

STUDENT PRESS LAW CENTER

# REPORT

SPRING 2015 VOL. XXXVI, NO. 2



**Yak flack**  
How should  
schools respond  
to anonymous  
speech?

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

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Anonymous speech has existed for centuries. From Sharpie notes scrawled on public bathroom stalls to strings of comments from unidentified posters on online message boards like Reddit and 4Chan, anonymous speech has become ubiquitous in modern culture. But with new technology comes new worries. In the Yik Yak era, how should schools respond to students' anonymous speech?

*By Katherine Schaeffer*

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## Alumni support network priceless for student media

When high school students achieve great heights in athletics, music or debate, they receive accolades from superintendents and school boards. When Howard Spanogle's students at Illinois' Glenbard East High School published the story of a lifetime, they received recognition of a different sort: A box of bricks in the mail.

Those bricks, a wordless retort to the Glenbard East *Echo's* coverage of resume-padding by the chair of the school's English department, failed to intimidate the newspaper's battle-tested 1986-87 staff. They'd already been interrogated by the English faculty demanding to know what the students planned to publish – to which editor-in-chief Greg Jao imperturbably replied: "In this case, I am a journalist, not a student."

Jao recounted that backbone-forging experience as part of a May 2015 gathering of alumni of one of the Chicago area's most storied journalism programs. Organized under the leadership of now-retired adviser Spanogle, the *Echo* reunion brought 200 former newspaper staffers back to Chicago to celebrate the irreplaceable educational experience of student journalism – what key-noter Jeff Jarvis, the *Entertainment Weekly* founder and bestselling author, called "*Glee* for the tone-deaf."

The event raised more than \$10,000 to



Longtime *Echo* adviser Howard Spanogle addresses a May 2 gathering of Glenbard East High School newspaper alumni at Chicago's Cantigny Park. Photo courtesy of Randy Swikle

support the work of the Student Press Law Center, for which we're unendingly grateful to Howard and his patient wife, Juanita, as well as an organizing committee led by alumni Christine Zrisny, Julie Kracke Schorfheide and Julie K. Murphy.

Beyond the money raised and friendships renewed, the *Echo* event set an inspiring bar for what others might accomplish if they reconnect with the lawyers, business executives, authors and – in the *Echo's* case – Space Shuttle astronauts whose path to success began in the newsroom.

At a time of shrinking institutional support, it has never been more essential for

those invested in student journalism to build support networks and identify allies. A deeply invested alumni community can speak out publicly if news is censored, advisers are removed or programs are eliminated.

Imagine what would happen at a typical high school if football was targeted for elimination or a championship-winning coach was fired. Parental boosters would protest so forcefully that any school board member or superintendent who values his job would reverse the decision instantly. That's where journalism should be – and with a well-cultivated alumni network, that's where it can be.

## Investigative reporting shows 'Campus Insecurity'

In October 2012, former Amherst College student Angie Epifano wrote a wrenching letter to her campus newspaper detailing her nightmarish mistreatment at the hands of Amherst authorities after reporting a rape. That letter became the catalyst for journalists everywhere to begin asking overdue questions about the way colleges respond when students report sexual assaults, and whether colleges' rosy self-reported crime statistics could be believed.

The anecdotal evidence that colleges misled the public with too-good-to-be-true crime disclosure reports (required each year under federal law) was compelling: the University of Louisville, with 21,400 students,

claims to have had four rapes in the last three years; the University of Memphis, with the same size enrollment, acknowledges five in the last three years.

Armed with some computer-assisted reporting training, the SPLC's Sara Gregory set out to determine whether the horror stories reaching our legal hotline were part of a systemic problem of disregard for safety and accountability. Sara was the first reporter in the country to comprehensively analyze and quantify the magnitude of colleges' underreporting – in any given year, half of America's colleges report zero sexual assaults, and nearly 20 percent claim never to have had an on-campus rape.

Sara's findings were published as part of a multi-part series, "Campus Insecurity," beginning in September 2014 in the *Columbus Dispatch*, and in June, Sara and the *Dispatch* investigative team (Jill Riepenhoff, Collin Binkley and Mike Wagner) were recognized with the AP Managing Editors' First Amendment Award, recognizing journalism of distinction that advances the cause of a better-informed public. We're proud to be the catalyst for great investigative journalism about schools and colleges – and, on occasion, to do a little of it ourselves.

A handwritten signature in black ink, reading "Frank D. Lomonte".

# FERPA Fact

FERPA Fact is an SPLC project to fact check the use of FERPA — the Family Educational Rights and Privacy Act — when denying access to public records. Sometimes, the records are legitimately protected by FERPA. Sometimes the records are protected by other privacy laws. And sometimes, schools just don't want to release the records.

Interest in the identities of Missouri statehouse interns followed news that a state university was conducting a Title IX investigation after two students ended their Senate internships early. Interest increased after House Speaker John Diehl admitted to sexting a 19-year-old intern. He's not speaker anymore.

In response, Missouri legislative officials are citing the federal student privacy law, FERPA, to shut down inquiries.

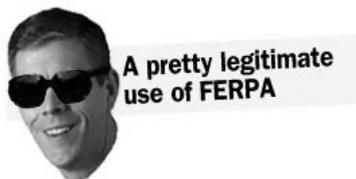
**SPLC Executive Director Frank LoMonte:**

Bottom line: Colleges have never classified the list of which students received which internship placements as a confidential educational matter, and they can't start now just because those placements became newsworthy. You can't be a little bit pregnant and you can't be a little bit FERPA, either.

(Bonus extra-credit law: Essentially every educational institution in America, including the University of Missouri, maintains a "directory information" policy that says information about "participation in officially recognized activities" is categorically exempt from FERPA. Internships are an officially recognized activity. So, there's that.)

Not to mention that we're not talking about a college. We're talking about the Missouri legislature. FERPA regulations say that a college may disclose confidential education records to outside parties only if that outside party is "under the direct control of the agency or institution with respect to the use and maintenance of education records." So if any FERPA violation occurred, it would be when a university disclosed education records to the Missouri legislature, which cannot operate "under the direct control" of a university (the legislature controls the universities, not the other

## THE ARNE METER @ FERPAFACT.TUMBLR.COM



way around).

But of course, that didn't happen. Because a list of internship placements isn't a confidential FERPA record.

**We rate this: Three Arne Duncans**

The University of Memphis banned Zeta Phi Beta sorority from campus for three years for code-of-conduct violations including hazing, physical abuse and "conduct dangerous to others." University records obtained by the *Daily Helmsman* student newspaper indicate that alumni as well as current students participated in the abuse, which took place at the home of a former student and left one would-be ZBT with a broken nose. But Memphis won't release information about the identity of the non-student assailants, citing the Family Educational Rights and Privacy Act.

**SPLC Executive Director Frank LoMonte:**

Why in the world, if you're the University of Memphis, would it seem important to you to protect the "privacy" of a dumbass who hosts beat-down parties? Wait, don't answer that. Memphis is part of its own elite fraternal organization for which the answer to every question (including "have we had any rapes lately?") is always "FERPA."

The Department of Education says that records about alumni "directly related" to their attendance as students are covered by FERPA's prohibition against disclosing "education records." But the DOE has gone on to explain that "personally identifiable information related solely to a student's activities as an alumnus of an institution is excluded from the definition of education records" and therefore not subject to withholding under FERPA.

**We rate this: Three Arne Duncans**



North Dakota House committee members listen to testimony in support of an “anti-Hazelwood” law in February at the North Dakota Capitol in Bismarck. **Courtesy photo**

## A catalyst for reform

North Dakota lawmakers have approved an anti-*Hazelwood* law to protect students’ speech rights, helping rebuild a national movement.

BY ELAINA KOROS

2009 had been a good year for journalism adviser Jeremy Murphy and his students. For the first time, West Fargo High School’s student newspaper was considered the best in North Dakota by a regional scholastic press group, and one student journalist was named the state’s best by the Journalism Education Association.

However, in June, Murphy received a tough phone call — while he could continue to teach at West Fargo, he would no longer serve as journalism adviser.

“I was slightly devastated,” Murphy said. “I didn’t see it coming, and I was shocked.”

Murphy said he thinks the demotion stemmed from his

advising approach, which prioritized the interests of his students over controlling content to avoid negative depiction of the school. His students covered district policy changes including a transition to block scheduling and reported on how schools in the district responded to flooding, topics which Murphy didn’t see as controversial but timely.

While Murphy’s reassignment was legal, come fall, similar situations will more easily be avoided.

In April, Gov. Jack Dalrymple signed The John Wall New Voices Act, which ensures the free-speech rights of journalism students in North Dakota public schools and colleges. The law passed unanimously in the state legislature and will go into effect



A North Dakota House committee listens to testimony in February, where committee members approved a bill to protect the First Amendment rights of student journalists by preventing school administrators from invoking the *Hazelwood School District v. Kuhlmeier* precedent. Courtesy photo

in August.

“If the law was in place in 2009, I wouldn’t have been able to be removed for supporting what my students were publishing,” Murphy said. “It provided a good focal point as we started talking about this law and moving forward that we don’t really want that to happen to anybody.”

Steve Listopad, an assistant journalism professor who helped write the law, said Murphy’s eventual reinstatement in 2011 gave proponents of the new legislation “all of the ammunition needed.”

“There’s no ambiguity,” he said. “They couldn’t have rehired him if there were legitimate reasons to fire him in the first place.”

In 1988, the Supreme Court held in *Hazelwood School District v. Kuhlmeier* that students engaging in school-sponsored speech didn’t have the same First Amendment protections as other citizens, therefore allowing school administrators to edit student media through actions “reasonably related to legitimate pedagogical concerns.”

To counteract this blow to student free speech, five states passed “anti-*Hazelwood*” legislation, joining California, which already had a student free expression law on the books. Since the turn of the century, legislative momentum has lulled. However, some say North Dakota’s law could spur a nationwide movement to secure student journalists’ free-speech rights.

“If journalism students at public high schools and public colleges and universities can receive the level of protection that North Dakota has given them unanimously, it’s wide open for any state to pass this bill,” Listopad said. “It’s not a question of ‘if’ it can be done anymore, it’s a question of ‘when’ they are going to do it.”

### A student bill with classroom origins

The North Dakota bill originated in Listopad’s civic and citizen journalism class at the University of Jamestown in 2013. The class researched and wrote the bill and, at the end of the semester, sat down with Democratic Reps. Jessica Haak and Corey Mock, who eventually co-sponsored the legislation.

“I was able to have experience with what is now real legislation that I am very excited about,” said Dan Arens, a student in Listopad’s class. “The First Amendment, freedom of speech and freedom of the press are some of the most fundamental rights that we have as Americans.”

Listopad said the class studied anti-*Hazelwood* legislation in other states, adopting facets of California’s legislation, the only student free expression law to encompass private schools. However, they also considered the policies of Arkansas and Iowa, states with “representative value systems” similar to North Dakota. The class intentionally drafted an ambitious bill, which would have leverage in committee.

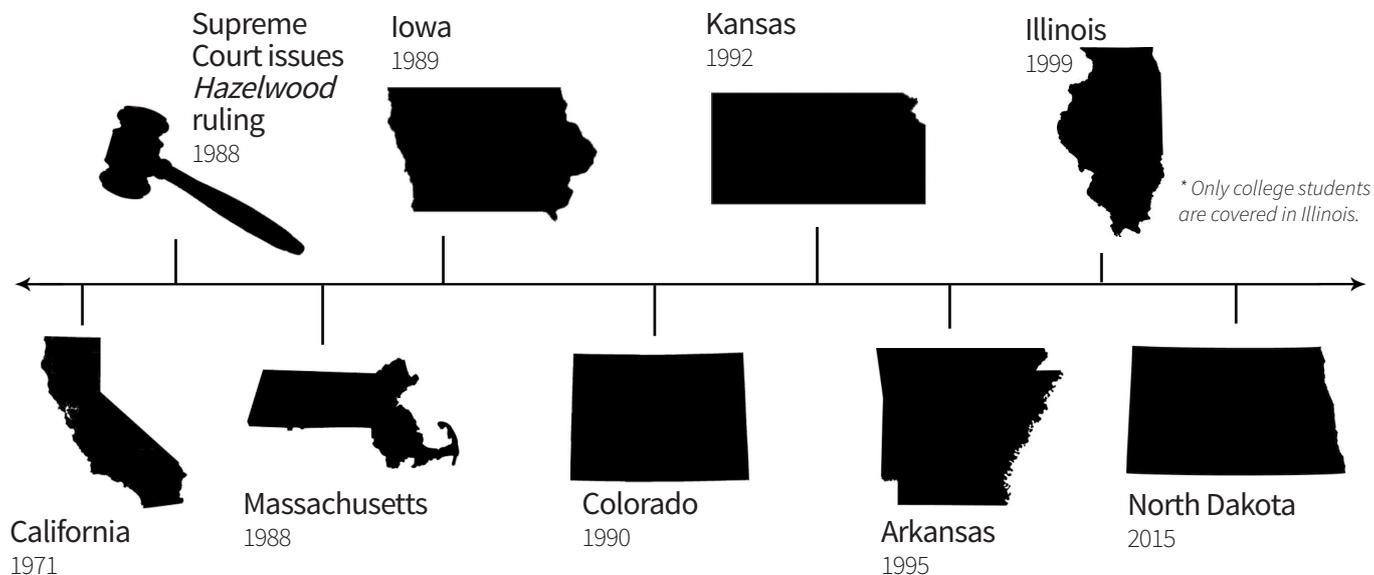
“We wanted to write a bill in such a way that there was room to compromise,” Listopad said. “If you wrote a bill in such a way that only addressed one part, then you had nothing to give up if things got sticky, and so we wanted to write a bill that was comprehensive so that there was some wiggle room.”

