

STUDENT PRESS LAW CENTER  
**REPORT**  
FALL 2006 VOL. XXVII, NO. 3



## Vending control

*Company's restrictive policy templates  
concern student press advocates*

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**ALSO INSIDE:** Student journalists debate whether to ask for designated public forum status, Page 34

**AND:** Are lessons lost when schools prohibit students from publishing last names on Web sites? Page 19

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# Help the SPLC defend student journalists for many years to come

As managing editor of the *Arrow* student newspaper at Utica High School in Michigan, Katy Dean was determined to report on the potential harmful effects of diesel fumes from idling school buses, despite school officials' attempts to suppress her story.

With the help of the Student Press Law Center, Dean contested her school's censorship. In November 2004, a federal judge ruled that school officials violated Dean's First Amendment rights by not allowing her to publish her story. As the stories in this issue of the *Report* illustrate, Katy Dean is not alone. Countless other student journalists who are able and interested in uncovering the truth are fighting for the freedom to do so.

Since 1974, the Student Press Law Center has been the only national organization exclusively devoted to providing free legal advice to student journalists and advisers and serving as an advocate for their free press and freedom of information rights. Please help the SPLC defend young journalists for years to come. When you make a contribu-



tion to the SPLC's **Tomorrow's Voices** endowment campaign, you help ensure that the voices of young journalists like Katy Dean will be heard long into the future, not silenced. For every \$2 contributed, the John S. and James L. Knight foundation will match with \$1.

Visit [www.tomorrowsvoices.com](http://www.tomorrowsvoices.com) for details on how you can give.

*This summer, former SPLC intern Abbie Gibbs rejoined the SPLC as Development Director. For more information on the campaign please contact Abbie at [development@splc.org](mailto:development@splc.org). Abbie is communications/journalism graduate of Oklahoma State University where she was an award-winning reporter for the student newspaper, The Daily O'Collegian.*



## CORRECTIONS

— The Winter 2005-06 *Report* incorrectly stated that a new policy at the State University of New York at Binghamton making it an offense to steal newspapers was inspired by a Spring 2005 theft of the student newspaper. Student editors had been working on the

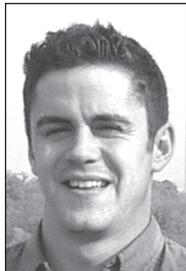
theft policy before the Spring 2005 theft.

— Executive Director of the Journalism Education Association Linda Puntney's name was misspelled in the Spring 2006 *Report*.

*The SPLC regrets the errors.*

## 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*.



**A.J. Bauer**, summer 2006 Scripps Howard Foundation Journalism Intern, is a senior at the University of Texas at Austin. He is pursuing a double major in government and history. Before coming to the SPLC, Bauer served as editor in chief of *The Daily Texan*, the student newspaper at UT-Austin. He also interned as a general reporter at Star Community Newspapers, a community newspaper group serving the north Texas market. Bauer covered high school censorship, anti-Hazelwood, advertising and high school adviser cases for the *Report*.



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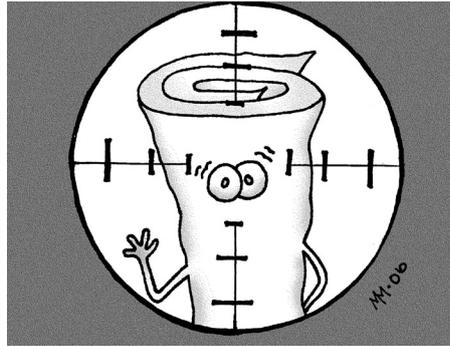


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# Editorials

# under



# attack

As diverse as the topics on which student journalists choose to opine are the methods used to censor them

BY A.J. BAUER

**L**eAnne Manuel was on a journalism field trip to Ball State University when a friend called to warn her she might not want to return to school that day.

“She said ‘LeAnne, people are crying. It’s bad, real bad.’” Manuel said.

That day, April 28, an unsigned editorial written by Manuel was published in *Spotlight*, the student newspaper at Ben Davis High School in Indianapolis. The editorial, titled “Migrant slack-off day also known as May 1,” encouraged students not to participate in the nationwide strike supporting rights for illegal immigrants, but to attend school as usual.

When some of her fellow students found the editorial offensive, school administrators confiscated the remaining copies of the paper and have now imposed new restrictions on *Spotlight*, including requiring prior review by an assistant principal.

Manuel’s story is not unique. Students around the country have their viewpoints silenced every year, and the 2005-06 school year was no exception. In Illinois, Indiana and Utah students faced efforts to prevent them from speaking their minds on topics such as immigration reform, homosexuality and sexually transmitted disease.

Just as diverse as the topics on which

student journalists choose to opine are the methods by which administrators and community members attempt to keep them from doing so.

## The policy approach

Student opinion pieces – be they editorials or columns – are particularly vulnerable to attack by administrators because, in addition to covering controversial issues, they naturally advocate one opinion as being

“*Kids aren’t going to want to read a front page story about a chess tournament. They want real life issues, stuff that’s really going on.*”

**LeAnne Manuel**

senior at Ben Davis High School

“right” or superior to others.

In the case of Manuel’s editorial opposing illegal immigration, students who reacted vocally found the superior tone of her writing insulting.

“Illegal immigrants are doing nothing but breaking our laws,” Manuel wrote. “If these illegal aliens think they are making a difference to our society, they have another

thing coming.”

Hearing of the tension back at school on her cell phone, Manuel said she was afraid for her life. Ben Davis Principal Joel McKinney said that, while there was no physical violence, the editorial did spark some heated verbal confrontations.

As a result, administrators changed long-standing policies to assure such a “disturbance” does not happen again. These included revoking the paper’s claim that it was an “open forum for student expression,” and instituting a policy of prior review to forecast potential disruptions.

“I don’t have any desire to change the students’ practices whatsoever,” McKinney said. “I just need my sponsor to be more prepared to point out things that could cause a disruption.”

Administrators also hope to make the restrictive policy district-wide. The school board has drafted a new student publications and productions policy, which places limits on what topics students can cover and prohibits unsigned editorials.

A spokesman for the district said it hopes to implement the policy by the time students begin class in August.

Despite the overwhelming policy changes, Manuel said the worst part for her was being prohibited from writing editorials in the final issue.

“I felt like all my responsibilities were

taken away,” Manuel said. “It was like I was just another peon on the staff.”

## The neutralizing approach

Opinion pieces frequently advocate some kind of action that administrators often fear will reflect negatively on their school or cause conflict. This often results in attempts to defuse editorials, neutering them of their forceful language or requiring the student to give both sides of an argument.

Stephen Delaney, a senior at Wheaton-Warrenville South High School in suburban Chicago, faced such attempts to tone down a column he submitted to the student newspaper *The Pride* last September.

In his column, titled “The importance of coming out,” Delaney announced he is gay, shared his experience telling his friends and family and urged other gay students to come out as well.

“My main objective of this article is to urge other homosexuals to come out,” Delaney wrote. “Even if it is just to one friend, letting out that huge secret is such a relief.”

But Delaney’s column did not run in *The Pride*. Principal Dawn Snyder prohibited its publication, saying the topic was acceptable but the way it was written was not. She said the column was written as a personal letter to another student.

Delaney admitted that he did have a particular student in mind when he wrote the column, but said he did not specifically call him out. He said he had written the column in such a way that he hoped it would help others as well.

“At the time there was this kid at my school who I knew was gay, and knew he was seeing boys and he was dating this girl,” Delaney said. “He knew he was gay, but he was afraid to admit who he was. I was hoping to let him and anyone else reading know it’s OK to come out.”

Snyder said she would allow the column to run only if Delaney made several changes, including “softening the blow” of the column’s lede, in which Delaney explained that

he is gay, and removing an announcement of “National Coming Out Day.” Delaney made the changes, but Snyder still would not let it run.

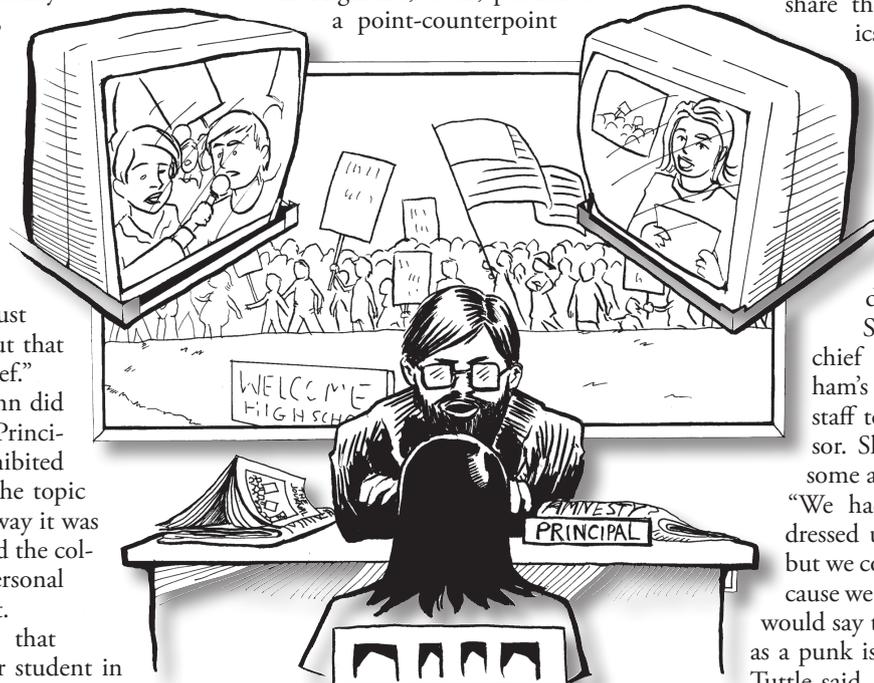
Delaney said he felt Snyder wanted his column to be neutral on homosexuality.

“That wasn’t something I wanted to do,” Delaney said. “I didn’t want to make it a historical article or give the cons [of being gay].”

## The purist approach

While some advocate neutrality in student opinions, others attempt to stifle them all together.

Last November, *The Crusader*, the student newspaper at Lone Peak High School in Highland, Utah, published a point-counterpoint



‘You can’t write about that’

on the formation of a Gay-Straight Alliance at the school. Principal Chip Koop approved the topic, “as long as it didn’t become a promotion or gay bashing.”

But parent Stephen Graham accused the school of breaking state laws by allowing the topic to be discussed. Graham, whose daughter Elise wrote the column opposing the creation of GSA, is the president of the Standard of Liberty Foundation, a Christian nonprofit that opposes the “homosexual activist movement.”

Graham said in an e-mail that he does not believe students should be allowed to dis-

cuss certain topics in public schools, saying, “Not all points of view are worthwhile.”

“It makes no sense for kids who have no adult life experience to be allowed society-sanctioned, unlimited freedom to indoctrinate other kids on serious topics which have to do with psychological, emotional, spiritual and physical health,” Graham said.

He also took issue with a May column in *The Crusader* that advocated vaccinating young girls for human papilloma virus, which can be spread by sexual contact. Graham maintains that public schools are “no place for discussion about sexual behaviors,” except as defined in the state’s abstinence-only sex education policy.

“Budding journalists should be taught by their teachers that they will be free to share their opinions on adult topics when they have left public school, reached adulthood and have an adult audience,” Graham said.

Graham asked both the Utah Attorney General’s Office and state board of education to investigate the matter, however both declined.

Samantha Tuttle, editor in chief of *The Crusader*, said Graham’s complaints led her and her staff to second-guess and self-censor. She said to prevent backlash, some articles were not written.

“We had a picture of a someone dressed up as a punk on Halloween but we couldn’t put it in the paper because we were afraid Stephen Graham would say that the guy wearing eyeliner as a punk is promoting homosexuality,” Tuttle said. “His exercise of free agency took away ours.”

## A principal’s perspective

Lone Peak Principal Chip Koop said, as the case with his school shows, administrators have many constituencies to appease, a factor that he said leads them away from allowing completely free student expression. He said oftentimes prohibitions are a matter of public relations.

“My role as an administrator is to be sensitive to all the feelings and attitudes of the school and community and maybe tame writing that may offend,” Koop said.

He said the situation with Graham il-

lustrates the position principals often find themselves in when a student opinion piece steps over the proverbial line.

In the Gay-Straight Alliance incident, Koop said he felt both points were well argued and, since the point-counterpoint format ensured balance, he did not anticipate any controversy.

“I didn’t worry about it,” Koop said.

But when Graham contacted Koop to say he felt the school broke state law, Koop found himself in the position of having to defend the decision to run the columns when he had not made the decision to run them.

“He wanted a retraction and an apology letter,” Koop said. “He wanted to educate

my teachers about the law and what you can and cannot say.”

Eventually, Koop said, the issue died when school district attorneys concluded that the school broke no laws.

Koop said the prospect of having to deal with the complaints of community members is one factor that leads administrators to be cautious of allowing students to opine on controversial topics. Another, he said, is about the school’s environment.

“I have a great culture here,” Koop said. “I don’t want to do things that are going to create any kind of a hostile environment.”

Koop said he does not believe students should be allowed to write whatever they

want in a student newspaper, but said a paper is about more than just covering football games and advance placement tests.

“There has to be a window for hot topics that are out there,” Koop said. “We need to give students the opportunity to explore, while making sure it’s done right.”

### ‘Making sure it’s done right’

John Bowen, a professor of journalism at Kent State University and chair of the Journalism Education Association’s Press Rights Committee, said oftentimes administrators’ concern with making sure student opinion pieces are “done right” can lead to viewpoint discrimination.

## Know your rights

*Just because your opinion is extreme or unconventional does not, in most cases, allow school administrators unlimited powers to censor it. Read the section that applies to your student publication and see just how far you have to go before a principal can legally censor your opinion:*

- If your public school publication is a designated public forum for student expression either by policy or practice:**  
Your newspaper is governed by a 1969 U.S. Supreme Court decision called *Tinker v. Des Moines Independent Community School District*. In *Tinker*, the Court held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” and school officials may not punish or prohibit student speech unless they can clearly demonstrate that it will result in a material and substantial disruption of normal school activities or invades the rights of others. If a school administrator is trying to censor your opinion and it will not reasonably create a disruption or invade the rights of others, that administrator is violating your First Amendment rights.
- If your public school publication is in Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, Pennsylvania or Washington state:**  
These states each have state laws or state administrative code provisions that protect student free expression rights. These codes typically give students comparable First Amendment protections to the *Tinker* standard, if not better. You can find out more about your state law or code by checking the law library section of the SPLC’s Web site at [www.splc.org/law\\_library.asp](http://www.splc.org/law_library.asp).
- If your public school publication is not a designated public forum for student expression:**  
Your newspaper is governed by a 1988 U.S. Supreme Court decision called *Hazelwood School District v. Kuhlmeier*. In *Hazelwood*, the Court held that a high school-sponsored newspaper produced as part of a class and without a “policy or practice” establishing it as a public forum for student expression could be censored where school officials demonstrated a reasonable educational justification. Most courts have also said that *Hazelwood* requires censorship to be viewpoint neutral. While the *Hazelwood* decision does give administrators some leeway as to what they can censor, it is by no means a blank check. If a school official attempts to prevent you from publishing your column or editorial, ask them why. They must have a pedagogical reason for censoring you and it cannot have anything to do with the side you are taking in the article. An administrator may not censor you simply because he or she disagrees with your opinion.
- If you attend a private school:**  
Because private schools are not government agencies, they are not limited by the First Amendment in their ability to censor. But private school students may have other means of defending press freedom. To find out strategies for ensuring your First Amendment rights in a private school, visit the Student Press Law Center’s Web site at [www.splc.org](http://www.splc.org).
- No matter where you are, no matter what policy your school has:**  
Do not begin censoring yourself in fear of what school officials might say or do! If your staff has prepared a well-written, accurate editorial or column on any topic of interest to you and your readers, do not drop it because of *Hazelwood*. If your principal or some other school official wants to censor, let them do it. Make sure to appeal the decision to the highest level possible – be it the superintendent or board of education – and don’t forget to contact the Student Press Law Center for legal advice or for help getting publicity for your cause.



"I think that's what we saw at Ben Davis, and I think it's probably going to happen more and more because we're becoming a less tolerant society," Bowen said.

He said a principal's concern should be with matters of curriculum instead of newspaper content.

"I think a principal should be more concerned with making sure the curriculum attempts to teach students to do it right," Bowen said. "The principal should work with the teacher to make sure the curriculum includes things that teach how to write a column thoroughly."

David Knight has been teaching high school students how to effectively express their opinions for more than 25 years. He conducts workshops at scholastic journalism conventions around the country and has read his share of student opinion writing.

"I think it has an important place in high school journalism, and can be the strongest writing in a publication if students take it seriously," Knight said. "It can also be some of the worst writing ever."

Knight said student opinion writing, good or bad, should be protected and is important because it allows students to relate to one another. He also said it can be a valuable tool for administrators to learn what kind of issues students are interested in and dealing with.

"There was one column I read about sexual abuse," Knight said. "And a lot of students have read that and gotten help for it. That's some of the value."

Fred Fiske, chairman of the National Conference of Editorial Writers' Committee on Journalism and Education, said learning strong editorial writing skills can be useful to students no matter what profession they go into.

"After all," Fiske said, "it's important to know how to think logically, consider competing points of view and make your way to a conclusion that makes sense to you."

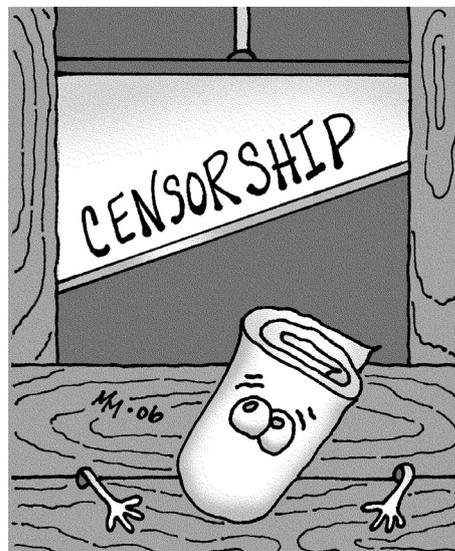
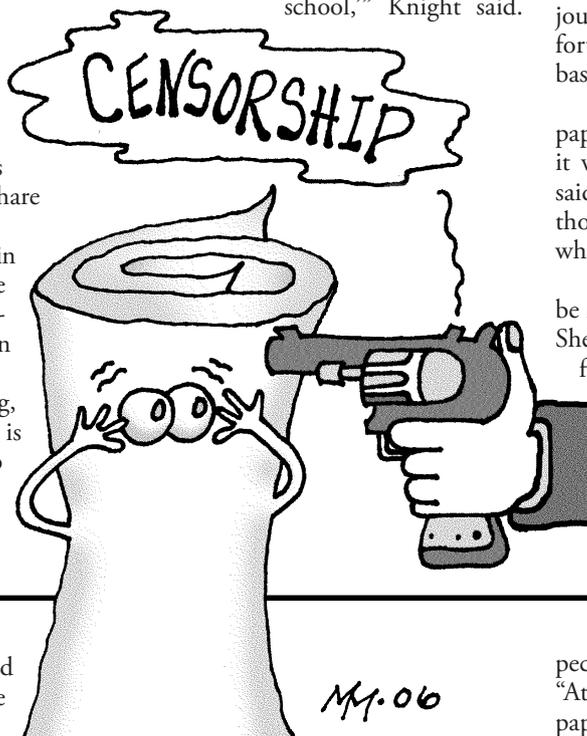
Fiske said he worries stifling student opinion writers while they are still learning could dissuade them from going into journalism and, even worse, make them reluctant to read newspapers.

"Or they may descend into the 'blogosphere' or the Internet chat room or listserv where opinions are cheap and not well-supported," said Fiske, who is a senior editorial writer at *The Post-Standard* in Syracuse, N.Y.

Knight also expressed concern with attempts to censor student opinion writers. He said it is better for students to learn the "consequences of impolite speech" than for them to be prevented from making it.

After all, Knight said, it is not as though students are openly advocating violence, and even controversial opinions can lead to constructive discussions.

"I've been reading personal columns for 25 years, and you don't see students saying 'rise up and take over the school,'" Knight said.



"They're just writing about issues that kids have."

### Writing for their community

Manuel said she writes editorials because she wants to give students what they want.

"Kids aren't going to want to read a front page story about a chess tournament," Manuel said. "They want real life issues, stuff that's really going on."

She said by allowing free expression in student editorials, administrators let student journalists provide their classmates with a forum that hallway gossip prevents — fact-based discussion.

"[Administrators] thought by taking our papers away, so people couldn't read them, it would make everything better," Manuel said. "But it made everything worse because those who had read it were exaggerating what it said."

Manuel, a rising senior, said she will not be returning to the *Spotlight* staff in the fall. She said she had to give up journalism to focus on her schoolwork and other extracurricular activities, but regrets not being able to be on staff next year to help ensure students' opinions are heard.

Because for some students, Manuel said, the newspaper is the one place where their opinions are their own.

"At home, some students can't have an opinion because their parent may have a certain view and they're expected to have that view too," Manuel said. "At school it's just like a regular adult newspaper, instead it's in our community." ■

# Rays of hope amid dying legislation

Despite widespread failure of student free-expression bills, advocates in two states are optimistic for the future

BY A.J. BAUER

It has been four years since school administrators censored Katy Dean, then a junior at Utica High School in Utica, Mich. And now, much to her chagrin, another generation of Michigan high school students is facing the same specter of administrative control.

"It is extremely disheartening to know that Michigan high school students can and will continue to be censored under current Michigan law," Dean said.

In 2002, Dean wrote a story for her high school newspaper, *The Arrow*, in which she told the story of a local couple who were suing Utica Community Schools after one of them developed lung cancer, they believe, as a result of diesel exhaust from the school district's bus barn, which was adjacent to their house.

But Utica High School Principal Richard Machesky, citing "factual errors," would not allow *The Arrow* to publish the story.

"*The Arrow* is a school-sponsored, curriculum-based publication, over which the school exercises a great deal of control," Machesky wrote in a March 2002 letter to *The Arrow* staff.

As a result of Machesky's censorship and a successful lawsuit by Dean, student press advocates in Michigan successfully lobbied state Sen. Michael Switalsky, D-Rosville, to sponsor legislation defending the rights of high school student journalists.

In doing so, advocates in Michigan joined those in Vermont and Oregon in competition to be the seventh state to pass student free-expression legislation — vying to join Arkansas, California, Colorado, Iowa,

Kansas and Massachusetts, which already have student press-friendly laws.

However, as state legislative sessions around the country adjourn for the upcoming elections, it appears in the three states where advocates pursued student free-expression legislation for high school students, the bills have either stalled indefinitely or were never introduced.

As elections near, student press

publishing her story.

Utica administrators claimed their withholding of Dean's story did not constitute censorship because *The Arrow* was not a designated public forum. But a federal district court judge ruled otherwise, saying the paper was in fact a public forum and that even if it was not, school officials could not have justified withholding Dean's article.

