



STUDENT PRESS LAW CENTER

REPORT

FALL 2012 VOL. XXXIII, NO. 3

PLUS: High school editors
launch independent paper
to protest censorship

The FACEBOOK STANDARD

Minnesota Supreme Court
lowers speech protections
for some college students

INSIDE: Faculty-run journalism projects may raise concerns for student media

RT@SPLC.org

Read the latest News Flashes
online at www.splc.org

The *Independent Florida Alligator* at the University of Florida is fighting a school plan to remove 19 of the paper's iconic orange newspaper racks and replace them with university-owned racks. Editors are concerned the policy could be detrimental to their readership and press freedom.

The *Michigan Daily* is facing a defamation lawsuit filed by a Canadian hockey club, following a story that alleged the team offered money to a University of Michigan-bound player. The lawsuit, filed in Ontario, seeks \$1 million in damages.

Two Texas girls were arrested for creating a fake Facebook account that used the name of a classmate. The girls, ages 12 and 13, face a third-degree felony count of "online impersonation." Meanwhile, administrators at Minnesota school are investigating a Twitter account they say was created by several students and graduates of Worthington High School to gossip about classmates. And North Carolina has now made it illegal for students to make fake social media profiles mocking school administrators with the intent to "intimidate" or "torment."

The Michigan Supreme Court has struck down a Michigan State University ordinance which made it a criminal offense to "disrupt the normal activity" of certain university employees. The court ruled the ordinance was too broad and infringed on free speech rights.

A Tennessee high school journalism adviser was reassigned after the school's yearbook published an article titled "It's OK to be gay," a profile of a then-senior who discussed his decision to come out as gay. James Yoakley, who advised the Lenoir City High School newspaper and yearbook for six years, believes the reassignment was motivated by the backlash over the yearbook.

Get updates from the SPLC via
Email: www.splc.org/joinemail
Twitter: Follow us @SPLC
Facebook: facebook.com/StudentPress

REPORT

Fall 2012 VOL. XXXIII, NO. 3

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

The *Student Press Law Center Report*, Vol. XXXIII, No. 3, Fall 2012, is published by the Student Press Law Center Inc., 1101 Wilson Boulevard, Suite 1100, Arlington, VA 22209-2275, (703) 807-1904. Copyright © 2012 Student Press Law Center. All rights reserved. Yearly subscriptions to the *SPLC Report* are \$15. Contributions are tax-deductible.



EXECUTIVE DIRECTOR: Frank LoMonte
ATTORNEY ADVOCATE: Adam Goldstein
DEVELOPMENT DIRECTOR: Beverly Keneagy

CORPORATE BOARD OF DIRECTORS

Organizations for identification purposes only

- Javier Aldape | Journalist
Chicago, Ill.
- Caesar Andrews | University of Nevada at Reno
Reno, Nev.
- A.J. Bauer | Graduate Student
New York, N.Y.
- Patrick Carome | WilmerHale
Washington, D.C.
- Kevin Corcoran | Lumina Foundation
Indianapolis, Ind.
- Susan Enfield | Highline Public Schools
Burien, Wash.
- Maureen Freeman | Newseum
Washington, D.C.
- Andrew Lih | University of Southern California
Los Angeles, Calif.
- Frank LoMonte | Student Press Law Center
Arlington, Va. (ex officio)
- Laura Lee Prather | Haynes and Boone LLP
Austin, Texas
- Geanne Rosenberg | CUNY-Baruch College
New York, N.Y.
- Mary Stapp | Educator
Washington, D.C.
- Mark Stencil | National Public Radio
Washington, D.C.
- Mark Stodder | Dolan Media
Minneapolis, Minn. (chair)
- Reginald Stuart | The McClatchy Company
Silver Spring, Md.

STAFF

Brian Schraum, McCormick Foundation Publications Fellow, received his master's degree in journalism from the University of Missouri, where he studied media law and policy. He graduated from Washington State University in 2007. Schraum previously interned for the First Amendment Center in Nashville and for newspapers in Washington and Missouri. He also initiated efforts to enact student press rights legislation in Washington and was a high school, community college and university student journalist.



Sydney Dunn, summer 2012 journalism intern, is a senior journalism major at Louisiana State University. She is editor-in-chief of *LEGACY* magazine, and has been a news intern at *The Times-Picayune* in New Orleans and a freelance reporter for *The Advocate* in Baton Rouge. She has also served in several capacities at LSU's student newspaper, *The Daily Reveille*.



Nikki McGee, summer 2012 journalism intern, is a junior at the University of Missouri—Columbia studying strategic communications with an interest in investigative reporting. She first became involved with SPLC as editor-in-chief of her high school paper, *The Wolf's Howl*. In addition, she has worked at *The St. Charles Suburban Journal* and MUTV.



Taylor Moak, summer 2012 journalism intern, is a senior at the University of Kentucky, where she studies print journalism. Moak was the 2011-12 editor-in-chief of UK's daily independent student newspaper, the *Kentucky Kernel*, and will be the projects editor when she returns to campus this fall.



Seth Zweifler, summer 2012 journalism intern, is a junior at the University of Pennsylvania, where he studies communication and public service. He is the campus news editor of *The Daily Pennsylvanian*, and has previously worked with *Main Line Media News*. In 2010, he was named the Pennsylvania High School Journalist of the Year by the Pa. School Press Association.



Contributors: Sara Gregory, Zoe Schaver, Sean Mussenden, Jock Lauterer, Mark Vancleave, Pam Dempsey, VectorStock.

Cover: MARK VANCE/LEAVE/MINNESOTA DAILY

Hazelwood symposium to mark 25th anniversary

This coming Jan. 13, America marks an anniversary that is no cause for celebration.

It soon will be 25 years since the Supreme Court rolled back the First Amendment rights of young people everywhere in *Hazelwood School District v. Kuhlmeier*, a ruling that has poisoned the learning environment not just for journalism but for the teaching of civics and critical thinking.

The Supreme Court's 1988 ruling upset the delicate balance between school authority and individual liberty that the Court so artfully struck 19 years earlier in *Tinker v. Des Moines Independent Community School District*.

As a result of *Hazelwood*, it is almost impossible for a censored student to prevail in a First Amendment challenge, so long as a school can point to some justification that is in the general vicinity of reasonableness. The *Hazelwood* mentality now permeates public education, so that schools no longer feel they owe students an honest explanation for their decisions, and students no longer believe – even when they are entirely in the right – that they can “fight city hall.”

While *Hazelwood* began as, and still often is thought of as, a case about high school newspapers, it has spread like an oil slick across all of public education, diminishing students' ability to make their own choices in musical and theatrical performances, graduation speeches and anything else that a school can convince a court is “curricular” in nature.

And *Hazelwood*'s toxic effects are in no way limited to “children.” As the 6th U.S. Circuit Court of Appeals decided in January, even adult-aged college students in professional programs can be held to the “training-wheels” level of free expression rights if they oppose school academic policies.

Because an entire generation has now grown up entirely in the shadow of *Hazelwood*, it is timely to take stock of the Court's ruling,

and how it has affected not just the teaching of journalism, but the teaching of critical thinking and good citizenship.

That is why the Student Press Law Center is partnering with the University of North Carolina School of Journalism and Mass Communication and the staff of the First Amendment Law Review at the UNC School of Law to organize a two-day symposium, “One Generation Under *Hazelwood*: A 25-Year Retrospective on Student First Amendment Rights,” to be held Nov. 8-9 at the college's Chapel Hill, N.C., campus.

The symposium brings together leading stakeholders from law, journalism, civics education and school administration – including students – to assess how *Hazelwood* has impacted young people's development as participatory citizens. It will result in the production of a special edition of the *First Amendment Law Review* devoted to student free expression issues.

Well-known presenters participating in the discussion will include University of California-Irvine law school dean Erwin Chemerinsky, author-educator Sam Chaltain, General Counsel Francisco Negrón of the National School Boards Association, and many more.

The events are open to the public, and anyone interested in being part of the conversation is encouraged to attend by signing up at: www.HazelwoodSymposium.unc.edu.

The SPLC considers the events of Nov. 8 and 9 to be the start of a continuing campaign to remind the country that the *Hazelwood* affliction is curable, and that a healthier and more positive learning environment not only is attainable but has existed in the relatively recent past.

– Frank D. LoMonte, executive director



**REGISTER TODAY:
HAZELWOODSYMPOSIUM.
UNC.EDU**

INSIDE

High school

- 4 Student journalists at a Kentucky high school put out an independent student newspaper to avoid their school's content restrictions.

Yearbooks

- 7 Colorado student journalists are fighting to run yearbook pages their adviser vetoed.
- 9 Middle school yearbooks are pushing boundaries as students become increasingly tech-savvy.

Internet

- 12 States are cracking down on employers who ask applicants for social media account information.
- 15 Cyberbullying laws let schools be more involved in regulating off-campus student speech.

Cover Story

- 18 In a June ruling, the Minnesota Supreme Court lowered speech protections for some college students.

College

- 21 The *Hazelwood* standard is being applied to college-level free speech cases.
- 23 More schools are introducing free speech zones to regulate student speech on campus.
- 26 School-run journalism labs raise questions about editorial control.
- 28 What happens to student autonomy when schools outsource student media business operations?

DEPARTMENTS

SPLC TipSheet

- 11 Using audit records to check up on school performance.

On the Docket

- 24 Several courts rule on records shielded by FERPA.

Legal Analysis

- 33 What you should know about copyright law and fair use.

Out *from* Under

Student journalists at one Kentucky high school put a new twist on an old practice to avoid their school's content restrictions

BY TAYLOR MOAK

The threat of censorship creates a choice for student journalists: compromise or publish elsewhere.

This spring, several journalism students at duPont Manual High School in Louisville, Ky., chose the latter.

The resulting publication, *The Red Pen*, was a 12-page independent student newspaper, along with an accompanying website.

Red Pen editorial board members said in their first issue that they were “fed up with the roadblocks” they faced at their school-sponsored publications.

“For bureaucratic, safety and other reasons, we got stopped from attacking the stories we most wanted to pursue,” they wrote in a letter from the editors. “It wasn’t any specific person’s fault, but rather the trend toward suppressing controversy that exists across America and across the world.”

“We knew through experience that this trend was nearly impossible to fight on school grounds, where rules, and, to some degree, conformity — at least on the administrative level — are highly valued. So we decided we needed *The Red Pen*.”

Past issues

Zoe Schaver, one of *The Red Pen*’s editorial board members, said she and other students decided to create their own publication after multiple controversies at duPont Manual, including some before their time at the school. One of those issues involved the 2007-08 yearbook.

Members of the yearbook staff wanted to do a spread on gay and lesbian students, Schaver said, but there was a problem with the final spread.

Liz Palmer, a journalism teacher and adviser at Manual, said in an email that the mother of one of the students who was named in a caption told the principal she did not want the story in the yearbook.

After speaking with the mother, Principal Larry Wooldridge decided the yearbook staff would have to cut the pages out of the yearbook, Palmer said. The editors tried to negotiate with Wooldridge, but a compromise could not be reached and the students followed through with cutting out the pages, she said.

Schaver was not a student at Manual in 2007-08, but she said former staffers explained the basics of what had happened to teach younger students about the problems they had with censorship.

Students want to have controversial material in the yearbook

“because it’s more hard-hitting,” Schaver said, and it’s frustrating when those stories and spreads can’t be published.

She said Wooldridge has always been hesitant about anything “that could affect Manual’s image as the best public school in Kentucky.”

When a teacher was caught in 2011 “doing things with a student,” the editor of the school’s online publication, manualredeye.com, wanted to publish a story about what had happened, but the principal only wanted a blurb saying the teacher had resigned, Schaver said.

Another issue that led to the creation of *The Red Pen* didn’t even involve school-sponsored media.

During the 2010-11 school year, Manual was starting its first student government in 20 years, and every student who was running for office had a statement on what they wanted to change about the school, Schaver said.

Wooldridge “made small edits that ended up being a big deal,” she said, including omitting a student’s reference to being gay and softening another student’s opinion about the need for more attention on the school’s visual arts magnet.

Schaver said students outside of the yearbook staff heard about that controversy.

“It was a huge uproar,” she said, “but it was pretty brief.”

With these issues in mind, along with others that would come up later, Schaver said she and the other students began talking about creating a publication that would allow them to do different types of journalism, including more literary journalism, than what the publications at Manual offered.

Creating a new publication

The first issue of *The Red Pen* was published in May, but Schaver said it took months of preparation.

Emily McConville, another editorial board member, said the conversations for *The Red Pen* really started rolling in January. Once the decision was made to create an alternative publication, the students began recruiting other students.

The staff wasn’t as organized as it could’ve have been, Schaver said, and some of the staff “fell by the wayside,” leaving a core editorial board of six members: Patrick Haertel, Schaver and McConville, who were juniors at the time, and Kelsey McKim, Dakota Sherek and Virginia Johnson, who were seniors.

Johnson gets credit for coming up with *The Red Pen*, which Schaver called a “perfect” name.



duPont Manual High School students Patrick Haertel, Zoe Schaver, Dakota Sherek, Kelsey McKim, Virginia Johnson and Emily McConville make up the editorial board of *The Red Pen*. They started the independent, off-campus publication after their school-sponsored publications ran into restrictions from administrators over covering controversial issues.

PHOTOS COURTESY ZOE SCHAVER / THE RED PEN

“The red pen is censorship, basically,” Schaver said, “and it evokes kind of an image of journalism and writing.” The name is also a play on the name of the school’s official student newspaper, *Manual RedEye*.

As writers for an independent publication, the staff of *The Red Pen* doesn’t have any oversight from the administration at Manual. And while the journalism teachers at the school were not involved in the creation of the publication, they were supportive of the students’ work, Manville said.

Palmer, the journalism adviser, said she was proud that the students took the initiative to publish independently. She had helped publish an independent newspaper herself while in college, so she said she “understood the power of youth adopting their own voice.”

Palmer was the yearbook adviser in 2007-08 when the students had to cut out pages, and said she learned from that experience not to place herself in the middle of the students and administration. She said she tries to remove herself from situations and let students go to the principal directly.

Before 2008, the school did not have prior review, Palmer said. Now, Wooldridge approves any “controversial” material before it goes to print, but he delegates power to Palmer to tell the students which stories fit that category.

If Palmer thinks Wooldridge would want to see a story, she tells the students to write it out exactly as they would want to see it published and take the idea to Wooldridge for his consideration.

If he has concerns with the story, the students can determine if a compromise would not violate the journalistic integrity of their stories. Palmer said Wooldridge’s concerns are usually pretty reasonable, like contacting the parents of a student who has been interviewed to ensure everyone is OK with the story.

Other times, Wooldridge will tell the students that the story will not be allowed, Palmer said.

This spring, Schaver and Haertel wanted to do a yearbook spread on transgender students, Palmer said. When she mentioned the spread to Wooldridge, he told her, “That’s just never gonna get published.”

Palmer said she always tells her students to approach Wooldridge about topics regardless of if the students believe he will approve of the topic. But in this instance Schaver and Haertel decided not to go that route.

“That’s where *The Red Pen* got started,” Palmer said. “They decided not to go through that process with him.”

But before the first issue of *The Red Pen* was distributed, Schaver still took a one-page infographic of the “history of censorship at Manual” to Wooldridge so he could see what the students planned on running.

She said she never heard anything back from him.

The Red Pen never handed out its first issue a few days before school let out for the summer at the end of May.

Schaver designed the publication at home using Microsoft Publisher and her parents covered the \$400 to print the 500 copies of *The Red Pen*, she said, with the idea that she will pay them back.

McConville said the support of Schaver’s parents helped the staff create *The Red Pen*. Schaver’s father is an assistant metro editor at *The (Louisville) Courier-Journal*, and her mother is a former reporter.

Reaction

The staff of *The Red Pen* said its publication was well received. “The student body absolutely *loved* our publication,” McConville said in an email. “I got people I hadn’t talked to in months coming up to me and complimenting me. It turned out to be something the school definitely needed.”

The distribution was slow at first, Schaver said, but later it seemed that everyone was holding an issue. She said many students asked her if the staff needed help for next year.

The first issue of *The Red Pen* explored student censorship and gay rights issues. Schaver said one common constructive criticism was that the publication needed more variety, which she hopes will be included in future issues of the paper.

Wooldridge, Manual's principal, said in an email that he had heard about *The Red Pen*, but he has not read it.

He said he tries to be as supportive as possible of student media while keeping student safety and confidentiality in mind.

"As the principal, and therefore editor in chief of all publications that come from our school, I do review the yearbook and other publications to ensure that these two issues are not in jeopardy," Wooldridge said.

Palmer said other teachers came up to her and complimented *The Red Pen* before she even had a chance to read it. She said *The Red Pen* is "definitely an opinion-based publication," compared to Manual's publications, which have more articles that are neutral. But she said the staff of *The Red Pen* appeared to have thought through the issues and that they had a "great voice."

She said she liked seeing the students use the skills they had learned in the journalism magnet program at Manual and it was evident the school succeeded in preparing them for independent work.

