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SUNSHINE OR SHADE?—THE UNIVERSITY AND OPEN MEETINGS ACTS

TRIBUNE PUBLISHING CO. V. CURATORS OF THE UNIVERSITY OF MISSOURI¹

“Policies of secrecy, whether they stem from indolence or design, are cancerous to the body politic and must, if our government is to remain ‘of, by, and for the people,’ be curbed by adequate legal guidelines and then by scrutiny of the people for use in the electoral process.”²

The above statement was made during the Watergate years, when public confidence in government was very low.³ At that time, a growing number of states had adopted open meetings laws, commonly known as sunshine laws. Today, all fifty states and the federal government have open meetings statutes.⁴ Proponents of sunshine laws argued that open meetings promote greater citizen participation and understanding of government, make government more responsive to the people, and reduce public suspicion and distrust.⁵ Opponents countered that open meetings, particularly at the early stages of decisionmaking, impair the free exchange of ideas, make individuals unwilling to take necessary but unpopular stands, and impair the efficient administration of government.⁶ Legislatures must have concluded that the benefits of these laws outweigh their disadvantages, since all states have adopted sunshine laws in some form.

The most important remaining issue in the area of sunshine legislation is its scope. Increasingly, the press has been seeking to extend the reach of sunshine laws into new areas. One such area is the university setting. Traditionally, courts have treated universities as unique governmental bodies that con-

1. 661 S.W.2d 575 (Mo. Ct. App. 1983) (Western District), *rehg. denied*, 661 S.W.2d 575 (Mo. 1984).

2. Warren, *Governmental Secrecy: Corruption's Ally*, 60 A.B.A. J. 550, 550 (1974).

3. Comment, *Sunshine, the Dubious New God*, 32 AD. L. REV. 537, 537 (1980).

4. For a comprehensive list of all fifty state statutes, see Note, *Open Meetings in Higher Education—An Analysis and A Proposal for Florida*, 34 U. FLA. L. REV. 250, 250 n.8 (1982). The Federal Open Meetings Act can be found at 5 U.S.C. § 552 (1982). Missouri's statute can be found at MO. REV. STAT. § 610.010-.115 (1978 & Supp. 1984).

5. Edelstein, *Openness in Government—A Continuing Era*, 38 FED. BAR J. 95, 96 (1979); see also Simon, *The Application of State Sunshine Laws to Institutions of Higher Education*, 4 J. C. & UNIV. L. 83, 86-87 (1976); Note, *supra* note 4, at 251 n.13.

6. Simon, *supra* note 5, at 89; Note, *supra* note 4, at 252.

duct business behind closed doors.⁷ There are two kinds of academic freedom found in universities—institutional and individual.⁸ Courts have become increasingly active in efforts to guarantee individual academic freedom within the university setting. In the seminal case of *Sweezy v. New Hampshire*,⁹ the Supreme Court reversed the conviction of a professor who refused to answer questions from state authorities about his political beliefs and the content of his lectures. A majority of the Court believed the conviction was an impermissible government intrusion into academic freedom and university autonomy.¹⁰ In *Keyishian v. Board of Regents*,¹¹ the Supreme Court struck down a New York statute that required faculty members to take an oath that they had never been a member of the Communist Party. The statute was held invalid on the ground that it threatened the academic freedom essential to the nation's future.¹² Additionally, courts have prevented violation of due process rights of both faculty and students from the university itself.¹³

While the Supreme Court has never explicitly recognized a constitutional right of institutional autonomy, the Court and lower federal courts have historically refrained from intruding into university affairs.¹⁴ Courts have consistently stated that university autonomy protects independent thought and teaching by faculty members.¹⁵ A New York court stated:

In academic communities greater freedom may prevail than in society at large and the subtle fixing of these limits should, to a great degree, be left to the educational institution itself. . . . The judiciary must exercise restraint in questioning the wisdom of specific rules or the manner of their application since such matters are ordinarily in the prerogative of school administrators rather than the courts¹⁶

7. Shurtz, *The University in the Sunshine: Application of the Open Meetings Laws to the University Setting*, 5 J. LEGAL ED. 453, 453-54 (1976).

8. *Preventing Unnecessary Intrusion on University Autonomy: A Proposed Academic Freedom Privilege*, 69 CALIF. L. REV. 1538, 1546 (1981) [hereinafter cited as *University Autonomy*].