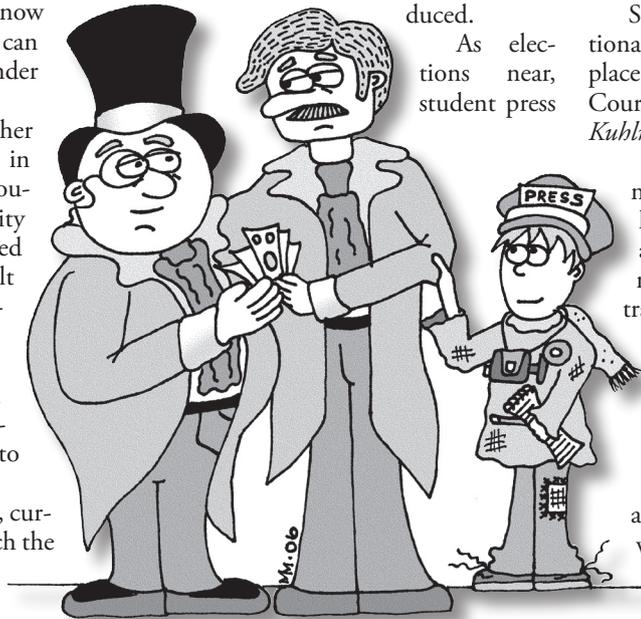
Such attempts by administrators to rationalize censorship have become commonplace since 1988, when the U.S. Supreme Court ruled in *Hazelwood School District v. Kuhlmeier*.

In *Hazelwood*, the Court held that administrators could censor student publications as long as they demonstrated a reasonable educational justification, a requirement that has allowed administrators to censor a wide variety of student content.

The Court also ruled that if either "by policy or by practice" a student newspaper had been opened as a forum for student expression, and student editors have control over content, an administrator's ability to interfere with the paper is governed by an earlier precedent, the Court's 1969 decision in *Tinker v. Des Moines Independent Community School District*.

In *Tinker*, the Court ruled that in order to censor a student publication, administrators must prove that the material will create a "substantial disruption" of normal school activities or would invade the rights of others.

The Court's loophole for student newspapers that are public forums for student expression has led countless administrators to denounce and even pull newspapers' public forum policies. Such restrictive measures have helped to spark attempts to pass leg-



advocates find themselves hoping the next legislative session brings more success, and those in Michigan and Washington feel they have reason to be optimistic.

## Catalyzing legislation

In the case of Utica High School, Dean sued the school district in April 2003, claiming administrators violated her First Amendment rights in prohibiting *The Arrow* from

islation counteracting *Hazelwood* in states around the country – including Michigan.

## Stalled in Michigan

Michigan state Sen. Switalski introduced Senate Bill 156 in February 2005 to praise from the state's student press advocates.

If passed, the bill would prohibit administrators from reviewing students' content prior to publication or censoring that content unless it consisted of already illegal speech, such as obscenity or defamation, or would materially and substantially disrupt school activities.

Switalski said the situation in Utica, a community he represents, is what sparked his interest in student press rights.

"If we believe free speech rights are good enough for citizens, why aren't they good enough for students," Switalski said. "By censoring students, are we telling them we really believe in our ideals or that we don't really?"

SB 156 was sent to the state Senate's education committee. However, after a hearing in April 2005, it became apparent the bill would not make it out of committee, according to Jane Briggs-Bunting, the director of Michigan State University's department of journalism, who testified at the hearing.

Briggs-Bunting said the committee chairman, state Sen. Wayne Kuipers, R-Holland, clearly did not support the bill.

"It was very clear from the questions he was asking and his comments," Briggs-Bunting said. "At least one of the senators said it's dead because [Kuipers] will never let it out."

Kuipers could not be reached for comment. But Angie Doezema, a spokeswoman from Kuipers' office, said the senator is not necessarily opposed to SB 156, but he feels it needs more work before it can pass committee.

Doezema said she could not comment on what work needed to be done.

## Down and out in Vermont, Oregon

In Vermont S.46, a bill that would counteract *Hazelwood*, has also stalled in the state Senate's education committee.

The bill, which would ensure that students are granted the free press rights that *Hazelwood* limits, was introduced by state Sen. Jeanette White, D-Windham, in February 2005.

S.46 would protect students' free expression rights in school-sponsored publications, as long as the content is not obscene, libelous, defamatory or invades someone's privacy. It would allow administrators to censor only if the speech "materially and substantially disrupts the orderly operation of the school" – the standard allowed by *Tinker*.

Despite a hearing on March 8, 2005, the bill remained in committee until the end of the legislative session on June 1, 2006, when it died.

White said that the bill is "dead for now"

and said she plans to reintroduce the legislation in the next legislative session, assuming she is re-elected.

"There has been interest from the high school level – both teachers and students – so I expect next year that it will get more attention," White said in an e-mail. "It wasn't that it was opposed, just that there was not the clamor of support that some other bills had."

The Oregon Society of Professional Journalists and the Oregon Newspaper Publishers Association, meanwhile, have each moved on to other issues and dropped their

## Pennsylvania State Board of Education

### Did student free-expression code dodge a bullet?

Student press advocates in Pennsylvania are relieved despite changes in a section of the state's administrative code regarding student free expression.

Pennsylvania is one of two states to include wording in their state administrative codes ensuring high school students' First Amendment rights. However, in December the Legislature approved changes proposed by the State Board of Education that may blur the code's interpretation.

The alterations remove references to the 1969 U.S. Supreme Court decision *Tinker v. Des Moines Independent Community School District* and change the clause enumerating unprotected speech. The *Tinker* ruling restricted administrators' ability to limit student expression to cases where the speech would violate another individual's rights or would cause a "material and substantial disruption" of normal school activities.

The new wording prohibits speech that threatens "serious harm to the school or community." The previous language had required that the speech threaten "immediate harm," wording most student press advocates believe more accurately fits the *Tinker* precedent.

Wanda Pletcher, president of the Pennsylvania High School Press Association, said she is happy the Board of Education did not make more serious changes, as it had proposed in late 2003.

In November 2003, the board proposed adding the U.S. Supreme Court cases *Bethel School District No. 403 v. Fraser* and *Hazelwood School District v. Kuhlmeier* to the code.

The *Fraser* ruling upheld the ability of school administrators to punish a student for a speech given at a school assembly that was deemed vulgar and offensive, while the *Hazelwood* ruling allowed schools to impose greater restrictions on some school-sponsored student media.

Pletcher said adding such restrictive case law to the code would have restricted, instead of defended, student free-expression rights in the state.

"I think if they had replaced *Tinker* with the other cases, that would have been a bigger problem," Pletcher said. "I'm hoping simply removing the case doesn't cause problems."

The state Board of Education said the changes that passed in December would not alter students free expression rights in the Pennsylvania Bulletin, a state-produced publication that lists changes and intent of state rules.

"In amending § 12.9, the Board does not intend to restrict or limit the long-held tradition of the Commonwealth to provide to students free speech rights that might be somewhat broader than those that are guaranteed by the United States Constitution," according to the board's statement in the Bulletin. "The Board intends to maintain this tradition as a matter of policy."

Pletcher said she did not anticipate any new problems interpreting the code and said she hopes more administrators pay attention to the freedoms it grants.

"We'll have to wait and see," she said. ■

push for student free-expression legislation in their state.

The last time Oregon's legislature considered student free-expression legislation was in 2001.

There had been talk of reintroducing such legislation in 2004, prior to the 2005 legislative session. But with the old bill's supporter out of office and the state's key journalism interest groups no longer pursuing the issue, the push for such legislation in Oregon is effectively over.

LeRoy Yorganson, executive director of ONPA, said after trying in 1999 and 2001 to no avail, the group decided to focus its efforts on other topics, such as expanding the state's freedom of information laws.

### 'We're not giving up'

While student press advocates in Oregon have moved on to other battles, proponents of the Michigan bill said its failure to pass committee is only the beginning.

"We're not giving up on it," Briggs-Bunting said. "We're going to be approaching it from a different strategy."

Briggs-Bunting said she did not want to elaborate on the new strategy for fear of aiding the bill's opponents, but she and other Michigan student press advocates say they plan to portray the bill as an enhancement of civics education.

Gloria Olman, who was *The Arrow's* adviser when it was censored in 2002 and is currently the legislative chair of the Michigan Interscholastic Press Association, further stressed the importance of teaching journalism. She said journalism gives students a free outlet to express themselves and is a lesson in participatory democracy.

"We must give students rights. Without them we take responsibility away from students and give it to adults and then [the students] don't learn it," Olman said. "If we want involved adults in this democracy, we have to train them. And this is the way to do it."

Michigan state Sen. Switalski said although the bill's opponents seem set in their ways, he plans on reintroducing it next term assuming he is re-elected.

"I think people are reluctant to give student publications free reign," Switalski said. "They're not willing to take a fresh look at it, despite a lot of testimony and specific examples of how censorship has been misused."

### 'First step' in Washington

Brian Schraum is editor in chief of *The Current*, the student newspaper at Green River Community College in Auburn, Wash. In his efforts to protect Washington college students from censorship, he has been lobbying his state representative to sponsor student free-expression legislation that would help high school students as well.

Schraum became active in pursuing student-free expression legislation after last year's 7th U.S. Circuit Court of Appeals ruling in *Hosty v. Carter*. In *Hosty*, the court held that *Hazelwood*, which has historically limited high school students, could be applied to colleges and universities in Indiana, Illinois and Wisconsin.

Although the *Hosty* decision did not apply directly to Green River, which is not in the 7th Circuit's jurisdiction, Schraum said it gives credence to a frightening argument against student free expression in colleges and universities around the country. But when Schraum approached Washington state Rep.

Dave Upthegrove, D-SeaTac, he said he wanted to look out for high school students as well.

"When I met with Upthegrove, I said, 'Really I think the people who need [the legislation] more than anybody are high school reporters,'" Schraum said. "He said, 'Let's throw everyone into this bill, make it comprehensive.'"

"I think we got everybody covered."

In addition to protecting college journalists from the ill effects of *Hosty*, a preliminary version of the Washington bill would go much further than the state's current administrative code, which only reiterates that students have First Amendment rights.

The preliminary bill would explicitly prohibit high school administrators from engaging in prior review or prior restraint of a student newspaper except under the limitations of *Tinker*. The bill also has a clause protecting high school journalism advisers.

"No journalism adviser will be terminated, transferred, removed or otherwise disciplined for refusing to suppress the protected free expression rights of student journalists," the preliminary bill states.

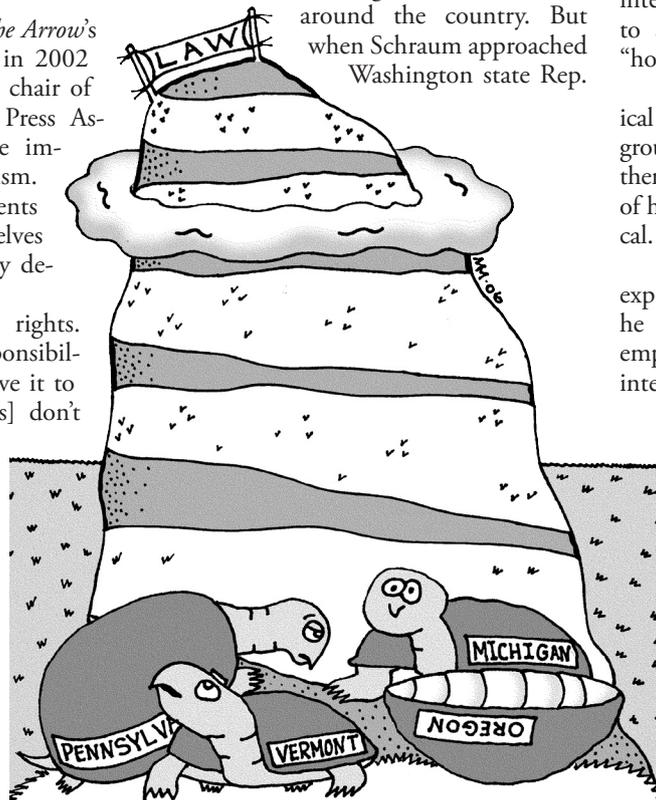
Upthegrove said he hopes to introduce the bill in its current form in January, and said he will be meeting with a number of interested parties over the next few months to seek their feedback, suggestions and "hopefully support."

"We'll need to be cognizant of the political realities," Upthegrove said. "If there are groups that are strongly opposed [to the bill] then we'll have to make a political decision of how much to change. I hope it is identical. I'm comfortable with it as drafted."

He said he was drawn to student free-expression legislation because, at age 35, he said he feels promoting the political empowerment of young people is a "niche interest" of his.

And while he acknowledged that many states have tried to pass such legislation to no avail, Upthegrove said freedom of the press is fundamental to democracy and thus such legislation is worth pursuing.

"I'm optimistic about the prospects, and I plan to work hard to build a coalition of supporters before the legislative session," Upthegrove said. "We'll find out in January for sure." ■



# Vending Control

Company that sells restrictive policy templates to school districts raises concerns among student press advocates

By A.J. BAUER

When Superintendent Jay Mitchell came to the school district of Superior, Wis., in 1998, he said the district policy book, which dated back more than 30 years, was in need of updating.

Facing what he described as the “huge task” of revising the entire book, Mitchell said he turned to a policy vendor with which he was familiar – NEOLA.

Originally known as the Northeastern Ohio Learning Association, NEOLA now provides policies, guidelines, electronic publishing and consulting services for school districts in seven states: Florida, Indiana, Illinois, Ohio, Michigan, Wisconsin and West Virginia. The company’s chief operating officer, Sandy Krueger, puts their number of clients at around 850.

NEOLA uses a series of state-specific policy templates, each of which includes a number of prewritten policy options that administrators may choose from in drafting their policies. Krueger said the associates NEOLA hires to consult with districts, many of whom are former superintendents, are in frequent contact with the districts to inform them of necessary policy alterations.

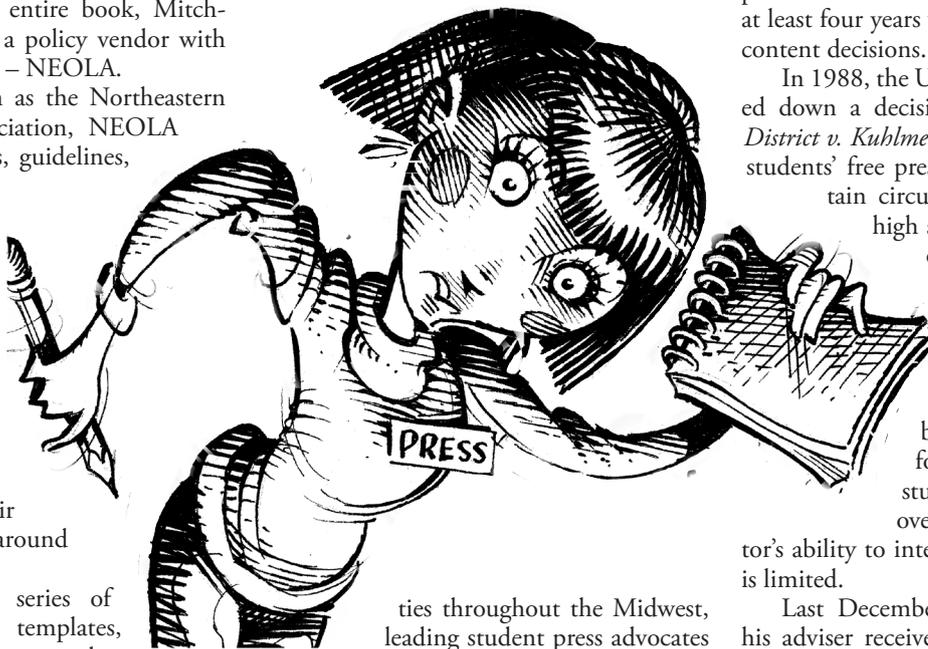
Mitchell praised NEOLA and said the service saved him and his school board valuable time and money. He said the company’s legal consultants help his district keep its policies attuned to ever-changing laws.

“It’s labor intensive,” Mitchell said, “and quite honestly it would cost us more to do it ourselves.”

But student press advocates say they are

concerned that NEOLA’s cookie cutter method of drafting policies diminishes local input and that the policies’ vague language leads to confusion that can have severe consequences for students’ First Amendment rights.

Conflicting interpretations of NEOLA student publications and productions policies have sparked controversy in communi-



ties throughout the Midwest, leading student press advocates to question the company’s underlying philosophy.

## Shake up at Lake Shore

While Mitchell says his district has seen no conflict over its NEOLA student publications policy, just over 700 miles away in St. Clair, Mich., students and student press advocates are up in arms over a similar policy.

In May 2005, superintendent Brian Annable challenged the editorial policy at *The Shoreline*, the student newspaper at Lake Shore High School, after a student-written article on teen sex ran in *The Macomb Daily*, a local newspaper.

Annable argued that the editorial policy,

which designated the student paper as an “open forum for student expression” and stated that it would not be subject to prior review or restraint by school officials, was in conflict with the board policy, which was drafted using a NEOLA template.

Andrew Mardis, an editor of *The Shoreline*, said despite the district policy, the paper had been acting as an “open forum” for at least four years with students making the content decisions.

In 1988, the U.S. Supreme Court handed down a decision in *Hazelwood School District v. Kuhlmeier* restricting high school students’ free press rights by allowing certain circumstances under which a high school newspaper may be censored.

In its decision, the Court ruled that if either “by policy or by practice” a student newspaper had been opened as a forum for student expression, and student editors have control over content, an administrator’s ability to interfere with the newspaper is limited.

Last December, however, Mardis said his adviser received an e-mail stating that the paper’s publication would be postponed until they conformed their editorial policy to board policy. The students refused to publish unless they were able to call the paper an “open forum.”

## Dissecting the policy

What followed was months of debate, beginning at a January board of education meeting where *Shoreline* staff members voiced their disapproval with Annable’s insistence on their adherence to the board policy. It culminated in June, when the board of education voted 7-0 in favor of an updated NEOLA template policy that included new,

## 'Unprotected'

The following are options as listed in NEOLA's Michigan student publications and productions policy template under materials deemed unprotected because they "violate the rights of others." Such unprotected materials are those which:

- are grossly prejudicial to an ethnic, religious, racial, or other delineated group
- libel any specific person or persons
- seek to establish the supremacy of a particular religious denomination, sect, or point of view over any other religious denomination, sect or point of view
- advocate the use or advertise the availability of any substance or material which may reasonably be believed to:
  - constitute a direct and substantial danger to the health of students
  - contain obscenity or material otherwise deemed to be harmful to impressionable students who may receive them
  - incite violence, advocate the use of force, or urge the violation of law or school regulations

more restrictive guidelines.

Of the 17 choices in the NEOLA Michigan policy template No. 5722, the student publications and productions policy, the Lake Shore policy contains 11. The guidelines portion, which is meant to help administrators implement the policy, contains all 21 of the template options with amendments to two of them.

The NEOLA student publications policy template consists almost exclusively of options that would limit what students would be allowed to write and includes no option allowing student publications to be public forums for student expression (See sidebar for examples).

An addition to the Lake Shore policy that is not from a NEOLA template is an introductory paragraph that states in part: "Student speech is protected by the First Amendment of the United States Constitution. Thus, students have the right to express themselves openly on school premises about matters of social, political and religious importance."

The remainder of the policy and guidelines, mostly NEOLA template language, act to specify what students are not allowed to write, often conflicting with the rights implied in the first paragraph.

The policy gives ultimate control over student publications to administrators and makes all publications subject to prior review by advisers.

"The decision to publish or produce something shall be made by the adviser with appeal to the principal and superintendent," the policy states.

In its accompanying guidelines, the policy restricts what advertisements student publications may accept, requires that a byline accompany every article and notes among the objectives of student publications to "promote and encourage school-sponsored activities" and "create a wholesome school spirit."

The policy also prohibits students from expressing their opinions concerning any candidate, bond issue or proposal that is up for election. In the guidelines, the policy goes a step further in explaining limits on political dialogue.

"School publications/productions shall not endorse any candidate for public office or take a political stand on any issue," according to the guidelines.

Gloria Olman, a retired high school journalism adviser and legislative chair of the Michigan Interscholastic Press Association, spoke out against Lake Shore's NEOLA policy and its new guidelines.

Olman spent two hours discussing the policy with superintendent Annable the week before the board passed the updated version, arguing line-by-line each clause she felt violated student rights.

"They're just vague and misleading," Olman said of the NEOLA template options. "They're violating *Hazelwood* because they say the administration has the right to prior review and to remove materials for pretty much any reason. Even *Hazelwood* said it must be for pedagogical reasons."

Annable defended the policy, saying ad-

ministrators are primarily interested in promoting "good journalism" among students and are not planning on using the policy to censor.

"People use terms like 'prior review' like they use the term 'censorship,'" Annable said. "How can you offer advice if you haven't reviewed it?"

*Shoreline* adviser Kevin Francis could not be reached for comment, but both Olman and editor Andrew Mardis said he has

“We need to teach our students how to think, not what to think. When you enforce these policies, the kids aren't learning.”

**Gloria Olman**

legislative chair, Michigan Interscholastic Press Association

decided not to continue advising the paper in the fall. Until a new adviser is assigned, *Shoreline* staff members are uncertain how much the new NEOLA guidelines will change the way they operate.

## Fingers crossed in Dexter

Lake Shore's decision to pull its student newspaper's open forum editorial policy has Rod Satterthwaite of Dexter, Mich., nervously counting his blessings.

Satterthwaite advises *The Squall*, the student newspaper at Dexter High School, a paper that, like *The Shoreline*, has been a practicing public forum for four or five years despite its more restrictive district policy. Dexter Community Schools is another NEOLA client, and its student publications policy employs many of the same template options as Lake Shore.

Despite facing an unsupportive assistant principal and superintendent a few years ago, the paper has managed to avoid many of the restrictions of the NEOLA policy.

Satterthwaite said he has drafted a proposal of the kind of policy he would like to replace the NEOLA one. But due to a high rate of principal turnover over the past few years, he has not been able to build the support he says he needs to take the policy to the school board.

"We want principal backing," he said.

He said one of the clauses that worried him the most when the board first considered the NEOLA policy was one that prohibited publications that "promote, favor or oppose

any candidate for election to the board or the adoption of any bond issue, proposal or question submitted at any election.”

Satterthwaite, concerned the policy would prohibit students from writing columns about the then upcoming 2000 presidential election, expressed his unease to the superintendent.

“He said, ‘You’re reading the policy too narrowly.’ But I was just reading what the policy said,” Satterthwaite said. “He said ‘That’s not the intent of the policy.’ But it’s hard to get the intent.”

Having seen four different principals in four years, Satterthwaite said he and his students have been lucky.

“My biggest worry is, because the policies are so vague and open to interpretation, if someone comes in who’s not supportive of press rights, they can come in with those policies and run with them,” Satterthwaite said.

## Inconsistencies in Indiana

Two different interpretations of similar NEOLA policies in Indiana have led to two drastically different outcomes for student journalists.

In December 2005, *The Triangle*, the student newspaper at Columbus North High School in Columbus, Ind., published a four-page report on the risks of oral sex. The feature, titled “That Other Sex,” included national statistics and discussions of the medical and psychological risks of participating in oral sex.

Community members and a member of the Bartholomew Consolidated School Corporation board of trustees criticized the spread, and the board member proposed a new policy that would require the paper to be submitted to school administrators prior to publication. The policy would have circumvented the adviser who, under the district’s NEOLA policy, is charged with deciding what will and will not be printed.

In January, the board voted against the proposed policy 5-2, a vote *Triangle* adviser Kim Green said saved the paper’s ability to practice as an “open forum.”

“The [NEOLA] policy was adapted enough that when our community reads it, it shows we encourage an open forum without prior review of any sort,” Green said.

The language of the policy, Green admits, is open to interpretation. The policy gives ultimate control over student publications to the adviser, with appeal to the prin-

cipal and superintendent.