"With *The Red Pen*, it shows ultimately that we don't have control over the students and their voice," Palmer said.

What students should know

Frank LoMonte, executive director of the Student Press Law Center, said students who want to create their own publication should review their school's policies before bringing a publication onto school grounds.

For instance, many schools have restrictions on how and when students can distribute their publication. Some schools even have prior review on outside material to make sure it is not unlawful or

disruptive, LoMonte said, which is probably constitutional.

However, schools can't control distribution off of school grounds or after school hours, LoMonte said. But with the rise of social media, schools have tried to regulate off-campus speech if it has the potential to cause harm or disruption at school.

He said students could give a courtesy heads up to the administration that they plan to distribute their own publication. But he advised against having more than a conversation to let

administrators know what they plan on doing, because any more than that could make the students appear to be asking for permission.

"As a general matter, I wouldn't invite the principal in the door," he said.

Students should also avoid using school computers or working on their alternative publications during school hours, LoMonte said.

"Maintain integrity of separation so you can accurately claim to be independent," he said.

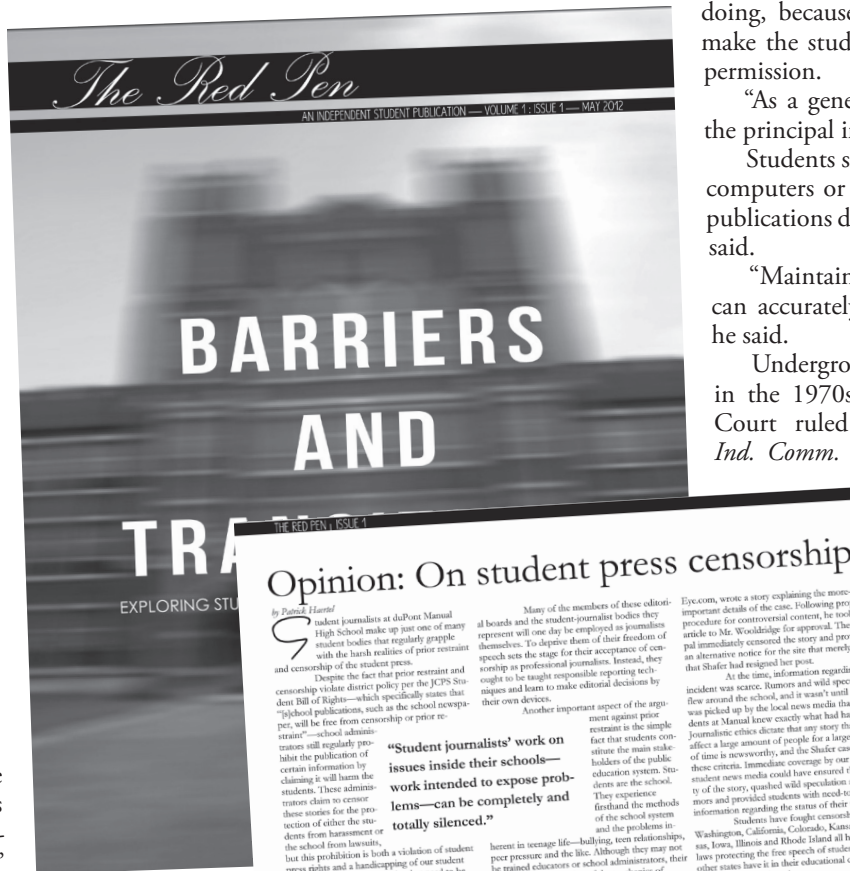
Underground newspapers were popular in the 1970s, shortly after the Supreme Court ruled in *Tinker v. Des Moines Ind. Comm. School District* that students

do not shed their constitutional rights at the schoolhouse gate, LoMonte said.

In recent years, though, students have been more likely to express themselves online through Facebook groups or blog posts instead of a physical publication, LoMonte said.

He said it's rare today to see students put in so much time to create an alternative publication, which makes *The Red Pen* particularly noteworthy.

"They really harnessed all of their journalism skills and talents to create a site that works as a bona fide journalism



Opinion: On student press censorship

by Patrick Hamel

Student journalists at dePue Manual High School make up just one of many student bodies that regularly grapple with the harsh realities of prior restraint and censorship of the student press.

Despite the fact that prior restraint and censorship violate district policy per the JCPS Student Bill of Rights—which specifically states that “high school publications, such as the school newspaper, will be free from censorship or prior restraint”—school administrators still regularly prohibit the publication of certain information by claiming it will harm the students. These administrators claim to censor these stories for the protection of either the students from harassment or the school from lawsuits, but this prohibition is both a violation of student press rights and a handicapping of our student journalists’ ability to tell stories that need to be told.

It’s important to know the structure of most student publications, which model them selves after professional news outlets. Reporters are preceded over by some form of editors, who are preceded over by at least one more level of editors (Editors-in-Chief). The teachers that supervise student publications are called advisers, who don’t actually control or change content unless absolutely necessary.

Many of the members of these editorial boards and the student-journalist bodies they represent will one day be employed as journalists themselves. To deprive them of their freedom of speech sets the stage for their acceptance of censorship as professional journalists. Instead, they should be taught responsible reporting techniques and learn to make editorial decisions by their own devices.

Another important aspect of the argument against prior restraint is the simple fact that students constitute the main stakeholders of the public education system. Students are the school. They experience firsthand the methods of the school system and the problems inherent in teenage life—bullying, teen relationships, peer pressure and the like. Although they may not be trained educators or school administrators, their collective understanding of the mechanics of school is something that ought to be taken into account. While prior restraint and student press censorship is practiced, student journalists’ work on issues inside their schools—work sounded to expose problems—can be completely and totally silenced.

Take, for example, the Carrie Shaver incident earlier this school year. Charley Nold, who serves as the Editor in Chief of ManualRed,

Eye.com, wrote a story explaining the more-important details of the case. Following proper procedure for controversial content, he took the article to Mr. Wooldridge for approval. The Principal immediately censored the story and provided an alternative notice for the site that merely stated that Shaver had resigned her post.

At the time, information regarding the incident was scarce. Rumors and wild speculation flew around the school, and it wasn’t until the story was picked up by the local news media that students at Manual knew exactly what had happened. Journalistic ethics dictate that any story that will affect a large amount of people for a large amount of time is newsworthy, and the Shaver case met these criteria. Immediate coverage by our own student news media could have ensured the veracity of the story, quashed wild speculation and rumors and provided students with need-to-know information regarding the status of their teacher.

Students have fought censorship before. Washington, California, Colorado, Kansas, Arkansas, Iowa, Illinois and Rhode Island all have state laws protecting the free speech of students. Two states have it in their educational codes. And students will fight it again.

Tell your parents, write Congress and inform other students. Without these rights, student journalism education in Kentucky can never be complete.

STUDENT JOURNALISTS TO HIGH SCHOOL ADMINISTRATION: “Thank you for suppressing us”

by Emily McCannell

LOUISVILLE — Local high school student journalists greeted members of their high school administration with a complimentary breakfast yesterday, in gratitude for the administrators’ repeated refusal to allow them to publish news articles and videos they deemed controversial. This proved to be a reconciliation between the press and the power, coming after a long battle over how much power the administration had over what the students could put in their publications.

“We would like to express our sincerest thanks to our Principal and assistant principals,” Blake Blake, the editor of her school’s newspaper, the *Crier*, said in a brief address. “Their continual suppression of our writings about issues such as gay rights, sexual misconduct, and bullying have taught us what journalism will be like in the real world, thus preparing us for what is to come.” Blake and Tyrone Campbell, the executive producer of the school’s news show *The*

Morning *Crier*, went on to praise the administration’s steadfast loyalty to the school. “By making us at the *Crier* News System literally cry, you guys have made us realize how important it is to uphold our school’s principles, and principals,” Campbell said. “Our school’s reputation, after all, is the most important thing of all, and besides—if something happens, we can just let the local news report on it.”

The breakfast continued until the start of the normal school day, with students mingling with the administrators, promising to only report the good parts of the morning’s conversation. The atmosphere of the breakfast, according to the students, reflected their conciliatory attitude toward the administration.

“These circumstances have definitely prepared us for the real world,” Alyssa Taylor, a reporter for the *Crier*, said. “By hearing what our administration doesn’t want us to publish, we’ve

learned which hot-button issues to avoid in the future, saving us a lot of trouble with the government, sources, and advertisers when we go into actual journalism.”

“Yeah,” added Taylor’s friend, *Crier* copy editor Rachel Zinn. “It’s really not our place to go around talking about stuff like homosexuality and, like, sex in general, because who wants to read those things like they’re normal? It’s better to let the adults handle it, anyway. And I think the best thing the administration can do to remind everyone of that is to keep censoring the student press.”

This is a satirical article and is intended to be read as such. It is not meant to be taken seriously. All names, quotes, and events are fabricated.

publication,” LoMonte said,

Schaver said while she wants to publish *The Red Pen* in the future, ideally, the staff would rather publish its stories in the scholastic press.

“*The Red Pen* is there to be an outlet if we lose that battle,” she said. ■

WHEN ADVISERS SAY 'NO':

Palmer High School students fight to run yearbook pages

BY TAYLOR MOAK

Anna Carmichael was at her grandmother's funeral when she got a call from one of her fellow yearbook editors.

Their adviser, Angie Selman, had a problem with a spread about relationships. Student life and organizations editor Coco Toribio called Carmichael, who was editor-in-chief of *Retrospect*, the yearbook at Palmer High School in Colorado Springs, Colo., with news about a spread he designed. Toribio told Carmichael that their adviser wouldn't allow the spread, which included photos of a lesbian couple holding hands, to be published.

At first, Carmichael thought there had to be some kind of miscommunication. But it soon became apparent that Selman wasn't going to let the spread in the yearbook.

Carmichael met with the school's principal, who encouraged her to share the school's nondiscrimination policy with Selman, which Carmichael did. Selman told her the issue wasn't up for discussion.

About a week later, the administration said the spread was pulled because it included other pictures of male and female students kissing, Carmichael said, which goes against school policies against public displays of affection.

"It seemed a little weird that it was being blamed as PDA," she said. Toribio said he was working on the page when Selman told him to "cut the gay couple, or I'll cut the page."

Devra Ashby, spokeswoman for Colorado Springs School District 11, said Selman was acting under the district's policy on student publications, which prohibits the distribution of any material that can be considered "obscene to minors."

Carmichael said the real issue with the yearbook – the lesbian couple – "just got smoke screened," and meetings with the

administration soon lost focus on the original problem.

"They weren't talking about the discrimination issues," Carmichael said. "They were talking about that I left class."

Carmichael and three other students walked out of class in protest after Selman gave an assignment for a "diversity" page that would feature various demographic groups. Carmichael said the spread was to feature demographic "labels" under each photo, but no captions.

All of her pages were cut from the yearbook, Carmichael said, and Selman would repeatedly kick her out of class.

Toribio, who was also the student council president for his class, was not permitted to speak at graduation because of the dispute with Selman and the administration, he said. All of his pages were also cut, the files deleted, and given to other students to design.

Under district policies, Selman is seen as having the final say on content since students publish the yearbook as part of a class at Palmer, Ashby said.

However, Colorado's Student Free Expression Law states that student editors are responsible for determining content and "no expression contained in a student publication, whether or not such publication is school-sponsored, shall be subject to prior restraint" except in four limited cases. Under the law, advisers are permitted to supervise the production of school-sponsored publications and "to teach and encourage free and responsible expression and professional standards for English and journalism."

Adam Goldstein, attorney advocate at the Student Press Law Center, said the school's publication policy that allows the adviser to have the final say directly conflicts with state law.

The law allows advisers to teach, Goldstein said, but that doesn't mean the lesson can be hands-on censorship.

The students got legal representation and began negotiating with



school officials. They eventually reached an agreement allowing the students to create a supplement that can be bound into the yearbooks, which have already been distributed, Carmichael said. But it's been difficult for the students to complete the supplement because the computer they were given to work on doesn't work.

Toribio said he thought the supplement would fall by the wayside since students are ready to move on. And all of the pictures that were in the original spread have been deleted, so the students don't have the same material they originally had to work with.

"We don't have any pictures," he said. "That's our number one problem."

Steven Zansberg, one of the attorneys for the Palmer students, declined to comment, saying settlement discussions are still ongoing. Sara Rice, a staff attorney at the American Civil Liberties Union of Colorado, confirmed the settlement was not yet final as of press time.

Selman could not be reached by the SPLC for comment, but she was quoted in *The Gazette*, a local newspaper, saying the pages were pulled because of the PDA.

"The picture that the media has shown of the girls in question, holding hands, was never in the spread," Selman told *The Gazette*. "I would have never pulled a picture of two girls holding hands from a yearbook."

Carmichael said that even before the yearbook relationship spread controversy, working with Selman "was an absolute uphill battle the whole time."

"[She was] very into making sure we knew she was in charge," Carmichael said.

Toribio said Selman began the year as an "exceptional adviser," but she began to "push her power around" after the first quarter of the school year ended.

The dispute with Selman also had an effect on the quality of yearbook the students were able to produce, both students said.

"[A] dysfunctional family definitely showed through in the book," Carmichael said.

Opportunities for advisers

The Palmer case is the most recent in a unique breed of censorship disputes. In these situations, students aren't just battling the usual suspects – school administrators – but rather with the person charged with providing advice.

In 2009, for example, the newspaper adviser at McPherson High School in Kansas told students they couldn't run a column about teenage pregnancy. The students ran a white space in the issue where the column should have been, and were eventually allowed to run the piece in a later issue.

Candace Bowen, director of the Center for Scholastic Journalism at Kent State University, said controversies often arise because of "uninformed advisers."

"They don't understand the ramifications of the things they do," Bowen said.

Advisers think that by pulling a story or censoring a certain topic they are helping their students and keeping them out of trouble, Bowen said, "which is totally wrong."

If an adviser's first reaction is to get rid of a story, it shows a lack of the adviser's confidence, Bowen said.

Advisers don't always come from a journalism background, and many times teachers of subjects like English are placed in adviser positions because they are seen as being "good with words."

Bowen said advisers who want to grow in their positions have many options, including joining local, state and national scholastic press associations, receiving a mentor through an organization like the Journalism Education Association, by taking courses or by

watching webinars.

Joining press associations allows advisers to interact and develop a network with other people who are in the journalism world, which is needed because an adviser can be the only person in their school who does journalism, Bowen said. And organizations like JEA can provide advisers with a set of guidelines to follow.

The JEA Adviser Code of Ethics encourages advisers to trust their students and to advise, not act as censors or decision makers. The code also encourages advisers to ensure students have a free, robust and active forum without prior review or restraint.

And when advisers place trust in their students, their work pays off.

Aaron Manfull, a journalism teacher and adviser at Francis Howell North High School in St. Charles, Mo., said his philosophy is to advise and to be there to help, but "the publications really are the students' publications."

The Dow Jones News Fund named Manfull the 2011 journalism teacher of the year.

When working with students, Manfull said he encourages them to think through stories thoroughly.

Manfull said he reads most stories before they go to print, but he has never censored a story or exercised prior restraint.

"[The] final say is always the editor in chief," he said.

Manfull said he tries to keep personal opinions out of conversations because he doesn't want his students to think there's only one solution or way to handle a situation.

"I'm very aware while I may have some good ideas, I've had kids come through the room [with ideas] that are a billion times better than mine," he said.

He said his students can report and cover any topic as long as they act within the law, but they have to understand that they are responsible if someone has questions about the story.

"If a phone call comes, you're going to be the one who answers the phone call," he said.

Manfull said the idea of having a student in charge is scary at times, but it's a myth that reporters have to be a certain age or have a certain years' worth of experience to report on controversial topics.

"It's been my experience that you give kids the responsibility and the trust, they are able to make just as good of decisions — if not better — than adults," he said.

Journalism over free expression?

Goldstein said students might not want to fight an adviser for several reasons. Sometimes, students don't know they have a right to protest the censorship in the first place.

And students must determine if the battle is worth the fight, which is why seniors are more likely to fight an issue, he said. Juniors have to worry about having the adviser again in class.

Many schools have advisers who place more emphasis on journalism than on free expression and "think bad journalism isn't constitutionally protected," Goldstein said.

He said there are many advisers, though, who don't know how they would react in a situation like the one at Palmer because they haven't confronted the issue yet.

Toribio, the student life editor at Palmer, advised other students who may be in similar situations not to be afraid of someone who is in a higher position – even if that person is a teacher and adviser. Students should stand up for what they believe is right.

Carmichael, the editor at Palmer, said that the dispute made her question people she had been taught her whole life to respect. But she said it made her stronger, more aware and a better leader.

"It really solidified me in what I think is right and wrong," Carmichael said. ■

Cutting Edge:

Middle school yearbooks push boundaries

BY TAYLOR MOAK

No topic is off limits for journalism students at Sierra Middle School.

