Vowell said the theft could have been in response to a focus piece in the issue on a former advertising director who faces felony theft charges for allegedly stealing thousands of dollars from the paper. *Echo* staff have received complaints about the crime log from parents and students, and she said she is not ruling it out as a motive for the theft either.

Staff members reported the theft to the University of Central Arkansas Police Department, but Vowell said previous thefts have not been taken seriously by the campus police.

Vowell estimated the cost of the issue – with three sections with full color on the front and back of each section – at around \$1,500.

“Whoever wants to use this form of censorship is not going to succeed,” she said. “The stories really didn’t get stopped. Yes, it was a financial loss, but the most important thing is that the UCA community still had access to these stories.” ■

Updates on past thefts

CALIFORNIA — Last spring three students who confessed to stealing student newspapers at Loyola Marymount University in Los Angeles were punished by an internal campus disciplinary process. Tom Nelson, the *Los Angeles Loyolan’s* adviser, said the paper’s policy that the first newspaper is free and every additional newspaper costs \$1 helped the campus police to take the theft more seriously. “If 3,000 papers are stolen [with the policy in place] you then have \$2,999 worth of stolen property,” Nelson said.



CALIFORNIA — In April, a student confessed to defacing 300 copies of an election issue of *The Daily Nexus*, the University of California at Santa Barbara’s student newspaper. The student paid the paper full restitution, valued by the newspaper staff at \$640.

GEORGIA — There has been no progress in finding who stole 1,100 copies of *The Sting*, the student newspaper at Southern Polytechnic State University in Marietta. According to Editor in Chief C.J. Shrader, the Dean of Students questioned one suspect but the student denied the charges and the newspaper did not have definitive evidence that the student was guilty. “I wish I could have proven who did it and punished them, but so far, it looks like they might just get away with it,” Shrader said.

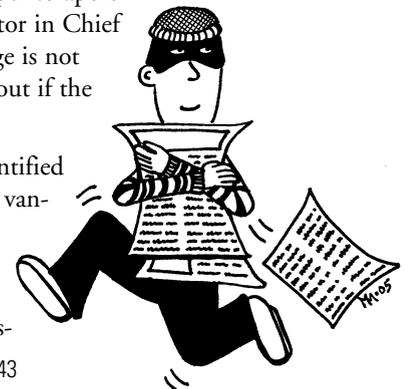
INDIANA — Last December an internal judiciary process at Vincennes University in Indianapolis punished fraternity members who officials say stole 1,600 copies of the student newspaper after it ran an article about the suspension of the fraternity for alcohol violations and alleged rape. The punishment included paying the cost of reprinting the paper and community service, according to Campus Police Chief James Jones.



INDIANA — Information about a staff member who threw away an issue detailing the salaries of staff members on campus in Purdue University’s student newspaper, *The Exponent*, was passed on to the county prosecutor last December. No charges were filed because the newspapers were free, said the county prosecutor’s office.

NEW YORK — One girl found responsible for stealing 1,000 copies of *The Ithacan* at Ithaca College called the newspaper to apologize for the theft. According to Ithacan Editor in Chief Beth Quill, the judicial process at the college is not public, so the newspaper staff never found out if the girl received further punishment.

NEW YORK — No suspects were ever identified in last spring’s student newspaper theft and vandalism case at the State University of New York at Binghamton. After a controversial April Fools’ Day issue, 5,000 copies of *Pipe Dream* were stolen and the lock to the news-



See **Thefts**, PAGE 43

Professor sues student newspaper for defamation

MINNESOTA — The adviser to a student newspaper being sued for defamation said reporters will continue their work, but he said he worries the threat of legal action could discourage other student newspapers around the country.

Michael Vadnie, adviser to the *University Chronicle*, the student newspaper at St. Cloud State University, said the newspaper would remain “aggressive” in its reporting under his watch.

Former dean Richard Lewis, who is currently a history professor at the university, filed suit in Stearns County District Court in September against the *Chronicle*.

