

State Open-Meetings and Open-Records Laws in Higher Education: An Annotated Bibliography*

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Introduction to the Annotated Bibliography

For the past forty years, state open-meetings and open-records laws, or “Sunshine” laws as they are also known, have exerted an important influence on the governance of public colleges and universities and on the relationship between higher education institutions and the institution of America’s mass media. The controversial laws, whose nature, scope, and application to higher education vary substantially across geographical and jurisdictional boundaries, exist in all fifty states and reflect a basic commitment of this nation to the idea of “openness” in government and broad public participation in governmental decision-making. The laws themselves, however, have proven quite dynamic, and in recent years many state legislatures and courts have altered the application and interpretation of Sunshine laws to higher education institutions in an effort to more effectively balance the tripartite tension that exists between individual privacy, institutional autonomy, and public accountability. For example, one study recently found that 22 states have revised their open-meetings and open-records statutes so as to permit state agencies, including public colleges and universities, to withhold names of all but a few finalists for executive positions, half of those exemptions having been created since 1997 (Estes, 2000).

Perhaps, not surprising, in light of this history of growth and revision in state Sunshine provisions, a modest body of literature has accumulated over the past several decades in description and analysis of open-meetings and open-records laws in higher education. The bibliography that follows provides annotated references for this literature.

This annotated bibliography is based on a systematic review of literature sources conducted in December of 2002 by our team of researchers at Vanderbilt University. Our literature search covered the years, 1975-2002 or, roughly from the emergence of a discernable literature on the topic of Sunshine laws in higher education to the present day. Our search covered the following electronic research databases: ABI/Inform; Books in Print; *Chronicle of Higher Education* Back Issue Archive; ERIC (FirstSearch and SilverPlatter versions); Dissertation Abstracts International; LexisNexis Academic Universe; and, ProQuest. Our specific search terms included the following: “higher education” or “college” or “university”, followed by the suffixes, “Sunshine”, “open-meeting”, and “open-record”, in separate and sequential searches.

We limn five general findings from our review of the literature on state open-meetings and open-records laws in higher education. First, we note in the literature a lack of articles reporting the results of systematic research. While anecdotal accounts abound, quite little conceptual or empirical scholarship exists on the topic of Sunshine laws in higher education. Moreover, much of the research that does exist is now twenty or more years old. Second, whether anecdotal or otherwise, we note that many articles on the topic of open-meetings and open-records in higher education focus on the experiences of a single institution or a single state, rather than comparing experiences across geographical, political, and organizational contexts. However, we note thirdly that,

despite a lack of empirical research on the topic, several recent legal analyses provide quite valuable insight and perspective on the positions taken by the several state courts relative to the issue of open-meetings and open-records laws in higher education. A fourth finding of our literature search is the existence of a fairly uniform assertion that, in order to achieve the “public good” which they seek to serve, state Sunshine laws demand a delicate balancing of at least three sets of competing interests: the individual’s right of privacy; the public’s right to know; and, the public college or university’s need for freedom sufficient to function effectively and efficiently. The clearest expression of this so-called “trilemma” may be found in Harlan Cleveland’s study, *The Costs and Benefits of Openness: Sunshine Laws and Higher Education*, published in 1985 by the Association of Governing Boards of Universities and Colleges. Finally, we note in the literature a preponderance of “Sunshine” publications devoted to a single topic—presidential search and selection—while numerous other topics of prospective importance (e.g., research on college and university campuses; student affairs and disciplinary matters; board evaluation and development) remain largely ignored.

The articles annotated in this volume are arranged in alphabetical order. Each entry contains a bibliographic reference for the article, a brief description of the article and its major assertions or findings, and a set of keywords capturing the article’s major topical or thematic thrust. Keywords used to code the entries include the terms, “open-meetings” and/or “open-records”, followed by any of the following that applied: “advancement/fund raising”; “athletics”; “board effectiveness and evaluation”; “faculty tenure and promotion”; “presidential search and selection”; “program review”; “university-based research”; and, “student records”.

Bibliography

American Association of University Professors, Subcommittee of the Association's Committee A on Tenure (1986). On open-meetings. *Academe*, 72(1): 3a-4a.

This subcommittee report considers the impact of state Sunshine laws on faculty and faculty-related issues. The report provides examples of the varied application of Sunshine laws in different states and jurisdictions; for example, as the laws involve faculty senate meetings in Washington, student government activities in Iowa, and departmental faculty meetings in Connecticut. The subcommittee acknowledges as problematic the extension of Sunshine laws into the realm of documents and records, as mandated in state open-records laws. However, for purposes of this report, the subcommittee's focus remains fixed on the question of open-meetings provisions as they impact faculty affairs and academic freedom. The report delineates three classes of reasons why decisions made in the open are positive, and asks how these reasons apply to higher education. In general, the three areas are said to promote and preserve accountability in public decision-making process, while encouraging citizens to be active participants in the decisions that affect them. In the instance of boards of trustees of public colleges and universities, which are considered public officials, the rules of openness should depend on the type of decision being made; the authors of the report argue against blanket application of the Sunshine laws. The report identifies various costs associated with "openness" in higher education, including: the danger that political pressures may inhibit the hiring of persons with controversial views; the loss of privacy for individuals about whom decisions are being made; the increased difficulty of obtaining candid evaluations on the merits of candidates; and, a corrosion of evaluation processes that, in turn, undermines standards of excellence in higher education in general and the peer-review process in particular. The report acknowledges the difficulties associated with balancing whether or not to make a particular decision public. It warns, however, that despite the importance of public disclosure in university decision-making, "across-the-board requirements that all decision-making bodies in public universities open all their meetings to the public or to the press would be a serious mistake" (p. 4a). The report concludes with the assertion that, openness is least appropriate in instances that touch upon issues of academic freedom.

Keywords: Open meeting; open-records; faculty tenure and promotion.

Association of Governing Boards of Universities and Colleges. (1985). Open-meetings: Let the Sunshine in. *AGB Reports*, 27(4): 30-33.

This report summarizes participant discussion at an AGB-sponsored symposium held to deliberate issues presented in Harlan Cleveland's (1985) book, *The Costs and Benefits of Openness: Sunshine Laws and Higher Education*. Cleveland's work casts state open-meetings and open-records laws as presenting higher education with a "trilemma", or a threefold dilemma, requiring the simultaneous balancing of the public's right to know,

the individual's right to privacy, and the institution's obligation to operate effectively. The symposium discussion centered on the "presumption of openness" that is embedded in public debate about the application of Sunshine laws to higher education. Symposium participants concurred that openness toward the public, the press, and various interest groups helps satisfy those parties' legitimate interests in the affairs of public higher education institutions, as well as promotes the effectiveness of the institutions. Actions that demonstrate openness include, for example, providing information prior to board review concerning preparation and deliberation of budgets and making public the general or collective aspects of personnel matters, while protecting the privacy rights of individual employees or candidates for employment. Symposium participants also discussed how institutions should make determinations regarding certain "exceptions" to openness, as in the case of board self-evaluation or presidential searches. The report concludes that, despite disagreement among participants on particular issues raised, there was consensus regarding the importance of the "presumption of openness" in higher education. Symposium participants also agreed that in determining which exceptions to openness institutions may legitimately claim, higher education should be mindful of the "trilemma", so that the public, citizen groups, the press, boards of trust, state legislators, and members of higher education community, at large, may have their interests represented.

Keywords: Open-meetings; board effectiveness and evaluation; faculty promotion and tenure; presidential search and selection.

Association of Governing Boards of Universities and Colleges. (2002). Is the press a trustee's friend or foe? *Trusteeship*, 10(2): 9-13.

