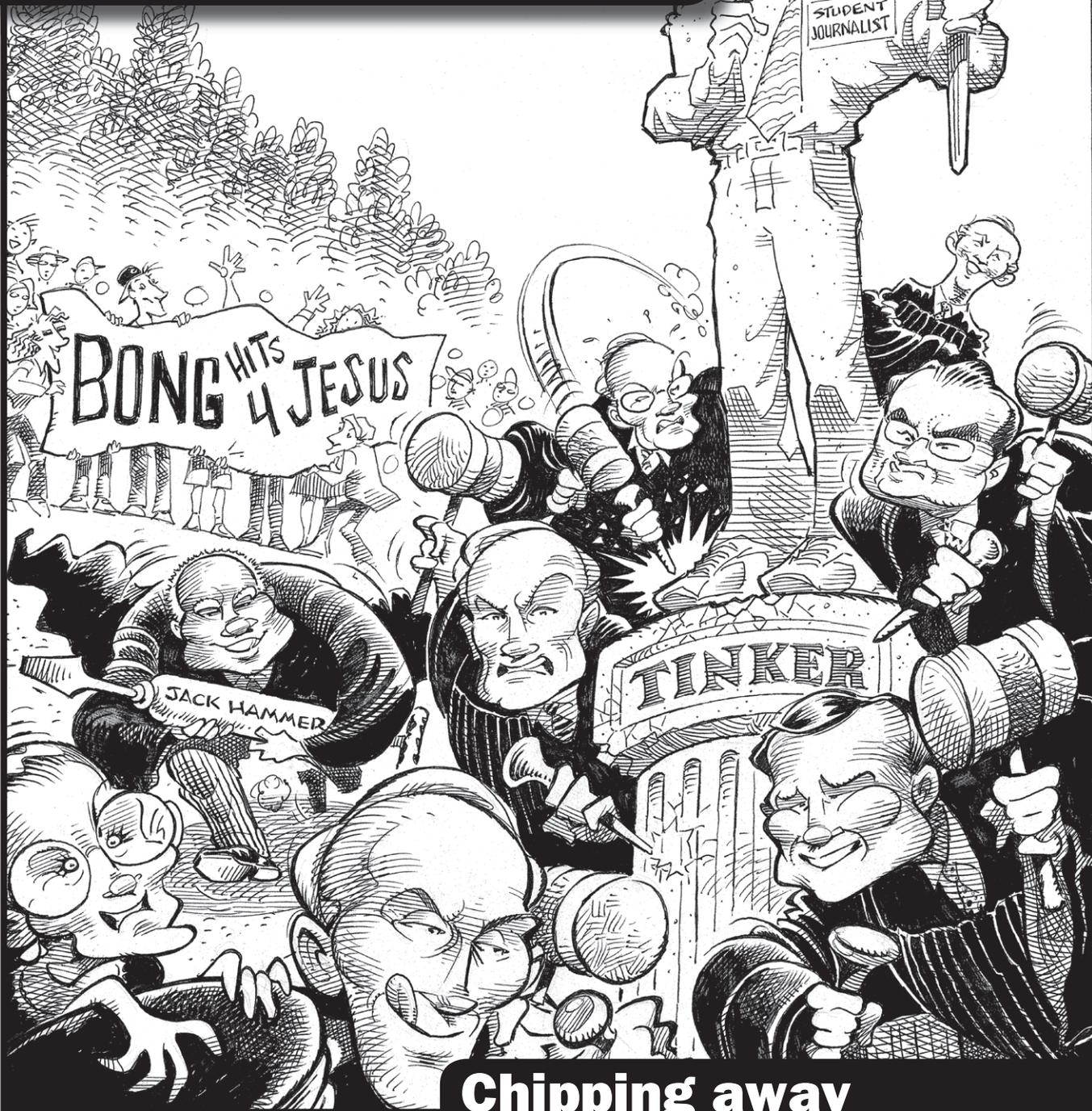


**INSIDE: Ore. governor signs student press freedom bill; Ill. measure waits for signature, Page 27**

STUDENT PRESS LAW CENTER  
**REPORT**  
FALL 2007 VOL. XXVIII, NO. 3



**Chipping away**

*Supreme Court ruling erodes Tinker protections, Page 20*

**ALSO INSIDE: Student newspapers, student governments square off over funding, Page 13**

**AND: Parents, students critical as Md. high school yearbook turns to Facebook to fill pages, Page 33**

STUDENT PRESS LAW CENTER  
**REPORT**  
 FALL 2007 VOL. XXVIII, NO. 3

**PUBLICATIONS FELLOW:** Scott Sternberg  
**REPORTERS:** Isaac Arnsdorf, Tim Hoffine, Jenny Redden, Judy Wang  
**CONTRIBUTOR:** Adam Goldstein  
**COVER ART:** Jack Dickason  
**SENIOR CONTRIBUTING ARTIST:** Melissa Malisia (rmali@frontiernet.net)  
**CONTRIBUTING ARTISTS:** Hope Donovan (jetcake@gmail.com), Bob Gandy (bob@bobcatarts.com), Danny "Om" Jean Jacques (www.myspace.com/nftp),

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

The Student Press Law Center *Report*, Vol. XXVIII, No. 3, Fall 2007, is published by the Student Press Law Center Inc., 1101 Wilson Boulevard, Suite 1100, Arlington, VA 22209-2275, (703) 807-1904. Copyright © 2007 Student Press Law Center. All rights reserved. Yearly subscriptions to the SPLC *Report* are \$15. Contributions are tax-deductible. A membership form appears on page 39.



**EXECUTIVE DIRECTOR:** Mark Goodman  
**DEVELOPMENT DIRECTOR:** Abbie Gibbs  
**LEGAL CONSULTANT:** Mike Hiestand  
**ATTORNEY ADVOCATE:** Adam Goldstein  
**OUTREACH COORDINATOR:** Sam Wilder

**CORPORATE BOARD OF DIRECTORS**

Javier J. Aldape ● *Hoy*, Los Angeles, Calif.  
 A.J. Bauer ● *Patriot Ledger*, Quincy, Mass.  
 Jerry Ceppos ● Santa Clara University, Santa Clara, Calif.  
 Shawn Chen ● Associated Press, Washington, D.C.  
 Virginia Edwards ● *Education Week*, Bethesda, Md.  
 Angela Filo ● Eastside College Preparatory School, East Palo Alto, Calif.  
 Robert Garcia ● ABC News Radio, New York, N.Y.  
 Richard Goehler, Esq. ● Frost Brown Todd LLC, Cincinnati, Ohio  
 Mark Goodman, Esq. ● Student Press Law Center, Arlington, Va.  
 Kathleen Kirby, Esq. ● Wiley Rein & Fielding LLP, Washington, D.C.  
 Tonda Rush, Esq. ● American PressWorks Inc., Arlington, Va.  
 Rosalind Stark ● Radio and Television News Directors Foundation (retired), Reston, Va.  
 Mark Stodder ● Dolan Media, Minneapolis, Minn.  
 Mark Witherspoon ● Iowa State University, Ames, Iowa

*Organizations for purposes of identification only*

**INSIDE**

**ACCESS**

Eastern Michigan's Clery Act tragedy..... **4**  
*Access in brief*..... **5**

**ADVISERS**

Ocean County adviser, students settle lawsuits .... **7**

**COLLEGE CENSORSHIP**

Tufts forbids unsigned editorials ..... **8**  
*College censorship in brief*..... **9**  
 Flagler U. students wary of censorship..... **10**  
 Connecticut task force completes report ..... **11**  
 Newspapers' financial ties that bind..... **13**  
 Cincinnati St. students challenge flier review ... **16**

**HIGH SCHOOL CENSORSHIP**

High schools react to violent speech ..... **18**

**COVER STORY:**

Supreme Court censors drug speech ..... **20**  
 Thomas calls for overturning of *Tinker*..... **21**  
 Narrow decision hinges on Alito ..... **21**  
 Calif. immigration editorial case continues .... **26**  
*High school censorship in brief*..... **26**

**LEGISLATION**

Ore. enacts new anti-censorship law ..... **27**  
 Ill. anti-*Hosty* bill awaits signature ..... **27**

**LEGAL ANALYSIS**

**Legislation time:**

Breaking down anti-censorship laws ..... **30**

**INTERNET**

Md. yearbook pulls photos from Facebook ..... **33**  
 NCAA kicks blogger out of press box..... **35**  
*Internet in brief*..... **37**

REPORT STAFF

**Scott Sternberg**, Publications Fellow, graduated from Louisiana State University's Manship School of Mass Communication in May 2006 with a degree in print journalism. While at LSU, he was the editor in chief of the student newspaper, *The Daily Reveille*, where he led coverage in the aftermath of Hurricane Katrina.



**Isaac Arnsdorf**, summer 2007 Student Press Law Center Journalism Intern, graduated in June from Montgomery Blair High School in Silver Spring, Md., where he was co-editor in chief of the student newspaper, *Silver Chips*. Named one of two top AI Neuharth Free Spirit scholars at a journalism conference sponsored by the Freedom Forum, he will be a freshman at Yale University in the fall. Isaac covered college censorship and the Internet for the *Report*.



**Tim Hoffine**, summer 2007 Scripps-Howard Foundation Journalism Intern, is a senior at The Ohio State University, where he is majoring in journalism, international studies and French. He is the campus editor of his college newspaper, *The Lantern*. Tim covered college censorship, confidentiality and college advisers for the *Report*.



**Jenny Redden**, summer 2007 College Media Advisers Journalism Intern, is a senior at Oklahoma State University studying Print and Broadcast Journalism with a minor in Spanish. She will be editor in chief during the fall 2007 semester at the student newspaper, *The Daily O'Collegian*. Jenny covered legislation, access, newspaper theft and college censorship for the *Report*.



**Judy Wang**, summer 2007 Scripps-Howard Foundation Journalism Intern, is a junior at Yale University, where she is a double major in English and political science. She is the student life beat reporter for the *Yale Daily News*. Judy covered high school censorship, libel and privacy for the *Report*.



# Student Press Law Center mourns the loss of two tireless advocates

**S**tudent journalists lost two of their most revered national press-freedom advocates this year, and the Student Press Law Center lost two dear friends.

**Louis Ingelhart**, journalism professor emeritus at Ball State University and a former Student Press Law Center board member, died of complications from pneumonia in January.



Louis Ingelhart

Photo courtesy Ball State University

He was regarded by many as the first professional advocate for the free-press rights of high school and college journalists. From his years as a high school student newspaper editor in the 1930s to those as a high school and college media adviser and scholar, Ingelhart was known throughout the nation as someone who cared about student journalism and the ability of students to make their publications their own.

He served on the SPLC board from virtually the organization's founding until becoming a board member emeritus in 2000.

"No one has had a bigger impact on student-press freedom or the success of the SPLC than Louis Ingelhart," said SPLC Executive Director Mark Goodman. "When the Center was struggling financially in the early 1980s, he was one of a small group who pledged his support and got pledges from others to keep this organization afloat."

**David L. Adams**, a member of SPLC's board of directors for almost 20 years, serving as chairman from 2003 through 2006, died in an accidental drowning in June.

In his time on the board, Adams played an essential role in leading SPLC's growth and development, including its important strategic planning and concluding with the successful completion last year of the SPLC's Tomorrow's Voices endowment campaign.



David Adams

Photo courtesy The Indiana Daily Student

Adams was publisher of and adviser to the *Indiana Daily Student* newspaper and the *Arbutus* yearbook, as well as a professor in the school of journalism at Indiana University in Bloomington, Ind.

He was also a former president of the

national College Media Advisers organization and a former executive director of the Journalism Education Association, a national organization of scholastic journalism teachers and advisers. In the United States and abroad, he was a prominent speaker and advocate for student press freedom.

"Dave was a bright light, always enthusiastically supporting the work of the SPLC and energetically defending the rights of students everywhere to publish freely," said Rosalind Stark, chairwoman of the SPLC board of directors. "We are deeply saddened that Dave will not be with us as we celebrate the success of our work, but we know that as a generous contributor and tireless spokesperson, he was a principal reason for the phenomenal growth of the SPLC."

"Dave was a great adviser and a great spokesperson for our cause," Goodman said. "Anyone who came in contact with him quickly learned how much he cared about students and how committed he was to ensuring that their voices were heard."

To honor Ingelhart, the SPLC has created a journalism internship that bears his name. The **Louis Ingelhart Journalism Internship** will allow a college student journalist or recent college graduate to spend a semester with the Student Press Law Center gathering information about student press-freedom issues and conflicts around the nation and writing about them for the Center's Web site and magazine.

To honor Adams, the SPLC has created the **David Adams Student Press Freedom Fund**. The fund will support the SPLC's work advising and defending student journalists and their advisers in their battles to publish free from censorship. Contributions to either program can be made via the SPLC's Web site: [www.splc.org/give](http://www.splc.org/give). ■

CORRECTION

— In the story "Illinois takes on Hosty" in the Spring 2007 SPLC *Report*, ACLU of Illinois spokesman Ed Yohnka's name was misspelled on page 34.

*The SPLC regrets the error.*

# Crime and punishment

## Report: Eastern Michigan University violated Clery Act after tragic student death; regents fire president

By JENNY REDDEN

As the fall semester came to a close at Eastern Michigan University, most students were finishing finals and preparing to head home for winter break.

But on Dec. 16, 2006, university students found a disturbing message in their e-mail boxes that said a university custodian had found Laura Dickinson, a 22-year-old student, dead in her Hill Hall dormitory the day before.

Months later, area newspapers would report that she was found naked from the waist down, with a pillow covering her head and with traces of semen on her leg.

But at the time, the school issued a release announcing only that she had passed away unexpectedly. It said there was "no reason to suspect foul play," according to a timeline posted on the university Web site.

In issuing the campus-wide notice, Eastern Michigan officials said they were following the federal Jeanne Clery Act.

The Clery Act, passed in 1990, requires all public and private colleges and universities that participate in federal financial aid programs to release information about campus crime and safety in a timely manner. It was named after Jeanne Clery, who was beaten, raped and murdered in her dormitory room at Lehigh University in April 1986.

Crimes that merit reports are murder, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, arson and certain liquor, drug and weapons violations.

The university issued subsequent releases Dec. 18 and Jan. 12 to update students. Neither release gave a cause of death or mentioned a homicide investigation.

Ten weeks after Dickinson's death, police arrested Orange Taylor III, another Eastern Michigan student, on charges of homicide, two counts of sexual criminal conduct, larceny and home invasion in connection with Dickinson's death.

Her family and Eastern Michigan stu-

dents and parents were outraged to learn that Dickinson's death was a homicide, and many accused school officials of staging a cover-up. The scandal cost three top administrators, including the president, their jobs.

Security on Campus Inc., a Clery Act watchdog organization founded by Jeanne Clery's family, called for an investigation by the U.S. Department of Education.

In July, almost seven months after Dickinson's death, the department issued an initial 18-page report, citing the university for seven violations of the Clery Act. The violations included failures to provide timely warnings, to properly disclose crime statistics, to report required statistics and to properly maintain the crime log, as well as the lack of a timely warning policy.

"Not only did EMU fail to disclose information that would enable the campus community to make informed decisions and take necessary precautions to protect themselves, but it issued misleading statements from the outset, providing false reassurance that foul play was not suspected, and that it had no knowledge of an ongoing criminal/homicide investigation prior to the arrest of the suspect," the report said.

With an enrollment of about 23,000, the public university could be fined up to \$27,500 for each violation of the act or lose some or all of its more than \$108 million in federal student aid.

The department's final report is expected by the end of August, after the university provides a response.

Since the inception of the act in 1990, the department has conducted hundreds of reviews, but only three schools have been fined, said Daniel Carter, senior vice president of Security on Campus.

This investigation is the "fastest, most-quickly completed" review the department has conducted, largely because of "how serious it is," he added.

In addition to the department's investigation, the university hired an outside law firm to conduct an independent probe into the handling of information after the woman's



death.

Butzel Long, a Michigan-based law firm, provided the board of regents with a 568-page report June 8.

"The report reveals a systemic failure to comply with the federal Clery Act, including the failure to warn the campus of potential danger," Board of Regents Chairman Thomas Sidlik said in a university statement. "The findings are clear: This university got it wrong. What happened was unacceptable."

In response to the reports, the board's eight regents unanimously voted to terminate President John Fallon, exactly two years into his five-year contract.

"Until we had change at the top, nobody would believe you're serious," Regent Francine Parker said at the special meeting during which the dismissal was formally announced.

The board also terminated Vice President of Student Affairs Jim Vick and Public Safety Director Cindy Hall.

"This board will not tolerate anyone who sabotages the educational mission of this university by participating in these destructive behavior patterns," Sidlik said.

Fallon has maintained that he did not know about the homicide investigation until Taylor was arrested.

But Kevin Devine, director of student media at Eastern Michigan and adviser to

the student newspaper, *The Eastern Echo*, said student editors could tell there was more to Dickinson's death than police and administrators were saying.

Reporters, who had established "cordial relations" with the police chief and other officers, initially believed police when they said there was no reason to suspect foul play.

"They took their word for it," Devine said.

But in the following weeks as the investigation dragged on and administrators remained tight-lipped, editors began to believe something more was going on.

"There were a lot of people who ... were unable to talk or claimed they were under orders not to talk," he said. "That was the point at which the student editors and reporters were starting to think there's something funny about this."

After a suspect was arrested, the newspaper, published three times a week, stayed on top of the story, Devine said. Editors stopped

relying on information from administrators and started investigating wherever they could, he added.

When administrators announced that all dormitories had been secured, Devine said the features editor decided to experiment. He attempted to enter on-campus residence halls after midnight. He succeeded, managing to get into nearly all of the buildings and onto most of the floors through propped-open doors and loading docks.

Devine said the investigative piece was "a great lesson learned."

"Don't rely on the phone," he said. "Go out and do it."

Devine said that in hindsight, reporters should have filed requests under the Freedom of Information Act for records regarding the case.

"Perhaps we should have been more aggressive in doing it," he said.

Christine Laughren, news editor at the *Echo*, said she covered Dickinson's death for

much of the spring semester. She advised journalists covering big news to stay organized and to ask the hard questions.

"You've got to go at it full force," she said. "Start your FOIA requests right from the get-go."

Laughren said she wished she had been more aggressive when interviewing police and administrators.

"If I could go back, I would definitely push more," she said.

## Importance of the Clery Act

Before Fallon was dismissed, he created a 16-point plan to increase security on the campus. The initiatives included working more collaboratively with local police to improve safety and security on and adjacent to the main campus.

The plan called for a complete campus

See **Clery Act**, Page 17

## ACCESS IN BRIEF

### California Assembly considers executive salary measure

**CALIFORNIA** — A bill in the state legislature aimed at increasing the transparency of specified public university executives' compensation is another step closer to the governor's desk.

An Assembly committee unanimously passed SB 190, known as the Higher Education Governance Accountability Act, in July.

Authored by Sen. Leland Yee (D-San Francisco), the measure requires all compensation packages for top executives at the University of California and California State University systems to be voted on in open sessions. It defines "executives" as the chancellor of the California State University, presidents of individual campuses, vice chancellors, treasurers and assistant treasurers, general counsel and trustees' secretaries.

The bill also closes a loophole in the current open-meetings law that allows advisory committees to discuss compensation in closed meetings.

The bill follows a series of audits and lawsuits at the public institutions after

they failed to get public approval from the regents or trustees for compensation packages and some top executives were paid more than the figures released to the public.

The Senate unanimously passed the measure in April.

### Court: top school finalists should have been made public

**SOUTH CAROLINA** — The state supreme court ruled in July that a school district violated the state Freedom of Information Act when it refused to release information about final candidates for a superintendent position.

"FOIA must be construed so as to make it possible for citizens to learn and report fully the activities of public officials," the court wrote in its unanimous decision.

The case, which is the state's first legal test of a Freedom of Information law that governs how public bodies hire employees, started in 2003 when Spartanburg County School District No. 7 began its search for a superintendent.

A local newspaper *The Spartanburg*

*Herald-Journal*, filed a request for information pertaining to the final candidates under the state's right-to-know statute, which requires public bodies to release information relating to "not fewer than the final three" candidates.

The district began its search with 30 applicants, according to the decision. The applicant pool was narrowed to five "semifinalists" and then two "finalists."

The district, which has an enrollment of about 7,500 students, promised the semifinalists that the names and information of only the "finalists" would be released. Because of this promise, the newspaper's request was denied, according to the decision.

The *Herald-Journal* sued, and a circuit court found that the district had violated the Freedom of Information Act, ordered the disclosure of additional information and awarded attorney's fees and costs to the newspaper. The supreme court affirmed this judgment July 16.

**Case:** *The New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, No. 26358, 2007 WL 2034821 (S.C. July 16, 2007).

See **Access briefs**, Page 6

From **Access briefs**, Page 5

## Michigan St. paper expects EMU report to bolster lawsuit

**MICHIGAN** — News that the president of Eastern Michigan University was dismissed after the school violated federal safety laws (see “Crime and punishment,” **Page 4**) may help the student newspaper at Michigan State University get access to campus police records it requested in 2006.

Herschel Fink, an attorney representing the *State News*, said the paper has been involved in a legal dispute since May 2006 for police incident reports detailing an on-campus assault, and the matter now awaits a ruling from the state supreme court.

In light of the alleged homicide cover-up that cost Eastern Michigan President John Fallon his position, Fink said he may submit additional information to the supreme court.

Fink said the Eastern Michigan president was terminated because the school violated the federal Jeanne Clery Act, which requires public institutions that receive federal funding to disclose information about campus crimes. He called MSU’s denials of record requests “very similar lapses.”

“We think that case has application to the MSU case,” Fink said. He added that he thinks MSU has violated the Clery Act, in addition to the state Freedom of Information Act. ■

**Case:** *State News v. Michigan St. Univ.*, No. 133682 (Mich. application filed Apr. 17, 2007).

## George Mason U. student government declared public body

**VIRGINIA** — The George Mason University student government is changing the way it does business after editors of the student newspaper informed the body it was breaking state open-meetings laws.

The *Broadside* Managing Editor Jeremy Beales said editors encountered

several violations of the Virginia Freedom of Information Act while trying to report on the first of three impeachment trials scheduled in the spring semester.

The student-body president, accused of reckless spending, and two senators were tried at separate hearings.

During the first trial, senators went into a closed executive session without voting or listing the session on its agenda, Beales said.

