TRIGGER WARNING

Professors struggle to find a balance between remaining sensitive to students who have experienced trauma and protecting academic freedom.
Cover Story

12 Under the gun

Trigger warnings are the latest free speech debate to hit college campuses. Students of all ideological backgrounds have called for professors to label ‘triggering’ curriculum, which can range from a graphic description of sexual assault to books containing elements of racism. Professors must find a balance between remaining sensitive to students who have experienced trauma and protecting academic freedom.

By Madeline Will

5 Still Captive?

The most recent review of the state of high school journalism showed the latest struggles, and the progress made, since the first review in 1974.

8 Behind closed doors

Public access advocates have pushed back against university governing boards’ closed-door meetings.

16 Free speech zones

Several colleges across the country have attempted to restrict students’ speech to ‘free speech zones,’ which have been ripe for lawsuits.

31 New Voices of Michigan

A conversation with Jeremy Steele, a journalism professor who is leading the campaign in Michigan to add legal protection for student journalists.

Regular Features

4 FERPA Fact

Fact-checking the use of FERPA to deny access to public records.

18 On the Docket

A former student in Georgia who was expelled without a hearing agreed to a $900,000 settlement with the former university president after filing suit in 2008.

26 Under the Dome

The Pennsylvania legislature is working to increase the amount of state employees whose salaries are publicly reported, including university faculty.

32 Legal Analysis

What video programming on the Internet needs to be closed captioned?

35 SPLC News

The SPLC formed the J-Team with other national journalism organizations to respond to instances of colleges censoring student journalists.
North Dakota journalism professor wins accolades for spearheading successful student press rights campaign

Although Guinness doesn’t recognize a category for it, it’s a fair bet that the record for “most North Dakotans ever at the Playboy Mansion” was set on Sept. 29.

That’s the day Steve Listopad, the student media director at Valley City State University, stood alongside journalism royalty to accept the Hefner Foundation’s First Amendment Award for outstanding achievement by an educator.

“Outstanding” is one way of describing the year that Listopad had. “Miraculous” wouldn’t be an exaggeration.

Until Listopad convinced the North Dakota legislature to enact the John Wall New Voices of North Dakota Act, it had been eight years since a state (Oregon) passed a law granting students more than the bare minimum legal protection remaining after the Supreme Court’s 1988 Hazelwood decision. Eight frustrating drought years, during which bills proposed in Connecticut, Kentucky, Nebraska and Washington went nowhere.

While the victory had many assists – state Reps. Alex Looysen, Corey Mock and Jessica Haak, none older than 30, did not have the seniority to realize what they were doing was impossible, so they just went out and did it – Listopad was the quarterback without whom the ball would never have moved. Whenever the movement needed a boost – a newspaper endorsement, a celebrity guest speaker – he simply willed it to happen.

Listopad accepted the award in a setting that could scarcely have been further removed from the University of Jamestown cafeteria where the New Voices Act originated around a lunch table on a sketch pad – Beverly Hills, Calif., in a backyard ceremony at the storied Hefner mansion.

“We don’t want our new voices retreating to the dark recesses of the Internet to have important conversations,” Listopad said in his acceptance speech before a cheering section of some two dozen North Dakotans witnessing the validation of their mutual achievement.

What happened in North Dakota would have been noteworthy in its own right, but what made it momentous is the supercharge of inspiration it has provided to the rest of the country.

Movements are taking shape to enact copycat legislation in Maryland, Michigan and New Jersey, and are being discussed in Florida, Idaho, Minnesota, Missouri, New York, Rhode Island and Wisconsin. If those states join the roster of those limiting schools’ authority to restrict or punish student journalism, the debate over Hazelwood will effectively be over.

All because of a small-town college professor who believed in the power of well-trained young voices as a force for good.

SPLC and Ed Week partner to support high school reporters

American newsrooms hemorrhaged another 3,800 jobs last year, a 10.4 percent single-year decline in full-time positions, which are down a breathtaking 42 percent since peaking in 1990. Who is left to provide the everyday coverage of local and state governments that hollowed-out professional news staffs no longer dependably can? Increasingly, the answer is Students.

Students’ unique ability to inform the community about school news is the 21st century survival case for journalism, and the SPLC is helping make it. That’s why we’re partnering with Education Week magazine to help high school journalists bring the public essential news about developments in education policy, and how national trends are being felt at the classroom level.

With the start of the fall semester, SPLC and Ed Week jointly launched a new feature, “On the Ed Beat,” that provides young reporters and editors with recipes to create localized versions of the magazine’s most engaging education-policy articles. Each “Ed Beat” post on the SPLC website — collected at www.splc.org/page/story-ideas — includes a step-by-step guide to obtaining relevant public records, along with expert tips from Ed Week beat reporters and columnists.

It will be a “win” if students in school newsrooms across the country begin reading excellent journalism by the best education writers in the field. It will be a bigger “win” if those students can bring their unique ground-level perspective to issues on which young people’s voices — the voices of the customer — are so rarely heard.

If you create a story based on the SPLC/Ed Week tip sheets, send us a link at pubfel-low@splc.org or tweet it to @SPLC and we’ll share it.
FERPA Fact

After a report from the Department of Education documenting the University of Virginia’s repeated failures to respond to reports of sexual assault by students, the Washington Post asked UVa President Teresa Sullivan whether anyone had been expelled from the university for rape during the past year. Yes, Sullivan told the Post, but “she declined to elaborate, citing federal student privacy laws.”

SPLC Executive Director Frank LoMonte:

Twelve-point-five pounds.

That’s the minimum pounds-per-square-inch inflation that the NFL requires for a game-legal football. That is a statistic that quarterback Tom Brady has memorized better than the New England Patriots’ playbook. It’s what nearly cost Brady four regular-season games before a judge lifted his league-imposed suspension for (the league believed, though a judge found the evidence insufficient) directing that balls be deflated before a playoff game.

We mention this because, if you are Teresa Sullivan, you have lived every day of the last 51 months – the duration of the DOE’s torturously slow investigation – with a Tom-Brady-like focus on the law governing campus sexual assault, an issue that could torpedo your presidency and the institution it rode in on.

And yet, you still somehow managed to get it wrong. Federal student privacy law says sexual assault cases resulting in expulsion are not private. Not even a little bit.