Green said while her district’s NEOLA policy was interpreted in a way that supported student freedom of expression, it could have been used to justify restricting the paper.

“It’s word for word a lot of the same language as other schools where the board is using it to shut them down,” Green said.

One such school is Noblesville High School, located about 70 miles away in Noblesville, Ind. The staff of *Mill Stream*, the student newspaper at Noblesville, worked for months on an article concerning students’ attitudes regarding oral sex.

Like *The Triangle*, the *Mill Stream* story also focused on the risks of participating in oral sex. However, unlike the situation in Columbus, the superintendent in Noblesville prohibited the students from publishing their article.

The controversy first developed in February when, hours before the *Mill Stream* publication deadline, the school principal announced that the article could not run until it was approved by a committee of administrators, students and community members.

The committee review process is not provided for in the district’s NEOLA student publications policy.

Although the committee supported running the article, the superintendent prohibited it, saying the article had no place in a student newspaper.

The NEOLA-template district policies that govern Columbus North and Noblesville high schools are not identical. However, the sections of the policies that enumerate unprotected student speech that may be prohibited share all but one of the same clauses.

Noblesville superintendent Lynn Lehman could not be reached for comment. However, Noblesville principal Annetta Petty described Lehman’s rationale behind the censorship for a story in the Spring 2006 issue of the *Report*.

“He did not believe it was an appropriate subject for a high school,” Petty said. “The things that might be perceived as being of high interest might be perceived to be shocking to some members of their audience.”

## ‘Selling a product’

Green said she believes the NEOLA policies are drafted so that they can “go both ways,”

## Guideline objectives

The following are options as listed in NEOLA’s Michigan student publications and productions guidelines template under “objectives of school publications/productions”:

- communicate to those who are actively interested in the school – the students, the teachers, the parents, the administration, the alumni and other members of the school community
- provide vehicles for the expression of student thought and action to act as catalysts for helping students realize goals and objectives
- create a wholesome school spirit and to support the best traditions of the school
- promote and encourage school-sponsored activities
- provide training in useful and purposeful writing, speaking, artwork, photography, design and layout
- create a desire for the best in all forms of production, both in and out of school
- record in permanent form the history of the school
- promote cooperation among taxpayers, parents, the school and its students

or be interpreted differently by different districts or even different board members.

“I think the NEOLA people are selling a product,” Green said. “In selling a product they’re going to sell something with mass appeal, open to interpretation by conservatives and liberals alike.”

John Bowen, a professor of journalism at Kent State University and chair of the Journalism Education Association’s Press Rights Committee, said there is also an inherent bias toward administrative control of student newspapers in the NEOLA

policy options.

Bowen said the company's use of former superintendents as sales associates exacerbates this tendency.

"They're going to represent the school interests, this is what these guys know," Bowen said. "They know what's going on is beneficial to the school system, and that's who pays them."

Although some of the NEOLA options are based in law, such as those prohibiting the publication of libelous or obscene materials, others have no legal basis and, consequently, are more open to interpretation.

## Restrictive atmospheres

Gloria Olman from the Michigan Interscholastic Press Association said that NEOLA policies create restrictive atmospheres for student journalists and said it deprives them of training necessary to be citizens of a democracy.

"We teach students the Constitution on paper but they don't know how to live it," Olman said. "We need to teach our students how to think, not what to think. When they enforce these policies, the kids aren't learning."

Olman said in addition to failing to educate students, she believes the NEOLA template can be used to violate students' First Amendment rights.

In the case of Lake Shore, Olman said that since *The Shoreline* had been practicing

as an open forum for years, any censorship of the paper would have to meet the standards of the 1969 U.S. Supreme Court decision in *Tinker v. Des Moines Independent Community School District*.

In *Tinker*, the Court ruled that in order to censor a student publication, administrators must prove that the material would create a "substantial disruption" of normal school activities or would invade the rights of others. The Court's decision in *Hazelwood* narrowed the *Tinker* decision, but only for student newspapers that are not designated public forums by policy or practice.

"If these newspapers within these districts were previously limited public forums, then these students can sue," Olman said. "In Lake Shore they fall under *Tinker*, and it's going to come back to bite the district at some point."

Mardis, editor of Lake Shore's student

newspaper, said he is not considering any legal action at this time.

Bowen said although he disagrees with the language of the NEOLA templates, he understands why school districts would use the company's services.

"On the surface it makes a lot of sense; they don't have to reinvent the wheel," Bowen said. "But those generic policies don't reflect local concerns."

He said he worries school districts often have a false sense of security since NEOLA provides them with policy experts and legal advice. He said this reduces the districts' need to consult local student press advocates or other scholastic student press groups prior to adopting student publications policies.

Bowen said it has been 10 years since he had any direct contact with a NEOLA representative and said the company should do more to reach out to groups like JEA.

"I just wish they would be more open in discussing with people before they write First Amendment policies," Bowen said.

## Open to discussion

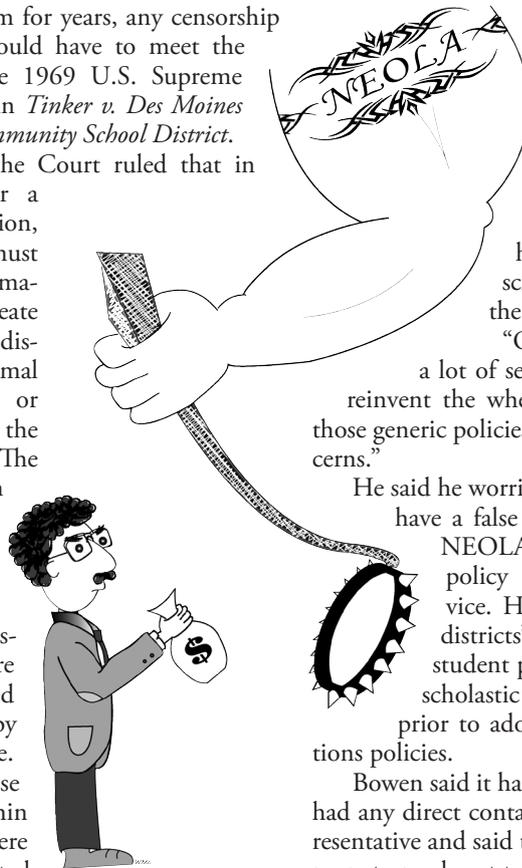
Sandy Krueger, NEOLA's chief operating officer, said she is interested in listening to the suggestions and concerns of scholastic press advocates.

"We're very anxious to hear any comments," Krueger said.

The current student publications policy template was drafted before the company came under new ownership in 1999, Krueger said. She said she was not sure when the last major review of the policy occurred, but said if clients have concerns, NEOLA gives them options.

"We try to write materials that are appropriate, where [administrators] can find choices that work for them," Krueger said. "If clients have special circumstances and want more information we tell them to contact their own attorneys."

She added that districts are free to write their own policies or add to the template student press friendly options, but said of-



## Is your district's policy a NEOLA?

Here are a few questions you can ask yourself to see if your district bought its student publications policy from NEOLA:

### Do you live in Florida, Indiana, Illinois, Ohio, Michigan, Wisconsin or West Virginia?

NEOLA sells policies in these seven states.

### Does the wording cited in this story sound familiar?

NEOLA's use of templates leads to a high number of similarities among participating districts' policies.

### Is your district's student publications policy numbered 5722?

To make it easier for NEOLA associates to work with policies in many districts, the company employs the same numbering system in each district. NEOLA's publications policy template is numbered 5722.

If you answered "yes" to all three of these questions, your district probably purchased its policy from NEOLA. Regardless, if you feel your district's student publications policy is too restrictive or violates your First Amendment rights, visit the Student Press Law Center online at [www.splc.org](http://www.splc.org) for more information on how to seek help.

tentimes districts have few complaints.

“Even if the district is coming in reluctant, usually by the time they’ve got one section done they just say ‘We’re going to use your stuff, it’s much better than what we have,’” Krueger said. “Ours have been legally vetted, there’s something to say for having the material reviewed.”

Krueger denied allegations that NEOLA has any hidden motives in the way it drafts its policy options.

“We never create anything that’s intentionally vague or with the idea that someone will interpret it somewhere that isn’t within the bounds of the law,” Krueger said.

She said NEOLA has no particular philosophy of administrative control in student press matters, but admits they are aware of their client base.

“Our clients are school districts and school boards,” she said. “That’s where we’re going to start out. What do the schools have to do? What do they want to do?”

Krueger said NEOLA does not take sides

on issues such as whether a district should allow its student publications protection as limited public forums and said they do not claim to specialize in student press issues. After all, she said, student publications policies are one of many the group sells.

“Obviously this policy is important, but it is one of 300 or 350 we’re dealing with on a daily basis,” Krueger said. “That’s one small piece of what we do every day. Not that we don’t care, we certainly do.”

### ‘One small piece’

While to school administrators and NEOLA associates the student publications policy is just one in hundreds, to student journalists it can have a direct effect on everything from who advises them to what they can and cannot publish.

The updated NEOLA policy and guidelines at Lake Shore leave Andrew Mardis, who said he will likely be both the editor and business manager of *The Shoreline* in

the fall, more concerned about who will advise his paper next year than his other editorial responsibilities.

Mardis said he is concerned administrators may hire what he calls a “tool” – someone who the district will use to strictly enforce the new district policies.

“If we get a tool next year, I don’t know if I’m going to be able to handle the class,” Mardis said. “I don’t know if it’s worth putting myself through that stress.”

That stress, Mardis said, includes the possibility of a much more complex relationship with the new adviser, who will have the power to veto stories without student input. Mardis said even if the NEOLA policy does not lead to direct censorship, he fears it will lead students to self-censor.

“Students aren’t going to want to cover controversial topics that need to be talked about,” Mardis said. “They’re afraid they’re going to do all this work only for the adviser to say ‘we can’t publish that.’ Then they just did all that work for nothing.” ■

## HIGH SCHOOL CENSORSHIP IN BRIEF

### IN THE COURTS

## Administrators seek dismissal of lawsuit over basketball players’ petition

**OREGON** — School administrators asked a federal district court in June to dismiss a First Amendment lawsuit stemming from the suspension of eight members of the Clatskanie High School basketball team in 2001.

Administrators filed a supplemental motion for summary judgment with the court to dismiss the remaining claims against them after a 9th U.S. Circuit Court of Appeals panel ruled that the players’ boycott of an away game was not constitutionally protected speech.

The team members were suspended after boycotting the game in February 2001. Earlier that day they had submitted a petition to the school’s principal complaining that their coach, Jeff Baughman, was verbally abusive and asking for

his resignation.

After their suspension, the students filed a lawsuit claiming they had been punished for complaining about Baughman, a violation of their First Amendment rights.

The district court ruled in favor of the administration. However, on appeal, the 9th Circuit panel ruled in early May that student members of the team had participated in constitutionally protected speech when they signed the petition.

The panel also ruled that the players’ boycott was not protected because it “substantially disrupted and materially interfered with a school activity,” remanding the case back to the district court.

The administrators claim the decision to suspend the players resulted solely from their refusal to board the bus and play in the away game, and thus they did not violate the students’ First Amendment rights.

If the motion is denied, the case is expected to go to trial in January 2007. ■

**Case:** *Pinard v. Clatskanie Sch. Dist.*, 446 F.3d 964 (9th Cir. 2006)

## Appeals court rejects request to rehear anti-gay T-shirt case

**CALIFORNIA** — The 9th U.S. Circuit Court of Appeals on July 31 denied an appeal for the full court to hear the case of a student who was prohibited from wearing a T-shirt with anti-gay statements.

The appeal followed a 2-1 9th Circuit panel decision in April in favor of the Poway Unified School District in Poway.

In April, the panel found administrators at Poway High School did not violate Tyler Harper’s First Amendment rights when they banned him from wearing a T-shirt that read “Be ashamed, our school embraced what God has condemned,” on the front, and “Homosexuality is shameful,” on the back.

Harper was a sophomore in April 2004 when he wore the controversial T-shirt in response to a Gay-Straight Alliance club’s “Day of Silence” at his school. He was asked to remain in the office for the remainder of the school day, but was

not suspended.

He responded by filing a lawsuit against school administrators, claiming they had violated his First Amendment rights to freedom of speech and religion. A federal district court initially upheld Harper's First Amendment claims, but the 9th Circuit panel overturned the lower court's decision.

Harper's final option is to ask the U.S. Supreme Court to hear the case; that petition must be filed within 90 days of the 9th Circuit decision. ■

**Case:** *Harper v. Poway Unified School Dist.*, No. 04-57037 (9th Cir. Apr. 20, 2006), *petition for reh'g en banc denied*, 2006 WL 2103580 (9th Cir. July 31, 2006).

## District to appeal 'Bong Hits 4 Jesus' case to U.S. Supreme Court

**ALASKA** — Equipped with a new, high-profile lawyer, the Juneau School District is expected to file a request with the U.S. Supreme Court, asking it to uphold its suspension of a student who held a banner reading "Bong Hits 4 Jesus" at a parade near his high school.

Kenneth Starr, the former U.S. solicitor general and independent counsel who investigated President Bill Clinton's scandal involving Monica Lewinsky, has agreed to represent the district in its Supreme Court appeal, which it has until Aug. 28 to file.

Starr, who is dean at Pepperdine Law School in Malibu, Calif., has agreed to take the case for free, Phyllis Carlson, president of the school board, told *The Associated Press*.

The appeal follows a ruling by a three-judge panel of the 9th U.S. Circuit Court of Appeals, which ruled unanimously that the school district had violated Joseph Fredrick's First Amendment rights when it suspended him for displaying the controversial banner while off-campus.

Frederick, a student at Juneau-Douglas High School, displayed the banner in an effort to attract TV cameras as the Winter Olympic torch relay was passing

the school in 2002. Principal Deborah Morse grabbed the banner from Frederick and suspended him for 10 days.

Frederick has said the phrase "Bong Hits 4 Jesus" was meaningless and funny. But Morse has argued the term "bong hits" promoted marijuana use, which contradicted the school's drug-free mission.

The district petitioned unsuccessfully in April for a rehearing before a full panel of 9th Circuit judges, which led to the impending Supreme Court appeal. ■

**Case:** *Frederick v. Morse*, 439 F.3d 1114 (9th Cir. 2006)

## Student suspended for horror story weighs Supreme Court appeal

**NEW YORK** — The Finkle family, whose son Dylan was suspended from his middle school in 2003 for writing a horror story and reading it aloud in class, are considering asking the U.S. Supreme Court to consider their case after the 2nd U.S. Circuit Court of Appeals denied their request for a rehearing.

Finkle's attorney, Christopher Murray, filed a petition for a rehearing by the full court after a three-judge 2nd Circuit panel affirmed a lower court's ruling that officials at Thompson Middle School in Syosset did not violate Finkle's First Amendment rights by suspending him.

According to court documents, Finkle was 11 when he wrote the multi-chapter story titled "Costume Party," modeled after the horror flick "Halloween," in which he named characters after some of his friends and classmates.

The story, which was part of a journal that one of Finkle's teachers had assigned as a class project, chronicled the killing spree of a character named "Dylan" who was out for revenge after being bullied by kids at school.

Disturbed by the story, a teacher brought it to the attention of the school's principal and Finkle was suspended for five days. After Finkle's suspension was upheld by the Syosset Central School District, his father Andrew sued the dis-

trict on his son's behalf.

In September 2005, a federal district court in New York ruled in favor of the school district, finding that Dylan's story was not constitutionally protected speech.

Finkle appealed the district court's ruling, but the court of appeals — in a brief decision that it stated "may not be cited as precedential authority to this or any other court" — also sided with the school district. ■

**Case:** *D.F. v. Board of Educ. of Syosset Central School*, 2006 WL 1236145 (2nd Cir. May 9, 2006)

## Student sues district for cutting mic during valedictorian graduation speech

**NEVADA** — A valedictorian is suing school officials for cutting her microphone when they say she began proselytizing during her graduation speech.

The lawsuit, filed July 13 on behalf of Brittany McComb by attorneys for The Rutherford Institute, a conservative non-profit organization dedicated to the defense of religious freedom and civil liberties, charges that school officials' censorship of her speech violated McComb's First Amendment rights.

McComb, one of three valedictorians at Foothill High School in Henderson, was delivering a speech she titled "Filling that Void" at the school's graduation ceremony June 15 when school officials said she deviated from the pre-approved draft.

The speech, as submitted to the district, included numerous references to God and directly quoted scripture on two occasions.

Administrators, concerned that her speech might violate the Establishment Clause of the First Amendment, made her remove specific references to Christianity. McComb agreed to do so, only to reconsider at the ceremony, which led the administrators to unplug her microphone.

John Whitehead, president of The Rutherford Institute, said he hopes this case clarifies and expands the First

Amendment rights of students in school and during school activities.

“I think it’s an important case because there’s so much confusion around the country about what can be said by students,” Whitehead said. “This is a good case to get the courts to start defining what students can do instead of what they can’t.” ■

## Protest organizer sues school after being suspended for giving fliers

**CALIFORNIA** — A student in Riverside filed a lawsuit in early June against his high school after school officials suspended him for advertising an off-campus protest and later stopped him from wearing an anti-immigration T-shirt.

Joshua Denhalter was first suspended from Jurupa Valley High School in March when he attempted to organize a counter-demonstration after several students from the Mexican-American organization MEChA held a walkout and an on-campus protest against federal immigration legislation.

According to the lawsuit, Denhalter was handing out fliers before school for a response assembly that would have taken place during the school’s open lunch period on a sidewalk off campus. Denhalter refused to comply after a school official asked him to stop handing out fliers, and he was suspended for three days.

School officials also prohibited Denhalter on May 25 from wearing a T-shirt produced by “Save Our State,” a group against illegal immigration in California.

Denhalter said he filed the lawsuit because he wanted to clear his record and bring attention to his school’s actions.

“I think the school district needs to change and realize that there are consequences for what they do,” Denhalter said. “And I think they need to be respectful of everybody’s rights, not just MEChA’s rights.”

Richard Ackerman, Denhalter’s attorney, said the school’s actions have created one of the worst cases he’s seen involving a violation of students’ expression rights.

“It shows an absolute lack of commitment to free speech rights,” Ackerman said. ■

## COVERING SEX

### School censors editorial that mentions sexually explicit ‘Top 25 List’

**PENNSYLVANIA** — Administrators at a Pittsburgh high school stopped its student newspaper from publishing an editorial in early June about the local media coverage surrounding a sexually explicit “Top 25 List” that was circulated among students.

School officials banned the editorial from running in Mt. Lebanon High School’s *The Devil’s Advocate* because it mentioned the list, which contained sexually graphic descriptions of female students, grading them based on their breasts, buttocks and faces.

No one on the staff of the student newspaper was involved in creating the original list and the editorial did not include any of the descriptions or student images. *Advocate* Editor in Chief Jenny Schmidt said the purpose of the editorial was not to further sensationalize the issue.

“We as a newspaper as a whole felt we weren’t drawing attention to the ‘Top 25 List’ as much as we were defending them [the students listed] and saying this shouldn’t have happened to them,” Schmidt said.

*Advocate* staff members said they are not interested in taking legal action against the school. However, they did print a new editorial titled “Editorial censored by administration,” which school officials allowed the paper to publish. ■

### Students face prior restraint after controversial ‘sex issue’

**CALIFORNIA** — High school students in Whittier are considering their options after their principal refused to let them publish the June issue of their student

newspaper, when they say was punishment for their May issue, which focused on sex.

The May issue of *The Freelancer*, the student newspaper at La Serna High School, included a center spread devoted to discussing student opinions on sex. The spread included a sexually suggestive photo of two professional models in their underwear, an interview with a pregnant student and a survey that, among other things, found that 41 percent of 15- and 16-year-olds reported being sexually active.

The package also included a word search that included sex-related terms on a separate page.

The “sex issue,” as it has come to be known, elicited complaints from faculty and parents alike who co-editor in chief Claire Webster said were particularly offended by the word search and photograph.

Webster said in the days following the May issue, Principal Martin Plourde spoke to *The Freelancer* staff, saying because of the issue he would not allow them to publish for the rest of the year. She said he reconsidered when they told him the planned topic of the June issue was “unsung heroes.”

However, when the paper was ready to print, Plourde would not let it go to press because it “went beyond the scope” of the unsung heroes theme.

Webster said the students have not yet decided if they want to pursue legal action, but said they have not ruled it out. ■

### High school principal closes open-forum publication over sex survey

**VIRGINIA** — Students at Midlothian High School are seeking legal counsel after the school’s principal challenged the student newspaper’s open-forum status for publishing a sex survey.

Student staff members of the *Trojan Times* expect to challenge the principal’s attempts to change their publications policy.

The *Trojan Times* has not published

since February, when it reported the findings of an anonymous survey, conducted by the paper's staff, which asked students at each grade level to define some relationship-related terms, as well as to give their opinions on topics such as casual sex and cheating.

Tiffany Gibson, a graduating senior and editor in chief of the paper, said they have not published since Principal Christine Wilson told her and other staff members they had to change their editorial policy prior to publishing again.

"We had our early-April issue ready to go and then she said we have to change the policy before we print it," Gibson said. "We told her we didn't want to and that's when it all started."

Wilson deferred repeated requests for comment to Michael Packer, an attorney with Chesterfield County Public Schools. Packer said the *Trojan Times* was never an open forum to begin with, and therefore Wilson's decision is not changing policy, but rather updating the policy printed in the newspaper to reflect the actual policy in practice.

Gibson and adviser Wendy Spanier each dispute Packer's interpretation of the policy in practice.

Spanier described the editorial policy, which she said has remained the same since she took the job in 1999, as "autonomous," saying the few times she approached Wilson prior to a paper's publication were not a matter of policy but, "out of professional deference and when I felt she would be personally affected." ■

## MISCELLANEOUS BRIEFS

### Yearbook updates editorial policy after photos of students breaking law stir controversy

INDIANA — The yearbook adviser at North Central High School in Indianapolis is working with student staff members to update their editorial policy following public backlash over a spread titled "breaking the law" in its most recent edition.

The yearbook, which was released in May, featured a story about a student whose car was stolen along with photos of students lighting a marijuana pipe and drinking alcohol.

Students in the photos were unidentifiable and gave permission for the photos to run, said Trevor Shirley, editor in chief of the yearbook.

Following the yearbook's publication of the photos, parents and school administrators alike expressed disappointment. Superintendent James Mervilde said the students had violated at least three school board policies and spoke with yearbook adviser Tom Gayda about how better to ensure students abide by district policies.

Gayda said the yearbook is updating their policy by incorporating some language from the Journalism Education Association's model policy.

Shirley said he thinks the school's policies concerning student publications are "a gray area."

"It's really gotten pretty out of hand pretty quickly, and in my estimation, we didn't do anything wrong," Shirley said. "If we had put [the photos] on a page called 'weekend fun' it would be a totally different issue." ■

### Photo of gang member leads principal to confiscate student newspaper

ARKANSAS — A Little Rock high school principal pulled an issue of the school's student newspaper in May over a feature concerning drugs and gang activity.

*The Galaxy*, the student newspaper at Wilber D. Mills University Studies High School, was confiscated May 26 when Principal Bill Barnes objected to a cover photo of a gang member that accompanied stories investigating potential gang and drug problems at the school.

Barnes told the *Arkansas Democrat-Gazette* he pulled the papers because he objected to the dominant front-page photograph of an apparent gang member with a red bandana wrapped around his face, leaving only his eyes visible.