In response, *Broadside* editors wrote an editorial that called for an open trial because the student body “has an inherent right to scrutinize the actions of its elected officials.”

Before President Aseel Al-Mudallal’s trial in March, editors and senators contacted the Virginia FOI Advisory Council, a state FOI compliance office, for clarification of the law.

Executive Director Maria Everett issued an advisory in May, affirming that the senators could vote to go into executive session to discuss impeachment but not taking a vote to do so would be a violation of the state law.

Senators, at the time unsure of the law, voted to keep the president’s trial open March 29. ■

## Police department will appeal murder records release

**GEORGIA** — The Athens-Clarke County Police Department is asking the state supreme court to overturn a court of appeals decision that opened records of a 15-year-old murder investigation.

The *Athens Banner-Herald* sued nearly two years ago, after police denied access to files regarding the murder of Jennifer Lynn Stone, a 22-year-old University of Georgia student who was raped and strangled in April 1992. Police said the case still was actively being investigated, so the file was exempt from open records disclosure.

A county judge sided with the police in a March 2006 summary judgment, but the court of appeals overturned the decision in March 2007.

“We find that the undisputed evidence in this case shows that there has been no progress in solving the Stone murder for several years, there is no

ongoing, active investigation of the case by the county, there are no suspects ... and there is only a slight possibility that the county’s submission of the DNA to a database will ever result in progress in solving the case,” the decision said.

**Case:** *Athens Newspapers v. Unified Gov’t of Athens-Clarke County*, 643 S.E.2d 774 (Ga. App. 2007), *appeal docketed*, No. S07C1133 (Ga. April 11, 2007).

## School district continues to fight open-meetings suit

**TEXAS** — The legal dispute continues in a case that started with an act of censorship and turned into an open-meetings lawsuit as an attorney for the Danbury Independent School District is seeking parental permission to release student statements for use in the case.

*The Facts*, a Brazoria County newspaper that alleges the school board broke the law when it went into a closed-door session May 28, asked the district for copies of the complaint forms that students submitted calling for the redistribution of the December 2006 issue of the Danbury High School newspaper that the principal had withheld because of its content.

The district denied the newspaper’s request, citing the Family Educational Rights and Privacy Act, a federal statute that regulates schools’ release of records with identifying information about students. But Charles Daughtry, attorney for *The Facts*, said the students’ identities are not a secret.

“Everybody in town knows who these students are,” he said.

The district claims FERPA prohibits it from releasing the documents unless the parents give permission.

Philip Fraissinet, an attorney representing Danbury schools, said the district is contacting the families to ask for consent to release the records. He said he expects the three families involved to make a decision within the “next couple of weeks.” ■

**Case:** *Brazosport Facts v. Danbury Indep. Sch. Dist.* No. 42094 (Brazoria Co. Ct. Tex. filed Mar. 21, 2007).

# Students, adviser reach agreements with college

## Bosley receives \$90,000, returns to teaching journalism

By TIM HOFFINE

Karen Bosley's long fight against Ocean County College is finally over.

Ocean County College will pay the reinstated newspaper adviser \$90,000 and return her to teaching journalism classes to settle a lawsuit she filed when the school took away her classes and refused to renew her contract as adviser in December 2005, Bosley announced in July.

Several student editors and Bosley, who had served as the *Viking News* adviser for 35 years, expressed concern when the school's board of trustees voted unanimously in 2005 not to renew her contract as adviser. They said the school's actions constituted censorship by intimidation.

"The general consensus among the staff is that it is a complete and utter travesty," said *Viking News* Editor in Chief Scott Coppola in December 2005. "The college, by removing her, is removing one of the key people in fighting for student rights, and by doing so, it's an attempt to control the newspaper altogether and to censor us."

College officials said the censorship accusation was unfounded.

Bosley said she thought she was terminated as the newspaper's adviser because of a number of stories the paper had run in 2000 criticizing the college president's \$78,000 inauguration and his decision to change the college logo. The conflict came to a head in November 2004, when the *Viking News* ran an article that published comments from those who criticized President Jon Larson for not surveying students or faculty before changing an activity period time.

Student editors said Larson met with them and threatened to "take action" if the paper did not print a correction to the article. Larson said he had surveyed people before making the scheduling change, according to an editorial Coppola wrote in the paper after the meeting.

Coppola's editorial also accused Larson of intimidating the staff and threatening student editors' First Amendment rights by telling them they should "restrain what goes onto the opinion page."

Faculty in the English department, in-

cluding Bosley, wrote Larson a letter in light of the editorial, saying, "any attempt to manage the news, or to intimidate students whose views are expressed in the news, violates an essential American liberty." Larson responded to the faculty's letter with one of his own, saying, "your letter makes groundless and insulting assertions that condemn and demean my character and devotion to essential American liberties."

The board then decided not to renew three other professors' contracts, which some said also was in retaliation for the professors' support of the student newspaper, according to an article on *The Chronicle of Higher Education's* Web site.

In May 2006, Coppola and fellow student journalists Alberto Morales and Douglas Rush filed a lawsuit in federal court seeking Bosley's reinstatement as newspaper adviser. Six weeks later, Bosley filed her own lawsuit that alleged the administrators had violated her First Amendment rights and discriminated against her on the basis of age. The suit sought Bosley's return to her journalism classes as well as financial compensation.

"I believe the censorship has been largely through intimidation — not by saying 'Oh, you can't publish that' — but through intimidation of the students and retaliation against me because I don't tell the students they can't publish it," Bosley said in 2006.

National media organizations College Media Advisers and the Society of Professional Journalists both issued reports in 2006 calling for Bosley's reinstatement.

In July 2006, the students were granted a preliminary injunction that temporarily reinstated Bosley to her advising position.

### OCC settles both lawsuits

Ocean County College and the three students settled their lawsuit in June. The settlement reinstated Bosley as *Viking News* adviser and called for the creation of a Student Media Advisory Board, composed of leaders and advisers of campus media organizations, representatives from the student body, faculty, and from the local media.

The board's only functions, according to a statement, "are to approve budgets, select

editors in chief and radio station managers and act as a resource to the student media." The agreement also states the board will not exercise any editorial or content control over the *Viking News* or other student media.

The students had other claims in their request for an injunction that were ultimately denied. The students asked the court to bar the administration from changing the newspaper's computers and eliminating the workshops that Bosley taught.

The students also asked that Director of Student Media Joseph Adelizzi be barred from accessing the *Viking News* newsroom.

The resolution to Bosley's lawsuit came in late July, when administrators agreed to pay \$90,000 to Bosley while giving back journalism classes she previously had taught. The agreement also calls for Bosley to teach two English classes, rather than the introduction to communications courses she had taught and hoped to gain back through the lawsuit. Bosley will begin teaching journalism classes again in September.

"I am happy to have the travesty in human dealings this case represents finished," Bosley said in a statement. "I am relieved the lawsuit is over, the three *Viking News* former editors and I have been vindicated and I have back both the advisership and my journalism classes."

Bosley supporters expressed satisfaction with the settlement and said it is an important statement about the rights of student journalists and their advisers.

"The settlement and reinstatement of Professor Bosley should provide encouragement to advisers everywhere who work hard to uphold students' rights to express themselves in their campus newspapers," said Kathy Lawrence, immediate past president of College Media Advisers and chair of the CMA Adviser Advocacy Committee. "I would hope that the settlement would send a strong message that the First Amendment is alive and well on college campuses and that advisers can rely on a system that supports their mission to teach and support students in the exercise of free expression." ■

**Related:** 11th Circuit throws out Kansas State adviser removal lawsuit, [see Page 9](#)

# Anonymous no longer

## Administration bars Tufts journal from printing unsigned editorials

BY JENNY REDDEN

On May 10, editors of a conservative journal at Tufts University issued a news release on their Web site.

At the top of the release, they wrote: "To air concerns, contact: Lawrence Bacow, Tufts University President, bacow@tufts.edu."

The statement seemed appropriate, say editors of *The Primary Source*, the conservative journal printed twice a month, which is now required by the private university in Medford, Mass., to include a byline with every article.

The requirement, enforced by school administrators, ends a practice of unsigned editorials at the journal after the publication angered several students by publishing articles they considered to be insensitive and harassment.

And *The Primary Source* may not be the only publication affected as administrators are looking to extend the decision to other media on campus, including the student newspaper, *The Tufts Daily*.

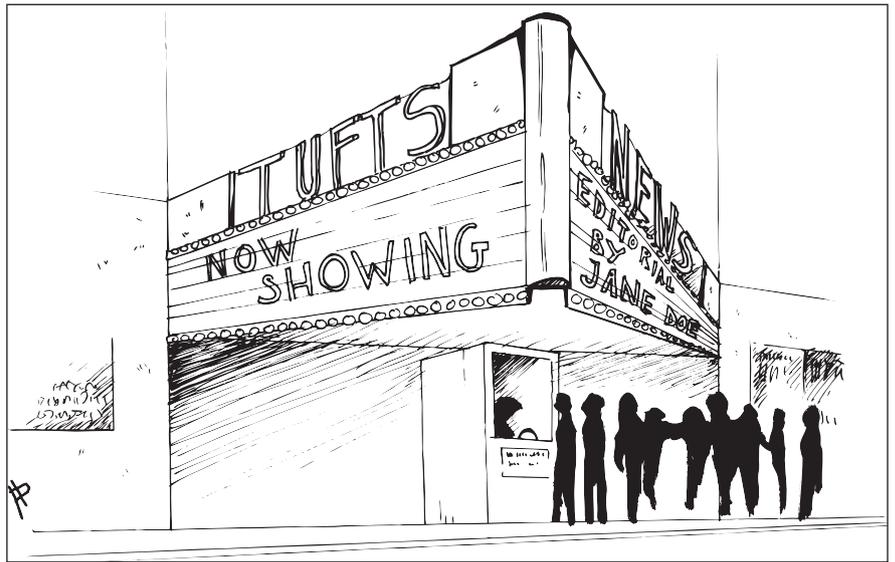
*Primary Source* Editor in Chief Matthew Schuster said this requirement is a way to censor viewpoints that are not mainstream and do not conform to the university's standards of political correctness.

"We're fighting it," he said.

The policy, which ends a 25-year tradition of unsigned editorials at the *Primary Source*, was created after students filed two complaints against the journal in response to articles published in 2006 and 2007.

David Dennis, a student at Tufts, objected to a parody Christmas carol about affirmative action, called "O Come All Ye Black Folk," which he said constituted harassment and the creation of a hostile environment. The Muslim Student Association brought the same charges against a mock advertisement, titled "Islam Arabic Translation: Submission."

The university's handbook, *The Pachyderm*, defines harassment as "attitudes or opinions ... expressed in words, in e-



mail or in behavior" that "constitute a threat, intimidation, verbal attack or physical assault."

The Tufts Committee on Student Life conducted a hearing in April. After the five-hour trial, it determined that the articles did constitute harassment and ordered all published material to be "attributed to named author(s) or contributor(s)," according to the decision.

In addition, the committee, composed of students and faculty members, recommended "student governance consider the behavior of student groups in future decisions concerning funding and recognition," according to the decision.

The committee justified its decision by saying "although students should feel free to engage in speech that others might find offensive and even hurtful, Tufts University's non-discrimination policy embodies important community standards of behavior that Tufts, as a private institution, has an obligation to uphold," according to the decision.

University officials do not seem to consider the policy a form of censorship. In a statement released days after the verdict, Chairwoman Barbara Grossman said the committee worked to balance two important principles: "the freedom of speech and expression" and "maintaining an environment where everyone feels welcome and safe."

"*The Primary Source* can continue to print what it chooses, but it should not have the shelter of anonymity from which to launch hurtful attacks," Grossman said in the statement.

*Primary Source* editors have filed an appeal with James Glaser, dean of undergraduate education. Glaser said the appeal has been decided, but the verdict will not be released until students return to school in September.

## Outsiders respond

The American Civil Liberties Union of Massachusetts sent Glaser a letter, asking him to reverse the committee's decision against the journal.

"The sanction imposed on *The Primary Source*, prohibiting it from publishing any anonymous articles, violates basic principles of freedom of speech," the letter reads. "This punishment runs afoul of the protection under the First Amendment that has been accorded by the U.S. Supreme Court to anonymous speech."

Although the First Amendment does not typically limit the ability of private schools to censor, a Massachusetts superior court said in the 1986 case *Abramowitz v. Trustees of Boston University* that the free-expression rights of private school students could be protected under the state constitution.

The letter also offered the university alternatives to censorship, such as holding a forum for journalistic integrity or encouraging students to express opposing viewpoints in letters to the editor.

The Foundation for Individual Rights in Education also defended *The Primary Source* and its right to political speech.

“By issuing this decision, Tufts University is saying that its students are not strong enough to live with freedom,” FIRE President Greg Lukianoff said in a statement from the organization in May. “Satire and parody are so strongly protected by the U.S. Constitution precisely because they may offend or provoke. Tufts knows that the proper cure for speech one dislikes is more speech — but it has instead elected to meet controversial speech with repression. We call on the president of Tufts to overturn this unwise and illiberal decision.”

Various professional newspapers took stands against the university, one of them choosing a seemingly ironic medium: an unsigned staff editorial.

In a July 5 editorial, *The Washington Times* charged that Tufts is seeking to stifle ideas and dialogue on campus.

“Even if the university can legally prohibit students from expressing contentious ideas, it shouldn’t,” the editorial said.

Mark Fitzgerald, a columnist for *Editor & Publisher*, said in a June 23 column that he is alarmed when an institution such

as Tufts University claims that it “cherishes both freedom of speech and expression” while ordering a student publication to byline everything it publishes.

John Leo, a columnist for *The New York Sun*, named Tufts President Bacow “the worst college president” of the academic year by giving him the “Sheldon Award.” The satirical honor is named after Sheldon Hackney, the former president at the University of Pennsylvania where a student was charged with racism after he called a group of students “water buffalo.”

In a column in June, Leo described the award as “like the Oscar, except the Oscar features a man with no face looking straight ahead, whereas the Sheldon shows a man with no spine looking the other way.”

## Extending the ruling

The byline policy applies exclusively to *The Primary Source*, but a university spokeswoman said many officials would like to see the policy extend to all campus media.

Public Relations Director Kim Thurler said she expects the administration to look into broadening the policy as early as this fall.

If that happens, the student newspaper, *The Tufts Daily*, may have to give up its long-standing tradition of printing an unsigned staff editorial on the opinion page five days a week.

Howard Ziff, an emeritus professor at the University of Massachusetts and a longtime editorial writer, said unsigned editorials are a staple of American journalism. If the *Tufts Daily* and other campus media lose the right to publish unsigned editorials, they may as well lose their right to publish at all, he said.

“That, in effect, closes the paper,” Ziff said. “If I were there, I’d say ‘OK, see you later’ and close down the paper. You don’t have to live under that kind of restraint.”

Ziff said personally, he does not believe opinion pieces should be printed unsigned. But he added that university administrators should never be put in charge of making those decisions.

“I don’t think anybody from the president of Tufts to the president of the United States has a right to tell a member of the press what has to be signed,” Ziff said. “I think it’s very dangerous to let some power ... tell you what should be signed and what shouldn’t be signed.”

Former *Tufts Daily* Editor in Chief Kathrine Schmidt said she had not heard that administrators were making plans to extend the ruling to other student media.

Schmidt also said that although she did not agree with the content of *The Primary Source* articles, she and the editorial board at the *Tufts Daily* strongly defended the journal’s right to freedom of press in staff editorials. ■

## COLLEGE CENSORSHIP IN BRIEF

### IN THE COURTS

## Court throws out Kansas State U. censorship lawsuit

**KANSAS** — Former student newspaper editors who sued Kansas State University administrators when their adviser was fired in 2004 do not have a First Amendment claim because they are no longer enrolled in school, the 10th U.S. Circuit Court of Appeals ruled in July.

The claims of plaintiffs Katie Lane and Sarah Rice, both former *Collegian* editors, were ruled moot because “there is no reasonable expectation that Lane and Rice will be subjected, post-gradu-

ation, to censorship by defendants in connection with that paper.”

“It is particularly troubling that the appellate court chose to very narrowly construe the well-established exception to the mootness doctrine that allows a court to hear a case if it is capable of repetition yet evading judicial review,” said Clay Calvert, the John and Ann Curley Professor of First Amendment Studies at Pennsylvania State University. “Clearly a situation like this could occur again and it, in turn, will affect student journalists who are similarly situated to the plaintiffs in this case.”

In addition, the court noted that no current editors, who may have a continuing legal interest in the court’s ruling, were substituted as parties to the

lawsuit. In ruling the case moot, the court also threw out the district court’s ruling that it was permissible for school administrators to fire an adviser based on the quality of the student newspaper.

Lane and Rice filed suit when adviser Ron Johnson was removed from his adviser position following allegations the paper was not sufficiently covering minority issues. University officials created a content analysis of the paper, which the district court found was a “significant” basis for Johnson’s removal.

Johnson initially was a plaintiff on the students’ lawsuit, but his claim was dismissed after the district court found he did not have standing and that his

See **College briefs**, Page 15

# Journalists at Flagler College continue struggle

Adviser defends dual role at student newspaper, public information office

By TIM HOFFINE

The newspaper for a private college in Florida will keep its mission to enhance the image of the school and will stay under the college's control even after students protested and resigned over their concerns the paper had been censored.

Flagler College President William Abare said he intends to approve a new governing document for the college newspaper that includes the creation of an advisory board — although, as publisher of the private college's newspaper, he will retain final editorial control.

Director of Public Information and newspaper adviser Brian Thompson created the document to help avoid conflicts over control of the newspaper and to make the paper more independent following the September 2006 controversy in which Abare pulled copies of *The Gargoyle* from the racks and had it reprinted after it carried a faulty headline.

The paper had published a story with the headline "Campus Growth Forces Tuition Hike," which then co-Editor in Chief Glenn Judah at the time admitted was a mistake because it indicated an increase in tuition already had been approved. The story described how tuition rates would rise in the future because of the growth of the college, but an actual hike had not been decided.

"We should have had the chance to fix our own mistake instead of [the university] taking the authority away from us," Judah said at the time. "We still stand behind the story. We just disagree with the way the administration went about it."

Abare defended his actions by saying the context in which the newspaper's error took place — right before many prospective students would be visiting campus — and the fact a correction would not come out for several weeks meant taking the newspaper off the stands and reprinting it was the best option.

"Because there's not a daily circulation,

when you have a three-week span between the time when one issue is published and another issue is published, a retraction or a correction really becomes ... a non-issue at that point. Three weeks have passed," Abare said.

"This is horrible, because ... a parent or a prospective student reads this and says, 'Oh my gosh, Flagler College is in trouble,'" Abare said. "People don't necessarily have a wealth of information about finances in higher education, so when it comes to that and you see a headline on your newspaper, most parents are going to have questions."

## Student editors' reactions

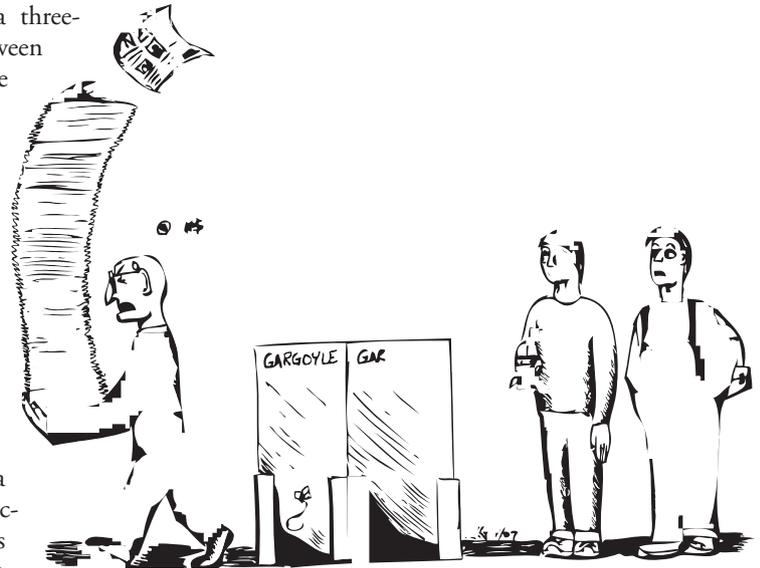
Current and former student editors of *The Gargoyle* have expressed concern that the new proposal, submitted by Thompson, will not prevent censorship much like they claim happened last year.

"Honestly, it looks like more of the same garbage," former *Gargoyle* co-Editor in Chief Bill Weedmark said. "And in my opinion, there's a strong chance that *The Gargoyle* will dissolve this coming semester — it may not be required as a class anymore, and the majority of the editors resigned and no one else wants the job."

But not all editors share that view.

"I have seen the mission statement and new proposal ... and, although they are not perfect, they do set up boundaries and give the paper more autonomy," said *Gargoyle* editor Brittany Hackett. "Not everyone from last year's staff agrees with me, but to me it's a good foundation."

Thompson would not provide a copy of the proposal, but Abare said it seeks to create an advisory board to which concerns over



content can go instead of going directly to him. Abare said he is not interested in a majority vote by the board, saying instead there should be a consensus on the board whether an article in question is good or bad.

"I think that in the event the board has some misgivings or need for further clarification, then at that point the board would come to the president and ask for a decision," Abare said. "The key thing is I don't want to become a micromanager, and I don't want to be the editor of the paper. I'm not interested in having them send me a proof of what's going to be printed every other week."

Weedmark said although the newspaper was "for sure" not an independent publication, through practice it became an independent student voice — except when controversial issues came up.

"The president treats it as a [public relations] vehicle, which directly conflicts with the [Society of Professional Journalists] Code of Ethics regarding advocacy, and we were all on staff to practice journalism — not promote the image of the university," Weedmark said. "The student handbook even described the class as gaining first-hand experience in writing news stories for a newspaper — it doesn't describe it as gaining experience in writing press releases or image-enhancing articles."

Abare has claimed the primary mission of *The Gargoyle*, funded by the college and

run primarily by students, is to enhance the image of the university — while the newspaper simultaneously serves as a venue for journalism education as a lab course.

Thompson affirmed the role of *The Gargoyle* as a mechanism for journalism education, saying “this is an academic tool, this is about journalism,” but Hackett said she has mixed feelings about the future of the newspaper.