This article reports a roundtable conversation convened by *Trusteeship* to shed light on the impact of the press on higher education. The roundtable's six participants were Jane Elizabeth, education editor of the *Pittsburgh Post-Gazette* and faculty member at the University of Pittsburgh; Jerrold Footlick, trustee of the College of Wooster and former senior editor of *Newsweek*; Tahlman Krumm, Jr., immediate past chair of the Ohio Board of Regents and a media executive; Phil Power, former trustee of the University of Michigan and publisher; Bill Schackner, higher education reporter, *Pittsburgh Post-Gazette*; and, Peter Schmidt, associate editor of the *Chronicle of Higher Education*. Participants were asked to respond to a common scenario, a newspaper's publication of names of candidates for a public university presidency obtained under state Sunshine provisions. Most roundtable participants concurred that such disclosure is neither good nor bad, but rather of more or less usefulness to different parties: for newspapers, the disclosure is always useful in selling papers; for the institution the candidate is about to leave, the information may be useful in that it foreshadows important changes for the institution; and, for institutions hoping to lure the candidate, the disclosure is rarely useful to its interests. One participant, Phil Power, recounts that in the two presidential searches in which he had been involved at the University of Michigan, court-ordered disclosures (under the provision of state Sunshine laws) of the names of candidates had resulted in the university's inability to garner as finalists any sitting presidents. Power

stated, “Speaking as a regent, the result was that we were unable to get a look at the best talent out there. On a more general point, as a newspaper publisher, my job is to publish all the news as accurately as I know how. As a regent, my job is to do my best to maximize the chances of getting the best candidate for my institution. The policy problem is to mesh these two differing roles” (p. 9). Another roundtable participant, Peter Schmidt, cited recent data indicating that 22 states had enacted legislation permitting colleges and universities to withhold names of all but a few finalists, half of these exemptions having been created since 1997. Schmidt, therefore, characterizes the recent history of Sunshine laws in higher education as a “cycle of the press getting aggressive and publishing these names, and then colleges saying the process was compromised, and lawmakers responding” (p. 10).

Keywords: Open-meetings; open-records; advancement/fund raising; board effectiveness and evaluation; presidential search and selection; student records.

Basinger, J. (2001). No long-term president and no prospects: How politics on and off the campus scuttled the search for a leader at the U. of Florida. Chronicle of Higher Education, 47(26), A35, 37.

Basinger provides a lengthy description of the circumstances surrounding a failed presidential search at the University of Florida in year 2000. Among the factors Basinger cites as contributing to the failed search are complexities involving the state’s Sunshine laws. Much of the author’s discussion of events surrounding the search involve the former chancellor of the State University System, Mr. Adam Herbert, and the particular presidential search structure and processes which he adopted in 2000 in order to comply with Florida’s open-meetings and open-records laws. Critics contended that Mr. Herbert crafted an “unwieldy” two-pronged search structure; the chancellor responded that the structure was essential to balancing the demands of the state’s Sunshine laws against the need for confidentiality in decision-making. Although 54 faculty members, administrators, businessmen, and students served as a “search advisory committee”, the group was not involved in the actual recruitment or selection of candidates. Rather, Chancellor Herbert and the search-firm he hired, Korn/Ferry International, exercised full responsibility for the interviewing and selection of finalists. In so doing, the Chancellor was allowed to shield conversations about candidates from the mandates of the state’s Sunshine laws; if either the university’s board or the advisory committee had been involved, the names of all the candidates they discussed would have become public record. Yet, Basinger writes, the advisory committee and university constituencies said they distrusted and disliked the search structure, and some potential candidates were “troubled” by the structure of the search, a factor that allegedly contributed to candidates withdrawing their names from consideration. Eventually, writes Basinger, all five finalists withdrew from the search, citing a combination of concerns, particularly the professional difficulties created by a very open and public search.

Keywords: Open-meetings; open-records; presidential search and selection.

Bickel, R.D. and Brechner, J.A. (1978). The college administrator and the courts. Asheville, NC: College Administration Publications, Inc. (ED 188509).

This handbook, published as a companion to *The College Student and the Courts*, attempts to acquaint the college or university administrator with the legal aspects of selected major areas of administration of public and private institutions of higher education. Included among the topics covered are open-meetings and open-records laws. An overview of existing “openness-in-government” statutes is provided, along with a brief discussion of the legal implications of Sunshine laws in the areas of student records, faculty tenure and promotion, and presidential search and selection.

Keywords: Open-meetings; open-records; faculty tenure and promotion; presidential search and selection; student records.

Blum, D. E. (1990). Universities where tenure candidates can review files say system has not been undermined: Openness is said to boost faculty morale and instill confidence that decisions are fair. Chronicle of Higher Education, 36(22): A19, 21.

This article examines institutional reaction to recent pressures to make more “open” faculty tenure decisions, in light of the Pennsylvania Supreme Court’s *University of Pennsylvania v. Equal Employment Opportunity Commission* decision. In the decision, the Pennsylvania high court upheld the state commission's right to subpoena university tenure files for its investigation into a case of alleged race and sex discrimination at the university. Blum presents the debate between “open” tenure review systems (those in which candidates may examine their review files) and “closed” ones in the context of the impact of those systems on the faculty tenure, promotion, and evaluation processes. At the heart of the issue, writes Blum, are two conflicting interests: a person's right to fair consideration in employment decisions and an institution's right to confidentiality. State Sunshine laws requiring openness in certain aspects of university decision-making further complicate the issue. Blum notes that, in the aftermath of the Pennsylvania Supreme Court’s decision, elite universities complained about the potential violation of confidentiality that could ensue, while some public universities, already subject to state open-records laws, expressed confidence in the effectiveness of their review systems. Opponents of “open” faculty tenure systems claim that the loss of confidentiality jeopardizes an institution’s ability to choose its faculty members selectively for promotion and tenure. Furthermore, opponents claim, open systems create an evaluation process tarnished by biases, diminished candor, and lessened access to accurate and adequate information. Proponents of more open systems assert that such openness promotes faculty morale and instills a sense of confidence that fair decisions are being made. Blum claims that in response to the increased attention of the issue of confidentiality and openness in tenure review processes, institutions of all types are reviewing and reexamining their confidentiality policies. The article contrasts the experiences of different institutions, including the University of Pennsylvania, Florida

State University, Stanford University, the University Alaska, and Central Oregon Community College.

Keywords: Open-records; faculty tenure and promotion.

Cage, M.C. (1989). Battles over state “Sunshine” laws are heating up as public colleges are pressed to open records. Chronicle of Higher Education, 35(44): A18, 21.

The author of this article describes several recent legal actions taken by newspapers and public-interest groups against higher education institutions under state open-meetings and open-records laws. Particular attention is paid to lawsuits filed against public colleges and universities in Arizona and South Carolina over presidential searches, donor records, and student disciplinary records, while previous episodes of conflict involving Sunshine laws and higher education institutions in Florida and Michigan are also mentioned.

Keywords: Open-meetings; open-records; advancement/fund raising; program review; presidential search and selection; student records.

Cate, F.H. and Varn, R.J. (1999). The public record: Information privacy and access: A new framework for finding the balance. Washington, DC: Coalition for Sensible Public Records.

“Open access to public records is a cornerstone of American democracy. Such access is central to electing and monitoring public officials, evaluating government operations, and protecting against secret government activities. Open access recognizes that citizens have a right to obtain data that their tax dollars have been spent to create or collect” (p. 5). With these opening remarks, Cate and Varn illustrate the importance of maintaining America’s historic commitment to open public records, a commitment the authors argue is under assault. Citing the need of policymakers for a framework to help them evaluate when and how the law should be balanced to protect both privacy and access interests, Cate and Varn present twelve principles to guide policymaking: policymakers should identify and evaluate conflicting interests; privacy solutions must respond reasonably to defined problems; limits on access to protect privacy should be effective and no more restrictive than necessary; privacy interests are limited to personally identifiable records; enhancing state revenue is not a privacy problem; public information policy should promote access; there should be no secret public records; not every privacy/access issue can be balanced; systems for accessing public records and, where appropriate, controlling their use should not be burdensome; information policy must ensure the security of the public record infrastructure; education is key; and, the process for balancing access and information privacy should be sound. Although this publication does not specifically address issues of openness, access, and public disclosure in higher education, the arguments advanced on behalf of open public records are in themselves a useful resource.

Keywords: Open-meetings; open-records.

Cleveland, H. (1985). The costs and benefits of openness: Sunshine laws and higher education. Washington, DC: Association of Governing Boards of Universities and Colleges (AGB). (ERIC Documented Reproduction Service No. ED 263814).