Here’s almost certainly what Sullivan was actually saying: “I choose not to tell you, because the answer is ‘one,’ and when you have 26 rapes a year, ‘one’ sounds pretty much as bad as ‘zero.’”

This makes sense – well, not real actual sense, but “UVa sense” – once you consider that a UVa administrator was quoted in the DOE report as saying that the university had never expelled anyone for sexual assault because, even when the guy walks into the hearing and admits he did it, “one is never 100 percent sure” that the words on the page actually mean what they say. As opposed to what you wish they said.

UVa is wrong on the law of student privacy. 100 percent.

We rate this: Three Arne Duncans

THE ARNE METER @ FERPAFACT.TUMBLR.COM

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.

Sack Secrecy

Hiring a college president shouldn’t be like running a drug ring, but sometimes it’s hard to tell the difference. Sack Secrecy is an SPLC project to highlight secretive searches.

Board of Regents naturally did everything possible to restore public confidence and send a message of transparency by interviewing candidates in the open.

No, ha ha, that’s what anyone with a brain bigger than a walnut would have done, but of course what the Texas Regents did hire another secret president, naming Gregory Fenves the “sole finalist” after their rumored first-choice candidate – “rumored,” because all the actual discussions took place behind closed doors – took another presidency. (Small moment of Secrecy Schadenfreude here: The fact that no candidates’ names are ever announced is what lets applicants “play the field” in pursuing two presidencies at once. How’s that secrecy taste to you now, UT?)

The major argument in favor of closed-door searches is that “good people” won’t apply for fear of jeopardizing their standing with their current employers. But of course Fenves’ current employer was UT-Austin. So the reason not to announce his name in advance and have him interview and compete publicly for the position is… um, let us get back to you on that.

UNVEIL BAG MAN @ SACKSECRECY.TUMBLR.COM

SPLC Executive Director Frank LoMonte:

The University of Texas-Austin has been burned, big-time, by a president who maintained an off-the-books preferential-admission system for the under-qualified relatives of politicians.

So when it came time to hire Bill Powers’ replacement, the
A review of the state of high school journalism reached its third iteration with the recent publication of *Still Captive: History, Law and the Teaching of High School Journalism.*

The book, a collection of analyses from 14 editors and authors published this spring, looks at how the field of high school journalism has continued to evolve into the digital age. Many concerns remain the same 40 years after *Captive Voices: High School Journalism in America* first exposed the challenges that student journalists face in keeping their First Amendment rights, which led to the creation of the Student Press Law Center.

“Although the journalism industry itself and the education systems are very different than they were 20 years ago and 40 years ago, the way journalism is considered, the way it is treated, the way it is supported, has changed very little when we talk about high school journalism and high school education,” co-author David Burns said.

The biggest contribution of the book might be a survey conducted by the Society of Professional Journalists’ education committee, which asked high school journalism advisers about the state of high school journalism today. The committee received 258 responses, which together paint a picture of a national scene where journalism programs are fighting to stay relevant.
Many journalism advisers still lack journalism training, and while minorities are becoming more represented within the field of journalism, there is still a gap in representation. Program funding, lack of professional support and censorship remain key concerns for journalism programs today. 

Captive Voices emphasized the fight against censorship in high schools that is still ongoing today. The book, published in 1974, was one of the first to argue that direct administrative censorship has a chilling effect on students and stops the free discussion of controversial issues.

Some of the main challenges listed in the original book include censorship from high school administrators and advisers, the lack of support from professional news organizations for high school journalists’ free speech and the lack of diversity in professional and student newsrooms. 

Still Captive dives into many of the same concerns, albeit against a very different backdrop of waning financial health for scholastic and professional journalism.

The purpose of high school journalism

So what does the modern high school journalism adviser look like today? Nearly 80 percent are female, with an average age of 44. Almost 25 percent took no college journalism courses, and 43.3 percent have no previous professional journalism experience.

“What amazed us was that nearly one-fourth of all high school journalism teachers who we surveyed have had absolutely no journalism training,” co-editor and project coordinator Rebecca Tallent said.

She added that some advisers hadn’t even heard of Hazelwood School District vs. Kuhlmeier, the 1988 Supreme Court case that ruled the First Amendment rights of student journalists are not violated when school officials prevent the publication of certain articles.

One significant change between the 1994 book, Death by Cheeseburger: High School Journalism in the 1990s and Beyond, and the new Still Captive study completed in 2014 has been how advisers view the core purpose of high school journalism.

In 1994, 36.5 percent said that teaching and learning skills was the primary purpose, followed by 34 percent who said it was a public forum for student expression. About 16 percent said the purpose was to report good and bad news, 7.6 percent thought it was for publicizing school events, and 6.7 percent said the primary purpose was to promote positivity.

In 2014, the percentage that focused on teaching and skill-learning was bolstered to 63.5 percent. Those who said a public forum for freedom of expression was the primary purpose dropped to 22.8 percent and the remaining categories constituted under 3 percent of respondents.

Closing high school newspapers

Tallent, who is a professor at the University of Idaho, believes the skills that an individual learns in journalism can carry into a number of professions.

“It is just incredibly important that we foster our best and brightest youngsters (to) learn what journalism can help them do,” Tallent said. “Not only in high school, even if they don’t go into journalism, but in life as a lawyer, as a doctor, as a mechanic, as an engineer — whatever it is you go into being, journalism helps.”

Still, across the country, many high school newspapers and journalism programs have closed down.

“What we have is a lot of schools that don’t have papers at all,” said attorney Chris Fager, who served as the first full-time director of the Student Press Law Center, from 1975 to 1978. “Oftentimes there are schools where there were papers, but they no longer have them.”

Tallent said students who come to college seeking to do journalism can be ill-prepared due to a lack of journalism education in high school. She said principals sometimes see newspapers as dangerous or perceive newspapers as dying, but overlook the changes in mediums of storytelling and the critical thinking skills that can come from having ownership in a newspaper.

“Principals still have the right, under the ever-so-lovely Hazelwood decision, to review newspapers before they go out; they have the right to censor,” Tallent said. “Principals can still have all these students learning all this great stuff, learning how to write, learning how to think. They can still have the newspapers keep going, but they aren’t thinking along those lines.”