The *Chronicle* published an article on Oct. 23, 2003, quoting a former student who accused Lewis of anti-Semitism, racial slurs and obstruction of free speech.

Editors retracted the article on Nov. 20, 2003. The correction apologized to Lewis and said the article “contained serious errors.”

Vadnie said he worries the lawsuit will

dampen reporting at other schools.

“I hope they don’t pause,” Vadnie said. “I hope they continue to report.”

Vadnie said the lawsuit did not have a “chilling effect” at the *Chronicle* because the editors at the time of the incident graduated.

Chronicle attorney Mark Anfinson said he does not know what Lewis has to gain from the suit. The newspaper holds no libel insurance and does not possess a large advertising budget, Anfinson said.

“[The damages] are very negligible in a case like this,” Anfinson said.

Lewis’ attorney, Marshall Tanick, said his client wants “vindication for his reputation.”

Tanick said the retraction was

“unsuccessful” in restoring Lewis’ reputation.

“We retracted the story on legal advice,” Vadnie said. “We were wrong and we printed a falsity. We’re not proud of it.”

Chronicle reporters had learned an important lesson not to rely on one-source stories because of the case, Vadnie said.

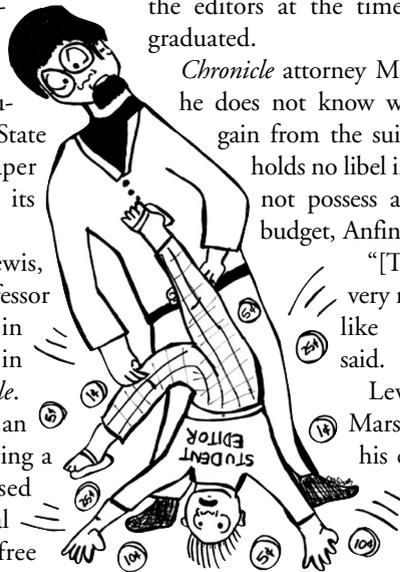
Lewis first filed suit in a district court in Ramsey County on March 11, 2004, against the university. The suit described the *Chronicle* as an agent of the school, making St. Cloud State liable for its actions.

A Ramsey County district court judge dismissed Lewis’ lawsuit, ruling the university cannot be held liable for the newspaper because it does not hold or exercise editorial control over it. An appeals court affirmed the lower court ruling and the state Supreme Court refused to hear the case.

The university has taken a “laissez-faire” approach to the newspaper and has shown a “time-honored” commitment to the *Chronicle*, Vadnie said.

Vadnie said the newspaper receives \$130,000 in student activity fees and generates further revenue from advertisements. Any profit is returned to the student activity fund at the end of the year.

Lewis is “entitled to exercise his rights to sue for defamation” but Vadnie said he had faith in the merits of the case if it goes to trial. ■ KM



LIBEL & PRIVACY IN BRIEF

Settlement ends 14-year dispute between man and local newspaper

ILLINOIS — A man wrongly identified in a suburban Chicago newspaper after editors used his high school yearbook photo to accompany a story on a drug bust settled his defamation lawsuit against the paper in September.

Christopher M. Edwards reached a settlement with Paddock Publications, publishers of the *Daily Herald* in Chicago, said Joseph M. O’Callaghan,

Edwards’ lawyer. The agreement ended a 14-year dispute between Edwards and the newspaper.

Because of the confidential terms of the settlement, O’Callaghan said he could not comment any further.

An e-mail sent to *Daily Herald* managing editor Eileen Brown was not returned.

The *Herald* used Edwards’ picture erroneously on March 28, 1991, after the Illinois State Police arrested another “Christopher Edwards” — Christopher A. Edwards — in conjunction with a drug sting the previous morning,

according to a January 2002 opinion.

The paper printed a front-page retraction the next day. ■

Adviser dismissed from invasion of privacy, defamation lawsuit

CALIFORNIA — A lawsuit filed against a high school newspaper adviser after the paper named a student as a victim of Internet bullying has been dismissed in Los Angeles County Superior Court.