Cleveland's landmark study explored the impact of open-meetings and open-records laws by focusing on the so-called "trilemma" which Sunshine laws pose. According to Cleveland, the trilemma involves a balancing of the conflicting values associated with the public's right to know, the individual's right of privacy, and the public college's or university's need to function effectively. In assessing how state Sunshine laws affect all three dimensions, Cleveland surveyed relevant statutes, case law, and the opinions of state attorneys general in all 50 states, and conducted in-depth interviews with a cross-section of officials in six states: Florida, Montana, Minnesota, Iowa, Texas, and Pennsylvania. The six states were selected for the study on the basis of their degree of "openness" under state Sunshine laws. Following a brief history of the evolution of Sunshine laws, Cleveland defines open-meetings and open-records provisions in state statute, provides examples from various states to illustrate recent changes that have occurred in state Sunshine laws, and examines ways in which the governance of public institutions of higher education has changed since the introduction of Sunshine laws. Cleveland cites as among the primary benefits of openness, greater inclusion of the public in institutional decision-making and enhanced protections against corrupt decision-making. The costs of openness include the corrosive effects of Sunshine laws on the discourse of the decision-making process. Cleveland notes that an appropriate balance has yet to be struck, and he offers a series of recommended reforms that might remedy imbalances. The publication is particularly valuable for its appendices, which include a definition of 25 characteristics of openness and a template matching states with their characteristics, a rank-ordering of states from "most open" to "least open", a state-by-state listing of opinions of attorneys general relative to the application of Sunshine laws to higher education, citations to state Sunshine laws, and a selected bibliography.

Keywords: Open-meetings; open-records; board effectiveness and evaluation; faculty tenure and promotion; program review; student records; university-based research.

Cleveland, H. (1985). Sunshine laws and the 'trilemma' they present. AGB Reports, 27(2): 17-21.

This article is adapted from Cleveland's book, *The Costs and Benefits of Openness: Sunshine Laws and Higher Education*, which gauges the effectiveness of open-meetings laws as applied to higher education in the United States. Particular attention in this article is given to the discourse that should take place both before and after implementation of Sunshine provisions. The investigation reveals four ways collegial decisions are affected by state Sunshine laws. Cleveland asserts that among the primary costs of openness in higher education are, a loss of candor among board members and presidential candidates during the search process and a general reduction in the freedom of speech that is available to university decision makers when discourse becomes simplified and dialogue trivialized. However, the author optimistically notes that when

the interests of the individual, the institution, and society are appropriately balanced, Sunshine laws can assist the media, higher education institutions, and private individuals in the execution of their duties.

Keywords: Open-meetings; board effectiveness and evaluation; presidential search and selection.

Coburn, M.B. (1992). The conflict between confidentiality and open meetings law and its impact on the faculty promotion and tenure process in the Florida State University System. Unpublished doctoral dissertation, Florida State University.

This study explored how the conflicting issues of academic freedom, confidentiality, and public disclosure impact the tenure and promotion process at public universities in Florida. Using historical, legal, and document analysis and interviews, legal standards of academic freedom, confidentiality, and public disclosure law were compared against faculty tenure and promotion practices in public universities throughout the Florida State University System. The public disclosure standard, as manifested in opening meetings law, focuses on the status of a group as a governing body and on the decision-making process. In Florida, if a university group is considered a governing body, then meetings must be open to the public when it is foreseeable that official action is to be taken. The standard may not be applicable, however, if it is determined that a group is not a governing body by virtue of its remoteness to the final decision, its lack of autonomy in policy-making, or its status as an advisory or staff committee. Coburn's analysis found that institutional practice was fairly congruent with the academic freedom and confidentiality standards. The comparison to the open-meetings standard was less conclusive. In the system, peer-review committees are designated as advisory and play differing roles in the decision-making process. The author concludes that, since Florida courts have provided insufficient guidance on the question of whether university committees constitute governing bodies, it remains unclear if these committees are subject to the state Sunshine Laws.

Keywords: Open-meetings; open-records; faculty tenure and promotion.

Estes, N. (2000). State university presidential searches: Law and practice. Journal of College and University Law. (http://www.nacua.org/jcul/JCUL_Without_Hyperlinks/26_jcul_485.pdf).

This article describes the "typical" university presidential search and the "typical" state open records law, summarizes court decisions in cases involving the application of state open-records laws to universities presidential searches, and discusses some of the statutory amendments legislatures have enacted as a result of adverse court decisions. According to Estes's research, at least 22 states have open-records laws containing exceptions that would appear to permit the nondisclosure of the names of applicants for public employment. Estes also notes that three of those statutes apply only to public

university presidential searches (Michigan New Mexico, and Texas), all three statutes apparently responses by state legislatures to court decisions requiring universities to disclose the names of candidates. Indeed, Estes identified what he terms a “repeated pattern” in modification of state open-records laws. Writes Estes, “Every so often, a state university presidential search becomes the object of well publicized litigation, in which the media sue to force greater disclosure of candidate identities...The media usually win these lawsuits, but the victory is pyrrhic. The university appeals to the legislature, points out that it cannot attract good presidential candidates under the rules demanded by the press and the courts, and convinces the legislature to change the statute.” Estes concludes by observing that this cycle may not necessarily be a bad development: “Perhaps state legislatures are in the best position to judge the value of attracting top leadership to their higher educational systems, and can balance the desire for total openness with the practical reality that such openness will diminish their state’s chances of attracting top candidates...”

Keywords: Open-records; presidential search and selection.

Finkin, M.W. and Stern, C.S. (1987). Report of committee A of the American Association of University Professors, 1986-87. *Academe*, 73(5): 45-53.

This committee report reviews reactions by the AAUP membership to its earlier report, “On Open Meetings”, which was published in the January/February 1986 issue of *Academe*. In the 1986 report, the committee declared it would restrict its examination and assessment of state open-meetings laws to decisions involving faculty appointment, retention, and advancement. The current document includes a statement, largely mirroring the 1986 report, adopted by the AAUP in 1987 on the question of open-meetings and open-records laws. The adopted statement summarizes the intent of state open-meetings laws and the parameters within which these laws function. It also identifies three potential benefits of open-meetings laws, while recognizing the enormous variation in scope and application of Sunshine laws across jurisdiction and situation. Those potential benefits include the following: reducing the likelihood of improper and biased decision-making by public officials; providing to the public information that is useful in assessing how officials serving on government bodies are executing their duties; and, providing citizens with the information and opportunities to express their opinions on policy. However, the statement recognizes that the application of open meeting laws to matters of faculty status often intensifies difficulties associated with obtaining candid evaluations of candidates. Moreover, increased openness may result in the loss of privacy for those individuals about whom decisions are being made. In view of these considerations, the committee report recommends that discussions regarding faculty status (e.g., employment, promotion, tenure) be conducted in private and that procedural protections be closely observed so as to ensure the integrity of the process.

Keywords: Open-meetings; faculty tenure and promotion.

Folger, J. (1976). Legislative expectations about the accountability of higher education. Paper presented at a seminar for state leaders in postsecondary education. Inservice Education Program (IEP) Tucson, AZ.

This paper reviews recent legislative activity in the area of accountability in higher education, including the recent emergence of Sunshine laws. These laws, according to Folger, originally emerged out of public criticism that the “legislature is too responsive to pressure groups, does not do its business in public, and does not oversee public agencies with enough vigor” (p. 30). Folger notes that open-meetings and open-records laws are now being applied to public institutions of higher education as an extension of the public’s growing desire for accountability in public agencies and organizations of all stripes. According to Folger, one potential impact of greater accountability in higher education, in general, and increased application of Sunshine laws to higher education institutions, in particular, will be increasing formalization and bureaucratization of institutional decision-making.

Keywords: Open meeting; open-records.

Geenarghese, S.G. (1996). Looking behind the foundation veil: University foundations and open records laws. Journal of Law and Education, 25(2): 219-236.