Fager said he thinks the focus on obtaining higher standardized test scores has caused some of the elimination of journalism programs, along with other non-core subjects. Fager now serves on the board of directors for the Student
Voice Project, a group that supports journalism education and student media in underserved schools.

“Journalism isn’t the only thing that has gotten whacked, it’s arts and sports and extracurriculars — anything perceived as not having an immediate impact on test scores,” he said. “We’ve had papers that were really successful that didn’t bother school administrations at all, but they didn’t choose to continue with journalism education because it wasn’t close enough to their priorities with test scores.”

Diversity in student journalism

Lee Anne Peck, a professor at the University of Northern Colorado rado and one of the co-authors, noted in the book that high school newsrooms still contain a gap between minority and majority students and that gap continues at the professional level.

Peck estimated that among all high school media, 25 percent are nonwhite as compared to 37 percent of the general United States population. The original Captive Voices survey did not measure minority representation in high school journalism programs. In 1992, a JEA survey found that white journalism students made up over 80 percent of journalism staffs.

“Although the percentages seem a bit better than 20 years ago, more recruiting still needs to be done,” Peck wrote.

This imbalance remains pronounced at the professional level today, although there has been marked improvement since 1973 when the then-American Society of Newspaper Editors found that minorities constituted only three-fourths of 1 percent among professional U.S. newspaper staffs.

Now, 15 percent of newsrooms have a minority journalist in a top-three leadership position, according to the 2014 Newsroom Census survey by what is now known as the American Society of News Editors, though that still is not fully representative of the general population.

A lack of professional support

“In the survey we found that when we asked, high school advisers said 56 percent had no outside help from professional journalists,” Tallent said. “And colleges and universities don’t fare much better — 53 percent said they had no outside help.”

Professional media involvement is important at the high school level because that’s when most media professionals began their careers in journalism, Tallent said. But now, there are not as many opportunities for high schoolers in professional news organizations, she said.

Professional journalists are also important messengers who can effectively convey the educational benefits of journalism to high school administrators, Fager said. But donations and partnerships with professional news organizations are more difficult to come by now.

“One of the difficulties is that the journalism profession itself has been wracked with layoffs, with contractions, with the erosion of the print audience,” Fager said.

“Here in Los Angeles, the Los Angeles Times has lost half of its editorial workers in the last five years, so one of the difficulties with student journalism is the perception that there are a lot less jobs. We would like to see everybody have some journalism education, because it will really promote media literacy.”

Going forward, Tallent said she hopes that the new book can be a resource to journalism advisers, especially those who do not have previous experience with journalism.

“We have to teach the teachers, and that is one of the reasons we wrote the book and put it together the way we did,” she said.

The book, Still Captive? History, Law and the Teaching of High School Journalism, can be found on Amazon and the New Forums Press website for $34.95.
Behind closed doors

Public access advocates have pushed back against university governing boards’ closed-door meetings, resulting in legal action.

BY PATRICIA LEBOEUF

When the University of Connecticut voted to authorize its $1.3 billion budget in June, there was no opportunity for public discussion.

Although the vote was taken in public, the budget discussion for the public university with 18,000 students happened in executive session — a closed meeting of the financial affairs committee of the board.

There’s an exemption in Connecticut’s Freedom of Information Act that allows public agencies to meet behind closed doors if the subject is a draft budget document and the agency determines that public interest is better served by not disclosing the draft.

UConn cited that exemption as the reason for the closed budget discussion, which has garnered some pushback from free speech advocates and journalists, said Daniel Klau, a lawyer and member of the New England First Amendment Coalition.

“They were candid about it,” Klau said. “Let’s put it this way: they were not secret about having a secret meeting.”

While there is currently no legal action planned against UConn, in the last few years, there have been a rash of court rulings against college trustees who met in secrecy. And advocates in several states are pushing legislation to clarify or expand the public’s right to attend university board meetings.

In Connecticut, a state with a Freedom of Information Commission that has often interpreted state law in favor of public access, the closed budget meeting surprised some onlookers.

Klau said the closed session on the budget appeared to be an anomaly — “which made this meeting a big deal,” he added.

In an emailed statement, university spokeswoman Stephanie Rietz said the financial affairs committee did not
make any changes to the budget in executive session. The budget and “highly detailed” pages of explanatory documents were posted online and made available to the media five days before the board meeting, she said.

But a local newspaper, *The Day*, published an editorial that said the budget was amended and finalized during the executive session, and by the time the documents were made available, there was little time for public scrutiny.

“The most violated laws’

“Open meetings laws are probably the most violated laws in the nation. [They’re] probably violated more than speeding laws,” said David Cuillier, longtime chairman of the Freedom of Information Committee for the Society of Professional Journalists.

Across the country, university leaders believe they are “outside the bounds of the law and of the fundamental principles of democracy,” he said. “It’s not just access to meetings, it’s a whole culture of secrecy that applies to access, to public records, and everything else on campus.”

Access to university meetings tends to be cyclical — it changes in different times, particularly in response to economic fluctuations, said Mitchell Pearlman, a lecturer in law and journalism at UConn and a board member of the National Freedom of Information Coalition.

When there aren’t as many tough decisions to be made, the public and the media see more transparency, he said. But when university budgets are tight — like at UConn, where state funding has decreased — and difficult decisions must be made, government, including public universities, increase secrecy, he said.

Public interest in university transparency increases during lean economic times as well, he said. Universities typically don’t expressly violate open meetings laws, Cuillier said.

Instead, they might use tactics to follow the letter of the law, but not the intent of the law. For instance, boards can call their meetings “retreats,” or debate via email, he said.

“A lot of it’s just fear and cowardice,” Cuillier said. “Bureaucrats who are afraid of being exposed and being questioned — but they work for the public, and they have to develop a backbone and do their jobs, which means being able to work in sunlight.”

Legal backlash

In the past several years, a string of court rulings have gone against university trustees who excluded the public from meetings, at times without providing an adequate explanation as state open-meeting laws require.

Recently, Californians Aware, a California nonprofit, pursued litigation against the Pasadena City College board of trustees for violating the state’s open meetings law when it went into closed session to negotiate the severance agreement for its then-president, Mark W. Rocha.