Tiffany Summitt, who will be co-editor of the student newspaper in the fall,



said she and her staff are not going to let the incident, or the fact that the school is facing turnover in administrators, change what they publish.

"We're not going to make our paper fluff because the principal got touchy with one of our subjects," Summitt said. "We'll stay on the topics we have been doing. Now that we're aware of our rights we're not going to have them taken away." ■

### 'Choking game' article allowed to run

PENNSYLVANIA — An article warning teenagers of the dangers of playing the "choking game," ran in May in the *C-M Times*, the student newspaper at Canon-McMillan High School in Canon, after the school's principal withheld it for fear of copycats.

Danielle Hibler, a student at Canon-McMillan, wrote the article titled, "A dangerous game exposed," which detailed the death of a 15-year-old girl from Kansas who died while cutting off her air supply as a means of getting high.

Principal Linda Nichols had originally not allowed the story to be run as planned in the *Times'* February edition because she said she feared other students would, upon reading the story, try the game themselves.

The story was finally allowed to run in the student newspaper's May issue, after the *Pittsburgh Post-Gazette* ran it in its March 12 issue and news of the censorship gained national attention. ■

# Dropping names

## Are journalistic lessons lost when schools prohibit students from publishing last names on newspaper Web sites?

By WHITNEY MCFERRON

The online staff directory for *The Advocate*, the student-run newspaper at Jonathan Law High School in Milford, Conn., is a virtual alphabet soup of indistinguishable names.

Led last year by co-editors in chief Peter W. and Kelly S., the staff boasted nearly 80 members, none of whom are identified by last name on the newspaper's Web site. The staff had two other student editors last year named Sara C. and Sarah C., and two reporters named Sean S., as well as three Matts – A., D. and G. In addition to cutting out online student bylines, the paper does not print the last names or photographs of any of its student sources on the Internet.

"It does get confusing," adviser Chris Kulenych said. "Because if there are two Joe S.'s in the school, they may both be quoted in one story and actually be different people. And it's one of our concerns too, because we have writers on staff with the same first name and last initial."

Although it may at times be difficult to sort out, Kulenych said that Jonathan Law High School's policy against publishing students' last names and pictures online is designed to protect students from Internet predators. Administrators adopted the policy for the newspaper after it launched its site in 2004. Kulenych

said some of his journalism students were at first confused and disappointed, but they have since accepted the policy.

"I think in a way it is a small form of censorship, and the kids know that, but in the end, the safety of the students has to

*"It seems like waste of time. I mean, how can you realistically cover anything meaningful in your community if you can't publish names or photos of students?"*

**Paul Kandell**

adviser to *The Paly Voice and Verde*  
Palo Alto High School, Palo Alto, Calif.

supercede having last names online," Kulenych said.

Kelly Sielert, one of *The Advocate's* editors in chief last year who was known online simply as Kelly S., said the students on her newspaper staff did not really mind not having their full names on their Web stories because both first and last names still ran in the printed newspaper.

"Because we used the Web

site only as a supplement to our actual publication, which had always been in print and had always used both first and last names, we felt that we were each getting the recognition we deserved through the printed paper and did not feel that having our last names on the Web site was a major issue," Sielert said in an e-mail.

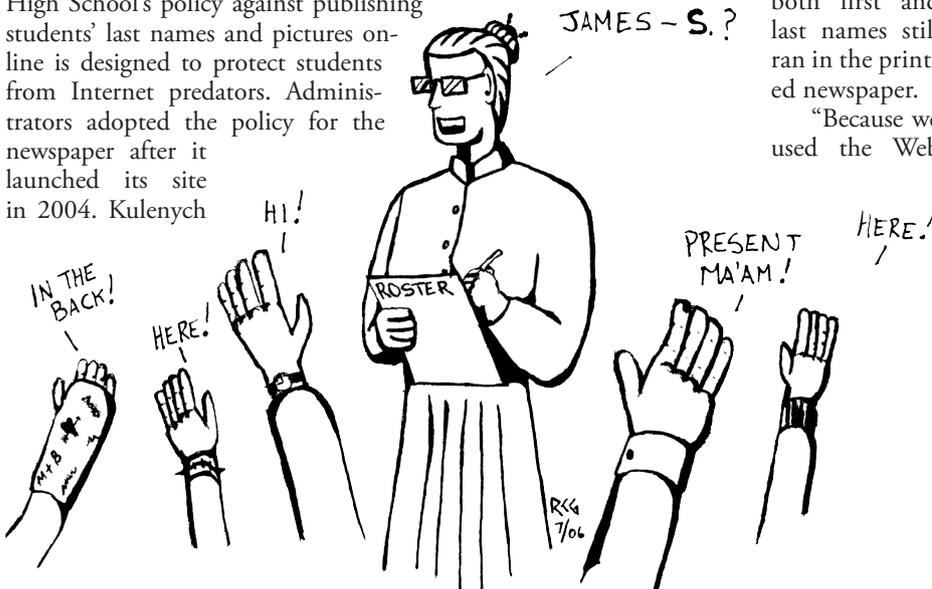
But some advisers and other journalism experts have criticized the practice at Jonathan Law High School and other schools like it. Some say that printing students' last names on a student newspaper's Web site does not raise enough of a credible safety risk to warrant such school policies. Others argue that it is impossible to engage in meaningful journalism when every source and every author effectively becomes anonymous.

### Effective policy

Craig Branson, online director of the American Society of Newspaper Editors' High School Journalism Initiative, said Jonathan Law High School is one of what he estimated as about 15 percent of high schools nationwide that prohibit their student newspapers from publishing the last names of students in an online edition. And although there is no federal law keeping student newspapers from publishing full names of students on the Internet, Branson said that most schools across the country that create such policies do so because they believe it will increase students' safety.

But Branson said that in an age of increasingly popular social networking sites like MySpace.com, such policies – although well meaning – probably are not generally that effective.

"These students have MySpace accounts, they have Xanga[.com] accounts, they have LiveJournal[.com] accounts, they're on [America Online Instant Messenger] all the time," Branson said. "I think it's misguided because as much as these

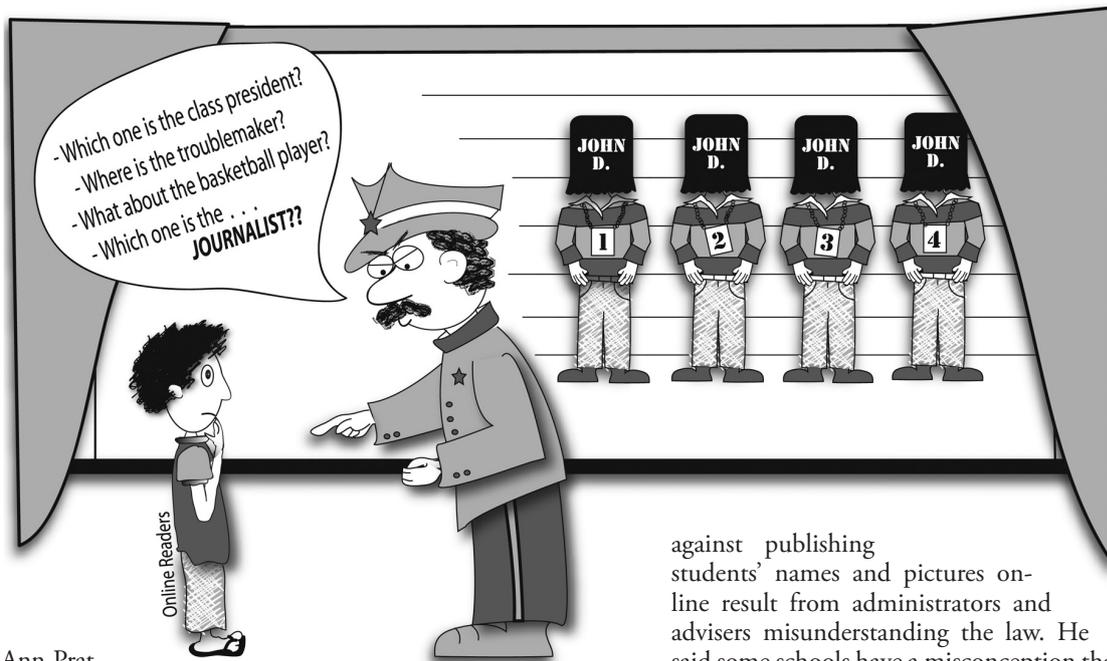


administrators or boards would like to think that they are protecting students, they aren't, because students are already out there."

Kulnych, Jonathan Law High School's student newspaper adviser, said his school's policy "in the end is probably not as effective as the district wants it to be" because students are online for so many reasons outside of school. But he said administrators there adopted the policy after an incident that happened at a local private girls high school, The Academy of Our Lady of Mercy, Luralton Hall.

Luralton Hall Principal Ann Pratson said that about six years ago, a man had attempted to contact a Luralton Hall student at school after he had read a profile story about her in the local newspaper.

Despite this incident, however, Luralton Hall still prints last names and occasionally pictures of students on its official school Web site. Pratson said school administrators have discussed taking such information off the



Online Readers

Web site, but they know that it would still be available elsewhere online, including from local media outlets that cover school news.

"It just seemed counterproductive to us, to have it in the local newspaper one way and then on our site another," she said.

Jonathan Law High School, like most schools with similar Internet policies, also still allows the student newspaper to publish last names and photos of students in its print edition. And although Jonathan Law's paper is not distributed off campus, Branson said many schools that have similar Internet policies still allow public libraries and others in their communities to subscribe to student publications.

Candace Perkins Bowen, a scholastic media program coordinator from Kent State University and a past president of the Journalism Education Association, said that "except for a few isolated incidents," school policies against publishing names online could create "far more trouble than they are worth." She said that when used responsibly, the Internet is not as dangerous as many school administrators might think.

"The Internet may have viewers half way around the world, but that doesn't make it more dangerous," she said in an e-mail. "They need to worry more about the stalker around the corner than the one in Bangladesh."

### Web sites and the law

In addition to a misguided concern for student safety, Branson said some school policies

against publishing students' names and pictures online result from administrators and advisers misunderstanding the law. He said some schools have a misconception that allowing students to put too much information on student publications' Web sites would violate the Children's Online Privacy Protection Act, a federal law that prohibits companies from collecting personal information directly from children under the age of 13.

But Ari Schwartz, deputy director of the Center for Democracy and Technology, said applying COPPA to high school newspaper Web sites would be an "extreme misinterpretation" of the law, primarily because most high school students are older than 13. The law, he said, applies principally to commercial industries focused on marketing to children.

"Most of the regulations are actually about the collection of the information and not as much about the distribution of information," Schwartz said. "The cases that they really want to go after with this law are companies that were collecting information from children under 13 and then trying to market to their families based on that information."

Schwartz said it is possible that COPPA could be applied to middle school newspaper Web sites, but only if such newspapers exhibited some sort of commercial interest, such as by selling advertisements.

Mike Hiestand, legal consultant for the Student Press Law Center, said another law that administrators might argue bars schools from publishing students' names online is the federal Family Educational Rights and Privacy Act. FERPA prohibits schools from releasing any information about students that could be considered

## Publishing options

*The American Society of Newspaper Editors High School Journalism Initiative provides free Web hosting to elementary, middle and high school newspapers.*

To sign up a student newspaper, a teacher or school administrator can fill out a registration form located on the organization's Web site, [www.highschooljournalism.org](http://www.highschooljournalism.org). The High School Journalism Initiative requires a one-time registration fee of \$50 and requests that all Web sites be updated at least once a month during the school year. Stories posted on Web sites hosted by the High School Journalism Initiative may be published in the organization's online National Edition, which showcases the best student work each week.

For more information, contact Diana Mitsu Klos at 703-453-1125 or [dmk@asne.org](mailto:dmk@asne.org).

part of an “educational record.”

However, FERPA contains an exception that allows schools to release certain “directory information” about students, which can include names, Hiestand said. In addition, FERPA only applies to school officials, so if students are making the editorial decisions for their newspaper rather than school administrators, FERPA does not apply.

“As long as students only are making these decisions, they have a First Amendment right to talk about their classmates in a newsworthy context, and any regulation that has a blank prohibition on that would be unconstitutional,” Hiestand said.

In New Jersey, school districts are prohibited from publishing on their official Web sites “any personally identifiable information about a student without receiving prior written consent from the student’s parent or guardian on a form developed by the Department of Education,” according to state statute. This information includes “student names, student photos, student addresses, student e-mail addresses, student phone numbers and locations and times of class trips.” But nothing in the law would prohibit students from publishing this information if their online newspaper were hosted on an independent Web site.

Other states have their own education privacy laws that contain language similar to FERPA.

## Lessons lost

Although school policies against publishing students’ last names online generally stem from administrators’ worries over safety, many journalism experts argue that such restrictions are a disservice to readers. Others say that without bylines, the lessons student journalists learn from having their names published with their stories could be lost.

Paul Kandell, adviser to *The Paly Voice* and *Verde*, two student publications at Palo Alto High School in Palo Alto, Calif., said that school policies against publishing students’ last names online do not make sense. *The Paly Voice*, which has won three National Scholastic Press Association Online Pace-maker awards and a Webby Award in 2005 for best student Web site, runs both student last names and pictures online.

“I don’t think we would have gone down the path of going online if we were subject to those restrictions,” Kandell said. “It seems like waste of time. I mean, how can you

## Advisers’ say

**“Generally, we don’t use students’ pictures, although we have from time to time. It’s not really that we’re not allowed to; it’s more a decision on our part. There are so many wackos out there who can just right click on a picture and copy-paste. We do it more for the safety of our students. If we do use a picture with students, then we obviously felt it was important, or the picture was such that it would be difficult to take the picture.”**

Elizabeth Cardenas, adviser to *The Viper Vibe*  
Felix Varela Senior High School, Miami, Fla.

**“Six or seven years ago my newspaper editors were selecting the best stories from each issue and putting them on our Web page on the school’s Web site. Our plan was to continue, with improvements, until we could put the entire paper on our page. However, that summer our school board ruled out the use of a student’s last name and/or photo on any district Web page unless the parents gave their permission to print the name or photo. The ruling meant we couldn’t publish any stories because we would have to omit photos, quotes and bylines. It also meant that we could not list the yearbook or newspaper staff names on our Web pages. I was quite frustrated because the students had been enthusiastic about publishing electronically.”**

Nancy Becker, former adviser to *MHS Today* and *The Talon*  
Milton High School, Milton, Wis.

**“When I initially discussed just linking a PDF of our newspaper to our school’s Web site, my department head was a bit skeptical because of the name issue. I also remember a conference with my school principal in which she expressed the same concern when I brought the idea up to her. Nothing very interesting came of it, though, just a ‘We’ll have to look into that’ kind of response. We ended up putting the PDF of our print newspaper on the school’s Web site anyway, with no more discussion of it.”**

Sean Marcus, adviser to *Chieftain* and *Smoke Signals*  
Chamberlain High School, Tampa, Fla.

**“My high school had a Web site for the newspaper until about three or four years ago when the district said we could not publish online if we were going to use pictures and stories with students’ names in them. So we just folded. We did post PDFs for a while, but the district said that was not allowed as well.”**

Diane Honda, adviser to *The Charger*  
Bullard High School, Fresno, Calif.

realistically cover anything meaningful in your community if you can’t publish names or photos of students? These are not restrictions placed on the professional press.”

Kandell said because he thinks less people would visit Web sites that do not publish last names or photos, the student journalists also may not put as much effort into their work.

“What makes a student press work is that it provides an audience to students for their work,” Kandell said. “If nobody is going to read what they do, in part because they can’t tell who’s who, or nobody can identify anyone, why would [the students] care?”

Branson, of the ASNE High School

Journalism Initiative, agrees.

“Personally, I think that there’s a degree of pride that goes into your work when your name is on it, and there’s certainly a lot of positive reinforcement that you can get from seeing your name in print or online on a story,” he said. “But further than that, people take it a lot more seriously – the responsibility they have as journalists – when they know that their name is on it. I mean if Tiffany Brown’s name is on this story online and it can be Googled a year from now, and it has this glaring error on there, Tiffany Brown is really going to be watching herself in the future. But Tiffany B.? Who knows?” ■

# Censoring MySpeech

## Is the First Amendment lost in the MySpace debate?

BY WHITNEY McFERRON

**W**ith the explosion of media reports surrounding purported sexual predators online, lawmakers are considering placing restrictions on minors' access to social networking Web sites like MySpace.com.

But some experts worry that the free speech benefits of online social networking are getting lost in the debate over Internet safety.

### The reality of danger

MySpace, which in July became the most-visited Web site in the United States, is the virtual home to more than 90 million registered users worldwide. Like any population, it has its share of problems – MySpace is facing a \$30 million lawsuit from one of its members, a 14-year-old girl who claims that she was sexually assaulted by a 19-year-old man she met on the site.

But despite the heavy media play surrounding this incident and a handful of others, the number of minors who are targeted online by sexual predators is a point of some dispute.

The National Center for Missing and Exploited Children reported that in 2000, one in five Internet users between the ages of 10 and 17 had been “sexually solicited” online. However, a study specific to MySpace completed in June by a professor at California State University at Dominguez Hills found that only about 7 to 9 percent of MySpace users have received a sexual proposition on the site. The

“The effect is that it leaves the kids that only have access to these sites through public spaces further shut out of the defining experiences of their generation.”

**Henry Jenkins**

director of Comparative Media Studies  
Massachusetts Institute of Technology

study also reported that “nearly all of those simply blocked the requester from contacting them through their MySpace page.”

Henry Jenkins, director of Comparative Media Studies at the Massachusetts Institute of Technology, said he thinks national media coverage of MySpace and other similar sites has overplayed a few instances of child predation online, while other benefits of the sites have been downplayed. This has left some parents and school administrators with a bad taste for social networking sites, he said.

“It’s very easy to turn adults against those technologies that young people are most associat-

ed with, because all it takes is one incident, or one scary thing – whether it’s a school shooting in the case of video games, or child predation in the case of MySpace – and then you suddenly have this thing that everyone grabs hold of and is absolutely convinced defines the phenomenon as a whole,” Jenkins said.

Some of this fear, he said, also can be chalked up to the generation gap.

“I think if you look at the relationship of young people to technology, what you see happening over and over again is that young people are the early adopters of media technology,” Jenkins said. “They’re looking for ways to communicate with their peers, ways to communicate outside of adult control and supervision, and adults are often spooked by this because this wasn’t part of the world of their own childhoods.”

### Deleting online predators

While it is impossible to know exactly how many cases of child predation can be linked to social networking Web sites, one U.S. Congressman has introduced legislation that would bar minors from accessing MySpace and other similar sites at school and in public libraries.

The Deleting Online Predators Act, introduced by Rep. Michael Fitzpatrick, R-Penn., passed in the House in July and was awaiting discussion in the Senate’s Commerce, Science and Transportation Committee as of early August. The bill would amend the Children’s Internet Protection Act – which already requires schools and public libraries to block sexual content on the Internet from minors – by including social networking Web sites and chat rooms specifically in the language of the law.



Fitzpatrick's press secretary, Jeff Urbanchuk, cited media reports of child predation as one reason for the congressman's interest in sponsoring the bill. Urbanchuk said DOPA is an attempt to keep laws up to date with emerging technology.

"When I was growing up, [predators] used to go into parks, and you were always told not to talk to strangers," he said. "Now, they've taken advantage of a new technology that would to an extent preserve their anonymity and allow them to pose as a younger person, and they're taking advantage of that to really turn it into their own virtual hunting ground."

Urbanchuk said DOPA would still allow students to access social networking Web sites, with parental consent, for educational purposes.

"The question that it comes down to is the government is funding access to the Internet, and the government has a responsibility to make sure that children are safe," he said.

But Jenkins, of the MIT Comparative Media Studies program, said DOPA could "politically disempower" students who want to use MySpace or other similar networking sites for political or social discussion, especially if these students do not have access to a computer at home.

"The effect is that it leaves the kids that only have access to these sites through public spaces further shut out of the defining experiences of their generation," he said.

### Social activism

Kelli Herrick, a 17-year-old recent graduate of Novi High School in Novi, Mich., has accounts on MySpace, Facebook.com and LiveJournal.com, and she also uses the youth civic action Web site Mobilize.org as an outlet for political opinions. She said she found out about DOPA on Facebook,



and she has written letters to her congressmen and the president to protest the bill. She has also encouraged her friends online to do the same.

Herrick said she thinks the provisions DOPA calls for would constitute censorship.

"Whether or not it's vocal, or you're writing something online or writing something in an article, it's all the same, so if you're choosing to share information online, you shouldn't be limited," she said. "That's like saying you can express your opinion, as long as you're not in a government building. It's like saying you can say things against the government as long as you're not near the government."

David Smith, executive director and founder of Mobilizing America's Youth, the

Washington, D.C., based group that operates Mobilize.org, said that many students just like Herrick are finding that social networking sites can be "a great tool for social activism."

He said this was demonstrated particularly with the rallies that took place in the spring against congressional anti-illegal immigration legislation. In March, thousands of high school students across the country, including an estimated 40,000 in Southern California, walked out of school in protests, many of which were organized in part on MySpace.

"There was so much conversation, at least within the Beltway, saying 'Where did this come from? This issue, we didn't realize it was so hot out there, so how could you mobilize tens of thousands of young people?'" Smith said. "It seemed like it came out of nowhere, when if these people were actually on these various sites and had been able to be privy to these different conversations, they would have realized that these conversations had been happening for a long time, and because of the way social networking sites are designed, it's easy to activate people and get them

to do stuff offline as well."

And although Mobilizing America's Youth was not directly involved with the immigration protests, Smith said the organization uses MySpace and several other social networking sites to inform students about political issues and motivate them to get involved in the group's campaigns. One of these causes is the Save Our Social Networks campaign against DOPA.

"There are very few members of Congress that have a MySpace account, I don't think any of them have Facebook accounts," Smith said. "So they have no personal connection to these networks that millions upon millions use. They have no concept of how these sites are used positively." ■

## Gay-rights advocates sue after student expelled for profile

**KENTUCKY** — Gay-rights advocates in have filed a lawsuit challenging state funding to private universities after a student at the University of the Cumberlands was expelled in April for saying he is gay on his MySpace.com profile.

Jason Johnson was expelled and received failing grades in all his classes from the private University of the Cumberlands in Williamsburg, Ky., after administrators found references to his sexual orientation on his profile on MySpace.com, a social networking Web site. The Southern Baptist-affiliated school has a policy that prohibits homosexuality.

Don Waggener, the lawyer who represented Johnson, said Johnson reached a settlement with the school in which he was able to finish the semester and receive his earned grades from the university. Waggener said Johnson will transfer to Eastern Kentucky University in the fall.

The Kentucky Fairness Alliance, a gay and lesbian advocacy group, filed a lawsuit in late April to challenge the \$11 million in state funding the school is slated to receive to build a new pharmacy school. The lawsuit names as a defendant Gov. Ernie Fletcher, who refused to use a line-item veto to block the University of the Cumberlands' funding.

Christina Gilgor, executive director of the Kentucky Fairness Alliance, said the university and several conservative legislators have joined as defendants in the case, while the Jefferson County Teachers Association and two Kentucky ministers have joined as plaintiffs. ■

## University restricts athletes' usage of Facebook Web site

**OHIO** — Kent State University has reversed an order that would have required all student athletes at the school to delete their Facebook.com profiles by Aug. 1.