The journalism program at the Parker, Colo., school, including an award-winning yearbook, has always had the support of its administration, said Jed Palmer, the school's journalism adviser. And the principal has never asked to read a story beforehand.

"We haven't had anything that students have wanted to cover that has caused issues," Palmer said.

The publications at Sierra are among the many covering substantive issues even before student journalists enter high school.

Palmer said he does encourage students to avoid certain topics until they are ready to cover them well. He said he wants his students to be ready to write stories responsibly.

During the past school year, for example, several of Palmer's students wanted to do a story on the school board budgeting process. He said he encouraged the students to slow down on the story because he didn't feel they understood the process well enough at the time.

"It was not to tell them not to do the story," he said, "but to take their time with it."

The school's yearbook has been nationally recognized in recent years. In 2011, the yearbook, *Fusion*, won first place for "best in show" at the National High School Journalism Convention in Seattle. The yearbook also won a Gold Crown from the Columbia Scholastic Press Association for its 2011 and 2012 editions.

But even with a legacy of excellence, each year's staff isn't expected to live up to any standards set by students in years before, Palmer said.

"My goal for them — for the students every year — is that they can do the best they can do," he said.

In addition to the yearbook, Sierra's journalism program has online components for video and writing.

Different challenges, skills

Palmer said middle school students differ from high school students in their ability to handle deadline pressures. That's where the advantages of online publishing come in.

"By going online, we can publish when a story is ready," he said.

Another major difference: Transportation. Many high school students can drive themselves or ride with friends to cover an event, like an away basketball game, but middle school students often depend entirely on their parents or the school for transportation.

Laura Zhu, the yearbook adviser at Toby Johnson Middle

School in Elk Grove, Calif., said energy is one characteristic that sets her students apart from older students.

While high school journalists sometimes come down with the "good enough" syndrome, Zhu said, middle school students are extremely passionate about their work. They have no fear and are motivated to be on the cutting edge and try new ideas in the yearbook. She said incoming students are more and more tech-savvy each year.

"They want you to teach it to them and then let them run free," Zhu said.

Elk Grove, like Sierra, is an award-winning yearbook program. The 2011 yearbook won a Pacemaker from the National Scholastic Press Association and the 2010 and 2011 yearbooks won Gold Crowns from CSPA.

Zhu said when she first began advising the yearbook, she tried to be overly involved in the publishing process. Then she came to realize how capable her students are.

"In my first few years of doing this, I kept my finger in the pot a lot more than I needed to," Zhu said.

One of the biggest events that middle students like to cover is lunch, Zhu said, because that's their time to socialize. Toby Johnson's latest yearbook had six pages dedicated to lunch alone.

Zhu said her students cover both positive and negative stories throughout the year, because the yearbook is "a snapshot of a year and years aren't perfect."

Kathy Zwiebel, a journalism adviser and judge for the Columbia Scholastic Press Association, said middle school yearbooks don't generally have much controversy, partly because they lack the space to include both the positive and the negative.

Zhu said Toby Johnson's yearbook has fewer pages than what a high school yearbook would have. That prevents students from being able to cover as many sides of a given topic.

"We tend to focus on the positive," Zhu said, "but we don't want it to be this happy newsletter-y type of thing either."

She said the issues her middle school students cover aren't always as tough as what would be found in a high school yearbook — students who sleep in class, for instance, compared with students with tattoos or piercings or who must be the head of a household.

"[Students] kind of have easier lives in middle school," she said, "so our books don't have to be as intense."

Carina Qurioz, a graduate of Toby Johnson, was editor in chief of the yearbook in 2011. She said the students tried to have everyone in the school — about 1,500 students — in the yearbook at least three times. To get so many students into the book, the staff had to interview people outside of their circle of friends.

Qurioz said that “took a lot of people outside of their comfort zones.”

Legal standards

Middle schools tend to be more conservative than high schools when it comes to pushing boundaries, said Adam Goldstein, attorney advocate for the Student Press Law Center. And many schools may try to limit their students' speech because they are younger.

"They'll justify it on the grounds of age," he said.

Two main Supreme Court free speech decisions that are familiar to high school students — *Tinker* and *Hazelwood* — apply to middle schools as well, he said.

"The age of a student is a factor in the level of free expression you're given," Goldstein said, "regardless of the standard applied."

In *Tinker*, the justices said students don't lose their free speech protections at the schoolhouse gate, but speech can be restricted if it would cause a "material and substantial disruption" of school. *Hazelwood* allows school officials to limit "school-sponsored" speech if they have a legitimate educational reason.

But those standards apply on somewhat of a sliding scale, as something that would be “disruptive” at a middle school might not be at a high school. Similarly, a school’s acceptable educational justifications are different depending on the maturity of the students. The Supreme Court itself observed in *Hazelwood* that topics such as “the existence of Santa Claus” could be restricted in a school-sponsored publication at an elementary school – whereas that probably would not be a legitimate justification with older students.

Applying these standards, high schools are usually less restrictive than middle schools, and middle schools are less restrictive than elementary schools, Goldstein said.

"It's a tough topic — middle school speech," he said.

It's also one that continues to be litigated in the courts. Perhaps the biggest First Amendment issue for younger students in recent years has been distributing religious materials at school. One case, decided in 2011 after nine years of litigation, centered on a Texas third-grader who wanted to distribute candy cane pens at a winter party at school. A federal appeals court ultimately ruled that the law of elementary school speech was unclear and gave administrators immunity from the student's lawsuit. A similar case is pending before a different appeals court in Pennsylvania, stemming



Lunch is a time for eating, hanging out with friends, playing games, doing sports, doing homework, and a myriad of other activities. "I hang with my friends while eating Cup o' Noodles, then play football with my friends for most of lunch," said Xavier Foster [7]. Even with the large variety of activities available there is one thing students enjoy doing most, hanging out with friends. "Most of the time at lunch I eat food and hang with my friends," said Marcello Vincent Barca [7].

By Marissa Nunes and Morgan Rosenstein



English, History, and Bridge may not be your favorite classes, but you can't deny that some pretty fun things happen there. Essays in English aren't very hard and they help you express yourself," Kaitley N. Gibson [7] told. Whether it's playing Bingo in English or reading an awesome book in Bridge, academic classes like these nourish your brain and keep you occupied. "I think academic classes like these are really fun. It's awesome that you get to learn new things every day," said Eduardo E. Aguilar [7].

By Carolyn Theiss and Lucas Kerbs

[fourth period]

[illegible]

six [fourth period] 49

Two spreads in the 2012 Toby Johnson Middle School yearbook are devoted to documenting lunchtime and academic work.
COURTESY OF THE TOBY JOHNSON YEARBOOK

from a student who wanted to pass out invitations to a Christmas party.

While the legal standards for middle school journalism may be set by the familiar cases of *Tinker* and *Hazelwood*, applying those standards to younger students remains a murky area. And whether administrators can censor a particular story may not be an easy question to answer.

Lasting legacy

Where expression is encouraged, middle school students can produce journalism that rivals that done in high schools.

Zwiebel has judged many middle

school yearbooks over the years and said some that enter competitions now are just as good as high school entries.

She said the rise of quality middle school publications has encouraged journalism judges to evaluate the way they look at middle school entries because they see the work students are capable of producing.

And while the rise of social media may have created greater competition for year-book audiences, Zwiebel said she recently read a quote that matches her sentiments.

"The print yearbook is the only technology that's guaranteed to open 20 years from now," she said. ■



audit reports

Investigative reporting is, in a way, a form of “auditing” – checking out government programs to see whether they deliver a good value for the customer’s dollar. Fortunately, journalists aren’t alone. Federal, state and in-house auditors get behind-the-scenes access to the workings of colleges and schools – and they’re constantly generating reports that point out the deficiencies that taxpayers need to know about.

what’s out there...

Audit reports come in two main types – financial audits and performance audits – and they’re just what they sound like. A financial audit looks at how well an enterprise is managing its money, and whether its financial controls are adequate to verify that money is going only where it should. A performance audit evaluates whether a specific government program is producing the expected results, and whether it operates efficiently or wastefully.

Most states have an Auditor General or Office of State Auditor that conducts regular reviews of government agencies. If you can’t easily find yours online, check the online database at nasact.org. The reports of these auditing agencies are always public records. Any good-sized college (and some larger school districts) will have both an internal auditor’s office and a contract with an outside accounting firm to perform an independent audit. At a public agency, the report of an independent auditor becomes public once it’s submitted to the agency.

Many state legislatures also have “Oversight Committees” – or Oversight subcommittees under the umbrella of a Higher Education committee – that produce audit reports. Legislative reports often analyze the effectiveness of programs in response to complaints.

Also keep watch for audits of the statewide education system, such as the Board of Regents. How those agencies spend money is just as important as how local-level agencies do. The U.S. government – through the Government Accountability Office and through Inspector Generals at federal agencies – also audits education programs.

...and how you can use it

In reading a financial audit, look for headings such as “Significant Deficiencies,” in which auditors will flag an actual (or potential) risk of money being mishandled. Look for buzzwords like “lack of internal controls,” which signal that the agency gives its employees too much discretion to hand out money without being able to document where it went or why. Typical deficiencies might include reimbursing employees for luxury items or letting managers approve their own credit-card expenses with no oversight.

Audit reports contain a wealth of information about the way schools purchase goods and services from contractors – a frequent source of waste and fraud. For example, a January 2011 report by the Office of State Comptroller in New Jersey found that Rutgers University – taking advantage of a loophole in state bidding laws – routinely failed to publicize opportunities for contractors to bid on construction jobs, and instead steered the opportunities to a small circle of “preferred vendors.”

Look for recurring recommendations that have been made year after year with no corrective response. If the school is told that money is being mishandled – or can’t be accounted for – and the school doesn’t do anything about it, then it’s time to start asking why.

Audits can be confusing to read. Don’t give up – get help. A business-school professor, or a private accountant or attorney unaffiliated with your college, may be willing to help you interpret the data. If you’re really interested in becoming an expert, the Society of American Business Editors and Writers (sabew.org) offers training opportunities and has an online archive of “tele-training” conference calls that can be replayed for free.

the news peg

Colleges’ use (or misuse) of student activity fees is a perennial source of attention for auditors. In July 2012, the Associated Press reported that North Dakota’s state auditor questioned how the state’s largest universities spent student fee dollars on questionably necessary items including first-class plane tickets to India – and why some college departments were hoarding unspent fee money in “rainy day funds” for use on pet projects.

Look out for audits of programs that impact colleges and schools indirectly, which are often overlooked. For instance, an August 2010 audit of the U.S. Department of Health and Human Services uncovered deficiencies in the way schools verified the qualifications of speech therapists hired with federal Medicaid money.

HAND OVER YOUR PASSWORDS, OR ELSE

An increasing number of employers are asking applicants for social media account information. In response, state legislators are drafting bills that would prohibit employers — and university admissions offices — from snooping into people's non-public chats.

Human Resources Application 2012

Please print your name clearly.

NAME Joe Smith

EMAIL JSmith@report.com

ADDRESS 777 Oak St. CITY Arlington STATE VA

ZIP CODE 22292 DAYTIME PHONE (345) 555 - 5555

DATE OF BIRTH 9/22/89 SOCIAL SECURITY NUMBER XXX - XX - XXXX

DO YOU HAVE A FACEBOOK ACCOUNT? ☒ Y ☐ N

IF SO, PLEASE STATE THE LOGIN AND PASSWORD Joe Smith / splcl2 - Joe

DO YOU HAVE A TWITTER ACCOUNT? ☒ Y ☐ N

IF SO, PLEASE STATE THE HANDLE, LOGIN AND PASSWORD

@JoeSmith / splc3 - JOE

Christopher White walked into his job interview with all the right materials – a cover letter detailing his work, a resume and a list of references. But his potential employer asked for the one thing he didn't bring: his Facebook password.

White, a political science senior at Tulane University, is one of a growing number of students who have been asked for their social media account information during interviews for jobs, university admissions or during employment.

Some argue the social network information is needed for people entering specific fields, like journalism or athletics, where the employee is in the spotlight. But civil rights organizations and some lawmakers disagree, and are taking steps to end the practice.

White applied to be a financial adviser at a company based in Colonie, N.Y., in November 2011. He said his first interview went well, and he was called back for a second. After submitting his Social Security card, birth certificate and other information, the company asked for his Facebook login and password.

"It caught me off guard; it was just random," he said. "The way that they asked it, it was just like 'we're gonna need this, if you don't mind.'"

White did mind, he said, and when he declined to hand it over, the employer asked, "Why? What do you have to hide?" before continuing to badger him for access. White repeatedly said no until he became frustrated and walked out of the interview, he said. He did not hear from the company again.

"I feel like they were going to give me the job, but the Facebook thing was the last step," he said. "When I said no, it was obvious I wasn't going to get the job after that."

STATES WITH PENDING SOCIAL MEDIA PRIVACY BILLS

- California
- Massachusetts
- Michigan
- Minnesota
- New Jersey

SOURCE: American Civil Liberties Union

legislative counsel for the American Civil Liberties Union.

But if the applicant refuses, as White did, they run the risk of not being hired, Calabrese said.

"If you don't give it over, it's likely you won't get a job, and you won't have any recourse," he said. "It's an unfair situation to put a student in."

Rachael Moore, an education senior at James Madison University, agreed, saying she felt like she had no choice but to

comply with the request when she was asked for her Facebook information.

"I needed a job, so I had to suck it up," she said.

Moore was applying to work as a camp counselor in Virginia during summer 2011 when the camp administration gave her the option of supplying her Facebook password or becoming "friends" with the management so they could bypass her account's privacy settings.

"They said it was part of the application process; they said 'you're almost hired, but we have to look at your profile,'" she said. "I guess that was their form of a background check, but you can only see my Facebook if you're friends with me."

Moore said she understood why the director would want to view her profile, but she was taken aback when they were so direct. When she questioned their request, she said the director told her, "You can't work here if you don't."

"I was so confused, so I just said, 'Well, I guess I'll friend request you then,'" she said. "Of course I wasn't going to give someone my password."

Moore said she felt like her rights were violated, adding "it seemed like they were under the assumption that I was guilty until proven innocent." She said she considers herself a responsible adult and keeps her profile professional, but she thought they crossed the line.

Calabrese said it's an invasion of privacy.

"We think that everyone has the right to a private life, and just because your private life is accessible in some way... it doesn't mean it's right for them to look at it," he said. "You should be able to live your life online and have the same private life as you would offline."

Calabrese said the ACLU has seen an increase in complaints about the practice within the last six months, but "even one employer doing this is too many."

"We worry if we don't draw the line right now it will become common practice and appear on the standard [employment] application form," he said.

Calabrese said state lawmakers are working to combat the issue before it reaches that point. He said a number of state politicians are drafting legislation that would ban the practice among employers, universities or both.

One example, he said, is Maryland, which was the first state to pass a social media privacy protection bill. Maryland Gov. Martin O'Malley signed the bill May 2, making it illegal for employers to ask job applicants or workers to hand over login information for Facebook and other social media sites.

Bradley Shear, a Bethesda, Md., lawyer who has been a catalyst in the trend, said employees have an expectation of privacy for their personal accounts, and the movement in this legislation is to protect that.

He said the only time asking for a login and password is appropriate is when an employer requests information for a corporate account.

The issue is of particular importance for journalists and journalism students looking for media jobs, with a number of notable incidents of reporters coming under fire for social media posts. Some argue journalists must be held to different standards because of their roles as neutral observers – and in some cases as public figures.

Most recently, reporter Mark Krzos of the Fort Myers

News-Press made headlines for a post on his personal Facebook page. Krzos was assigned to cover “Chick-fil-A Appreciation Day,” born out of controversy over the restaurant’s stance on gay marriage.

“I have never felt so alien in my own country as I did today while covering the restaurant’s supporters,” Krzos wrote, according to media blogger Jim Romenesko. “The level of hatred, unfounded fear and misinformed people was astoundingly sad.”

Krzos later pulled the post. *News-Press* Executive Editor Terry Eberle told Romenesko it was “completely inappropriate” and vowed to take “strong and appropriate action.”

In June, a reporter at the *Colorado Springs Gazette* was placed on administrative leave after sharing a story on his Facebook page about the sale of the newspaper. He was later reinstated but declined to come back, tweeting that he was no longer interested in working for “that type of corporate culture.”

Ellyn Angelotti, digital trends and social media faculty member at the Poynter Institute, said for certain fields, such as journalism, employees must maintain their public persona inside and outside the office.

“It’s tough because in social media you really blur the line between professional and personal, and there are both personal benefits to associating yourself with your employer, tweeting about things that are related to your job, and there are also some professional benefits – your employer can benefit from your Twitter following or your fans on Facebook,” Angelotti said.

“It’s one of the situations where it can be a win-win situation if you find a way to skate that line, but at the same time, it’s fraught with peril. If you do one wrong move, it could upset your employers.”

To remedy this, she said it’s common for journalists to maintain separate professional and personal accounts. While the personal accounts should remain guarded, she said the corporate accounts are fair game.