The board did not inform the public of its full reason for doing so, said Kelly Aviles, an attorney and the vice president for open government compliance at Californians Aware.

“We’re seeing it a lot, where high-level executives are in one day, out the other, but when they leave, they’re taking tons of public money,” she said.

PCC officials claimed that a threat of litigation by Rocha justified closing the meeting, but failed to describe the surrounding circumstances — a violation of California’s open records and meetings act, Aviles said.

In California, boards can go into closed session under the statutory exemption for anticipated litigation, but the public must be made aware of the reasoning behind the decision, she said.

In this case, Aviles said, the only explanation of the matters being discussed in closed session was a note on the agenda that referred to “anticipated litigation.”

Los Angeles County Superior Court Judge Joanne O’Donnell decided for Californians Aware in a June 29 ruling, nullifying the August 2014 severance agreement between the board of trustees and Rocha.

The college was ordered to provide an explanation of steps taken to “unwind” the nullified 2014 severance agreement, or
an explanation of their progress in reaching a new agreement in compliance with the law, according to the ruling.

Gail S. Cooper, general counsel for PCC, declined to comment due to the pending nature of the lawsuit.

“I think they wanted to control the outcome of the matter and do it with as little publicity as possible,” Aviles said.

In July 2012, the Supreme Court of New Jersey ruled that the Rutgers University Board of Governors violated state law by not providing enough information to the public regarding a 2008 meeting where the governors discussed a controversial decision to spend $100 million expanding the Rutgers football stadium.

The unanimous ruling tightened requirements on public bodies to post detailed agendas of upcoming meetings.

The court ruled that the notice the board gave for its closed meeting — that the governors would meet to discuss “matters falling within contract negotiation and attorney-client privilege” — was too generic.

State law requires notice of the subjects to be discussed “to the extent it was known.” The board knew in advance that subjects including the stadium expansion would be discussed, but failed to tell the public, the court wrote.

The court also ruled that the board improperly discussed information concerning proposed policy changes and reformulation of university guidelines in executive session. But the victory proved somewhat hollow; since no actual decisions were made during the unlawfully closed session, there was nothing for the court to order undone.

In a comparable case, a New York Supreme Court justice decided in March 2013 to vacate a decision by State University of New York trustees to close the Long Island Hospital in Brooklyn.

The court found that the trustees’ use of a vague notice, a “skeletal” statement of purpose in the written agenda and the use of a closed two-hour session the day before the public vote amounted to a violation of the state’s Open Meetings Law.

In February 2013, the Open Meetings Compliance Board of the Maryland Attorney General’s Office ruled that the University of Maryland Regents committed multiple violations of the state’s open meetings law in connection with two November 2012 meetings. At the meeting, the panel met in secret to discuss a move from the Atlantic Coast Conference to the Big Ten.

Even though compliance board rejected nearly all of the school’s arguments — including one insisting that the school did not have to notify the public of the meeting date because ‘rumors’ were circulating on social media — the board does not have legal enforcement power against the university for future meetings.

The fourth branch of government?

The Detroit Free Press brought suit against the University of Michigan Board of Regents in July 2014, alleging that the university routinely violated the state’s open meetings law.

This summer, the court decided against the newspaper. The Free Press is appealing the decision.

The paper’s analysis of the formal meetings of U-M’s Board of Regents found that there were public discussions on only 12 of the 116 matters the board voted on between January 2013 and February 2014.

Meanwhile, a state resolution sponsored by Rep. Martin Howrylak, a Republican, would require all meetings of public university boards to be open.

The resolution would be placed on the ballot in the upcoming general election if both the House and Senate approve it by at least a two-thirds vote.

Currently, state law requires only “formal” meetings to be open, and the law enables universities to decide what is formal and what isn’t.

In 1999, Michigan’s Supreme Court had established an exception to the open meetings requirement for university presidential searches in Federated Publications, Inc. v. Michigan State University Board of Trustees.

The court ruled that, as a constitutionally-created body, Michigan’s public universities are not subject to sunshine laws in the presidential search process, because enforcing that requirement would infringe the separation of powers between branches of government.

Michigan’s public universities, in effect, were the “fourth branch” of government, said Jane Briggs-Bunting, president of the Michigan Coalition for Open Government.

“Unfortunately, the language in the decision was pretty sloppy, and as one of the justices said in her dissent .. basically, by doing it this way, you’re opening the door for all but formal sessions to be held in secret, and that’s exactly what’s happened,” she said.

This has led to a lack of public input on big decisions, even beyond presidential searches, she said.

Universities tend to believe that “formal” applies solely to when they take a vote — other business can be conducted behind closed doors, Briggs-Bunting said.

A U-M statement said that the legislative proposal is “a solution in search of a problem that has been shown not to exist.” A university administrator testified against the proposal.

‘Little rats in big bills’

While the United States typically has strong open meetings and records laws, the exemptions can “eat up” the rules’ effectiveness, Pearlman said.

Legislators often introduce proposed exemptions in bills unrelated to freedom of information laws, where they know members of the public and journalists won’t look for them, he said.

“We call them rats .. little rats hidden in big bills, and by
the time you find out about it, the bill is so important to pass that no one will amend it,” he said.

This widespread practice leads to hundreds of exemptions that are not found in the open records and meetings laws themselves, Pearlman said.

In Florida — a state with a strong open meetings and records statute — as many as 1,000 exemptions to the law have been identified, he said.

In the Sunshine State, citizens have had a strong constitutional right of access to government records and meetings since July of 1993, said Barbara Petersen, president of the First Amendment Foundation in Tallahassee.

Florida’s open records and meeting law applies to two or more members of a board, while in other states, a quorum, or half of the board plus one, must be present, she said. The law also doesn’t allow for the balancing of interests that other states allow for in releasing records.

Despite all this, in the last legislative session, a bill was filed that would exempt the selection process for the president, provost, and dean of the public universities in Florida from sunshine laws.

It did not pass, but the provision has been introduced about four or five times since 1993, Petersen said.

In Alabama, the state legislature recently passed a bill that amends the state Open Meetings act to expressly forbid, without proper notice, meetings in small groups to discuss issues that will come before the full body. (The Alabama Supreme Court had ruled in 2012’s Slagle v. Ross that serial meetings — those involving less than a quorum of members of the full organization — do not violate the open meetings law).