University Athletics Director Laing Kennedy said safety concerns prompted him to tell student athletes in May that they would no longer be allowed to ac-

cess Facebook, a social networking Web site. In a reversal of that decision, Kennedy said now student athletes will be permitted to use the site, but they must limit public access to their personal profiles.

The students also must allow their coaches and other academic counselors to access and monitor their personal profiles. Kennedy said this is to ensure that each student is complying with the university's "code of expected behavior."

Online actions that might be considered breaking the code, Kennedy said, could include posting "provocative" pictures or making excessive references to partying.

But some First Amendment advocates say image and safety concerns do not give school officials the right to control what students do online.

"What if they wanted to badmouth the university as a whole, or they wanted to say negative things about the team, or how the team is performing or how the coach is performing?" said Gary Daniels, litigation coordinator for the American Civil Liberties Union of Ohio. "Would they be less inclined to do this, knowing that the university is observing what they say and may take action against them?" ■

## Internet filters block educational sites, policy report finds

**NEW YORK** — Student journalists and others trying to do Internet research at school or in libraries are hitting brick walls across the country, according to a new report.

The New York University Brennan Center for Justice released in June its new study, *Internet Filters: A Public Policy Report*, which discusses the overall ineffectiveness of online filter programs designed to block materials deemed obscene or otherwise "harmful" to minors. The report is a compilation of nearly 100 studies completed by various researchers and interest groups.

Internet filter programs are required under the federal Children's Internet Protection Act, signed into law by President Bill Clinton in 2000, for all schools and libraries that receive federal funding. The U.S. Supreme Court upheld the law

in 2003 despite the American Library Association's attempt to have it declared unconstitutional.

But Marjorie Heins, co-author of the report, said such filters are often a hindrance to student journalists and others attempting to do electronic research. Heins said filter programs use a "mechanized" process based on keywords, so many educational Web sites with information about drugs, alcohol, sexually transmitted diseases and other topics are blocked without actual human review. Other sites are sometimes blocked because of biases among program writers and administrators, she said. ■

## Settlement reached between military academy and student's parents

**VIRGINIA** — Hargrave Military Academy reached a settlement in early July with the creators of a Web site critical of the Chatham prep school.

On July 7, both sides agreed to a settlement, ending a battle that began when Jerry and Melissa Guyles' son was expelled from the academy in March.

The parents created the Web site, *HargraveHasProblems.com*, when their son Stewart was expelled from the academy after being found guilty of stealing by the school's Honor Council. Hargrave and its president, Col. Wheeler M. Baker, then sued the couple for libel, tortious interference, conspiracy and unfair trade practices.

In May a federal district court issued a temporary restraining order requiring the couple to shut down the Web site. Shortly after, the American Civil Liberties Union of Virginia filed a friend-of-the-court brief on the Guyles' behalf arguing that requiring the site to be shut down was a violation of the their First Amendment rights.

A preliminary injunction hearing had been set for July 13, according to Anthony Monioudis, the attorney representing both Hargrave and Baker. Monioudis said the terms of the settlement are confidential.

The Web site has been removed. ■

# Adviser out of job despite national support, student protest

By SUZANNE BELL

**NEW YORK** — Alan Fischler has the support of a number of national organizations, but it looks like he is out of the job as adviser to the student newspaper at Le Moyne College.

College officials informed Fischler in November 2005 that his contract would not be renewed for the 2006-07 academic year because of “consistent publication of incorrect information, blatant grammatical errors and non-coverage of major campus events” in *The Dolphin*, the private college’s student newspaper, said Vice President for Student Development Shawn Ward.

Since November, the Foundation for Individual Rights in Education and the American Association of University Professors have come out in support of Fischler, asking the college to reinstate him. College Media Advisers has censured the college and *Dolphin* staff halted publication in protest of the administrators’ decision.

But Ward said reaction from groups like FIRE and CMA has not changed the administration’s decision to get rid of Fischler. Ward maintained that he would not be reinstated as adviser.

“Up until now we’ve kind of been hopeful that we could work things out, but we’re slowly coming to the realization that’s just not going to happen. The administration is not going to give us [Fischler] back. It’s a sad state of things,” *Dolphin* editor in chief Andrew Brenner said.

However, Brenner said he suspects there were alternative reasons behind the decision.

“The administration had maintained from the beginning of all this that this was about quality, but we knew behind all of this was a content-based decision,” Brenner said.

He said he thought the administration was unhappy about a weekly satire column that ran in the paper as well as an article about funding cuts to the physics department.

“Things went stale the second half of the semester, we kept meeting with the admin-

“If you have to fight a battle, make sure it’s fought in public.”

**Mark Witherspoon**  
past president  
College Media Advisers

istration and kept talking with them and nothing happened,” Brenner said. “I think they have become more stubborn and as a result, things have gotten so polarized to the extent that now we can’t even be in the same room.”

## Stop the presses

In what he described as a “bold move,”

Brenner and the staff of *The Dolphin* voted unanimously in November of last year to halt publication in protest. Brenner said the following week, the paper issued a letter detailing the paper’s grievances as well as a few protest issues of the paper that only included letters from community members, staff members and Fischler himself.

“We needed to somehow relay our message to the campus and make everyone understand why we were so outraged at the administration’s decision,” Brenner said. “We felt that simply writing it in the newspaper would not be as effective as halting publication.”

Ward said the college would like to see *The Dolphin* resume publication in the fall.

“The college respects the actions of the students, [however] the college ... the Student Senate and other student groups would like to see *The Dolphin* published,” Ward said.

Brenner said he does not regret the decision to stop publishing. However, former CMA President Mark Witherspoon said if students find themselves in a similar situation, he would not advise them to stop publication.

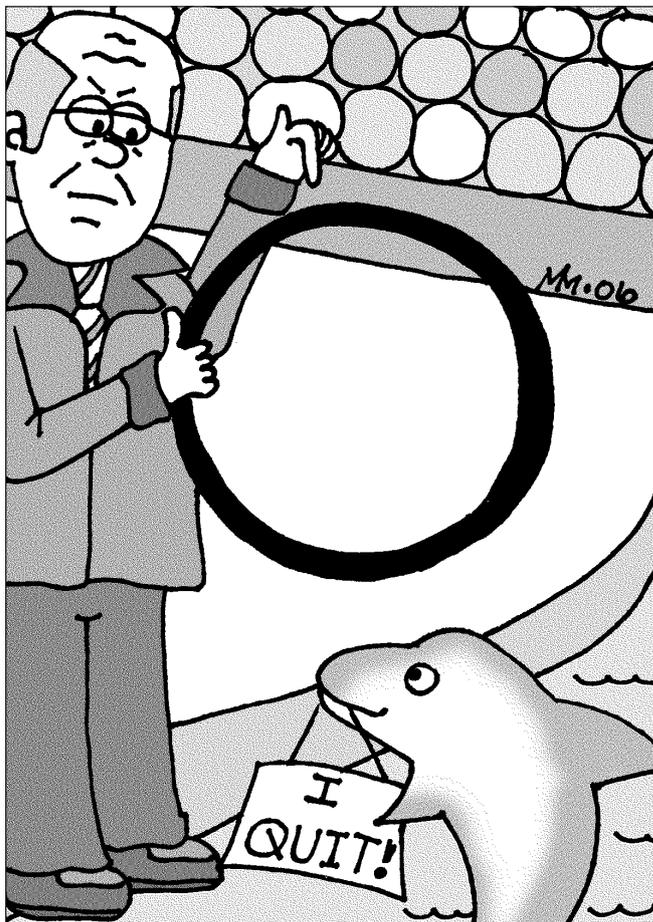
“If you have to fight a battle, make sure it’s fought in public,” Witherspoon said. “You publish stories about it. You need to, as a journalist, go find out what the real motives are and do that story fair, complete and accurate. Then editorialize on your opinion and make sure that other media in your town or city know about it.”

Witherspoon said that does not mean students cannot still find their own way to protest.

“You can still do protest demonstrations. Depending on the student body and the student government you can have all kinds of rallies for free speech and freedom of the press,” Witherspoon said.

## Looking toward the future

The battle is starting to take its toll on Brenner, who said he suspects standing up against the administration



may cost him his job as editor of the paper.

Administrators “will do things by all means necessary to accomplish whatever it is they want to do. I have no doubt in my mind that they’ll go after me and probably other people on my staff as well,” Brenner said.

Ward did not comment on the status of Brenner’s job, but did say, “the Student Senate is working with both *The Dolphin* editorial board and the college administration to bring closure to this issue and prepare for publication of the school paper.”

Brenner said it is frustrating “fighting an uphill battle” and that he was upset that faculty members had not offered to help.

“To just kind of see them stand by and do nothing when a group of students is attacked and when one of their colleagues has been attacked, is pretty appalling,” Brenner said. “It would have been nice to see some support from the faculty and unfortunately that didn’t happen.

“I don’t know what’s going to happen a month from now, let alone a year from now. Ideally [the next editor] would be a person with [my] mindset who would follow what we started, but I just don’t know. It’s tough to say.”

### Similar situations

Nearing 10 months of protest, Brenner was full of advice for students who may find themselves in similar situations.

“Follow what you know to be true. People are always going to offer their take on things and what they think you should do, but you yourself have to be sure of what you’re doing,” Brenner said. “It is not easy going up against an administration. You

## Adviser advice

*Mark Witherspoon, former president of College Media Advisers, gives advice for students fighting to keep an adviser:*

- ☐ Meet with the administration at the beginning of your term as editor. Describe to them what you hope to accomplish. Get a feel for how open they are to the First Amendment and if you sense any resistance, educate them on how important it is to have a free press on campus.
- ☐ If your adviser is let go, first meet with him or her and discuss the situation. Urge your adviser to contact the College Media Advisers. Get an understanding of why the administration chose to do what it did.
- ☐ Try to reach a negotiated settlement with the administration. Also contact the Student Press Law Center to find out what your legal rights are.
- ☐ Cover the situation in your newspaper fairly and accurately. However, do not be afraid to editorialize about it as well. This is a big story to your campus. Also, get in touch with local media and let them know what is going on.
- ☐ Meet with the student government and see if you can plan demonstrations and rallies on campus. Make sure the students on campus understand the situation.
- ☐ Continue to meet with the administration and make sure they know exactly what you want. One can hope they will understand that you are trying to do the best job you can and have been educated on the importance of a free press.
- ☐ If you are an adviser in need of help, call College Media Advisers and get in touch with Kathy Lawrence, director of Texas Student Publications at the University of Texas at Austin, who is in charge of the organization’s adviser advocacy program. Her phone number is 512-471-5084 and her e-mail is KathyL@mail.utexas.edu.

have to know they are going to do everything in their power to undermine you and your work, but don’t stoop to their level.”

Brenner added the most important thing a student journalist can do in a similar situation is to remember that they are,

in fact, a student.

“Remember that you have a life, it was easy for me to get completely wrapped up in everything and at times I forgot that I had other things that were also important; such as class and sleep,” Brenner said. ■

## ADVISERS IN BRIEF

### Federal district court issues preliminary injunction; orders college to reinstate newspaper adviser

**NEW JERSEY** — A federal district court issued a preliminary injunction in late June that will reinstate a student news-

paper adviser who was removed for what students claim was retaliation for stories they printed.

Three editors at the Ocean County College student newspaper, the *Viking News*, filed a lawsuit in May against college President Jon Larson and several other administrators after the school removed longtime newspaper adviser Karen Bosley. The lawsuit alleges that Bosley’s removal was the result of retaliation for several stories the newspaper wrote

critical of the school’s administration. The preliminary injunction is a decision that will allow Bosley to continue to advise the *Viking News* while the lawsuit is underway. Bosley has filed a similar, separate lawsuit.

In his opinion, Judge Stanley R. Chesler wrote that the school’s decision to remove Bosley had violated the students’ First Amendment rights.

See **Advisers briefs**, Page 31

# New Georgia law opens crime records at private colleges; Massachusetts legislation falls short

BY WHITNEY MCFERRON

**G**aining access to campus crime records has often been an arduous task for journalists at private colleges and universities, but some states are taking steps to make all campus police departments subject to open records laws.

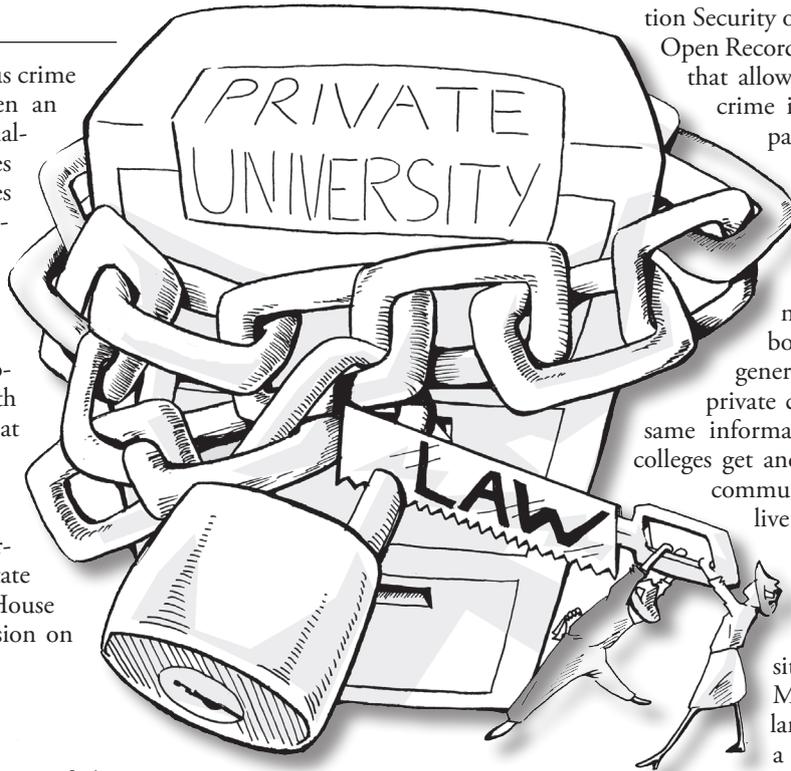
On the last day of its session this year, the Georgia Legislature passed a bill that will provide journalists in the state with all new access to crime records at private colleges and universities, student press advocates say. Similar legislation in Massachusetts also cleared a significant hurdle this year by passing in the state Senate, but the bill died in the House at the end of the legislative session on July 31.

## Georgia's new law

The Georgia legislation marks one of the first attempts in the nation to make opening detailed police records mandatory at private colleges and universities. All private and public institutions that receive any form of federal funding are already required under the Clery Act to release certain basic information about crimes that occur on campus. The new law in Georgia, however, will require campus police to release more detailed information, such as arrest records and incident reports, to journalists and other members of the public upon request.

Carolyn Carlson, a Georgia State University professor who is also the co-chair of the Society of Professional Journalists' campus crime subcommittee, said the Georgia law will give journalists in the state new access to information that had previously been readily available only at public institutions.

"Prior to this law, private campuses were the only place in our society where police departments were able to operate outside of the public view," Carlson said. "So this opens up what I think is the last bastion of secrecy in the police world to public scru-



tiny, and that's important."

Carlson said the law passed the Georgia General Assembly on March 30 as a last-minute rider amendment within another bill that primarily regulates street gang violence. Because it went into effect July 1, experts are still not exactly sure how some exemptions and protections within state open records laws will apply to the new law.

S. Daniel Carter, senior vice president of the campus crime watchdog organiza-

tion Security on Campus, said the Georgia Open Records Act includes an exemption that allows officers to withhold some crime information that is deemed part of an ongoing investigation.

"There are a number of potentially unanswered questions that may need to be revisited now that the law is on the books," Carter said. "But we're generally pleased that students at private colleges are going to get the same information that people at public colleges get and any other member of the community is entitled to where they live."

The Georgia legislation was introduced in 2005 as a result of a court battle involving Mercer University, a private institution in Macon, Ga. In 2003, an Atlanta law firm that represented a student who alleged she was the victim of a sexual assault on

campus sued the university because the campus police department refused to provide records of sexual assaults on campus. After a state circuit court originally decided that the records should be made public, a court of appeals ruled in February 2005 that Mercer did not have to release the crime reports. The state Supreme Court declined to hear the case.

Mercer University Police Chief Gary Collins directed requests for comment to the university's public relations department. Collins said he was aware of the bill, but did not know it had passed.

Judith Lunsford, associate vice president for university relations, also said she was unaware the bill had passed, but later, she released a statement from Mercer president William Underwood, which read:

"We think the legislation is appropriate and strikes a proper balance between the public's right to know and student privacy concerns. Mercer University has always complied fully with the law and will continue to do so."

## Georgia amendment

"Law enforcement records created, received, or maintained by campus police-men that relate to the investigation of criminal conduct and crimes as defined under Georgia law and which are not subject to protection from disclosure by any other Georgia law shall be made available within a reasonable time after request for public inspection and copying."

At Emory University, a private school in Atlanta, University Police Chief Craig Watson said his department did not do anything to prepare for the new law before it took effect.

“There’s really little for us to do to prepare,” Watson said. “It’s not a major change from the way we’ve operated for a long time. While we were not subject to the open records law, we have always worked on the philosophy of trying to abide by the spirit of the law.”

Rachel Zerkowitz, news editor of *The Emory Wheel*, said that in the past, the newspaper has not had problems with gaining access to crime information from the Emory police, but she sees how the new law could be beneficial at other schools.

“I think that anything that supports the free and open distribution of information is a good thing,” she said.

## Failure in Massachusetts

Legislation similar to the new Georgia law has been in the works in Massachusetts since 2004, but once again this year it failed to gain enough support to get through the state Legislature.

Like in Georgia, the proposed Massachusetts legislation was the result of a lawsuit against a private university in the state. In 2003, student journalists from *The Harvard Crimson* at Harvard University sued the school after campus police refused to provide them with crime records. The state Supreme Court ruled in January that Harvard police records were not subject to state open records laws.

Alice Wolf, the state representative that sponsored the bill in the House this year and whose district encompasses Harvard University, said she decided to introduce the bill after speaking with some concerned

## Virginia statute

*In addition to the Georgia law, Virginia also contains provisions in its state statutes that in some ways expand public access to crime records at private colleges.*

The Virginia codes require that state-authorized police departments at private colleges must open “criminal incident information,” which includes:

- the date, time and general location of the alleged crime
- a general description of injuries suffered or property damaged or stolen
- the name and address of any individual arrested as a result of felonies committed against persons or property or misdemeanors involving assault, battery or moral turpitude

But S. Daniel Carter, senior vice president of the campus crime watchdog organization Security on Campus, said the Virginia code stops short of explicitly opening all crime records. “The circumstances are similar, but I would still classify that Virginia law as more of an enhanced crime logs law than a specific expansion of the public records law to include police reports at private colleges and universities,” Carter said. “It tells them certain specific things they have to make public, certain classifications of information. It doesn’t specifically say they have to make their police reports public. And I don’t know how it’s working in the field – that may be the practical effect at some schools. But it’s not the same.”

Carter said the Virginia code is not as expansive as the law recently passed in Georgia or the proposed legislation in Massachusetts.

“The Georgia law, which explicitly requires the full police report information to be made public, is the first law of its kind in the country,” Carter said. “The Massachusetts one would be second, and of course it was the first one introduced of the two. But they both are really leading the nation on this.”

students from *The Harvard Crimson*.

“There is no reason why that – just because these are private colleges but they have people who have been approved as state police officers – they should not follow the same rules as everybody else,” she said.

Wolf said she likely will file the bill again in the House next year, although she has not made a final decision.

Andrew McInnes, who graduated in the spring from Boston University, is the government affairs specialist with Safe Cam-

pus Initiative, an organization made up of students at Massachusetts’ private colleges that has lobbied for the bill. He said he still hopes that the group’s efforts will make a difference in Massachusetts and elsewhere.

“We hope that people will begin to see what’s been going on in Massachusetts, and – whether it’s students or legislatures or even the universities themselves – they will take our lead in some sense and see that perhaps there is a problem that needs to be fixed and then make moves to fix it,” he said. ■

## ACCESS IN BRIEF

### Paper appeals after court denies access to crime records

**MICHIGAN** — A student newspaper has filed an appeal after a county circuit court in June denied the newspaper access

to a campus police incident report about an assault that took place in February.

*The State News* at Michigan State University filed the appeal in late July along with a motion to expedite proceedings. The newspaper is seeking access to records pertaining to an assault in one of the campus residence halls allegedly in-

volving a handgun. The lawsuit, which was originally filed in May, came after the university denied two separate Freedom of Information Act requests the paper had filed.

Herschel Fink, attorney for *The State News*, said he expects the case to be heard this fall.

“Hopefully things will move quickly, and hopefully the court of appeals will understand just how off base this [circuit court] judge was and how wrong the university is, because this has implications far beyond the student press,” Fink said. “This judge made a ruling saying that citizens aren’t entitled to know about crime in their communities.”

University spokesman Terry Denbow said the ruling was a demonstration of the court’s commitment to protecting student’s privacy rights. The circuit court judge ruled to deny the newspaper access to the report because she said those involved in the case were private individuals and the information recorded was of a personal nature.

*State News* Editor in Chief Nick Mrozowski said in June that crime records still should not be private.

“I don’t think that crime is a private thing,” Mrozowski said. “I think when there is crime on campus, I don’t see how that’s not a public event and something that the public has more than just an interest in, but a stake in, because it’s something that affects them.” ■

## FOI request reveals Pentagon surveillance of students

**CALIFORNIA** — A Freedom of Information Act request has led to a “trickle of documents” that are revealing acts of government surveillance on student anti-war protestors at two California universities.

The American Civil Liberties Union of Northern California first filed the FOI request in February after some students from the Universities of California at Berkeley and Santa Cruz learned from an NBC News report that their anti-war protests had landed them on a government terrorist watch list. Mark Schlosberg, police practices policy director with the ACLU of Northern California, said the organization so far has received about 150 pages of documents pertaining to the California students and the terrorist database.

Schlosberg said the ACLU of Northern California had requested expedited processing on the FOI request, which would have required the documents to

be delivered quickly, but the Department of Defense denied the request. However, a judge ruled May 25 to require expedited processing after the ACLU challenged the Department’s decision in federal district court.

“I think it strikes a chord of concern about the blurring between protest acts and terrorism,” Schlosberg said. “This was a terrorist database – the Department of Defense has referred to it as a terrorist database. A protest act, including acts of civil disobedience, is not terrorism. We are very concerned about the blurring of that distinction and the threat it imposes to people’s privacy and free speech rights.”

Schlosberg said the ACLU of Northern California may follow up with similar FOI requests to other government organizations, but for now, they are waiting for all the information to trickle in. ■

## New law allows foundations to keep some donor information private

**IOWA** — A new law in Iowa will allow those who donate to colleges and universities in the state to keep some of their financial information confidential.

The law, which was signed by Gov. Tom Vilsack on May 24, came after a state Supreme Court ruling the year before that ordered the Iowa State University Foundation to release donor records. Now, journalists and other members of the public will not be able to access records that disclose a donor’s “personal, financial, estate planning or gift planning matters,” deal with a donor’s “prospective” pledge or address the “appropriateness of the solicitation and dollar amount of the gift or pledge.”

Individual donors also may keep their names private upon request, but the law requires the names of publicly traded corporations that make donations to be released. The law also requires that foundations release the dollar amount of each donation, the date the donation was made and any conditions or restrictions placed on the donation by the donor.

Kathleen Richardson, executive director of the Iowa Freedom of Information Council, said the law went into effect July 1.