“I don’t feel like I can get a solid education in my field if I am not able to practice honest journalism, but I am skeptically optimistic about the future,” Hackett said. “It would be a lie to say that I trust the school won’t do it again, but I love the *Gargoyle* too much to not give it one more chance and see if we can make it better for the future.”

*The Gargoyle’s* Web site recently was named a finalist in the national online Pace-maker Awards competition, a major prize for student journalists.

## Dual roles

Phone calls seeking information at Flagler College — including those to the president’s office, other administrators and *Gargoyle* editors — often can be directed to the same person: Brian Thompson.

Thompson serves in a dual capacity as one of *The Gargoyle’s* advisers and also the director for Flagler’s Office of Public Information, the goals of which he says do not conflict because his job in public information is

“He has a job to do for the school and the administration, so it can be hard to know where he personally stands on certain issues.”

**Brittany Hackett**  
editor, *The Gargoyle*

not to craft the message for the college.

“Because my office has changed so much, I’m not really a spokesman for the college,” Thompson said. “We’re becoming more of an almost college media office, in that we do the Web site, we do the alumni magazine, we do things like that. And so in some ways there are, but it’s kind of like anybody, sometimes you have to have a ... veil of ignorance. And you’ve got to take yourself out of that mode and get into this one.”

Thompson also said he does not have the information required to speak for the college and that President Abare himself is the official spokesman — such as in instances in which student journalists would need to get official information from the university.

“[Abare is] designated as the spokesman for the college. So that information almost always comes from him,” Thompson said. “And I don’t even have information that I can even go on record with them about.”

Editors have expressed concerns, however, that Thompson’s roles could be a conflict of interest.

Hackett said Thompson’s two roles can make it difficult to know which hat he is wearing when he talks about a particular issue or concern.

“Sometimes, I [do] think there is a conflict of interest with Brian’s two roles, especially when the ‘scandal’ happened at the end of the year,” Hackett said. “On the one hand, he wants to be there to support us, but on the other hand he has a job to do for the school and the administration, so it can be hard to know where he personally stands on certain issues.”

Weedmark said it is “definitely a conflict of interest to have him in charge of both the college newspaper and public relations for the college.”

But unless Abare were to change his position on the role of the newspaper, Weedmark said a change of advisers would not bring about editorial independence.

Thompson is one of two advisers for the newspaper, along with Carrie Pack — both of whom work for the school’s Office of Public Information, but Hackett said other resources in the communication department are available if Thompson’s role conflicts with his responsibilities at the newspaper.

When asked about the situation, Abare defended Thompson’s qualifications as an adviser by saying he was once on *The Gargoyle* staff and was hired away from his journalism position at the local newspaper, the *St. Augustine Record*, to head the public information office at Flagler College. ■

# Connecticut panel completes newspaper review

## President formed task force after ‘satirical’ rape editorial published

BY TIM HOFFINE

Members of a task force that reviewed journalism practices at Central Connecticut State University are giving the process mixed reviews, including a student editor and newspaper adviser who say it has caused a chilling effect on campus.

University President Jack Miller convened the task force in March after *The Recorder* ran a controversial and supposedly

satirical editorial titled “Rape Only Hurts If You Fight It,” which claimed rape had been a positive influence on Western civilization and that it benefits “ugly women.”

The article’s author, Opinion Editor John Petroski, said the editorial was meant to be a satire. The article became a target of widespread ire and the newspaper’s editors removed Petroski from his editor position, but he remained on staff.

National media attention focused on the campus, and in a statement issued in February, Miller proposed looking further into *The Recorder* itself to “take positive steps to educate students about the damage such blatantly misogynistic and homophobic

content causes.”

The task force — whose members included newspaper advisers, student leaders, several university professors and leaders of campus organizations, such as the Women’s Center and the YWCA Sexual Assault Crisis Service — reviewed *The Recorder’s* constitution, the roles of its editors and advisers, its funding models and past First Amendment court cases.

*The Recorder* is a weekly publication and receives \$25,000 each semester from the university, almost all of which goes to printing costs, editors said.

The task force presented its findings in a final report released May 18. The rec-

ommendations included hiring a full-time media adviser, creating a journalism major and encouraging professional development training for student journalists.

“U.S. Supreme Court decisions have repeatedly affirmed strong First Amendment protection for university student newspapers, prohibiting retaliation against unpopular publications, their writers and their editors, thereby limiting the scope of faculty or professional staff intervention in the editorial process and proscribing the imposition of ‘sensitivity training,’” the report said.

## Under review

The final report is in the hands of the university president, who expects to make a public response in the late summer or early fall, university spokesman Mark McLaughlin said.

“The task force doesn’t change much of anything right now,” said Vivian Martin, newspaper adviser, a member of the school’s media board and a member of the task force. “Even before the controversy, there was talk of some more training aimed at the newspaper staff, a for-credit weekly critique session and some other tweaks, and that will continue.”

Though the report acknowledged the student newspaper’s right to print without prior restraint or review by the university, newspaper adviser Susan Sweeney said she was concerned the added presence of the university in student-run groups would keep them from taking chances from which they could gain educational value.

“I’m concerned about the intrusion of the university into [student-run organizations] because I want to preserve student-run organizations as a safe place for students to make decisions that they might make differently in the future,” said Sweeney, who is also the associate director of the Department of Student Activities and Leadership.

“They can have this experience at the school newspaper now, and then when they’re sitting at a seat at a different newspaper or publication, they will have the benefit of having had this experience to weigh the consequences of their decisions in the future.”



Some members of the task force, including Sweeney and *Recorder* Editor in Chief Mark Rowan, said the task force did have an important educational purpose.

“The task force was a positive experience for both the newspaper and the university,” Rowan said. “[The final report] certainly benefited the faculty, but the newspaper is put out for the students and by the students, so it is essential for them to also get and understand that information.”

Then-student body President Christopher Brine said the task force was important because it helped faculty and students understand the relationship between the university and the student newspaper.

“It let there be no doubt that a school newspaper is an arena of student learning that cannot be corrupted by actions of the university administration but may only be influenced by the newspaper staff itself or through outside student activism,” Brine said in an e-mail.

But Martin suggested the task force did not go far enough to help educate the entire community, rather than members of the student newspaper and faculty.

“People were much more interested in dealing with the students on the newspaper and sensitizing them than addressing some of the issues that affect the campus as a whole,” Martin said. “Yes, we need to deal with issues of press responsibilities and the First Amendment. ... But the broader discussion needed to happen as well.”

Although the report recommended programs to teach students about “journalistic integrity and professional competence,” adviser Vivian Martin said the report should have included programs designed to give all students the chance to become familiar with free-speech issues.

“I think we should have recommended some co-curricular activities around the challenges of living with the First Amendment,” she said.

Sweeney said she was concerned some on the task force were interested only in giving suggestions and not introducing ways to see them accomplished.

“They had a whole lot of ideas about what we should be doing,” Sweeney said. “But they’re not the ones that are in the seats of facilitating it. We turned around and said ‘You know, that’s great that you think training should be improved. What additional resources is the university going to dedicate to facilitate that?’”

Rowan said situations in which newspapers are reviewed by their universities could be considered intervention, but he also said the journalism department had no intention to harm the work students are doing.

“Universities certainly have the means of influencing the final product,” Rowan said. “Whether it be through something like this committee that has the potential to make student writers more timid towards reasonable, yet still controversial articles or through sensitivity training or the classroom.

“While the professors we interact with give us plenty of feedback and assistance, I do not feel it is to spin the content in a certain direction.” Rowan said.

## Connecticut chill

Advisers and student editors contend the situation at Central Connecticut has had a chilling effect on student expression, especially with regard to student-run, printed media.

Sweeney said several months after the initial controversy that prompted the review, editors of a campus literary magazine decided not to publish some photographs they thought might be too controversial on the basis that “this campus has been through enough this year.”

Maurice Ledoux, an editor of CCSU’s literary magazine, *The Helix*, said his publication made the decision not to publish artistic photos of a man masturbating in front of a computer because of the controversy and review of *The Recorder*.

See **Task force**, Page 14

When student newspapers get tough with student governments, student leaders pull out an important bargaining chip:

# Power of the purse

BY TIM HOFFINE

Student journalists in Florida and New Jersey are the latest to come to terms with student governments after their funding was pulled — saying student governments objected to the content of their papers.

Courts have been consistent in ruling that at public colleges and universities, school officials — including student government officers — may not exercise the power of a private publisher over student publications simply because they provide financial support.

Student government and newspaper leaders at **Florida Gulf Coast University** in Fort Myers, Fla., recently came to an agreement over a dispute that occurred when the student government cut the *Eagle News*' funding by almost half last year — from \$35,750 to \$18,700.

Then-Editor in Chief Rich Ritterbusch had alleged that the student government's actions were in retaliation for information the paper had printed regarding the student government's operating budget. Student government leaders claimed otherwise.

"Some of the business practices, how [the *Eagle News*] spent their money and just a few other ethical concerns we had, we wanted to be cleaned up before we appropriated any more funding," Student Government Association Vice President Jameson Yingling said.

Student Affairs Vice President James Rollo stepped in and organized a task force to compare the *Eagle News* with similar newspapers at peer universities and to review the relationship between the paper and student government.

The two sides came to an agreement in February. A non-binding resolution passed by the student government Feb. 6 will provide more than \$40,000 per year for the next three years to fund the newspaper, said *Eagle News* Editor in Chief Will Cochran.

Student government leaders promised a three-year funding model based on the total

number of credit hours the student body takes. In exchange, the newspaper agreed to have a new adviser as well as an oversight board composed of students, faculty and community members that will hire the editor in chief.

Yingling acknowledged the non-binding resolution that promised the new funding model can be amended, but he said he is committed to making sure it is not changed in any way that harms the *Eagle News*.

"I know that as long as I'm around, I'm going to do whatever I can to make sure that doesn't happen," Yingling said.

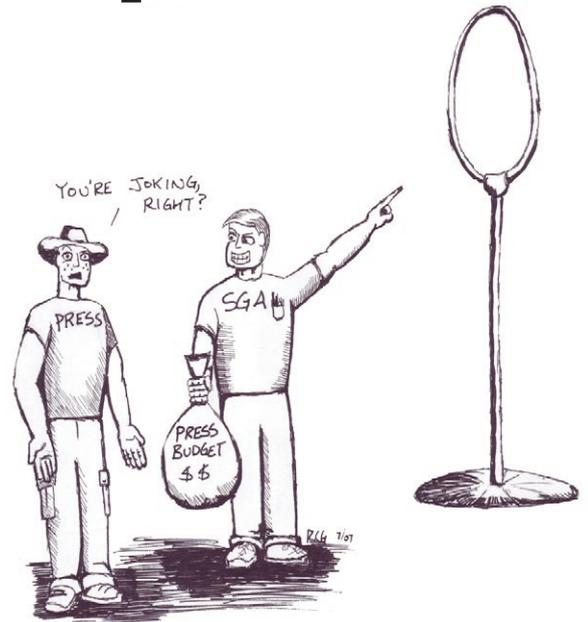
Cochran said the *Eagle News* is planning to become independent from student government funding in the next three to five years, when he says the newspaper might be better able to "stand on its own two feet."

"I believe there are always issues when you have a student government that is giving funds to the student newspaper, and then the paper is required to criticize the student government," Cochran said.

At the same time elsewhere in the state, students at **Florida Atlantic University** in Boca Raton also were fighting budget cuts of student media outlets.

A year earlier, student leaders had voted to cut \$63,000 from the student newspaper and television station budget — an action some saw as retribution for content critical of the student government.

This is not the first time students have had concerns about their student government. In addition to the funding cuts in 2006, the student government was accused of trying to shut down the student newspaper and student radio station for political reasons in 2004. Also, the student government was without a president for more than three months in 2006 following a bungled



election.

The school's board of trustees approved a new student government constitution in January 2007 that reduced student government power and provided an administrator veto of student government actions. University and student leaders hoped the new constitution would prevent disputes over student media funding.

Former *University Press* Editor in Chief Jason Parsley also suggested the creation of a media board, which has not been approved. He says the proposal would help protect student media funding by giving financial control of the newspaper, radio and television stations to an independent board.

Parsley said another problem his newspaper faced was student government leaders' lack of knowledge about press freedoms for college newspapers.

"I felt they had a very limited knowledge as to that," Parsley said. "We tried to give them as much information as we could, but since it was coming from us, they didn't always believe what we were saying."

Parsley said he can understand how the inherent nature of checks and balances in

student government would create situations where student government leaders would want to control how their funds are spent.

"They fund us ... and they want to be able to control it, and they want to be able to make editorial decisions or try to tell the newspaper what to write about, or not write about, and those are some of the issues we did face."

Educating student government leaders about their roles and responsibilities with regard to the press is a school administrator's responsibility, Parsley said.

"The burden should really fall on the administration to teach the future leaders how to deal with the press and the rights of the press, and that's where I think there's a lack of that happening," Parsley said.

Funding for student newspapers often comes from some combination of student government, the university itself and advertising revenue.

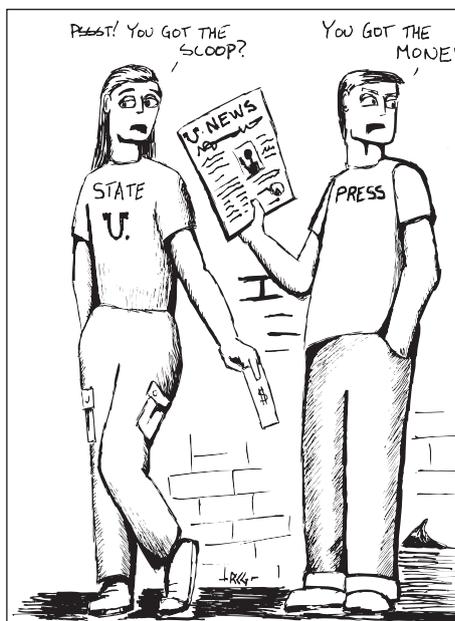
Parsley said the *University Press* "did not really look into" becoming financially independent because of stiff competition from other local media outlets.

"South Florida is a huge media market," Parsley said. "There's an abundance of local, community, newspapers and magazines ... so there's a lot of competition going on in this neighborhood."

At New Jersey's **Montclair State University**, Karl de Vries got a wake-up call when a member of student government tried to cut funding for his school's weekly newspaper.

De Vries, editor in chief of the student-run *Montclarion*, said he began to seek financial independence from student government when Treasurer Maria Soares attempted to freeze the paper's \$107,000 budget in February. De Vries claimed Soares was motivated by a personal vendetta, while Soares said the decision to cut funding was a response to the newspaper's overspending.

"For years, such a worst-case scenario



has been the paranoid talk of *Montclarion* editors, a bad dream never to be wished [to] fruition," de Vries said in a Feb. 8 editorial. "Trouble is, we now live in a world where the worst-case scenario has happened."

Less than two days after he was informed the paper's budget had been frozen, de Vries was notified by the student body president that the treasurer could not freeze the budget without the president's prior approval — and that the president had not given his permission.

But being under the protection of the student body president did not necessarily equate to total financial independence. De Vries said the attempt to freeze his newspaper's budget emphasized how much control the student government had over his newspaper's operation.

"It was the first instance in which I realized some of the broader liabilities of being under the student government," de Vries said.

And as for *The Recorder*, Rowan said the effects of the controversy and the review continue to have a presence in the newsroom.

"There certainly is a cloud hanging over the office since the [controversial] article and the committee started their report," Rowan said in an e-mail. "Part of it is a renewed consciousness, but I do believe part is a fear to challenge and to be controversial in a positive way."

The newspaper's finances traditionally have been tied to student government. In the past, the newspaper has gotten about \$107,000 from the student government, while three-quarters of the paper's approximately \$70,000 in advertising revenue has been given to the student government.

For this year, a new funding deal has the newspaper receiving less funding from student government — down to \$67,000 from \$107,000 — but receiving a larger share of the advertising revenue it brings in.

"We're receiving approximately \$40,000 [from student government] less than we received in the past," de Vries said. "It's based on the assumption that the median we've set for advertising revenue over the past 15 years or so is \$50,000. If we go below \$40,000, we're up a creek."

De Vries has said he would like to see the newspaper become financially independent of the government and potentially even the university but called doing so a "long and complicated" process. Even a gradual change — such as making the newspaper independent from the student government and then attempting to establish complete independence from the university in the long-term — would be extremely difficult, de Vries said.

And as long as someone else has control of the money, student media organizations have to consider who is most trustworthy with that control.

"In some ways, it's a toss-up under who you think you'd be more protected by," de Vries said. "To become independent of the student government, then we'd have to work out a deal with the board of trustees."

When asked how long it would take the newspaper to become financially independent, de Vries said, it is "certainly nowhere in the conceivable future," and added that within the next 15 years would be a "very, very optimistic" estimate. ■

From **Task force**, Page 12

After speaking with the magazine's adviser and having an official debate that featured statements from heads of the art and women's studies departments, *The Helix's* five editors voted 3-2 not to publish the photos.

"We didn't want that sort of backlash of, 'how you could do that in the aftermath [of *The Recorder* controversy]," Ledoux said.

Rowan said everyone at the paper is "very careful" and that what was "once seen as humor or a strong opinion has been more scrutinized and deemed taboo."

"We try to operate as normally as possible, but all the writers who have been through this will still feel its presence for a long time," Rowan said. "I don't believe the content of the paper has changed that drastically, but it is something we all have to fight through each issue." ■

From **College briefs**, Page 9

First Amendment rights were not violated “because he exercised no control over the content of the [*Collegian*].” Johnson did not appeal the decision.

Rice and Lane are considering their options, but their “initial thought” is that it might be best to appeal to the full appeals court on the issue of their legal standing, Rice said.

**Case:** *Lane v. Simon*, No. 05-3266 (10th Cir., July 26, 2007)

## Court: Leaders not liable for First Amendment claim

**NEW YORK** — Plaintiffs in a 10-year-old lawsuit against the College of Staten Island are asking the U.S. Supreme Court to review an appellate court ruling that said student government officials could not be sued for infringing the constitutional rights of student journalists.

The court upheld the district court’s previous ruling that school administrators had violated students’ First Amendment rights when they cancelled an election following the publication of an endorsement in a student newspaper.

The three-member panel also ordered the reconsideration of the district court’s finding that administrators could not be held financially liable for violating the students’ First Amendment rights.

The *College Voice* published an election issue in February 1997 endorsing a slate of candidates. On May 1, 1997, the Student Election Review Committee postponed the election already in progress, claiming the *Voice* had violated election rules. College of Staten Island President Marline Springer nullified the election results five days later.

*Voice* editors sued student government officers and the school, claiming their First Amendment rights were violated.

The judges ruled the cancellation was a “retaliatory action” intended to prevent the paper from publishing similar articles in the future.

The panel also ordered the district court to reconsider its finding that ad-

ministrators could not be held financially liable for the violations.

But the court dismissed the student leaders from the suit, finding that the students were not state actors.

SPLC Executive Director Mark Goodman said historically, student leaders are considered state actors.

“Courts have said that if a student government or some other body is acting on authority delegated to it by a public college or university, then it is a ‘state actor’ for First Amendment purposes,” Goodman said. “If applied in future cases, this decision could pose real problems for student publications battling content-based funding cuts from student governments.”

In a partial dissent, Chief Judge Dennis Jacobs ridiculed the case as being “about nothing” because it happened 10 years ago and seeks only \$2 in damages.

**Case:** *Husain v. Springer*, No. 04-5250, 2007 WL 2020028 (2d Cir. July 13, 2007).

## NEWSPAPER THEFT

### Framingham State students pay \$630 for stolen newspapers

**MASSACHUSETTS** — Framingham State College students who admitted to stealing between 800 and 1,000 copies of the student newspaper, *The Gatepost*, are paying the price — about \$630.

Mari Megias, a university spokeswoman, said the newspaper was being reimbursed by the students responsible, but she would not reveal what, if any, other punishment the students received.

Area newspapers reported that two women, whose names were not released, reimbursed the newspaper for the cost of reprinting 500 copies of the April 27 edition after they took almost half the press run because they thought they looked fat in the front-page photograph. The photo depicts seven women bearing their midriffs to reveal the message “I (heart) N-O-O-N-A-N” in support of one of their friends on the lacrosse team.

*Gatepost* adviser Desmond McCarthy said in May that suspicion of a theft

arose because the 3,000-student commuter campus rarely runs out of papers so quickly on distribution day, a Friday.

University officials drafted an unsigned apology in May and, with approval from some of the women in the photograph, submitted it to the newspaper for publication, according to an article in *The Metro West Daily News*, but *Gatepost* editors refused to print it. ■

## Commencement issues removed before Clinton speech

**OHIO** — Federal authorities requested that maintenance staff remove more than 5,000 copies of the student newspaper at The Ohio State University hours before former President Bill Clinton delivered a commencement speech.

Ray Catalino, business manager at *The Lantern*, said stadium officials told him that federal authorities instructed the maintenance staff at the stadium to remove all trash cans and printed material from the area to prepare for Clinton’s arrival. Staff members removed bundles of the commencement issue from outside the stadium.

“All but 500 were taken,” Catalino said. He added that he does not know whether the papers were thrown away.

Stadium staff supervisors later apologized to the newspaper for the mistake, Catalino said.

But *Lantern* outgoing Editor in Chief Ryan Merrill said he thinks university officials were censoring the paper and trying to hide it by blaming anonymous federal authorities. ■

## MISCELLANEOUS BRIEFS

### Daily Texan board purchases libel insurance, ending adviser review

**TEXAS** — For the first time in more than 30 years, the student newspaper at the University of Texas at Austin is going

See **College briefs**, Page 23

# Proper Channels

Student demonstrators fight prior review of their messages

BY ISAAC ARNSDORF

Billy Embree was trying to help his college's janitors fight for higher wages. He ended up fighting a suspension.

When Embree joined a union organizer in handing out fliers on Cincinnati State Technical and Community College's campus May 30, security officers removed Embree from school property, threatened him with suspension and threatened to send the organizer to jail. The police came but made no arrests.

Two weeks later, the pair were back on campus canvassing after completing the official process of registering with the student activities office and submitting their fliers for approval.

Originally, "they did not go through the process," said Michele Imhoff, the college's director of public information. "Since that time, they have gone through the process, and they have been on campus, and they're on campus today."