“When it’s a corporate account, someone on the digital media team is going there, and the team is going to have the password,” Angelotti said. “If you’re going to be tweeting on behalf of the company on company time, then the company is going to want to have access to that account in case something happens or somebody leaves, so that’s much more acceptable.”

She said the password dilemma is often more an ethical questions than a legal question, but with new laws and court decisions, more legal guidance will be available.

And soon, Calabrese added.

California, Massachusetts, Michigan, Minnesota and New Jersey are among the states working on social media privacy bills, according to the ACLU. The language of the individual bills differs, with some limited to employers asking for infor-

mation from current employees or to applicants, and others including schools and universities.

Shear said Delaware was the first to enact a law that also protects schools, students and applicants.

The Delaware bill prohibits both public and private colleges and universities from requiring students to disclose social media user names and passwords.

Sen. Brian Bushweller, who sponsored the bill in the Senate, told the Student Press Law Center the bill is “on the cutting edge of issues that our society will be facing because of the rapid proliferation of social media and technology development.”

Shear applauded Delaware and other states – like Illinois, which enacted a similar law Aug. 1 – for making headway, saying, “Every state should pass legislation that protects colleges, universities, students, and prospective students.”

He said it’s important to include students and universities in the bills because “schools should not have a duty to social media monitor their students’

personal digital accounts.” He said schools don’t have the power to “bug” students’ apartments or cars, so schools should not try to police them online.

In addition to the state laws, though, Shear stressed the need for a federal law to ensure uniformity.

He said he worked with Rep. Eliot Engel, D-N.Y., to draft the proposed Social Networking Online Protection Act (SNO-PA), which would protect social media users from having to divulge information to employers, schools and universities. It would protect those who are already employed or enrolled, those seeking employment or admittance, and those facing disciplinary action.

Jeremy Tomasulo, spokesman for Engel, said the bill is in currently in the House Education and the Workforce Committee. He said no hearings have been scheduled yet.

Until SNO-PA or a similar bill passes, Calabrese said students, applicants and employees should learn the rules for their respective states. He said knowing the law can help someone if they are put in a situation where they are asked for their personal account information.

“You can learn about what the law says and whether you have to give it up,” he said. “If it’s illegal, it’s possible the employer didn’t know. If it is legal, it’s a difficult situation, and that’s why we are trying to pass these laws.”

Both White and Moore said they had no idea if the practice was legal or not when they were under scrutiny. They said if students aren’t aware of their state’s law, they recommend asking the employer why it’s necessary.

Moore said it’s important to ask questions before you know what you’re getting into.

“Or I would say to deactivate your account before you start applying,” White joked. ■

“It’s one of the situations where it can be a win-win situation if you find a way to skate that line, but at the same time, it’s fraught with peril. If you do one wrong move, it could upset your employers.”

—Ellyn Angelotti | Faculty member
Poynter Institute

Bullying in the digital age

States move forward with
legislation banning
electronic harassment

BY NIKKI MCGEE

There's no question that harassment is a serious offense that can result in criminal punishment. But things get more complicated when harassment is no longer in person and when students become the offenders.

The explosion of social media and technology has opened doors to new outlets of communication. This has presented school administrators – and judges – with major questions about how First Amendment protections online may differ from those in person. Many of these questions have been spurred by harassment that takes place online, and to complicate things more, what authority schools should have over their students when the school day ends.

When someone hears the word “cyberbullying,” the now-famous stories of Megan Meier and Phoebe Prince often come to mind. Both of their suicides have been blamed on Internet bullying. As a result of these and other tragedies involving young people, legislators across the country have pushed for new laws to fight back.

Today, all states except Montana have laws against bullying, requiring schools to enact anti-bullying policies. In addition, all but five states have laws against electronic harassment.

Movement toward legislation dealing with cyberbullying came about shortly after Meier's 2006 death, with her home state of Missouri among the first to adopt a law.

More recently, these efforts have evolved to not only make cyberbullying a matter for law enforcement, but to make it a punishable offense at school – in some cases, even when it occurs off campus. This has raised new concerns for First Amendment and

student rights advocates who believe schools should not have the right to punish students for what they do outside of class.

So far, eight states have laws that expressly include off-campus behavior as part of their cyberbullying statutes: Arkansas, Connecticut, Louisiana, Massachusetts, New Hampshire, New Jersey, New York and South Dakota. Similar measures have been proposed in several other states.

“I think that school officials can regulate off-campus speech only if it has tangible, real-world consequences at school,” said David Hudson, a scholar at the First Amendment Center and author of the book *Let the Students Speak*.

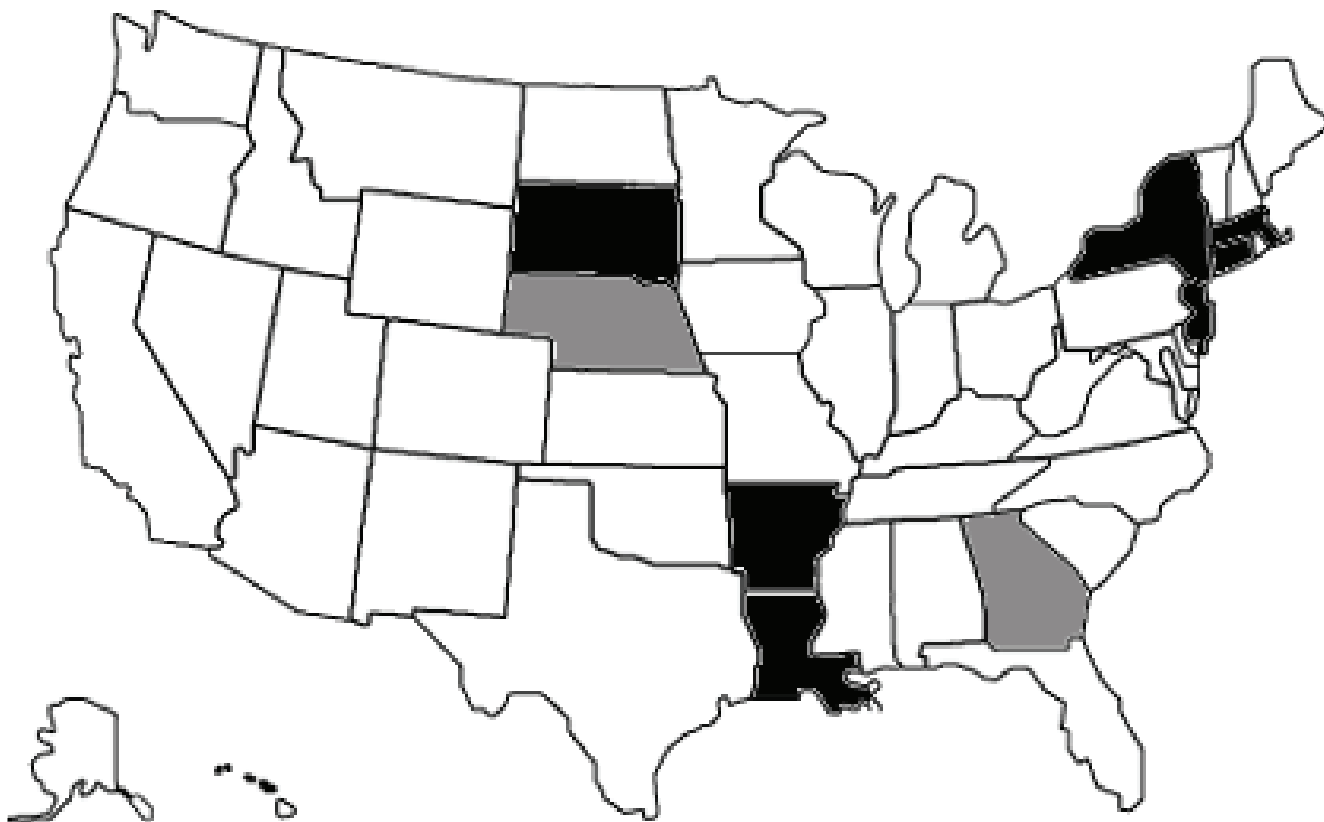
“The application of the *Tinker* standard [is that the speech can be restricted if it] causes a substantial disruption, or a reasonable forecast of substantial disruption, of school activities. Otherwise it's a matter of parental discipline or law enforcement.”

Despite this legal argument against school officials regulating off-campus speech, some are overcoming it, finding new ways to break out of the schoolhouse gate.

Schools officials are justifying off-campus involvement because they believe that online harassment will upset students at school, possibly even leading to physical altercations.

Perhaps one of the most extreme pieces of legislation in the past year was Indiana's HB 1169. The bill would have allowed school officials to discipline students to the point of expulsion for doing or saying something that could “reasonably be considered to be an interference with school purposes or an educational function,” even if the speech took place off campus. This bill proposed to expand on the Indiana's current law by taking out the require-

States with (proposed) bullying laws that include off-campus behavior:



ment that the activity to be unlawful before the school can get involved. Sponsors of the bill thought it was necessary to strike the word “unlawful” so that administrators could better address cyberbullying incidents and cheating.

Late opposition from civil liberties groups, including student media advocates, caused legislators to take a second look at the proposal. At the end of the session, the legislature made no changes to existing law, but recommended a special committee study the issue.

Others feel more strongly about the need for schools to become involved in off-campus cyberbullying.

“Cyberbullying is something that schools absolutely need to respond to in many of these situations,” said Nancy Willard of the Center for Safe and Responsible Use of the Internet and author of the book *Legal and Ethical Issues Related to K-12 Internet Use Policies*.

A major legal question is what can be considered a true “disruption” of school within the meaning of the Supreme Court’s landmark *Tinker v. Des Moines* decision.

Online posts from students making fun of staff tend not to cause a substantial disruption, where as student-on-student bullying seems to be more detrimental, Willard said.

“The impact of the cyberbullying invariably affects how students are able to interact and engage while they are at school,” Willard said. “So when the actions of one student, regardless of where those actions occur, are legitimately interfering with the ability of another student to receive an education, there is an impact at school and it is significant. And if it is interfering with another student’s rights, then school officials, in my opinion, and also in the opinion of the court, not only have the authority to respond, I believe they should have the responsibility to respond.”

As schools are becoming more involved with punishing online bullying, so is law enforcement. So far 12 states have criminal charges available for online harassment. This includes Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, North Carolina, North Dakota, Tennessee and Wisconsin.

Creating fake social media accounts is also becoming a punishable offense in some states. To date, California, North Carolina, New York and Texas have laws against creation of fake online profiles.

The North Carolina law specifically targets students, making it illegal for them to create an

STATES WITH PROPOSED UPDATES TO BULLYING LAWS

- Alabama
- Alaska
- Georgia*
- Indiana
- Kentucky*
- Maine*
- Minnesota
- Nebraska*
- New Hampshire

***Specifically address “cyberbullying”**

SOURCE: Cyberbullying Research Center, www.cyberbullying.us

account in the name of a school employee with the intent to “torment” or “intimidate” that person.

Some First Amendment experts have questioned whether the law is constitutional. The ACLU of North Carolina is concerned with vague words being used to define these types of offenses. The ACLU worked with legislators to remove the word “embarrass” from the bill, but the organization remains concerned.

Policy Director Sarah Preston gave an example of how these words could become problematic. If a parent posted a photo online of their child in a funny Halloween costume, she said, this could be considered embarrassing to the child, or could be considered tormenting the child depending on how one interprets the meaning of the word.

More recently, a similar law in Texas resulted in the arrest of two middle school girls for creating a fake Facebook page about a classmate. Because of juvenile privacy rules, it was unclear how long the girls spent in juvenile detention or how the case was progressing. Texas law prohibits anyone from making a fake account with the intent to “harm, defraud, or threaten a person.”

Though these stricter laws may seem over-the-top to First Amendment legal advocates, their constitutionality will have to be determined by a court, Preston said. Since these new criminal offenses have been signed into law so recently, most of them haven’t been used enough to bring about a legal challenge.

Preston said the ACLU usually waits until a complaint has been filed before they take action against legislation they have concerns about.

With laws becoming stricter, it seems Arkansas and Louisiana can be considered the states with the most cyberbullying regulations in place. Both states have criminal sanctions for cyber harassment, as well as school punishment for similar behavior, including speech that occurs off campus.

Montana’s laws appear the most lenient. A person can only be pursued criminally if the person intentionally, “with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person.”

With each year, a new round of cyberbullying legislation arises, with schools and law enforcement often gaining more and more control over online speech – and with consequences becoming even more severe.

Despite wrangling between anti-bullying advocates and those concerned about free speech, it’s likely too early to tell if these laws are having the desired effect. And it’s impossible to know whether they can or have prevented the teen suicides that started the legislative trend.

“It’s obviously very disturbing and certainly, in some instances, bullying has played a key role in it,” Hudson said. “I’m not sure that it’s the full cause. It’s hard to generalize because when someone takes their own life, there could be other difficulties and the bullying just simply is the last straw that breaks the camel’s back, so to speak.” ■

ONE GENERATION UNDER
HAZELWOOD
A 25-YEAR RETROSPECTIVE
ON STUDENT FIRST AMENDMENT RIGHTS

Nov. 8-9, 2012 • UNC-Chapel Hill

It’s been nearly 25 years since the Supreme Court rolled back students’ First Amendment rights in *Hazelwood School District v. Kuhlmeier*. Join experts from the fields of law, education and journalism for a conversation about how the rise in censorship has affected young people’s civic readiness.

Day 1 A Dialogue: Censorship and Student Civic Learning	Day 2 <i>First Amendment</i> Law Review Symposium
--	---

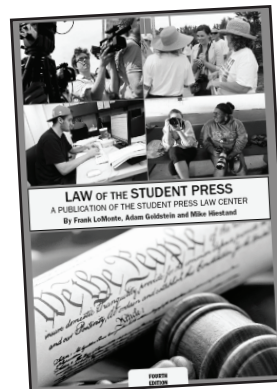


hazelwoodsymposium.unc.edu

COMING SOON:

LAW OF THE STUDENT PRESS⁴

An indispensable reference tool
for developments in media law



**Visit the
bookstore at
splc.org to
order your copy
starting in
September.**

THE FACEBOOK STANDARD:

Minnesota Supreme Court lowers speech protections for some college students

BY SYDNI DUNN

Months after the Minnesota Supreme Court held that public universities can restrict the speech of students enrolled in “professional programs,” First Amendment advocates and Minnesota students continue to analyze the broader implications of the ruling.

The June 20 decision in *Tatro v. University of Minnesota* was the first time a state Supreme Court addressed what speech rights college students have away from campus.

The case raised the possibility that colleges would be given broad power to discipline students for posts on social networking sites. Some even wanted the court to import the well-known *Hazelwood* high school censorship case to higher education. And though that particular standard was rejected, it’s likely to resurface in the future, according to Jane Kirtley, professor in the University of Minnesota’s School of Journalism and Mass Communication.

The case

The case originated in 2009 when Amanda Tatro, a former student in the University of Minnesota’s mortuary science program, posted a series of eyebrow-raising statuses on Facebook about her work in the program. The posts, which Tatro described as “satirical commentary and violent fantasy,” prompted an investigation into whether Tatro violated her program’s professional code of conduct.

Tatro, a junior at the time, was enrolled in three laboratory classes in the program, one of which included human cadavers for teaching and research. At the beginning of the course, students were given an orientation, a set of professional guidelines to follow as part of the Anatomy Bequest Program, the entity that supplied the human cadavers for the lab, and a class syllabus including lab rules.

Among the anatomy lab rules, students were allowed to have “respectful and discreet” conversations about the cadaver dissection, but “blogging” about the lab – and the work involved – was prohibited. If a student did not adhere to these rules, the code



MORE @ SPLC.org/podcasts

Legal experts Jane Kirtley and Raleigh Levine discuss the Tatro ruling in our June podcast.

warned, they could be evicted from the lab and course. Tatro signed a disclosure form to acknowledge the rules of conduct in order to begin the course.

Throughout November and December 2009, Tatro posted commentary via Facebook about her donor body and about her work.

Among other things, Tatro wrote a status update saying she “gets to play, I mean dissect, Bernie today.” Bernie was the name she assigned to the cadaver her lab group was working with, she said.

Later, Tatro wrote she wanted to “stab a certain someone” in the throat with a trocar – a long, needle-like embalming tool used to remove gases and fluid from the body – and that she would spend the evening updating her “Death List No. 5.”

That “certain someone” referred satirically to an ex-boyfriend who broke up with her the night before, she later said, and she knew he would see it and know that she was angry. “Death List No. 5” was a reference to her favorite movie, *Kill Bill*.

These posts, along with several others, prompted another student to report Tatro to the director of the program, and a police investigation followed soon after. The director, according to the Supreme Court opinion, said the staff members “were very much concerned for their safety.” The campus police, however, found no crime had been committed.

At the end of the term, Tatro received a C+ in the course and an email notifying her that a formal complaint had been launched with the Office of Student Conduct and Academic Integrity.