“I am optimistic that there will still be some accountability for the foundations, that the foundations will have to account for their donations and how those donations are used,” she said. “But as I said before, since this legislation was just enacted this summer, it remains to be seen in practice how this will work out.”

## State high court rules part of vice president’s letter can remain private

**MICHIGAN** — The Michigan Supreme Court ruled in July that a letter pertaining to the construction of a university president’s house can in part remain private.

*The Ann Arbor News* in Ann Arbor, Mich., filed the lawsuit against Eastern Michigan University after school officials refused to release a 2003 letter from a university vice president to one of the members of the school’s Board of Regents. The newspaper had filed a Freedom of Information Act request to obtain the letter, as well as other records, as part of an investigation into the construction cost of the EMU president’s university-owned house.

EMU officials had said that the construction project cost the school \$3.5 million, but a state auditor later found the actual cost to be closer to \$6 million, according to an article in *The Ann Arbor News*.

In its July 19 decision, the state Supreme Court ruled that EMU must release only parts of the letter deemed purely “factual” by a lower court judge. In March 2004, a circuit court judge had ruled that the letter contained more opinion than fact and that protecting the “frank communication” between officials “clearly outweighed the public interest in disclosure.” ■

**Case:** *Herald Co. v. Eastern Michigan Univ. Bd. of Regents*, No. 128263, 2006 WL 2022230 (Mich. July 19, 2006)

## School asks student journalists to sign confidentiality agreement

**OKLAHOMA** — In what a school official has called a “breakdown of communication,” student journalists were told July 20 that they would not receive their paychecks if they refused to sign a confidentiality agreement that prohibited the disclosure of certain university information.

Copies of the agreement were sent to the office of *The Daily O’Collegian*, the student newspaper at Oklahoma State University. Among other things, the document required that the students agree “not to access or view any information other than what is required to perform [their] specified responsibilities” and “not to make inquiries about any individual for any person or party who does not have proper authorization to access such information.”

“The way this agreement is worded, it’s so vague that the things they are specifically trying to protect are materials that student journalists wouldn’t go after, such as social security numbers, or it’s information that’s already protected under the state open meetings and open records acts, like employment records, budgets, things of that nature,” said Editor in Chief Lenzy Krehbiel, who told the staff not to sign the document. “The way it’s worded, it makes it almost impossible for one of our reporters to do his or her job.”

University Director of Communications Gary Shutt said the students were inadvertently given a copy of an old confidentiality agreement written earlier this year after a school laptop computer that contained some sensitive student information was stolen.

Shutt said a committee is drafting a new version of the agreement because some faculty voiced concerns that the original was too “punitive.” He said the committee has not yet decided if student journalists will be asked to sign it. ■

## State shield law includes student journalists, representative says

**CONNECTICUT** — Connecticut became the 32nd state to enact a reporters’ shield law in June, and the law’s author says it would include student journalists.

The bill, which will allow reporters to protect the identities of their confidential sources, was signed into law June 6. Rep. James Spallone, D-Essex, the author of the “Act Concerning Freedom of the Press,” said that although it does not mention student journalists specifically, the language of the law is broad enough to include them.

“I would say that students are covered because a student would be an ‘agent’ of a newspaper or magazine or other periodical ...,” he said. “It was certainly not my intention to exclude student journalists. I was a student journalist myself.” ■

## Some student journalists covered under federal shield bill

A federal bill that would give journalists the ability to protect the identities of confidential sources would also apply to paid student reporters, a senator’s aide says. But the many student journalists who do not get paid for their work might not be covered under the bill.

Sen. Richard Lugar, R-Ind., in May introduced the Free Flow of Information Act of 2006, a federal reporters’ shield law. The bill, which is awaiting a hearing in the Senate Judiciary Committee, would protect reporters in federal courts from subpoenas that would lead to the compelled disclosure of the identities of confidential sources. A similar bill is making its way through the House Judiciary Committee.

Mark Hayes, deputy press secretary for Lugar, said the primary intent of the Senate bill is to protect “professional” journalists from being subpoenaed.

“The definition says ‘salaried employees or independent contractors for newspapers,’ so ... then if [students] are contracted to write the stories, then according to this definition, they would be covered,” Hayes said.

Colleen Flanagan, deputy press secretary for one of the bill’s co-sponsors, Sen. Christopher Dodd, D-Conn., said Dodd had wanted to make the language more precise so that student journalists would be universally included. ■

## Student paper faces \$800,000 defamation lawsuit

**VIRGINIA** — A student newspaper is being sued for \$800,000 on allegations that the paper published defamatory statements last year about a rape victim.

The complaint was filed April 11 in a state trial court against five current and former staff members at *The Remnant*, a student newspaper at the College of William and Mary in Williamsburg, Va. The woman suing the newspaper was a victim of rape while visiting the College of William and Mary, according to the complaint.

During the months of April and

May 2005, *The Remnant* published statements about the woman “knowing that the statements were false” and made “with reckless disregard,” the complaint said.

The woman reported she was raped at a campus party in 2003 when she was 16 years old, according to an article in the *Daily Press*, a local newspaper.

The complaint alleges that, two years

later, the paper published a statement indicating the woman was a “wannabe victim,” a “con artist” and that she was a liar. ■

## Despite arrest, defamation charges never filed

**WISCONSIN** — Authorities have decided not to file charges against a student who was arrested in May for defaming his school’s athletics director.

Carter Broer, a student at La Crosse Central High School in La Crosse, Wis.,

was arrested after he allegedly put the face of the school’s athletic director on a sexually suggestive liquor poster and tacked the poster on a school bulletin board. Broer was held for five hours in the La Crosse County Jail after being booked on police accusations of defamation and bail jumping, according to The Associated Press. The AP reported that Broer was cited in January for driving after his license was revoked.

Police said Broer was arrested after he used school computers to retrieve a parody ad featuring Captain Morgan rum and to superimpose the athletic director’s picture over the face of a man in the ad,

The AP reported. In the ad, the man has a scantily clad woman with her legs wrapped around his waist as he fondles her breasts.

Wisconsin is one of 17 states that still have laws on the books making libel or defamation a criminal offense, according to a 2005 report by the Media Law Resource Center. Typically, libel is a civil claim. In a case currently pending before the 10th U.S. Circuit Court of Appeals, *Mink v. Salazar*, the Student Press Law Center and the Silha Center for the Study of Media Ethics and Law have argued that all criminal defamation statutes are unconstitutional. ■

## ADVISERS IN BRIEF

From **Advisers briefs**, Page 26

Chesler wrote that the facts supported the students’ claim that Bosley’s removal was based on content and “that such a retaliatory removal would ... have an impermissibly chilling effect on the paper’s student editors’ freedom of expression in future issues of the paper, and inflict irreparable harm on the plaintiffs.” ■

## Popular adviser asked to leave after paper prints article on bus assault

**NORTH CAROLINA** — A man students called an “adviser extraordinaire” has been asked to stop volunteering with the student newspaper at Smith Middle School by administrators that some suspect are still upset over an article the paper printed.

In March, *The Cyclone Scoop* ran a story naming several students charged with assaulting a school bus driver. Administrators confiscated the issue claiming it violated the school’s student confidentiality rules, according to an article in *The News and Observer*, a community newspaper based in Raleigh.

Chris Roush, a journalism professor at the University of North Carolina at Cha-

pel Hill, had served as volunteer adviser for the student newspaper since 2004 and said he felt his dismissal was related to the confrontation over the article.

“I was told through [Becky] Burke, the journalism teacher, that [Principal Valerie Reinhart] didn’t want anyone from UNC involved with the paper,” Roush said. “What it boils down to is that the principal wants control of the paper, she wants to approve the stories in the issues going forth.”

Stephanie Knott, a spokesperson for Chapel Hill-Carrboro Schools, said the basis for terminating the relationship between the middle school and UNC had to do with content control.

Knott said the school cut ties with UNC because the school is ultimately responsible for what is printed in the student newspaper, not UNC, and those lines might have been blurred by the relationship. ■

## Adviser says college will not renew his contract for standing up for student press

**ILLINOIS** — Harper College in Palatine did not renew student newspaper adviser Dann Gire’s contract after it expired in June, and Gire said he thinks he

knows why.

“Every year that I didn’t have a run-in with the vice president, I was re-appointed faculty adviser,” said Gire, who has been advising *The Harbinger* student newspaper since 2000. “The year I did have one, I’m fired four months later. Coincidence?”

After a fall semester that included the publication of a photograph from a Muslim art exhibit of a woman’s exposed breast and ensuing protests of the exhibit and the paper’s coverage, Gire said Harper administrators decided to set some new guidelines for *The Harbinger* in February.

A copy of the guidelines, provided by Gire, mandates among other things that *The Harbinger* editor in chief “observe common standards of decency,” and “work closely with the Student Activities staff ... using their experience and advice” to improve the journalistic quality of the paper.

Gire said he feared the new policy might expose the college to greater legal liability. Administrators demanded that the paper’s editor in chief sign a contract comprised of the new guidelines, he said.

Gire said he is currently weighing his options, although “they are few.”

Phil Burdick, a spokesman for the college, said the task to find a new adviser is up to the college’s student life committee. ■

# California Dreaming

Legislature, professional organizations taking proactive approach to protecting student journalist rights

BY SUZANNE BELL

**B**eaches, sunshine, Hollywood and earthquakes are all things people think about when they think of California. However, California has a lot more to offer students, especially student journalists, than a nice tan, say professionals in the state.

Student journalists in California have long enjoyed extensive free press protections. And if the state Legislature has its way, those freedoms may be expanded even more.

## California's response to *Hosty*

More than 2,000 miles away from the Golden State, a court case was decided that put into motion a piece of legislation that its sponsor says would make California the first state to prohibit the censorship of college student newspapers under state law.

In February, the U.S. Supreme Court announced that it would not hear an appeal in *Hosty v. Carter*, a case that questioned the authority of administrators at an Illinois university to censor a student newspaper that had published articles critical of the school. The Court's refusal means that an earlier decision by the 7th U.S. Circuit Court of Appeals that could limit college student journalists' rights stands as law in Indiana, Illinois and Wisconsin.

Ten days after the decision, the general counsel for the California State University system sent a memo to presidents of the system that included a discussion of the case's possible impact on the state.

This prompted the California College Media Association and the California Newspaper Publishers Association to take action. Both groups got behind a bill being sponsored by California assemblymen Leland Yee, D-San Francisco, and Joe Nation, D-Martin. AB 2581 would prohibit any administrator at public colleges within the state from exercising prior restraint on the student press. Prior restraint occurs when administrators censor student media before

material is published or broadcasted.

"We in California have always believed that like high school newspapers, college newspapers were protected. Unfortunately the [*Hosty* decision] put into jeopardy that understanding," Yee said. "When that court case came to light, I decided that we needed to get a bill signed by the governor that would codify that First Amendment protection for college newspapers.

"We're trying to train young people to become adults who appreciate the First Amendment and their first message in college should not be about prior restraint – their first experience should not be about stifling the First Amendment, but to be supportive of it."

The bill was unanimously passed by the California Assembly in May and passed the state Senate 31-2 Aug. 11. Gov. Arnold Schwarzenegger had 12 days to sign or veto the bill.

"[This bill] simply amends a law that's been in place for about 20 years that already protects student speech, but [the bill] makes very clear that student publications are protected as well," Ewert said.

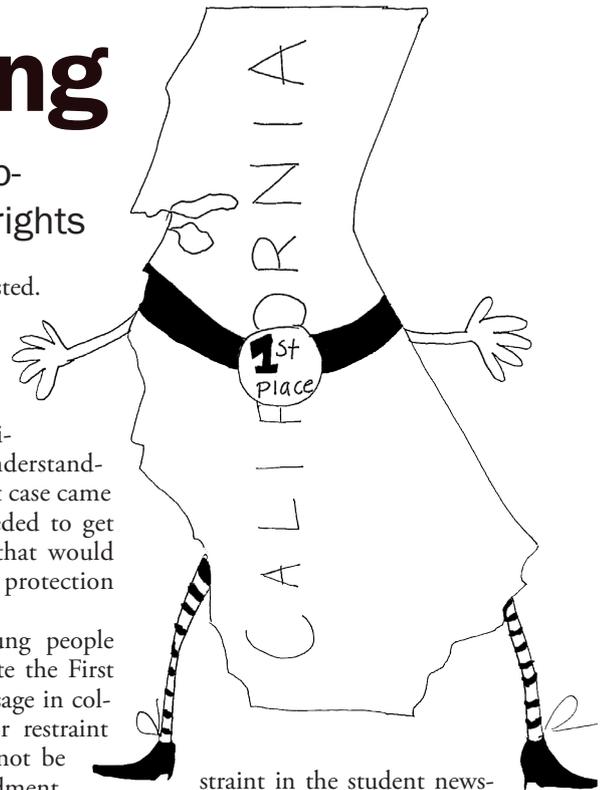
The California State Student Associa-

*"We have an awful lot of rights in California, and I think we try very hard to protect these rights."*

**Sylvia Fox**  
California College Media Association President

tion, the organization that represents California State University system students in the state Legislature, sent a representative to testify before a hearing in the California Assembly.

"The reason why the [CSSA board of directors] supports this bill is because we don't think it's appropriate for there to be prior re-



straint in the student newspapers," said Laura Kerr, director of governmental affairs for the CSSA. "We believe that student newspapers should be protected under the First Amendment like any other form of press – it just doesn't make sense to restrict student speech."

## Stopping newspaper theft

Another bill expected to be up for a vote in the state Senate after the summer recess is AB 2612, sponsored by assemblyman George Plescia, R-San Diego, Ewert said. The bill would make it a crime to take more than 25 copies of a free newspaper. If the bill is passed, newspaper thieves caught on their first offense could be charged with an infraction and up to a \$250 fine. Thieves caught on their second and subsequent offenses could be charged with either an infraction or a misdemeanor. They may also be punished by up to a \$500 fine and up to 10 days in a county jail, Ewert said.

Ewert said that although police can currently prosecute newspaper thieves based on the value of the paper's advertising, many have been reluctant to do so.

"Whether the papers are stolen because someone disagrees with the ideas expressed in them or they are used for recycling, readers are deprived of a valuable source of infor-

mation and ideas,” said Morgan Crinklaw, press secretary for the California State Assembly Republican Caucus. “This bill outlines exactly what law enforcement needs to know to stop this kind of theft.”

Ewert said a majority of thefts of free newspapers occur on college campuses, but added the bill would also protect freely distributed community newspapers.

## What sets California apart?

An old saying goes, “there must be something in the water.” That just may be the case in California when it comes to protect-

## California high schools

California has a long history of protecting the rights of student journalists and has been on the forefront of establishing such protections since the 1970s.

According to Wayne Overbeck, professor of communications emeritus at California State University at Fullerton, the state enacted the nation’s first statutory law to limit censorship of officially sponsored high school newspapers in 1977.

The California Student Free Expression Law states that “students of the public schools shall have the right to exercise freedom of speech and of the press ... whether or not such publications or other means of expression are supported financially by the school or by the use of school facilities.”

The law does give some power to administrators to intervene if the student publication is deemed obscene, libelous or slanderous – which was the reason why at the time the American Civil Liberties Union and the Journalism Association of Community Colleges chose not to support it, Overbeck said.

The law protecting high school student journalists was passed 11 years before the Supreme Court ruled in the *Hazelwood School District v. Kuhlmeier* case, which restricts high school students’ free press rights by allowing certain circumstances under which a high school newspaper may be censored.

Since the *Hazelwood* decision, five other states have enacted statutes to protect the freedom of the high school student journalists.

ing the First Amendment.

“I think California is pretty open to protecting student rights, but also it is basically an advocate for the First Amendment,” said California College Media Association President Sylvia Fox. “We have an awful lot of rights in California, and I think we try very hard to protect these rights.”

Ewert said the number of student publications in the state might influence the state’s stance on the First Amendment.

“Because we are such a large state and because we have a lot of student publications, [CNPA] felt that in order for our industry to survive and compete that we needed to promote journalism at the high school and the college level,” Ewert said.

Fox agreed that the state’s size has an impact on its free speech policies.

“I just think we’re a huge state and we have the [University of California] school system which would certainly pride itself on the freedom of students to have a voice and to make their own decisions,” Fox said. “Then we have this huge California State University system in which everybody that I know, all the university presidents, have been advocates for student rights.”

Jennifer Scholtes, news editor at *The Orion*, the student newspaper at California State University at Chico, said she can tell a difference between how student journalists in California are treated compared to student journalists in other states when she attends newspaper conferences.

“One of the people [at a conference] was saying that they have to submit their newspaper to their [student government] before they print it and that they do it just to humor them because they share funds,” Scholtes said. “We were like ‘Wait, what? Where are you from? That’s not what you do.’ We don’t have to answer to anyone, and I think that solves a lot of problems.”

Fox said she thought that even private schools in California, which are not subject to the same First Amendment limitations in censoring student media as public institutions but are limited by a state law regulating school’s ability to censor, are open to protecting student rights.

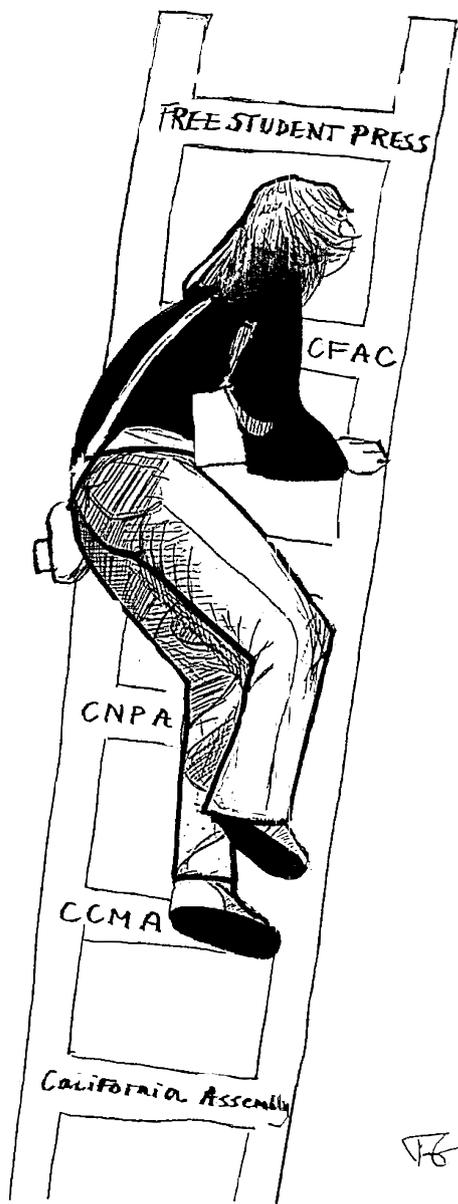
“That just seems to be how we work in California, and it’s something that is really good at teaching students not only their rights, but their responsibilities,” Fox said.

Ewert said the CNPA also works hard to train tomorrow’s professional journalists by

offering membership to any student publication in the state.

“By raising the water level, so to speak, the newspaper publications would have better quality individuals who are coming in to work in the newsroom and in advertising,” Ewert said. “I think it’s going to take time to really weigh the effectiveness of our efforts, but certainly it can’t hurt especially in an era that it seems like a lot of student publications are the first thing to go when resources are limited at colleges and universities.

“We try to make sure that we can offer support both financially and through other resources to ensure that these publications remain learning tools.” ■



# Ask & receive?

## Student journalists debate whether to ask for designated public forum status after *Hosty* decision

BY SUZANNE BELL

**T**o ask or not to ask for designated public forum status?

Depending on the college, student journalists in Indiana, Illinois and Wisconsin have different answers to that question. Some say it is an important designation to have, while others say they have a free press at their school and do not see the need to ask their president to sign a public forum statement.

These three words — designated public forum — have become important in Indiana, Illinois and Wisconsin after the U.S. Supreme Court refused to hear the *Hosty v. Carter* case. The Supreme Court's refusal lets stand a decision out of the 7th U.S. Circuit Court of Appeals that could give public college administrators more ability to censor student media.

In *Hosty*, the 7th Circuit found that the Supreme Court's 1988 *Hazelwood School District v. Kuhlmeier* decision limiting high school students' free press rights could extend to colleges. But the *Hosty* decision makes clear that those student publications that are operating as "designated public forums" where student editors have been given authority to determine content will have strong First Amendment protections when school officials attempt to censor them.

While some student press advocates, including the Student Press Law Center, have argued that becoming a designated public forum is the only way to ensure a free student media in *Hosty's* wake, some student editors in the 7th Circuit say they do not think the designation is necessary.

Student journalists at five universities in

Indiana, Illinois and Wisconsin have successfully petitioned administrators to sign designated public forum statements. But some student editors said they have not asked for their student media to become a designated public forum because they do not want to

*Leader*, a student newspaper at the University of Wisconsin at Milwaukee, said that although administrators have not signed a designated public forum statement, they have made it publicly clear they have no intention to censor the paper.

"The *Milwaukee Journal Sentinel* ran a story about the *Hosty* decision and whether or not it would affect the papers in the area," Ahlers said. "They quoted our dean of students [who said] the university had no intention to censor the paper."

Ahlers said *Leader* staffers do not plan on asking for an administrator to sign a public forum statement.

"We had brought it up a while back but it was the kind of situation where we didn't feel exactly comfortable asking for it because we receive funding allocated to us by our student government," he said.

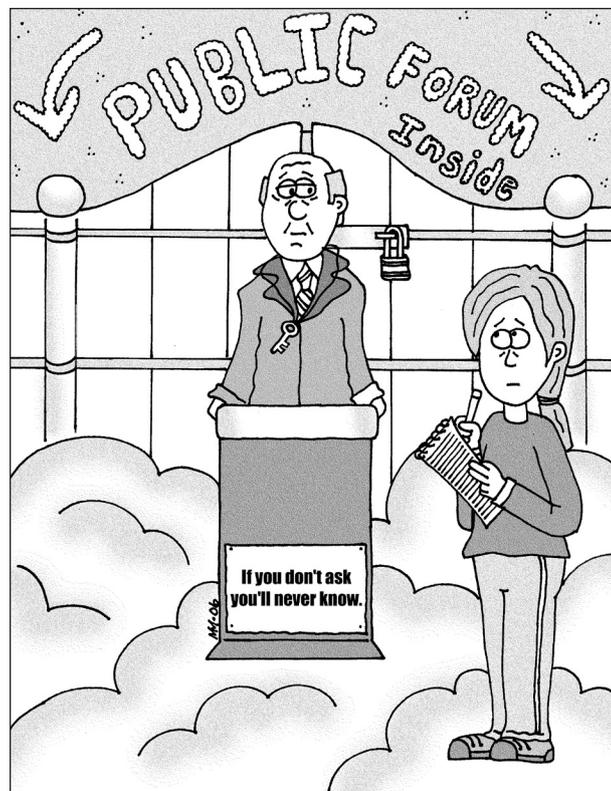
He said he hopes the dean's public comments will be enough to prevent any problems.

"They've made it publicly clear that they aren't going to censor us, so if they go back on that then we have proof that [they] said they were going to respect our right to free speech," he said.

### 'In every way possible independent'

More than 130 miles south, Justin Smith, editor in chief of the *Northern Star* at Northern Illinois University, said the *Hosty* decision did not affect the daily paper because it is "in every way possible independent of the university."

"We are entirely supported from ad revenue, we don't receive any student fees," Smith said. "The only connection we have to the university is through our publication board."



jeopardize a good relationship with their administration. Some said they feel they are independent from their administration, while others simply think the *Hosty* decision does not affect their publication.