Movie producer Lee Caplin and his

wife Gita filed a \$100 million lawsuit in April against a number of officials at the prestigious Harvard-Westlake School, including *Chronicle* adviser Kathleen Neumeyer, after derogatory and threatening comments about their son were posted by students at the school on a Web site devoted to his performing career.

The student newspaper at the private

North Hollywood school published a story about the incident, reporting that law enforcement agencies were investigating and that the targeted student, who was named, had transferred to a school in northern California.

According to the Caplins' complaint, the defendants' actions constituted civil rights violations, invasion of privacy, defamation and infliction of

emotional distress among other claims.

According to Neumeyer's attorney, E. Randol Schoenberg, the complaint against his client was dismissed on Aug. 31.

The lawsuit against other school officials and parents of the students accused of the Internet harassment is ongoing. ■

From **Access**, PAGE 37

Southern Illinois spokeswoman Susan Davis told *The Illinoian* she was not aware of a similar incident at the school.

"It's certainly not been a practice on this campus to interfere with the freedom of the press," Davis said. ■

Time and place of interviews should be public, attorney general says

NORTH CAROLINA — University officials are not required to hold open meetings to interview candidates for president under state open government laws, but they must notify the public of the place and time of those meetings, Attorney General Roy Miller told schools in an advisory legal opinion released in October, according to a local paper.

"You can have the whole thing in closed session, but the public is entitled to know when and where the meeting is," University of North Carolina at Chapel Hill government professor David Lawrence told *The News & Observer*.

Leslie Winner, general counsel for the university, told *The Associated Press* she followed old advice from the attorney general's office when allowing the committee to keep the time and place of meetings

private during the university system's recent search for a new president. ■

University retracts policy restricting student speech

INDIANA — Tri-State University officials revoked a school policy asking students to contact marketing officials before granting media interviews on Oct. 31 after criticism from students and free expression advocates.

School spokesman Patrick Johansen said the university, located in Angola, Ind., retracted the policy because officials are in the process of revising it and the revisions are "taking longer than expected."

School officials sent an e-mail to students and employees on Oct. 14 asking them not to answer reporters' questions without explicit permission from the school's Department of Brand & Integrated Marketing.

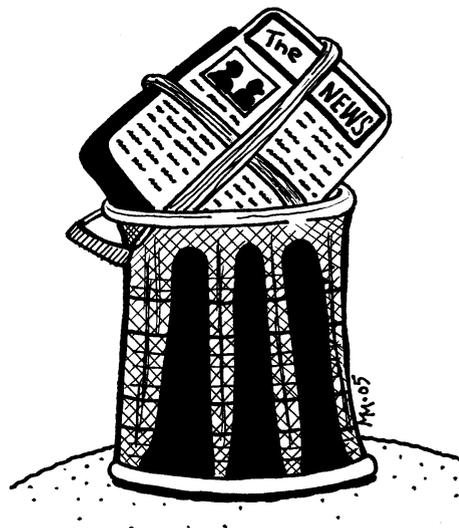
Because the school is a private university, it does not have the same constitutional limitations in censoring students that apply to public institutions.

But such policies could have "a chilling effect" on students wanting to discuss crime on campus, said Daniel Carter, senior vice president of Security on Campus, a non-profit organization dedicated to campus crime awareness. ■

From **Thefts**, PAGE 41

paper's office was glued shut. The theft inspired a new campus policy, making it an offense to take more than one newspaper with the intention of suppressing its content. However, according to Editor in Chief Matthew Chayes, "The new rule probably wouldn't have changed things since the responsible individuals were never identified."

NEW JERSEY — The staff of Rutgers University's student newspaper decided not to press charges against a law school secretary who trashed 300 copies of the March 21 edition of the *Observer* last spring. The secretary confessed and was reprimanded by school officials but retained her job, according to an article in *The Star Ledger*, a community newspaper. ■



For more recent stories on newspaper thefts, visit www.splc.org/newspapertheft.asp

ADVISERS IN BRIEF

Magazine adviser restored after being fired for sexual poem

WASHINGTON — Administrators at Shorewood High School reinstated Steve Kelly for the 2005-06 academic year as adviser of *Imprints*, the school's literary magazine, after he was asked to resign last year when the publication he oversaw printed a poem about a sexual experience.