Tatro challenged the complaint, saying she used jokes and humor to relieve anxiety and to “stave off depression due to her unique life circumstances.” She said her posts were intended for



Amanda Tatro speaks with reporters in February after oral arguments in her First Amendment case against the University of Minnesota. PHOTO BY MARK VANCELEAVE / MINNESOTA DAILY

her friends and family, who understood her morbid humor. She said she realized her classmates might have seen the status updates, but she never intended to scare anyone.

She recognized that students could misunderstand her humor and also acknowledged the prohibition on blogging in the course rules. She said she didn't know "blogging" included social media, like Facebook.

But in April 2010, the Campus Committee on Student Behavior ruled Tatro's comments to be "disrespectful, unprofessional, and reasonably interpreted as threatening," according to court documents.

The panel assigned several punishments, including changing her C+ to a failing grade, and requiring her to write a letter to faculty members and enroll in a clinical ethics course. She was also placed on academic probation for the remainder of her undergraduate career.

After the university provost upheld these sanctions, Tatro appealed her case to the state Court of Appeals, which in July 2011 ruled the university did not violate Tatro's First Amendment rights when it imposed the punishments.

The decision

The appeals court reasoned that the standard set in *Tinker v. Des Moines Independent Community School District* applies to college students' off-campus speech.

Tinker, a 1969 Supreme Court case, held that schools may limit or discipline student expression only if it would create a "substantial disruption" of school activities.

However, First Amendment advocates and Tatro's lawyer, Jordan Kushner, argued that *Tinker* should not apply to the college level.

During February arguments before Minnesota's highest court, University of Minnesota General Counsel Mark Rotenberg said the court should apply *Hazelwood School District v. Kuhlmeier*, a 1988 decision that states a school may limit school sponsored,

curricular speech as long as those restrictions are related to "legitimate pedagogical concerns."

He said the university had two main educational concerns: an interest in teaching professional behavior to future morticians and embalmers, and a fear the bequest program would lose the trust of donors if the actions went unpunished.

Kushner argued, however, that public university students should have the same free speech rights as members of the general public in regard to Facebook posts. He said her status updates did not constitute "true threats," as she did not intend to carry out violent plans. She was just "venting random thoughts," he said.

But the Supreme Court decision rejected both arguments, as well as the appellate court's view from the year prior. Creating its own new standard, the court held that a university "does not violate the free speech rights of a student enrolled in a professional program when the university imposes sanctions for Facebook posts that violate academic program rules that are narrowly tailored and directly related to established professional conduct standards."

The court then unanimously ruled that Tatro violated the standards of the program as well as the state definition of unprofessional conduct in mortuary science, as she failed to treat the donor body with respect and dignity. The university's discipline was upheld.

While creating a First Amendment standard for students in "professional programs," the court did not announce a general rule for off-campus speech by college students. It also did not address the issue of whether Tatro's comments represented "true threats" — a recognized exception to the First Amendment prior to this case.

The reaction

Rotenberg released a statement applauding the decision shortly after its release.

"This important decision affirms the university's authority to establish and enforce rules that train our students in the profes-

sional ethics and norms they will need to follow to be successful in their chosen profession,” he wrote. “To be successful, our students need to learn and practice a high degree of discretion and sensitivity in speaking about their work.”

Kushner said the ruling was disappointing. He said Tatro shouldn’t have had to surrender her free speech because she was enrolled in a professional program.

Kushner questioned where the lines in discretion are drawn, saying, “If a professional student raises concerns or talks about their experience, are they in danger of violating the standards? If a law student wants to talk about a client or hints at a case without revealing it, could they get in trouble?”

Students have the same questions, said Katherine Lymn, managing editor of *The Minnesota Daily*, the university’s student newspaper. Lymn has covered a number of stories about the case since its start.

Lymn said the newspaper started a Twitter discussion after arguments were first heard by the Supreme Court in February. She said opinions were varied, with some students concerned about the case and others unconcerned.

“A lot of people were alarmed because they had never thought about their university standing colliding with their social media,” she said. “Others thought this was a completely isolated incident.”

Kirtley said from a faculty perspective, she heard a number of students – particularly journalism students – express interest in the case and the ramifications it would have.

“Students were anxious about the notion that, even if the university wasn’t overtly monitoring what they were doing, at least they were vulnerable to action if somebody reported something that was posted on their social media site,” she said.

Kirtley said it will be interesting to see what they say when class resumes, since school was out for summer when the decision was announced.

Broader implications

The unclear scope of the ruling has First Amendment advocates, including the Student Press Law Center, focusing on the bigger picture. SPLC Executive Director Frank LoMonte, for example, called the ruling a mixed result.

“The First Amendment dodged a bullet today,” LoMonte said after the opinion was released. “The University of Minnesota was out to essentially wipe the First Amendment off the books for college students, and the Minnesota Supreme Court stopped them in their tracks.”

Kirtley agreed, saying, “The Supreme Court panel wasn’t willing to go as far down the road of trying to control off-campus speech as the university and supporters asked of it, and that is very important.”

She said the outcome is not as bad as it could have been and offered a narrow decision.

“The one negative aspect is the fact that on the one hand, it’s good that they tied it so closely to the professional conduct rules because that would, arguably, limit these types of sanctions to the situations where there’s a clearly defined set of standards,” she said. “On the other hand, there are more and more disciplinary

fields that have codes and some are more formal than others. In the areas of journalism, for example, it has codes of ethics that may not be universally accepted.”

Kirtley said her concern is that future courts will extend this to encompass more informal codes of ethical standards, but LoMonte said the decision may be carefully worded enough to avoid this.

The decision is only binding precedent in Minnesota – and even there, only for cases brought in state courts. The more likely impact is that other state courts could use the ruling, the first of its kind, as a guide in future cases.

“I have to say that, given the number of universities that took part in the litigation as friends-of-court briefs in support of

the university, this has been a closely-watched decision on the part of universities across the country,” Kirtley said. “They could be looking for guidance so they could utilize these provisions on their own campuses.”

Several questions remain unanswered after the court announced its new standard. For example, given that the ruling is limited to students

in “professional programs” – what constitutes a professional program? Some see rule applying only to students in medical fields, and perhaps law students. However, Rotenberg suggested after the ruling that it might be broad enough to include “students in a host of professions -- including medicine, law, nursing, law enforcement, social work, teaching, and many others.”

The decision allows for punishment only under rules directly related to “established professional conduct standards.” Also unclear is how standards become established. The standards in *Tatro* came from a state law – but would a professional organization’s ethical guidelines, such as the Society of Professional Journalists Code of Ethics, carry the same weight?

Kirtley said she would like to be optimistic and say the problem won’t leak outside of Minnesota, but it’s unlikely “given the proliferation of social media and the concern universities have about students using it.”

The future

Kushner said Tatro had plans to appeal the decision to the U.S. Supreme Court, but just a week after the decision was released, Tatro suddenly died.

The Hennepin County Medical Examiner’s office confirmed Amanda Rand – Tatro’s name after her marriage – died June 26. Her cause of death was undetermined.

Though unclear if it is connected with her death, Kushner noted in a legal brief that Tatro suffered from a “debilitating central nervous system disease.”

Lymn said through her experience writing the case updates and Tatro’s obituary, she learned what an impressive person Tatro was. She noted Tatro’s dedication to the case, saying other students probably would have given up long before Tatro did.

In a Feb. 13 story in *The Minnesota Daily*, Tatro recognized that drive.

“I’ll fight this for the rest of my life,” Tatro told the *Daily*. “They started it, and I’ll finish it.” ■

“A lot of people were alarmed because they had never thought about their university standing colliding with their social media.”

—Katherine Lymn | Managing Editor
The Minnesota Daily

Hazelwood's expanding influence

BY NIKKI MCGEE

When making its ruling in *Hazelwood School District v. Kuhlmeier*, the Supreme Court stated in its opinion that it “need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level.”

The need to decide may not be far off.

Lower courts have begun applying the *Hazelwood* standard in college-level free speech cases. Most recently, *Hazelwood* was invoked by a federal appeals court in the case of *Ward v. Polite* – a case centered on a counseling student, but which some fear could have a lasting impact on student speech rights.

After teaching high school English and broadcasting classes for about 10 years, Julea Ward enrolled in Eastern Michigan University’s graduate-level counseling program. With a 3.91 GPA, Ward enrolled in one of her final courses – a practicum course, where students counsel real clients. Problems arose when the university asked Ward to counsel a gay client.

Although she agreed to meet with the client, she told her supervisor that she would not be able to affirm the client’s “homosexual behavior” because of her religious beliefs. She asked her supervisor if she should refer the client to another counselor right away, or meet with the client and only make a referral if a conflict arose. The university supervisor had her refer the client and set up an informal review session.

In the meeting, Ward indicated that she was unwilling to compromise her beliefs on the issue, at which point she was advised to either withdraw from the program or attend a formal review session. Ward chose to undergo formal review. There, a faculty and student committee unanimously found Ward’s actions inexcusable, and in conflict with the American Counseling Association Code of Ethics. Ward was immediately dismissed.

Ward’s attorney believes that her First Amendment right to freedom of religion was violated.

“They didn’t like her religious beliefs and views, and kicked her out because she was unwilling to violate those beliefs,” Al-

liance Defending Freedom attorney Jeremy Tedesco said. “One professor asked her if she felt that her Christian beliefs were superior to those of others. Another professor took her on what he called a theological bout, where he questioned her understanding of scripture and tried to explain to her why she was wrong, the way she was interpreting scripture.”

Tedesco went on to say that even if schools do have the right to restrict certain speech, they are never allowed to censor based on their personal disagreement with the opinion of the speaker.

Historically, the 6th U.S. Circuit Court of Appeals, which covers Michigan, has ruled favorably for college students who claim violations of their freedom of speech rights. In 2001, the court ruled in *Kincaid v. Gibson*, after Kentucky State University students sued the school’s vice president of student affairs for locking what she found to be unsatisfactory yearbooks in a closet. The biggest dispute seemed to be that the yearbook did not include school colors. After a lower court sided with the school, citing *Hazelwood*, the appeals court ruled in favor of the students – writing that “*Hazelwood* has little application to this case.”

The same was not true in Ward’s case.

“The *Hazelwood* test, it is true, arose in the context of speech by high school students, not speech by college or graduate students,” the court wrote. “But for the same reason this test works for students who have not yet entered high school, it works for students who have graduated from high school. The key word is student.”

The court cited *Hazelwood* a total of 16 times in its opinion. It is now binding precedent in Michigan, Ohio, Kentucky and Tennessee.

But the ruling was ultimately a win for Ward, with case be-



Julea Ward was dismissed from her graduate-level counseling program at Eastern Michigan University after she sought to refer a gay client to another counselor because she felt she would not be able to affirm the client's "homosexual behavior" because of her religious beliefs. PHOTO COURTESY OF ALLIANCE DEFENDING FREEDOM

ing allowed to proceed to a trial in the district court. The appeals court ruled that while Ward was only entitled to the *Hazelwood* level of First Amendment protection while in the counseling program, a jury must decide whether the university based its discipline on a legitimate educational goal – or mere disagreement with her religious beliefs. The trial is set to take place in October.

Neither Tedesco nor the American Civil Liberties Union of Michigan – which filed a brief in support of EMU – feel that *Hazelwood* is applicable to this case.

"I don't think it applies in this context," Tedesco said. "I think that *Hazelwood* should be limited to a very narrow scope of speech because *Hazelwood* is a very deferential standard to the government, and I worry about its expansion. If it's expanded, then I think free speech is obviously going to be limited more."

Jay Kaplan, an attorney on ACLU's LGBT Legal Project, has a different take. Kaplan said the case is more of a civil rights issue than a First Amendment one.

"I don't think it's a situation like *Hazelwood*, where a student wanted to articulate a critical point of view," Kaplan said. "We don't believe that this is a violation towards freedom of religion rights under the constitution.... She was terminated from the program because she indicated she would not and could not comply with a core curricular value of the Eastern Michigan University counseling program – that is, able to render nonjudgmental counseling services."

Kaplan said the school depends on providing these kinds of services for its American Counseling Association accreditation.

Although some find *Hazelwood* being applied to colleges problematic, Mark Goodman, former executive director of the Student Press Law Center, said it was inevitable that questions would arise.

"I think part of the reason that was inevitable and will continue to be so, is because the courts don't deal with student press cases frequently enough for there to be a very clear, distinct framework of analyzing student First Amendment claims that occur in that context," Goodman said. "So what judges do certainly is look for Supreme Court decisions that look like they're involving similar facts, and take the frame of analysis from that. Because the Supreme Court has never really specifically dealt with a college censorship case.... *Hazelwood* is the closest example there is."

Given the vastly reduced level of free press rights *Hazelwood* brought to high school journalism, any application of the case at

the university level is particularly concerning for college media.

"I am concerned about the path the court seems to be taking," said Neil Ralston, a professor at Western Kentucky University and vice president of student chapter affairs for the Society of Professional Journalists. "Applying the *Hazelwood* standards at the college level would put a target on the back of virtually every college student journalist in the circuit."

The issue, while a relatively recent concern, has been addressed before. The neighboring Seventh Circuit raised the alarm of student press advocates when it applied *Hazelwood* in the 2005 case of *Hosty v. Carter*.

In *Hosty*, the editor of the student newspaper at Illinois' Governors State University brought suit against the school's dean. After the newspaper published several stories critical of administrators, the dean told the staff that they could not publish any more issues unless they underwent prior review.

The appeals court wrote that *Hazelwood* provides the "starting point" for analyzing college newspaper censorship cases. Thus, whether a college's censorship is permissible hinges on whether the publication is a "designated public forum."

Many disagree with the Seventh Circuit's approach.

"I think the bad thing would be that it means that college student media are not being treated as adults," said Jim Killman, former president of the Illinois College Press Association. "Courts have consistently ruled that the First Amendment applies to adults and often students, too, but especially to adults, and to say that it doesn't apply to college media would be depriving adults of First Amendment rights. That's why it was such a concern."

It didn't take long for student journalists – and legislators – to respond. Illinois nullified the impact of *Hosty* by passing the Illinois College Campus Press Act later in 2005. The state law gives further freedom of speech protection to college journalists by declaring all publications at public colleges to be public forums. It effectively means that no public college media will be analyzed under *Hazelwood*.

"It just meant that there was kind of an atmosphere of restriction and an atmosphere of potential censorship that everybody knew was wrong, and everybody knew was probably not going to withstand a legal challenge, but yet, there was this weird case law out there, that we think was a very bad decision," Killam said. "What the new law did was kind of prevented a test case from potentially causing some real harm."

The law has protected college students in several instances since.

While Goodman supports the legislative outcome of the dispute, he wishes the conclusion would have come from the court.

"I'm frustrated by the idea that that is the most realistic solution, because I just know how difficult that solution is to achieve, and in some places, perhaps, politically impossible," Goodman said. "I am not a big fan of the legislative process. I feel like the number of legislators who understand this issue, or care about it, is so small that it's very difficult to receive a fair hearing."

Although Illinois was able to fend off the threat of *Hazelwood* through the College Campus Press Act, student journalists in the Sixth Circuit may not be so fortunate in the aftermath of *Ward*.

"I understand the court's desire to support the application of professional standards in academic programs at the college level," Ralston said. "[But] it's already common for high school administrators to use *Hazelwood* to censor important student speech. And some college administrators in the Sixth Circuit would love to quiet dissent on their campus by using the 'legitimate curricular objectives' argument anytime a student journalist expressed something that didn't promote the school." ■

ZONING FREEDOM:

College students fight back against “free speech zones” that restrict student speech on campus

BY SETH ZWEIFLER

On the morning of Feb. 15, a group of students involved with the University of Cincinnati's Young Americans for Liberty set off for a distant part of the school's West Campus.

Weeks earlier, the students had requested permission to use the school's free speech zone — an area of campus specifically reserved for “demonstrations, picketing or rallies.”

The YAL members initially wanted to travel campus-wide to collect signatures for a ballot initiative that would make Ohio a right-to-work state, but were told the only place they could do so was in the free speech zone. The zone consists of about 0.1 percent of the entire West Campus, which totals more than 8 million square feet.

Though the students stood in the zone for hours, clipboards in hand, they encountered a total of six passers-by, collecting just one signature along the way.

While the YAL chapter has since filed suit against UC for restricting its First Amendment rights, such free speech zones are commonplace at college campuses across the country.

In recent years, there has been a significant amount of movement in the push to rid campuses of free speech zones, with groups like the Foundation for Individual Rights in Education experiencing success at schools like West Virginia and Texas Tech.

But administrators who have kept free speech zone policies on the books maintain that these areas are in place to protect students' rights and maintain the basic educational mission of their institution.

First Amendment advocates disagree.

“Speech zones represent something that's gone seriously wrong with our attitudes about college campuses,” FIRE President Greg Lukianoff said. “Administrators are treating free speech as more of a nuisance than as the lifeblood of a university, and that's a scary thought.”

A rocky — yet successful — past

Like many other schools, UC's free speech zone was first created as an administrative response to Vietnam War-era protests.