Still, both the University of Alabama and Auburn University, two of the largest universities in Alabama, will be allowed to hold serial meetings when searching for university presidents, said Jim Rainey, publisher of the Tuscaloosa (Alabama) News.

This concession in the bill was an attempt to look at the greater good and keep the Slagle ruling from standing another year, he said.

“Allowing serial meetings to take place, for any governmental entity, and allowing it to be legal, just flies in the face of any idea of open government, and ultimately that erodes public trust,” he said.

The universities of Alabama and Auburn are the “cultural epicenters” of the state — many state politicians got their start in student government at these universities, Rainey said.

“So it is doubly important that the process of open government is practiced here, because it does have long-range, far-reaching impact in our state,” he said.

Rainey predicts a “constant struggle” to hold those who violate the law accountable, but he hopes to see more transparency as a result of the bill.

“Unchecked ... and unchallenged, boards dealing with controversial issues will inevitably try to operate in secret in some way. It eventually will happen, and that’s not unique to Alabama,” he said. “It’s not unique to universities. I think it’s human nature.”

Open meetings penalties lacking

As it stands right now, states generally have laws defining the public right of access to records and meetings, but no real method of enforcement other than the courts.

Cuiller pointed to Connecticut’s commission as an exception to the rule.

“If there was no penalty for speeding, wouldn’t you think most people would speed?” Cuiller said. “Of course they would. And that’s what we have in America. We have laws with no enforcement.”

Some states, including Florida, Texas and Washington State, can impose monetary penalties on FOI violators, but in most states, Cuiller said, the only penalty is the equivalent of a do-over — the closed-door decision is nullified, and can simply be redone.

“What we need are real harsh penalties that make it hurt to break the law,” he said. “Without enforcement, we could have the best laws on the books, but people may not follow them.”

When universities get away with holding their meetings behind closed doors, a sense of cynicism and distrust of government emerges, Pearlman said.

“That’s the way it works in oligarchies. That’s not the way it’s supposed to work in democracies,” he said.

Students see universities making decisions that affect their lives as students, and yet they can’t access these meetings where the decisions are being made, said Pearlman.

This leads to corruption of government and cynicism that pervades the public’s attitude toward government, he said.

“Secrecy breeds thievery and greed and poor choices, and transparency’s the best disinfectant to that,” Pearlman said.
Colleges resist pressure to label ‘triggering’ curriculum despite student calls for more sensitivity when teaching controversial topics.

BY MADELINE WILL

One of the most controversial buzzwords in higher education today has nothing to do with teaching methods or student behavior. Instead, it’s the label that has sparked hundreds of essays, news articles and resolutions: trigger warnings.

The concept originated in feminist blogs as a way to mark articles about topics like sexual assault so that survivors wouldn’t be caught unaware. Proponents say trigger warnings are a way to prevent students who have experienced trauma in their past from having a strong, negative reaction to sensitive material presented in class. Opponents say that trigger warnings prevent students from being exposed to differing points of view.

The debate has raged fiercely, as a vocal swath of students, across the political spectrum, have called for trigger warnings before sensitive or graphic material in class. Some professors have added trigger warnings to their syllabuses or assignments. Others in academia have condemned the trend, saying that it infantilizes students and prevents the spread of controversial ideas — which, they say, threatens the foundation of a liberal education.

Last year, the American Association of University Professors released a report on trigger warnings, in which the group called them a “threat to academic freedom in the classroom.”

“There’s vanishingly little content that doesn’t offend somebody.”

Will Creeley, vice president of legal and public advocacy at the Foundation for Individual Rights in Education

The report warned that associating those topics as triggers could lead to faculty marginalizing or avoiding them in fear of offending students. Trigger warnings, it said, could create “a repressive, ‘chilly climate’ for critical thinking in the classroom.”

Joan Bertin, executive director of the National Coalition Against Censorship, who was on the AAUP committee that drafted the report, said that a year later, there is growing pressure from students to implement trigger warnings in classes.

Bertin, who clarified that she’s speaking as an individual and not on behalf of the AAUP, said in the year since the report came out, she’s found that it is “very rare” for schools to adopt formal policies to recommend or require trigger warnings. Initially, she said, it had seemed like there was a growing trend toward uniformity — for example, Oberlin College created a policy recommending professors add trigger warnings to “anything that might cause trauma,” before tabling the policy after backlash.

Now, while the issue has been discussed at many universities’ faculty councils, most have declined to issue a mandate one way or the other, instead leaving it up to individual professors.

At American University, the faculty senate unanimously approved a resolution in September that criticizes trigger warnings for fear that they shield students, which could “deter them from becoming critical thinkers and responsible citizens.” While the resolution does not forbid their use by
faculty, it instead encourages faculty to help students engage with sensitive or controversial material rather than labeling the material “in such a way that students construe it as an option to ‘opt out.’”

Trigger warnings started off being predominantly attached to discussion of rape and sexual assault, Bertin said. But now, she has seen other content with trigger warnings. Bertin said she has even heard of students requesting advance notice before watching horror films — “a trigger warning on scary.”

Trigger warnings, she said, are “permeating the culture at large.”

Not a partisan issue

Will Creeley, vice president of legal and public advocacy at the Foundation for Individual Rights in Education, said the debate on trigger warnings has struck a nerve in the country and particularly in the higher education community. FIRE staunchly opposes trigger warnings.

And the publicity that trigger warnings has garnered, he said, has led to more students requesting their use — students on both the right and the left.

Over the summer, a student at Crafton Hills College in California objected to the graphic novels assigned in an English course, including Marjane Satrapi’s Persepolis and Alison Bechdel’s Fun Home. She called the books “garbage” and wanted a warning that the books contained profanity, violence and sex. Her professor originally agreed to include a trigger warning about the books in future syllabuses for the course, but later reversed his decision.

Just a few months later, a Duke University freshman protested the choice of Fun Home for a voluntary summer reading program. The student opposed Fun Home, which is about a lesbian woman coming to terms with her sexuality and includes illustrations of the woman engaged in oral sex with her partner, on the basis of his Christian faith. He said he opposed the ‘pornographic content’ and said there should have been an explicit warning about the illustrations before being assigned the book.