9. 354 U.S. 234 (1957).

10. *Id.* at 250.

11. 385 U.S. 589 (1967).

12. *Id.* at 603.

13. *E.g.*, *Healy v. James*, 410 U.S. 667, 670-671 (1973); *Papish v. Curators of the Univ. of Mo.*, 408 U.S. 169, 181 (1972); *Dixon v. Alabama*, 294 F.2d 150, 158 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961) (students given right to notice and hearing before being expelled); *Soglin v. Kaufman*, 295 F. Supp. 978, 984 (W.D. Wis. 1968).

14. Gellhorn & Boyer, *Government and Education: The University as a Regulated Industry*, 1977 ARIZ. ST. L.J. 569, 574; *University Autonomy*, *supra* note 8, at 1547-50; Note, *supra* note 4, at 253.

15. *University Autonomy*, *supra* note 8, at 1550.

16. *Jones v. Vassar College*, 59 Misc. 2d 296, 299, 299 N.Y.S.2d 283, 287 (N.Y. Sup. Ct. 1969); *see also* *Stebbing v. Weaver*, 537 F.2d 939, 943 (7th Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977); *Board of Curators v. Horowitz*, 502 F.2d 1229, 1231-32 (2d Cir. 1974); *Duke v. North Tex. State Univ.*, 469 F.2d 829, 838 (5th Cir. 1972), *cert. denied*, 412 U.S. 932 (1973); *Marjorie Webster Junior College v. Middle*

Sunshine laws have often resulted in a conflict between the public's right to know as guaranteed by statutes,¹⁷ and a university's institutional independence and academic freedom.¹⁸ This conflict is aptly illustrated by the recent Missouri case of *Tribune Publishing Co. v. Curators of the University of Missouri*.¹⁹

The Tribune Publishing Company brought suit against the University of Missouri, its President and the Chancellor of the Columbia campus, alleging violations of the Missouri sunshine law.²⁰ The Tribune alleged its reporter was illegally barred from an "informal social meeting" held by the Board of Curators. The Tribune claimed that the meeting was required to be open because the Curators discussed a student exchange program with a Korean university.²¹ In addition, the Tribune alleged that its reporter was wrongfully denied permission to read several internal reports regarding changes in financing and governance of the University medical center and a study concerning the solicitation of funds to create a new medical school library. The Tribune asked that the University be enjoined from holding any closed meetings in which public business is discussed or public policy formed and from withholding access to the requested reports. The trial court granted the relief requested in an order that enjoined the University from excluding the public from attending formal or informal meetings at which public policy is discussed or decided.²²

The Western District Court of Appeals first examined the Missouri sunshine law which provides "except as otherwise provided by law . . . all *public meetings* shall be open to the public and *public votes* and public records shall be open to the public for inspection and duplication."²³ A "public meeting" is defined as "any meeting, formal or informal, regular or special, of a public governmental body, at which any public business is discussed, decided or public policy is formulated."²⁴ A "public governmental body" is defined as a constitutional or statutory governmental entity, including political subdivisions of the state and any other "*governmental deliberative body*" having rule-making or quasi-judicial power.²⁵ A "public record" is defined as any record retained

States Ass'n of Colleges & Secondary Schools, 432 F.2d 650, 657 (D.C. Cir.), *cert. denied*, 400 U.S. 495 (1970).

17. At common law, there was no right to inspect public records or to attend legislative and administrative proceedings. H. CROSS, *THE PEOPLE'S RIGHT TO KNOW* 25, 179-180 (1953); Note, *supra* note 4, at 250.

18. Note, *supra* note 4, at 255.

19. 661 S.W.2d 575 (Mo. Ct. App. 1983).

20. MO. REV. STAT. § 610.010-115 (Supp. 1977). The sunshine law was amended in 1978 and again in 1982. However, the court specifically limited its opinion to the law as it existed prior to these amendments at the time of the Tribune's suit. *Tribune*, 661 S.W.2d at 578 n.2.

21. *Tribune*, 661 S.W.2d at 578 n.2.

22. *Id.* at 580.