Requiring pre-registration for flier distribution and requiring posted fliers to bear a stamp of approval are forms of prior review, experts say, that could influence the circulation of student publications and tests the strength of the First Amendment on public college campuses.

"It's constitutionally questionable," said David Hudson of the First Amendment Center at Vanderbilt University in Nashville, Tenn. "Prior review policies are probably OK at the secondary school level, but public colleges and universities are supposed to be about a marketplace of ideas."

## Regulating speech

The guards at Cincinnati State had been instructed to remove anyone canvassing on campus who did not go "through the proper channels," Imhoff said.

Such "proper channels" are common stipulations at public colleges nationwide. "Their legal rationale would be that all they are doing is requiring students to adhere to reasonable time, place and manner restrictions," explained Jane Kirtley, the Silha Professor of Media Ethics and Law at the University of Minnesota School of Journalism and Mass Communication.

Sandy Davidson, a media law professor at the University of Missouri at Columbia, said state institutions have the authority to regulate the time, place and manner of speech as long as they are not interfering with content.

"As long as you have a non-discriminatory, evenly applied time, place and manner restriction, then the state authorities are all right," Davidson said. "You have the right to free speech, but that doesn't mean any time, any place, anyhow."

Kirtley said public schools have an obligation to regulate some speech.

"Of course in an ideal world we would say everybody ought to engage in any expressive act whenever they choose," Kirtley echoed, "but as a practical matter I think universities and any state entity also have an obligation to balance the need to promote the opportunity of people to do that with other interests like public health and safety."

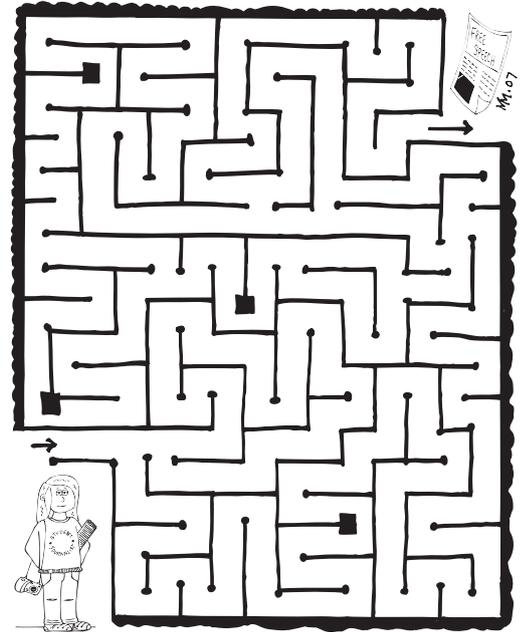
But that balance can tilt when such policies are designed to discourage speech through red tape.

"Whenever you have requirements where expression is reviewed beforehand, you end up chilling controversial speech," said Greg Lukianoff, president of the Foundation for Individual Rights in Education.

No disciplinary action was taken against Embree, but he said an "intimidation factor" still overshadows student participation in the janitors' campaign. While circulating a petition, "I actually had students tell me, 'Oh, I'm about to graduate. I can't sign this. I don't want to start any trouble,'" he said. "That's part of our freedom of speech — being able to sign something we believe in."

A fair and clear procedure should not be intimidating, however, Kirtley said. "The question is how onerous is the process and is it executed in a way that is absolutely fair, equitable and viewpoint-neutral."

When that process includes prior review



of the content — not just the time, place and manner — its tension with the First Amendment escalates, experts warned.

"The danger with this kind of operation is that it could lead to viewpoint-based discrimination and restrictions, which are really problematic under the First Amendment," Kirtley said.

Courts have consistently rejected systems that require prior approval of independent student speech on public college campuses. In their *Guide to Free Speech on Campus*, the Foundation for Individual Rights in Education describes requiring prior approval of the content or viewpoint of campus demonstrations as "unconstitutional prior restraints."

## 'Check it through first'

Marcia Colton works at Cincinnati State's Student Activities Office, which is charged with approving all fliers before they can be posted on any wall or bulletin board. People wishing to hand out fliers do not need their literature stamped, but they must register with the office.

She said content is a factor in determining which fliers are approved and which are denied.

"If it's going to be something of a controversial nature, we like to check it through first," Colton said. "Ninety percent of the fliers that go up, there's no problem, but there are certain things where it may pose a question or we want to make sure it's in line with what the college is doing."

Colton said the policy is designed to screen fliers that the administration considers inappropriate.

"We had an incident where they were advertising a party or something, and there were some very scantily clad women. Those were not approved," she said in a phone interview. "We had a woman who was trying to sell her egg, and so we didn't authorize that."

As for the union trying to organize the janitors, approval of its fliers was initially delayed to check that the union was not criticizing the administration.

"Once it was checked through, just to make sure the union wasn't indicting Cincinnati State but it was just offering an opportunity to the workers, then it was OK," Colton said.

Davidson said such content-based considerations in approving fliers surpass time, place and manner restrictions and suggest prior restraint.

"Definitely it's not just time, place and manner," she said. "Now we're more into licensing and content discrimination."

Student Press Law Center Executive Director Mark Goodman said Cincinnati State is "lucky it hasn't been sued over such unconstitutional practices.

"This kind of approval process based on content is exactly what the First Amendment was intended to prohibit," Goodman said.

## Going to court

Without specific, content-neutral guidelines for evaluating flier approval or space requests, courts have sometimes ruled such policies overly broad and unconstitutional.

"Because of the nature of public schools

being state institutions, it's a lot more questionable from a legal perspective whether in fact they can have these kind of restrictions, assuming they go beyond reasonable time, place and manner restrictions, when time, place and manner does not include content," Kirtley explained.

In September 1999, a federal judge in California enjoined Irvine Valley College in the South County Community College District from enforcing its student speech policies, which prevented students from gathering in all but a few designated areas on campus, banned microphones and other amplifiers at rallies, and prohibited students from demonstrating in front of the heavily trafficked student services center.

That policy was replaced the next year with another that required students to reserve outdoor space for holding events and to obtain the college president's approval before distributing any written material on campus.

Students sued again, and, in April 2002, a federal judge ruled that "because the provisions provide the college presidents with absolutely no standards to guide their decisions, they are unconstitutional."

In 2002, before going to court, the University of Wisconsin at Whitewater rescinded its policy restricting signs and posters on campus and requiring 24-hours notice before any protests after a community outcry.

Still, 73 percent of public colleges have policies that "clearly and substantially" restrict student speech, according to a 2006 FIRE report.

## Fight for input

The proposal of similar rules at the Uni-

versity of California at San Diego has mobilized students to block their adoption.

Near the end of the term, before final exams week, an e-mail notified students June 8 about proposed revisions to the school policy manual that would require any gathering of 10 or more people to acquire a reservation and hold one student liable for any damage that occurs in that activity. The deadline for accepting student input on the revisions was set for June 25.

Rising sophomore Juan Vazquez designed fliers, created a Web site and started a group on the social networking site Facebook.com.

"This is a true violation of our crucial rights of expression and it must be stopped," he wrote on the message board of the Facebook group, which quickly grew to more than 1,200 members. "Do not let the administration control your ability to express your opinion! Do not let this policy take away your power to exercise the now endangered right of free speech! Do not let yourself and your community be silenced at your university!"

In the middle of finals week, fewer than 24 hours after the Facebook group was created, more than 80 people came to a question-and-answer session with the vice chancellor June 12, when he agreed to extend the deadline for comments on the revisions to December, Vazquez said, and promised that students would be included on the committee considering the revisions.

"Freedom of speech is particularly important," Vazquez said in a phone interview, "because if we can't assemble with more than 10 people, then we can't do any kind of activism on campus." ■

From **Clery Act**, Page 5

facilities safety audit. Also, the Department of Public Safety now will be under the supervision of the vice president for business and finance, as recommended in the Butzel Long report.

Faculty offices are being rekeyed; the process of updating crime statistics has begun; and the Department of Public Safety continues to offer crime prevention programs, the board of regents said.

Finally, Security on Campus, the organization that filed the original complaint, was scheduled to conduct Clery Act compliance training on campus Aug. 16.

Carter said the university's mishandling of information is not the result of deficiencies in the Clery Act but solely the result of the school failing to comply with the act.

"Security is not [administrators'] top priority," Carter said. "Education is, even though it's kind of hard to educate students if you can't protect them."

But Carter said Eastern Michigan is not alone. It is common for universities to underreport crimes on campus, and reputation is part of the motivation, he said.

Jane Kirtley, Silha Professor of Media Ethics and Law at the University of Minnesota, agreed.

"You can't just rely on university admin-

istrators to do the right thing," she said. "I wish you could."

Because "college administrators need a little incentive to be forthcoming," Kirtley said it is vital for the Clery Act to exist. Many students and parents depend solely on administrators for information regarding safety on campus, she said.

"Accurate information is a very powerful tool," Kirtley said.

Also, the Clery Act serves to quell rumor and speculation, she added.

Kirtley concluded by calling Dickinson's death a "tragic occurrence, which would have been tragic enough" without the university's apparent cover-up. ■

# Sensitive speech

High schools react to violent expression after Virginia Tech massacre

BY JUDY WANG

Eight days after the Virginia Tech University massacre, a high school student in Northport, Wash., was overheard telling other students that chaining shut all of the doors in the school except for one would make it easy for a gunman to shoot those emerging from the unchained entrance.

The vivid images that Lance Timmering, 17, painted caught the ear of two Northport High School teachers, who reported the incident to the principal. Teachers discovered a notebook that had the word "Assassination" written across the cover and contained notes on how to kill 20 to 30 people. Principal Patsy Guglielmino acted quickly; she immediately expelled Timmering and oversaw his arrest by local police, later citing the 1999 shootings at Columbine High School and the recent Virginia Tech University shootings to justify her swift actions.

In the aftermath of violent incidents, schools can be quick to crack down on student speech that appears to express violent thoughts. Although some school officials said a tougher stance on "violent speech" might be necessary to expose or discourage potential school violence, students and activists said such enforcement is often an "overreaction" and schools should not curtail free-speech rights, even if the airwaves are buzzing with tales of school-ground terror.

## Keeping schools safe

Administrators and school-safety proponents said news of campus violence should remind schools that it is incumbent upon them to make safety — and not speech — a top priority.

John Lochman, a professor of clinical psychology at the University of Alabama who conducts research on risk factors and violence prevention, said school officials are more likely to suppress student expression immediately after violent incidents because they become "more sensitized" to the potential for tragedy at their own schools.

"They are more likely to respond strongly and, perhaps, overly strongly," he said.

Since the 1999 Columbine shooting in Jefferson, Colo., which left 12 students, one teacher and the two shooters dead, officials have become much more proactive in seeking out and disciplining student speech that contains violent thoughts. Following the shooting, many schools enacted zero-tolerance policies on speech or writing that appeared to express a violent intent. A group of politicians, including then-House of Representatives Judiciary Committee Chairman Henry Hyde (R-Ill.), even tried to pass legislation in Congress to censor student speech.

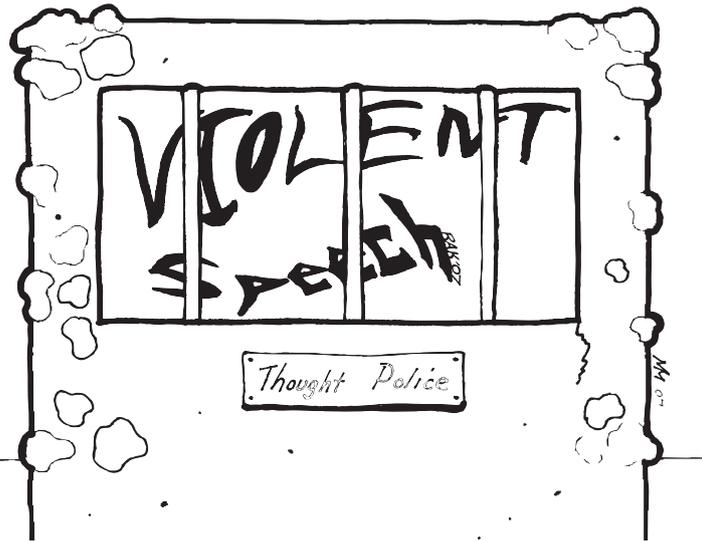
"It's definitely changed," Ronald Stephens, executive director of the National School Safety Center, said of schools' approach to speech connoting violence. "The growing reality is that administrators are becoming much more aggressive in this era."

On April 16, a student gunman at Virginia Tech killed 32 people and left many more wounded before turning the gun on himself. The massacre, the deadliest school shooting in American history, drew the eyes and concern of school officials across the country.

Mike Hiestand, Student Press Law Center legal consultant, said the Virginia Tech shooting reinvigorated the more aggressive attitude toward student speech that had been dying down in the years after Columbine.

"Schools are looking for and making up things out of statements that, in the past, would have been passed over as foolish kid talk," he said.

Randy Swikle, who recently retired from 36 years as an adviser to an Illinois high school student newspaper, said the increased discipline of unsavory student speech is bad news for student publications as well. He said



he is concerned that school officials are inadvertently telling student journalists that their schools do not trust them to exercise their own editorial judgment.

"A lot of schools right now don't want their students to know what their rights are because they're afraid they'll start using them," he said.

Hiestand said the conflict at Northport High School may be a part of the reinvigorated trend.

Following Timmering's arrest, Principal Guglielmino told local media that she acted with the recent school shootings in mind and it is her duty to "look at every threat as though it is real."

Although Guglielmino admitted that she did not think the school was in any significant danger and later said she did not feel personally threatened by reports of Timmering's behavior, she maintained that school policy obliged her to issue an emergency expulsion over concerns that the behavior signaled impending danger.

Timmering initially was charged with a felony of a threat to kill by Stevens County police. But after investigators determined that Timmering did not pose a safety threat and dozens of letters written in support of the student poured in, Stevens County Prosecutor Tim Rasmussen reduced the charge

to a misdemeanor.

Pleading guilty to a charge of disorderly conduct in Stevens County District Court on June 11, Timmering was sentenced to pay a \$75 fine, attend mental health counseling, send out letters of apology to the community and serve one year of probation.

He can even return to school for his senior year if he remains on good behavior and Northport decides to invite him back, Rasmussen said.

Guglielmino said Timmering's eligibility to re-enroll "hasn't been decided yet" because he has not yet completed his application for re-entry.

In a similar incident that emerged several hundred miles east of Northport, a high school senior in Cary, Ill., was removed from school and arrested for writing an essay containing images of gun violence and sex in his English class.

In response to an assignment from the teacher that asked him not to "judge or censor" his words, Allen Lee, 18, handed in a personal reflection paper about "shooting everyone" and having "sex with the dead bodies." The essay, turned in one week after the Virginia Tech shooting, mocks his English teacher, telling her not to be "surprised on inspiring the first [Cary-Grove] shooting."

Cary-Grove High School Principal Sue Popp had Lee removed for 10 days and arrested while school officials and the local authorities analyzed his essay and probed into his life to determine the danger he posed to the school. Upon hearing of Lee's arrest, the U.S. Marine Corps promptly removed him from its enlistment program and briefly extinguished the student's dream of becoming a Marine after high school.

But prosecutors eventually dropped the charges against Lee once they determined that he was not dangerous. Lee returned to school without receiving further punishment and he graduated with the rest of his class May 26 to loud applause, his attorney, Tom Loizzo, said.

Loizzo said his client's free-speech rights were trampled upon not for expressing a violent intent but rather for simply following the teacher's instructions to "release his inner critic" in his writing.

## Perilous times for student speech

Some First Amendment advocates have

characterized administrative crack-downs on student speech as classic overreactions following a large-scale tragedy, arguing that safety regulations should not leave the First Amendment biting the dust.

John Bowen, chairman of the Journalism Education Association's Scholastic Press Rights Commission, said schools too often punish what could be valuable student expression out of fear.

"We encourage students to be creative, think outside the box," he said. "A lot of that may involve fantasies that can be interpreted as violent."

Swikle said that although some students use their free-speech rights irresponsibly, recent news of campus violence should not justify a broad policy of censorship.

"You can't allow a few students in the school who are irresponsible to jeopardize the rights of those who are responsible," he said. "The First Amendment is supposed to be an instrument of safety."

But some courts have been more sympathetic to administrators.

The 2nd U.S. Circuit Court of Appeals ruled July 5 against an eighth-grader who filed suit against the Weedsport Central School District in Weedsport, N.Y., alleging that his suspension for instant messaging a violent image calling for the death of a teacher violated his free-speech rights.

The message contained an image of a gun shooting at a person's head and included the message "Kill Mr. VanderMolen," the student's English teacher.

The appeals court decided that the student's message "crosses the boundary of protected speech and constitutes student conduct that poses a reasonably foreseeable risk."

Hiestand, who said he disagreed with the 2nd Circuit's decision because the speech occurred off campus, said he wishes the court had been more attentive to the fact that the middle school student did not have a violent history and did not show any signs that he would actually carry out his message.

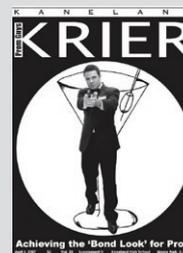
"Kids say stupid things sometimes, and it's just talk in most cases," Hiestand said. "We get into trouble when we start punishing people for their thoughts or solely for their speech."

But other advocates said this case might

## Editorial decision

*Following the Virginia Tech tragedy, student journalists at one high school in Illinois voted to limit distribution of a prom supplement depicting students in a James Bond-like role.*

The Kaneland High School prom issue was criticized by parents who thought the issue glorified gun violence in the wake of the Virginia Tech shootings. The staff of the *Kaneland Krier* voted in April not to distribute the issue to the general community or to publish the supplement covers online.



Read more on the Web: [www.splc.org/report\\_detail.asp?id=1352&edition=43](http://www.splc.org/report_detail.asp?id=1352&edition=43)

be an exception to free-speech protections because the specificity of the student's message could be interpreted as a death threat.

"The concept of a 'material and substantial disruption' is a whole lot clearer in that case," Bowen said, referencing the standard set by a 1969 Supreme Court decision, *Tinker v. Des Moines Independent Community School District*, which restricted public schools' power to punish or prohibit student speech.

Often the line is far less clear. The question of when, if ever, student safety supersedes their speech rights hinges on whether violent speech or writing is a precursor to actual violence.

Lochman, the psychology professor at the University of Alabama, said drawing a distinction between harmless talk and a serious threat is a challenging task, though schools should be more concerned if the student has a history of anti-social or violent behavior, or if the student's speech is directed at a specific person or group.

"We have a better idea today of what potential risk factors for school violence might be," he said. "But it's still a difficult question." ■

## COVER STORY

# Chipping away

U.S. Supreme Court's decision in *Morse v. Frederick* leaves narrow hole in landmark *Tinker* standard

BY JUDY WANG

A burst of laughter broke over the marble halls of the U.S. Supreme Court chamber when one of the nine dignified, black-robed figures seated behind a raised bench began to speak about “bong hits.”

While delivering the *Morse v. Frederick* ruling, witnesses said, Chief Justice of the United States John Roberts sarcastically described a comical banner reading “Bong Hits 4 Jesus” amid some chuckles from the crowd that had gathered to watch the final decision reading of the Court’s term.

Students and First Amendment advocates, however, were not laughing.

On June 25, nearly five years after a high school student in Juneau, Alaska, held up the now-famous banner across the street from his school during the 2002 Olympic Torch Relay, the Supreme Court ruled that his school had a right to discipline him for his actions. In a narrow ruling, the Court decided that schools do not violate a student’s First Amendment free-speech rights by punishing speech that advocates illegal drug use at a school-sanctioned and school-supervised activity.

While students and advocates bristled at this setback to students’ freedom of expression, school administrators maintained that the right side prevailed. These groups were not the only ones that disagreed on the outcome of the legal battle, as the Court itself exhibited more than one sharp ideological split in the decision.

Speculation among First Amendment advocates about the decision’s potential impact ranged from optimistic to deeply skeptical. Several advocates simply shrugged and resignedly said, “It could have been worse.”

## The decision

Many legal experts said the outcome of *Morse*, although unfavorable to established First Amendment protections, carves out a narrow precedent that is unlikely to prove devastating for student-speech rights.

The controversy began in January 2002 when Joseph Frederick, then an 18-year-old senior at Juneau-Douglas High School, raised a 14-foot banner duct-taped with the words “Bong Hits 4 Jesus” to attract the television cameras parked on the street next to his school. Frederick unfurled the banner for a moment in the spotlight, but he probably did not realize how much attention his message would soon receive.

Although Frederick would later claim that the words on the banner were “absurdly funny” but nonsensical, Principal Deborah Morse thought they carried a pro-drug use message.

After spotting the display across the street, Morse grabbed the banner and suspended Frederick for 10 days. Frederick appealed to



the Juneau School Board to end his punishment but lost.

The conflict gained momentum in April 2002 when Frederick, with help from the American Civil Liberties Union of Alaska, filed suit in a federal court alleging that his free-speech rights had been violated.

But the district court ruled that Morse and the school board did not infringe upon his rights, stating that the First Amendment does not protect Frederick’s message in this case because the banner “conflicted with the school’s deterrence of illegal drug use.”

Frederick appealed to the 9th U.S. Circuit Court of Appeals, which reversed the lower court’s ruling. The appeals court unanimously decided that the school violated Frederick’s free-speech rights because it failed to “show a reasonable concern about the likelihood of substantial disruption to its educational mission, applying the Supreme Court’s 1969 *Tinker* standard.”

But the school board, displeased with this ruling, brought its complaint to the Supreme Court.

Oral arguments were heard in the high court March 19. By that time, the case had gained national fame and drawn the interest of former special prosecutor and dean of the Pepperdine University School of Law Kenneth Starr, who signed on to represent the school district *pro bono*.

An eclectic group of organizations, including the Student Press Law Center, ranging from the left-leaning Lambda Legal Defense and Education Fund to the conservative Alliance Defense Fund, filed friend-of-the-court briefs with the Supreme Court in support of Frederick. Groups such as the National School Boards Association and Drug Abuse Resistance Education filed for Morse.

The Supreme Court ended the lengthy legal battle in June by giving the school district and Starr the final victory.

“I’m glad that the Court recognized the need to have reasonable

rules governing student speech for the good of all students,” Morse said in a conference call the day the Court ruled in her favor. “It’s been very challenging ... both personally and professionally.”