Using as backdrop the national media exposure surrounding the Ohio Supreme Court’s 1992 *Toledo Foundation* case, Geenarghese provides an overview and analysis of legal issues involved in the application of state open-records laws to university foundations. The author writes that, despite similarity of language in the fifty state open-records laws, state courts apply their open-records act differently, with differing implications both for nonprofit foundations in general and university-affiliated foundations, in particular. The article discusses the case law dealing with open-records litigation against university foundations, summarizes academic research that has emerged on the open-records question, and offers recommendations to university foundations. In his discussion of the relevant case law, Geenarghese summarizes the findings of key court rulings both in cases holding that foundation records are not subject to open-records acts (*Courier-Journal & Louisville Times Co. v. University of Louisville Bd. of Trustees*, 596 S.W. 2d 374, 379 [Ky. Ct. App. 1980]; *4-H Rd. Community Ass’n v. West Virginia Univ. Found.*, 388 S.W.2d, 308, 308 [W.Va. 1989]; *Guste v. Nicholls College Found.*, 558 So. 2d, 132, 1233 [La. Ct. App. 1990]) and in those holding that foundation records are subject to state open-records acts (*Weston v. Carolina Research and Dev. Found.*, 401 S.E.2d 161 [S.C. 1991]; *Toledo Blade Co. v. University of Toledo Found.*, 602 N.E.2d 1159, 1160 [Ohio 1992]; *Palm Beach Community College Found. v. WFTV, Inc.*, 611 So. 2d 588 [Fla. Dist. Ct. App. 1993]). The key questions resolved by the court in each of these cases, writes Geenarghese, tend to be two in number: (1) Is the foundation a public body?; and (2) If so, then are the foundation donor records subject to the disclosure requirements of the state open-records act? Although courts look at the university foundation problem from multiple perspectives, and no clear-cut consensus has yet emerged, the author cites various conditions that lead courts to characterize a foundation

as a public or quasi-public body, thus making the application of open-records law to the foundation more likely. Such conditions include, for example, whether the foundation receives any public funding from the state, whether it serves in any policymaking role within the university, whether it holds funds in the university's name, whether the foundation uses office space or pays rent for it at reduced or preferential rate, whether it provides services to the university at no costs, whether the university pays salary or benefits of foundation employees, and whether the public perceives the foundation to be an extension of the university. Finally, Geenarghese offers recommendations in light of the *Toledo Foundation* case and of similar judicial responses across the country.

Keywords: Open-records; advancement/fund raising; university-based research.

Healy, P. (1998). U. of Florida chief gets to keep his job, but state board asserts control over him. Chronicle of Higher Education. (http://chronicle.com/search/97cgi/s97_cgi).

The article chronicles how University of Florida President John Lombardi, after having made a series of critical comments about the state Board of Regents and about the chancellor of the state university system, saved his job by agreeing to pledge loyalty to the board and submit to "unusual oversight". Healy reports that the Board of Regents was prepared to fire the popular and politically well connected Lombardi, "famous" for making legislative end-runs around state system officials, but the behind-the-scenes campaign to force the president's ouster was frustrated by state Sunshine laws that forbid regents to conduct business in private.

Keywords: Open-meetings laws; open-records laws; presidential search and selection.

Hilton, D.A. (1989). Presidential careers: An exploratory study of the relationship between presidential career backgrounds and financial stress among collegiate institutions. Unpublished doctoral dissertation, The Pennsylvania State University.

The chief focus of this study was the extent to which colleges and universities have changed presidential selection practices in response to financial stress. Specifically, the study analyzed the relationship between financial stress and an institution's decision to appoint a president with managerial, as opposed to academic, career experience. Using an American Council on Education dataset that contained career background information on college and university presidents, the author analyzed characteristics of presidents of four-year institutions who were appointed to office between 1984 and 1986. The nature and extent of state Sunshine legislation (open-meetings and open-records laws) was included as an intervening variable in the study, but was shown to be unrelated to presidential selection.

Keywords: Open-meetings; open-records; presidential search and selection.

Iorio, S.H. (1985). How state open meetings laws now compare with those of 1974. Journalism Quarterly, 62(4): 741-749.

Following a brief overview of the evolution of state open-meetings laws since the 1950s, the author presents the results of a study that utilized archival analysis to categorize differences in the 50 state open-meetings laws. The study, which for purposes of comparison used a research design similar to that of a 1974 analysis of state open-meeting laws, examined five key questions: (1) How effective is open-meetings legislation? (2) How broad is the coverage? (3) How clear is the wording of laws? (4) How strong is the enforcement?; and, (5) How different are today's laws than those in the past? The study's key conclusions are threefold. First, the author notes a general trend toward open-meetings laws that allow greater access to government; the laws surveyed demonstrate more comprehensive coverage and have stronger enforcement measures than those laws studied in 1974. Second, the author found that more recent laws were written more precisely, closing some of the loopholes present in earlier legislation. Third, the author lastly notes a significant trend toward dispensations under state law that allow for closed executive sessions. The author presents her data in the form of three summary tables. Although the article does not address issues involving higher education, per se, the author's tabular data may be found to be useful.

Keywords: Open-meetings.

Iorio, S.H. (1985). The development of state open-meeting laws. Paper presented at the annual meeting of the Southwest Education Council for Journalism and Mass Communication, Las Cruces, NM, October 6, 1985.

This study investigates the current status of the freedom-of-information movement through an examination of access and state open-meetings laws. Access is further defined in the context of open-meetings as the one major source of information about state and local government. Drawing on James Madison's philosophy regarding the importance of public access to information, Iorio assesses the "content of the current legislation and discusses issues involved in the continuing development of open-meeting legislation" (p. 1) in an effort to examine the public's and the press' desire for access to governmental decision-making. Iorio traces the development of state open-meeting laws, provides a historical sketch of the concept of open access to information in the English common-law tradition, and summarizes key constitutional developments involving public access to information. The author briefly describes specific state open-meetings provisions, using Sunshine legislation in Florida and Tennessee as examples. Iorio also reviews the literature, identifying perceived and documented problems with open-meetings laws. One persistent problem stems from inadequate clarity in the definition of "meeting". Another major factor hampering the effectiveness of Sunshine laws is inadequate enforcement. Finally, Iorio presents results of a 50-state survey of state press association executives that sought to categorize open-meetings laws.

Keywords: Open-meetings.

Kaplan, W. and Lee, B. (1995). The law of higher education: A comprehensive guide to legal implications of administrative decision making. (3rd ed.). San Francisco: Jossey Bass.

Kaplan and Lee's comprehensive handbook to the law of American higher education includes a section devoted each to open-meetings and open-records case law. The authors write that open-meetings laws provide "a particularly good illustration of the controversy and litigation that can be occasioned when a general state law is applied to the particular circumstances of postsecondary education" (p. 695). Kaplan and Lee illustrate the wide range of issues brought before courts in their summary of the following legal actions: *Arkansas Gazette Co. v. Pickens*, 522 S.W. 2d 350 (Ark. 1975), which involved a suit brought by a newspaper reporter against the University of Arkansas arguing that committees of the board, and not just the board itself, were subject to the Arkansas Freedom of Information Act; *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), in which local news media sought to enjoin a search committee for a law school dean at the University of Florida from meeting in private session under provisions of the state open-meetings law; *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983), which saw a disappointed tenure applicant sue the University of Alaska, under that state's open-meetings laws, for refusing to make public the applicant's tenure files; *Donahue v. State*, 474 N.W.2d 537 (Iowa 1991), in which an associate professor denied promotion sued his university alleging that the meeting of the faculty promotion committee should have been open to the public; *The Missoulian v. Board of Regents of Higher Education*, 675 P.2d 962 (Mont. 1984), which saw a court reject a newspaper's claim that board of regents' periodic review of Montana state college presidents should be open to the public under that state's open-meetings law; *In re American Society for the Prevention of Cruelty to Animals, et al. v. Board of Trustees of the State University of New York*, 568 N.Y.S2d 631 (N.Y. App. Div. 1991), in which a New York appellate court ruled that meetings of the university's animal use committee were not a "public body" for purposes of the state's open-meetings act, a decision affirmed by the state Supreme Court; and, finally, *Red and Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257 (Ga. 1993), in which the state's Supreme Court ruled that the proceedings of a student disciplinary board at the University of Georgia were subject to the state's open-meetings laws. Kaplan and Lee characterize state open-records laws as "cousins" of open-meetings laws that also have had an important impact on postsecondary institutions. Among the key cases they cite are the following: *Denver Publishing Co. v. University of Colorado*, 812 P.2d 682 (Colo. Ct. App. 1991), in which the court held that the state's open-records laws required the university to disclose a settlement it had reached with a former chancellor; *State ex rel. Toledo Blade Co. v. University of Toledo Foundation*, 602 N.E.2d 1159 (Ohio 1992), described elsewhere in this bibliography; *University of Kentucky v. Courier-Journal*, 830 S.W.2d 373 (Ky. 1992), in which the university was required to disclose its responses to an NCAA investigation of rules infractions in its athletics program; and, *Russo v. Nassau County Community College*, 603 N.Y.S2d 294 (N.Y. 1993), in which the state's Supreme Court ruled in favor of the plaintiff who had filed a request under the state's open-records laws for access to class materials used in a college sex education course.