23. MO. REV. STAT. § 610.015 (Supp. 1975) (emphasis added).

24. MO. REV. STAT. § 610.010(3) (Supp. 1977).

25. "[A]ny constitutional or statutory governmental entity, including any state body, agency, board, bureau, commission, committee, department, division, or any po-

by a public governmental body, with the exception of student records maintained by an educational institution.²⁶

The court then discussed the distinction between the Board of Curators and the Curators of the University of Missouri, a public corporation.²⁷ Citing constitutional and statutory provisions, the court held that the Board of Curators was the governing body of the Curators of the University of Missouri, which is the institution itself.²⁸ This distinction between the Board of Curators as a governing body and the *institution* known as the Curators of the University of Missouri was fundamental to the Court's resolution of the key issue—whether the University, President Olson, and Chancellor Schooling were public governmental bodies within the scope of the sunshine law.²⁹

In deciding this question, the Court traced the operations of the University. The President is the chief administrative officer of the University System and is appointed by the Board of Curators. The University also has two vice-presidents and each campus has a chancellor responsible for the supervision of academic and administrative units. The only positions filled by, and which report directly to, the Board of Curators are the President, General Counsel, Treasurer, and Secretary of the Board. There are four committees that report directly to the Board and consist solely of Board members: the Executive Committee, Finance Committee, Academic Affairs Committee, and Physical Facilities Committee. The meetings of these committees, in addition to meetings of the Board of Curators, are all open to the public. In addition, records of these committees, employment records, rules of the Board, presidential executive orders and guidelines, delegations of authority by the Board, official audits, and official correspondence of the Board are open for inspection by the public.³⁰

The court held that the University (as distinguished from the Board of Curators), President Olson, and Chancellor Schooling were not public governmental bodies within the meaning of the sunshine law and that the records requested were internal management tools designed to assist the President and

litical subdivision of the state, government, school district or special purpose district, and any other governmental deliberative body under the direction of three or more elected or appointed members having rule-making or quasi-judicial power." MO. REV. STAT. § 610.010(2) (Supp. 1977).

26. MO. REV. STAT. § 610.010(4) (Supp. 1977).

27. MO. CONST. art. IX, § 9(a) (government of university will be vested in Board of Curators); MO. REV. STAT. § 172.010 (1978) (government of university vested in Board of Curators); MO. REV. STAT. § 172.020 (1978) (University is incorporated and shall be known as The Curators of the University and shall sue and be sued by that name); MO. REV. STAT. § 172.100 (1978) (Board may prescribe its own government); MO. REV. STAT. § 172.300 (1978) (Curators to appoint president, deans, and other employees and faculty of the University).

28. *Tribune*, 661 S.W.2d at 578-79.

29. *Id.* at 582-83.

30. *Id.* at 581.

Chancellor in their administrative duties and thus were not public records.³¹ The court noted that the sunshine law was applicable only to "public governmental bodies."³² It further concluded that the legislature did not intend to include within the definition of that term bodies that held purely administrative functions without power or authority to "govern." The court narrowly defined "governing" as the "formulation of policies and the promulgation of statutes, ordinances, rules and regulations, or the exercise of quasi-judicial power."³³ It stated that to hold otherwise would be so unduly disruptive and nonproductive that the legislature could not have intended such a result.³⁴

The "informal social meeting" held by the Board of Curators was held to be a public meeting of a public governmental body within the meaning of the sunshine law. There was no question that the Board of Curators is the governing body of the University and that the student exchange program was public business.³⁵ The court noted that, although the Board can meet privately for purely social reasons, they cannot use such meetings as a means of circumventing the sunshine law.³⁶

The court further held that the requested reports were not public records under the sunshine law. It based its opinion on the fact that the documents were prepared at the direction and for the use of the President and the Chancellor, who were not public governmental bodies.³⁷ Furthermore, the Board had not given the President or his staff either de jure or de facto authority to make policy decisions, or to issue rules or regulations to effect changes. Only if the reports had been given to the Board of Curators for informational decisional purposes would they have become public records under the sunshine law.³⁸ In conclusion, the court stated that government should not be made

31. *Id.* at 582.

32. *Id.* at 584.

33. *Id.*

34. *Id.* at 584-85. "It is inconceivable that the salutary goal of letting the sunshine in on meetings of public governmental bodies envisioned elimination of all intermediate layers of ozone to the extent of crippling or impeding the day-to-day efficiency of purely administrative functions." *Id.* at 585.