Moving forward, each North Dakota public school district must draft a policy in compliance with the new law, which guarantees student expression the free-speech standard established in the Supreme Court’s 1969 decision of *Tinker v. Des Moines Independent School District*.

In that case, the nation’s highest court determined students do not “shed their constitutional rights to freedom of speech or

# 27 years of 'Anti-Hazelwood'

North Dakota became the eighth state this year to guarantee the free-speech rights of student journalists.



expression at the schoolhouse gate,” preventing school officials from punishing students for their speech unless they can demonstrate it will cause a “substantial disruption” of normal school activities or invade the rights of others.

“We wanted to make sure that high schools in our state have to write their own code for handling student journalists and student speech, so that the baseline is now the *Tinker* standard but they have to create explicit policy within their school district,” Listopad said. “As far as collegiate expression, our goal was to codify the existing values that are already in North Dakota university system policy.”

## A safeguard against intangible censorship

North Dakota Newspaper Association Executive Director Steve Andrist gave a pervasive opinion about the law — that while blatant censorship is not a common problem in North Dakota schools, the new rules will establish protections against subtle offenses and send a message of empowerment to student journalists and media professors.

“All the way through the testimony on this particular bill, there were not egregious examples of school administrators stamping out the rights of student journalists,” he said. “But the law sets a tone and tells student journalists and the general public that free speech is important in this state. It’s a principle that we really want to live by, and we want to teach our future journalists how important it is by giving them those rights.”

Bismarck State College sophomore Katie Winbauer, who testified at committee hearings, said her high school’s administration inhibited her from reporting on controversial topics including underage drinking and a scandal about the school’s football coach.

“I definitely wish this legislation would have been passed when I was in high school because I would have fought harder for my stories,” she said. “Since I knew there wasn’t really anything I could do because this legislation wasn’t in place, I just kinda gave up.”

Emily Chadwick, a senior at West Fargo High School who also testified in committee hearings, depicted a different high school environment — one which has supported her reporting, no matter how controversial.

“We flourish as student journalists because we aren’t subject to prior review, we don’t have our stories taken from us and we can write about sensitive topics,” she said. “I think we should all have the same rights as professionals. We do have freedom of speech and we should be able to write what we feel comfortable writing.”

Arens, who never faced censorship as an opinion columnist at the University of Jamestown, said the value of the experience gained by reporting on sensitive issues outweighs the harm of potential missteps.

“You have to start getting that experience somewhere to make you a better journalist, and what better place than in school where you can tie your journalism experiences with what you’re learning in classes,” he said. “I think it’ll provide for better journalists in the future if we provide for more press freedom at the student level.”

## The exclusion of private schools

The bill initially sought to protect the free-press rights of student journalists in both public and private schools; however, opposition quickly contested the private component. Arens himself had qualms about including private schools while the bill, believing that “the government should not be forcing private schools to set specific standards for student press protections.”

*“I need to do a little groundwork here, but based on my experience in Iowa over 20 years ago and North Dakota’s recent success, the time may be ripe for such legislation here in South Dakota.”*

**Mary Arnold**, *Head, Department of Journalism and Mass Communication, South Dakota State University*

*“I’m hoping to work it into a course in the next few years ... I’m just thinking about it at this point — inspired, of course, by the good work being done in North Dakota.”*

**K.C. Wolfe**, *Adviser of The Current, Eckerd College, Florida*

*“We were inspired by North Dakota’s success and all the support they’ve been giving us, and we’ve been following a blueprint for what worked for them. We’re working toward gaining support and hopefully getting a legislator to propose a bill in the fall.”*

**Tom McHale**, *Board member, The Garden State Scholastic Press Association, New Jersey*

The North Dakota Catholic Conference submitted a formal opposition to the bill’s first draft, writing that “government should not unduly interfere with the policies and practices of private institutions.”

“The provision impermissibly invites courts to review the ‘religious tenets’ of a religious organization — something that is outside a secular court’s competence, in addition to being unconstitutional,” according to the statement.

Christopher Dodson, the Executive Director and General Counsel for the North Dakota Catholic Conference, said the provision violated the free-speech and expression rights of private institutions.

“These are private schools for a reason,” he said. “Other institutions are run by the state, and the state has a right to set the policies of what they can and cannot do, but it would set a very dangerous precedent to allow the government to tell private schools what they can and cannot do.”

Rep. Alex Looyesen, the bill’s lead sponsor, said the bill was ultimately amended to exclude private schools in order to guarantee the passage of the other sections.

“Personally I don’t believe you check your First Amendment rights at the door when you go to a private school, but we thought from a strategy standpoint that it would be better to pass two-thirds of the bill than lose the whole thing,” said Looyesen, a Republican.

However, both Looyesen and Listopad said they hope future legislation will grant private school students in North Dakota the same free-speech rights now granted to public school students in the state.

“We’ll be back again in two years,” Listopad said, noting that the bill originated at one of only two private universities in the state with student media. “I think we’ll be successful.”

#### **A change of heart?**

On its journey to becoming law, another concern with the legislation dissipated in committee, Listopad said.

“The North Dakota Council for Educational Leaders came to the House education committee meeting to oppose the bill, but then during our testimony, they flipped and stood up in support of the bill,” he said, noting that the committee amended the bill to include “relatively minor” edits proposed by the NDCEL.

An umbrella organization of all educational leadership associations in North Dakota, the NDCEL represents all schools and students in the state. Executive Director Aimee Copas said the organization’s support for the bill was contingent on the acceptance of their proposed amendment, which ensured that libelous and lewd speech in schools would not be protected.

“Regardless of how many freedoms that we want to give, the district is still the publisher of content,” she said.

Copas said that ever since her amendment was “adopted immediately,” she has had high hopes for the new law.

“I think that this is groundbreaking legislation, and more

than anything, I don't think that it suddenly allows the students to do inappropriate activities," she said. "Rather, I think it better defines how we interact with each other as educational leaders and with our students."

### **A bipartisan decision**

After the House Education Committee made 11 amendments to the bill, most far less substantial than those proposed by the North Dakota Catholic Conference and the NDCEL, the legislation had widespread support and was passed unanimously in both the House and the Senate.

"The unanimous vote shows that it was a great bipartisan effort and that our legislature recognized how important this bill was," said Sen. John Grabinger, a sponsor of the bill. "I think the best thing is that it's not necessarily political, it's just the right thing to do."

Listopad said he was surprised by the bill's bipartisan support — a good sign for other conservative states.

"There's a measure of disbelief that it passed at all in the first round, but it's harder to wrap my head around how successful it was," he said. "We know that these aren't easy in any state, especially in a super-majority Republican state. We thought that this would be much more challenging and would take several attempts."

The only concern with the final bill regarded its implementation in rural communities, Listopad said.

"The entire time, from the House Education Committee to the House floor to the Senate Education Committee to the Senate floor, there were only two votes against the bill," he said. "They were by House representatives in very small school districts that didn't have journalism programs and didn't have journalism advisers. They were concerned about teaching kids in these schools proper journalism ethics and practices."

### **The future of student free speech**

Listopad said he hopes the effect of the new law will expand beyond North Dakota. Since his initial involvement with The John Wall New Voices Act, Listopad has been contacted by community leaders interested in enacting new anti-*Hazelwood* legislation in at least seven more states.

"There's a strategic roadmap and assurance that anyone, any Democrat, any Republican can go up against potential opposition in any state," he said. "I think the field's open and every state should try to get on board and try to do something."

However, eventually, Listopad said he hopes the student free-speech movement will reach a national stage and attract the attention of federal lawmakers.

"Why should we go after this state-by-state with varying results?" he said. "Let's take care of this once and for all." ♦

*"We had the legislation pass [in 1997], but it was vetoed by then-Gov. Jim Edgar. I was motivated to rekindle this in Illinois by what they accomplished in North Dakota."*

**Stan Zoller**, Adjunct professor of journalism, Lake Forest College, Illinois

*"Steve Listopad's efforts in North Dakota inspired the Nebraska Collegiate Media Association to begin to take a look at the possibility of this type of legislation in Nebraska. We're in the first stage, finding out exactly what North Dakota's law says and determining what strategy we might use to push legislation through the Nebraska Unicameral."*

**David Swartzlander**, Adviser, The Doane Owl, Doane College, Nebraska

# Teacher talk

Professors have First Amendment rights, too. Their fight to speak openly often isn't easy.

BY MARIANA VIERA

Having accepted a tenured professorship at the University of Illinois, Steven Salaita resigned from his job at Virginia Tech and was ready to go to the public institution's Urbana-Champaign campus — until university officials rescinded their offer about three weeks before classes started.

A month before his termination, Salaita, a Palestinian-American, posted a series of impassioned and controversial tweets criticizing Israel's president and the country's actions in Gaza.

"#Israel has even bombed a few cemeteries. You know, just to make sure the "terrorists" are really dead. #Gaza #GazaUnderAttack," Salaita said in one of his tweets.

Salaita's tweets led to his termination in Illinois, which he claims is a violation of his First Amendment rights, according to a lawsuit he filed in federal court in January.

The Kansas Board of Regents, in the wake of a University of Kansas professor's controversial tweet about the Washington, D.C., Navy Yard Shooting in 2013, passed a policy that allows it to punish professors for their online speech. In Wisconsin, a professor at Marquette University was fired in February for criticizing a teaching assistant on his blog.

Anita Levy, a senior program officer for the American Association of University Professors, a trade organization based in Washington, D.C., representing professors and researchers, said restrictions on professors' speech are becoming more common. These actions, she said, are an affront to their academic freedom.

According to the AAUP's Statement of Principles on Academic Freedom and Tenure, academic freedom is based on the idea that professors are free to engage in research and publication, classroom discussion and speak as individual citizens without fear of facing institutional censorship or discipline.

Currently, 53 universities have policies that do not meet the AAUP's standards for academic freedom, Levy said, which the nonprofit organization argues is necessary for faculty at

universities to teach and conduct research freely. Northeastern Illinois University was added to the list in 2014 when the university president denied tenure to a professor, despite favorable recommendations, because he did not file a plan to improve his advising and failed to improve to her satisfaction his "cooperation with colleagues and peers." National Louis University was added to the list in 2013

when it violated the AAUP's standards for academic freedom and tenure in discontinuing 14 degree and certificate programs and four departments and terminating more than 60 faculty members.

"Academic freedom is just one way of characterizing the concept of being able to engage in critical thinking, to engage in evidence-based thinking," said Mark Peterson, a political science professor at Washburn University. Attempts to limit professors' academic freedom, he said, undermine "the ability of any society or social organization to stay in touch with reality and keep following a path of improvement and progress."

*"There really is a systematic attempt to stifle free speech in Kansas, particularly academic speech."*

**Max McCoy**, *Emporia State University journalism professor*

## Restrictions to online speech

The AAUP launched an investigation on the University of Illinois after the institution denied Salaita his professorship. Levy said the investigation involved AAUP staff going to the campus and interviewing university administrators.

Based on its findings, released in April, the association says Salaita's termination violated its standards for academic freedom and tenure. The university, the report said, failed to show good cause for rejecting Salaita's appointment and "cast a pall of uncertainty over the degree to which academic freedom is understood and respected."

In January, Salaita filed a First Amendment lawsuit in federal court against university officials, the Board of Trustees and anonymous donors, claiming the University of Illinois discriminated against his views and opinions on the Israeli-Palestinian conflict when they denied him the opportunity to take up his post in the American Indian Studies department.

In February, the University of Illinois filed a motion to dismiss the case.

The State of Kansas is "in a free speech crisis," said Max McCoy, a journalism professor at Emporia State University. In December 2013, the Kansas Board of Regents created a social media policy which could result in a professor's termination for their online speech.

"There really is a systematic attempt to stifle free speech in Kansas," McCoy said. "Particularly academic speech."

The Kansas Board of Regents' social media policy calls for universities to create rules regarding the responsible use of social media by professors, allowing university presidents to discipline professors with "suspension, dismissal and termination" for "improper use of social media."

McCoy said the policy came in response to University of Kansas professor David Guth's tweet directed at the National Rifle Association after the Washington, D.C., Navy Yard shootings in September 2013.

"#NavyYardShooting The blood is on the hands of the #NRA," Guth tweeted. "Next time let it be YOUR sons and daughters. Shame on you. May God damn you."

Michael Smith, a political science professor at Emporia State University, said he found the social media policy worrisome because it could lead to professors losing their jobs for what would otherwise be protected speech.

"Certainly we can all agree that if someone posts confidential data about a student on social media, that that is very wrong and while the first resort shouldn't be to fire the person, certainly there should be some sort of procedure there," Smith said. "But on the other hand, if you're just stating political opinions, we of course think that that is protected under academic freedom."

In November 2014, John McAdams, a political science professor at Marquette University, wrote a blog post criticizing a graduate student instructor of a philosophy course because

she allegedly stopped a debate on same-sex marriage, saying she would not allow homophobic opinions to be voiced in her class.

In January, McAdams received notice that he had been summarily suspended and that the university began the process to remove his tenure and dismiss him, claiming his post was "incompetent, inaccurate and lacking integrity," according to a Marquette dean's email to McAdams.

The Foundation for Individual Rights in Education and the AAUP have called for McAdams' reinstatement, arguing the university's actions violate the principles of academic freedom and tenure.

## Other restrictions of academic freedom

Earlier this year, Kansas lawmakers proposed a rule that would put restrictions on college professors who write newspaper columns — not because they wanted a law. They wanted to send a message.

The bill, which died in committee, would have required universities to have policies restricting professors' use of university titles on columns they wrote about state politics for newspapers.

"That was a very, very odd bill," Smith said. "For one thing, no one would take ownership for sponsoring it, even the people that were widely believed to be the initiators. For another thing, the bill was strangely written in such a way that it was specific to newspaper columns so, for example, it wouldn't apply to television appearances or radio appearances."