Keywords: Open-meetings; open-records; advancement/fund raising; athletics; board effectiveness and evaluation; faculty tenure and promotion; presidential search and selection; program review; student records; university-based research.

Kaplowitz, R.A. (1978). The impact of Sunshine/open meeting laws on the governing boards of public colleges and universities. Washington, DC: Association of Governing Boards of Universities and Colleges. (ERIC Document Reproduction Service No. 272059).

Sunshine laws are discussed in the context of attempting to lend assistance to governing boards and chief executive officers of public universities in the exercise of their institutional responsibilities. Kaplowitz provides definitions of the following terms: “open-meetings” or “Sunshine laws”; “executive session”; “sunset legislation”; “freedom of information laws”; and, “right to privacy”. Specific issues are addressed which directly relate to the decision-making processes of governing boards and executive officers of public institutions, including the following: legal constitution of a meeting; personnel matters; collective bargaining; consultation with counsel, purchase, lease, and disposition of real property; interpersonal dynamics; and, perspectives of the press. According to the author, the long-term impact of Sunshine laws on higher education is unclear. Three vignettes are provided to illustrate the issues underlying long-range planning in an era of openness in institutional decision-making. Finally, Kaplowitz identifies five factors that should be considered in reforming state Sunshine laws so as to make them more suitable to the effective governance of public colleges and universities: personnel matters; collective bargaining; consultation with legal counsel; property transactions; and, other matters such as security and public safety, judicial proceedings, and gifts and bequests. A brief summary of the key issues for which executive sessions may be called is included in the appendix.

Keywords: Open-meetings; open-records; board effectiveness and evaluation; faculty tenure and promotion.

Kauffman, J.F. (1983). Strengthening chair, CEO relationships. AGB Reports, 25(2): 17-21.

In this brief report, Kauffman provides a first-hand account of the multiplicity of differing roles, positions, and responsibilities of boards, board chairs, and institution presidents. He focuses on the chairperson-president relationship, positing that both entities are dependent upon one another for effectiveness and success. The impact of Sunshine laws upon presidents and boards of public institutions is discussed. Kauffman claims that the functioning and effectiveness of boards can be severely affected by open-meetings laws, which can strain board cohesion, frankness and candor, and communication. Board members may be reluctant to disagree with or question a president because such behavior might be interpreted as a lack of confidence. Constituent representatives and the media are quick to identify any perceived tensions in

the relationship between presidents and their boards, and these strains become glaringly evident in the public arena. Sunshine laws, however, may preclude or prevent presidents and boards from engaging in the kind of frank and open discussions that could alleviate such tensions. Finally, Sunshine laws also place serious constraints on the ability of the president to share information with board members on an informal basis, or to discuss with the board long-range concerns.

Keywords: Open-meetings; advancement/fund raising; board effectiveness and evaluation.

Leatherman, C. (1993). How a leaked list revealed what was secret at Michigan State. Chronicle of Higher Education. (http://chronicle.com/search/97cgi/s97_cgi).

This article considers dueling perspectives on state open-meetings laws in higher education against the backdrop of a recent presidential search at Michigan State University. The Michigan State board of regents and its executive search committee viewed confidentiality in the presidential search process as paramount to attracting high quality candidates. In turn, securing for public universities presidents of the highest caliber, argued the board, serves the best interests of the state and the general public. On the other hand, the press, which filed a series of suits against the university for its barring of the press from board and executive meetings associated with the presidential search, argued there is no evidence to conclude that open searches diminish the quality of candidates. Leatherman quotes other university and state officials as sharing the views of the press with respect to the mere inconveniences posed by state Sunshine laws; several of these officials reason that becoming a candidate for a university presidency is an honor and that candidates should be willing to put their records before the public view. Some of these proponents of openness further argue that it is “common knowledge” college and university presidents are “job hoppers”, so there is no need to attempt to conceal from the public a candidate’s prospective interest in a presidency.

Keywords: Open-meetings; open-records; board effectiveness and evaluation; presidential search and selection.

Leatherman, C. (1995). Top universities are having a hard time finding presidents. The Chronicle of Higher Education. (http://chronicle.com/search/97cgi/s97_cgi).

Leatherman reports on the difficulties encountered in recent presidential searches at the Universities of North Carolina, Washington, and California. Among the several reasons observers cited for the troubled searches were the political climate, the complexity of the jobs, and heightened public scrutiny. Leatherman writes that all three universities discussed in the article clashed with the media over the issue of open-meetings and open-records laws. The article quotes Charles Reed, chancellor of the State University System of Florida, as one of the few people to argue in favor of complete openness in presidential searches: “Openness makes for smoother searches, better candidates, and longer tenures.”

According to Reed, a Florida university courts only candidates who are ready to leave their old posts and want the job enough to say so publicly. Reed is quoted as believing that, with openness, sitting presidents don't secretly shop around for other posts: "It works, but people are all afraid to try it." Leatherman notes few people believe, as Mr. Reed does, that the best candidates are the ones who are ready to leave their old posts.

Keywords: Open-meetings; open-records; presidential search and selection.

Lehman, J.S. (1997). A search in the Sunshine leaves dark clouds. Trusteeship, 5(4): 18-22.

This case study of the University of Michigan's presidential search examines the implications of conducting a presidential search at a public university under provisions of state open-meetings and open-records laws. Lehman describes an unconventional process adopted by the university in response to earlier litigation (brought by newspapers) questioning the institution's adherence to the open-meetings laws. Despite objections by the local newspaper, the university conducted private meetings between regents and the potential candidates for the presidency. Ignoring the warnings from the press, the university search committee continued with its process and announced its selection of president. Interestingly, the press supported the selection after the selection was announced. Lehman challenges the assertion that open-meetings laws' necessarily promote open and candid communication. He claims that the laws themselves make this kind of communication difficult. This is particular true where heavy newspaper coverage is involved because coverage diminishes people's willingness to share information in an effort to avoid the glare of publicity. In Lehman's opinion, the heavy media coverage of the University of Michigan's presidential search strained the communication process necessary to gain valuable information about candidates and undermined effective institutional decision-making.

Keywords: Open-meetings; presidential search and selection.

Letzring, T.D. (1997). The impact on institutional research of open meeting and open records laws in higher education. New Directions for Institutional Research, 24(4): 27-35.

This brief article summarizes case law involving open-meetings and open-records laws as applied to institutional research offices in higher education institutions. It identifies several practical steps and strategies institutional researchers can follow (e.g., knowing who will receive the information and communicating with the home institution's lawyer) in order both to meet the requirements of law and to be prepared for information requests by media and concerned citizens.

Keywords: Open-meetings; open-records; university-based research.

Magrath, C.P. (1998). Can news organizations and universities ever hope to understand each other? (Letter to the editor). Chronicle of Higher Education. (http://chronicle.com/search97cgi/s97_cgi).

Appearing in the “Opinion” section of the *Chronicle of Higher*, this article bemoans the “hostility” that often exists between the news media and higher education, parties that should view one another as First Amendment allies, not “natural enemies”, according to the author. Magrath, president of the National Association of State Universities and Land-Grant Colleges, points to a number of ironic tensions between the media and higher education in the United States. For example, he notes that both the press and universities rely on the First Amendment and believe in intellectual freedom; they both are anti-authoritarian and perceive their purpose as that of challenging received wisdom; they both dislike being managed by external forces; and, both the news media and universities are intensely self-critical. Despite these commonalities, Magrath notes also “sharp tensions” between the media and higher education. While many university leaders distrust or fear the media, reporters and editors “typically see universities as part of the ‘establishment’ ... which therefore should be watched and, at times, pulled down.” According to Magrath, the tension between these entities is most evident in the media’s “insistence on open-meetings for virtually everything that occurs within a college or university”, a demand that may have negative repercussions on campuses. Magrath characterizes the tension that exists between the media and universities as “unfortunate”, and poses a variety of suggestions for promoting understanding: editors of mainstream newspapers should re-examine why they typically assign inexperienced reports to cover higher education; universities should make greater efforts to visit and develop relationships with editors and their staffs; and, both parties should sponsor regular forums to “debate and analyze why stories on education and other topics turn out as they do.”