35. *Id.*

36. *Id.* at n.3. Many other jurisdictions which have considered this issue have reached the same conclusion. See *Jones v. Tanzler*, 238 So. 2d 91, 91 (Fla. 1970); *Channel 10, Inc. v. Independent School Dist. No. 709*, 215 N.W.2d 814, 827 (Minn. 1974). But see *Adler v. City Council*, 184 Cal. App. 2d 763, 767-68, 7 Cal. Rptr. 805, 810 (1960).

37. *Tribune*, 661 S.W.2d at 586.

38. "Although a well-informed electorate is the cutting edge of a representative form of government, it does not necessarily follow that unbridled public excursions into every nook and cranny of day-to-day administrative functions best hones this cutting edge against the ever-present risk of impairing administrative efficiency without commensurate benefits." *Id.* The court later indicated that if the Board does delegate either de jure or de facto authority to these administrative officials, their meetings and reports would take on a different complexion under the sunshine law, the implication being that this would constitute intentional evasion of the law. *Id.*

open at the expense of administrative efficiency.³⁹

The Missouri sunshine law was enacted in 1974,⁴⁰ and has been amended several times.⁴¹ Very few Missouri cases have interpreted the law. In *Cohen v. Poelker*,⁴² the Missouri Supreme court held that the Act was constitutional, because it represented a declaration of public policy that meetings of public governmental bodies should be open and their records available to the public.⁴³ The Court further held that it was the intent of the sunshine law to prohibit secrecy at all levels of government by requiring government departments, commissions, and agencies to hold open meetings and maintain open records.⁴⁴

Because of the scarcity of Missouri case law, an examination of cases from jurisdictions with statutes similar to Missouri's is useful.⁴⁵ The various state statutes, and their judicial interpretations, fall into one of three categories. In the first category, the sunshine law applies only to formal meetings. Only exclusion of the public from "official" gatherings in which governmental

39. *Id.* at 587.

40. Smith, *Sunshine Legislation in Missouri*, 39 J. MO. BAR 315, 316 (1983).

41. *Supra* note 20. Because the court specifically limited its holding to the Act as amended in 1977, there is some question as to the applicability of the decision to the Act as amended in 1978 and again in 1982. In 1978, section 610.010(2) was amended to broaden the definition of a public governmental body to include "any committee appointed under the direction or authority of any of the above named entities and which is authorized to report to any of the above named entities . . ." MO. REV. STAT. § 610.010(2) (Supp. 1982). One commentator has concluded that this addition places bodies created by any political subdivision within the purview of the law. Smith, *supra* note 40, at 318. However, under the court's analysis, the committees created by the President and the Chancellor would not have been created at the direction of the Board nor would they have reported to the Board. Therefore, the conclusion of the court would most likely have been the same under the 1978 amendment. This conclusion is supported by legislation proposed to make the sunshine Act "applicable" to the University. Representative Chris Kelly, of Columbia, Missouri, proposed an amendment to the sunshine law in response to *Tribune*. H.R. 1585, 82nd Gen. Assembly, 2d Reg. Sess., (1984). By merely deleting the word "governmental" from the law every time it appears, the amendment would make any *public body* subject to the sunshine law. However, the bill encountered opposition in the Governmental Review Committee, which was concerned with the breadth of the amendment.

In 1982, section 610.010(3) was amended to provide that "public meeting" did not include "an informal gathering of members of a governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter." MO. REV. STAT. § 610.010(3) (Supp. 1982). In light of the court's finding that the Board of Curators never attempted to circumvent the sunshine law, it is unclear how the court would have ruled on the informal social gathering under the 1982 amendment. *Tribune*, 661 S.W.2d at 587.

42. 520 S.W.2d 50 (Mo. 1975).

43. *Id.* at 53.

44. *Id.* at 52; *see also* Hudson v. School Dist., 578 S.W.2d 301, 307 (Mo. Ct. App. 1979).