### 'Didn't feel exactly comfortable asking'

Joe Ahlers, former editor in chief of *The*

He explained that the publication board is made up of some university officials, but the only impact it has on the paper is to approve the paper's yearly budget.

"I'm pretty confident with the relation-

## Public forums

*The Student Press Law Center is urging student journalists in Illinois, Indiana and Wisconsin to ask their administrators to immediately adopt a statement that recognizes campus student news organizations as designated public forums.*

*The statement should include language similar to 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."*

*Here's a look at who has signed a statement so far:*

- Illinois State University  
*The Daily Vidette* (signed Sept. 15, 2005, by university president)
- Indiana University at Bloomington  
*Indiana Daily Student* and *Arbutus* (signed July 1, 1969, reaffirmed Oct. 20, 2005, by senior VP/chancellor)
- University of Southern Indiana  
*The Shield* and *Access USI* (signed Oct. 4, 2005, by university president)
- University of Wisconsin at Platteville  
*The Exponent* (signed Nov. 2, 2005, by chancellor)
- Ball State University  
*The Ball State Daily News*, *Expo*, *Ball Bearings*, *NewsLink* at 9, *WCRD* (signed April 4, 2006 by university president)

For more information, visit our Web site at [www.splc.org/publicforumcolleges](http://www.splc.org/publicforumcolleges)

ship we have with our administration, I don't think they would go as far as to censor us for something," Smith said.

Despite the good relationship, Smith said the paper took some steps to make it clear it was independent after the *Hosty* decision.

"We changed the wording in our masthead to reflect the idea that we are a designated public forum," Smith said. "It's very clearly spelled out, there's no question."

## 'Doesn't need validation'

Smith's fellow Illinoisan, *The Daily Eastern News* Editor in Chief Kyle Mayhugh, said the student paper at Eastern Illinois University is taking a different approach to *Hosty*.

"We think people have overreacted to the *Hosty* decision," Mayhugh said. "Our tradition as a public forum doesn't need validation from the school president and to go to him and ask for it would only validate the idea that we need permission from him to do so."

Mayhugh said the paper has always had a good relationship with its administration and added that the paper does not plan on changing its mind about asking for designated public forum status.

## 'Just wanted to cover ourselves'

At Indiana State University, student journalists have taken a proactive approach to the *Hosty* decision by drafting a request to be declared a designated public forum, said Michelle Pattison, editor in chief of the *Indiana Statesman*.

"Our student publications board met and sent a proposal to the vice president of student affairs and he was going to pass it on to the president," Pattison said. "Nothing has happened so far, to my knowledge the president hasn't signed it, but he should have it."

She said she did not see any reason why the president would not sign the statement.

"We've never really had any problems as far as the administration trying to censor what we publish or anything," Pattison said. "It hasn't really been a big deal, but we just wanted to cover ourselves."

Pattison said she is not planning on pressing the president to sign the statement, but said if it is not signed within a few months she will look into it.

Teresa Exline, a university spokeswoman,

## Independence?

Some student editors might feel their publication is independent from the university and therefore not affected by the *Hosty* decision. But Lillian Lodge Kopenhaver, dean of the school of journalism and communication at Florida International University, said some student papers that think they are independent might not be.

"It's rare to have an independent publication," Kopenhaver said. "There are probably only a dozen student publications [in the country] that are truly independent. The rest are quasi-independent."

Kopenhaver said she surveyed college and university newspapers nationwide for an article she wrote for the *College Media Review* in 1989.

"So many [student newspapers] thought they were independent when in reality, in the finite definition of what independent is, they weren't," she said. "A truly independent publication has no ties to the university. If you take it to its furthest extreme, technically the newspaper shouldn't even be using the name of the school itself."

For example, to be completely independent a publication cannot receive student fee funds, use campus facilities, enter into any publishing agreements with the university or have a university adviser, according to Kopenhaver's article. In addition, a completely independent paper cannot have any relationship with any instructional program, receive mail through the university mail system or use the university's payroll.

Kopenhaver said it is a good idea for student newspapers to seek independence in the wake of the *Hosty* decision.

"It's not a wise decision to assume the paper is independent – they need to be a designated public forum," she said.

an, said that the vice president for student affairs is waiting for a report from the university's legal counsel concerning the statement before it is given to the president.

## 'Get your ducks in a row'

On April 4, Ball State University in Muncie, Ind., joined four other universities in

the 7th Circuit (see sidebar) that have been declared designated public forums, according to Vince Filak, adviser to *The Ball State Daily News*.

President Jo Ann Gora affirmed editorial independence and press freedom for all student media at Ball State during a speech she gave at the annual journalism awards banquet in April. A month later, Filak said he received an excerpt from the speech that Gora had signed.

Filak said the paper has always enjoyed editorial independence but said it was important to make sure the paper was legally protected.

"We don't really have a problem, but we wanted to make sure that everyone was on

the same page," Filak said. "If there are people out there creating a list that says, 'These people have designated public forums and that's good,' we wanted to make sure Ball State was near the top of that list."

Filak said there was some apprehension that asking for the designation would lead some to question whether or not the paper should have editorial freedom.

"But that was really a passing fear because we knew that everybody here is committed to having that free and open student press and the university takes a great deal of pride in it," Filak said. "We have our good days and our bad days, but overall it's really nice to be able to walk up and say, 'This is our student press and this is something that

the students do, they do it well and they do it independently,' as opposed to saying, 'They write stories that we don't like so we censor them.'"

Filak said students – especially those in the 7th Circuit – should start a discussion with their administrators about becoming a designated public forum.

"I think it's important to take the opportunity to get everybody on the same page because you never know until you bring the conversation to the forefront," he said. "A lot of people think they're OK until a crisis breaks out, and that's not when you want to try and get your ducks in a row. You want to have everything set before that situation emerges." ■

## Archiving the past: One man helps preserve student press history

BY SUZANNE BELL

**NEW YORK** — Call him a collector, a compiler, even a pack rat. But whatever you do, do not call John Behrens a lawyer.

"I'm not a lawyer, I never wanted to be a lawyer and I'm never going to be a lawyer. My purpose is to offer people information ... not to offer legal advice," Behrens said.

Behrens' job, as he would energetically tell you, is to serve as curator of the Student Press Archives at Utica College in Utica, N.Y. Behrens described the archives as "four large containers" that reside in the Frank E. Gannett Memorial Library at the college, but he quickly warned that looks can be deceiving.

"The Student Press Archives was founded with just 10 [student press] cases in 1967, from there we've moved to more than 1,000 cases and more than 5,000 users over that period of time," he said.

If a student, adviser or even a lawyer is looking for a court decision, a brief, a dissertation or things of that matter involving the student press, Behrens can help. Using a "Dewey Decimal style" index, Behrens looks up the case, as well as similar cases, and sends copies to whoever is in need.

"We've found [the archives] have been very successful," Behrens said. "Lawyers don't know too damn much about this and are constantly coming to us saying, 'I've got

this client ... and I know very little about the [student press].'" He added that lawyers often use the cases they get from the archives in formulating new lawsuits.

Behrens said a large part of what he does is helping students, advisers and lawyers make connections between what is going on at their school and what may have happened elsewhere.

"We provide them with cases they didn't know about. We provide cases that someone in Pennsylvania didn't see because it happened in Washington," Behrens said. "We have enough case history that I can safely say there are a lot of similarities."

### Making progress

Behrens said since the formation of the Student Press Archives in the 1960s, he has seen a rise in the confidence level of many student journalists.

"In the 1960s and 1970s there was a tremendous amount of fear on campus, not only about Vietnam but also about the fact that rights were being eroded in all kinds of ways. One of the big problems, we felt, was that students were obviously very apprehensive about their rights," Behrens said.

Although the Supreme Court's 1988 decision in *Hazelwood School District v. Kuhl-*



**John Behrens, curator of the Student Press Archives, browses through student press law case files.** PHOTO COURTESY OF JOHN BEHRENS

*meier* restricting the First Amendment rights of high school students was "a setback," Behrens remained positive about the future of the student press.

"I think we've moved a long way, even

with *Hazelwood*, toward having more dialogue,” he said. “I know there are some advisers who would disagree with me, but I think if you look overall at campuses and the student publications on those campuses today and you compared them to publications 39 years ago, I think you’d be impressed that we’re making progress. It’s slow, but we’ve made progress.”

### Looking out for the adviser

The Student Press Archives can trace its heritage back to the National Council of College Publication Advisers, a group that later became the College Media Advisers, Behrens said. At the most, CMA gives Behrens around \$750 a year. All additional funding he provides himself.

Before he became involved with the Student Press Archives, Behrens worked as a newspaper adviser at different colleges. He said his experience with unhappy administrators got him interested in student press rights, adding that most of the requests for information he gets comes from advisers.

“It is normal for advisers [to contact me] because they are fearful of losing their job. They have probably been involved in the student publication in a way that they were a little worried about when they took the position,” he said. “Some of these positions are unpaid, so here’s an instructor who’s been told by their department chair ‘You’re also going to advise our student newspaper.’

“We try to help them see themselves in a more secure position, which isn’t easy to do since *Hazelwood*.”

### Requesting information

If a student, adviser or lawyer is looking for information, he or she needs to send a letter explaining his or her situation and what kind of information he or she is looking for to the Student Press Archives, Behrens said.

He added there is a 25-cent charge per copy for anyone requesting information.

Behrens said a typical file would contain original court briefs, attachments and newspaper clippings on the case from professional and student media. He said the size of a file can vary dramatically depending on how much information he can find, adding that some cases have three or four items while others can have up to 500 items.

He could not think of one specific case he gets asked for more than others, but Behrens said that he does get a lot of requests for information about advisers’ responsibilities and the rights and responsibilities of student publications at private universities compared to those at public institutions.

“Our turn-around rate on requests is not fast ... the normal time frame, if I’m just given a casual request, is probably about a month,” he said.

If someone is in urgent need of information, Behrens said he could make an exception.

CMA offers an extensive bibliography of the archive’s holdings through spring 1996 for \$10, which is available to CMA members and others who are doing research, said Ron Spielberger, CMA executive director.

Behrens said he is looking to put the entire archive online but needs a grant to do so.

“In discussing [the student press archives’] future needs with [Utica College] librarians and CMA, the estimate I see is about \$10,000, which will enable us to put a large part of this onto digital format and, hopefully, transfer it to a Web site,” he said.

A lot of the information Behrens receives comes from advisers who send him free subscriptions of their newspapers. He said he gets 62 student newspapers a week and reads them all. He also receives information from journalism education groups, including the Student Press Law Center, which he estimated has given him about

### Using the archives

To contact John Behrens, send a letter explaining what you are looking for to:

Professor John Behrens  
Curator, Student Press Archives  
Utica College  
1600 Burrstone Road  
Utica, NY 13502

To order a copy of the archive’s bibliography through spring 1996, contact:

Ron Spielberger  
College Media Advisers  
Dept. of Journalism, The University of Memphis  
Memphis, TN 38152  
(901) 678-2403  
rsplbrgr@memphis.edu

half of the cases in the archives.

He said last year he received 15 requests for information but said the number of requests varies from year to year. He said five years ago he received 125 requests, mainly from graduate students working on theses or dissertations about the student press.

Behrens retired in 1997 but has continued to teach a magazine writing class at Utica College. He said that student press issues would always be close to his heart.

“I believe in [the archive], I know we’ve helped people. The challenge is getting others to see there’s value in this,” Behrens said. “My purpose is to continue to help editors, staff members and advisers all equally in terms of the rights that some of them don’t know about and in other cases, just to advise them how they need to function in a world that obviously treats media in a totally different light than they used to.” ■



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# Sex mag editors report differences in funding, no censorship

BY SUZANNE BELL

Students at Boston University get *Boink*, at Harvard it is called *H Bomb* and in the Windy City students at the University of Chicago have *Vita Excolatur*.

Student newspaper? Television show? At Yale University its name is a little less ambiguous, *Sex Week at Yale: The Magazine*.

Their common erotic theme is not the only thing these student publications have in common. They all report that despite their differences in funding and university affiliation, none have faced serious censorship threats from their private school administrators.

Yale's sex magazine has no formal relationship with the university. It does not ask for or receive any funding from the school, said Soren Sudhof, the magazine's editor in chief. He said the publication seeks sponsorship from businesses and sells advertisements to obtain revenue.

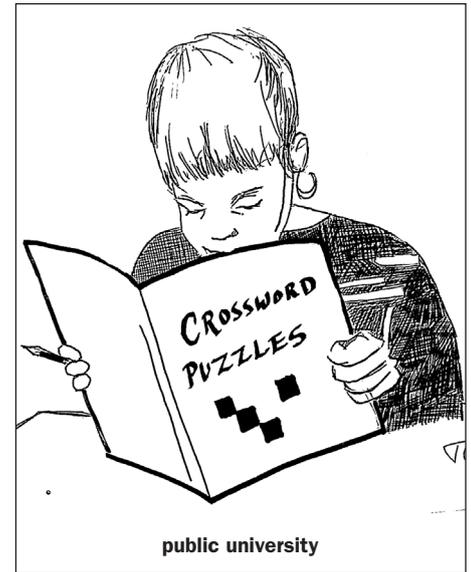
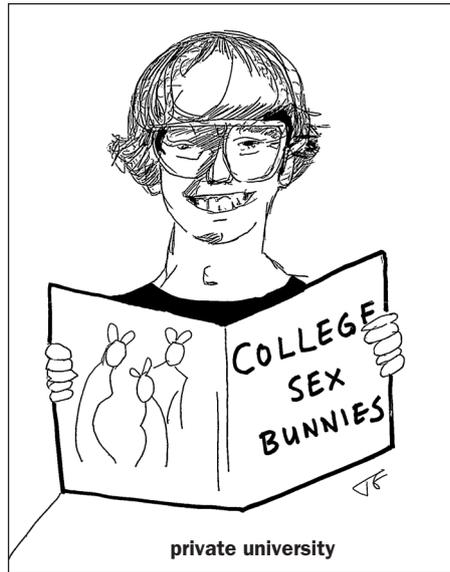
*Boink* is in a similar situation at Boston University. It receives no funding from the university and is not associated with the school at all, said Colin Riley, director of media relations.

At the University of Chicago, however, *Vita Excolatur* is a student organization and does receive some student fee funding through the school, said Bill Michel, assistant vice president for student life.

"We try very hard to not make a judgment one way or another in terms of the value or something our students want to do," Michel said. "I think the University of Chicago is very committed to the free and open exchange of ideas."

At Harvard, *H Bomb* is also a recognized student organization and receives funding allocated through the student government. Despite having ties to the university, *H Bomb* founder and editor in chief Katharina Cieplak-von Baldegg said the publication has never been censored.

"Since the initial media frenzy, we have



not heard from the administration with the exception of the Harvard University Archives, which requested two copies of each issue," Baldegg said.

She added that she felt there was not anything for the administration to censor, describing *H Bomb* as a literary and arts magazine on the subject of sex.

"Sometimes the artwork includes nudity or partial nudity, but the goal of the magazine is not to showcase nude Harvard students," she said.

Because they are entirely separate from the university, Sudhof said that *Sex Week at Yale: The Magazine* can publish whatever it wants, but that staffers have set limits for the publication.

"Our content [has] varied and at times contained explicit instructions or non-mainstream opinions, [but] there was nothing pornographic in it and nothing that would make the average college student overly uncomfortable," he said. "If anything, some of the content might have been funny to the average reader."

He added that they do not put any pictures on the publication's Web site.

Since the magazine has no official ties to the university, Sudhof said they had to be careful not to violate any Yale trademarks.

"Since we are not a Yale-affiliated organization, we could not use the trademark Yale-front 'Y' and we also couldn't include

any images of campus without the approval of the Yale Office of Public Affairs," Sudhof said. "Since we didn't need either one that much, we put a disclaimer under the magazine title and make sure to shy away from anything explicitly Yale."

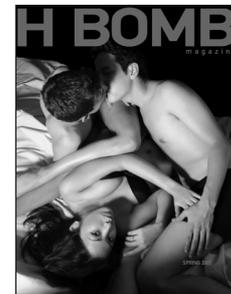
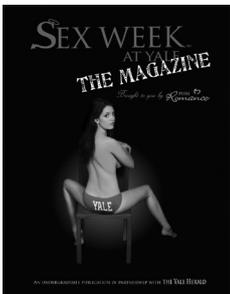
One obstacle that both Baldegg and Sudhof said they encountered concerned liability for publishing nude photos.

"We had to be very careful to make sure models sign model release forms that allow us to publish pictures of them," Baldegg said. "We generally make a point of making sure students are comfortable with the photos that are being published and are well aware of the attention the photos might receive."

Sudhof said they had their models sign similar release forms, which gave them the option to opt out if they wanted to after seeing the pictures.

Both editors agreed that the attention their publication received when it first began has died down, which is both good and bad.

"We faced the usual conservative media backlash, everything from Catholic blogs to Fox TV," Sudhof said. "But the contro-



versy is good in that it accomplishes our mission, which is to get people talking and to expose the deep-seated division of opinion that is still prevalent in our modern society about this most universal of human subjects.”

The largest student publications of this kind are found at private institutions where administrators are not subject to First Amendment limitations in censoring student media as are public institutions. However, Sudhof and Baldegg said their schools have been good about following the principles of the First Amend-

ment.

“Yale has a very free press, I don’t think we’ve made much of a difference,” Sudhof said. “But we did spark debate and a lot of attention.”

“Harvard has a reputation for being somewhat conservative and puritanical, which has certainly been true in the past,” Baldegg said. “On the other hand, professors and students past and present have been very liberal, including some amazingly accomplished writers and artists whose work deals with topics related to sex.” ■

### Become an SPLC intern



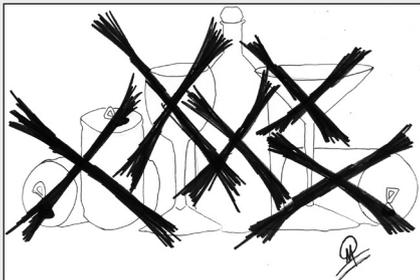
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### COLLEGE CENSORSHIP IN BRIEF

## Two college papers challenge state regulation prohibiting alcohol ads

**VIRGINIA** — Two college student newspapers are challenging the constitutionality of a Virginia state regulation that prohibits college student publications from publishing alcohol ads.

The American Civil Liberties Union of Virginia filed a lawsuit in a federal



district court in Richmond in June on behalf of the *Collegiate Times*, student newspaper at Virginia Tech, and *The Cavalier Daily*, student newspaper at the University of Virginia. The lawsuit seeks to overturn Virginia Administrative Code Section 5-20-40, arguing it violates students’ First Amendment rights.

The regulation prohibits any advertisements that mention alcohol in “college student publications” unless they are “in reference to a dining establishment.”

It defines “college student publication” as one that is edited and published primarily by students, is sanctioned by a college or university and “which is distributed or intended to be distributed primarily to persons under 21 years of age.”

The state attorney general’s office, in its response filed in July, argued that to the extent the code regulates constitutionally protected speech, it is constitutional because it “advances a substantial governmental interest.”

Rebecca Glenberg, lead attorney for the ACLU of Virginia, expressed reserved optimism due to a 2004 decision in the 3rd U.S. Circuit Court of Appeals, which found that a similar law in Pennsylvania violated the First Amendment.

“Of course it’s always impossible to predict these things,” Glenberg said. “But I feel we have a strong case and that the 3rd Circuit case is enormously helpful and should be very persuasive precedent to courts.” ■

## Restricting off-campus groups to five speeches unconstitutional, court rules

**ARKANSAS** — Administrators at the University of Arkansas at Fayetteville have revised their facilities use policy, opting not to appeal a decision out of the 8th

U.S. Circuit Court of Appeals deeming part of the old policy unconstitutional.

The 8th Circuit ruled in April that a policy placing a five-day cap on the number of days an off-campus group can use school facilities violated a non-student speaker’s First Amendment rights.

The university has already instituted a new policy and has elected not to appeal the case, said Bill Kincaid, associate general counsel, in an e-mail.

Gary Bowman, an Oklahoma-based preacher, filed the lawsuit alleging the university’s policies regarding off-campus groups’ use of school facilities violated his First and Fourteenth Amendment rights, according to an article in *Inside Higher Ed*, an online education news source.

The university argued that a five-day cap would promote diversity among speakers and would ensure that no one speaker could have a monopoly on the use of school land.

The court disagreed, stating, “The policy written does not by itself foster more viewpoints; it merely limits Bowman’s speech.”

The court did uphold several other parts of the facilities use policy, including requiring off-campus groups to obtain a permit at least three days in advance, according to the ruling. A ban on any speakers coming to campus during “dead days” — days when final examinations take place — was also upheld. ■

**Case:** *Bowman v. White*, 444 F.3d 967 (8th Cir. 2006)

## Community college fined for airing PBS documentary

**CALIFORNIA** — A television station licensed through the San Mateo County Community College District could be punished for airing a Martin Scorsese-produced blues documentary if the Federal Communications Commission has its way.

The FCC fined the KCSM-TV PBS station \$15,000 after receiving a complaint that the documentary contained “numerous ‘obscenities,’ ... in violation of the [FCC’s] rules restricting the broadcast of indecent material,” according to the FCC’s ruling.

“The Blues: Godfathers and Sons,” which was aired on March 11, 2004, from 8 to 10 p.m., included the words “fuck” and “shit” numerous times throughout the documentary, according to the ruling.

The community college formally appealed the FCC’s ruling in early May stating that if the FCC does not reverse its decision they will seek legal action, said Dave Mandelkern, president of the San Mateo County Community College District board of trustees.

“We’re an educational television station,” Mandelkern said. “We’re airing an educational documentary as via a highly acclaimed producer, and it’s basically being treated as if it were a piece of pornography.”

Mandelkern said the community college is ready to take the case to the U.S. Supreme Court if necessary.

“If we cave on this my personal opinion is ... how can you say, with a straight face, that we believe in academic freedom and intellectual expression on our campuses?” he said.

Meanwhile, the fine has caught the attention of Scorsese who, in early May, sent a letter to the FCC in which he stated that he has “deep concern over the adverse impact that the FCC’s actions will have on the creative process generally,” according to an article in Inside Higher Ed, an online higher education news source.

The station is still waiting for a response from the FCC regarding the ap-

peal, KCSM General Manager Marilyn Lawrence said. ■

## ‘Shamrock streakers’ photo causes provost to pull recruitment flyer

**NORTH CAROLINA** — Student journalists at North Carolina State University had to cover up a photo they put on their recruitment flier after a school administrator deemed the photo inappropriate.

Editors for the *Technician*, the student newspaper at NCSU, said they were notified that a recruitment flier for student media would be pulled from packets created for an incoming student orientation in early July.

**PROVOST** Larry Nielsen could not be reached for comment, but he told the *Technician* that he did not feel the fliers were appropriate for orientation. The fliers contain a picture of a *Technician* reporter being hugged by a group of “shamrock streakers” on St. Patrick’s Day.

Tyler Dukes, *Technician* editor in chief, said he met with Nielsen and other administrators to discuss the situation. After an hour-long meeting, both sides agreed that the fliers could be included in the packets for future orientations during the summer with a sticker over the picture in question that would read, “Why is this sticker here? Visit the *Technician*online.com for the whole story,” Dukes said.

Administrators agreed to pay for the cost of the stickers as well as reimbursing the paper for the fliers that were pulled from the early-July orientation. Dukes said that should cost the university around \$650.