The 18-page opinion of the court, written by Roberts, sympathizes with school officials and the “difficult” and “important” job they have in shielding students from drug advocacy. Drawing on an educator’s duty to deter drug use, the majority decision said it would give school officials legal cover to strike down student speech that can be “reasonably regarded as encouraging illegal drug use.” The majority found the school’s interpretation of Frederick’s banner as a pro-drug message to be reasonable.

The decision used the Court’s 1986 ruling in *Bethel School District v. Fraser*, in which it ruled that sexually suggestive speech delivered at a high school assembly is punishable, to argue that the 1969 *Tinker v. Des Moines Independent Community School District* decision, the standard-bearer for student speech, is “not absolute.”

*Tinker* restricted censorship by only permitting schools to suppress speech that causes a substantial disruption in the learning environment or infringes on the rights of others.

The *Morse* decision also states that although Frederick raised his “pro-drug” banner across the street from his school, he still can be disciplined because the environment surrounding the Olympic torch relay constituted a school-sanctioned and school-supervised event.

Many legal experts said the ruling’s impact on student speech, however damaging, is considerably tempered by a concurring opinion written by Associate Justice Samuel Alito and joined by Associate Justice Anthony Kennedy. In the weeks leading up to the decision reading, Alito publicly spoke on the importance of upholding the First Amendment and was expected by many to stand up for student free-speech rights in the impending decision.

Although his vote was not for Frederick, Alito’s concurrence warned school administrators about the limits of drug speech regulation. He wrote that he and Kennedy support the Court’s decision as long as it “goes no further” than to allow administrators to restrict expression advocating illegal drug use and does not permit administrators to restrict commentary on “any political or social issue.”

Alito said the Court will not uphold restrictions on student speech that references illegal drug use but does not promote the illegal activity, which he said includes student speech that examines “the wisdom of the war on drugs” or the issues concerned with “legalizing marijuana for medicinal use.”

In addition, to prevent administrators from using the ruling as a *carte blanche* to censor, Alito wrote that the Court does not endorse the argument brought by the school district and Starr that the First Amendment permits public school officials to censor student speech that interferes with a school’s “educational mission.”

James Tidwell, an Eastern Illinois University professor of journalism, said the Alito-Kennedy concurrence makes it clear that students will not entirely relinquish free-speech rights at school.

“This case has carved out a narrow, narrow exception for speech that advocates drug use,” he said.

Associate Justice Clarence Thomas also concurred but wrote a separate statement that called on the Court to put the kibosh on student-speech rights entirely. None of the other justices signed on with this stance.

See **Bong Hits**, Page 22

## Thomas’ opinion considered extreme

### Justice calls for overturning *Tinker*

BY TIM HOFFINE

Reaching back to the history of America’s public education system and a legal principle known as “*in loco parentis*,” Associate Justice Clarence Thomas offered the most extreme opinion in June’s *Morse v. Frederick* U.S. Supreme Court decision.



Relying on “*in loco parentis*” — meaning “in place of the parent” — Thomas claimed that because public schools historically could act in place of the parent not only in matters of education but also of discipline, they should be able to punish student speech without any limitations.

“Justice Thomas seemed highly concerned that courts and the judiciary should not be substituting their own reasoning and logic for that of school officials who, in his mind, apparently are better suited to stand in the position of the parent,” said Clay Calvert, the John and Ann Curley Professor of First Amendment Studies at Pennsylvania State University.

Thomas said given the opportunity, he would overturn the 1969 decision in *Tinker v. Des Moines Independent Community School District*, which famously declared that students do not “shed their

See **Thomas**, Page 25

## Advocates counting on Alito, Kennedy concurrence to limit decision’s scope

BY JENNY REDDEN

Reaction to the U.S. Supreme Court’s June decision in *Morse v. Frederick* was almost as varied as the judgment of the Court, which issued five opinions in the first high school student-speech decision since *Hazelwood v. Kuhlmeier* in 1988.

Delivering a majority opinion, two concurring opinions, one dissent and one partial dissent, the Court carved out an exception to the 1969 landmark case *Tinker v. Des Moines Independent Community School District*, ruling that schools do not violate a student’s First Amendment free-speech rights by punishing speech that ad-

See **Advocates**, Page 24

From **Bong Hits**, Page 21

## The dissent

The breakdown of votes in the Supreme Court mirrored the bench's ideological split, as the five conservative justices agreed with the school district and the four more left-leaning or moderate justices were sympathetic to Frederick's argument.

Associate Justices Ruth Bader Ginsburg, John Paul Stevens and David Souter dissented from the Court's opinion and Associate Justice Stephen Breyer concurred in part and also gave a partial dissent.

Breyer said the Court simply should have decided that Frederick could not seek damages for his punishment, and it was "unwise and unnecessary" to pursue a First Amendment debate. He expressed concern that the decision would authorize further viewpoint-based restrictions on student speech, which he said could encourage school officials to prohibit speech that calls on the government to legalize marijuana.

"This Court need not and should not decide this difficult First Amendment issue on the merits," Breyer wrote.

Stevens went much further to denounce the majority opinion.

Stevens, who reportedly shook his head disapprovingly as Roberts read the ruling, said in the dissent that the First Amendment supersedes any justification Morse can make for doling out punishments for a banner with an "oblique reference" to drugs.

"The First Amendment demands more, indeed, much more," he wrote.

Drawing on *Tinker*, which stated that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," Stevens argued that the decision misconstrues a precedent that would have upheld Frederick's message.

SPLC Attorney Advocate Adam Goldstein said while *Morse* does little harm to the *Tinker* protections as a rule of law, the recent decision undercuts the authority of the older decision because it is the third exception the Court has made to the rule.

The other two exceptions came down in *Fraser* and in the 1988 Supreme Court decision *Hazelwood School District v. Kuhlmeier*, which permitted public high school officials to censor some school-sponsored student publications if the publications are not "public forums for student expression."

*Morse* has now added illegal drug advo-



PHOTO COURTESY ACLU

cacy to the list of unprotected speech.

Goldstein and SPLC Executive Director Mark Goodman have expressed concern that *Morse* could lead to more erosion of the *Tinker* standard.

"If this path continues, eventually the exceptions will swallow the rule," Goldstein said.

## Watching from the sidelines

Stevens and the other dissenting justices were far from being the only people to speak against the ruling.

In the weeks following the decision announcement, a number of media outlets and non-profit groups, including the *New York Times*, *The Washington Post* and the Journalism Education Association, released statements criticizing the Court for curtailing students' First Amendment rights.

JEA, an organization of journalism teachers and advisers based at Kansas State University in Manhattan, Kan., held a meeting to discuss ways to counteract *Morse's* impact on student press rights. The organization released a statement warning educators not to treat the decision as an invitation to restrict student expression that they think is controversial.

"This is one of the most frightening decisions ever to come down," JEA Executive Director Linda Puntney said.

Puntney said because Frederick was not technically in school when he unfurled his banner, school administrators could misinterpret the ruling as permission to control content on students' Web sites or other media.

Puntney, who serves as director of publications at Kansas State University and taught journalism in high school for 12 years, said she fears the decision will have a chilling effect on student journalists who should instead be encouraged to pursue robust discussion.

"Because of this, I think there will be students who develop a tendency to self-censor," she said.

But others took a more optimistic view of the ruling.

Mathew Staver, the founder and chairman of the Liberty Counsel, which also filed a friend-of-the-court brief supporting Frederick, said his organization is satisfied with the outcome, despite being momentarily displeased with Frederick's loss.

"We were concerned about this decision because it had the potential to undo free speech," Staver said. "But it appears that the free-speech rights of students are still intact."

Not all students will take a hit from the decision; a few states have student-expression laws that are far more protective than the federal standard. California's statute on student expression, for instance, states, "Students of the public schools shall have the right to exercise freedom of speech and of the press."

Some groups that supported *Morse* have criticized the Court for not going far enough to limit student speech on a national level.

Tom Hutton, the National School Boards Association senior attorney, said he was somewhat disappointed that the decision, like *Fraser*, has made only a single addition to the categories of speech that schools can regulate.

"This is a very *ad hoc* approach that doesn't give anybody as much clarity and guidance as might be helpful to avoid future litigation," he said. "We would have liked a little more discretion for school officials."

## The road ahead

Although it has been weeks since the chattering crowds descended the white steps of the Supreme Court building after the decision was announced, interest in the "Bong Hits 4 Jesus" case has not died down.

Legal scholars and advocacy groups have turned their eyes to the places in which the ruling will take its toll — the schools.

Mary Becker, the president of Juneau School Board, said she is pleased that the Supreme Court upheld school policy on drug promotion.

"We won't have principals and administrators worrying any longer that they cannot prohibit those kinds of advocacy by students," she said. "I'm pleased that [the Supreme Court] agreed that we were just defending our policy."

Becker said she has no plans to revise school policy on speech or publications

because it is already “strong” and has been “strengthened” by the *Morse* decision.

Few schools, for now, have said they will revise school policy on speech and publications to reflect their new authority to regulate pro-drug speech, though some experts said more are likely to revisit student expression policy once school begins this fall.

Hutton said he thinks most schools will probably refer to *Morse* when a confrontation involving drug speech crops up, but they are far less likely to take a proactive approach to restricting student expression.

Some raised concerns that the ruling, despite Alito’s concurrence, will lead school officials to censor speech that delivers an anti-drug message or makes a controversial political statement. A number of pending court cases, including a conflict involving a high school student from New York who attached a piece of paper to his shirt with the message “Abortion is Murder,” may be affected by the *Morse* rationale.

But the high court’s refusal to hear another case may indicate that it does not intend the decision to be interpreted so broadly.

Days after the *Morse* decision, the Court denied a Vermont school district’s petition for a writ of *certiorari* to hear a case involving a student who was punished for wearing a T-shirt depicting President Bush with images of illegal drugs and alcohol.

Zach Guiles, a former student at Williamstown Middle High School in Williamstown, Vt., was suspended in May 2004 when he wore a shirt that called President Bush “Chicken-Hawk-in-Chief” and illustrated him as a chicken surrounded by

cocaine and a martini glass. In retaliation, Guiles arrived at school in the following few days wearing the same shirt covered with duct tape bearing the word “censored.”

Although a district court said the school could legally censor some of the images on the shirt, the 2nd U.S. Circuit Court of Appeals decided that the school’s actions violated Guiles’s First Amendment rights. The school petitioned the Supreme Court in February to hear its case.

Legal experts said the Court probably denied the writ of *certiorari* because the student’s message in his case was a political statement, and thus protected by the First Amendment, according to *Morse*.

Clay Calvert, a Pennsylvania State University professor of journalism who attended the oral arguments for *Morse*, said the Court has indicated that it reached the recent decision only by drawing a distinction between pro-drug speech and political speech about drugs.

“The good news is that the Court did not adopt Justice Thomas’ line of reasoning in which he would have completely stripped students of free speech rights altogether,” he said. “It’s bad news, but it could have been worse news.”

Yet, Calvert said he would still be curious to see how lower courts use the *Morse* ruling to decide cases involving speech or published material about legalizing marijuana, a question that Justices Breyer and Stevens said in their respective opinions *Morse* has precariously left open for debate.

“It’ll be interesting to see if students test this by making drug-based speech that is

clearly political,” Calvert said.

For now, students across the nation are still faced with what may prove a perplexing task of deciding what kinds of speech are acceptable in their schools and what kinds of speech may land them in the principal’s office, where the law may not be able to help.

Mary Beth Tinker, whose lawsuit established protections for student expression in 1969, said the ruling leaves too much up to administrators.

“To censor student speech that is against school policy is opening the door to a wide range of issues that schools can censor,” she said. “So much is just left up to interpretation.”

Hareesh Ganesan, 16, an editor in chief of *Silver Chips*, a student newspaper from Montgomery Blair High School in Silver Spring, Md., said his newspaper has run several stories about drugs in the past without any problems, but he said he fears that the recent ruling may give the administration more self-assurance to misconstrue these pieces as pro-drug speech.

“If the school decides to interpret them as advocating or glorifying drug use, then [*Morse*] would really hurt us in that situation,” he said.

Ganesan said because many school administrators may miss the nuances in the new standard and decide that it gives them free reign to censor, it will be important for students to educate themselves about the “Bong Hits 4 Jesus” case and learn how it affects their right to free speech.

“Hopefully, they’ll come to understand what this entails for them,” he said. ■

## COLLEGE CENSORSHIP IN BRIEF

From **College briefs**, Page 15

to press without being reviewed by a faculty member.

The change came in June after the Texas Board of Regents relinquished control of the newspaper and liability for its content to the Texas Student Media Board in February.

The student media board voted in March to scrap the review policy, but the change did not go into effect until the summer semester, when the paper secured libel insurance, said Kathy Lawrence, director of student media.

Richard Finnell, adviser of *The Daily Texan* for 12 years, said he now reviews

stories only when students ask him to. ■

## Va. Tech student photographer recovers equipment

**VIRGINIA** — A Virginia Tech student newspaper photographer whose camera equipment was confiscated during the April 16 shootings had it returned days after his lawyer contacted the police.

*Collegiate Times* Photo Editor Shaoyu Cui was taking pictures near Norris Hall, the building in which Seung-Hui Cho shot and killed 30 students and

professors before taking his own life, when police seized the equipment.

Officers apprehended Cui, who, like Cho, is of Asian descent, because he matched the gunman’s description, according to an April article in the *Collegiate Times*.

Cui was released two hours later but without his camera, camera bag and the two forms of identification police had taken from him, he said in a statement. Officers returned the items about three days later, after the newspaper’s lawyer negotiated with police to get them back, said Kelly Furnas, editorial adviser for the *Collegiate Times*. ■

From *Advocates*, Page 21

vocates illegal drugs at a school-sanctioned and school-supervised event.

The free-expression organizations that filed friend-of-the-court briefs in support of Joseph Frederick interpreted the ruling as a narrow exception to students' reaffirmed free-speech rights while supporters of Principal Deborah Morse saw the decision as an affirmation that administrators need to have control over some expression.

## Friends of Frederick

Many of the nation's free-speech advocates focused on what they call the silver lining of the *Morse* decision.

Relying on Associate Justice Samuel Alito's concurring opinion, in which Associate Justice Anthony Kennedy joined, they believe the Court ensured that the new restriction allowing censorship of speech advocating the use of illegal drugs does not extend to political or religious speech.

Adding Alito and Kennedy's votes to the three dissenters — Associate Justices John Paul Stevens, Ruth Bader Ginsburg and David Souter — created a fragile five-justice majority for rejecting a broad school-censorship ruling, many said.

Alito wrote that he joins the opinion of the Court only if "it goes no further than to hold that a public school may restrict speech that a reasonable observer would interpret as advocating illegal drug use and it provides no support for any restriction of speech that can plausibly be interpreted as commenting on any political or social issue."

Rebecca Zeidel, a research assistant and coalition coordinator at the National Coalition Against Censorship, said this declaration goes a long way to ensure that the Court's ruling is a narrow one.

"We're disappointed that Frederick lost," Zeidel said. "But given the outcome, we were pretty pleased by the concurring opinion that Justices Alito and Kennedy wrote, which limited the majority opinion by being very specific as to the kinds of restrictions school officials can make."

Jordan Lorence, senior vice president of the Alliance Defense Fund, a conservative free-speech advocacy group, agreed that the concurring opinion may limit the ruling but fears administrators will ignore that limit.

"The Alito concurrence, joined by Justice Kennedy, recognizes the potential dangers of the majority opinion and seeks

to limit it to situations where students advocate illegal drug-use," Lorence said in a statement from his office. "However, school officials will undoubtedly try to expand the reach of the majority's opinion in order to censor student speech that dissents from the official school policy."

Lorence added that he worries this ruling could be used to justify censorship of speech that is not drug-related.

"It's a dangerous idea that government may censor speech based on the vague concept of 'school mission,'" he said. "Say a school in San Francisco decided its mission was to support what they call 'complete equality for gays and lesbians, women's health and absolute religious diversity.' That may mean that said school could censor pro-marriage, pro-life and pro-Christian points of view."

But Casey Mattox, litigation counsel for the Christian Legal Society, said he is not worried about principals misusing the decision to restrict other speech.

"The Court said time after time in the opinion and certainly in Justice Alito's concurring opinion that religious student speech is not covered by this opinion," Mattox said.

And Michael Rosman, general counsel at the Center for Individual Rights, said the Court's ruling is so narrow that schools will have a hard time applying it to other cases.

"It would be very difficult to predict what other effects this will have ... because I don't think the Court adopted any general broad principle that is applicable outside the specific facts of this case," he said.

Student Press Law Center Executive Director Mark Goodman agreed that this decision should not have a broad legal impact, but said that he is concerned about the implications for the future.

"The law was clearest when the courts applied the single fact-based *Tinker* substantial disruption standard in determining the legality of school officials' acts of censorship," he said. "Every subsequent Supreme Court decision on the subject just makes things less clear. My concern is how many more cases will it take for the exceptions to free-expression protections to swallow up the rule?"

## On the other side

Groups that filed friend-of-the-court briefs in support of Morse saw the decision

more as a guideline for principals than a restriction for students.

Gerald Tirozzi, the executive director of the National Association of Secondary School Principals, called the decision a "loud and clear message" in support of principals.

The Court affirmed that a "principal does have the discretion" to take the necessary steps to "maintain a safe and orderly environment," he said.

Francisco Negrón, general counsel for the National School Boards Association, said the decision reaffirms "the school's role in regulating messages that are detrimental to student welfare."

"The Court clearly spoke to the health and well-being of our students, not their constitutional rights of free speech," Negrón said in a statement from the association.

Other Morse supporters viewed the decision more narrowly. Bruce Hunter, the associate executive director of the American Association of School Administrators, said the ruling tested a set of facts that had not been tested before: advocacy of illegal drug-use at a school-sponsored activity off campus.

"Starting with *Tinker*, then *Bethel*, then *Hazelwood*, now this one: In every case, the rules of the road get clearer on what administrators can and cannot do," Hunter said.

When students are approaching the line of speech not protected by the First Amendment, principals must decide instantly whether to censor. They must consider all case law and possible consequences, Hunter said.

"Every bit of clarification helps," he said.

And Bill Ferranti, an attorney representing organizations such as D.A.R.E. America and Drug Free America Foundation Inc., said the Court had to balance two important interests: student expression and student safety from drugs.

"The Court did best they could," he said.

Ferranti, like many Frederick supporters, said he liked Alito's opinion because it gives principals the tools they need to battle illegal drug use without infringing too much on student speech.

The fact that groups supporting Frederick, as well as those supporting Morse, are emphasizing Alito's opinion "goes to show how much everybody values free-speech issues," he added. ■

From **Thomas**, Page 21

constitutional rights to freedom of speech or expression at the schoolhouse gate.”

“In the name of the First Amendment, *Tinker* has undermined the traditional authority of teachers to maintain order in public schools,” Thomas wrote in his concurrence. “In my view, the history of public education suggests that the First Amendment, as originally understood, does not protect student speech in public schools.”

Thomas came out strongly against First Amendment rights for students at a time when the majority opinion took a narrower aim at student free-speech protections — and in a way no other justice has before.

“He’s not the first ... to say the First Amendment does not apply to schools, but he is the first one to say the First Amendment does not apply to schools because the framers did not so intend,” said Ron Collins, a legal scholar at the First Amendment Center’s Arlington, Va., office.

Calvert said Thomas’ opinion, in which no other justices joined, is non-precedential and “has no real power at this stage,” but the potential remains for it to be used as guidance in decisions should the Court ever be differently composed.

“He may be trying to lay the groundwork if the Court’s composition were to ever change in a dramatic fashion,” Calvert said. “If there’s any slight, silver lining, it’s that the Court did not adopt Justice Thomas’ reasoning, which would scrap free-speech rights of students in public schools.”

Associate Justice Samuel Alito was among those who criticized Thomas’ logic.

“It is a dangerous fiction to pretend that parents simply delegate their authority — including their authority to determine what their children may say and hear — to public authorities,” Alito wrote in his concurrence.

Thomas’ opinion also seemed to run counter to some views expressed by administrators’ supporters.

“I ... not necessarily speaking for the organization but I suspect a majority opinion of our members ... feel that at this point *Tinker* is pretty well established law and shouldn’t be rolled back,” said Paul Houston, executive director of the American Association of School Administrators, which filed a friend-of-the-court brief in support of *Morse*.

“We sided with the school because we felt that administrators need the ability to maintain reasonable discipline,” he added.

## Early legal applications of the *Morse* decision

As soon as the *Morse v. Frederick* decision was handed down from the U.S. Supreme Court in late June, it immediately began appearing in lower courts’ opinions across the country.

On July 2, just seven days after the “Bong Hits 4 Jesus” ruling, a California superior court cited the new precedent in overturning a middle school’s dress code, which banned all pictures, logos, words, stripes and patterns, and had disciplined students for wearing an American Cancer Society ribbon pin and T-shirts reading “Jesus Freak” and “D.A.R.E. to keep kids off drugs.”

The judge invoked *Morse* as a reaffirmation of the *Tinker* standard.

“It has long been held that, under the First Amendment to the Constitution of the United States, student expression is protected, so long as it does not ‘materially and substantially disrupt the work and discipline of the school,’” Judge Raymond Guadagni wrote in his decision in *Scott v. Napa Valley Unified School District*. “This well settled principle has just been reconfirmed by the Supreme Court in *Morse v. Frederick*.”

On July 10, Judge Terrence McVerry of the U.S. District Court for the Western District of Pennsylvania ruled that a student’s suspension for creating a satirical MySpace pro-

file of his principal was unconstitutional, citing Justice Samuel Alito’s concurring opinion in *Morse* to reject the school district’s claim that the parody profile undermined the school’s educational mission.

“Justice Alito’s concurrence in *Morse* clarifies that *Morse* does not permit school officials unfettered latitude to censor student speech under the rubric of ‘interference with the educational mission’ because that term can be easily manipulated,” McVerry ruled in *Layshock v. Hermitage School District*.

But a third student free-speech case decided since “Bong Hits 4 Jesus” went in the opposite direction.

The 2nd U.S. Circuit Court of Appeals’ July 5 decision upholding an eighth-grader’s suspension for sharing an AOL Instant Messenger buddy icon depicting his teacher being shot was influenced by *Morse v. Frederick*, said the student’s attorney, Stephen Ciotoli.