Kelly was asked to resign in June after 17-year-old student Zoya Raskina published a poem titled "My first fuck" in the 2004-05 edition of the magazine in which the narrator describes being pressured into a first sexual experience.

After a grievance hearing on Aug. 8, district officials withdrew a proposed letter of reprimand and restored Kelly as adviser, according to Donna Lurie of the Washington Education Association, a local teachers union. ■

Newspaper adviser gets \$74,000 in settlement

INDIANA — Franklin Township Schools will pay former newspaper adviser Chad Tuley about \$74,000 and cover his attorney's fees per an out-of-court settlement reached in October.

Tuley, who is on sabbatical leave, will continue to be paid his regular salary through the end of the school year, when his resignation takes effect, and will receive an additional \$40,000 lump sum payment after that, according to the settlement. The settlement also stipulates the school district will pay Tuley's legal fees of \$23,125.

Tuley agreed never to work for the school district again.

Tuley was removed as adviser of *Pilot Flashes* and suspend-

ed for a week with pay in November 2004 after the student newspaper printed an article about a student arrested on murder charges.

He was eventually reassigned to a middle school, which he said he saw as punishment for allowing publication of the article in question.

After asking to be reinstated as adviser and being denied, he filed suit against the school district claiming his and his students' First Amendment rights had been violated. ■

Two students win award for pursuing lawsuit

KANSAS — Two former students were presented with the 2005 College Press Freedom Award at the Associated Collegiate Press convention in October for pursuing a lawsuit to protect the First Amendment at Kansas State University.

Mark Goodman, executive director of the Student Press Law Center, said that Katie Lane and Sarah Rice won the award "for their selfless commitment to their adviser, their university, their student newspaper and the First Amendment, long after they have any prospect of personally benefiting from their efforts in this case."

The two former students are appealing a federal court decision made over the summer in Kansas that said the university's decision to fire their adviser based on an "overall content analysis" did not violate the constitutional

rights of the adviser or the students.

"We're really concerned about the precedent and setting the record straight about what administration can and can't do with a college newspaper," Lane said. The adviser, Ron Johnson, has dropped his name from the case.

Johnson, who had been the paper's adviser for more than 15 years, was told in May 2004 that he was being dismissed. Later he was told it was because of a lack in overall quality of the student newspaper. ■

Paper staff up in arms over adviser's removal

NEW YORK — On Oct. 7, administrators at Le Moyne College elected not to renew the contract of a popular student newspaper adviser.

As a result, *The Dolphin's* editorial staff voted 7-0 to halt publication of the newspaper until Alan Fischler is reinstated, said *Dolphin* Editor Andrew Brenner.

"We were absolutely livid" about the decision, said Brenner. He added that the staff will remain loyal to Fischler, who has been the newspaper's adviser for eight years.

Shawn Ward, vice president for student development, said the decision to remove Fischler had nothing to do with the newspaper's content. He said the newspaper had not printed anything the college was unhappy with. The decision was based on quality and grammatical mistakes, Ward said.

But Brenner said Ward told him in a meeting in November that among other reasons for their decision, administrators were upset with a weekly satire column in which the columnist sometimes poked fun at the college. ■



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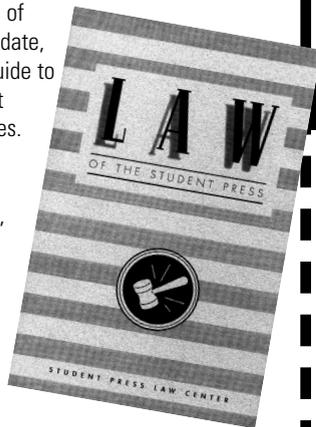
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