Just by introducing it, the bill creates the potential for "a chilling effect on academic freedom," said Bob Beatty, a political science professor at Washburn University, in Topeka, Kan. A professor's university title gives a sense of legitimacy to a newspaper column. If this legislation had passed, Beatty said it would have put the credibility of professors' newspaper columns in question.

But attacks on academic freedom aren't limited to restrictions to professors' personal speech.

At Northern Michigan University, the student newspaper adviser was ousted in what she perceived as retaliation for her students' investigative stories, many of which were critical of the university administration.

Cheryl Reed, *The North Wind's* adviser, filed a federal lawsuit in April against members of the student newspaper's Board of Directors. Reed claims the board violated her First Amendment rights when they voted against her reappointment.

According to the complaint, the board's vote violated Reed's right to freely teach student reporters about investigative journalism without fear of retribution.

Three journalism associations — Society of Professional Journalists, Associated Collegiate Press and College Media Association — have come to Reed's defense arguing that the board's actions were an affront to the First Amendment.

## Protecting an image

While free speech protections for college professors seem like an easy sell for many in academe, it's not always so easy for college administrators.

Dan King, the president of the American Association of University Administrators, a non-profit professional organization that represents university administrators, said policies restricting academic freedom have a long-standing history.

"We always want to ask people to be clear that whenever they're taking a position — whether it's controversial or not — that they make it clear to people that that position is their personal position that they're not speaking on behalf of a college or university," King said. "One way to do that is to encourage people not to use their titles unless it's absolutely appropriate."

Peterson, a professor at Washburn, said he feels for the administrator who has to go to legislators and answer for a professor's unpopular speech.

"Administrators worry about the bottom line," Peterson said. "Is that guy in the appropriations committee going to submit an amendment to cut our funding because he's decided that he's experienced too much heartburn at the hands of that guy who's in our political science department?"

Peterson said he avoids using his university title when he writes a newspaper column.

"If you can make your point and not wind up antagonizing the bull, why not take the path that's more prudent?" Peterson said.

King said policies restricting social media speech are reactionary

policies because social media is still new.

"I think it's not the best administrative or managerial approach to have these specific extreme limitations but it's understandable because social media is so new and people are frankly a bit scared of it," King said.

## Why protect academic freedom?

Anita Levy, of the AAUP, said professors should have the right to speak, teach and research without fear of retribution.

"If we don't protect academic freedom, then faculty members will be looking over their shoulders fearful that if they say something that the administration doesn't like, or the legislature doesn't like or some big donor doesn't like, then they'll be fired," Levy said.

McCoy said college campuses are essential to the marketplace of ideas and restricting professors' speech "hurts the university system as a whole."

"There should be free and unfettered discourse about matters of public interest," McCoy said. "No matter who you are, no matter what side of the political spectrum you're on, you are enriched by having a diversity of opinions available to you."

Similarly, Smith said a professor's job is to put new ideas that are being overlooked on the public agenda.

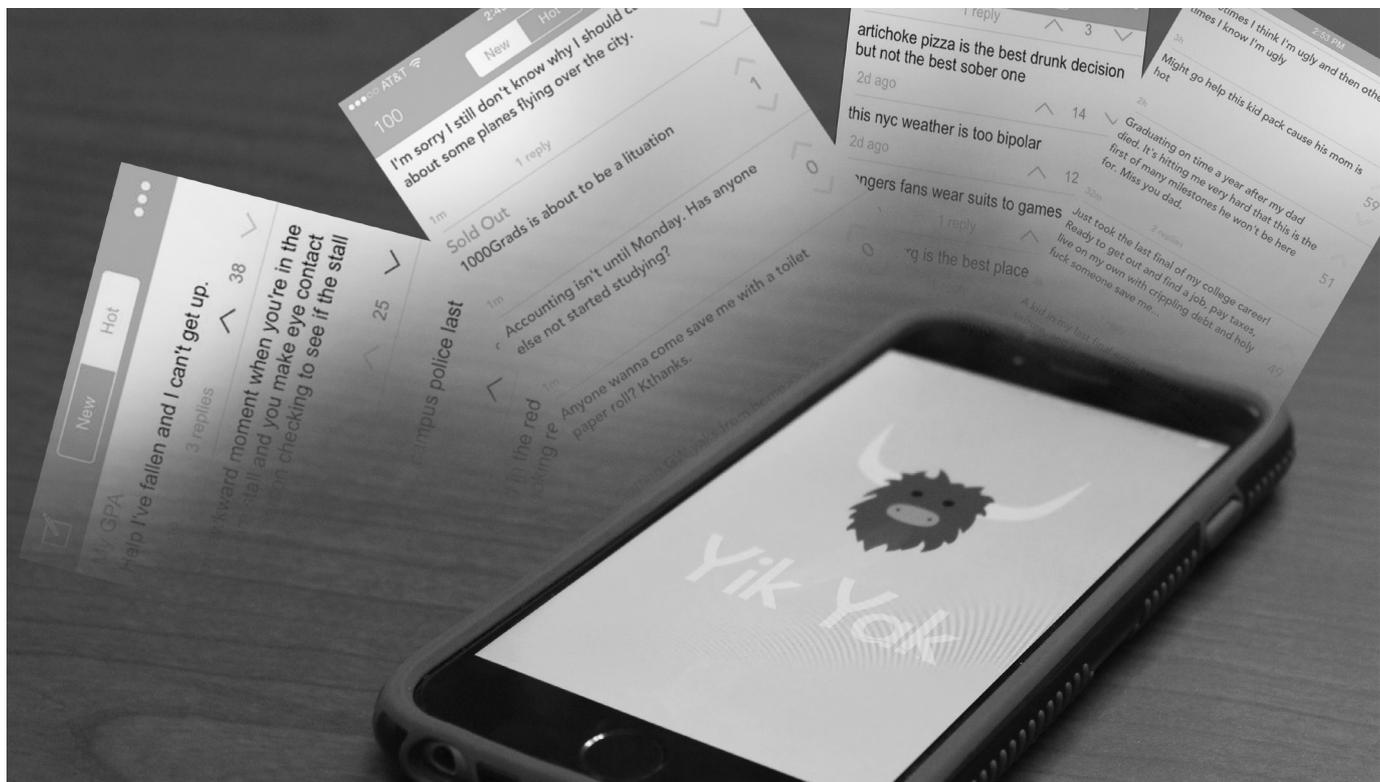
"If you shut us down or have a chilling effect, you're going to limit your range of political debate because sometimes we can see issues out there that aren't being debated, aren't being discussed, aren't in the news media and we can put them on the public agenda," Smith said. ♦

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## Yak flack

New technology means new worries. In the Yik Yak era, how should schools respond to students' anonymous speech?

BY KATHERINE SCHAEFFER

When student government representative Max Zoberman introduced a bill banning Yik Yak from Emory University's wireless network in October, he hoped to stop students from using the anonymous message-board app to utter "racially charged grievances."

Before the meeting adjourned, however, waves of hostile yaks popped up to attack Zoberman with angry barbs and personal jabs. His proposal didn't stop students from doing anything; it provoked them.

The anonymous posting app had been prevalent on campus since spring 2014. But posts had "taken on a more hateful tone" since students returned for classes in the fall, Zoberman said.

Yik Yak is a smartphone app that allows users to post, comment and vote on anonymous 200-character "yaks" on

localized bulletin boards. The app has become popular on college campuses and in high schools — creating legal and ethical debates as critics question limits of anonymous speech and free-speech advocates profess its merits.

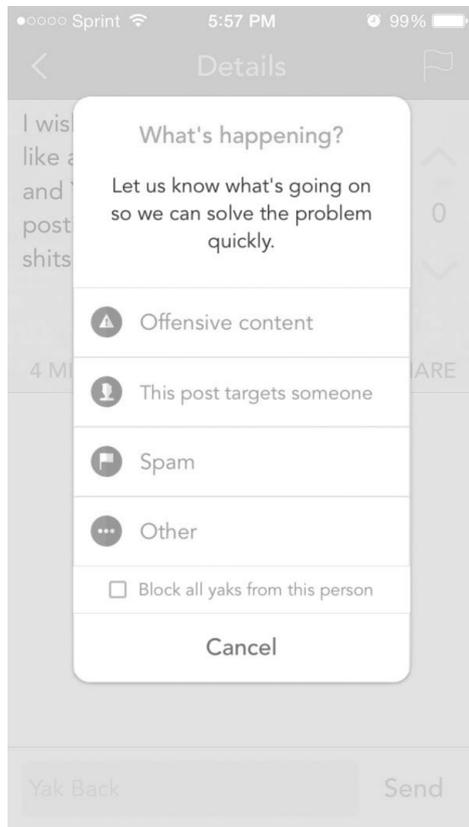
Since its November 2013 launch, stories about Yik Yak misuse have created debates, as students across the country use its veil of anonymity to spout racist thoughts, prod peers and professors with personal attacks and alarm the community with talk of mass violence.

In response, the app's developers have blocked access to Yik Yak at 85 percent of middle school and high school campuses, and some colleges have banned the app from their Wi-Fi networks.

But the news isn't all bad, free speech advocates point out. Students have used the app to spread awareness about mental

In order to combat speech that does not comply with its terms of use, Yik Yak allows users to flag content they find offensive or threatening.

Screenshot



illness, suicide prevention and race relations.

Emory is among the colleges across the country questioning what – if anything – to do about Yik Yak’s presence on campus.

### Same story, new technology

From Sharpie notes scrawled on public bathroom stalls to strings of comments from unidentified posters on online message boards like Reddit and 4Chan, anonymous speech has become ubiquitous in modern culture.

*The Daily Tar Heel*, the University of North Carolina at Chapel Hill’s student newspaper, and *The East Carolinian*, the student newspaper at East Carolina University, have published anonymous reader submissions in their opinion sections for years. Unlike Yik Yak posts, opinion staff reviews the blurbs before they’re published, weeding out the unsavory ones and editing others for profanity.

*The East Carolinian’s* Pirate Rants’ topics run the gamut from complaints about campus construction to acknowledgement of attractive classmates to praise for the cafeteria’s dinner menu, Editor-in-Chief Ryan Clancy said. The Rants is among the most popular sections of the paper, he said.

Clancy and *The Daily Tar Heel* Editor-in-Chief Sam Schaefer both said students submit thoughts to the papers’ anonymous forums they wouldn’t always express aloud.

Although readers are freer with their anonymous speech,

Schaefer said he’s noticed submissions to *The Daily Tar Heel’s* Kvetching Board aren’t as vitriolic as the posts on Yik Yak, likely because they know they won’t be published.

“It changes the tone of what people will say,” Schaefer said. “Especially when they’re complaining about other people’s personal behavior, they’re not going to walk up to them at the library and say, ‘hey you’re sucking on your pen really loud.’”

Clancy and Schaefer also said they’ve noticed fewer submissions as Yik Yak becomes more popular, probably because the app allows instant posting and user feedback. In response, Schaefer said *The Daily Tar Heel* is looking for ways to make posts more interactive once they are on the paper’s website, possibly adding an upvote feature.

Although Yik Yak is new, it feeds a desire for anonymous expression that has existed for centuries, said David Ardia, faculty associate at the Berkman Center for Internet & Society at Harvard Law and co-director of UNC’s Center for Media Law and Policy.

“Yik Yak didn’t create anonymity,” he said. “But it taps into a deep societal need for discourse.”

In a democratic society, free speech is essential for the free flow of ideas, Ardia said. And in fact, the United States was founded on a tradition of free, anonymous speech. Some anonymous authors spread ideas leading to the American Revolution, and the Founding Fathers used pseudonyms when they published the Federalist Papers, an important step in drafting the Constitution.

“It was well accepted during that time period that in order for there to be robust, wide-open public discourse, there needed to be some ability for speakers to engage in speech anonymously,” he said.

This sentiment hasn’t changed, especially among young people, who are still honing their personal identities and often seek affirmation anonymously, Ardia said. Even if colleges choose to ban the app, the ideas expressed there won’t disappear, leading to greater discontent.

“One of the theories underlying the First Amendment protection for speech,” he said, “is that it leads to a healthier, more stable society that permits people to speak their minds.”

### Negative speech

Since its debut, Yik Yak has spread to about 17,000 communities, and as a result, Yik Yak-related incidents have peppered the news. At Oklahoma State University, a student was arrested after using Yik Yak to warn the campus would be the site of a mass shooting later in the week. At Eastern Michigan University a group of female professors alleged that students were using the app to harass them, making them feel unsafe in the classroom.

In response, some institutions, like Utica College in New York and Vermont’s Norwich University, have blocked the app on their wireless networks. And waves of racist yaks

have other universities like Clemson and UNC-Chapel Hill wondering if they should do the same.

Users must be 17 or older to download the app onto their phones, and the company has geo-fenced 85 percent of high school campuses in the United States as a precautionary measure, said Cam Mullen, Yik Yak's lead community developer. The geo-fencing makes the app inaccessible by Wi-Fi or through data plans.

At Emory, the student body's vocal opposition to the campus-wide ban led to a "neutering of the legislation," Zoberman said, and the student government eventually passed a nonbinding resolution condemning the use of Yik Yak for hate speech. The resolution didn't change the way the university deals with anonymous speech it finds problematic, but requested the university and student government discuss ways to handle anonymous speech on campus.

Since then, Zoberman said he believes the resolution forced a tone change. He's noticed the student body seems to be policing itself on the app, with fewer racist posts and less cyberbullying.

"The resolution scared people," he said. "You abuse it, you lose it."

Yik Yak's terms of service forbid yakkers from using the app to "defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others," and "use racially or ethnically offensive language."

And although Yik Yak can't prevent users from posting that kind of speech, the company has been trying to curb it and ensure it's quickly removed once posted, Mullen said.

Ultimately, Yik Yak relies on users to "downvote" or report posts they think are inappropriate, Mullen said, and developers have created safeguards to help users self-police their communities.

Users can "downvote" unpopular yaks until - after five downvotes - they disappear from feeds completely, and a moderation team works to review reported yaks.