“I assume the 2nd Circuit was waiting for that decision and, to a certain extent, I think they followed it,” he said of the ruling in his case, *Wisniewski v. Board of Education of the Weedsport Central School District*. “They probably figured if they had gone the other way and then this case had gone up to the Supreme Court, the Supreme Court might have reversed them.” ■

“But I understand that just as free speech can go too far, so can administrative oversight.”

Houston said free-speech rights have an important role in the educational process.

“Public schools were created initially by the founding fathers as places where ‘civic virtue’ would be taught,” he said. “I think that would include their learning the most basic of our rights by experiencing them.”

Houston also suggested administrator frustrations with student behavior should not be the only concern when free-speech rights are implicated in school.

“One of the best features of an American education is that our students tend to grow up questioning authority and pushing the limits,” he said. “While, as a school administrator, that can drive you a little crazy, as an American I can only applaud the spirit it implies.”

Thomas’ approach to the *Morse* case was certainly typical, if not expected, legal scholars said. Known as an “originalist” in terms of how he interprets the Constitution, Thomas often looks at the text of the Constitution as he considers it to have been intended by its

authors, rather than by what the text seems to say in the present day.

“Justice Thomas privileges and prefers historicism and original intent as the key modes and methods of judicial analysis in First Amendment jurisprudence,” Calvert said. “He is guided by history and by the original understanding, at least what he believes it is, of the First Amendment.”

Thomas was one of five justices to write an opinion in the case and one of two to author concurrences to the majority opinion that found schools do not violate a student’s First Amendment free-speech rights by punishing speech that appears to promote illegal drug use at a school-sanctioned and school-supervised event.

In *Morse*, the Court reversed the 9th U.S. Circuit Court of Appeals decision by deciding that Joseph Frederick, a former student at Juneau-Douglas High School in Alaska, was not protected by the First Amendment when he held up a banner with the words “Bong Hits 4 Jesus” across the street from his school during the 2002 Olympic Torch Relay. ■

# 'Immigration' editorial court case continues

BY JUDY WANG

A five-year-long waiting game over a high school student's right to publish a controversial editorial may continue as the California Supreme Court decides whether to hear or deny a petition in the *Novato Unified School District v. Smith* case.

The school district is petitioning the state supreme court to hear arguments after losing the free-speech case of former student Andrew D. Smith in a California Court of Appeal. Smith alleged his First Amendment rights were violated when the school condemned a controversial opinion article titled "Immigration" that he wrote for the student newspaper.

His lawyer said he is likely to hear from the California Supreme Court by the end of the year. The conflict began in November 2001, when Smith's article appeared in the school's student newspaper, *The Buzz*. The article sparked outrage among students and parents for its alleged racist quips. "If a person looks suspicious then just stop them and ask a few questions, and if they answer 'que?', detain them and see if they are legal," the article reads.

After being approached by upset Latino

students and parents, Novato High School Principal Lisa Schwartz ordered all remaining copies of the paper to be collected. She apologized to those offended by the article, telling them that it violated school policy and should not have been printed.

Undeterred, he authored an article in the following spring titled "Reverse Racism," in which he argued that the American justice system is unfairly more forgiving of racial minorities. Smith has alleged that the school delayed its publication.

In May 2002, Smith filed a lawsuit against Novato Unified School District for infringement on his rights under California student free-expression laws.

Smith's lawyer, Paul Beard, said he hoped a victory in the case would send a message to administrators about the importance of upholding open debate in schools.

"Students should be able to view and air controversial issues so they can learn how to deal with debate before they enter adulthood," he said.

But the trial court found that Smith's rights had not been violated because the article contained "insulting, derogatory and disrespectful speech directed at various ethnic groups." Smith appealed the decision in a state court

of appeal, which reversed the lower court's ruling by deciding that his rights had been violated under California law.

But on July 2, the school district prolonged the back-and-forth legal battle by petitioning for review by the California Supreme Court.

The school also requested "depublication" of the court of appeal's ruling, which, if successful, would not allow the case to be cited in future court cases.

Beard said he doubts the state supreme court will hear the case, but if it does, it will likely uphold the court of appeal's ruling.

Nonetheless, the administrative response to Smith's articles has left a lasting impression on the student newspaper, Smith said. The student newspaper folded in September 2002, which Smith said could be traced to the administration's efforts to create a "stifling" environment for student press.

"The class didn't want to be in an atmosphere where they could potentially get into trouble," he said.

Novato High School officials did not respond to requests for comment.

**Case:** *Smith v. Novato Unified Sch. Dist.*, No. A112083 (*Cal. 1st. App. Dist. May 21, 2007*).

## HIGH SCHOOL CENSORSHIP IN BRIEF

### D.C.-area school district considering policy change

**VIRGINIA** — An attorney for Fairfax County Public Schools, the largest school district in the Washington, D.C., area, is recommending that principals at the district's 25 high schools get rid of statements that explicitly declare school publications open forums, according to documents obtained by the Student Press Law Center.

In a confidential memo dated October 2006 to the school district's lawyers, private attorneys from a Washington, D.C., law firm suggest that the district "eliminate any statements of policy or purpose suggesting that a publication is a public forum." In March 2007, school attorney Anne Murphy echoed the sentiment in a separate confidential memo to administrators.

"A number of [high school newspapers] have articulated a publishing philosophy that we would not recommend, such as statements that the paper is an 'open forum,'" Murphy wrote in an e-mail.

She concluded by suggesting that principals "attempt to steer their respective papers to more-curriculum related (rather than open forum) statements of purpose."

Paul Regnier, the coordinator of the school district's Office of Community Relations, said the district has never had a policy that declared school publications open forums.

But advisers and editors at many of the high school newspapers have adopted their own public-forum policies.

Murphy's e-mail suggests that principals get rid of such publication policies, and Regnier said administrators are planning "staff development" training for advisers. ■

### Anti-gay T-shirt case continues lengthy court battle

**CALIFORNIA** — A former high school student's battle for the right to wear an anti-gay T-shirt to school will be waged once again in a federal district court.

A court in San Diego will revisit the First Amendment suit first filed in 2004 by Tyler Chase Harper against Poway High School after it detained him for wearing an anti-gay T-shirt with the words "Homosexuality is Shameful." Both the district court and court of appeals handed down decisions in favor of the school.

Harper wore the controversial T-shirt — which also displayed the words: "Be ashamed, our school embraced what God has condemned" — in April 2004 to protest the "Day of Silence"

See **High school briefs**, Page 37

This summer, two state legislatures passed anti-censorship bills

## Strengthening statutes

### In Oregon, a new law protects students

BY JUDY WANG

**W**hen student journalists in Oregon return from vacation, they will be protected by a press-freedom law passed in July.

Oregon joins six other states that have similar laws protecting student publications. The law is intended to guarantee that public high school and college student journalists can exercise free-press rights in school-sponsored media.

When Gov. Ted Kulongoski (D) signed it July 13, it became the first state law that protects both high school and college student publications under a single statute and the first set of protections for high school students enacted since 1995.

Legal experts said support from educators and local news outlets might have eased the bill's passage, but not everyone is satisfied. Some legal scholars say the bill was substantially weakened by amendments in committee. Provisions that would have ensured that college-sponsored publications have open-forum status and protected student media advisers from being fired were excised from the bill before it was sent to the governor.

Nonetheless, many First Amendment advocates and students said they are pleased with the new protections and look forward to future progress.

### The impetus

Ironically, the successful Oregon bill was inspired by a bill that failed to pass through another state's legislature.

Rep. Larry Galizio (D-Tigard), who introduced House Bill 3279 in March, modeled it after a similar bill then working its way through the Washington State Legislature. Galizio, who teaches journalism and communications at Portland Community College, said he decided to take action after learning about Washington's bill.

Galizio said he also was spurred into action upon hearing about movements to negate the impact of a 2005 decision in the 7th U.S. Circuit Court of Appeals, *Hosty v. Carter*, which gave colleges in that circuit more authority to regulate student publications.

The Washington bill would have ensured that students "have the right to exercise freedom of speech and of the press in school-sponsored media" and affirmed that student editors are responsible for

### Advocates await signature in Illinois

BY JENNY REDDEN

**S**tudent journalists at public universities and community colleges in Illinois are one signature away from a guarantee that their newspapers are not subject to prior review or restraint.

Gov. Rod Blagojevich (D) has until the beginning of September to take action on the measure, known as the College Campus Press Act, which would secure press freedom and effectively negate the 2005 7th U.S. Circuit Court of Appeal's decision in *Hosty v. Carter* in that state.

The *Hosty* case began in January 2001 when editors at the Governors State University newspaper, *The Innovator*, filed a lawsuit against the university, claiming that administrators violated their First Amendment rights by requiring prior approval of the content of the newspaper.

The federal district court and a three-judge panel of the federal appeals court ruled in favor of the students, but an en banc panel of the 7th Circuit reversed the decision, siding with the school administrators. In a 7-4 vote, the court said school officials could control student newspapers that have not been designated as public forums.

The editors asked the U.S. Supreme Court to review the case, but the Court declined in February 2006.

First Amendment advocates said the decision would diminish the rights of college journalists. The decision applies to Illinois, Indiana and Wisconsin, which comprise the 7th Circuit.

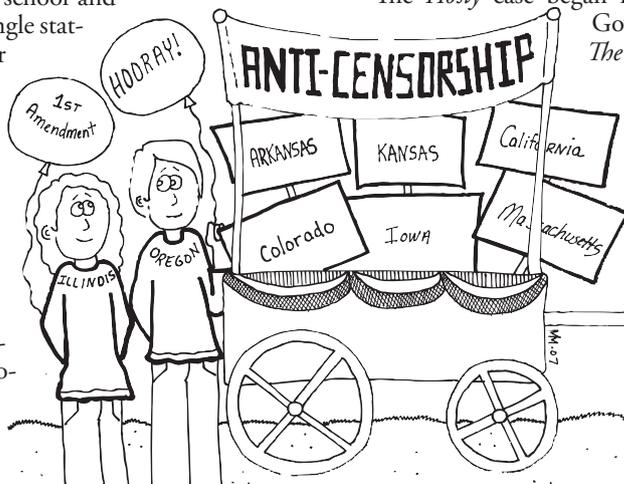
But the bill designates all public college and community college publications in the state as forums for student expression, nullifying the *Hosty* decision in Illinois.

Many state journalism experts say the bill will have the greatest effect on community colleges.

John Ryan, executive director of the Illinois Community College Journalism Association, said the state's six college daily newspapers have long histories, and many already have public-forum status. But the more than 20 community college publications are more likely to be a part of the curriculum, which makes them vulnerable to prior review.

"[Community college publications are] the potential winners here," Ryan said.

James Tidwell, legal adviser to the student newspaper at Eastern Illinois University, agreed that community colleges likely would see



See **Oregon**, Page 28

See **Illinois**, Page 29

From **Oregon**, Page 27

content. The bill also would have protected student media advisers from being punished for refusing to suppress student speech.

The Washington Senate Judiciary Committee removed the protections for high school student publications, the section that had prompted the most opposition. But the bill died in April when it was not brought to the Senate floor for a vote. Its sponsor, Rep. Dave Upthegrove (D-Des Moines), attributed the setback to a variety of factors, such as time constraints and a lack of support.

Others blamed the bill's failure on vocal opponents. Warren Watson, the director of J-Ideas, a First Amendment institute at Ball State University, said critics of the Washington bill included groups such as the Association of Washington School Principals and Washington State School Administrators Association. In addition, *The Seattle Times* published an editorial criticizing the bill — a move that many have said played a significant role in the bill's undoing.

Conversely, many local media outlets in Oregon supported that state's bill. Although some school administration groups opposed it, Watson said, its reception was far warmer than it had been in its neighboring state.

"I think the state of Oregon has a deeper heritage of free expression," Watson said. "It's perhaps more conducive for a law like this."

Oregon offers one of the broadest free-speech guarantees in the country. The state constitution states: "No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right."

Galizio said he was confident the bill would pass the House and Senate.

"I knew we would get the bill," he said. "What the final bill would look like was the real concern."

## An evolving bill

Debate over the bill in the state House of Representatives focused on claims that, although the bill allows students to exert sole responsibility over published content, it could leave colleges and high schools vulnerable to lawsuits. In fact, most courts have said schools that do not censor are not liable for the content of student publications.

Galizio said critics of the bill assumed that any law for student expression would encourage high school students to publish

## Tough language

*Oregon's bill includes language that provides strong protections for both high school and college journalists.*

"... student journalists have the right to exercise freedom of speech and of the press in school-sponsored media, whether or not the media are supported financially by the school or by use of school facilities or are produced in conjunction with a high school class." ■

outrageous and inflammatory material without guidance.

"Some people hear free expression and they get really nervous," he said.

The bill passed the House Judiciary Committee on a 6-2 vote, but the representatives removed "advertising" from the list of protected student speech. However, the committee also inserted a clause allowing students who sue their schools under the new law to obtain \$100 in damages and "injunctive and declaratory relief." The bill passed the House on a 39-16 vote.

In the Senate, the Judiciary Committee removed a provision that would have protected high school and college student media advisers from being disciplined for refusing to censor lawful student expression. It also removed arguably one of the most significant protections for college-sponsored media — a clause that recognized these publications as "public forums" for student expression.

Sen. Ginny Burdick (D-Portland), who voted for the bill in committee, maintained that she and her colleagues made these changes to clarify the legislation, not to downgrade its potential impact on students.

"Nothing was done to change the substance of the bill," she said.

Neil Bryant, the lobbyist and attorney for the Oregon University system who proposed the amendments, said the bill would have failed in the Senate if some provisions had not been deleted. The final bill squeezed by the Senate on a 16-14 vote, which some legislators said reflected a clear partisan split in the legislative body.

High school journalism teacher Rob Melton, who testified for the bill in the House and Senate, said the bill was worth passing even in its amended form.

The changes "didn't completely cut out protections for college students, but it weakened them a little bit," he said.

The final version of the law affirms that

"student journalists have a right to exercise freedom of speech and press in school-sponsored media" and allows students and their parents to file suits against the school if this law is violated. But the law also provides limitations on these protections. It states that published material that causes a substantial disruption will not be protected. Nor is material that is libelous, an invasion of privacy, or a violation of school regulations, state or federal law permissible.

Galizio said he plans to reintroduce the deleted portions in new legislation this fall. But this time, he said, he will hold meetings with school administrators and other groups that opposed HB 3279 and try to broker a compromise.

Upon signing the law, Kulongoski said he hoped it will set an example for other states.

"This legislation not only affects student journalists in Oregon, but also leads the way for students around the country," the governor said. "This legislation ensures that all student journalists have rights to freedom of speech."

## A growing trend

Six states — Arkansas, California, Colorado, Iowa, Kansas and Massachusetts — already had laws in place that protect high school student publications from censorship. Pennsylvania and Washington have administrative codes that offer some protections for student journalists. California recently enacted a law that protects college journalists, and Illinois is on the verge of enacting a similar law.

Upthegrove, who introduced the Washington bill that inspired the Oregon law, has said he plans to reintroduce student press-freedom legislation in the upcoming months.

"There's no reason to think that this movement won't grow," said Watson, the J-Ideas director.

In Michigan, a recently reintroduced student press rights bill is awaiting a hearing in the Senate Education Committee. Although the bill has been sitting in committee for five months, its sponsor, Sen. Michael Switalski (D-Roseville), said the situation might change when he and the bill's co-sponsors cite the Oregon law as support.

The Michigan bill would prohibit prior review by school officials and give students the final say in the content of student pub-

See **New law**, Page 29

From **Illinois**, Page 27

the most change. The measure gives student publications a public-forum status, it puts a stop to prior restraint and it protects advisers, he added.

But Ira David Levy, faculty adviser of *The Wright Times* at Wright College, said community colleges are not the only schools that will benefit from the bill. Publications that already enjoyed an open-forum policy also will see greater protection, he said.

"It strengthens those [open-forum] statements," said Levy, the immediate past president of the Illinois Community College Journalism Association. "It will better position them."

## Legislative history

Illinois Sen. Susan Garrett (D-Lake Forest) introduced the bill in February with assistance from the American Civil Liberties Union of Illinois. Senators passed the bill unanimously in March.

Sponsors in the House of Representatives added an amendment in June to meet opponents' objections that the original legislation did not provide administrators with protections.

The amendment has two major provisions. One protects administrators from being held liable for any student-produced material. The other allows administrators to punish students who use unprotected speech, including "obscenity" and "incitement."

Representatives passed the amended bill with a vote of 112-2, and senators unanimously voted to pass a motion of concurrence on the amendment shortly thereafter.

"Now in Illinois, college journalists at public universities will be given the same

opportunities as other journalists to write openly about relevant issues," Garrett said in a statement. "By passing [the College Campus Press Act], we have sent a message that journalists who write for their college newspapers should not be treated differently and that freedom of the press is essential for true openness in college newspapers."

Jim Ferg-Cadima, legislative counsel for the Illinois ACLU, said he thinks the bill passed so easily because "it wasn't as ambitious as other bills," such as the Oregon bill that protects both college and high school student publications.

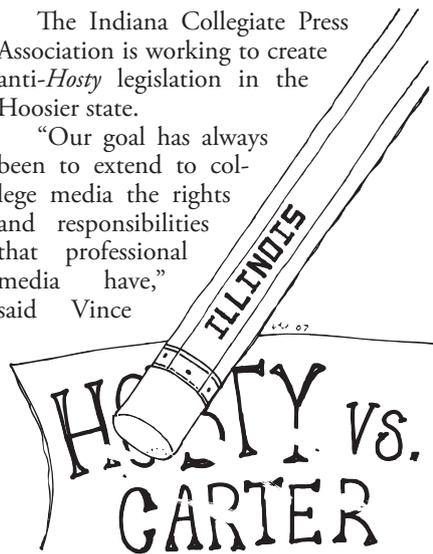
"It's targeted just to creating a legislative remedy for college students," Ferg-Cadima said.

While students and advisers in Illinois rejoice, journalists at Wisconsin and Indiana public universities are wondering whether their states will consider similar measures.

## Indiana progressing

The Indiana Collegiate Press Association is working to create anti-*Hosty* legislation in the Hoosier state.

"Our goal has always been to extend to college media the rights and responsibilities that professional media have," said Vince



From **New law**, Page 28

lications.

Watson said other states, including New Jersey and Indiana, are rumored to be considering similar bills, though there have been few visible movements in the state legislatures.

"There does seem to be a growing appreciation for the fact that we cannot prepare citizens for life in a democratic society if we don't teach them those values in school," said SPLC Executive Director Mark Goodman. "I think we're going to see wider support for this kind of legislation in the years

to come."

But skeptics said the enactment of more student press rights bills, however significant, will not stop school administrators from censoring publications as they see fit. Some have raised concerns that such bills can be rendered ineffective if administrators and student media advisers do not acknowledge the protections they offer.

Erica Salkin, a high school student media law researcher while a graduate student at the University of Wisconsin, conducted a survey in four states with similar legislation and found that few advisers were aware of the law and few districts fully complied with

Filak, executive director of the association and adviser to the student newspaper at Ball State University.

Filak said the Indiana General Assembly will not reconvene until January 2008, giving the association a few months to prepare.

"We absolutely plan to use the Illinois bill as a model," Filak said. He added that he expects Indiana legislators to support the measure.

Steve Key, general counsel at the Hoosier State Press Association, said the professional organization would be "encouraging and supportive" of any efforts to pass anti-*Hosty* legislation in the state.

## Wisconsin handling *Hosty*

But student journalists in Wisconsin are taking another approach.

Instead of working on a piece of legislation, student editors at university newspapers are working with their specific administrations to create school policies that ensure students are in control of content.

"Officials (at the various campuses) have been open to entering into agreements, declaring student newspapers limited public fora," said David Allen, a media law professor at the University of Wisconsin at Milwaukee.

Many student press leaders seem to believe that legislation is unnecessary because they "have been satisfied with their discussions with university officials," he added.

No one has made anti-*Hosty* legislation a priority, agreed Peter Fox, president of the Wisconsin Newspaper Association.

He added that the *Hosty* decision "didn't draw very much attention here in the legislature — or the public for that matter." ■

it. She said she hopes someone in Oregon takes the initiative to conduct an educational outreach campaign to ensure that schools know what the new statute means and how to use it.

"Ignorance of the law only ends up hurting the students in the end," she said.

Melton said he is aware of this concern and has taken steps to work with the Oregon Department of Education and the superintendent of public schools to cultivate "that kind of understanding."

"No one ever said free speech is easy," he said. "But if you want to pursue democracy, it is essential." ■

# Understanding student free-expression laws

Renewed push to pass state laws as courts chip away at First Amendment rights in schools

Most student journalists and advisers are aware that student expression rights in school-sponsored high school student media were limited by the Supreme Court case *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). Since that decision, seven states — Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon — have passed laws that limit the effects of the *Hazelwood* decision in their states and return a greater degree of press freedom to student editors. (A college press freedom bill in Illinois was sitting on the governor's desk awaiting his signature as this article went to press in the summer of 2007. S.B. 729, 95th Gen. Assem., Reg. Sess. (Ill. 2007)). Nevertheless, distinctions exist between those laws, and both students and teachers have questions about how the laws work in general.

Chief among those questions: How can state laws (or, for that matter, local school policies, which work the same way as a state law but on a smaller scale) “trump” a United States Supreme Court decision?

In short, they don't. They exist independently. A student editor of a school-sponsored publication in a state with these laws is entitled to both the protection of the First Amendment and the protection of the state law.

To put it another way, *Hazelwood* establishes the minimum level of high school press freedom that the First Amendment requires. No government official — federal, state or local — may act in a way, nor may lawmakers pass a law or policy, that provides individuals with less free-speech protection than that required by the First Amendment, as interpreted in *Hazelwood*. Nothing, however, prevents state lawmakers from passing a law that requires school and government officials in their state to provide student journalists with more rights than the Constitution requires.

More recently, following a 2005 decision by the 7th U.S. Circuit Court of Appeals in *Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005) (en banc), cert. denied, 2006 WL 385624 (Feb 21, 2006), which raised questions about the legal protections available to some college student media — protections that had been widely recognized for nearly

four decades — college students have looked to state law to shore up their free-press protections as well.