Meanwhile, at the end of the spring semester, students at Columbia University called on the school to add trigger warnings to Greek mythology, like Ovid’s Metamorphoses. The students wrote that texts like these, “wrought with histories and narratives of exclusion and oppression, can be difficult to read and discuss as a survivor, a person of color or a student from a low-income background.” Columbia professors did not make any policy regarding trigger warnings, although they did replace Metamorphoses with a Toni Morrison novel (a decision that was unrelated to the debate, faculty said).

There have also been multiple accounts of students calling for trigger warnings to staples in college literature classes, like F. Scott Fitzgerald’s The Great Gatsby, for misogyny and violence, and Chinua Achebe’s Things Fall Apart, for its themes of colonialism, racism and religious persecution.

“I think that the desire to be free from the discomfort or the intellectual uncertainty that comes with encountering challenging ideas is a feeling that strikes all of us at some time or another, no matter what our political allegiance is. So if we legitimize the idea of trigger warnings, if we accept trigger warnings as a normative good or a standard practice, then we’re going to see very little material able to escape being the subject of such a warning,” Creeley said. “There’s vanishingly little content that doesn’t offend somebody.”

Even President Barack Obama referenced trigger warnings, and other limits on free speech in college settings, in a Sept. 14 speech at a town hall meeting in Iowa. He said college is a place to listen to other perspectives and be exposed to new ideas. Some students, he said, “aren’t listening to the other side.”

“Or [students] don’t want to read a book if it has language that is offensive to African Americans, or somehow sends a demeaning signal towards women,” Obama said. “And, you know, I gotta tell you that I don’t agree with that either. I don’t agree that you, when you become students at colleges, have to be coddled and protected from different points of view.”

Still, for all the debate, trigger warnings are not entirely widespread in academia. There are few, if any, top-down policies that require professors to provide trigger warnings, and there is no hard data on how many professors have added the warnings to their syllabuses.

(As Vox wrote in an article about the issue, “there are probably more articles on the internet arguing about trigger warnings on college syllabuses than there are actual trigger warnings on college syllabuses.”)

Some, however, say they’re becoming more popular. Angus Johnston, who has had a trigger warning on his syllabus for an introductory history course for a little over a year now, said at least a dozen professors, but probably more, have adapted his trigger warning, which has been published in various forms on his blog and in Inside Higher Ed and Slate.

Johnston wrote an essay, published in Inside Higher Ed last May, that argued that while he has to raise difficult subjects in class, he has an “obligation to raise them in a way that provokes a productive reckoning with the material.” That reckoning, he wrote, will only take place if students know he understands “that this material is not merely academic, that they are coming to it as whole people with a wide range of experiences, and that the journey we’re going on together may at times be painful.”

A year later, Johnston, who teaches at the City University of New York, has tweaked the trigger warning on his
syllabus to make it more focused on creating a dialogue with the student. He added an invitation to discuss any concerns the student might have before a subject comes up in class, if the student thinks the material might be “emotionally challenging for them.”

His syllabus trigger warning gives students permission to leave the room when the class is discussing challenging material and has a disclaimer that the student will still be responsible for any material missed.

Johnston said he also changed how he presented the trigger warning to his students. At first, he wrote in a blog post, he over-explained why there was a trigger warning, “leaving the impression that the course was going to be far more fraught than it actually is.”

Now, he gives a specific example of why this trigger warning might be necessary for the course: the class will discuss the eulogy Charles Darwin wrote for his daughter, who died at age 10.

Johnston said the eulogy is an important way to show how the death of a young child was not uncommon in that time period. But if one of his students had recently lost a child or a sibling, “the last thing I’d want to do is spring an essay like that on them without any warning” or a way to remove themselves from the situation, he said.

For the most part, students have reacted positively to the trigger warning, Johnston said.

“The danger is that you over-think it and over-explain it and make it seem like a bigger thing than it actually is. It isn’t really a big deal,” he said. “I think that ultimately, I want my students to have it in their back pocket.”

A trigger warning for spiders
In the spring, members of the Modern Language Association and the College Art Association were surveyed about their experiences with trigger warnings in academia. More than 800 faculty members submitted responses.

Although the survey is not scientific, Bertin said the response indicates that “this is a real issue that faculty are coping with.”

“Students demand trigger warnings for all kinds of things,” she said, adding that one respondent said she received a request for a trigger warning for content about spiders.

While fewer than 1 percent of respondents said their institution has a formal policy on trigger warnings, half of the respondents have voluntarily provided warnings — and 23 percent provided them several times or regularly.

Meanwhile, 15 percent of respondents said that students have requested trigger warnings in their classes, and 12 percent said that students have complained to either the instructor or to administrators about a lack of trigger warnings in the class.

Almost half of the respondents indicated that trigger warnings would have a negative effect on classroom dynamics, and 63 percent said they could hurt academic freedom.

Bertin said that since this is a non-scientific survey, it’s hard to tell if this is the majority view among faculty, since those who are most opposed might be more likely to have taken the survey in the first place.

Preventing vs. confronting triggers
While the main point of trigger warnings is to prevent inflicting trauma on vulnerable students, some critics, like Richard McNally, a professor of psychology at Harvard University, have said that trigger warnings might actually be counterproductive to those who have post-traumatic stress disorder.

In an article published in the Pacific Standard magazine last May, McNally wrote that while PTSD isn’t uncommon among sexual assault survivors, many of them recover within months of their assault. It is important for survivors to confront triggers in order to overcome their PTSD, he said.

“By practicing confronting these triggers, clients learn that fear subsides, enabling them to reclaim their lives and conquer PTSD,” he wrote.

And if sexual assault survivors make the trauma central to their identity, it bodes poorly for their mental health, McNally wrote.

Bertin said students should be aware that if they are “emotionally vulnerable,” some courses might not be appropriate to take right now.

“At times this semester we will be discussing historical events that may be disturbing, even traumatizing, to some students. ...If you ever feel the need to step outside during a class discussion you may always do so without academic penalty.”