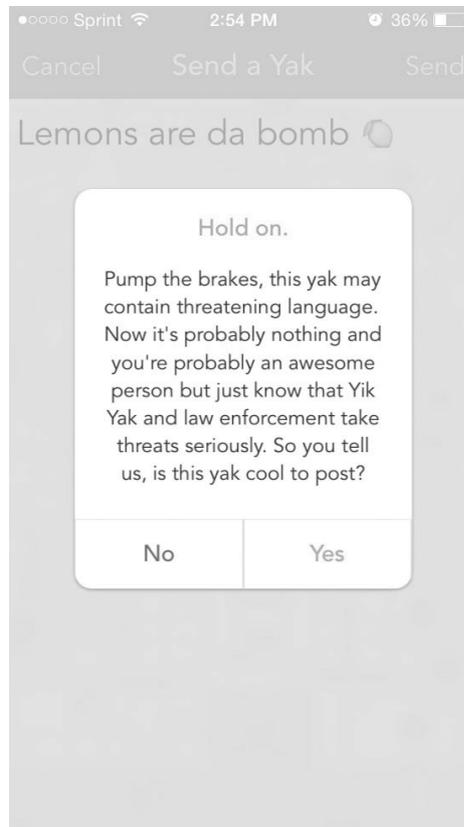
New filters prevent users from posting full names, and certain words like "bomb" trigger a warning:

"Pump the brakes, this yak may contain threatening language. Now it's probably nothing and you're probably an awesome person but just know that Yik Yak and law enforcement take threats seriously. So you tell us, is this yak cool to post?"

Developers are also experimenting with ways to implement "natural language processing," which would allow the app to determine whether a post is appropriate, Mullen said.

"Our efforts to curb misuse have gotten a ton better since Yik Yak initially came out, and it continues to improve with the ways we alter our moderation," Mullen said.

The company has also cooperated with authorities to track down the authors of yaks threatening mass violence,



The Yik Yak application automatically flags posts that could be considered a threat. In order to proceed, the user must confirm the post is not threatening. In this example, the word "bomb" was flagged. Screenshot

successfully identifying yakkers whose posts threatened bombings or shootings.

### Is it a big deal?

Anonymous speech itself is subject to the same free-speech protections as any other form of speech - unless it's libelous, slanderous, threatening or obscene, the First Amendment protects it.

The challenge for anonymous forums comes when users post false gossip or viable threats, Ardia said.

When this happens, anonymous posting services like Yik Yak are forced to strike a balance between unmasking malicious individuals and protecting users' privacy, he said. Often, companies' terms of service outline when they will divulge users' identities, but some people argue that schools, outside moderators, or even the government, may need to step in.

"Yes, there is offensive and harmful speech out there," Ardia said. "What are we going to do about it? Then the question is who gets to decide what to do about it?"

Anonymous speech allows free discussion of all ideas, even those that might be unpopular, he said. An "open, robust discourse about anything" is essential for a healthy society to function, and the push to eradicate anonymous speech on websites like Facebook, which increasingly requires users to register with their real names, makes platforms like Yik Yak especially important, he said.

Rey Junco, a faculty associate at Harvard's Berkman Center for Internet and Society, who has been studying Yik Yak since the beginning of the school year, said with the barrage of negative press, people overlook the value of anonymous speech.

"The moral panic narrative surrounding Yik Yak is so played out that it's almost incredibly boring," Junco said.

The perception of Yik Yak as a cesspool for bad behavior is an example of the availability heuristic, Junco said, where society overestimates the likelihood of an event based on overexposure in news media.

For example, plane crashes get far more news coverage than car accidents, even though an individual is far more likely to die in a car accident, Junco said. The same is true of cyber bullying and racism on Yik Yak, which do happen, but not nearly as often as non-users think.

"In my research on Yik Yak, those events are so few and far between, that they're almost non-events," he said. "I've seen maybe three or four posts that were mean or racist."

### **Yaks that matter**

On the first day of finals in December 2014, professors at Colgate University, identifying themselves in their Yak handles, crowded the campus feed with messages for their stressed-out students. Some professors posted motivational quotes and others encouraged students to get enough sleep. Students responded with upvotes and positive comments, pushing the professors' notes to Colgate's top post feed.

At other institutions, students and faculty have used Yik Yak as a launchpad for discourse about tough topics, taking the conversation from the anonymous forum to the campus quad.

When a student at the University of Michigan yakked a short suicide note in April, the post spurred an outpouring of support and a campus-wide conversation about suicide and mental illness. The next day, students and faculty gathered on campus to show their support with handmade signs and songs.

Other colleges have used students' offensive posts on the app as a teachable experience, encouraging conversation about issues like race.

In April, students at Maine's Colby College organized a protest to address perceived police brutality against minorities.

Instead of sticking to designated demonstration areas, Tionna Haynes, president of Colby's Students Organized for Black and Hispanic Unity, said protesters walked through academic buildings and near campus libraries.

The strategic move was intended to create conversation, Haynes said, but not the racially charged posts that exploded onto the campus Yik Yak feed.

Yaks criticized the protesters and denounced their cause, and Haynes said the posts made her and her friends feel "upset, unsafe and scared."

University administrators used the momentum the yaks created to encourage teachers to take class time to address the week's events, Haynes said, but she said she wasn't sure what the community would take away from it.

"That's a great step because some people have to be forced into a conversation about racism, bigotry and discrimination," Haynes said. "I hope the teach-ins open a few more eyes to the realities that marginalized

people live out everyday, even in Maine."

Ardia and Junco both agree the anonymous speech creates a vehicle for discussion of larger, societal issues.

The app also serves as a live feed of students praises and complaints, Junco said. It's something administrators can actually harness to help identify how to make campus a better environment to live and learn.

Junco said his research has shown Yik Yak does something many administrators struggle with: it creates a forum for students to build and maintain a community.

"Young people open up, take more creative risks, and that allows them to test different facets of their identity," Junco said.

Junco says universities should harness the app as a free campus climate assessment, providing honest insights into students' views of campus services, culture and stereotypes.

Some schools colleges agree. Duke University announced in February it had no plans to ban the app, maintaining the responsibility to post respectfully fell on Yik Yak users.

Mullen and Yik Yak spokeswoman Hilary McQuaide said they agree the intersection of user privacy, the ability for the community to give feedback and the app's localized nature allow anonymity to create a sense of camaraderie within communities.

"Anonymity levels the playing field," McQuaide said, "and puts content over persona." ♦

*"Yik Yak didn't create anonymity, but it taps into a deep societal need for disclosure."*

**David Ardia**, *faculty associate at the Berkman Center for Internet & Society*

# Responding to the haters

Heightened with the prevalence of online commenting, student journalists frequently receive pushback from their work. Often, the adversaries are their own peers.

BY MARIANA VIERA

It's customary for the editor-in-chief of *The Daily Princetonian* to write a letter from the editor in the last issue of the year. Outgoing editors often reflect on changes to the student newspaper, the year's biggest news events and their learning moments running a student newspaper.

As Marcelo Rochabrun, former editor-in-chief of *The Daily Princetonian*, sat down to write his own farewell, he tackled what he saw as the biggest issue during his time as editor.

"It's hard being a student journalist at Princeton these days," Rochabrun wrote.

In his letter, Rochabrun explained the criticism many Princetonian reporters had to face from their peers, saying some reporters were excluded from social groups or were asked to leave parties. A few were threatened with violence.

Rochabrun's letter garnered national attention from other student journalists — a bit surprising since he thought the issue was unique to Princeton University, he said.

After Rochabrun's letter, student editors around the country saw similar issues plaguing their campuses. Negativity from other students and the challenge of seeing sources in class were something many editors related to, Rochabrun said.

Kelley Callaway, the College Media Association's president-elect, said student journalists often cover a smaller community than professional journalists.

"Depending on the size of the campus, you might have class with the people you're writing about," Callaway said. "Some of your sources could be your professors or people who live in your residential halls. I think it gets to a different level when you're living on campus, you're creating a community and you want to be a part of that community while still being a journalist."

## Flak from peers

Negativity from peers is "only a natural reaction" because people aren't used to opening a paper and reading about their friends, Rochabrun said.

"That is exactly what happens with student newspapers,"

Rochabrun said. "You may even know the author and the student that's being talked about. It creates a weird tension when everything is so small and everyone knows each other."

When Nicholas Stewart snapped a picture of first responders at the scene of a fatal car accident at Western Illinois University in October 2014, other students said he should have shown more respect for the student lives lost.

"Coming from that incident in particular was definitely a really rough time for me," said Stewart, the editor-in-chief of the *Western Courier*. "I had a lot of people commenting on my Facebook page, sending me emails, calling the *Western Courier* office, basically berating me and calling me very inhumane things."

Stewart was again thrust into the spotlight when university administrators suspended him from his position as editor because he sold a video of an altercation between students and campus police in January. The video showed campus police officers pepper-spraying people in a brawl outside the university's student union building after a Black Student Association-sponsored dance in December 2014.

Because he sold the video and his subsequent suspension, Stewart said he couldn't go anywhere without other students recognizing him and gossiping. Heather Mongilio, a former editor in chief of *The Eagle* at American University, ran into a similar experience.

Mongilio said she could walk from one end of campus to the next in 15 minutes and run into five people who recognized her and disliked her because she worked at the newspaper.

"I've actually lost a friend because I wrote a story about his fraternity hazing," Mongilio said. "The fraternity got kicked off. He called me and started cursing me out, so it's hard working and living in a community that's so small."

Alex Wilson, the daily news editor for Spinnaker Media at the University of North Florida, said the Spinnaker's main critic is student government.

Wilson said Spinnaker reporters will not only have classes with student government members and interact with them in a



When Western Courier Editor-in-Chief Nicholas Stewart shot this photograph at the scene of a fatal car accident, fellow students said he acted disrespectfully.  
Photo Courtesy of Nicholas Stewart/Western Courier

peer capacity, but also work with them in a professional capacity. Spinnaker Media and student government work in the same building and members of each organization see each other every day, which creates tension if student government is unhappy with a story.

“Working in such close quarters, it can be a struggle,” Wilson said. “It can be challenging, especially for learning journalists when they’re not 100 percent confident in what they’re doing or what they know. It can be a struggle to deal with that not just in your job, but outside your job too.”

### ‘A double standard’

Mongilio said peers like to criticize the student newspaper by saying it’s not credible or trustworthy, but when breaking news happens on campus, students turn to *The Eagle* for information.

“While people may say the student newspaper is not as credible, when it comes to a story like a Title IX investigation or a professor being arrested or a bunch of emails being leaked from a fraternity, they do come to the newspaper because we have the angle that no one else has,” Mongilio said.

Stewart said student journalists could cover something the same way as a professional news outlet but not be taken as seriously.

“I think the biggest thing is that students have to understand that a student-run newspaper is no different than *The New York Times*, *The Chicago Tribune*, or different major news organizations,” Stewart said. “We’re doing the same job, which is reporting the news, and there really can’t be a double standard.”

Callaway, the CMA president-elect, said student journalists might take criticism from their peers to heart and be more susceptible to self-censorship.

“I think student journalists have always had a tendency to

maybe self-censor,” Callaway said, “and that’s why they need to talk to each other and get outside of what they’re thinking and get other input so that they don’t censor themselves just because they’re afraid somebody walking on campus is going to recognize them and criticize them for something that they’ve written.”

### All in a day’s work

“If you’re making people mad, you must be doing something right.”

Mongilio said that’s the motto for reporters at *The Eagle*. Unless a reporter made an error of fact, she said she tells her reporters that if their article got students talking, then they’ve done their job because they’ve pushed their classmates to talk about something that would have otherwise been ignored. Self-censoring only hurts the students.

“It’s so important to tell a good story,”

Mongilio said. “If something is happening, it is your job as a journalist to tell that story. You’re the voice of the students. You are absolutely the only outlet on campus that can provide the same angle. You’re the only one with the connection with the university and with the students. All those outside newspapers aren’t going to have that kind of connection.”

Callaway said student journalists should, in most cases, ignore other students’ criticisms unless it was a major story or issue. She said as soon as student journalists start defending themselves, “you weaken the position you already had.”

“I advise students to take a step back and ask themselves if it’s really as bad as they think or is it just one person who is a stakeholder in a story who’s upset for the wrong reasons,” Callaway said.

Callaway said journalists “need to have a backbone” because they’re the ones who are supposed to tell the truth no matter what, adding “that they need to keep that in mind even when telling the truth is upsetting to their peers.”

Rochabrun said criticism is just a part of the job. Reporters and editors should go into the job knowing that they’re going to write stories that people aren’t necessarily going to agree with, “but in the end, you have to do what’s in the best interest of the reporting you’re doing,” he said.

Stewart said he censored himself once after covering the fatal accident in October. He said he didn’t get pictures at the scene of another accident in fear of facing the same criticisms, and he regrets letting his experience with flak from peers affect how he reported another accident.

“You’re doing your job, so don’t let whoever tell you what not to do,” Stewart said. “Don’t feel you have to bow down to anyone to report the news they want to hear or report it the way they want to hear it.” ♦

# Shaking the foundation

Public universities use private nonprofits to raise money. In order to track donor influence, one group is fighting for more access.

BY KATHERINE SCHAEFFER

Schuyler Kraus has spent seven months battling the University of Kansas for public records from the university's nonprofit foundation. The documents, which the university said would come with a \$1,800 price tag, could connect the director of KU's Center for Applied Economics with libertarian billionaires David and Charles Koch.

Kraus, president of KU's Students for a Sustainable Future, said her group raised \$1,800 to foot the bill for any contracts between the Kochs and KU. They ran into another roadblock, however, when economics department director Art Hall sued the university to keep the records private.

The student group would need \$35,000 in attorney fees to fight Hall's suit, an amount they were able to raise through an online fundraising campaign. Now, Kraus says, the group has begun a months-long legal battle that may continue after the funds run dry.