**Photo that caused conflict at North Carolina State University.**

Dukes said after the meeting, the paper was able to distribute its fliers throughout the summer without any problems. ■

## Art students file lawsuit over closed show

**NEW YORK** — More than a month after city officials shut down their graduation art show, 18 masters degree students at Brooklyn College filed a lawsuit in a federal district court.

The students, along with Karin Giusti, an art professor who advised them for the show, filed the lawsuit in mid June saying that city and school officials violated their First Amendment rights and damaged their property. On May 4, just one day after the opening of the students’ final thesis art show, officials from the city’s Department of Parks and Recreation closed down the display because some works were deemed inappropriate for the show’s space, a city-owned World War II memorial.

City officials said some of the art, which included a sculpture of a veiled hand holding a penis, violated a verbal agreement made six years ago between the college and the city that the work should remain “family friendly.” Students said they were not informed of this stipulation until after the show was shut down.

The lawsuit also alleges that workers at Brooklyn College damaged some of the artwork when they moved it – without the students’ consent – from the World War II memorial after the city revoked the college’s permit to use the space. The students were barred from accessing their work for five days.

The students reopened their show May 24 at another location in Brooklyn. ■

## Student government’s funding cuts jeopardize paper’s future

**FLORIDA** — A Florida university is

slicing its campus newspaper's budget almost in half for the upcoming year, and a student editor said he considers the cuts payback for a longstanding rift between the paper and the school's student government.

Florida Gulf Coast University President Bill Merwin gave final approval to the Student Government Association's organizational budget May 19, decreasing funding for the *Eagle News* from \$35,750 to almost \$18,700. The newspaper had originally requested about \$93,000 for the 2006-07 school year.

However, *Eagle News* Editor in Chief Rich Ritterbusch said the Student Government Association requires the news-

paper to provide them with full-page color ads, over which the student staff is allowed no editorial control, in each issue of the weekly paper. The ads cost the newspaper about \$18,000 to print over the course of the year, and Ritterbusch said the Student Government Association's appropriations chair told him that this is how the student government created its funding figure for the newspaper for the upcoming year.

"My opinion is that they have completely zeroed out the funding for the paper," Ritterbusch said.

Ritterbusch said he thinks the student government decided to ax funding to the *Eagle News* because of informa-

tion it printed last fall regarding the Student Government Association's own operating budget.

Ritterbusch said the paper already has a plan for the fall to try to regain control over the paper's funding.

"We are hoping to introduce a bill to the student senate in August with a unique concept for funding the paper," Ritterbusch said. "A funding based on so much per student, per issue of the paper which would be similar to a buy-out of issues. They do this on campus for *The New York Times* and *USA Today*, and we're wanting to piggyback on to that concept and use that to fund the student paper." ■

## NEWSPAPER THEFT IN BRIEF

## Editor salvages stolen newspapers, tries to redistribute on campus

**CALIFORNIA** — A student editor in California attempted to redistribute her student newspaper after finding nearly 2,000 stolen copies in a dumpster near campus.

Jane Pojawa, editor in chief of *El Vaquero*, said she suspects administrators at Glendale Community College confiscat-

responsible for taking the papers.

The article ran in the June 9 edition of the newspaper and named a Glendale Community College nursing student who had recently committed suicide, Pojawa said.

Not long after distribution, Pojawa said staffers started to notice the papers "were disappearing from the stands at a really alarming rate ... clearly they weren't just taken to be read, they were being confiscated."

Pojawa estimated that nearly 2,000 of the 3,500 copies put out were taken, costing the paper around \$2,500.

Davitt said he understood the paper had a right to print the story, but said he had ethical concerns with the article.

"My problem [with the article] was that it ... was put into the newspaper by the student reporter even though she had been told that the family [of the student who committed suicide] requested that it remain private," Davitt said. "I asked the adviser if he would pull the article and I would pay the cost of re-doing the paper with a different article substituted for the article in question, but he declined."

Glendale Community College Police Department did not respond to several calls for comment. Pojawa said she is not sure of the status of the investigation.

"I don't know if the investigation is open or not. I don't think the campus

police ever questioned any suspects or anything like that," she said. ■

## Two students named in connection with campus newspaper taking in May

**CALIFORNIA** — The Pasadena City College campus police reported in June that two Pasadena City College students were responsible for stealing the student newspaper in May.

On May 18, nearly 5,000 copies of *The Courier* went missing shortly after they were distributed on campus. Later that morning, several people entered the newspaper's office and dropped off three bags filled with torn up copies of the paper. The bags had a note attached that blamed *The Courier* staff for not covering a recent event hosted by the campus' Hispanic group MEChA.

According to the police report, a *Courier* staff member was in the office at the time and eventually identified two MEChA members, Patrick Benjamin and Rebecca Conteras, who were named in the report. Additionally, a sample of Conteras' handwriting was said to be "most closely matched" with the handwriting of the note left at the scene, ac-



ed and trashed the June issue because of an article about recent student suicides on campus. College president John Davitt admitted he had problems with the ethics of the story but denied being re-

ording to the report.

“All MEChA Club members denied any involvement, conspiracy or advanced knowledge of the incident. Once Mirandized, all requested legal counsel to be present and invoked their Fifth Amendment rights against self incrimination, refusing to cooperate with the investigation,” the report stated.

The report also stated the two students were culpable in the destruction of district property and were in violation of the Student Code of Conduct. But college spokesman Juan Gutierrez said the college has not taken any action against the students.

“[The college] has been dealing with situation all summer, and we’re trying to come to an understanding between the two groups,” Gutierrez said. “We’ve been trying to rectify the situation. Things are still in motion.” ■

## Stolen newspapers found in presidential candidate’s garage

WASHINGTON — A police investigation has concluded that despite finding stolen copies of a Central Washington University newspaper in student body presidential candidate Ashley Gilmore’s garage, Gilmore could not be held solely responsible for the theft.

“The papers were found in the garage where five other students live in the house. We couldn’t conclude he took the newspapers, but what we did was give him a sanction and hold him accountable and responsible for probably having someone in the house take the newspapers,” said Keith Champagne, vice president for student affairs. “We asked him to make restitutions to the amount of the papers that were in his garage and issued him a sanction.”

Gilmore, who was running for student body president, was featured in a front-page story of the May 18 edition of *The Observer* that reported he had been acquitted in September 2005 of second-degree manslaughter in connection with the 2004 death of his roommate, Joseph Tibbs.

At the time of Tibbs’ death, Tibbs and Gilmore were roommates at Wash-

ington State University, according to an article in *The Seattle Times*. According to a February 2004 police report, Gilmore told officers he kicked a gun from Tibb’s hand in horseplay, and when the gun hit the floor, it fired bullets into Tibbs’ chest, the article said.

The student newspaper chose to run the story on May 18, the day of the election, because they received the tip about Gilmore the Monday before the May 18 issue, and the weekly paper coincidentally published on election day, said Rachel Guillermo, editor in chief of *The Observer*. Gilmore lost the election.

Guillermo said out of 6,000 papers distributed on the night of May 17, 4,000 were missing the next morning. She said the paper reprinted the issue at a cost of \$806.

Gilmore did not respond to a phone call seeking comment. ■

## Conservative newspaper containing ‘Depthroating’ article stolen

MARYLAND — A student editor at Johns Hopkins University said around 900 copies of his independent, conservative publication went missing shortly after they were distributed in May.

Jered Ede, editor of *The Carrollton Record*, said he suspects the paper was stolen in response to the cover story in the issue titled, “Depthroating Hopkins, How Your Tuition Hike Pays the Gay Porn Industry.” The article reports on the showing of the 1972 adult film “Deep Throat” and a campus visit by gay pornography director Chi Chi LaRue, which were paid for with student fees.

Matthew Viator, co-director of the Diverse Sexuality and Gender Alliance, which sponsored Chi Chi La Rue’s visit, said there are a number of inaccuracies in the story, which Ede wrote. He said La Rue spoke on how the taboo was removed from safe-sex practices and the talk was not a “porn” event as the newspaper described it.

Viator said he did not confiscate any of the stolen newspapers and he is not aware

of anyone in DSAGA who did either.

When Ede tried to report the theft to campus security, he said the office would not allow him to file a report and referred him to Dean of Students Susan Boswell.

Ede said Boswell told him the newspaper was removed from residence halls because it was banned from distribution there.

Dennis O’Shea, a university spokesman, said a school policy states that only the university’s student newspaper, *The Johns Hopkins News-Letter*, can be distributed in residence halls.

“*The Carrollton Record* is welcomed to distribute this issue at the usual places on campus where periodicals are distributed,” O’Shea said. “Those places do not include residence halls. We don’t want them cluttered with the many student publications.” ■

## Newspaper containing religious cartoon stolen twice

ILLINOIS — After an issue of their paper that contained the cartoons depicting the prophet Muhammad was stolen, redistributed, then taken again, student editors in Illinois decided to place the issue in a glass case outside their office.

In May, more than 2,500 copies of the *Courier*, the student newspaper at the College of DuPage in Glen Ellyn, Ill., were stolen. Students reprinted the issues, which were also taken, *Courier* adviser Kathy Stablin said.

Kristina Zaremba, editor in chief of the *Courier*, said the papers went missing shortly after they were distributed.

Zaremba said the cartoons were published along with an article about an editorial cartoonist who gave a speech on campus titled “Drawing Fire: A Discussion on the Art of Visual Satire and the Muslim Cartoon Controversy.” The cartoons were also accompanied by an editorial explaining why the paper chose to print them.

Zaremba said she suspects those unhappy with the cartoons took the papers. She said paper staff members told the

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# Informed choices

## A look at faculty evaluations and open records laws

BY LAURA MERRITT

Student journalists at Ohio State University's *The Lantern* expected to get some negative reactions from administrators when they requested copies of student evaluations of professors. What they did not expect was that, when they got the records, they would come as a 4,000 page PDF document that did not allow text searching.

Still, the newspaper's quest for evaluations resulted in more information than others with similar requests have often received. Depending on the law in your state – and how well your college complies with that law – getting access to teacher or professor evaluations can be more difficult than getting into college in the first place.

At most universities and some secondary schools, students complete anonymous evaluations of their instructors. Some schools consider the information to determine promotions or tenure. Others only give the information to the instructors so they can get an idea of what their students thought.

Evaluations are one of the few ways students can find information about a course and a teacher before enrolling. Even if a student knows a few people who have had the teacher before, reviewing compiled evaluations will give students a more comprehensive idea of what they can expect. Thus whether evaluation results are public can be an important question.

### Public schools, public records

When considering whether to make a request for faculty evaluations, a state's public records law is usually the best place to start. Public schools are run by state governments, and each state has its own public records law that applies to state government documents. This means that in some states a student evaluation could be considered a public record available upon request, but in other states that same information might be exempt from disclosure.

State open records laws generally work

by stating that all records are public *except* those listed in the text of the statute. When a student journalist seeks student evaluations, school officials may deny the request citing an exception for personnel records. In several states, the legislatures have decided to exempt personnel records, or portions of them, because the information is considered too personal, could be misinterpreted or might be harmful to the employee.<sup>1</sup>

*Determining whether the evaluation is a personnel record*

Because every state law defines records differently, it is difficult to generalize whether the specific records you seek will be public or exempt. But many open records laws seem to follow some general principles. To determine if something is a personnel record, consider who created the record and how the record is used.

Personnel records are frequently created by an employee's supervisor that evaluate



### What about my state?

*Availability of records will vary within a state due to a number of factors, depending on the construction of state law. Some of these factors are whether the records are in the possession of school administrators or student government officials; whether state officials include the records in personnel files; whether the records are used to make job-related decisions about employees; and whether the evaluations sought are from a high school or a college.*

*The following list is intended only to provide a general estimation of the state's open records law and whether most student evaluations of teachers will be open to public inspection. For a state-by-state discussion, visit the SPLC's Web site at <http://www.splc.org/facultyevaluations>*

- Probably open: Alabama, Arkansas, California, Colorado, Florida, Georgia, Indiana, Michigan, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee
- Probably closed: Connecticut, Kentucky, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Pennsylvania, Utah, Vermont, Virginia, West Virginia, Wyoming
- Unclear: Alaska, Arizona, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Mississippi, Missouri, Nevada, New Hampshire, New York, Oregon, Rhode Island, South Dakota, Texas, Washington, Wisconsin

job performance. For example, evaluations created by a teacher's department chair or principal would more likely be considered personnel records. When students create the evaluation, the records are less likely to be considered exempt from disclosure.

Arkansas is one place that recognized this distinction. The Associated Student Government at the University of Arkansas at Fayetteville conducted faculty evaluations. The state's attorney general advised that these evaluations could be released under the state's public records law because the "faculty of the UAF are not the employees of the ASG; therefore, the records regarding the [student evaluations of the] faculty are not 'employee evaluation or job performance records.'"2

Massachusetts, on the other hand, includes student evaluations in what it defines as confidential personnel records. In 1983, the Appeals Court of Massachusetts ruled that student evaluations were personnel records and, therefore were exempt from disclosure.<sup>3</sup> In this case, the university used the evaluations to assist "in making personnel decisions such as reappointment, promotion, merit raises and tenure."<sup>4</sup> However, the court did note that evaluations of an entire department – rather than those of individuals – would not be a personnel record and likely would be public.

Some personnel records are normally used to determine promotions or demotions and in the university context, to determine which professors are offered tenure. As the Massachusetts appeals court held, if an evaluation is used for those purposes, it is more likely to be considered a personnel record. The state attorney general for Missouri has also expressed the belief that if an evaluation is related to hiring, firing, discipline or promotions, it should not be a public record because the state's open meetings law contains an exemption when similar matters are discussed during public meetings.<sup>5</sup>

If evaluations are used merely so individual teachers can know what students thought about their class, the argument that these records should not be considered a personnel record – and are therefore available upon request – is stronger. Examining a school district's or university's employee handbook may provide some guidance about whether student evaluations are considered when officials make employment decisions.

*Balance of privacy v. right to know*

Even in states where the public records law

does not depend on whether something is a personnel record, in many states privacy interests are weighed against the public's right to know in determining whether a record will be public.

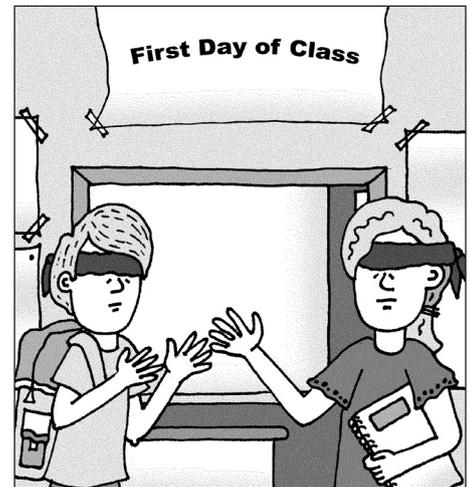
This balancing test often yields unpredictable results. For example, in Georgia, the attorney general has advised that student evaluations of university courses and faculty should be public records because they are related to a public duty which does not involve personal privacy.<sup>6</sup> In Louisiana, on the other hand, courts have held that the privacy interest of public employees in their performance evaluations outweighed the public's right to the information.<sup>7</sup> Even if the information is deemed relevant to the function of a public body, the Louisiana attorney general's office has suggested that personally identifiable information should be excluded.<sup>8</sup>

Kentucky has further clouded the issue by tying the availability of records to the amount of public interest in various school and university officials. The state attorney general has determined that the public's interest in a school district superintendent's performance evaluation, even when conducted by the school, is high enough that the evaluation should be a public record. Meanwhile, the public interest in the performance of a university department chairperson or a classroom teacher or professor, even when completed by students, is not high enough, in the attorney general's opinion, to warrant public disclosure of evaluations.<sup>9</sup>

### Private schools

It is important to note that most state open record laws apply only to public agencies and bodies and not apply to private schools or universities. For the most part, private schools may adopt whatever policy the school chooses to conceal or allow access to faculty and other employee's evaluations. Therefore, if you are looking for information at a private school, the school's policy regarding disclosure or a student handbook is a good starting point.

In most states, private school teachers are required to be certified by the state. In these situations, the state department of education may have documents in a teacher's certification file related to education or past employment that could be considered public even though the teacher is currently working at a private school. For example, in Nevada, the state's attorney general's office has rec-



ommended that private schools' certification files be open because the public can then inspect the institutions' records and make an informed choice about the school.<sup>10</sup>

Even when a student handbook does not provide for access to faculty evaluation forms, you may be able to persuade the school to open them to inspection. Arguments in favor of doing so are covered later in this article.

### Don't believe everything you read

Although evaluations can be a great resource for student journalists, their limitations should be recognized. Even within the academic community, the value of student evaluations is debated. Are they a valid means to assess teaching or merely the results of a popularity contest?

When the University of Minnesota began to consider limiting access to students' written comments, the university brought in Raoul Arreola, an expert on faculty evaluations. Arreola told *The Minnesota Daily* that students' comments are not a valid way to evaluate teachers' performances. He said there is the risk that one negative comment can skew the evaluation. Additionally, popular teachers may not necessarily be better teachers.

In Kentucky, the attorney general's office was persuaded by arguments that student evaluations have little value. In advising that they were not public records, the office noted that they "did not want to compound the unfairness [of student evaluations] by saying that the evaluations should be made public."<sup>11</sup> At the same time, the office did recognize that the evaluations were not used in

personnel decisions. Because they were only used by the teacher for his or her own personal feedback, the office decided that there was little public interest in the records.

It is important to consider the potential for libel that might arise in stories using student evaluations. Libel is the publication — in words, photos, pictures or symbols — of false statements of fact that harm another's reputation. In some states, obtaining information from a public record can be a defense to libel when the information is fairly and accurately reported. But factual allegations should be confirmed before publication. In any event, the source of the information should be noted in the article. To fairly report an evaluation, it is important to give teachers criticized an opportunity to provide their perspective.

## The right thing to do

Even when a school is not legally required to release information, journalists can (and, some would argue, should) try to persuade the school or individual teacher to release information voluntarily.

It would only seem fair that students who choose their classes and teachers have some way to judge a course before registering for it. Students' futures are often in the hands of their teachers and professors. In order to get the most out of their education, students should be able to make informed choices. In public schools, where taxpayer money is spent, the public has an additional interest in monitoring funds and the quality of education students receive and their satisfaction with courses and faculty. When stu-

dents pay for classes, they should be able to access information in order to be informed consumers. ■

—*Laura Merritt is a former SPLC intern and a student at American University Washington College of Law in Washington, D.C. SPLC Legal Fellow Adam Goldstein contributed to this report.*

1. California, Delaware, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Pennsylvania, West Virginia and Wyoming are examples of states with some personnel records exemption.
2. 1990 Ark. Att'y Gen. Op. No. 90-089 (April 11, 1990).
3. *Connolly v. Bromery*, 15 Mass. App. Ct. 661 (1983).
4. *Id.* at 663.
5. 1986 Mo. Att'y Gen. Op. No. 97-83 (Feb. 24, 1986).
6. *Athens Observer v. Anderson*, 245 Ga. 63 (1980).
7. *Traban v. Larivee*, 365 So. 2d 294 (La. App. 3d Cir. 1978), writ denied, 366 So. 2d 564 (La. 1979).
8. 1979 La. Att'y Gen. Op. No. 79-242 (May 31, 1979).
9. 1993 Ky. Att'y Gen. Op. No. 93-ORD-17 (Feb. 12, 1993).
10. 1987 Nev. Att'y Gen. Op. No. 87-5 (Jan. 26, 1987).
11. 1993 Ky. Att'y Gen. Op. No. 93-ORD-17 (Feb. 12, 1993).

## NEWSPAPER THEFT IN BRIEF

From **Theft briefs**, Page 42

Muslim Student Association ahead of time that the *Courier* was planning on running the cartoons, and a lot of Muslim students complained about the decision before publication. A response from the Muslim Student Association was also printed along with the cartoons in the stolen issue.

Zaremba said she has been in contact with administrators who originally told her there was nothing they could do about the theft. Administrators told Zaremba that students who stole the papers could be subject to judicial review by the school if she provided specific names.

Zaremba estimates the *Courier* lost \$3,000 in printing, staff salary and other costs related to the theft. ■

## Nearly 5,000 Rhode Island student newspapers stolen

**RHODE ISLAND** — Nearly every copy of an April issue of *The Good 5¢ Cigar* was stolen, and editors said they suspect an article on a fraternity prompted the theft.

Stephen Greenwell, editor of the University of Rhode Island's student newspaper, said the papers were distributed

around 9 a.m. and by the afternoon, most of the 5,000 press run had disappeared.

"It was a Friday, when classes are half-empty, so that kind of demand is unprecedented," Greenwell said.

Greenwell said he believes the papers were stolen because of a story that appeared in the paper on the expulsion of the Phi Gamma Delta fraternity, better known as FIJI, from Greek Week festivities due to alcohol violations.

The papers cost around \$350 to print and had \$600 worth of advertisements, including classifieds, Greenwell said. He said he filed a report with campus police.

Phi Gamma Delta President Brian Boucher said to his knowledge the case was closed and no party had been charged. But according to Barbara McDonald, an officer at the University of Rhode Island's police department, the investigation was still open as of early August. ■

## Around 8,000 papers taken costing paper \$6,500, editor says

**KANSAS** — Two men posing as newspaper staff members stole thousands of copies of a Kansas student newspaper in April, claiming that a misprint in the newspaper required that all the papers be

recalled.

Officer Parrish Quick with the Kansas State University Police Department said the two suspects were seen taking copies of the *Kansas State Collegian* from a news rack in the recreation center and driving away in a white sport utility vehicle, according to an article in the student paper.

About 8,000 copies of the daily paper's 11,000 press run were stolen, said Michael Ashford, *Collegian* managing editor. He estimated the paper lost about \$6,500 in printing, staff and advertising costs as a result of the theft.

"We're actually kind of upset and stunned that something like this is going on," Ashford said. "It's disturbing that people feel that they need to take these kind of actions."

Ashford said the paper sent a packet of information they collected to the KSU police in May but had not heard back from them since.

"It sounds like the KSU Police dropped the matter not long after it happened. But that's not surprising, as they were difficult to work with from the start," Ashford said.

According to Troy Lane, assistant chief of police for the KSU police department, no report was made to the county prosecutor because it did not qualify as a theft. ■



# The First Amendment Fund

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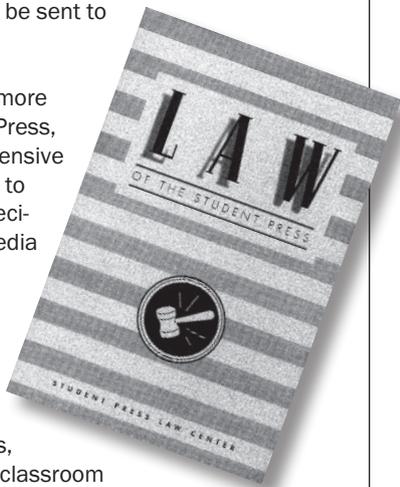
## Knowledge is the Best Defense and Membership is the First Step

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

### Join today and support the work of the SPLC.

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- Subscription to the SPLC Report, a three-times-yearly magazine that keeps you informed of all the changes in student media law and challenges to student free expression in schools and colleges in the United States.
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- Discount of 10% on one or more copies of Law of the Student Press, the most up-to-date, comprehensive and easy-to-understand guide to the laws, policies and court decisions that apply to student media in the United States. (High school, college and associate members receive one free copy.
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### All of this comes to you for a small price:

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- \$60 high school student publication or student media department.
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