Angus Johnston, an excerpt from his two-paragraph syllabus trigger warning

14 REPORT • Fall 2015
“Teachers are saying, ‘I’m not a therapist. I can’t treat my students’ emotional problems. All I can do is teach them,’” she said, adding that she thinks there’s a big difference for teachers “being responsible for mental distress and taking concerns seriously.”

Most professors want students to know they can come to them with concerns about course content — “and then go to the mental health center,” she said.

But proponents of trigger warnings say that it doesn’t cost much of them to give their students a quick heads-up that they will be discussing a sensitive subject, and it’s kinder to students who are vulnerable to certain topics. Trigger warnings, they say, aren’t meant to exempt students from doing the work.

In a Sept. 19 opinion piece for The New York Times, Kate Manne, an assistant professor of philosophy at Cornell University, wrote that chances are, some students in her class will have suffered some sort of trauma in their pasts.

Trigger warnings can help students prepare themselves for reading about sensitive subjects and perhaps “better manage their reactions,” she said.

A panic attack, or other symptoms of PTSD, “temporarily render people unable to focus, regardless of their desire or determination to do so,” she wrote. “Trigger warnings can work to prevent or counteract this.”

Manne wrote that her trigger warnings are non-obtrusive — just one extra line in an email such as: “A quick heads-up. The reading for this week contains a graphic description of sexual assault.”

She compared the warning to the advisory notices given before movies and television shows.

Johnston said he decided to add a trigger warning to his syllabus after one of his students stepped out of class during a discussion about lynching to “clear her head.” The student, who is black, had never experienced that sort of material before, Johnston said.

At the end of the class, the student apologized to Johnston and said she almost didn’t step out of class because she was worried he would be offended. Johnston was concerned.

“I would not want her, in that situation, to stay inside the classroom when what she really wanted was a few minutes to clear her head just because she thought I would be offended,” he said. “That’s the last thing I would want to impose on a student.”

All of this debate, Johnston said, gives people a “better sense of how to handle those questions.”

The dialogue has been productive, he said, and he predicts that once the “overheated debate” dies down, there will be a fairly widespread adoption in academia.

Eventually, he said, there will be a “recognition that this is not such a big deal, it’s not a dramatic departure from what professors have been doing.”

But as the debate rages on, Creeley said its intensity shows “just how high the stakes are.”

If trigger warnings are fully accepted as a best practice for professors, he said, it will be hard to remove them and the “damage done to a liberal education might be impossible to reverse.”★

News in brief

Michigan – An appeals court judge denied ousted newspaper adviser Cheryl Reed’s request for an injunction that would allow her to remain adviser of Northern Michigan University’s student newspaper, The North Wind, in July. A week later, Reed and the paper’s managing editor Michael Williams dropped their lawsuit against the paper’s board of directors. The lawsuit had claimed Reed’s termination was part of a “campaign of intimidation” to punish students for their investigative reporting. The paper then started a fundraiser for FOIA requests and got involved in a campaign to enact state legislation to expand student press rights: New Voices of Michigan.

California – After San Gabriel High School’s former principal Jim Schofield censored an article about a popular teacher’s dismissal in the student newspaper, The Matador, student staff members started protesting at board meetings. The school district has since implemented safeguards for the student press, including mandatory student media training for involved staff members and revised procedures in line with the law, and Schofield has since moved to a new district-level position. But the Matador’s adviser has since been placed on paid administrative leave indefinitely following an argument with the school’s new principal at yearbook camp in August.

Iowa – Several students at Muscatine Community College in Iowa raised over $5,000 in donations to launch their own independent monthly newspaper, The Spotlight, in response to alleged harassment and intimidation by officials at the college over several articles published in the school-owned student newspaper, the Calumet. Twelve current and former members of the Calumet also filed a federal lawsuit in May accusing the administration of deliberately marginalizing the journalism program in response to the articles. In late September, the judge denied the students’ request for a preliminary injunction.
Free speech, behind the line

Several colleges across the country have attempted to restrict students’ speech to “free speech zones,” which have been ripe for lawsuits.

BY DAVID LIM

What’s the price tag for a “free speech zone” on campus? For several colleges that have settled against lawsuits in recent years, it’s been tens of thousands of dollars.

Across the country, colleges are attempting to restrict students’ free speech to certain times and places, most notably in free speech zones — areas on campus specifically designated for demonstrations or protests. In at least six cases filed by the Foundation for Individual Rights in Education in the past two years, students have sued on the basis of the First Amendment.

So far, in five of those cases, the colleges have settled for hefty sums of money — a move that free speech advocates say signals the further toppling of more free speech zones.

“It shows you the degree of the confidence they have in their legal position,” said Adam Goldstein, Student Press Law Center attorney advocate. “Somebody talks big until they have to prove it. People who genuinely think they aren’t breaking the law wouldn’t consistently settle before going to court.”

For administrators, the zones are a way to allow a space where students know they can freely express their opinions without disrupting classroom environments — or other students.

Some students and other free speech advocates, however, see the restrictions on speech as impeding their rights of free expression.

“The Supreme Court has said that the government can put time, place and manner restrictions on expressive activity,” said Catherine Sevcenko, associate director of litigation for FIRE. “For instance, a school can say that you cannot have a protest outside the library during finals, but there is no significant government interest to restricting expressive activity to a tiny percentage of a college campus.”

Record of victories in court for First Amendment

The lawsuits that have been settled in court are part of the ‘Stand Up For Speech Litigation Project,’ a project by FIRE that aims to “eliminate unconstitutional speech codes through targeted First Amendment lawsuits.”

The latest settlement was in September, by Dixie State University in Utah.

Three students filed a lawsuit, with FIRE’s help, against the university in March that alleged their free speech rights were violated because administrators would not allow them to distribute flyers that criticized President Barack Obama, former President George W. Bush and Cuban revolutionary Che Guevara.

Dixie State administrators said the flyers, which were to promote the students’ Young Americans for Liberty chapter, violated the school’s policy because they disparaged and mocked individuals. Administrators also told the students that the Young Americans for Liberty’s “free speech wall” event would have to take place in the free speech zone, which comprised about 0.1 percent of campus, according to the complaint.

Administrators have since agreed to revise campus
policies, including the free speech zone and the flyer approval process.