Over the years, university spokesman Greg Hand said, the free speech area has evolved from what was once merely a free speech “alley” to an area today that is “meant to ensure no limitations are placed on the free exchange of ideas by students.”

In June, however, a federal judge issued a preliminary injunction declaring UC's free speech policies a form of prior restraint and unconstitutionally vague. That order was made permanent in August.

Chris Morbitzer, a UC student and member of YAL, applauded the decision, saying he hopes it will serve as a catalyst to change other restrictive free speech zone policies across the country.

“What greater risk to campus does a person pose by holding a clipboard to collect signatures than carrying a notebook on the way to class? It's just a policy that seems to make no sense at all,” Morbitzer said after the preliminary injunction was issued.

Eight years before the decision in UC's case, a federal judge came down with a similar decision at Texas Tech University. At the time, the university had designated a single 20-foot-diameter gazebo as the only place in which a campus of nearly 30,000 students could speak freely.

In his 2004 decision, U.S. District Judge Sam Cummings wrote that the practice of restricting speech to the gazebo was unconstitutional, and required the school to amend its policies to allow speech rights in all common areas across campus.

Kevin Theriot, an Alliance Defending Freedom attorney who worked with the students to overturn the gazebo policy, said one of most limiting aspects of free speech zones like the one overturned at Texas Tech is that they effectively eliminate the possibility of spontaneous speech.

Even before the Texas Tech policy was abolished, students at West Virginia University successfully lobbied their school administration to revise a policy that limited open expression to two small areas of campus.

Michael Bomford, a then-graduate student at WVU who worked with the administration on the speech zone issue, said that, over time, the students were able to make their case that students at a publicly funded university should be able to speak freely throughout all open areas of campus.

“Coming to the U.S. from Canada, I was just shocked to learn of such a policy — that free speech would be quarantined to such a small part of the university,” he said.

Other free speech zone reversals over the years have been common, with high-profile cases coming out of schools like Appalachian State, Tufts and Valdosta State.

“When we've seen people challenge these free speech restrictions, these policies have not only gotten laughed out of court, they've gotten laughed out of the court of public opinion,” Lukianoff said. “The idea that these schools tried to put students into tiny, far-off corners shows that this isn't anything more than trying to keep universities quiet when really they're supposed to be chaotic homes for ideas.”

On the rise

Despite these objections, the past few years have come with an increase in schools that have free speech zone policies on the books, said Samantha Harris, FIRE's director of speech code research.

Harris speculated that this recent uptick is a direct result of schools reacting to preachers from local, off-campus churches making spontaneous appearances on college campuses.

"A lot of these restrictions are driven by a more generalized fear of disruption rather than a specific concern," Harris said. "Limitations on free speech should be the exception and not the rule, but what a lot of these policies do is the exact opposite."

She explained that the accepted legal standard for regulating student speech is placing restrictions on the "time, place and manner" of the speech in a narrowly tailored way that achieves the university's legitimate interest in preventing disturbances of class-related activities.

Some students believe the speech codes at their universities overstep these bounds.

Since he graduated from Indiana University this spring, Nico Perrino has been asking his former administration to consider revising its policies.

In one handbook, IU says organizations must register to use the school's Dunn Meadow 24 hours in advance of speech-related activities. A different policy states that the area is open to everybody for spontaneous speech all the time. And yet another instructs those who wish to speak openly to register to use the space at least 10 days in advance.

While Perrino said the administration never shut down student speech in an objectionable way while he was a student, he said the inconsistency between the policies had a "chilling effect" on student speech — essentially scaring students off before they start expressing themselves.

Similarly, Jerry Hosey, who graduated from Florida State University in the spring, wrote an opinion piece in *The Seminole Sentinel* newspaper in which he criticized his school for maintaining a free speech zone policy.

Under FSU's Free Speech Zones and Open Platform policy, "the green area on the east side of Moore Auditorium, the central portion of Landis Green and the football stadium outside gate D in the grassy area are designated 'open platforms.' Any student or other individual who desires to be heard publicly on any issue of concern may use these areas subject to the provisions of this regulation at any time when previous scheduling does not preclude such use but only from 8 a.m. to 10 p.m. local time."

Though Hosey was never inconvenienced by the school's policy, he said it "seemed like you needed to have a permit to do anything. I'm not sure how you can tell people where they can say what they want to say."

However, Arthur Wiedinger, who works in FSU's Office of General Counsel, distinguished the school's policy from a traditional free speech zone.

"The big difference is that we're by no means saying the First Amendment applies in a single spot," he said. "We're just saying that we've set aside areas where there's going to be unrestricted time, place and manner access. Our goal is to make access to speech as easy as possible."

Alternative views

While there are many opponents of free speech zones, some see a place for them, especially given the increase in protesters on college campuses over the past year stemming from the Occupy movement.

Divya Kumar, a rising junior at the University of South Florida and the editor-in-chief of the *Oracle* student newspaper, wrote a column last year in which she urged USF to consider implementing a free speech zone.

on the DOCKET

Courts rule some athlete, sexual assault records shielded by FERPA

IOWA/OHIO/ILLINOIS/FLORIDA -- Several appellate courts have issued rulings interpreting the scope of the Family Educational Rights and Privacy Act.

The Iowa Supreme Court ruled that records related to a sexual assault allegedly committed by two University of Iowa football players are protected from public disclosure -- even with the names redacted.

The Ohio Supreme Court also took a broad view of FERPA, ruling that records connected to an NCAA investigation at Ohio State University are protected because they contain information about students.

Meanwhile, a FERPA lawsuit involving the University of Illinois' admissions process was kicked out of federal court. It will continue in state court. And an appeals court in Florida ruled that records are not protected simply because they contain student names.

Private university police not subject to N.C public records law, court says

NORTH CAROLINA -- A state appeals court has ruled that campus police records at private universities do not have to be disclosed under North Carolina's public records law.

The decision came after former Elon University student journalist Nick Ochsner filed suit seeking information about an arrest on campus in 2010.

The appeals court determined that "public law enforcement agencies" -- which must disclose their records -- are limited to those specifically listed in the law, such as municipal police departments or county sheriff's departments. Because private college police are not included in that list, they do not have to meet the disclosure requirements, the court ruled.

Ochsner has asked the North Carolina Supreme Court to hear a further appeal in his case.

Kumar argued that students on campus should have as much of a right to avoid hearing offensive speech than individuals should have to espouse it — especially when the speaker is unaffiliated with the university.

“At one level, it’s important that everyone has free speech everywhere,” she said. “At another level, the delineation between free speech and hate speech is very murky. I think that having free speech everywhere on a college campus is going to lend itself to having students subjected to what borders on hate speech.”

Other campuses across the country feature slightly different iterations of free speech-designated areas.

North Carolina State University, for instance, is home to a Free Expression Tunnel, an on-campus site of sanctioned graffiti in which any member of the public is able to paint messages.

Though the tunnel serves as a supplement — and not a substitute — to a campus-wide free speech policy, it has been at the center of several national controversies in recent years.

For example, in 2008, authorities investigated threatening graffiti in the tunnel directed at President-elect Barack Obama. In 2011, staff members of the *Brick* student publication found themselves in hot water with their administration after a racial slur surfaced in the background of a photo taken inside the Free Expression Tunnel.

While Bradley Wilson, former coordinator for student media advising at N.C. State, applauded the university for maintaining the tunnel over the years, he believes it has wrongly chosen to paint over controversial graffiti rather than start a campus-wide conversation about it.

“By doing this, they’re not dealing with the issues,” he said.

“The highlights of the tunnel seem to be its lowlights.”

Moving forward

Although most free speech zone policies refer explicitly to campus protests or petition-gathering efforts, they can sometimes run the risk of impacting student media.

“Student media — whose primary business is expression — obviously have much at stake in the speech zone wars. While the official, mainstream student media generally seems to escape the grasp of such policies, either because of language in the policy or because of irregular enforcement of the policy by campus officials, smaller, independent student media ... are often not so lucky,” Student Press Law Center attorney Mike Hiestand wrote in a 2005 guide. “Speech zone policies often lump ‘distribution of printed material’ into the category of expressive activities that should take place only in a school’s designated free speech zone. In such cases, the distribution of newspapers, leaflets or fliers in other parts of the campus is either prohibited or tightly regulated.”

Lukianoff added that, in order to run a successful anti-free speech zone campaign, one of the most important components is having students on the ground dedicated to the cause.

More than anything, he emphasized that administrators need to start embracing open expression as something that can create a more dynamic, enriching educational environment.

“The thing that continues to amaze and sadden me is the popularity of this idea — that universities can somehow get away with quarantining free speech into a tiny corner of campus and that people can be duped into believing that’s a good thing,” Lukianoff said. “That’s a mindset that has to change.” ■

An update on the latest legal developments of importance to student journalists

Seattle landlord’s libel suit against high school newspaper rejected

WASHINGTON -- A Seattle landlord who sued over a high school newspaper story did not meet his burden to prove the story false, a state appeals court ruled.

Hugh Sisley sued the Seattle School District for defamation after the *Roosevelt Times* published a story stating that Sisley and his brother “have been accused of racist renting policies.”

A trial court judge sided with the school district, in part because the school district could not have legally prevented the story from running due to student First Amendment rights.

The appeals court affirmed that decision, but did not address the school liability issue. Instead, it found that Sisley had a burden to prove the story was false, and did not meet it. Sisley could ask the state high court to hear the case; his brother has filed a separate suit.

Supreme Court refuses to weigh in on speech rights of broadcasters

WASHINGTON, D.C. -- The U.S. Supreme Court struck down several indecency fines against television broadcasters, but was able to avoid redefining First Amendment rights over the airwaves.

The ruling followed a years-long legal battle over government fines levied after one-time expletives and brief nudity made it onto broadcast television.

The Court has allowed greater regulation of broadcasting since its landmark decision in *FCC v. Pacifica Foundation*. Broadcasters have encouraged the Court to overturn *Pacifica*, arguing that developments in technology mean broadcasting is no longer the “uniquely pervasive presence” it once was.

Instead, the Court simply ruled that broadcasters in the latest case did not have adequate warning of the indecency rules they would be held to.

A NEW DIRECTION: *J-labs turn* classrooms into newsrooms

Journalism labs are launching across the country, featuring student reporters and professors as editors. Students' reporting is often aimed at filling gaps in local coverage, and they have the additional opportunity to gain valuable experience working with seasoned editors. At the same time, these new ventures can come into conflict with existing student newspapers, and concerns remain regarding editorial freedom.

BY SETH ZWEIFLER

A wire service covering the inner workings of Maryland politics, a community website following the at-risk population in Durham, N.C., and a national investigative reporting project tracking the evolution of election laws are among the ways the nation's top journalism schools are working to keep up with a rapidly changing media environment.

Today, journalism schools are increasingly transforming their classrooms into newsrooms — offering new opportunities for students but raising new legal and philosophical questions.

While each of these “journalism labs” is different, they all share a basic starting point. A small group of students — usually no more than a dozen — works under a professor who typically has years of reporting experience. While the course is completed for a grade, the professor effectively serves as the editor-in-chief of an online publication, guiding the content selection process and shoring up students' copy before it is published.

“When you have an entrepreneurial startup like this, students are going to be thrown into a daily news operation,” said Jan Schaffer, executive director of American University's J-Lab: The Institute for Interactive Journalism. “They have to figure out how to report the story, what kinds of media to use to report it and how to distribute it. I think that's an invaluable program for students.”

Although these labs provide students with unquestionably useful opportunities to learn from some of the best journalism practitioners in the industry, they do not come without their concerns from the student media community.

Student Press Law Center Executive Director Frank LoMonte is concerned that the ultimate editorial authority in many of these programs does not lie with the student reporters, as it does at traditional student media outlets, but rather with the faculty that manage them.

“You have to be mindful of the trade-off that's being made when students lose their editorial autonomy,” LoMonte said. “One of the most important learning experiences in college journalism is serving as the editor-in-chief of the independent student newspaper who has to make the final judgment call. If you absolve students of that opportunity, you lose an important learning experience.”

Across the country, models vary

Among the first fully-fledged journalism labs in the country was the University of Maryland's Capital News Service, launched in 1989.

The CNS model is unique. As staffing issues have forced many Maryland newspapers to scale back on their coverage of local governance, students in UM's program have stepped up to fill that void.

CNS student reporters are assigned to work at one of four bureaus — Annapolis, College Park, Washington, D.C., or the service's broadcast studio. Students are then “thrown right into the game” of covering the news of the day at their respective locations, said Adrienne Flynn, director of the program's Washington bureau.

Flynn said the basic goal of CNS is to “serve the public good by giving them news of high public importance from the state capital while also training excellent journalists.”

The program shares its content with several major regional and national publications, including *The Baltimore Sun* and *The Washington Post*. This, said College Park bureau director Sean Mussenden, gives students the added bonus of having their work published in professional media outlets — an opportunity nowhere to be found in the more traditional non-publishing journalism course.

While Flynn, Mussenden and Rafael Lorente, the Annapolis bureau director, all agreed that they are the final content arbiters for their respective bureaus, they emphasized that CNS is at its core an educational program before it is a news service.

“There’s no reason for a journalism college to run a news organization for the sake of running a news organization,” Lorente said. “We’re not here to compete with the private sector. It’s important to publish because of the experience it’s providing students.”

Much of the same is true at the University of North Carolina, where journalism professor Jock Lauterer runs the Carolina Community Media Project.

Lauterer described the Carolina Community Media Project as “relentlessly local,” with its basic goal to cover the local Carrboro and Durham communities. He calls himself the students’ “editor, their coach, their zen master and their old professor.”

While Lauterer’s project is fully integrated into the curriculum — students participate by enrolling in a journalism class — another UNC journalism lab is still in the process of fitting into the school’s course structure.

John Clark’s Reese Felts Digital News Project is run solely as an extracurricular activity, though student journalists who participate are paid a small stipend.

Unlike the Carolina Community Media Project, Reese News and its sister website, WhichWayNC, focus their coverage on issues all across the state, from local Chapel Hill stories to state politics in North Carolina.

The basic philosophy of Reese News, Clark said, is learning by doing. Like other journalism labs, Clark believes that some of the best journalism lessons are learned when students are working on deadline, on the job.

Marc Cooper, founder of University of Southern California journalism lab Neon Tommy, agreed.

“We don’t treat our student journalists as student journalists, but as professional journalists,” Cooper said. “I think that mindset helps them grow immensely.”

A replacement for student newspapers?

Journalism labs like Reese News and Neon Tommy, however, pose potential problems for the independent student newspapers on their respective campuses.

Some advisers and student editors said they have lost both staff resources and readership to the journalism labs at their schools — a surprising and sometimes irksome source of competition.

Kevin Schwartz, general manager of *The Daily Tar Heel* at UNC, said Reese News took a good deal of the newspaper’s senior staff members a few years ago, largely because the fledgling online news source offered a larger stipend.

Similarly, Giovanni Osorio, editor-in-chief of USC’s *Daily Trojan*, said he has noticed more students moving toward Neon Tommy — a trend he finds disturbing.

“Print journalism is still around and we provide that experience for students, whereas these labs just publish online,” he said.

Cooper disagreed, saying there is no major competition between the two publications and that Neon Tommy is structured



Northeast Central Durham Community VOICE (print edition) co-editors Shannon Coffey and Kate Sievers work on an edition of the lab newspaper, produced monthly at the University of North Carolina at Chapel Hill. PHOTO COURTESY JOCK LAUTERER

“unreservedly as a student publication.”

Mercer University’s Center for Collaborative Journalism — which will open officially in the fall semester following a \$4.6 million grant from the John S. and James L. Knight Foundation — presents another interesting case study. While the student newspapers at large universities are able to maintain relatively stable staff sizes despite popular journalism labs, Mercer offers a far smaller talent pool for the *Cluster* student newspaper to pull from.

In addition to having the school’s approximately 50 journalism students produce original content when the Center for Collaborative Journalism opens, it will also house the staffs of *The Telegraph*, a local Georgia newspaper, as well as Georgia Public Broadcasting.

Tim Regan-Porter, the Center’s director, acknowledged that the presence of professional journalists may be a pull for *Cluster* staff members to get involved with the Center in place of their work on the newspaper. Still, he maintained that “none of us wants this endeavor to make the student newspaper an afterthought. How exactly we encourage students to work on both isn’t something we’ve exactly figured out.”

The Knight Foundation has made journalism education reform one of its priorities, calling on universities to fill the void left by shrinking professional media outlets. The foundation believes schools need to become creators of original journalism through an approach comparable “teaching hospital” model.

Students and professors at several campuses said they don’t see any issues between journalism labs and student newspapers.



Azra Halilovic, a graduate student at the University of Illinois, interviews migrant workers at a Mexican restaurant in Arcola, Ill., on July 20, 2012. The work is part of a collaborative project between HoyChicago, a Spanish daily, and the CU-CitizenAccess journalism lab on demographic changes in Central Illinois. PHOTOS COURTESY PAM DEMPSEY

Samantha Kiesel, editor-in-chief of *The Daily Illini* at the University of Illinois, said there is no overlap between the student newspaper and the school's CU-CitizenAccess journalism lab.