SSF is one of several groups at campuses across the country questioning the extent of donor influence on their campus, and wondering if evidence exists in university contracts and gift agreements, fighting for records from their university's nonprofit foundations.

Public, taxpayer-funded colleges and universities create foundations to handle donations that create scholarships, raise money for programs and build memorial funds, among other things. Whether an institution's foundation is subject to public records laws varies from state to state and sometimes from case to case.

While public institutions argue in favor of respecting donors' privacy, this secrecy can create opportunities for abuse.

Six East Stroudsburg University graduates filed a lawsuit against the former university foundation director Isaac Sanders in 2009, alleging he sexually abused them after using university foundation money to ply them with scholarships, campus jobs and gifts, *The Pocono Record* reported.

And in 2011, The University of North Carolina's John William Pope Center for Higher Education Policy, named for

the father of major donor Art Pope, issued a report arguing that university donors should have a bigger say in how their money is used.

The report, "Games Universities Play: How Donors Can Avoid Them," advises donors not to give unrestricted funds, to give specific instructions along with each gift and to give annually, rather than committing to multi-year donations, in order to ensure that the money is being spent properly.

"It is usually the case that the universities wish to untie or eliminate the strings donors have carefully attached to their gifts," according to the report.

## What is a university foundation?

Most public colleges and universities set up foundations to handle a variety of functions from fundraising to alumni outreach to scholarship creation. These foundations can handle millions of dollars each year, and as news stories surface detailing misuse or abuse of funds, college communities question how their foundations are spending money.

Because public institutions are state entities, they manage donations - monetary or otherwise - through 501c nonprofit foundations. Donors' gifts to the school become tax-deductible charitable contributions, incentivizing donations further.

Private schools, which don't receive taxpayer money, are able to receive donations directly and with minimal disclosure.

As nonprofit entities, whether a foundation is required to make all of its records public depends on state public records laws, how the state defines "public body" or "public agency," as well as how closely the foundation works with its college or university.

Colorado, Georgia, Minnesota and Nevada all have state laws dictating which foundation records should be disclosed, but most allow exemptions for donor lists. Nevada's is the only public records law that does not allow any exemptions for foundation documents.

Foundations are free to disclose more than is required by

law, but many refuse to divulge more than the state-required minimum. Most states allow exemptions for certain records, usually including donors' names.

But because nonprofits are required to make their tax returns public, the community can access their IRS Form 990s to find out how foundations raise and spend money, said Harvey Dale, director of the National Center on Philanthropy and the Law at New York University.

Some institutions' foundations issue annual reports, which are easily accessible with a Freedom of Information request, Dale said.

### **Examples of donor influence**

The majority of donors gifts' don't come with terms, Dale said. Some donors may require the gift to fund a scholarship or a specific program, but many gifts come in undesignated.

But it isn't unheard of for donors to expect something in exchange for their generosity, even if there isn't a written agreement. In January, a former professor sued the University of Illinois over his firing as a tenured professor in the American Indian Studies program after he spoke out against Israel's Gaza bombing last summer.

Steven Salaita's suit includes a claim against a handful of university donors who, in an email chain obtained through a public records request, warned they would discontinue their funding if Salaita wasn't fired for his anti-Israel remarks.

And in 2011, a donor asked the University of Connecticut for a \$3 million refund because the institution didn't consult him in their search for a new football coach.

Donors sometimes give schools money for teaching certain curriculum or promoting specific ideas. In May 2011 Bloomberg reported that John Allison, a former chairman of BB&T banking, had used the company's foundation to set up a grant - up to \$2 million - for schools interested in teaching a course on capitalism with "Atlas Shrugged" as required reading. At the time, at least 60 schools, four of them University of North Carolina campuses, had chosen to accept the grants.

Situations like these are exactly what student-led movements like UnKoch My Campus aim to eliminate, as they raise awareness about roadblocks the public runs into navigating the gray area in many states' public records laws.

### **A piece of the bigger picture**

KU is only one campus with an incarnation of the UnKoch My Campus movement, a student-led effort rallying students and faculty members to demand transparency and accountability on college campuses.

The Koch brothers, who are among the nation's largest donors for conservative causes, fund six charitable foundations to support higher education. In 2012, just two of these foundations provided colleges and universities with more than \$12.7 million.

Their funding for higher education, according to a report by the Center for Public Integrity, has helped pay for academic programs that "reinvigorate the teaching of America's founding principles and history,"

The billionaire Koch brothers are known for advancing their libertarian, deregulatory political ideology with millions of dollars in donations to politicians, nonprofits and colleges.

The Kochs aren't the only billionaires financing academic research and programs. Democratic billionaire financier George Soros has set up several foundations to funnel tens of millions of dollars into higher education, both in the United States and overseas, according to the Center for Public Integrity's reporting.

Soros and the Kochs join the ranks of many well-connected million- and billionaires who make a point to donate substantial amounts to causes where they hope to attain some influence, whether it be higher education or political campaigns.

As of April, nearly 250 colleges in the United States had Koch-funded programs, according to The Koch Family Foundations website. The Kochs have been known to request some influence over hiring decisions along with their grants, creating debates about whether schools should accept their money.

Students at colleges where donors wield millions of dollars worth of influence often question how the money is being spent and what effect it could have on the campus community, Kraus said, and so, UnKoch My Campus is about more than just David and Charles Koch. Members hold the billionaire industrialists up as an example of the dangers of donor influence, and at KU, many of the newest members are law and graduate students, pushing back against the "corporatization of higher education" - the increasing reliance on donations to fund academic endeavors.

Kraus said many students believe that opening university foundation records to the public is an important first step in raising awareness about the circumstances that drive universities to seek financial benefactors and separating public education from privatization.

"I think that lawsuit is a little piece of the bigger picture," Kraus said.

### **Behind UnKoch**

In 2011, some students and faculty of the Florida State University became outraged when two FSU professors published an editorial in the *Tallahassee Democrat*, criticizing a 2008 agreement between FSU and the Charles Koch Foundation: in exchange for \$1.5 million in funding, the Kochs received control over FSU's economic department's hiring decisions.

The story gained national attention as the FSU Faculty Senate recommended Koch contract revisions and concerned students formed the Florida State Progress Coalition, which pushed for more transparency and accountability.

Students at other universities, including George Mason, Suffolk and the University of Kansas, fearing donor influence on their campuses, launched their own awareness campaigns and submitted records requests to their university foundations, demanding to know more about how their programs were funding. The UnKoch My Campus movement was born.

Just miles away from the nation's capital, students at Virginia's George Mason University have been pressuring the administration for information about the campus' two Koch-funded think tanks since August 2014.

Sam Parsons, a member of Transparent GMU's organizing team, said the university's president has refused to sit down with the group to address their concerns and attempts to request records of the university have been futile, because the university handles donations through a 501c nonprofit.

Transparent GMU has been able to identify some donor information through the foundation's tax returns, which all nonprofits are required to make public, Parsons said, but the tax return doesn't include information about the foundation's grant agreements or any conditions that might come with the Koch's funding.

The organization, which was denied public records for the university foundation's grant agreements and contracts, has been asking GMU president Angel Cabrera for a meeting since fall 2014, using an online petition to gather signatures from the community.

Before winter break, the group delivered 292 candy canes – one for each petition signature – to Cabrera's office, along with a handmade sign declaring, "All we want for the holidays is a meeting with you."

But Cabrera ignored their requests, Parsons said.

### **Should colleges rely on donations?**

Private universities have relied on fundraising for centuries, but public institutions only began soliciting alumni contributions about 50 years ago, said Noah Drezner, an associate Professor of Higher Education at Columbia University's Teachers College, whose research focuses on college and university philanthropy and fundraising.

As states allocate less and less money to higher education, schools are forced to rely on tuition dollars and donations to fill funding gaps, Drezner said. Without donor funding, schools would have to charge higher tuition rates.

Despite donors' prevalence in higher education, most aren't seeking academic or institutional control, Drezner said. Donors and institutions often draw up a written gift agreement, which is typically inaccessible through public records.

But the particulars of a typical gift agreement are usually "pretty bland," including how much money would be paid over how many years as well as an out clause, he said.

"I don't think there's a lot of negative donor influence on

institutions," he said. "Generally, situations like the Kochs', where donors specifically spell out conditions in a written contract, are far outside the norm."

Dale said nonprofit foundations choose to protect donor anonymity, not releasing donor lists or disclosing gift agreements for a variety of reasons.

If a donor wishes to remain anonymous, Dale said, releasing the donor's names and gift amount might open wealthy donors up for solicitation, putting a chill on giving.

And requiring nonprofits to release donor information could create problematic consequences for some donors, he said, citing the 1957 *NAACP v. Alabama* precedent. In order to deter potential donors from giving to the NAACP, the state of Alabama required the organization to release its donor lists – an action the Supreme Court held violated donors' right to freedom of association.

### **Looking ahead**

At some institutions, friction between the foundation and its community members has resulted in a call for action. The Louisville *Courier-Journal* reported that news of multimillion-dollar deferred compensation packages from the University of Louisville Foundation to President James Ramsey and his top employees has two trustees insisting that the foundation should be absorbed into the university.

University oversight of the foundation, which operates independently, would create more transparency and financial accountability, the trustees argue.

Kalin Jordan, a grassroots organizer for UnKoch My Campus, said she hopes to see policy changes, like the one proposed at Louisville, at colleges and universities across the country.

And although she said she isn't sure what the policy change will look like yet, she hopes records will become more accessible for individuals demanding accountability.

Although each campus' UnKoch movement looks a little different, Jordan said each is built around the same common goal: transparency, not just for information about the Kochs, but for all donors. She said she hopes students will question the source of their school's funding and be mindful of donor influence, regardless of whether it is Koch-affiliated.

Jordan said social media has played a big role in students' transparency campaigns, allowing them to reach national audiences, and raising awareness among alumni and local communities.

From KU's crowdfunding efforts to online petitions, like one Transparent GMU launched, to Facebook and Twitter pages, Jordan said social media plays a huge part in rallying the community and putting pressure on administrators.

"Students pay to go there," Jordan said. "As shareholders, they have the right to ask questions and the right to get answers." ♦

# A plea for help

Like professional newspapers, student publications nationwide are strapped for cash. In an effort to stop the bleeding, some have turned to the Internet to ask for help.

BY KATHERINE SCHAEFFER

When the University of Redlands student government put the student newspaper on a “temporary hiatus” after it ran an article critical of the criteria for a new scholarship, the publication’s co-editors argued the suspension was nothing more than an attempt to chill the paper’s reporting.

“We felt like they had us held hostage until we did what they wanted,” Co-Editor Morgan York said. “We decided to go indie.”

Creating an independent, online-only news organization gave York and her staff newfound editorial freedom. Abandoning the *Bulldog Weekly*, the student government-funded student newspaper, meant they also had to operate without the \$40,000 budget the university previously provided to cover printing costs and the student journalists’ salaries.

Enter an online fundraising campaign, launched in February and asking for \$4,300 to get *The Bulldog’s* new, financially independent website off the ground.

In the last year, student newspapers have increasingly turned to online crowdfunding websites to keep their publications afloat. While the University of Redlands students used crowdfunding to launch a new publication in the wake of adversity, other students have used the method to help pay off years of accumulated debt.

Although some crowdfunding campaigns exceed their goals, bringing in tens of thousands in donations, the student journalists say the method isn’t sustainable and have wrestled to find profitable revenue streams after their campaign ends.

## Crowdfunding saves the day

As the news industry shifts from print to web-based models, student papers have struggled to supplement waning advertising revenue. Some student newspapers looking for ways to smooth the transition away from traditional news models have found that crowdsourcing campaigns rally far-flung members of their college communities.

Through donations from professors, alumni and staff members’ friends and family, *The Bulldog’s* campaign exceeded

its goal, raising \$4,400 to cover the monthly fee for the paper’s new online home and a semester of staff salaries.

The campaign wouldn’t have been nearly as successful without the online element, which “got the word out to people who can afford donations,” York said.

Although breaking away from the university helped *The Bulldog* maintain editorial independence, York said there have been some challenges that donations couldn’t fix. The crowdfunding campaign helped get the paper off the ground, but as next semester’s reserve begins to dry up, the staff will need to develop a sustainable business model.

York, who graduated in April, said she isn’t sure exactly what this plan will look like, but she expects advertising will play a role.

Another hurdle is the elimination of *The Bulldog* adviser’s position. Without the university’s financial support, *The Bulldog* can’t afford to pay adviser Erin Aubry Kaplan’s salary. Redlands paid Aubry Kaplan until the end of the spring semester, and she’s offered to work on a volunteer basis in the fall, York said.

After that, York said, *The Bulldog* will have to find another volunteer to take over the advising position, and York, who plans to be in the area, said she might step up.

Redlands isn’t the only university whose student newspaper launched a crowdfunding campaign after losing university funding. The student newspaper at The University of Missouri at St. Louis started a crowdfunding campaign in April after the student government chose not to renew the paper’s funding for the fall of 2014, citing debt the paper amassed between 2009 and 2011.

The university chose to forgive the debt, and although *The Current* generates some revenue from advertisement sales, last year’s operations relied on a \$20,000 donation from UMSL’s IT department.

But the paper’s leadership doesn’t think it can survive another academic year without outside help.

The paper, which used to receive about \$40,000 from the

university, has launched a multi-faceted fundraising effort. In addition to the crowdfunding campaign's eventual \$30,000 goal, staff planned fundraising events on campus, selling tickets to a trivia night and passing out copies of the paper to spread awareness.

"We cover the campus and wider community from the perspective of students and give the students of our diverse urban campus a voice," Anna Glushko, *The Current's* editor in chief, said in an article the newspaper published about its fundraising efforts. "Without support from alumni and the community, those voices will be silenced."