45. However, Missouri courts have not found such examination to be useful. *Tribune*, 661 S.W.2d at 583 (legislation varies from state to state and has been divergently construed by courts); *see also* Cohen v. Poelker, 520 S.W.2d 50 (Mo. 1975).

action is *formally* taken constitutes a violation of the sunshine law.⁴⁶ This type of statute has been largely discredited because it allows mere rubber-stamping of decisions reached at prior secret sessions.⁴⁷

In the second category of statutes, all prior discussions, deliberations, and actions in the decisionmaking process, whether formal or informal, must be made in public.⁴⁸ Florida's statute is an excellent example of this liberal approach.⁴⁹ Additionally, the Florida courts have been very liberal in their interpretation of the statute. In *Times Publishing v. Williams*,⁵⁰ the Florida Court of Appeals noted that the public has a right to view the entire decisionmaking process. Every thought of a public official relating to his official duties is a matter of public concern.⁵¹

The final type of statute is the most common. All *official* deliberations and actions taken to reach a decision must be made in public.⁵² This type of statute attempts to protect the interest of the public in meaningful participation in government while at the same time giving government officials needed privacy in the earliest stages of decisionmaking. Missouri's statute falls into this category.⁵³

Another means of categorizing state statutes is to determine what governmental bodies are covered by the state sunshine laws. Some statutes specifically list which bodies are covered. Others provide that the law applies to all

46. *Common Cause v. Utah Pub. Serv. Comm.—The Applicability of Open-Meeting Legislation to Quasi-Judicial Bodies*, 1980 UTAH L. REV. 829, 831-833 [hereinafter cited as *Common Cause*]; Simon, *supra* note 5, at 109-10.

47. *Common Cause*, *supra* note 46, at 831. For examples of interpretations of this type of statute, see *Waters v. City of Birmingham*, 282 Ala. 104, 209 So. 2d 388 (1968); *Barnes v. City of New Haven*, 140 Conn. 8, 98 A.2d 523 (1943) (interpreting an open meeting provision in a statute concerning municipal authority).

48. Simon, *supra* note 5, at 110; *Common Cause*, *supra* note 46, at 832.

49. FLA. STAT. ANN. § 286.011 (West Supp. 1984) provides:

All meetings of any board or commission of any state agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

50. 222 So. 2d 470 (Fla. Dist. Ct. App. 1969).

51. *Id.* at 473; see also *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (statute should be construed so that all the collective inquiry and discussion stages are embraced); *City of Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971) (law's intent is to cover any meeting relating to a matter on which foreseeable action will be taken); *Bigelow v. Howze*, 291 So. 2d 645, 647 (Fla. Dist. Ct. App. 1974) (two members on a fact-finding trip to Tennessee violated the statute by discussing how they would vote at an upcoming meeting because this denied the public the opportunity to observe the decisionmaking process).

52. *Common Cause*, *supra* note 46, at 831-32.

53. MO. REV. STAT. § 610.015 (Supp. 1982); see also ALASKA STAT. § 44.62.312 (1983); ILL. ANN. STAT. ch. 102, § 41 (Smith-Hurd Supp. 1983-84).

governmental bodies created by statute,⁵⁴ local ordinance, or other law. Another group of state statutes apply to all agencies that perform a governmental function. A final category of statutes apply to all bodies that expend or are supported by public funds.⁵⁵ Missouri's statute applies to all agencies that perform a governmental function.⁵⁶

A small number of cases from other jurisdictions deal with the applicability of sunshine laws to state universities.⁵⁷ These cases agree on one point: the statutes do apply to the Boards of Curators or Trustees.⁵⁸ Courts have split on more difficult questions involving advisory committees comprised of non-members of the governing board of the university.⁵⁹

In *Fain v. Faculty of College of Law*,⁶⁰ the Tennessee Court of Appeals held that the governing body of the University of Tennessee was the Board of Trustees.⁶¹ The Tennessee statute is similar to Missouri's in that it applies only to governing bodies.⁶² Using reasoning almost identical to that of the *Tribune* court, the court held that the faculty meetings of the college of law were not meetings of the governing body. The court looked at the organizational structure of the University of Tennessee, which is substantially similar to that of the University of Missouri.⁶³ Because the dean and the faculty could not formulate policy or even make direct recommendations to the Board of Trustees, they could not be a governing body and thus were not subject to the Tennessee sunshine law.⁶⁴

The North Carolina Supreme Court, in construing a statute similar to Missouri's, reached a similar conclusion.⁶⁵ In *Student Bar Association Board of Governors v. Byrd*,⁶⁶ the student bar association brought an action against

54. Simon, *supra* note 5, at 91-92.

55. *Id.*

56. MO. REV. STAT. § 610.020 (Supp. 1983). Other states in this category are California, CAL. GOV'T. CODE § 11120 (West Supp. 1984), Illinois, ILL. ANN. STAT. ch. 102, § 42 (Smith-Hurd Supp. 1983-84), Massachusetts, MASS. GEN. LAWS ANN., ch. 34, § 96 (West Supp. 1983), Minnesota, MINN. STAT. ANN. § 471.705 (1) (West 1977), North Carolina, N.C. GEN. STAT. § 143-318.10 (1983), Oregon, OR. REV. STAT. § 192.630 (1981), Tennessee, TENN. CODE ANN. § 8-44-102 (1980), and Washington, WASH. REV. CODE ANN. § 42.30-030 (1972); Note, *supra* note 4, at 257 n.62.