Keywords: Open-meetings; presidential search and selection.

McLaughlin, J.B. (1983). Confidentiality and disclosure in the presidential search. Unpublished doctoral dissertation, Harvard University.

This study examines the nature of presidential search and selection in an era of increasing pressures for openness in university governance. Two forms of methodology were utilized in the study, a nationwide survey and case research. The survey of sixty-five public and private institutions (with a response rate of 80%) provides information about the range, frequency, and variety of current practices, including limited descriptive information about the impact of Sunshine laws on the presidential search process. The case studies, one of a small private college and one of a large public university, present an in-depth examination of forces at play in the presidential search. The paper presents an overview of practices said to work well in striking a balance between confidentiality and disclosure in presidential searches. Additionally, the study provides an assessment of the factors contributing to and consequences of disclosures during the search process.

Keywords: Open-meetings; open-records; presidential search and selection.

McLaughlin, J.B. and Riesman, D. (1985). The vicissitudes of the search process. The Review of Higher Education, 8(4): 341-355.

Drawing on a national survey and a series of case studies conducted over a five-year period, McLaughlin and Riesman report on the complexities and problems that attend college and university presidential searches. A topic to which the authors devote substantial attention is that of confidentiality and disclosure, and how the two should be balanced in the context of the presidential search and selection process. They pay particular attention to “Sunshine Searches” (pp. 351-354), briefly describing the application of state open-meetings and open-records laws to particular presidential searches at the Universities of Florida, Minnesota, California, Virginia, and at Texas A&M University. The authors’ research indicates that when Sunshine laws are applied to searches in higher education, “the ability of search committees to conduct successful searches is almost destroyed” (p. 352), often because the real needs of institutions cannot publicly be discussed since the priorities of constituencies often conflict. Moreover, the authors assert that searches conducted in the Sunshine lower “markedly” the quality of the applicant pool and that open-records and open-meetings laws do not necessarily produce legitimacy, as proponents of Sunshine legislation often claim, because “plebiscitary” settings often foster distrust, even while promising fairness. McLaughlin and Riesman also describe the “harm” that befell individual candidates involved in one state’s presidential search (that of Florida), where confusion over the confidentiality available under the state’s Sunshine provisions had disastrous career consequences for individuals whose candidacies became public.

Keywords: Open-meetings; open-records; presidential search and selection.

McLaughlin, J.B. and Riesman, D. (1986). The shady side of Sunshine. Teachers College Record, 87(4): 471-494.

Citing the lack of in-depth descriptive and analytical treatment of the impact of Sunshine laws on college and university presidential searches, the authors present a case study of one such search, conducted in 1982-1983, at the University of Florida. McLaughlin and Riesman recount major developments in the university’s two-tiered presidential search and selection process, including: the initial “rain” of nominations and subsequent “drought” of candidates; the relative absence of substantive discussion within the search committee; the problematics of candidate interviewing; how an “informal” screening vote by search committee members, and the unexpected reporting of that vote by a local newspaper, affected the search process and its outcome; the vetting of finalists in the absence of sustained deliberation within the search committee, but growing involvement in the search process by citizens groups, politicians, and members of the state education establishment; and, the eventual selection of a new president. Of particular note is the authors’ forthright criticism of Sunshine laws as having diminished candidate quality and sacrificed candor (“Florida’s Sunshine law had a ‘chilling effect’ on committee discussions” [p. 487]). According to McLaughlin and Riesman, Sunshine laws are self-defeating: instead of increasing trust, they “provide temptation to duplicity” (p. 491).

Public disclosure of the kind demanded by open-meetings and open-records laws is a negative influence on presidential search and selection because it allows the media to alter the tone and even the outcome of the search process; interviews are turned into media events as the presidential search process comes to resemble a campaign for political office. In conclusion, the authors characterize Sunshine laws, in the case of the University of Florida's 1983 presidential search, as having neither prevented "skullduggery" nor educated and informed the public, the purported twin purposes of these laws. Rather, by forcing search committee members to conduct business in the glare of publicity, Sunshine laws resulted in evasions and "game playing", as well as leaving the presidential candidates "sunburnt".

Keywords: Open-meetings; open-records; presidential search and selection.

McLaughlin, J.B. and Riesman, D. (1989). The shady side of Sunshine: The press and presidential searches. *Change*, 21(1): 45-57

A case study of the University of Florida's 1984 selection of a new president is presented to explore issues pertinent to Sunshine legislation. McLaughlin and Riesman claim that, because Florida's Sunshine laws are the most comprehensive in the nation, the University of Florida presidential search represented the most public search process ever conducted at a major university. All aspects of the search process were subjected to public scrutiny. The negative consequences of Florida's Sunshine laws quickly became evident. One consequence was a shift from a focus on substance to procedure. Additionally, the authors documented a diminishment in candidate interest in the university opening, as persons who were well situated in their present positions did not want to risk sending a resume that would become part of the public record and thus potentially harm their institution, career, and personal or professional credibility. The authors argue that Sunshine laws, such as those seen to operate in Florida, do not achieve their intended objectives of preventing dishonesty while educating and informing the public. By forcing the search committee to conduct business in public, open-meetings laws and open-record laws create environments devoid of debate, thus leading to "avoidance", "cronyism", and public embarrassments among committee members, candidates, and nominees. McLaughlin and Riesman offer alternative methods and procedures that might protect the interests of the public and of institutions, and also promote effective institutional governance. For example, establishing checks and balances in the search process itself is one recommended method for balancing the dual claims of privacy and confidentiality, thus lessening potential abuses of power. According to the authors, this method seeks the same goal as that of Sunshine legislation, but without the troublesome side effects wrought by open-meetings and open-records laws.

Keywords: Open-meetings; open-records; presidential search and selection.

McLaughlin, J.B. and Riesman, D. (1990). Choosing a college president: Opportunities and constraints. Princeton, NJ: Carnegie Foundation for the Advancement of Teaching.

Drawing on their decade of research on the topic of college and university presidential search and selection, the authors' examine the process in its variety and intricacy. The authors claim that the book is intended to shed light on a process that varies greatly from campus to campus. Among the topics covered in the nine chapters of the volume are the following: the contemporary importance of the college and university presidency and the significance and challenges associated with the presidential search process; descriptions of the search process at different types of institutions; case studies of presidential search and selection at the University of Florida (a chapter of the book is devoted to an account of the 1983 search at the University of Florida, which was conducted in the glare of that state's open-meetings and open-records laws), Rice University, Winthrop University, and a liberal-arts college and flagship state university that are not named because those interviewed wanted confidentiality; the uses and implications of consultants in presidential searches; and, conflicts over disclosure versus confidentiality during the search process. This last topic also includes discussion of the nature and primary provisions of state Sunshine laws, the arguments for "openness" in presidential searches, how open-meetings and open-records laws have influenced particular presidential searches (mostly negatively, according to the authors), and suggestions for balancing the requirements of Sunshine laws against the need of institutions for some measure of privacy during presidential search and selection. Much of the focus of the book is involves how a search committee is formed and how it functions, particularly in the context of balancing confidentiality against demands for public disclosure.

Keywords: Open-meetings; open-records; presidential search and selection.

McMillan, J. (1996). U. of North Carolina settles fight over closed meetings. Chronicle of Higher Education. (<http://chronicle.com/search97cgi/s97.cgi>).

McMillan reports on an agreement reached between the University of North Carolina system and ten state newspapers, which had brought suit against the university for allegedly excluding newspaper reporters from chancellor's meetings. The newspapers claimed the state's open-meetings law expressly forbade such closed-door meetings by university officials. University officials denied the law had been violated because university officials never had excluded members of the press from attending the meetings. McMillan quotes the president of the university system as saying, "The more people know about the university, the better off we are. Public attention is beneficial to university and its operations." The agreement calls for all university system meetings at which policies are set to be open to the public.

Keywords: Open meetings.

Meyers, K. M. (1990). State open-records acts and the NCAA bylaw requiring coaches to disclose their 'athletically-related' outside income: Emptying the coaches' pockets for public inspection? Journal of College and University Law, 16(3): 497-520.