### Fighting debt

While *The Bulldog's* campaign helped the newspaper break away from censorship, other student papers, like *The Daily Free Press*, the student newspaper at Boston University, have used crowdfunding as a last-ditch effort after years of declining advertising revenue.

*The Free Press* launched a GoFundMe campaign in November 2014, asking for help paying off nearly \$70,000 of printing debt. The paper's printer had given *The Free Press* staff until December 31 to pay, or it would close the paper's account, said Kyle Plantz, fall 2014 editor-in-chief.

The newspaper had made adjustments in order to cut spending, Plantz said, notably switching from printing daily to printing weekly and publishing daily online. But the paper's declining advertising revenue couldn't cover expenses, and the paper slid further into debt.

Because the paper isn't university-funded, it had to raise the money itself, and reaching out to the community for donations seemed like the best option, Plantz said.

"It reaches its maximum potential that way," Plantz said. "People who haven't even heard of us or aren't even in journalism can still donate if they think it's a worthy cause."

As soon as the paper's campaign went live, donations flowed in, including two large gifts from high-profile alumni Bill O'Reilly and Ernie Boch, Jr. The campaign exceeded its goal, raising \$82,409.

The digital crowdfunding campaign allowed for a huge social media push, Plantz said, and he believes spreading the word through Facebook and Twitter contributed to the campaign's success.

"We got the word out to our alumni and they passed it on to alumni that we didn't know, and they passed it on to their colleagues who are in journalism and so on," he said. "Some of these people are working for big media outlets now and many of them said that they got their start in journalism from the FreeP."

*The Free Press* also incentivized donations with prizes, Plantz said, something crowdfunding sites like GoFundMe encourage users to do. Rewards ranged from a shoutout from Plantz at the \$5 level to a \$10,000-level in-person thank you: "We'll drive to

your home, buy you dinner and sing you an a capella version of your favorite American classic."

"We knew that there would be FreeP alumni, parents, current students, faculty and other people who just love student journalism, that would want to support us," Plantz said.

Like *The Free Press*, University of Delaware's financially independent newspaper, *The Review*, which receives office space from the university, but no other funding, turned to crowdfunding, asking for \$9,980 in donations as costs increase and ad sales fall.

"Since our founding we have been a catalyst for change and a forum for public discussion," according to *The Review's* crowdfunding page. "From covering students advocating for university divestment during South African apartheid to interviewing Nobel Prize winners, our reporters have written on issues that matter."

### A bigger phenomenon

Harnessing crowdsourcing for funding isn't unique to student journalists. Professional journalists realize its value too, starting crowdfunding campaigns to help promote freelance work and personal projects. As readers become more willing to donate money to fund reporting projects, some journalists are developing donor-funded newsrooms, like ProPublica. Others are turning to journalism-specific crowdfunding platforms like Beacon Reader to fund projects and build their brand.

As newsrooms across the country cut funding for investigative work in an effort to keep up with rising production expenses, investigative journalists search for other outlets to fund in-depth projects.

ProPublica, a nonprofit, aims to produce quality in-depth journalism, relying on donations to fund projects.

"Investigative journalism is at risk. Many news organizations have increasingly come to see it as a luxury," according to ProPublica's website. "Today's investigative reporters lack resources: Time and budget constraints are curbing the ability of journalists not specifically designated 'investigative' to do this kind of reporting in addition to their regular beats."

Beacon Reader, a crowdfunding platform designed specifically for journalists, allows readers to subscribe and donate to specific journalists whose projects they would like to see through to completion.

Catherine Hollander, Beacon's editorial director, said as major news outlets' project funding dwindles, freelance journalists are looking elsewhere for funding, and Beacon helps them build a following of readers interested in what they have to offer.

Beacon allows journalists the freedom to design their own projects while building their personal brands, Hollander said. Journalists can focus on specific projects or beats, and readers can subscribe to the writers whose work interests them most, creating a unique digital connection with audiences and individual reporters.



BOSTON, MA COMMUNITY

**\$82,409** of \$70k

Raised by 358 people in 6 months

**Donate Now**

SHARE ON FACEBOOK

gofundme

1.1K TOTAL SHARES | f SHARE 908 | t TWEET 280

Created November 6, 2014  
 Heather Goldin

When *The Daily Free Press*, the student newspaper at Boston University, used GoFundMe to raise money as a last-ditch effort to stave off years of declining advertising revenue, their campaign was more successful than they had expected — with donations exceeding their goal.

The site started out as a sort of “Netflix for news,” she said, and the ad-free site has since grown to allow writers to customize their specific crowdfunding efforts and build audiences. Readers can pledge at different price points for increasing degrees of engagement with the writer.

Traditional news outlets recognize the value of independently-funded news, Hollander said, and the *Texas Tribune*, *Huffington Post* and *Pacific Standard* have all used Beacon as a platform for funding long-term projects and boosting reader engagement.

Journalists at ProPublica have also partnered with major print publications, teaming up with the *Los Angeles Times* to produce “When Caregivers Harm,” a series exploring the lack of oversight for California’s nurses.

Hollander said she sees college students and recent graduates create profiles on Beacon in order to build their personal brands, Hollander said. Beacon’s model, which allows readers to subscribe and fund the projects they’re most interested in, is especially helpful for young journalists looking for exposure.

Hollander said recent graduates like Tyrel Bernardini are also likely to turn to Beacon for help funding travel journalism projects. Bernardini’s “Hitchhiking to Africa” project has raised \$8,540 for him to hitchhike from California to Africa.

### Focus on creativity

The trend of student newspapers looking for alternative funding methods may have to do with traditional sources of revenue, like student fees and advertising proceeds, not increasing

as quickly as other costs, said Rachele Kanigel, president of the College Media Association.

Working for their student newspaper stands out to many alumni as “the most important thing they do in college,” Kanigel said, and crowdfunding campaigns help tap a sense of affection and nostalgia.

Although the excitement of a crowdfunding campaign can help newspapers fund one initiative, she doesn’t see it as a sustainable business model, said Kanigel, who advises the San Francisco State *Golden Gate Xpress*.

Kanigel said her students launched a crowdfunding campaign in September 2014 in order to attend the CMA conference in Philadelphia, where they were nominated for several awards.

Her students came in about \$3,500 short of their \$5,000 goal, but the college found a way to fund their flight to the conference, she said.

Kanigel said students need to focus on coming up with creative ways to market their newspapers to online advertisers, although many student newspapers don’t have the personnel or business experience to make this a reality yet.

She said she’s seen college newspapers find creative ways to supplement advertising revenue, selling photos their photographers take at sporting events, printing campus directories and freshman guides.

More importantly, Kanigel said, crowdfunding campaigns “give students a chance to connect with alumni” that they may not have had otherwise. ♦

# Hip-hop hassle

How the lyrics of two violent rap songs could redefine your online free-speech protections.

BY MARIANA VIERA

Anthony Elonis, a Pennsylvania man in the midst of losing his job and his wife, turned to Facebook to write violent rap lyrics under the pseudonym Tone Dougie. He was subsequently arrested in December 2010 after his estranged wife and law enforcement found his lyrics threatening.

In his lyrics, Elonis described killing his wife, shooting a kindergarten class, bombing local law enforcement agencies and killing an FBI agent who visited his house.

“Little Agent Lady stood so close / Took all the strength I had not to turn the bitch ghost / Pull my knife, flick my wrist, and slit her throat,” Elonis wrote in one of his songs.

But Elonis, who was arrested and charged with domestic violence related simple assault and harassment in April, claimed his lyrics were therapeutic and he had no intent to go through with any of the actions described. Elonis brought a First Amendment claim to the Supreme Court, arguing his words were not true threats because he lacked intent to commit a crime.

Scott Colom, an attorney who represents Taylor Bell, a former high school student in Mississippi who was suspended over a rap song, said he’s concerned how the Supreme Court’s ruling will affect his client’s case.

On June 1, the Supreme Court ruled that Elonis’ intent behind his Facebook posts must be considered because he was convicted under a criminal statute, adding that basing his conviction on whether a reasonable person would find his posts threatening “is inconsistent with ‘the conventional requirement for criminal conduct — awareness of some wrongdoing,’” according to the

opinion. The Court reversed and remanded Elonis’ conviction.

In 2011, Bell, then a student at Itawamba Agricultural High School, was suspended from school because he recorded a profanity-filled rap song about two coaches at his school who allegedly made sexual comments about girls’ bodies.

“Looking down girls’ shirts / Drool running down your mouth/ You fucking with the wrong one / Going to get a pistol down your mouth,” Bell wrote in his song.

Bell posted the song on YouTube and Facebook. In response, school officials claimed the song threatened the coaches. Bell and

his mother filed suit against the superintendent and the school’s principal, arguing the suspension violated Bell’s First Amendment rights. The SPLC filed an amicus brief in support of Bell in June 2012.

In the Elonis case, the Supreme Court did not address the First Amendment issues or specify what standard lower courts should use to judge if speech is a true threat, which is speech with the intent to inflict harm and

is not protected by the First Amendment. However, the Court ruled that negligence, or Elonis’ failure to foresee that his speech would be perceived as threatening, was not enough to convict him of a true threat charge.

David Greene, the senior staff attorney and civil liberties director at the Electronic Frontier Foundation, a nonprofit organization that defends civil liberties online and cosigned the Student Press Law Center’s amicus brief in the Elonis case, said while the Supreme Court’s ruling did address some of his worries, he’s still concerned about the effect Elonis might have on student social media speech.

*“We need to be much more careful about who we kick out of school or who we send to jail when we’re just talking about speech.”*

**Erik Nielson**, *Assistant professor, University of Richmond*

# UNDER THE DOME

**Maryland** – Students who attend public or private colleges in Maryland were granted an extra layer of online privacy protections in May when Gov. Larry Hogan signed a law to shield their private social media accounts from administrators’ reach. The law prohibits college officials from requiring or asking students to grant access to their online profiles. The rules also apply to college applicants and prospective students.

**Texas** – The Texas Legislature approved a bill in May to require private university police departments to release certain records to the public. The bill would amend the state’s education code to specify that private universities’ police departments are “a law enforcement agency and a governmental body” with respect to information about law enforcement activities.

**North Dakota** – North Dakota Gov. Jack Dalrymple signed into law in April rules to further protect the free-speech rights of high school and college journalists. The law, which passed unanimously in both the state Senate and House, will prevent North Dakota’s public high schools and colleges from limiting student speech unless it poses a substantial disruption to the operation of the school.

**Florida** – The state legislature adjourned without taking action on a bill that would have restricted public access to the records of university presidential searches. Sen. Alan Hayes’ bill would have created an exemption to the Florida open records law for identifying information about applicants for president, dean and other college administrative positions. Those searches now are conducted in the open.

**Alabama** – Lawmakers in Alabama proposed rules in March to criminalize student speech that mocks or intimidates another student or school employees on social media. The bill would also prohibit students from creating fake social media accounts of other students or school employees.

## The history and culture of rap music

Both Elonis’ and Bell’s allegedly threatening speech were in the form of rap lyrics, which is a historically violent music genre, said Erik Nielson, an assistant professor at the University of Richmond specializing in the culture and history of rap.

Eminem, a popular rapper brought up by Chief Justice John Roberts at the Elonis oral arguments in December, is known for his violent lyrics, often talking about harming or killing his wife.

“Da-da made a nice bed for mommy at the bottom of the lake / Here, you wanna help da-da tie a rope around this rock? (yeah!) / We’ll tie it to her footsie then we’ll roll her off the dock,” Eminem wrote in his song, “Just the Two of Us.”

Nielson, who filed an amicus brief in support of Elonis, said rap music started as an artistic alternative to physical violence, but due to ignorance about the genre, aspiring rappers are often misunderstood and oftentimes prosecuted.

“We’re seeing a new breed of case in which rap lyrics themselves are the crime in which the contents of the lyrics form the sole basis of the charge usually as some sort of threat,” Nielson said.

Nielson said rap music has culturally helped reduce violence in neighborhoods known for gang violence and aspiring rappers should be free to pursue this form of expression.

“That’s not to say that I endorse truly threatening speech,” Nielson said, “but if somebody is going out of his or her way to frame it in artistic terms particularly in a genre that uses violent rhetoric, I think we need to be much more careful about who we kick out of school or who we send to jail when we’re just talking about speech.”

## An intent to be threatening

Though the Supreme Court ruled that negligence was not enough to convict someone of a true threat, it did not specify what standard courts should use when deciding true threat cases. True threats can be judged under the subjective standard – if an individual intended for his speech to be threatening – or the objective standard – if a reasonable person would perceive the speech to be threatening, regardless of the speaker’s intent – said Lauren Jones, the assistant director of legal affairs for the Anti-Defamation League, a civil rights advocacy group who filed an amicus brief against Elonis.

Jones argues that courts should use the objective standard to judge threatening speech online because it’s hard to judge someone’s intent without being able to hear their tone of voice or read their body language.

“It becomes much more difficult to prove what a person was thinking when they posted something on social media and yet the impact on the victim is the same,” Jones said. “There can be the same amount of fear and the same amount of real distress coming from statements online.”

Greene argued courts should use the subjective standard, adding that the hazard of taking the objective standard is that cultural differences between the speaker and the recipient are not taken into account.

“Cultural differences can include the differences between how young people and older people talk,” Greene said. “A statement made by a young person, which to that person would not seem to be threatening, might be



Former Mississippi high school rapper Taylor Bell is flanked by his attorneys, Wilbur Colom, left, and Scott Colom, right, after the May 12 oral argument in his First Amendment case before federal appeals judges in New Orleans.

Photo by Frank LoMonte

interpreted by an older person as very threatening and vice versa.”

Another argument against the objective standard, particularly when it comes to social media speech, is that the original context of the speech can be easily lost as the speech is shared and disseminated to different people very quickly, Greene said.