Brant Houston, founder of CU-CitizenAccess, thinks this is because the lab's coverage is focused largely on poverty-related issues in the community, rather than campus events and student affairs that the *Illini* covers.

Schaffer has observed that most journalism labs are focused on niche news whereas student newspapers are focused strictly on campus news, and said she has not noticed tension.

College Media Association Vice President Rachele Kanigel, who advises the *Golden Gate Xpress* at San Francisco State University, believes both journalism labs and increasing unpaid internship opportunities in the media industry have contributed to staff reductions at some schools' student newspapers.

"What's happening is that students have a lot more options now for getting credit and preprofessional experience, and that really does have an impact," she said.

Jason Manning, director of student media at Arizona State University, said the school's newspaper has had to compete with the popular News21 journalism lab, but doesn't necessarily think that is a bad thing.

"I think the experience of participating in student-run media is a vital part of the journalism education mix," he said. "The 'live, without a net' nature of it teaches judgment and responsibility in ways that no other program can. It is not a better experience, it is just different in a way that can't be replicated."

At the end of the day, said Yasmeen Abutaleb, editor-in-chief of *The Diamondback* at the University of Maryland, what matters most is whether student journalists are getting clips that can ultimately help land them a job.

"Journalism can only teach you so much in a classroom," Abutaleb said. "The only reason I've been able to get internships is because I've been published, and I'm sure that's true of everyone."

First Amendment concerns

In addition to being a potential source of competition in the market for student newspapers, emerging journalism labs have also prompted some questions from First Amendment advocates.

"You have to be mindful that, at the end of the day, the professor leading this program is a university employee," LoMonte said. "It's not a remote possibility that a college would use control over its professors to influence the students' editorial product."

Most lab directors interviewed said the fact that they are not readily covering university affairs has kept them out of any hot water with administrators.

There has been occasional controversy, however.

When Capital News Service filed an open records request to gain access to disciplinary records of students who had allegedly committed sexual assault, it took a great deal of time to get the university to comply, Flynn said.

Flynn added that state legislators have in the past complained to UM administrators about CNS coverage.

While CNS and other major labs have never faced a lawsuit from a source, the structure of these journalism training programs poses an interesting question: with whom does the ultimate legal liability for content lie?

Traditionally, LoMonte said, legal liability rests with student journalists — even in a school-sponsored publication — if it is clear that the students are calling the shots and have final editorial authority over their product.



Capital News Service political reporter Abby Brownback, left, interviews Maryland Gov. Martin O'Malley as part of her coverage of the state's gubernatorial election in 2010. Brownback, who received her master's degree in journalism from the University of Maryland, is now a reporter for *The Gazette* newspapers. PHOTO COURTESY SEAN MUSSENDEN

However, because faculty have the final say in programs like CNS, LoMonte believes these lab environments are a different story.

"It's hard for a college to disclaim liability if the professor is editing copy and controlling publishing," he said.

Though not a legal problem, another great dilemma for lab directors, said Lauterer, of the Carolina Community Media Project, is the challenge that comes with having to serve as the students' editor while assigning them a grade at the end of the day.

"That's one of the most subjective, daunting tasks that comes with this," Lauterer said.

CMA's Kanigel believes that, as long as journalism labs are not branding themselves as student publications, there are no problems with faculty serving as editors.

"The more skills a student can develop the better off they're going to be, and these programs help with that," she said.

LoMonte agreed.

"There's a lot to be said for learning your craft under the coaching of Pulitzer-winning professionals in the prime of their career," he said. "If you look at this as a supplement where students are able to publish work that used to be thrown into the professor's trash can, then it's nothing but a good thing."

Filling a void

Like the student newspapers at their respective campuses, the fundamental goal of most journalism labs is simple: provide the most thorough, comprehensive coverage possible to the public.

Few tackle this endeavor with the same depth and scope as the News21 project.

News21 — a national program that brings together student journalists from across the country to produce in-depth multi-

media content for major national media — was created in 2005 with support of the Carnegie Corporation of New York and the Knight Foundation.

Though News21 labs have spread to individual journalism schools nationwide, the program's nucleus still rests with its national operation, based out of Arizona State University's Walter Cronkite School of Journalism and Mass Communication.

In the past few years, News21 has produced major investigative reports on topics like food safety and transportation. This year — under the direction of award-winning professional journalists — students are working to produce a project on voter rights in the United States.

"Students going into journalism today essentially have to be digital decathletes. They aren't necessarily experts on all multimedia skills, but they have to be adept enough at them to get by," said Jody Brannon, a former national director of News21. "I think those are the skills this program is going to provide."

In a similar vein to News21's public service goals, Illinois' CU-CitizenAccess believes that by partnering with various local media outlets, it has been able to get its reporting out more readily and effectively to the community.

"That and educating our students is what we're about here," said Houston, the program's director.

Moving forward, Schaffer believes the journalism lab model will continue to catch on at journalism schools around the country.

"These programs are about more than popularity — they're real curriculum decisions. It's one way to really get people involved in convergence without having them take too many classes," Schaffer said. "They make a lot of sense, and I think there's no denying [these labs] are part of the future." ■

Student Media, Inc.

Faced with tough economic challenges, some universities have sold all or part of their student media operations to private business. Others are dumping student sales forces in favor of professionals. But what are the implications for student autonomy?

BY SYDNI DUNN

Amid changes in the economy and mass media, college publications are adopting creative strategies to stay afloat. One of the most popular has been to privatize portions of student media, particularly the business and sales departments, replacing students with professional teams.

And while this may be financially beneficial, college media organizations are concerned it could restrict the autonomy of the students, and, in turn, damage the publications.

The most recent example is Ohio State University's student newspaper, *The Lantern*, which had its business operations sold by OSU to Gannett Company at the end of the spring semester.

The Media Network of Central Ohio, a subsidiary of Gannett, has printed and distributed the publication for six years, but as of July 1 its contract with *The Lantern* was extended for another three years and now includes oversight of the newspaper's web hosting, email distribution, advertising sales, billing and collection services.

MNCO will pay OSU a monthly fee, totaling \$838,550 over the three-year contract term, according to the agreement. MNCO will keep all of the advertising sales dollars it generates.

Gifford Weary, dean of the social and behavioral sciences, which includes the School of Communication, said the money from Gannett will be funneled to the editorial staff and to "journalism training."

"Basically, Gannett will be contacting advertisers, selling the ads, collecting revenues and managing a student sales force," Weary said. "They will keep the revenue, and, in return, reimburse us for the costs involved in production. Whatever money we can save through them, we can reinvest."

Joseph Steinmetz, executive dean of the College of Arts and Sciences, said the main source of support for the newspaper came from advertising revenue and the college's general fund budget. He said "the sole reason for doing this was to put *The Lantern* on a good financial foundation."

The deal, Steinmetz said, will help student journalists focus their attention on improving the brand of *The Lantern* and its website, which hosts the online edition of the paper on Fridays. The print edition, which has a circulation of 15,000, is on

stands Monday through Thursday.

The newspaper staff announced the partnership on *The Lantern's* website just days after it heard of the deal for the first time, said student administrative assistant Alyssa Pupino.

But conversations about the deal with Gannett were ongoing for months prior, Weary said.

Weary said talks began at the end of 2011 and the deal was finalized at the end of the spring semester. According to emails acquired through a public records request, however, discussions with Gannett began earlier than June 2011.

Weary said following a bidding process – which appears from public records to have been a single email inquiry to *The Columbus Dispatch* – the university signed a confidentiality agreement with Gannett, making the school unable to tell student staff members the details of the contract until the deal closed.

As a result, *Lantern* employees felt "blindsided," said former editor-in-chief Jami Jurich. She said the main concern among staff members was the fate of the newspaper, as major media

companies have "a reputation of turning college newspapers into independent publications."

"All I wanted to know was, 'Is *The Lantern* going to be here in five years?'" she said. "I want to maintain the

the lantern

journalistic integrity of the paper."

Jurich also wanted answers regarding the impact it would have on the student-run business department.

Weary said MNCO will hire a "student sales force" to work alongside company representatives, but it remains unclear how many students will be rehired. In the spring semester, there were 14 business staff employees, 12 of which planned to return in the fall, according to *The Lantern's* announcement.

"The MNCO is looking forward to having *The Lantern's* student sales staff join us as employees of MNCO," said Laura Dalton, a spokeswoman for Gannett, in an email. "We hope they, too, will enjoy having the opportunity to work for and learn from a Fortune 500 company as they help *The Lantern* fulfill its mission."

The Lantern staff directed the Student Press Law Center to MNCO for details regarding the partnership, but Gannett refused to comment on how many students will be on the staff,



what their duties will be or how and when they will be selected. It is also unclear whether MNCO representatives will work on site.

Jurich said another question her staff raised was whether the partnership would have any effect on *The Lantern's* editorial process. She was assured by the administration, however, it would not.

Steinmetz and Weary stressed that *The Lantern's* 15 paid editors and faculty adviser will remain independent. In a press release, Ohio State officials said Gannett's role would be limited to business.

"MNCO's sole involvement in editorial operations will be laying out the advertisements on the pages that *The Lantern* editorial staff will fill with articles, graphics and other content to best inform its audience," according to the release.

As to who will have the final say on those advertisements, Weary said a "university liaison" will help sort out any issues that may arise. That person will be student media adviser Dan Caterinicchia, who said he could not comment.

David Swartzlander, president of the College Media Association, said this could be cause for concern because there is often overlap between the advertising and editorial departments.

"Sometimes advertising reaches into editorial and vice versa and that would worry me if I was the adviser of *The Lantern*," Swartzlander said. "What happens when you print a story that some advertiser doesn't like and it decides it's going to pull its advertising revenue? Does Gannett stop by the newsroom and say that they need to have more of a say in what goes into the paper? That's a gray area."

If anyone other than a student has the last word, it could mean trouble for the university, said Frank LoMonte, executive director of the Student Press Law Center.

"Advertising is First Amendment protected speech. The decision on what ads to accept or reject legally ought to remain with the students at the college level," LoMonte said. "The idea that some administrative intermediary would have the final say in a dispute raises big constitutional issues."

LoMonte also said if an administrator – a government actor – were to be the decision-maker, it would make the university

more susceptible to a First Amendment lawsuit when ads are rejected. If the final say remains with the students, there would be no claim.

He also questioned a portion of the contract that specifies the newspaper's publication schedule, which LoMonte said shouldn't be part of Gannett's deal. The regular printing schedule and the newspaper's special edition dates should be decided by the editor, he said.

And those are just a few red flags about the deal, Swartzlander said. The contract also states that if *The Lantern* is not producing a net profit for Gannett during any 10-month period, the company could "renegotiate" the contract.

Swartzlander questioned this statement, saying he didn't know how this would work.

"Does that mean they would have a say on the cost of collecting news? If that's the case, there are some big issues here," he said. "I've worked for commercial newspapers in the past and usually when you don't make your budget, people get laid

off and the newsroom is affected. Would that be the same thing at a student newspaper? Gosh, I would hope not."

MNCO President Bill Albrecht declined to comment on details of the contract.

Swartzlander said perhaps the biggest worry is that the partnership could negatively affect the students' experience and the newspaper.

"Here's how I look at it: student media is student media," he said. "Those students should be doing the writing, reporting, shooting the photos, making the calls for the advertising and collecting... that's how they learn. They can sit in a class and learn, but you can't really understand how it all works until you get out there and do it."

Swartzlander, a professor at Doane College in Crete, Nebraska, said from an academic standpoint, it doesn't make sense, but from a financial standpoint, he could understand why *The Lantern* would agree to the deal.

He said newspapers – including college publications – are experimenting with new ways to survive. He said it is becoming more common to see newspapers move toward digital-only publishing in the wake of financial setbacks.



Not unprecedented

While subsidizing Fortune 500 media companies can't be called a trend among college newspapers, it has been done in the past. And this isn't the first time Gannett has made its way into the college media network. This particular arrangement with *The Lantern*, however, is the first of its kind.

Gannett currently manages 82 daily newspapers, including *USA Today*. It also manages two college publications – the *FSView & Florida Flambeau* at Florida State University and the *Central Florida Future* at the University of Central Florida. But those newspapers were privately incorporated prior to Gannett's takeover.

The Tallahassee Democrat, owned by Gannett, bought the twice-weekly newspaper that serves Florida State University in 2006, marking the company's first venture into student media.

FSView General Manager Eliza LePorin began working for the publication in 2007 immediately following the purchase.

"I came on right after, and I've been able to see the changes occur," she said. "I think that it was for the best. Our transition was pretty seamless, and it continues to be."

She said students maintain control of editorial content while professionals oversee the sales department. She said the model is beneficial because the employees are more permanent than students because they aren't balancing school with work and they aren't graduating.

Asked if this model limited student experience, LePorin said the Florida State newspaper is a unique case, as there is no journalism curriculum offered at the university. She said the community newspaper is the outlet for learning about the field and gaining hands-on experience.

But when news of the purchase spread, Mike Hiestand, legal consultant for the Student Press Law Center, said he hoped it wasn't the "first of a big wave of things to come."

"There are dangers of students losing their voice and being absorbed by a corporate structure," he told *Inside Higher Ed*. "I do hope they maintain student autonomy."

Within the year, Gannett took over its second student newspaper, the *Central Florida Future*.

Gannett made its third attempt at Colorado State University in 2008, when the Coloradoan discussed buying the student newspaper, *The Rocky Mountain Collegian*. But when leaders from the university and the newspaper began privately meeting, the student staff spoke out.

The students, who were excluded from the initial conversations, wrote an editorial headlined, "*Collegian* not for sale." The bold statement garnered national support from media organizations and other student newspapers. Months later, the so-called "strategic partnership" was called off, though reports of why were contradictory.

It's unclear if the media company will continue to branch out into additional student media outlets. When Gannett was meeting with Colorado State, it told *The New York Times* there was "no grand strategy" and that it was "not looking to buy college newspapers."

Though LoMonte said he didn't know what the future would hold – for Gannett or for college publications – he speculated "what we'll see is more colleges maximizing revenue out of their publications."

LoMonte said there is increasing talk of student newspapers establishing professional advertising departments that would use full-time, experienced sales people instead of student trainees. He said this is a direct result of the economy.

Florida Atlantic University's weekly newspaper-turned-magazine the *University Press* is among the universities to adopt this

strategy. The publication now contracts a small, independent media company with one full-time professional salesman.

Marc Litt, proprietor of Nitch Media, said his one-man show is beneficial for his business, for the publication and for the university. Litt does all of the ground work and handles the advertising sales and revenue, working on straight commission.

Litt employs one student designer and has recently hired a student salesperson to begin work in the fall.

He said he hopes to eventually add more students to his team, but said he must first establish a sustainable business model. For now, he said it's more beneficial to have a professional handle the work.

"We want to have students involved, but we have to make this work," he said. "The goal isn't to waste my time but to get a student sales team up and running. It's about getting a model that students can sell and that runs smoothly."

Litt has worked with the *University Press* since spring 2010, first as part of another independent media group and then as a direct employee of the university. He served as the student media accounts manager for the spring 2012 semester, but he said it was better for the university and for him to work independently.

"It's like oil and water. Putting someone – a business man or a business model – within the university structure is conflicting. Everything that Sales does is quick, efficient, streamlined, and, well, the university takes the scenic route."

Litt opened Nitch, his new media company, shortly after his June 29 resignation.

"It's like oil and water. Putting someone – a business man or a business model – within the university structure is conflicting. Everything that Sales does is quick, efficient, streamlined, and, well, the university takes the scenic route."

Ryan Cortes, *University Press* editor-in-chief, said Litt helps the relationship between advertising and editorial. He said instead of reporting to the university, Litt reports to him. The students have control over the editorial content and the final say on advertisements.

"I don't have to focus on the ads or worry about that side of it," he said. "[That's] a burden I think a lot of other editors have. I think what we do is a little rare, but it helps me."

Cortes said Litt adding employees to his independent staff will enhance this relationship.

"One of the big concerns we had with Marc was, what happens if he gets hit by a bus one day? Who would sell our ads? He has been our one guy," he said. "This new model, in terms of getting and teaching students, will help in the future."

LoMonte said college media will see more contracts with private vendors in the coming years, but there are risks involved. Those risks, he said, could include the loss of student jobs, the experience and the university mentality that the newspaper is a vehicle for learning.

"The newspaper is different than the food service, the bus system," he said. "It has an expressive role with constitutional values that isn't true of any other outlet on campus. When you contract away all or part of student media operations, students should be given a voice – if not a decisive vote."

He said for newspapers that are directly associated with the university, like Ohio State, it is unlikely a media company will completely buy out a publication.

"Any college would face a stiff resistance from the students and the college media network as a whole if it tried to contract away student free press rights," he said. ■

Is copyright law curbing our freedom in the digital age?

BY CAROLYN SCHURR LEVIN, ESQ.