Not all student free-expression laws are the same and no student free-expression law is perfect. Each of the existing state student free-expression laws, however, is an improvement on the status quo in the wake of Supreme Court decisions limiting the First Amendment. In each of these seven states, the legislatures agreed that the First Amendment, as defined by the courts today, does not provide clear guidance to student journalists, advisers and school administrators about their rights and responsibilities. However, no two of these legislatures have attempted to define rights and responsibilities in exactly the same way. Some laws apply only to student editors, while some grant expression rights to students in general. Some laws require would-be censors to demonstrate an immediate threat of disruption, while others permit censorship where a student merely advocates for something that would be against school rules. Each of the laws have quirks and contours that could provide support for a controversial story — or trip up the journalist who is not careful to stay within its boundaries. In addition to these statutes, Pennsylvania and Washington have state regulations that could provide broader protection. See 22 Pa. Code Sec. 12.9 and Wash. Admin. Code sec. 180-40-215.

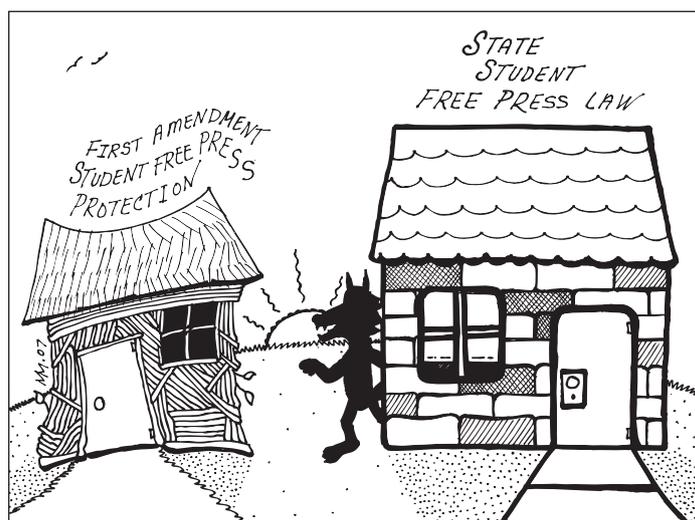
For a more detailed version of this analysis, see the SPLC Web site at [http://www.splc.org/report\\_detail.asp?id=1351&edition=43](http://www.splc.org/report_detail.asp?id=1351&edition=43).

For a more detailed version of this analysis, see the SPLC Web site at [http://www.splc.org/report\\_detail.asp?id=1351&edition=43](http://www.splc.org/report_detail.asp?id=1351&edition=43).

## Arkansas

### Ark. Stat. Ann. Secs. 6-18-1201 - 1204

1) *What protection does this law offer to students?* The Arkansas Student Publications Act requires public schools in Arkansas to adopt a “student publications policy” that



recognizes “that students may exercise their right of expression,” subject to the limitations and exceptions in the act (see question five in this section).

2) *What students are protected by this law?* The law appears to cover all students subject to a “school board’s” rules and regulations, which would presumably include public elementary, intermediate and high school students. The law does not address the free-speech and press rights of college students.

3) *What types of student media are protected?* The law protects “school-sponsored publications, whether such publications are supported financially by the school or by use of school facilities, or are produced in conjunction with a class.” ASA Sec. 6-18-1203. The term “school-sponsored publications” is not further defined.

4) *What protection does this law offer to advisers?* None.

5) *What would administrators need to prove before being able to censor a student publication under the law?* School administrators can censor publications containing obscenity as to minors, defamation and invasion of privacy, as those terms are defined under state law. Additionally, a publication may be censored if it incites students in such a way that it creates a “clear and present danger” of the commission of unlawful acts; of the violation of lawful school regulations; or the material and substantial disruption of the orderly operation of the school. Note that these protections are essentially identical to

the protection offered to independent student speech by the U.S. Supreme Court's decision in *Tinker v. Des Moines Indep. Comm. Sch. Dist.* 393 U.S. 503 (1969). ASA Sec. 6-18-1204.

**California**  
**Calif. Educ. Code Sec. 48907**

1) *What protection does this law offer to students?* The law provides two levels of speech protection: a general level to students in general, and a more nuanced level of protection to students on official school publications.

a. *To students in general:* All students "shall have the right to exercise freedom of speech and of the press," including wearing symbols, the use of bulletin boards, and distributing written material.

b. *To student journalists on official publications:* If a student is working on a publication that is produced in a class and distributed to the student body, the law specifies that the student editors of that publication are responsible for "assigning and editing" the content. It also states that the adviser is responsible for supervising the production of the newspaper and "maintain[ing] professional standards of English and journalism." Unless the content to be published is unprotected by the terms of the section, prior restraint (which is not the same as prior review) is expressly forbidden. *Leeb v. Delong*, 198 Cal.App.3d 47 (App. 1988).

2) *What students are protected by this law?* The law protects "students of the public schools" subject to the rules and regulations of a "governing board of a school district and each county board of education," which would presumably include public elementary, intermedi-

ate and high school students. Section 48907 does not address the rights of California's college students. However, other California statutes, including Calif. Educ. Code Secs. 94367 (private colleges), 76120 (community colleges) and more specifically Calif. Educ. Code Sec. 66301 (public colleges), do provide similar protection to college students.

3) *What types of student media are protected?* The law protects a broad variety of student expressive activities and explicitly states that the list provided in the law (which includes "bulletin boards," "printed material," "badges," and "official publications") is not exclusive. Moreover, the term "official school publications" is defined as "materials produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee," and would presumably include any type of "material," including print, on-line and electronic materials.

4) *What protection does this law offer to advisers?* None, but advisers are given the responsibility for "maintain[ing] the provisions of this section" with respect to official publications, but are given no protection from administrators who would seek to violate the rights of students under the section. Obviously, it is difficult to see how an adviser could maintain the provisions of the section that grant rights to students without some protection from an employer seeking to violate those rights. In fact, as this guide went to press, state journalism and First Amendment groups in California had drafted a proposed amendment to the law that would include such protection.

5) *What would administrators need to prove before being able to censor student media under the law?* The law prohibits students from printing obscenity or defamation, as well as "material which so incites students as to create a clear and present

danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school," a standard whose language was taken largely from the U.S. Supreme Court's decision in *Tinker v. Des Moines Indep. Comm. Sch. Dist.* 393 U.S. 503 (1969).

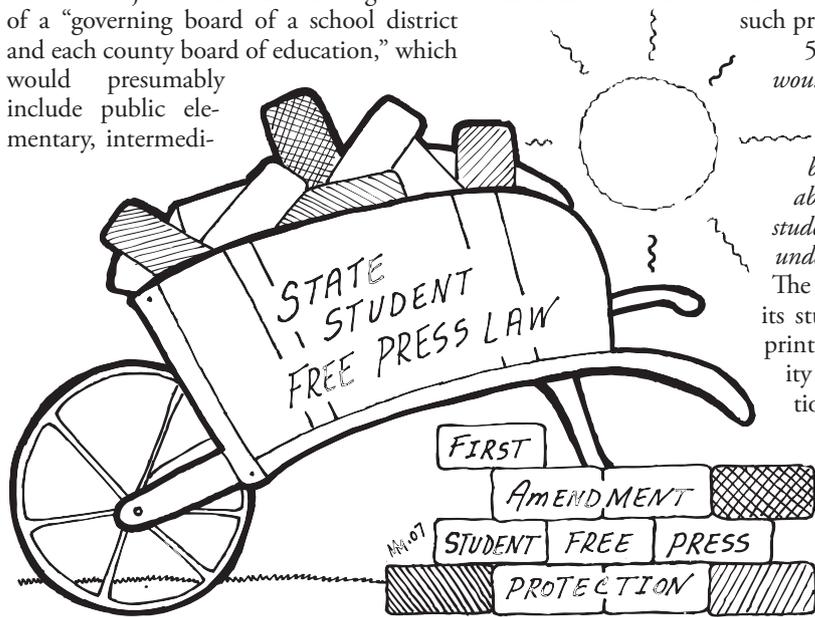
One category that *Tinker* does not protect, but which is not specifically prohibited under California's law, is material that "invades the rights of others." On the other hand, the statement that advisers "maintain professional standards of English and journalism" could impose an additional requirement on official publications, although it is difficult to determine from the law what "professional standards" means; but see *Lopez v. Tulare Joint Union High Sch. Dist. Bd. of Trustees*, 34 Cal. App. 4th 1302 (1995) (finding a film containing profanity did not meet "professional standards"). However, these standards should be determined by the adviser, not a school administrator.

**Colorado**  
**Colo. Rev. Stat. Sec. 22-1-120**

1) *What protection does this law offer to students?* The law provides blanket free-speech protection for students in schools and specific protections for "student publications" that are "written substantially by students" and made generally available throughout the school. Subsequent language in the statute seems to make clear that this definition is limited to school-sponsored material (see question 1(b) in this section).

a. *To students in general:* The first line of the statute states that public school students "shall have the right to exercise freedom of speech and of the press." CRS Sec. 22-1-120(1).

b. *To student journalists on official student publications:* Publications that are substantially written by students and distributed throughout the school are expressly declared public forums, which also strengthens the protections of those publications under the First Amendment as defined in *Hazelwood*. Because only government property can be declared a forum, this language is further limited to those newspapers that the school sponsors. CRS Sec. 22-1-120(1)-(2). The law expressly states that student editors shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section (see question five, below.) School of



officials are required to adopt and make available a written publications code, consistent with this law, that explains when, where and how students can distribute their material on campus.

2) *Who is protected by this law?* The law applies to “students of the public schools.” CRS Sec. 22-1-120(1). Presumably, this applies to elementary through high school students. College rights are not addressed.

3) *What types of student media are protected?* The term “student publication” is not further defined by the law.

4) *What protection does this law offer to advisers?* None. The statute contains a definition of publication adviser as “a person whose duties include the supervision of school-sponsored student publications,” but this is used only to determine who has the ability to require that the publication “maintain professional standards.” CRS Sec. 22-1-120(5)(a)-(b).

5) *What would administrators need to prove before being able to censor a student under the law?* On its terms, the law “shall not be interpreted to authorize the publication or distribution of the following:” obscenity; defamation; falsehoods about any non-public figure; expression that creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations or the material and substantial disruption of school operations; or expression that violates the privacy rights of others or threatens violence against people or property. CRS Sec. 22-1-120(3).

Furthermore, the law contains a provision making it the adviser’s responsibility to supervise production and “maintain professional standards.” CRS Sec. 22-1-120(5)(a). Another provision states that if a publication is part of a class, the law may not be interpreted to interfere with the authority of the adviser “to establish or limit writing assignments... and to otherwise direct and control the learning experience....” CRS Sec. 22-1-120(6).

## Iowa

### *Iowa Code Sec. 280.22*

1) *What protection does this law offer to students?* The law provides: (1) a blanket level of speech protection for all students; (2) restrictions for the content of publications in general; and (3) an additional set of provisions that set out rights for students on “official school publications.” IC Sec. 280.22(1), (2), (3) and (5).

a. *To students in general:* According to the statute, students have the right to freedom of speech “except as limited by this section.” IC Sec. 280.22(1). The limitations of the section deal primarily with content in student publications, but also include a provision permitting a school to adopt “otherwise valid rules relating to oral communications.” IC Sec. 280.22(8).

b. *To independent student journalists:* Independent student journalists are covered under the general grant of rights, but the statute has specific limitations on what can be published by students. See question five of this section for those limitations.

c. *To student journalists on official publications:* Student editors of publications that are prepared for a class and distributed to the student body have the right to determine the content of their publications. IC Sec. 280.22(5) and (7). Additionally, except where otherwise stated in the code, official school publications are free from prior restraint (which is not necessarily the same as prior review). IC Sec. 280.22(3). School officials are required to adopt and make available a written publications code that explains when, where and how students can distribute their material on campus.

2) *Who is protected by this law?* The law appears to cover all “students of the public schools” subject to a “board of directors[.]” rules and regulations, which would presumably include public elementary, intermediate and high school students. The law does not address the free-speech and press rights of college students.

3) *What types of student media are protected?* The definition of “official school publication” covers “material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.” IC Sec. 280.22(7). This broad definition would presumably cover all types of student media.

4) *What protection does this law offer to advisers?* None.

5) *What would administrators need to prove before being able to censor student media under the law?* The statute prohibits students from expressing or distributing obscenity; defamation, as defined by state law; or materials that encourage students to commit unlawful acts, violate lawful school regulations or cause the material and substantial disruption of the school. IC Sec. 280.22(2).

Additionally, for official school publications, the adviser is charged with supervising

the newspaper’s production, “maintaining professional standards” of writing, and compliance with the law. IC Sec. 280.22 (5).

## Kansas

### *Kan. Stat. Ann. Sections 72.1504 - 72.1506*

1) *What protection does this law offer to students?* The Kansas Student Publications Act states that “the liberty of the press in student publications shall be protected,” and explicitly states that material cannot be censored merely because it is controversial. KSA 72.1506(a). Additionally, the statute states that student editors determine the content (both editorial and advertising) of student publications, subject to the other limitations of the law. KSA 72.1506(d).

2) *Who is protected by this law?* The law appears to cover all students attending school in “any public school district,” which would presumably include public elementary, intermediate and high school students. The law does not address the free speech and press rights of college students.

3) *What types of student media are protected?* The definition of “student publication” includes “any matter which is prepared, substantially written, or published by students, which is distributed or generally made available, either free of charge or for a fee, to members of the student body, and which is prepared under the direction of a certified employee.” KSA 72.1505(b) (emphasis added). This broad definition would presumably cover all types of student media, including print, online and electronic.

4) *What protection does this law offer to advisers?* Advisers may not be “terminated from employment, transferred, or relieved of duties imposed under this subsection” for refusing to censor in violation of, or limit student rights conferred by, the student free expression law. KSA 72.1506(d).

5) *What would administrators need to prove before being able to censor student media under the law?* The statute exempts from its protection defamation; obscenity; matter that “commands, requests, induces, encourages, commends or promotes conduct” that is a crime or would be grounds for suspension or expulsion as defined by state law; or which creates “material or substantial disruption of... normal school activity.” KSA 72.1506(c).

See **Analysis**, Page 36

# Facebook foul-up

Maryland high school uses online photos to fill holes in yearbook

BY ISAAC ARNSDORF

Out of time and out of photos, the editors of *The Windup*, the yearbook at Walter Johnson High School in Bethesda, Md., needed more pictures of their classmates to fill blank pages. So they logged on to the well-spring of party photos and candid snapshots on the social networking site Facebook.com, republishing photos students had posted online — without credit or permission.

When students opened their yearbooks in June, they were startled to see pictures they thought were theirs from a Web site they thought was protected.

“You don’t expect to open the yearbook and see all these pictures that you thought only you were looking at or a few of your friends were looking at,” said Susannah Green, a junior who wrote about the controversy for the student news-

paper, *The Pitch*. A picture on Facebook of her and a friend at a dinner was reprinted in the “Homecoming” section of the yearbook, but Green said she did not attend the homecoming festivities.

Green’s expectation that glimpses of her personal life shared in a semi-public Internet community still would be treated as private coincided with the attitudes of her classmates at Walter Johnson, as well as students at other schools. Just across the Potomac River, the Forest Park High School yearbook in Woodbridge, Va., also printed pictures taken from students’ MySpace.com pages.

Forest Park senior Katie Valliere was surprised when a picture that was posted on Valliere’s MySpace page — of her and a friend at a Hawaiian luau party last summer — was reprinted in the yearbook without her permission.

“It just seems like a really bad trend is happening,” she said. “I feel like people are using the Internet as an easy route out.”

Now the sixth-most visited Web site in the country with more than 24 million active users, Facebook’s popularity and broadening reign over the youth social scene sets students’ online behavior on a collision course with other aspects of their lives, raising questions and sparking controversies while they, their parents, their teachers and administrators, and the law scamper to keep up.

## ‘No one will care’

The students’ familiarity with Facebook as a source of mostly benign and frivolous fun seemed to set it apart from the consequences of the real world, community members said.

“I talked with a couple of kids about it and they just said, ‘We just download pictures from each other all the

time,’ so it’s really not seen as ‘Well, you’re not supposed to do this,’” said Walter Johnson Principal Christopher Garran.

Green said it was a desperate move.

“I don’t think they really saw the consequences,” Green said of the yearbook editors, who did not respond to requests for comment. “They just thought, ‘We’re out of time and we need to fill up space. No one will care.’”

But they cared.

“People felt that their privacy was being violated because they put pictures up on Facebook with the intent of having them solely being viewed by a few friends,” said Lindsay Deutsch, who graduated in June and was co-editor of *The Pitch*. “There’s a big difference between posting up photos for friends and having them being archived in the history of Walter Johnson for anyone to see.”

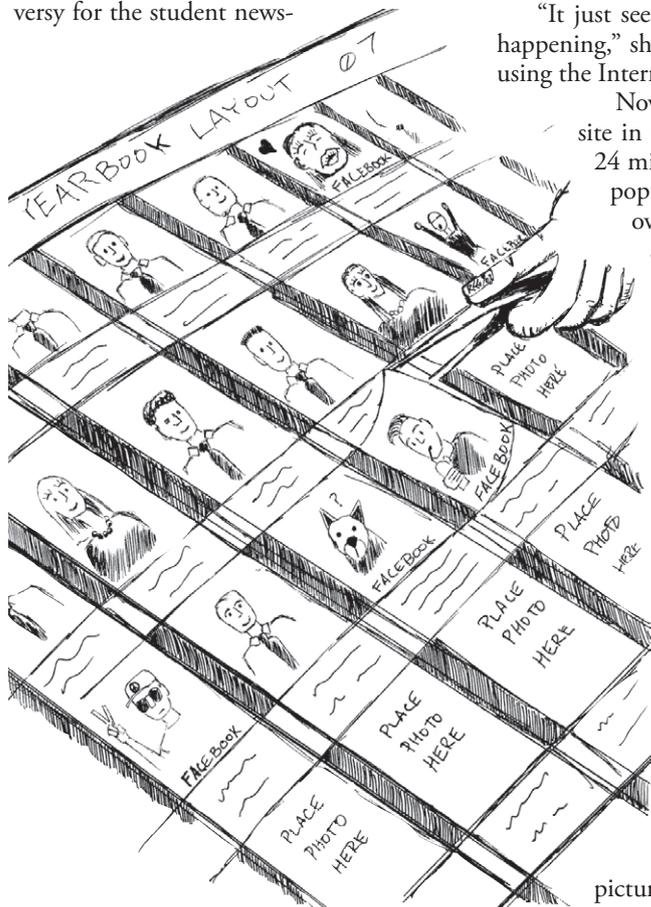
The pictured students were more concerned with the controversy’s social significance than any violation of their rights. But from a legal perspective, the incident illustrates the application of both privacy and copyright law.

## Private eye

Generally, images posted on the Internet are not considered private because there can be no reasonable expectation of privacy. A picture posted online is legally treated the same as a photograph displayed in a public building or park, experts said.

“Every kid in America had better figure this out: When you post stuff to a public Web site, a social networking site, any expectation of privacy you had in that photograph is gone, and you had better realize that,” said Charles Davis, a professor at the University of Missouri at Columbia School of Journalism. “If you put it on Facebook, that’s like putting it on the corner of First and Main street on a stop sign.”

Some students may trust that Facebook’s adjustable privacy settings will keep their images among only friends and do not expect their Facebook profiles to be visible to just anyone.



"You can make your Facebook profile private and protected so only your friends can see it," Green said. "So with that degree of privacy in mind, people felt a little taken aback to see their pictures there [in the yearbook] where anyone can see them."

But advocates said it is unlikely that a court would find that expectation reasonable.

"One thing our students seemingly cannot grasp is that the World Wide Web is just that — worldwide, and anyone from your best friend to your mother can see it," said Matt Daugherty, the journalism adviser at Orange Glen High School in Escondido, Calif. "However, recently MySpace and Facebook added new layers of privacy control to their accounts. What this has done is make the issue a little more complicated."

Although that privacy argument may not hold up in court, it still may influence ethical considerations that render Facebook photo's use imprudent, if not illegal, journalism advisers said.

"Even if you can find a way to do it legally, almost always it's not going to be the ethical thing to do," said Peter LeBlanc, the 2006 National Yearbook Adviser of the Year, who said he has advised his students not to use any images from the Internet. "I would say to them, 'If there was a picture of you and it was on the Internet and it's not necessarily something you would have wanted in the yearbook because it's a different community that you're sharing that with, and then that picture without your knowledge shows up in the yearbook, how are you going to feel about that?'"

Daugherty said he would consider pictures on a public profile "fair game," but if the profile had elevated privacy settings, "the fact that the user took the time to limit access to their profile at all implies that they are not for public use," he said.

## Copyright infringement

As for intellectual property rights, the second legal realm at play in the controversy, reproducing images posted on Facebook, or anywhere on the Internet, without the owner's permission violates Facebook's terms of use and could constitute copyright infringement, said Adam Goldstein, attorney advocate for the Student Press Law Center.

All works are subject to copyright "from the moment they are fixed in a tangible medium of expression," he explained. In this

case, the photographer owns the copyright of a photograph as soon as it is taken. Presumably, the person who posts a photo on Facebook also took the photo and, therefore, owns the copyright.

The problem arises, Goldstein said, when someone else publishes the picture elsewhere without the owner's consent.

But that should not deter legitimate uses of online content.

A legal exception, called fair use, is permitted when the image or the copyright owner of the image is the subject of news or commentary, Goldstein said.

For example, if writing about the phenomenon of students using social networking sites, using images posted there would probably qualify as fair use, Goldstein said.

But even if the law permits that use, some would still ask for permission.

"If the spread were on MySpace, I think using pictures posted would be, obviously, very appropriate, but under this condition: the student whose page it is and the subjects give their consent," said Matthew Bean, the yearbook and newspaper adviser at John Overton High School in Nashville, Tenn.

At Bowie High School in Bowie, Md., the 2006 yearbook included a spread on the rise of MySpace, incorporating photos and words from students' MySpace pages but with their permission.

"I have been teaching my students to treat MySpace and Facebook like we would pictures that are brought to us by a student and get permission," said the school's yearbook adviser, Jonie Lehmann. "It is ethical to use online images, as long as we treat them like other images."

## Advise and consent

But the student editors of *The Windup* were not experts in privacy and copyright law. They had never taken journalism classes, and they had a long-term substitute adviser while their adviser was on maternity leave.

Given her absence, LeBlanc said he could see how the controversy was an accident waiting to happen.

"There's already so many problems around stuff that's posted on the Internet and schools trying to handle that. It's just a powder keg," he said. "These things are going to happen because kids are kids, and they're going to make errors in judgment, and that's part of the education process."