“So a statement that when it was first made it was very clearly rhetoric or sarcasm, by the time it reaches the recipient who feels threatened, it has become something very different,” Greene said. “That’s why we thought the subjective standard, which requires an inquiry into the intent of the speaker, was important.”

### Effects of *Elonis* on student speech

The Itawamba County Board of Education and the U.S. District Court for Northern District of Mississippi upheld Bell’s suspension. The U.S. Court of Appeals for the Fifth Circuit reversed the district court’s decision in December 2014, but the court reheard the case in May.

In 2011, Bell was suspended from school because he recorded a profanity-filled rap song about two coaches at his school who allegedly made sexual comments about girls bodies. Bell posted the song on YouTube and Facebook. The school claimed the song threatened the coaches. Bell and his mother filed suit against the superintendent and the school’s principal, arguing the suspension violated Bell’s First Amendment rights.

Greene said the Supreme Court’s ruling in *Elonis* did not address all of the concerns when it comes to student speech. While the ruling clarified that a speaker’s state of mind must be considered when charging them under the federal threat

statute, the Court didn’t address any state threat statutes or the constitutional true threat doctrine.

“What we were very concerned with was that the Supreme Court would say something bad,” Greene said. “It didn’t say anything bad about the constitutional doctrine. What we’re not sure is how much it has changed the status quo.”

Greene said most student true threat cases are dealing with state law, which was not addressed in the Supreme Court’s ruling. While most state cyberbullying laws do not criminalize students’ online speech, 10 states have laws that classify cyberbullying as a misdemeanor offense.

Colom said the Supreme Court has not ruled on school districts’ jurisdiction over student speech outside of school. The circuit courts have been divided about whether the standard set in *Tinker v. Des Moines Independent Community School District* covers off-campus speech. Under the *Tinker* ruling, school officials may not censor student speech unless it causes a substantial or material disruption to the educational operation of the school.

Twenty states use the *Tinker* standard in their cyberbullying or cyberharassment laws, while 17 do not. There are 13 states whose laws are unclear as to whether they fall under *Tinker*.

Colom said if the court of appeals rules that Bell’s suspension was constitutional, Bell would like to appeal to the Supreme Court.

“I think that this issue is ripe for Supreme Court review,” Colom said. “At some point, the Supreme Court has to step in and say what authority do school districts have over student speech made away from school.” ♦

# The labor beat

Student journalists often face challenges when reporting on campus workers and workplaces.

BY ELAINA KOROS

When Ohio University neglected to prorate student meal plans for a short week in November, the mistake left students with 14 meals to use in only two days. Camera in hand, Will Drabold visited campus eatery Boyd Market to photograph the empty shelves after the rush.

However, within minutes, a student worker told Drabold that photography was not allowed in the market.

“There should be no difference if I have a camera in Boyd Market or if I’m standing on the college green,” Drabold said. “I can’t see how you can consider that anything but public, taxpayer-funded property.”

But university spokeswoman Katie Quaranta said that interior spaces on campus, including markets, dining halls, offices and classrooms, are not considered open forums by the university, which can place restrictions on photos and videos in these places.

Drabold said that this incident reflected a broader campus policy at OU, under which workers are not allowed to speak to members of the press.

“The worker who kicked me out of the market was really worried that I was going to print his name,” he said. “He was afraid that there was going to be retribution from his bosses against him. He was intimidated by the system that this university has set up.”

University policy is only one barrier that the student press faces when attempting to cover campus- and worker-related issues. Contract terms, employment culture and unions can also influence a student journalist’s access to sources and physical spaces while reporting. Collectively, these factors could undercut or eliminate a writer’s story.

“There have definitely been stories we simply have not written because we can’t get anybody to talk to us,” Drabold said. “It makes reporting very hard, it definitely leaves stories untouched and a lot of people don’t even want to talk anonymously because their afraid to have an opinion either way.”

## Explicit barriers to important faculty sources

Sometimes, to discourage discussion around a controversial

issue, school administrators issue gag orders on faculty members, cutting the student press’s access to university sources.

When drafting faculty contracts in early 2014, Central New Mexico Community college administrators proposed language to limit the faculty’s ability to talk to the student press.

According to a letter sent by vice president for full-union faculty Andy Russell to Jonathan Baca, a copy editor with student newspaper *The CNM Chronicle*, nothing “inflammatory, derogatory, or disruptive to good labor-management relations” could be included in communications with the student press.

Baca told the Student Press Law Center at the time that the language was so vague that he was worried unionized instructors “will take it to mean that they can’t come to *The CNM Chronicle* with legitimate concerns about anything regarding the union.”

During the fall of that year, student journalists at a Florida community college faced a similar situation when the president of Pensacola State College told faculty members they were violating state law by talking to student journalists about contract negotiations since public employees cannot “exploit a relationship with a student for personal gain or advantage.”

“What we’re trying to ensure is that students are not embroiled in labor matters at an institution,” college president Ed Meadows told Inside Higher Ed at the time. Meadows also said that local professional press could more appropriately report about contract negotiations at the school.

In a letter to Meadows, the United Faculty of Florida claimed the president’s interpretation of state law was invalid, voicing concerns that his administration acted “not only to bully PSCFA and its members,” but also “to harass student reporters.”

## Fear of retaliation

When talking to the press, university workers may also face informal pressures absent from policy, fearing for their jobs, livelihoods and immigration statuses.

Matt Lemas, a managing editor for *The Daily Trojan* at the University of Southern California, said that although he could easily talk to workers during a January 2015 wage increase



Campus workers at the University of Southern California protest for better wages in January.  
Photo courtesy of Mariya Dondonyan, *Daily Trojan*

strike on campus, it was challenging for other student reporters to find sources during subsequent negotiations.

“One reporter was trying to interview workers at their place of employment, at campus eateries and places of the sort, and it was incredibly difficult to find employees willing to speak on the record and use their names,” he said. “There was a fear of not expressing the goal of their cause in an articulate manner. Many times workers felt that they were not the proper voice and there was a fear of their words being used against them by the university because they were still in agreements.”

Lemas said USC campus workers, who sometimes staff privately operated eateries, are often hesitant to speak out against working conditions they believe are unjust.

“It really takes a brave worker or faculty member to be a voice for their cause because if what they’re saying puts the university in a negative light, there’s a fear they could be reprimanded by university officials,” he said. “That fear of retaliation proves an obstacle in getting workers to come forward.”

When Lucia He first started reporting about wage theft at Epicurean, an eatery on Georgetown University’s campus, she noticed some workers were hesitant to talk. Some workers said the restaurant owner told them not to speak out about underpayment, threatening their jobs and immigration statuses, He said.

“The bottom line for these workers was that they feared for their jobs,” she said. “They were scared and felt like while they were being treated unfairly, if they gave their names and their employer found out, they might get fired. In this specific case, the threat of deportation was also huge.”

### The Power of Unionization

Erin Donnelly, a reporter for *The Daily Bruin* at the University of California, Los Angeles, said she thinks her university is more accountable to the community and is less likely to threaten university workers because it is public.



Patient care workers at University of California, Los Angeles protest pension changes in January.  
Photo courtesy of Blaine Ohigashi, *Daily Bruin*

“When you’re employed by the state, you’re a lot more accountable to these things,” she said. “In that sense, I think the employees are a lot freer here. It always comes back to the issue of political accountability. When we have issues on campus, it’s not just about the workers.”

Mina Corpuz, who often writes about labor issues for Boston University’s *The Daily Free Press*, said the presence of a union plays a greater role in the accessibility of sources than the public or private nature of an institution.

“Even if it’s a private or public institution, it’s still going to be a matter of people from a union addressing some sort of university administration,” she said. “Contracts are still contracts and negotiations are still negotiations.”

When reporting about dissatisfied custodians, mailroom operators, groundskeepers and skilled trades workers at BU in fall 2014, Corpuz found that the workers happily talked to the student press “to get the message out to students who wouldn’t have known what was going on.”

Bade echoed the impact of unionization on source

# ON THE DOCKET

**Ohio and Indiana** — The Ohio Supreme Court ruled in favor of a former student journalist in May, determining that police departments at private universities are public entities and must release records under the state's open records law. However, a superior court judge in Indiana ruled in April the University of Notre Dame police department does not have to give ESPN access to police records about student athletes because the department is not a public agency under the state's open records law.

**Oregon** — An Oregon middle school student's free-speech rights were violated when he was suspended for calling a teacher a "bitch" who "needs to be shot" on Facebook, a federal judge ruled in May. The judge said the social media post did not cause "a widespread whispering campaign at the school or anywhere else."

**Iowa** — Twelve current and former members of the student newspaper at Muscatine Community College filed suit against several of the institution's top administrators, arguing the officials allowed faculty and staff members to harass and intimidate student journalists following a series of critical news stories. Administrators also removed the newspaper's full-time faculty adviser from the position, a decision the complaint argues was "content-based."

**Michigan** — The former student newspaper adviser at Northern Michigan University filed a federal lawsuit against members of the newspaper's board of directors in April, arguing her termination violated her free-speech rights.

**Louisiana** — The Fifth U.S. Circuit Court of Appeals reheard in May a lawsuit by a former student, who was suspended in 2011 for posting a profane rap video online, which accused two coaches of misconduct.

**Georgia** — A federal appeals court reinstated in January a former Valdosta State University student's claim that he was expelled in 2007 in retaliation for a Facebook post that criticized the institution's president.

accessibility, stating that ever since Georgetown University cafeteria workers unionized in 2011, they've been more willing to talk to reporters.

"For me, it was always difficult to get someone in their work environment to talk," he said. "But since the unionization, we've had good media contacts with cafeteria workers. When you go through a union, the union will make sure a source doesn't get fired for talking."

Donnelly said that because UC workers are included in a statewide union, labor strikes are common, reducing the necessity of investigative work by student reporters.

"It's the best news peg for us to wait and see if a protest is happening," she said. "In the meantime, we stick most of our coverage on union leaders, and if there are updates mid-protest we'll talk to the heads of the union."

Alex Torpey, a UCLA sophomore who works alongside workers in a campus cafeteria, said that the statewide nature of the university's union, AFSCME 3299, makes labor issues on campus more public. However, he said that workers often stick to scripted statements when speaking to reporters so that they do not "compromise the solidarity of their position."

AFSCME 3299 Spokesman Todd Stenhouse said that punishment for UC workers who speak to the press has "not been an issue" and that the union encourages dialogue between members and student reporters.

"Part of what being union means is the right to strike and the right to have a voice on the job," he said. "Students are inextricably linked to the fights we wage in the workplace and the solutions we find in the workplace. What's really important for us when working with student reporters is helping them understand the issues."

## Despite challenges, a rewarding beat

Though reporting on labor issues presents distinct obstacles, there are sometimes tactics available to student journalists when covering workplace and worker issues on campus.

Lemas said that teaming with a student group that supports workers at USC helped him gain access to sources who were previously hesitant to talk.

"There was a student organization on campus that was a main supporter of the hospitality workers' fight to increase their wages, and we used them as an intermediary to introduce us to the workers," he said. "A college campus is so connected, so we were able to talk to them and have them talk to the workers to see if they could budge on the matter, which ultimately helped."

Gavin Bade, who worked alongside He covering the wage theft allegations, said that student publication *The Voice* granted anonymity liberally when reporting about Epicurean, the Georgetown restaurant.

"Anonymity is just another tool that you can use to get people out of their shells to talk to you. A lot of times it really helps," he said. "Coming forward and talking about issues in your workplace, especially for the most precarious workers, is an incredibly scary and potentially dangerous situation from the perspective of their livelihoods."

Despite many the obstacles to sourcing the story, He said that that writing the Epicurean story was a rewarding process.

"My experience introduced me to the power that journalism has in the sense that if we didn't write this story no one would know about this," she said. "I don't know if current employment policies are better or not, hopefully they are. But in some sense, we brought awareness to the issue." ♦

# Unpaid journalism internships: Employers react to wave of legal challenges

By Frank D. LoMonte

When two college graduates sued Fox Searchlight Pictures in September 2011 demanding unpaid wages for internships that included such “educational” tasks as making coffee and taking out garbage, they fired a shot heard around the media industry. That lawsuit drew nationwide attention to the questionable legality of making unpaid interns do menial work that a paid employee would otherwise do.

Across the country, media companies are facing legal action from former interns disgruntled over working without pay, particularly those who worked with the hope of turning the unpaid position into salaried employment. Hearst Corp. and Gawker are among the media giants who’ve been targeted by former interns seeking back pay.

In October 2014, NBCUniversal paid \$6.4 million to settle a class-action lawsuit brought on behalf of several thousand former unpaid interns.<sup>1</sup> Then in March 2015, media conglomerate Viacom (which owns MTV and BET, among other high-profile properties) agreed to a \$7.2 million settlement with attorneys representing more than 1,000 former interns.<sup>2</sup>

Unpaid internships are in no way unique to journalism. A survey published by the research firm Intern Bridge found that more than 51 percent of students did unpaid internships, and more than half did not receive academic credit for the experience.<sup>3</sup> But employers in the news and entertainment fields have been targeted in a recent wave of lawsuits questioning the widespread practice of asking interns to work without compensation.

The nonprofit investigative news service ProPublica shone a national spotlight on the widespread use of unpaid intern labor in a series of stories spanning 2013-14 about what the authors called “the intern economy.”<sup>4</sup> The series pointed out that not only are internships commonly unpaid, but students who want to receive academic credit are required to register as if registering for any other academic course, meaning that students

are actually paying money to do work.

When is it permissible for a news organization to maintain unpaid intern positions? And what are the legal risks to interns who agree to work without pay? This article summarizes recent legal developments that are causing some observers to predict that the end of the unpaid internship is not far away.