As a media lawyer, I am frequently asked the following two questions by clients and students alike: “Is this copyrighted?” and “Can I use it?” The answers, which often bring surprised reactions, are almost always “Yes!” and “Not without asking for permission.” Because of the widespread confusion about copyrights, what they are and what they protect, a basic understanding of copyright law is essential for not only student journalists, but for anyone working with content from the Internet for just about any purpose.

Copyright is a perplexing legal issue in the age of online publishing. Online culture thrives on “open source” software and paywall-free information sites – incredibly valuable material is freely available to be enjoyed and improved on. But copyright did not disappear with digital information-sharing – the law still very much applies, and those who ignore it can be slapped with takedown notices or even sued.

Roots of the law

Copyright law is old – really old. British King Henry VIII issued the first royal grant of printing privilege, the forerunner of copyright law, back in 1518. In our country, the framers of our Constitution believed protection for authors, inventors and other creators to be so important that they included it right in the U.S. Constitution. Article I, Section 8 of the Constitution states: “The Congress shall have Power. . . To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” What that means is simply that the Constitution gives Congress the right to pass copyright laws to protect authors and inventors.

Based on this constitutional language, Congress passed the first federal copyright law in 1790, and has since amended it on numerous occasions. Copyright law is contained in Title 17 of the United States Code. Despite the many refinements that it has undergone over the years, the essence of our copyright law has not changed all that much. U.S. copyright law is a form of protection for all “original works of authorship fixed in a tangible medium” of expression, including literary, dramatic, musical, artistic, and certain other intellectual works.¹ There are only two requirements for copyright protection: (1) originality and (2) fixation in a tangible medium of expression.

Originality and fixation

Let’s break those requirements down. First, copyright protects only “original works of authorship.” What is original? The term “original” is not defined in the copyright law. Instead, Congress left it to the courts to come up with a sufficient definition. There have been many attempts. Judge Learned Hand defined original in *Sheldon v. Metro-Goldwyn Pictures Corp.*,² as follows: “if by some magic a man who had never known it were to compose anew Keats’ Ode On a Grecian Urn, he would be an ‘author,’ and, if he copyrighted it, others might not copy that poem.” Other courts have explained that the work must owe its origin to the author. Thus, if two report-

ers for different publications write identical blog posts – without looking at, speaking about, or having any other knowledge of the other’s work – each will own the copyright in his own work.

The only other requirement for copyright to exist in a work is that it be “fixed in a tangible medium of expression.” Simply setting pen to paper – or clicking a camera shutter – is enough. Congress has defined this second requirement: “Fixed in a tangible medium of expression” means “sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than a transitory duration.”³

Under this broad standard of copyrightability, not only newspaper and magazine articles and books, but films, radio broadcasts, websites, advertisements, music, and art – almost everything created for the mass media is copyrighted. (And yes, this includes snapshots posted on Facebook.) Moreover, copyright protection applies whether or not the work is published – even unpublished works are protected.

Who owns the right?

Copyright protection exists from the moment the work is created in fixed form that is either perceptible directly or with the aid of a machine or device.⁴ The copyright in the work immediately becomes the property of the author/composer/artist who created it. In practice, that means that a writer owns the copyright in his manuscript as soon as he types the words on his computer (provided that those words are his own). A photographer owns the copyright in her photograph as soon as she takes that picture. A painter owns the copyright in his painting as soon as brush touches canvas. A musician owns the copyright in his score as soon as that score is recorded, either in writing or on audiotape. No paperwork needs to be filled out. The work is copyrighted upon creation. Only the author/creator or those deriving their rights through the author/creator can rightfully claim that copyright.⁵

The creator can, of course, transfer the copyright to another person or company. For example, freelancers often sell or transfer the rights in their work to publishers. Writers and photographers often relinquish their copyrights to book or magazine publishers. And employees working for companies do not individually own the copyrights in their work done on company time – their employers do.⁶

An owner’s rights

Copyright law gives the copyright owner six exclusive rights:

- the reproduction right
- the derivative work right
- the distribution right
- the performance right
- the display right and
- the digital transmission performance right⁷

Exclusivity is a meant to encourage authors and other creators to create new and original creations that the public can enjoy. These rights permit the copyright owner to financially profit from



MORE @ yearbooklaw.com

For simple step-by-step instructions on how to register your creative work for enhanced copyright protection.

a creation. The premise of the law is that if these exclusive rights were to be weakened, there would be less financial incentive for authors to create original works.⁸ In fact, the U.S. Supreme Court has characterized copyright as “the engine of free expression” because it provides a vital economic incentive for the creation and distribution of much of the literature, commentary, music, art and film that makes up our public discourse.⁹ (Of course, copyright’s critics insist that, far from the “engine” of free expression, copyright is an “emergency brake” on free expression because it locks up the ability to sequelize or otherwise adapt other people’s work for so many years – a book published today will be protected for at least the lifetime of the author plus 70 years.¹⁰)

The misunderstood fair use

“But, I’m using less than 20 words from the text, or less than 30 seconds of the song.” I often hear that plea for leniency from those wishing to use another’s copyrighted material in their own work. Sorry – just because it is less than 20 words or less than 30 seconds does not automatically give you a pass.

Because under traditional copyright law, the use of any copyrighted material for any reason is infringement, the law posed a huge obstacle for teachers, critics, scholars and others who regularly redistribute parts of copyrighted materials. Therefore, the courts have recognized that some copying may be acceptable under the doctrine of “fair use.” Fair use permits you, in certain limited circumstances, to do things that would otherwise have been illegal under copyright law.

Unfortunately, the fair use concept is woefully misapplied and misunderstood – “the most troublesome in the whole law of copyright,” as one court aptly stated.¹¹

Section 107 of the Copyright Act of 1976 expressly recognizes the fair use defense to copyright infringement. Section 107 does not explicitly define “fair use.” Rather, it lists “the factors to be considered” when determining whether the use of a work in a particular case is a defensible fair use. Those factors to be applied when making a fair use determination are:

- The purpose and character of the use (commercial versus nonprofit/educational);
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use upon the potential market for or value of the copyrighted work.

In each case where copyrighted material is used without permission, it is up to the courts to determine whether that use constitutes an infringement or a fair use. Although fair use determines the amount of photocopying, software duplication and television videotaping permissible, the legal outcome depends almost exclusively on weighing subjective factors. The absence of precise standards leaves individual users to evaluate circumstances and to conclude

for themselves whether they are within the law or at risk.¹²

Notwithstanding the imprecision in defining fair use, many uses of copyrighted material are routinely found to be fair use. For instance, when a professor photocopies a newspaper article to distribute and discuss with her class, the professor is more than likely protected by fair use. When a video editor uses clips from a movie in a television segment produced to comment on the year’s best movies, the use is likely to be protected. Criticism and commentary are more often than not protected by the fair use defense. For example, if you are writing a book review, fair use permits you to reproduce some of the book in that review. Similarly, parody – a work that ridicules another work – is also often found to be fair use. Judges recognize that by its nature, parody demands some taking from the original work.

Keeping up with technology

All laws, of course, must be flexible enough to adapt to changes in society and circumstances that could not have been anticipated when the laws were written. For copyright law, this has meant attempting to keep pace with the explosion of technology that has occurred in the 222 years since the first U.S. copyright law was passed. In 1790, there was no photography, radio, motion pictures, television, videotaping, photocopying, or, most significantly for copyrights, Internet.

As each new technological advance has placed stress on the copyright system to adapt, the courts have attempted to apply traditional copyright law to new and unforeseen problems. Thus, the legal standards for infringement that have been applied to books, newspapers and magazines have similarly been applied to copyrighted material on the Web. Some commentators believe that this is working; others believe that legal reforms are needed.

Because, as we have seen, all that is needed for copyright to exist is originality and fixation, virtually everything accessible through the Internet is copyrighted, from websites to blogs, email messages and video games. Digital or electronic content, including graphics, photographs, and electronic databases are subject to the same protection under the copyright laws as non-electronic traditional works.

However, the Internet is far different than previous forms of media that have tested our copyright laws. The problem created by the Internet, as Harvard Law professor Lawrence Lessig aptly states, is that the Internet “makes possible the efficient spread of content” that “does not respect the traditional lines of copyright. ... The network doesn’t discriminate between the sharing of copyrighted and uncopyrighted content. Thus has there been a vast amount of sharing of copyrighted content. That sharing in turn has excited the war, as copyright owners fear the sharing will ‘rob the author of the profit.’”¹³ Professor Lessig continues: “The warriors have turned to the courts, to the legislatures, and increasingly to technology to defend their ‘property’ against this ‘piracy.’ A generation of Americans, the warriors warn, is being raised to

believe that ‘property’ should be ‘free.’”¹⁴ In other words, many Internet users simply do not believe that other people’s works on the Internet are protected by copyright.

Because the Internet provides a simple, inexpensive way to create instant and perfect copies of text, sound and images, professional creators of content have panicked – arguing that even more stringent copyright laws are needed to protect their original creations from unauthorized use. The movie and music industries have, for example, lobbied lawmakers and succeeded in lengthening the length of copyrights. In 1998, an amendment to the copyright law called the Digital Millennium Copyright Act added 20 years of protection to copyrighted works.¹⁵

On the other hand, there are observers who argue that strengthening the copyright laws in response to the growing free use of content on the Internet is the wrong way to go. These protestors, often called the “free culture movement” or “Copy Left,” believe that there should be relaxed copyright restrictions for the use of content on the Internet. “They stress that borrowing and collaboration are essential components of all creation and caution against being seduced by the romantic myth of ‘the author’: the lone garret-dwelling poet, creating masterpieces out of thin air. ‘No one writes from nothing,’” says Yale Law School professor Yo-chai Benkler. “We all take the world as it is and use it, remix it.”¹⁶

Nowhere has the battle been fiercer than in the sharing of online music. File sharing, or the ability to move files from one computer to another without either paying the copyright owner or getting the copyright owner’s consent, has created unforeseen problems. In the late 1990’s, file sharing services such as Napster and Grokster began to facilitate the free transfer of copyrighted music, giving people access to recorded music without buying a CD. The copyright owners (in this case, the music companies) sued both the file sharing services and individuals who used those services. This, as we all know, led to time consuming, expensive lawsuits and a lot of bad publicity for the record companies – but did not stop the practice of downloading music.

The film and television industries have faced similar problems. Illegal downloading is blamed for billions of dollars in lost sales in those industries. The music, film and television industries have attempted to combat the piracy by turning to the courts and traditional copyright laws, with varying degrees of success. Although downloading songs without payment has been found to be copyright infringement and not fair use by multiple courts – and despite lawsuits and other attempts to inhibit peer-to-peer file sharing providers – according to the Electronic Frontier Foundation, “file sharing is more popular than ever.”¹⁷

How best to balance the concerns of creators about losing their original works on the Internet against the concerns of those “free culture” or “Copy Left” advocates who believe that copyright laws need to be adapted to the digital age? There is, today, no clear answer. For now, what is clear is that, as it stands today, anyone who violates the exclusive rights of a copyright owner, no matter what form that content may be in, can be liable for infringement under the copyright law.¹⁸

Practical guidelines

All of this leads to a message of caution. The use of any content from the Internet – whether making identical copies, reworking, incorporating parts of a work into a newly created work, or even cutting, pasting, and recombining parts of video games, movies, or sound recordings – should be approached warily. Don’t panic and stop creating, innovating and mixing old ideas to create new ones. But, in the process of creating and innovating, if you

do use copyright protected content without the creator’s permission, keep in mind the following guidelines to protect yourself and your work in the digital world:

Almost all content found on the Internet is protected, whether or not the content appears with a copyright notice. Just because a work is publicly available on the Internet does not mean that it is in the “public domain,” i.e., available for free use by all.

Any use of that content – reproduction, copying, creation of a derivative work, distribution, sale, performance – without permission from the copyright owner may subject you to liability.

There is no magic number of words, seconds of a song, or parts of another type of work that can be used without liability. Fair use is always judged on a case-by-case basis.

Simply crediting the source will not protect you if you are sued by the copyright owner for infringement. Credit is not the same thing as consent.

Most importantly, when in doubt, ask permission. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some work. The Copyright Office of the Library of Congress may be of assistance in locating a copyright owner.¹⁹

Attorney Carolyn Schurr Levin, a lecturer at Stony Brook University School of Journalism and LIU Post School of Visual and Performing Arts, is a former vice president and general counsel at Newsday and a veteran college newspaper adviser.

Endnotes

- 1 See www.copyright.gov.
- 2 81 F.2d 49, 54 (2d Cir. 1936).
- 3 See 17 U.S.C. §102(a).
- 4 See 17 U.S.C. § 102(a).
- 5 <http://www.copyright.gov/circs/circ01.pdf>.
- 6 Work created in the course of salaried employment belongs to the employer as a “work made for hire.” But note that the employment must be salaried, not just some token payment, and the relationship must be truly “employment,” not just a contractor relationship. See *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989).
- 7 <http://www.copyright.gov/circs/circ01.pdf>.
- 8 Nimmer, Marcus, Myers and Nimmer, *Cases and Materials on Copyright* (Lexis Nexis, 8th ed., 2012) at 30.
- 9 *Harper & Row, Publishers, Inc. v. Nation Enter.*, 471 U.S. 539, 558 (1985).
- 10 The SPLC’s Copyright Duration Calculator, http://www.splc.org/virtual_lawyer/copyright_71112.asp, can help you figure out when the copyright is scheduled to lapse on a creative work.
- 11 *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661, 662 (2nd Cir. 1939).
- 12 Kenneth Crews, *Copyright, Fair Use and the Challenge for Universities* (Univ. of Chicago Press, 1993) at 2.
- 13 Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (Penguin Press, 2004) at 17-18.
- 14 *Id.* at 18.
- 15 Pub. L. No. 105-304, 112 Stat. 2860 (1998).
- 16 Robert S. Boynton, *The Tyranny of Copyright*, *New York Times Magazine*, (Jan. 25, 2004) at 42.
- 17 <https://www.eff.org/issues/file-sharing?page=1>.
- 18 17 U.S.C. § 101 et seq.
- 19 www.copyright.gov.

STUDENT PRESS LAW CENTER

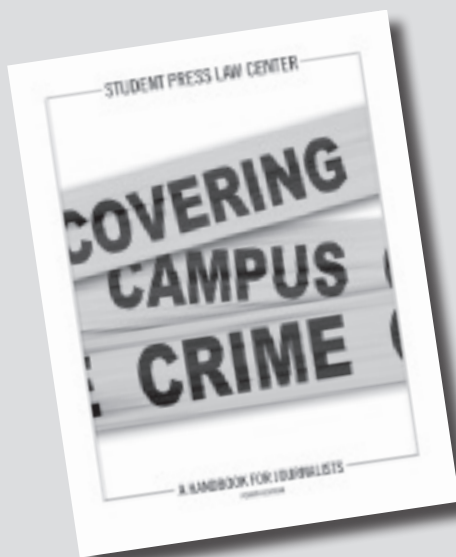
1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209-2275
Phone: (703) 807-1904
Website: www.splc.org

Non-Profit Org.
U.S. Postage Paid
Washington, DC
Permit No. 4702

ATTENTION: STUDENT MEDIA

The Student Press Law Center's Covering Campus Crime

fourth edition



Designed to provide an understanding of the law and practical newsgathering tips, this handbook will guide journalists as they cover safety issues on college campuses. Learn about the public records police must disclose, and how to use them.

Email us for a free printed copy or download a PDF at:
www.splc.org/cc



'Like' us on Facebook for the latest student media news. Scan this QR code or go to facebook.com/StudentPress



The Student Press Law Center gratefully acknowledges the generous support of the following institutions and individuals who have joined in our effort to defend the rights of student journalists.

Contributions from May 1 through Aug. 15, 2012.

STUDENT VOICE CHAMPIONS (\$5,000 to \$9,999)

Western Association of
University Publications Managers

FREE PRESS PROTECTORS (\$1,000 to \$4,999)

Richard Fitz
Kansas Scholastic Press Association
Andrew Stark
Mark Stencel
Washington Journalism Education Assoc.

STUDENT VOICE ADVOCATES (\$500 to \$999)

Logan H. Aimone
Quill & Scroll

FIRST AMENDMENT FRIENDS (\$100 to \$499)

Manolo Barco
Michelle Breidenbach
Madeleine Corson
Dale Herbeck
Illinois Journalism Education Association
Kristie Kemper
Kent Middleton
Martha Milner
Missouri State University
Nat. Conf. Comm./Justice of Piedmont Triad
Otterbein University
Pennsylvania School Press Association
Bruce Plopper
Therese Putz
Southern University Newspapers
Mary Stapp
Evelyn Stevens
University of Indiana
Fern Valentine

To support our work,
visit www.splc.org/donate

If you're a federal employee,
or know one, please consider
supporting the SPLC's mission
through the Combined Federal
Campaign program. Just use
CFC # 96157

*The SPLC is a 501(c)(3)
nonprofit charity.*