But copyright law offers no solace for

unawareness. "The curious thing is that it's one of the few laws that makes no exception if you thought you were OK or didn't think you were breaking the law," Goldstein said.

So with no defense in not knowing the law, the school's principal, Garran, sees education as the way forward.

"We probably could have done more in-house to educate students about the use of these things," Garran said.

Davis said to prevent this from happening again, rules must be established.

"This is one of those editorial policies that probably needs developing, that says 'We can't yank stuff off of Facebook when we're in a jam,'" Davis said. "That's just sloppy content generation, like, 'We need to kill some space, let's go grab something.' That's never a good idea."

Garran also said he plans to expand the journalism education available to yearbook staffers. "We sometimes have speakers come in and talk about journalistic ethics with our student newspaper kids, who are really sort of on top of it, but we don't really do that with our yearbook students," he said. "We'll definitely open that up so that when people speak with our student newspaper kids, they'll also speak with our yearbook kids so that all our student journalists get some of that education."

"I guess we think of yearbook and student newspaper differently."

But yearbook staffers are also journalists, and LeBlanc said having them take a journalism prerequisite is preferable.

Goldstein agreed that an exposure to journalism ethics would help schools avoid incidents like these.

"One of the first things students learn when they study journalism is, of all the things you can do with a pen, there are some you should and some you shouldn't," he said.

Making mistakes can help teach that lesson, too, Garran said.

"They're good kids, they just made a judgment call on doing some things — probably some stuff they shouldn't have done, but I think they've learned from it," he said.

In that sense, working on a student newspaper or yearbook is a unique opportunity, LeBlanc said. "The great thing about student publications is that the ramifications are always so real that I think that provides a learning lesson for these kids that you can't get in any other form in high school." ■

# NCAA blogging policy evokes concern

Professional reporter removed from press box for 'broadcasting' on blog

BY JENNY REDDEN

**B**asketball is king in Indiana. The sport is exciting; the athletes are exceptional; the fans are hardcore; and the newspaper coverage is plentiful.

In fact, John Wustrow, the summer sports editor at the *Indiana Daily Student*, said the Indiana University newspaper's sports section is not big enough to hold all of the basketball coverage his staff wants to produce.

"And we have all these other sports we have to cover," Wustrow said.

As the 2006-07 Indiana University basketball season approached, editors striving to give readers what they want had an idea: Basketblog, an addition to the *Indiana Daily's* Web site.

Wustrow said the blog gives the sports staff an opportunity to write stories it would not have space for in the print edition.

And readers love it, he added. In June, editors looked at a Web site traffic tracker, which showed that Basketblog was by far the most-visited feature on their site.

"The blog definitely adds a lot to our newspaper," said Wustrow, who estimated that it has between 4,000 and 5,000 readers.

In March, the newspaper sent two reporters to the National Collegiate Athletic Association men's basketball tournament. The *Indiana Daily Student* reporters, along with journalists from across the country, blogged during the games, providing readers with the most up-to-date information possible.

The *Indiana Daily Student* never had any trouble getting press credentials, even for its bloggers, but Wustrow said he worried the paper's blogging days might be over after a sports writer from a commercial newspaper was kicked out of a NCAA baseball game June 8 for blogging from the press box.

## Trouble in Louisville

Brian Bennett, a sports journalist at *The Louisville Courier-Journal*, was assigned to

periodically update his blog during a College World Series baseball playoff game.

About an hour before the game started, university officials sent a memo around the press box, reminding reporters that "any blog that has action photos or game reports, including play-by-play, scores or any in-game updates, is specifically prohibited."

Bennett said *Courier-Journal* editors instructed him to proceed, nevertheless.

Bennett posted 17 messages, highlighting plays during the University of Louisville's 20-2 victory over the Oklahoma State Cowboys. His posts were short, many of them giving just the score and a few sentences of commentary.

Before the end of the seventh inning, an NCAA official revoked Bennett's press credential and told him to leave the press box because the association had a strict "no-broadcast" policy.

"...Any statistical or other live representation of the Super Regional games falls under the exclusive broadcasting and Internet rights granted to the NCAA's official rights holders and therefore is not allowed by any other entity," the memo said, according to Bennett's June 10 blog entry titled "Ejected and Dejected."

The newspaper considered legal action against the University of Louisville and the NCAA for violating Bennett's First Amendment rights, said Jon Fleischaker, an attorney representing the *Courier-Journal*.

The NCAA was using its power to issue press credentials to tamper with freedom of the press, he said.

"It's a real question that we're being deprived our right to report within the First Amendment from a public facility," Fleischaker said, according to Bennett's blog. "Once a player hits a home run, that's a fact. It's on TV; everybody sees it. [The NCAA] can't copyright that fact."

In July, the official policy had been clarified to say that "in-game updates on score and time remaining in competition may be publicly displayed by any media entity whether credentialed or not."

But Bennett's 17 blog entries, which averaged about 60 words per entry and included commentary, are not allowed, said Jennifer Kearns, associate director of public and media relations at the NCAA.

Kearns said the NCAA has bundled

rights agreements with certain media entities, which pay for the rights to cover NCAA championships.

"Bloggers have not," she said in an e-mail.

Kearns said the policy applies only to journalists in the press box at championship games that are being broadcast. Bloggers, student or professional, who violate the policy will have credentials revoked, she said.

Fleischaker said the *Courier-Journal* decided against a lawsuit.

## Legality of the policy

Howard Wasserman, a law professor and a regular contributor to the online Sports Law Blog, said the NCAA's policy raises "some pretty troubling First Amendment concerns."

The first of these concerns is freedom of the press, said Wasserman, who teaches at the Saint Louis School of Law and the Florida International University College of Law. The NCAA's policy is "dictating to certain members of the press how they are able to do their job and how they are able to report things."

The second is inconsistency, he said. The NCAA may be able to control blogging when it is happening in a press box, but it has no control over a blogger sitting at home and watching the game on television from his couch, Wasserman said.

"Are they going to crack down on that?" he said.

Wasserman added that blogs are vital to the continuation of newspapers.

"Gone — very far gone — are the days where people had to wake up in the morning to check the newspaper to find out who won the game," he said. "People are going to get that information."

Because blogging is critical to the success of newspapers, Wasserman said he expects newspapers to defend their right to blog, even if that means going to court.

"If you take that option away, you really are going to put, particularly, newspapers in a real bind as to what they are going to do and how they are going to continue to be a source of news," Wasserman said.

He concluded, "We have to wait until the next controversy."

Roy Moore, a mass communication pro-

fessor at the Georgia College & State University, agreed that the policy's legality is not clear, calling blogs a "gray area."

"The problem, in this case, in this situation, is that technology ... is ahead of the law," said Moore, who taught at the University of Kentucky while Bennett was a student there. "I think the best solution would be for the NCAA to work with media entities to carve out a reasonable solution."

And Gabe Feldman, the director of the Tulane Sports Law Program, said that if such a case went to court, the judge would have to decide whether the blog in question is competing with the broadcast of the game.

"Would someone read the blog instead of watching the games?" he said.

## Student journalists react

Wustrow at the *Indiana Daily Student* said that if the NCAA begins enforcing its policy next year, his staff would be forced to change the way it covers games because

“Until we’re told [to stop blogging] there’s no reason why we should stop.”

**John Wustrow**

sports editor, *Indiana Daily Student*

reporters cannot afford to lose their press credentials.

But Wustrow said the staff has never had trouble getting credentials in the past, and the section will continue to plan its coverage as if the policy does not exist.

"Until we're told [to stop blogging], there's no reason why we would stop," Wustrow said.

Sports bloggers at other universities are taking note of the policy, as well.

Dan Winklebleck, former sports editor of *The Daily Collegian* at Pennsylvania State University, said reporters at the *Collegian*

will likely continue to blog, just not from the press box.

"You could have somebody live-blog from the TV," Winklebleck said.

Winklebleck, who graduated in May, added that he "can understand where [the NCAA is] coming from."

The association must be able to protect the interests of its broadcasters, he said.

But Andrew Alberg, the sports editor at *The Hatchet*, the student newspaper at George Washington University in Washington, D.C., said he does not believe live blogs affect the number of people who watch games.

"I don't think anyone would read the blog instead of watch the TV if they had access to the game on TV," Alberg said.

Although Alberg said he had heard about the journalist in Louisville, he said he did not think about the implication of Bennett's situation on his own blogs.

"I didn't really think about how it would affect me," Alberg said. ■

From **Analysis**, Page 32

### Massachusetts

#### *Mass. Gen. Laws Ann. ch. 71, Section 82*

1) *What protection does this law offer to students?* The Massachusetts law is unique in that it is the only student free-expression law without provisions directed specifically toward student publications. Instead, it states that the right to freedom of expression in public schools "shall not be abridged," then includes in the definition of freedom of expression "the rights and responsibilities of students... to write, publish, and disseminate their views."

2) *Who is protected by this law?* The law applies to students "in the public schools of the Commonwealth," and therefore would seem to apply to elementary through high school students. The law does not address the rights of college students.

3) *What types of student media are protected?* Students are permitted to "write, publish, and disseminate their views[.]" No restriction of that term is provided.

4) *What protection does this law offer to advisers?* None.

5) *What would administrators need to prove before being able to censor a student newspaper under the law?* The only enumerated exception to the rights conferred by the statute is that protected expression "shall not cause any disruption or disorder within the

school."

### Oregon

#### *H.B. 3279, 74th Leg. Assem., Reg. Sess. (Or. 2007) (enacted)*

1) *What protection does this law offer to students?* The law grants free-expression rights to student journalists on "school-sponsored media," which include broadcasts and publications prepared under the supervision of a school-appointed adviser. H.B. 3279 Secs. (1)(a), (1)(b), and (2).

2) *Who is protected by this law?* The law grants rights to any public high school or public college student who "gathers, compiles, writes, edits, photographs, records or prepares information for dissemination in school-sponsored media." H.B. 3279 Secs. (1)(b) and (2)(c).

3) *What types of student media are protected?* The law protects "school-sponsored media," defined as materials "prepared, substantially written, published or broadcast" by student journalists that are distributed or broadcast to the student body and are "prepared under the direction of a student media adviser." However, in the high school context, this expressly excludes media intended for use solely in the classroom where it is produced. H.B. 3279 Secs. (1)(a) and (2)(b). A student media adviser is someone "employed, appointed or designated by the school district to supervise, or provide in-

struction relating to, student media." H.B. 3279 Secs. (1)(c) and (2)(d).

4) *What protection does this law offer to advisers?* None.

5) *What would administrators need to prove before being able to censor student media under the law?* Prior to censoring, administrators will need to show that what a student wants to publish is defamatory; constitutes an unwarranted invasion of privacy; violates state or federal laws or regulations; or incites students in a way that creates a clear and present danger of the commission of unlawful acts, the violation of lawful school policies or the material and substantial disruption of the orderly operation of the school. H.B. 3279 Sec. (4).

The law further specifies that a school official's forecast of a clear and present danger of material and substantial disruption must be based on "specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension." H.B. 3279 Sec. (4). ■

**A more detailed version of this analysis can be found on the SPLC Web site at**

**[http://www.splc.org/report\\_detail.asp?id=1351&edition=43](http://www.splc.org/report_detail.asp?id=1351&edition=43)**

## Court strikes down U.S. law targeting Internet pornography

**PENNSYLVANIA** — A federal court in Pennsylvania ruled March 22 that a law intended to shield children from Internet pornography violates the First and Fifth amendments. The U.S. government has filed an appeal.

The decision said there is no practical way to prevent minors from accessing potentially harmful material without also denying adults access to constitutionally protected speech.

In June 2004, the U.S. Supreme Court ruled 5-4 that the Child Online Protection Act of 1998 probably was unconstitutional but sent it back to the lower federal court in Pennsylvania.

The law banned any speech on the Internet deemed “harmful to minors” unless the Web site made a clear effort to prevent minors from accessing it.

The law could have prevented online student media from publishing any content relating to sex or sexuality, the law’s critics said. ■

**Case:** *Gonzales v. ACLU*, No. 07-2539 (3d Cir. filed May 25, 2007)

## MySpace suspension violated student’s rights, court says

**PENNSYLVANIA** — A school district violated the First Amendment by sus-

pending a student who created a satirical profile of his principal on MySpace.com, a federal judge ruled July 10.

Justin Layshock, a senior and honors student at Hickory High School, said on a mock MySpace profile that his principal, Eric Trosch, used drugs and kept a beer keg behind his desk.

Layshock was suspended for 10 days, placed in an alternative curriculum program for students with behavior and attendance problems and was barred from participating in the graduation ceremony, according to court documents.

The judge declared those punishments unconstitutional because the profile was created off campus and not during school hours, and even when opened in a school computer lab it did not cause a substantial disruption.

The judge cited Associate Justice Samuel Alito’s concurring opinion in the “Bong Hits 4 Jesus” case to counter the school district’s contention that Layshock’s Web site undermined the school’s educational mission.

“Justice Alito’s concurrence in *Morse* clarifies that *Morse* does not permit school officials unfettered latitude to censor student speech under the rubric of ‘interference with the educational mission’ because that term can be easily manipulated,” the opinion said.

The judge ordered a jury trial to decide whether Layshock may be compensated for the infringement of his First Amendment rights. ■

**Case:** *Layshock v. Hermitage Sch. Dist.*, No. 06-116 (W.D. Penn. July 10, 2007)

## Violent buddy icon not free expression, court ruling says

**NEW YORK** — An eighth-grader’s suspension for sharing an AOL Instant Messenger buddy icon depicting his teacher being shot was upheld July 5 by the 2nd U.S. Circuit Court of Appeals, affirming a lower court’s dismissal of the First Amendment challenge.

The icon showed a gun shooting a bullet at a person’s head, splattering red dots, and included the caption, “Kill Mr. VanderMolen,” who was the student’s English teacher at the time, according to court documents.

The student, Aaron Wisniewski, transmitted the icon to at least 15 online friends, including some classmates at Weedsport Middle School, from his parents’ home computer in April 2001, according to the decision.

The three-judge panel ruled that out-of-school speech, especially threats, that could disrupt school operations may be punished.

“It just shows that the courts are giving schools the authority to reach outside of school and outside of the school building,” said Stephen Ciotoli, Wisniewski’s attorney. “This is a private text message between kids. This is like two kids having a conversation in their bedroom and the court now saying a school can punish that.” ■

**Case:** *Wisniewski v. Bd. of Educ. of the Weedsport Central Sch. Dist.*, No. 06-3394 (2d Cir. April 17, 2007)

## HIGH SCHOOL CENSORSHIP IN BRIEF

From **High school briefs**, Page 26

sponsored by the school’s Gay-Straight Alliance. His younger sister Kelsie and other students wore similar shirts.

When school officials asked Harper to remove it, he refused. According to court documents, school officials kept the shirt hidden from other students by detaining him in the school office.

Harper filed suit on June 2, 2004, alleging that his rights to free speech and free exercise of religion had been

violated. He filed a request for a preliminary injunction to stop the school from continuing to bar the T-shirt.

But the court denied his request for a preliminary injunction and said he failed to demonstrate a likelihood of success on the merits of his claim. The appeals court also denied the request.

Harper made a final appeal for a preliminary injunction to the U.S. Supreme Court in October 2006. As that request was pending, a federal district court decided that his claims were moot be-

cause he graduated from the high school in June 2006. The Supreme Court on March 5 vacated the appeals court’s denial of the preliminary injunction, declaring that ruling no longer valid.

But Harper’s sister Kelsie, who is still in school and whose name Harper’s attorneys added to the lawsuit, filed a motion for reconsideration in the district court on June 22.

Timothy Chandler, Harper’s attorney, said they are not likely to hear a decision from the court until this fall. ■



# The First Amendment Fund

Supporting student voices through  
The Student Press Law Center

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

**Student Press Law Center**  
**1101 Wilson Blvd., Suite 1100**  
**Arlington, VA 22209-2275**

**The Student Press Law Center gratefully acknowledges the generous support of the following institutions and individuals who have joined as partners in our effort to defend the free press rights of student journalists.**

Contributions from May 1, 2007, through July 31, 2007.

**FREEDOM FIGHTERS (\$10,000 or more)**

Newspaper Association of America Foundation

**STUDENT VOICE CHAMPIONS (\$5,000 to \$9,999)**

Journalism Education Association

**FREE PRESS PROTECTORS (\$1,000 to \$4,999)**

College Media Advisers  
College Newspaper Business & Advertising  
Managers

Northeast Ohio Scholastic Press  
Association  
Quill and Scroll

Mark W. C. Stodder (in memory of David  
Adams) (MN)  
Western Association of University  
Publications Managers

**STUDENT VOICE ADVOCATES (\$500 to \$999)**

Associated Students UCLA  
Virginia Edwards (MD)

Thomas and Sonja Eveslage (PA)  
Dale Herbeck (MA)

New Jersey Newspaper Foundation  
Taylor Publishing Company (TX)

**FIRST AMENDMENT FRIENDS (\$100 to \$499)**

David L. Adams (IN)  
Martha L. Akers (VA)  
John R. Bennett (GA)  
Susan Blackall (IL)  
Blue Valley Northwest High School (KS)  
John Bowen (OH)  
Candace Perkins Bowen (OH)  
Clay Calvert (PA)  
Columbus North High School (IN)  
Charles Donaldson (in memory of Eric  
Shuman) (CA)  
John Rory Eastburg (in memory of David  
Adams) (CA)  
William A. Elsen (VA)  
Linda Evanchyk (FL)  
Dwight Evans (CA)  
Tracy Fessler (NE)  
Bill and Harriett Fisher (SC)  
Robert Garcia (NY)  
Abbie Gibbs (in memory of David  
Adams) (DC)

Lawrence Gold and William Carroll (DC)  
Mark Goodman (DC)  
John Hannan (IN)  
Steve and Barbara Hines (in memory of  
David Adams) (MD)  
Michael Hogan (CA)  
*Inklings*, Staples High School (CT)  
Robert Johnson (FL)  
John C. Johnson II (DC)  
Journalism Education Association (in  
memory of David Adams)  
Linda Kane (IL)  
Lake Central High School (IN)  
Long Island Coalition Against Censorship  
(NY)  
Kent Middleton (GA)  
Midland Lutheran College (NE)  
Barbara Nilson (WA)  
Stephen O'Donoghue (CA)  
Parkway Central High School (MO)  
Jim Patten (AZ)

Judson Randall (OR)  
Barbara Straus Reed (in memory of David  
Adams) (NJ)  
Dave and Sara Reed (IL)  
Laura Schaub (in memory of David  
Adams) (CO)  
Shawnee Mission North High School (KS)  
Rebecca Sipos (VA)  
Karrie Smythia (MO)  
Rosalind and Martin Stark (in memory of  
David Adams) (VA)  
*The Exponent*, Purdue University (in  
memory of David Adams) (IN)  
Virginia Association of Journalism Teachers  
and Advisers  
Wenatchee High School (WA)  
Wilma Wirt (in memory of Ted  
Smith) (VA)  
Roxanne Zell (MI)

**ENDOWMENT CONTRIBUTORS**

Shawn Chen (VA)  
Kathleen and James Criner (VA)  
Mark L. Davis (VA)  
John Rory Eastburg (CA)

Susan V. Everett (NJ)  
GannettMatch (VA)  
Mark Goodman (DC)  
Steve and Barbara Hines (MD)

Anthony E. Mauro (VA)  
Vivian Vahlberg and Rick Gordon (IL)



# Student Press Law Center Membership

## Knowledge is the Best Defense and Membership is the First Step

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

### Join today and support the work of the SPLC.

Membership benefits include:

- 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.
- Legal Alert, members-only monthly (school-year) bulletin, that will be sent to your e-mail address.
- Discount of 10% on one or more copies of the CD-ROM version of *Law of the Student Press*, the most 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.)
- Access to free reprints of SPLC published legal analyses, which may be reproduced for classroom lessons, media staff handbooks and other uses. Topics include libel; copyright; Hazelwood Supreme Court decision; privacy; freedom of information; campus crime and campus court reports, among others.
- The opportunity to support the free legal assistance that you and all student journalists and advisers receive from the SPLC, including telephone and e-mail advice and referrals to media attorneys in your area when necessary.
- Security in knowing that you will be kept up to date on the legal issues you may face as a student journalist or adviser and on the latest information to teach your staff and students.



\*Membership benefits do not include voting privileges.

### All of this comes to you for a small price:

- \$15 individual student
- \$30 individual for teachers/advisers, parents or other non-students.
- \$60 high school student publication or student media department.
- \$130 college student publication or student media department.
- \$300 associate memberships for associations, organizations or non-student media.

Membership is for one full year beginning with the date membership is received. Donations to the SPLC, other than memberships, are tax deductible.

### To become a member, send the following form to:

Student Press Law Center  
1101 Wilson Blvd., Suite 1100  
Arlington, VA 22209-2275

#### Check membership category and payment:

- \$15 individual student
- \$30 individual teacher, adviser or other adult
- \$60 high school student media
- \$130 college student media
- \$300 associate member for association or group

- Check enclosed.  Purchase order enclosed. # \_\_\_\_\_
- Donation (optional) enclosed for \$ \_\_\_\_\_.

Checks and school/college purchase orders only, payable to SPLC. Your payment and membership information will be forwarded to the SPLC.

Name \_\_\_\_\_ Date \_\_\_\_\_

School/College \_\_\_\_\_

Street address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Office phone \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

URL \_\_\_\_\_



**JOIN THE STUDENT PRESS LAW CENTER AND PARTICIPATE IN A NEW PROGRAM TO SUPPORT FREE STUDENT VOICES!**

*The SPLC's Your Voice, Your Freedom campaign begins this fall, providing exciting new ways to support the only national organization dedicated to supporting your rights!*

You can begin with a simple fundraiser: host a bake sale, car wash, penny war or any other creative event you can think of.

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

It's a simple way to support a free student press and the work of the SPLC.  
Help us make the Your Voice, Your Freedom a huge success in 2007!

**STUDENT PRESS LAW CENTER**

1101 Wilson Boulevard, Suite 1100  
Arlington, VA 22209-2275  
Phone: (703) 807-1904  
Web site: [www.splc.org](http://www.splc.org)

Non-Profit Org.  
U.S. Postage Paid  
Washington, DC  
Permit No. 4702

**ATTENTION: STUDENT MEDIA**