In 1987, the National Collegiate Athletic Association adopted Bylaw 7-4, which requires coaches to report athletically related outside income to the school's chief executive officer. The NCAA legislation, in turn, has raised legal questions involving whether and to what extent colleges and universities must publicly disclose information about coaches' outside income under the provisions of state open-records law. The central focus of Meyers' article is an examination of the possible effects, both positive and negative, of the NCAA legislation, with particular focus on the potential for public-disclosure under state open-records law. Meyers first provides an overview of the NCAA's financial disclosure requirement, its origins, purpose, and enforcement provisions. The author then discusses the nature of state open-records laws. In this second section of the article, Meyers examines five key issues surrounding the application of state open-records in the states: (1) who may use a state's open-records law (31 states permit "any person" to request the disclosure of documents by an agency; 15 states require the requester to be a citizen of that state; three states expressly restrict access to government documents based on the requester's purpose for obtaining the records); (2) definitions of what constitutes a 'public record' (Meyers notes four general categories of definition); (3) state-funded colleges and universities as governmental bodies (state-funded colleges and universities "typically" are considered governmental bodies within the meaning of state open-records acts); (4) exemptions from disclosure (presumptively disclosable records may be withheld from the public if they fall under several general categories of exemption); and, (5) possible exemption of the NCAA coaches' income reporting requirement under a state's "invasion-of-privacy" provision of open-records law. The third section of Meyers' study presents a case analysis of a suit brought in 1988 against the University of Georgia attempting to force the university to publicly disclose, under provisions of that state's open-records law, information obtained by the institution pursuant to the NCAA legislation. Finally, Meyers discusses the practical effects of the NCAA reporting requirement under state open-records provisions, including certain commercial effects (bidding wars between coaches for endorsement contracts once coaches' contracts become publicly known) and institutional effects (liabilities, following termination of employment, associated with an institution's knowledge of a coach's perquisites).

Keywords: Open-records; athletics.

Mingle, J.R. (1986). (Book review.) The costs and benefits of openness: Sunshine laws and higher education. Journal of College and University Law, 12(4): 569-572.

In his review of Harlan Cleveland's 1985 report, Mingle lauds the author's attempt to raise serious questions about the applicability of Sunshine laws to colleges and universities and to outline a starting point for modifying some of the state statutes.

Nevertheless, Mingle criticizes the Cleveland report as “undervaluing” the benefits of openness. According to Mingle, the “size, scope, and importance” of public higher education demands openness, so that public confidence and support of the higher education enterprise may be maintained. In support of his assertion that the balance between institutional autonomy and public accountability should be weighted in favor of accountability, Mingle quotes Stephen Bailey, who observed, “The public interest would...not be served if the academy were to enjoy untroubled immunity... Whatever our current discomforts because of a sense that the state is crowding us a bit, the underlying tension is benign” (p. 572, in Mingle).

Keywords: Open-meetings; open-records.

Nicklin, J. (1997). Some college fund raisers move to delete personal information from donor records. Chronicle of Higher Education, 43(20): A28, 29.

This article reports a growing trend among development and fund raising professionals to purge from their files detailed personal information about donors and prospective donors, such as that describing sensitive family history and information, personal habits, and salary, stock, or property holdings. The article describes a 1991 episode involving the University of Toledo in which the institution’s daily newspaper brought suit against the University of Toledo Foundation, a fund raising entity, requesting that its donor records be made available under the state’s open-records law. The paper was seeking information about donors to determine whether individuals or businesses wishing to do business with the university had made donations. In 1992, the Ohio Supreme Court ruled that the foundation was in fact an agency of a public university, rather than a private, non-profit entity, as argued by the foundation. The Supreme Court ordered the foundation to open its records to the paper, whose reporters subsequently spent two weeks combing donors’ files. The article does not specify the number of institutions that have followed this records-purging “trend”.

Keywords: Open-records; advancement/fund raising.

Peterson, M.W. and McLendon, M.K. (1998). Achieving independence through conflict and compromise: Michigan. In T. MacTaggart (Ed.). Seeking excellence through independence: Liberating colleges and universities from excessive regulation. San Francisco: Jossey-Bass.

In their case study of the evolution and practice of “voluntary coordination” of higher education in Michigan, Peterson and McLendon briefly describe recent conflict surrounding the application of the state’s open-meetings law to college and university presidential searches, particularly those conducted by The University of Michigan, Michigan State University, and Wayne State University. According to the authors, the issue has centered on striking an appropriate balance between the public’s right to information and the universities’ prerogative and responsibility to self governance and

supervision, as provided in the state constitution. Peterson and McLendon discuss a series of recent events involving suits brought by newspapers against universities in violation of the state open-meetings act, efforts by universities to protect their presidential search processes from the threat of such suits, and legislative activity to grant universities dispensation from the requirements of the open-meetings act. The authors also mention one particular presidential search, conducted by The University of Michigan in 1996, in which the university paid \$225,000 to outside attorneys to help the school comply with the state open-meetings act and to assist it against the newspapers' suits.

Keywords: Open-meetings; open-records; presidential search and selection.

Power, P.H. (1995). How boards get sunburned in public. Trusteeship, 3(3): 18-21.

This practical guide for college and university trustees discusses the “trilemma” raised by Cleveland (1985) in his study of Sunshine laws and higher education. Power pays particular attention to the importance of balancing the public's right to know against the institution's obligation to operate in the best interest of the public. The author is a newspaper publisher and a regent of the University of Michigan; he, therefore, claims sensitivity to both the public's right to know and the benefits of conducting university business behind closed doors. Power offers five general guidelines for public university boards of trust as they attempt to balance the demands of openness and confidentiality: (1) begin with simple presumptions; (2) be suspicious of extreme ideological positions on either side of the argument; (3) follow the law; (4) beware of public policies that systematically put public universities at a disadvantage; and, (5) protect and promote, at all costs, cohesion and solidarity within the board.

Keywords: Open-meetings; open-records; presidential search and selection.

Riesman, D. (1983). Selection procedures for college and university presidents: Search and destroy missions? Invited address delivered to the faculty of Boston College, Chestnut Hill, MA, February 6, 1983.

In these remarks first delivered as part of the Reverend Charles Donovan Lecture series at Boston College, Riesman comments on the challenges associated with conducting college and university presidential searches, with particular attention paid to the “conflict” between privacy and publicity in the search process. The author contrasts the relatively private searches conducted by independent and religious-affiliated institutions with those of state institutions that operate under Sunshine laws and open-records laws. Based on his own study of and personal experiences with these searches, Riesman contends that Sunshine laws greatly diminish the quality of presidential candidates because “good candidates only rarely will come forward to be exposed to the circus of publicity...” (p. 11). As one example of the complexities attending presidential searches conducted “in the Sunshine”, Riesman briefly relates the experience of Texas A&M university. The student newspaper and the local newspaper brought suit against Texas A&M when the

institution, which argued that the Texas Open Records Law did not apply to universities, attempted to bring to campus for interviews a small number of candidates. The chancellor of the state university system appealed to the legislature for an exemption from the law for presidential searches, but the legislature adjourned without amending the law, under “pressure”, Riesman asserts, from the newspaper. Riesman recounts his writing a memorandum in support of the legislative amendment “indicating the harm...done to academic leadership by the unwillingness of capable individuals to expose themselves to the lottery of a completely open search” (p. 12).

Keywords: Open-meetings; open-records; presidential search and selection.

Schmidt, P. (1999). State Supreme Court rejects open-meetings lawsuit against University of California. Chronicle of Higher Education. (http://chronicle.com/search97cgi/s97_cgi).

The article reports how a legal technicality “torpedoed” a lawsuit alleging that the University of California Board of Regents violated the state’s open-meetings act when it agreed, in 1995, to end racial preferences at the university. The plaintiff in the case, a reporter for a student newspaper at the University of California at Santa Barbara, accused Governor Pete Wilson of “secretly and illegally” lining up support for his plan to abolish the use of racial preferences in university admissions, hiring, and contracting. In a unanimous ruling, California’s highest court ruled that the plaintiff had missed the deadline for filing suit as provided under the state’s open-meetings law. Lawyers for the plaintiff had convinced lower courts that the deadline for filing open-meetings complaints did not apply in instances where alleged violations appeared to have been concealed.

Keywords: Open-meetings; open-records.