57. *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976); *McLarty v. Regents*, 231 Ga. 22, 200 S.E.2d 117 (1973); *Student Bar Ass'n Bd. v. Byrd*, 293 N.C. 594, 239 S.E.2d 415 (1977); *Fain v. Faculty of College of Law*, 552 S.W.2d 752 (Tenn. 1977); *Cathcart v. Anderson*, 10 Wash. App. 429, 517 P.2d 980 (1974), *aff'd*, 85 Wash. 2d 102, 530 P.2d 313 (1975).

58. Simon, *supra* note 5, at 94.

59. *Id.* at 96-97.

60. 552 S.W.2d 752, (Tenn. Ct. App. 1977), *cert. denied*, 552 S.W.2d 752 (Tenn. 1977).

61. *Id.* at 755.

62. *See supra* note 56 and accompanying text.

63. *See supra* note 30 and accompanying text.

64. 552 S.W.2d at 754.

65. *See supra* note 56 and accompanying text.

66. 293 N.C. 594, 239 S.E.2d 415 (1977).

the dean of the law school seeking to enjoin closed meetings of the faculty. In determining legislative intent, the court stated that it could consider possible consequences of a particular statutory construction when deciding which construction the legislature had in mind.⁶⁷ Again, in reasoning similar to that of the *Tribune* court, the court held that, although the faculty was a component of the University system, it was not a component of a governing body nor did it have or claim authority derived from the Board of Governors, which is the governing body of the University.⁶⁸ The North Carolina court went even further than the *Tribune* court by holding that the Board of Governors was not covered by the North Carolina sunshine law. While the Board of Governors was the governing body of the University, the court held that an educational institution was not a governmental body within the meaning of the sunshine law because it did not exercise some power peculiar to the sovereign, such as promulgating statutes.⁶⁹

In *Bennett v. Warden*,⁷⁰ a Florida appellate court held that the state's sunshine law did not apply to meetings between the president of a junior college and representatives of career employees of the college.⁷¹ The appellee argued that the president acted as the alter ego of the Board of Trustees, thus making him a "committee" within the meaning of the law.⁷² The court rejected that contention, stating that the mere fact the president carries out the directions and orders of the Board does not make him its alter ego. The court felt any other conclusion would unduly hamper the efficient operation of modern government.⁷³

The opposite result was reached in the state of Washington.⁷⁴ In *Cathcart v. Anderson*,⁷⁵ the issue was again whether faculty meetings of the law school must be open. This time, the Washington Court of Appeals held that the statute applied, reasoning that the Board of Regents had delegated its power to govern.⁷⁶ The court noted that attendance at meetings of the Board of Regents would be fruitless for witnessing the decisionmaking process for questions con-

67. *Id.* at 595-98, 239 S.E.2d at 418.

68. *Id.* at 601-02, 239 S.E.2d at 419-21.

69. *Id.* at 603-04, 239 S.E.2d at 422.

70. 333 So. 2d 97 (Fla. Dist. Ct. App. 1976).

71. *Id.* at 97.

72. *Id.* at 98.

73. *Id.* at 99-100; *see also* McLarty v. Regents, 231 Ga. 22, 22-23, 200 S.E.2d 117, 119 (1973) (Open Meetings Act does not apply to group organized for collecting information, making recommendations and rendering advice and which has no authority to make governmental decisions).

74. Washington's statute falls into the same general classifications as Missouri's. *See supra* note 56.

75. 10 Wash. App. 429, 517 P.2d 980 (1974), *aff'd*, 85 Wash. 2d 102, 530 P.2d 313 (1975).