### Employment law basics

A federal statute, the Fair Labor Standards Act (referred to as the “FLSA”), requires employers to pay their employees at least the federal minimum hourly wage (which is currently \$7.25).<sup>5</sup> It also requires overtime pay at a rate of 150 percent (“time-and-a-half”) of the regular wage for hours that an employer requires an employee to work beyond 40 per week.<sup>6</sup>

But not everyone who shows up at a workplace is covered by the FLSA. To be entitled to receive overtime pay and minimum wage, the worker must qualify as an “employee” at a workplace with \$500,000 or more in annual gross sales.<sup>7</sup> The FLSA does not contain an “intern exemption.” But if an employer can prove that an intern is not legally an “employee” at all – that the intern is part of an educational program and not just doing the work of a regular paid employee – then the intern can be paid less than minimum wage. Or nothing at all. Ironically given recent events, one of the earliest U.S. Supreme Court cases interpreting what it means to be an “employee” under the FLSA also involved Hearst – in a 1944 dispute with Los Angeles “newsboys” who peddled the company’s papers on the street.

The National Labor Relations Board, which is the federal agency with power to enforce compliance with the FLSA, ruled that the newspaper sellers were “employees” even though the employer carefully avoided using that term. The NLRB looked beyond how the job was labeled and focused on how it was actually performed. The Supreme Court analyzed the substance of the working

relationship and agreed that the NLRB's decision was justified:

[T]he designated newsboys work continuously and regularly, rely upon their earnings for the support of themselves and their families, and have their total wages influenced in large measure by the publishers, who dictate their buying and selling prices, fix their markets and control their supply of papers. Their hours of work and their efforts on the job are supervised and to some extent prescribed by the publishers or their agents. Much of their sales equipment and advertising materials is furnished by the publishers with the intention that it be used for the publisher's benefit.<sup>8</sup>

The Department of Labor issued a "fact sheet" in April 2010 that sets forth criteria similar to those the Supreme Court applied in the *Hearst Publications* case

that will determine whether a position is "employment" for which minimum wage must be paid:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.<sup>9</sup>

In simple English, the Department has told employers

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that the more a job looks like a job and not like a training experience, the more likely the worker will be entitled to receive overtime and minimum wage.

In deciding whether the FLSA does or does not apply to a particular working relationship, judges will look at the “economic reality” of the complaining employee’s situation.<sup>10</sup> The most important consideration is who is the “primary beneficiary” of the work being done.<sup>11</sup> If the work appears primarily to be for the educational benefit of the intern, then the position is unlikely to be covered by the FLSA. But if the primary beneficiary is the employer – particularly if the interns are doing work that is also being done by paid employees (or was, before they were laid off) – then the job should qualify for minimum wage and overtime.

### When “free labor” is legal

Once a person qualifies as an “employee,” then the person is presumed to be entitled to the protection of the FLSA, including the right to be paid the minimum wage and time-and-a-half for mandatory overtime hours. But Congress has carved out certain industry-specific exemptions even for people who’d otherwise be covered by the FLSA as “employees.” If a dispute arises, the burden of proof is on the employer to demonstrate that a position is exempt from the FLSA.<sup>12</sup>

A government agency, such as a state college or university, has more leeway to use unpaid intern labor because of an exemption for “public agency volunteers.” The Labor Department says it’s legal for a government agency not to pay a volunteer as long as the work meets certain standards: (1) it must have a charitable or civic purpose, (2) there must be no promise or expectation of pay, (3) the work must be performed freely and without pressure and (4) the work must not be the same type of work that the “volunteer” is already doing for pay.<sup>13</sup> (In other words, an employee cannot “donate” unpaid hours of work at her regular job; the volunteer work must be of a different type, such as a librarian who volunteers on weekends to plant trees.)

The FLSA also has a targeted exemption that applies specifically to newspapers with circulation of less than 4,000,<sup>14</sup> so an intern for a small-town weekly paper would have no legal right to demand minimum wage or overtime pay. However, if a chain of small newspapers is under the same management with shared editorial content, then their circulation will be combined and may

put the newspaper over the 4,000 threshold, meaning that workers are entitled to overtime and minimum wage.<sup>15</sup>

### Unpaid interns fight back

In September 2011, former Fox Searchlight interns Eric Glatt and Alexander Footman filed suit in federal court in New York alleging that they should have been compensated as employees for their work on the crew of the Academy Award-winning motion picture, “Black Swan.” The suit claimed that the interns did work with no educational or training purpose, indistinguishable from the work of regular employees – except for the paycheck.

The interns won a favorable ruling in June 2013 from a judge in the Southern District of New York. Judge William H. Pauley ruled that the movie studio was, legally, the interns’ “employer.” Even though the interns worked in name for a different corporate entity, Fox Searchlight exercised “effective control” over their work and therefore could be held liable under the FLSA as their employer. The judge also allowed the lawsuit to proceed as a class action on behalf of five years’ worth of interns not just with Fox Searchlight but with all of its Fox-owned sister corporations, potentially hundreds of plaintiffs.

That ruling is being appealed to the Second Circuit U.S. Court of Appeals, where lawyers presented arguments in January 2015. No decision has yet been issued.

The Fox Searchlight lawsuit triggered a wave of similar cases around the country, many targeting media companies that for years have relied on unpaid interns to research news stories, produce TV broadcasts, manage social-media accounts and do other substantive work. Interns have readily taken on these positions for years in hopes of turning the “apprenticeship” into full-time employment, or at least making the connections that will lead to a post-graduation job.

At the same time the Second Circuit heard arguments in the *Glatt* case, the judges also heard a comparable case against Hearst Corp. brought by a former intern with *Harper’s Bazaar* magazine. In that case, unlike in Glatt’s, the district court refused to allow the former intern, Xuedan Wang, to bring her claims as a class action. (Class actions are significantly more intimidating to employers, and more rewarding to plaintiff’s lawyers, because unlike in a traditional lawsuit, the rights of potentially thousands of people with similar claims are all decided at once.)

## No salary = no legal rights?

If it were not frustrating enough to work without compensation, a New York court made life even more discouraging for unpaid interns in a 2013 ruling, *Wang v. Phoenix Satellite TV US, Inc.*, involving sexual harassment claims against a television production company.

The plaintiff, Lihuan Wang, worked as a television copywriter and on-air reporter during an unpaid internship while a graduate student at Syracuse University. Wang complained that her supervisor grabbed and propositioned her, and that she was rejected for full-time employment because she refused to accompany the harasser on a weekend trip to Atlantic City.<sup>16</sup>

A U.S. district judge threw out Wang's harassment complaint - brought under New York state law, which is nearly identical to the better-known federal Title VII gender discrimination law - on the grounds that Wang did not meet the definition of an "employee" because she received no pay. In other words, regardless

of how strong her proof that she was harassed on the basis of sex, Wang was disqualified as an unpaid intern from bringing a claim.<sup>17</sup> (Wang was allowed, however, to proceed with a claim that the broadcaster refused to hire her for not submitting to sexual advances, since a failure-to-hire claim logically does not require proof of being an "employee.")

While startling and seemingly unjust to many, the court's ruling was consistent with the view of most federal appeals courts nationwide - that protection against on-the-job harassment or discrimination first requires proof that the worker received "substantial compensation" for the work.<sup>18</sup> Being vulnerable to harassment without an obvious legal remedy is yet another hazard of the unpaid internship.

## The marketplace responds

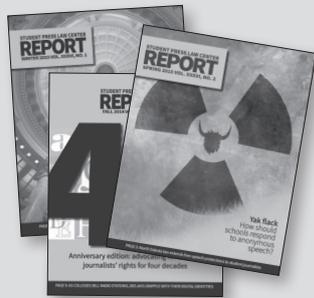
Alarmed by the wave of litigation, many employers have begun voluntarily paying their interns to avoid being next in the legal crosshairs. One Virginia employment-law expert told Bloomberg BNA that the unpaid internship "has been regulated virtually out of existence" at for-profit companies, although charitable and governmental employers continue offering unpaid positions.<sup>19</sup>

Indeed, ProPublica reported that, after the Labor Department threatened to bring an enforcement action against the outdoor sports magazine, *Outside*, on behalf of 28 former interns, the magazine responded by simply dropping its intern program and hiring more entry-level editors instead.<sup>20</sup>

One final complicating factor that may weigh in employers' design of intern programs is the obligation under the federal Affordable Care Act to offer health coverage to employees who work 30 hours per week or more. Although short-term temporary employees do not qualify for coverage, an intern who is paid and works six months or more is probably enough of an "employee" to be covered by the ACA. An employer who fails to offer coverage to the federally mandated percentage of workers can face hefty fines. Consequently, the incentive under the health-care law will be to keep internships unpaid and of short duration.

Regulators, too, are beginning to take notice. After a wave of public outrage over Lihuan Wang's sexual harassment case, the New York City Council enacted legislation that, at least in the nation's largest city, gives

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unpaid interns the same right to bring discrimination complaints based on race, religion or gender as salaried employees have.<sup>21</sup>

**Attorney Frank D. LoMonte is executive director of the Student Press Law Center.**

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#### Endnotes:

1. Daniel Miller, “NBCUniversal to settle suit by former interns for \$6.4 million,” *Los Angeles Times*, Oct. 24, 2014.
2. Meg James, “Viacom agrees to pay up to \$7.2 million to settle intern lawsuit,” *Los Angeles Times*, March 12, 2015.
3. The findings of Intern Bridge’s 2012 National Internship Salary Survey are summarized at <http://www.prweb.com/releases/intern-bridge/02/prweb10400332.htm>.
4. See Blair Hickman & Christie Thompson, “When Is It OK to Not Pay an Intern?”, *ProPublica*, June 14, 2013, available at <http://www.propublica.org/article/when-interns-should-be-paid-explained>.
5. 29 U.S.C. § 206(a). Students should also know that a lower minimum “trainee wage” of \$4.25 per hour can apply during the first 90 days of employment for a worker younger than 20. Also, many states and even some cities require employers to pay more than the federal minimum rate.
6. 29 U.S.C. § 207(a).
7. U.S. Dept. of Labor, Wage & Hour Div., “Handy Reference Guide to the Fair Labor Standards Act” (Nov. 2014) available at <http://www.dol.gov/whd/regs/compliance/hrgh.htm>.
8. *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 131 (1944).
9. U.S. Dept. of Labor, “Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act” (April 2010).
10. *Alamo Found’n v. Secy. of Labor*, 471 U.S. 290, 301 (1985)
11. See, e.g., *McLaughlin v. Ensley*, 877 F.2d 1207, 1209 (4th Cir. 1989).
12. *Corning Glass Works v. Brennan*, 417 U.S. 188, 196-97 (1974).
13. 29 C.F.R. § 553.101(a), (c), (d).
14. 29 U.S.C. § 213(a)(8).
15. See *Reich v. Gateway Press, Inc.*, 13 F.3d 685, 694 (3d Cir. 1994) (ruling that circulation of chain-owned newspapers should have been aggregated for FLSA purposes where the papers had a “unified operation or control” and “a common publishing purpose”); accord *McComb v. Dessau*, 89 F.Supp. 295 (S.D.Cal. 1950).
16. *Wang*, 976 F. Supp. 2d 527, 530-31 (S.D.N.Y. 2013).
17. *Id.* at 535-37.
18. Bryce Morgan, *Compensation Isn’t Everything: The Threshold-Remuneration Test for Employment Discrimination Under Title VII*, 40 Iowa J. Corp. L. 779, 782 (Spring 2015).
19. William Welkowitz, “Will Unpaid Internships Start ‘Paying Off’ In More Ways Than One?”, *Bloomberg BNA*, May 14, 2015.
20. Kara Brandeisky & Jeremy B Merrill, “How the Labor Department Has Let Companies Off the Hook for Unpaid Internships,” *ProPublica*, April 9, 2014.
21. Erin Durkin, “Interns get equal protection against pervy bosses as paid employees under new bill,” *New York Daily News* (March 26, 2014).

## SPLC NEWS

**New York** – The SPLC filed a friend-of-the-court brief in April with the New York-based Second Circuit U.S. Court of Appeals urging the court to restore reasonable fees for attorney Ronald McGuire, who represented the student editors of the *College Voice* newspaper at the College of Staten Island in a long-running First Amendment battle with their school. The brief seeks reversal of a December 2014 U.S. district court order slashing McGuire’s attorney fees, even though his side prevailed in the case in 2007. By McGuire’s calculations, he and his staff invested \$832,000 in labor and costs in the case — yet in the 2014 order, the district judge granted only \$56,000 in fees and expenses.

**Florida** – The SPLC filed a friend-of-the-court brief in March with Florida’s Fifth District Court of Appeals arguing that the Family Educational Rights and Privacy Act cannot constitutionally be applied to obstruct compliance with state open-records laws. The brief challenged the University of Central Florida’s claim that FERPA precludes releasing disciplinary records related to Greek houses and other newsworthy public documents.

**Montana** – The SPLC filed a friend-of-the-court brief in February challenging the University of Montana’s attempts to withhold the records of a student disciplinary appeal involving a high-profile athlete accused of sexual assault. Author Jon Krakauer filed suit under the Montana open records act and obtained a favorable ruling. Arguing that the release of these records would violate the federal student privacy statute, FERPA, the university is fighting back in the Montana Supreme Court.

**Washington, D.C.** – A survey released in February of 515 high school students and advisers attending the National High School Journalism Convention verifies that, while many continue facing institutional censorship of their work, most schools do not require an administrator to pre-approve news content before it is distributed. The survey was an SPLC project with assistance from the Kent State Center for Scholastic Journalism and with support from the Journalism Education Association and National Scholastic Press Association.

Of the 6,406 students and teachers who attended the annual journalism convention in Washington, D.C., in November 2013, 464 students and 51 advisers responded to a survey about their experiences with censorship of student media. Significant numbers of both students (25 percent) and advisers (17 percent) said school officials had told them not to publish or air something. Thirteen percent of advisers reported a school official reviews the content of their student news medium before it is published or aired. In addition, 7 percent of advisers said school officials had threatened their position as adviser or their job based on content decisions their students had made.

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