Schmidt, P. (2001). Seeking the shade: Public colleges and news media increasingly clash over Sunshine-law issues. Chronicle of Higher Education, 48(6): A21, 22.

In this lengthy report, Schmidt cites recent clashes between public-higher education officials, the media, and the public at large over access to university meetings and records. Schmidt cites pending lawsuits alleging violations of state freedom of information acts that involve public colleges and universities in Alabama (involving multiple alleged violations), Hawaii (at issue, a presidential search), Indiana (a suit involving the firing of basketball coach, Bobby Knight), Kentucky (involving donor records to an academic center closely linked with a U.S. senator), and Missouri (student disciplinary records), while lobbyists are said to have worked in 2001 to repeal or limit the expansion of open-meetings and open-records laws in Arizona, Florida, and New Jersey. Wrangling has been particularly pronounced in Alabama, where a state circuit-court judge ruled that the Auburn University Board of Trustees had violated the state open-meetings act at least 39 times in the past three years. Schmidt claims that in many cases, the argument is winning over legislatures and courts. In most instances of conflict,

according to Schmidt, universities are seeking to shield from public view the identities of candidates for college presidencies, the identities of donors to colleges, or details involving proprietary research on college campuses. The article states that “many” experts on state freedom of information laws believe public colleges and universities are becoming less tolerant of Sunshine laws and more willing to fight to keep secret meetings and records. For example, an authority on freedom of information laws at the University of Missouri, is quoted as saying, “Overall, there has been a fairly steady retreat from openness in higher education...[before,] the presumption was disclosure. Now, the presumption is litigation.” This authority attributes the trend in litigation to increased competitiveness in higher education, which, he says, has heaped new pressures on public colleges to guard tightly information. Also at work, according to Schmidt, is an underlying shift in public attitudes toward freedom of information laws; the general public is said to no longer value openness in government as it once did. Schmidt briefly summarizes recent legislative activity and court decisions as they relate to Sunshine laws and higher education, including the following: in March 2001 the Nevada Supreme Court ruled in favor of a practice by the Nevada Board of Regents in which officials interviewed candidates for community college presidencies behind closed doors; in April 2001 the Florida Senate voted 35 to 1 in favor of a bill that would have allowed universities to withhold the identities of all applicants for presidencies, except the three finalists for the job; and, in New Jersey, lawmakers appeared close (at the writing of the article) to passing a bill that would greatly expand the scope of open-records laws, but provide exemptions for donors to higher education institutions.

Keywords: Open-meetings; open-records; advancement/fund raising; athletics; board effectiveness and evaluation; faculty tenure and promotion; presidential search and selection; program review; student records; university-based research.

Schwing, A.T. (2000). Open meeting laws 2d. Anchorage, AK: Fathom Publishing.

This 727-page reference guide, a second edition, provides a comprehensive survey, description, and classification of open-meetings laws in the fifty states. Following an overview of the constitutional context in which state open-meetings laws have arisen in the U.S., Schwing annotates state statutes as they pertain to each of the following topics: entities subject to open-meetings laws; mechanical details of open-meetings laws; meetings, quorums, deliberations, and voting; executive sessions; remedies for violations of open-meetings laws; cures for violations of open-meetings laws; defenses to actions under open-meetings laws; the process of open meeting litigation; and, attorneys fees, defense, and reimbursement. For those interested in the application of state open-meetings laws to higher education, the most pertinent and valuable sections of Schwing’s volume are pages 59-69, which detail open-meetings provisions governing state educational institutions, particularly colleges and universities.

Keywords: Open-meetings; open-records; advancement/fund raising; athletics; board effectiveness and evaluation; faculty tenure and promotion; presidential search and selection; program review; student records; university-based research.

Selingo, J. (1999). Michigan Supreme Court says presidential-search panels are exempt from Sunshine laws. Chronicle of Higher Education. (http://chronicle.com/search97cgi/s97_cgi).

In a 5-2 decision, the state's high court held that Michigan lawmakers do not have the power to extend state open-meetings and open-records laws to cover presidential searches at public universities because such action would infringe on the institution's constitutional responsibility of self-governance and "supervision". The article indicates that although the ruling concerned a contested presidential search at Michigan State University, university lawyers believed the ruling would be broadly applicable to other public universities in Michigan. In writing for the majority, Justice Maura Corrigan noted that, while the state Constitution directs university boards to hold "formal sessions" in public, boards may choose whether to meet informally in private. Wrote Corrigan, "The Legislature is institutionally unable to craft an open-meetings act that would not, in the context of a presidential selection committee, unconstitutionally infringe the governing board's power to supervise."

Keywords: Open-meetings; open-records; presidential search and selection.

Shea, C. (1992). California court upholds big award in tenure bias case. Chronicle of Higher Education. (http://chronicle.com/search97cgi/s97_cgi).

Shea reports a California Supreme Court decision to let stand a \$1.4 million award in a race-discrimination suit brought by a former faculty member at the Claremont University Center. The faculty member sued the university in a state court in 1986 claiming he had been denied tenure because he was black. Shea characterizes the California Supreme Court's decision as "unusual" in that the university lost the suit (universities generally win such suits) and that the damage award was so great. Key to the plaintiff's case was his assertion that he had overheard members of his tenure review committee, which voted five-to-three in favor of his promotion, use racially charged language in discussing the plaintiff. The article cites Ronald Walters, chairman of the political-science department at Howard University and vice-president of the National Congress of Black Faculty, as saying he knew of no other cases in recent years in which black men had won tenure-discrimination suits. Walters, furthermore, characterized the case as pointing to the need for open-meetings and open-records laws in higher education, asserting that racial discrimination is common in tenure decisions, but almost impossible to prove: "People do things in secret that they won't do if their conversations could be made public," Walters is quoted as saying. "I think this case speaks to the need for Sunshine laws."

Keywords: Open-meetings; open-records; faculty tenure and promotion.

Sherman, M.J. (2000). How free is free enough? Public university presidential searches, university autonomy, and state open meetings acts. Journal of College and University Law, 26(4): 665-700.

Sherman provides a comprehensive review and analysis of case law complexities involving the application of state open-meetings law to universities vested with “constitutional autonomy”, using the Michigan Supreme Court’s recent *Federated Publications Inc. v. Michigan State University Board of Trustees* (594 N.W.2d 491 [Mich. 1999]) ruling as a backdrop to the discussion. In *Federated Publications*, the Supreme Court ruled that Michigan’s open meeting act could not constitutionally be applied to presidential searches at public universities in that state, because it would violate the right of autonomy granted universities in the state constitution. In fact, the scope of Sherman’s discussion extends beyond that of universities holding constitutional autonomy, as disputes about the applicability of open-meetings acts or other public information laws to institutions of higher education have reached the courts in numerous other states. After providing an overview of open-meetings acts and the reasons for and history behind their adoption (including relevant statutory references for all fifty states), the author next proceeds to a discussion of some of the exceptions that have been created to such laws either by legislatures or the courts. Sherman notes that all fifty state Sunshine laws list instances in which closed meetings, or “executive sessions”, are allowed, and he pays particular attention to those exemptions in matters of employment. In a third section of the article, the author considers the arguments made by the Michigan Supreme Court in its *Federated Publications* ruling: first, that universities, even those supported by taxpayer funds, require a degree of autonomy in order to function effectively, and second, that choosing how to conduct a presidential search is among those activities that universities should be free to conduct as they see fit. In analyzing this second claim, Sherman examines earlier cases that have involved public universities and open-meetings acts, the positions of university boards and university presidents, and the claims made by those who wish greater access to the presidential search process (often, the media). The article offers the following conclusions: there are sensible boundaries to openness in government; there are good reasons for thinking that universities are unlike other governmental agencies and should be treated differently, at least for some purposes; while universities are deserving of autonomy, there are reasonable limits to autonomy; in the context of the presidential search question, both those who prefer open searches and those who prefer closed searches have legitimate claims to assert; contrary to the arguments made by the supreme court in the *Federated Publications* case, universities do not require the freedom to choose the manner in which they search for a new president; and, because there is little evidence to assert that universities require closed searches, and because of the importance both inside and outside the university community of the choice of president, “influence over the contours of the search process should not be beyond the power of the state legislature” (p. 669).

Keywords: Open-meetings; presidential search and selection.