76. *Id.* at 431-32, 517 P.2d at 983-84; *see also* 251 N.W.2d 559 (Iowa 1977) (athletic council which manages athletic program is a governing body for purposes of the Iowa Open Meetings Act because it uses power delegated from university administrative officials).

cerning governance of the law school.⁷⁷ *Cathcart* can be distinguished from *Tribune* in that the Washington statute as interpreted by the Washington court falls into the most liberal of the three categories previously discussed.⁷⁸ This category requires that all preceding deliberations and actions, formal or informal, in the decisionmaking process must be made in public.⁷⁹

Other courts have considered whether meetings of sub-groups of governing bodies must comply with open meetings acts. In *Henderson v. Los Angeles City Board of Education*,⁸⁰ an appellate court held that the California sunshine law did not apply to an ad hoc advisory committee.⁸¹ Many jurisdictions that have considered the issue have concluded that sunshine laws do apply to subordinate committees of governing bodies. Florida, with one of the most liberal sunshine laws,⁸² has so held in *Town of Palm Beach v. Gradison*.⁸³ In *Palm Beach*, the Florida Supreme Court held that any committee established by the Council to act in an advisory capacity is subject to the sunshine law.⁸⁴ The court stated that every meeting of a public body should be a "market-place" of ideas so that governmental agencies will receive input from the citizens affected by their actions.⁸⁵

As demonstrated by *Fain*, *Byrd*, *Bennett*, and *Cathcart*, applying the sunshine laws to state universities is not an easy task. A conflict exists between the public's right to know as guaranteed by the sunshine laws and the university's need for institutional and academic independence.⁸⁶ Application of the sunshine laws is also made difficult because a university's governance is spread throughout the university structure. Boards delegate to presidents, who delegate to chancellors who in turn delegate to the deans and faculty.⁸⁷ Application of the statute becomes a question of line-drawing. The decisionmaking process of the university is so complex and diversified that enforcement can be extremely difficult.⁸⁸

While openness is a laudable goal in government, it is not without its disadvantages. As one commentator has noted, "openness is neither a panacea

77. *Id.* at 436, 517 P.2d at 984.

78. *See supra* notes 46-53 and accompanying text; *see also* 10 Wash. App. at 436, 517 P.2d at 984 (must have meaningful opportunity to witness the decisionmaking process).

79. *Id.*

80. 78 Cal. App. 3d. 875, 144 Cal. Rptr. 568 (1978).

81. *Id.* at 881-82, 571, 144 Cal. Rptr. at _____. Again, California has the same type of statute as Missouri. *See supra* note 56.

82. *See supra* notes 48-51 and accompanying text.

83. 296 So. 2d 473 (Fla. 1974).

84. *Id.* at 476.

85. *Id.* at 475; *see Bigelow v. Howze*, 291 So. 2d 645, 647 (Fla. Dist. Ct. App. 1974); *see also* Arkansas Gazette Co. v. Pickens, 258 Ark. 69, 76-77, 522 S.W.2d 350, 353-54 (1975); *Selkove v. Bean*, 109 N.H. 247, 248-49, 249 A.2d 35, 36 (1968).

86. Note, *supra* note 4, at 274.

87. Shurtz, *supra* note 7, at 454-55.

88. *Id.* at 457.

nor an end unto itself. It entails unanticipated side effects that can work against the purposes it is meant to promote. For all its virtues—and they are considerable—openness in government is not an unmitigated good.”⁸⁹ The universities must be free to operate without undue public pressure in order to preserve the academic freedom so fundamental to our society. The public’s right to observe its government in action must be tempered by these special needs of universities.⁹⁰

The Missouri Court of Appeals has achieved this delicate balance in *Tribune*. Its interpretation of Missouri’s sunshine law is similar to that of other courts in jurisdictions with similar statutes. It allows the public to attend the meetings and inspect the records of the Board of Curators, which is the University of Missouri’s governing body. At the same time, the day-to-day workings of the lower administrative officials can continue, giving them the privacy necessary to preserve their academic and institutional autonomy. Hopefully, this delicate balance can be preserved.

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89. Statler, *Let the Sunshine In?* 67 A.B.A. J. 573, 573 (1981).

90. “[T]he nature at the university should be acknowledged. It is a republic of scholars requiring autonomy. They must have it, because they are experts and only experts can adequately judge their own expertise.” Brubacher, *The Impact of the Courts on Higher Education*, 2 J. OF LEGAL ED. 267, 268 (1973).