Before the latest settlement at Dixie State, “we abolished free speech zones at Modesto Junior College, [University of] Hawaii at Hilo, Citrus College and Cal Poly,” Sevcenko said.

The colleges all settled: Modesto Junior College, Hawaii at Hilo and Dixie State for $50,000, Citrus College for $110,000 and Cal Poly for $35,000.

“In the case of Cal Poly, they required that students get a permit to speak — of course the government doesn’t get to decide who speaks and who doesn’t,” Sevcenko said.

In July, Cal Poly had agreed to settle a lawsuit filed by student Nicolas Tomas, who was prevented from handing out fliers against animal abuse by university police.

Tomas has claimed he was told he would have to wear a badge, signed by an administrator in the Office of Student Life, while distributing the fliers. The university also required students to stay in the campus’ free speech zone — which, according to FIRE, constituted less than 0.01 percent of campus — when distributing materials and speaking out, and to register in advance for any activities outside. The Office of Student Life also had to approve all fliers and posters before distribution.

In the settlement, four months after the lawsuit was filed, Cal Poly denied any wrongdoing, saying the settlement was to “buy its peace and to avoid the further costs of litigation.”

Still, the university agreed to revise its policies and to train officials in the Office of Student Life and the campus police in the revisions.

Another college is currently undergoing litigation being brought by FIRE. Blinn College in Texas. Sevcenko said she was confident that its free speech zone will also be removed.

“The precedent is so clear on this that that’s the reason that they are settling so fast,” Sevcenko said. “That’s why they are amenable to policy changes, there is just no plausible legal argument on the other side, at least we have not heard one yet.”

As an example of the precedents for these cases, Sevcenko pointed towards a 2012 ruling, Univ. of Cincinnati Chapter of Young Americans for Liberty v. Williams, that overturned the University of Cincinnati’s policy to limit students’ speech to a free speech zone that constituted 0.1 percent of campus.

The case, in the U.S. District Court for the Southern District of Ohio, found that a policy where students had to ask permission five days in advance of exercising speech was unconstitutional.

“It is offensive — not only to the values protected by the First Amendment, but to the very notion of a free society — that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so,” U.S. District Judge Timothy Black wrote in his opinion.

Without a compelling government interest, free speech zones do not stand on the basis that students have other methods of communicating off campus, Goldstein said.

“Creating a free speech zone is like saying ‘we’re going to censor everything except for this circle’ — you can’t do that,” Goldstein said. “The existence of alternative modes of communication is not a defense to an accusation of censorship.”

In June, Greg Lukianoff, president and CEO of FIRE, testified at the U.S. House Subcommittee on the Constitution and Civil Justice. The hearing, “First Amendment Protections on Public College and University Campuses,” explored the role of free speech at universities and schools across the country.

Lukianoff argued that establishing a law preventing public colleges from establishing ‘free speech zones’ would be the logical solution to violations of the First Amendment.

“Congress should pass a law declaring open areas on public campuses as ‘traditional public forums’ which would end absurd and tiny free speech zones,” Lukianoff said.

“The existence of alternative modes of communication is not a defense to an accusation of censorship.”

Adam Goldstein, attorney advocate for the Student Press Law Center

Statewide bans

The fight against free speech zones has also extended to state legislatures. Two states, Virginia and Missouri, have banned the free speech zones at public colleges and universities.

In April 2014, Virginia became the first state to enact a ban on free speech zones. The bill passed both houses of the state legislature unanimously.

In Missouri, state Sen. Ed Emery, a Republican, introduced a bill this year to ban free speech zones at state universities.

“I was talked into looking at it by some constituents who are liberty-minded folks. They wanted to make sure that that was protected in Missouri,” Emery said.

“I began to talk to the people from FIRE and learned how this legislation might help make sure that free speech wasn’t
ON THE DOCKET

Georgia – A former student at Valdosta State University, who was expelled without a hearing for criticizing the former university president’s plans to build two parking garages on campus, reached a $900,000 settlement agreement in July with the former president, the Board of Regents of the University of Georgia system and other administrators. The student, Hayden Barnes, originally filed the free-speech and due-process-rights violation lawsuit in 2008.

Arizona – A federal appeals court ruled in July that students have a constitutional interest in the curriculum they receive in public schools, and officials cannot remove material from the curriculum solely for the purpose of advancing their personal ideological interests. The ruling comes after a lawsuit filed by students and teachers in a majority-Hispanic district challenged the constitutionality of the state’s ban on ethnic studies programs.

Pennsylvania – An appeals court in Pennsylvania ruled in July that a police cruiser video is a public record, as it does not qualify as a “criminal investigative record” that can be withheld from the public under the state’s Right-to-Know Act. The court ruled that the police department was entitled to redact witness interviews and “utterances of private citizens,” but the entire video cannot be withheld.

District of Columbia – The U.S. Supreme Court overturned the conviction of would-be Pennsylvania rapper Anthony Elonis in June. Elonis was convicted under a federal threat-speech statute in 2010 for violent language he used online regarding his estranged wife, local elementary schools, and an FBI agent. The Court ruled that convictions for online threat speech can only be sustained with proof of awareness that the speech will be perceived as threatening. This was the first Supreme Court case on online free-speech protections, but the justices refrained from making a sweeping ruling regarding free speech.

Restrictions in high schools

While this debate on college campuses has resulted in fairly consistent court decisions and settlements, the rules for free speech on high school grounds appear to lean more heavily in favor of the administrators’ rights. The debate surrounding students’ free speech and administrators’ desire to protect a learning environment is also applicable in high schools, but lawsuits are less likely because high schools have a greater extent of control over maintaining order to ensure instructional time is undisrupted.

Still, some lawsuits against high schools over students’ rights to the First Amendment on school grounds do make their way to court. In May, a lawsuit that centered on religious preaching by a Washington state high school student resulted in a compromise between the student and the high school.

Michael Leal, a June graduate of Cascade High School, filed a lawsuit in November 2014 against Everett Public Schools in which he claimed that he was asked to stop handing out religious materials. Cascade High School attempted to regulate the material Leal was passing out, saying that only original content by students could be handed out at specific times at the entrances of the school.

The judge in the case, U.S. District Judge Thomas Zilly, ruled that non-original content could be handed out, but maintained that reasonable restrictions on the time and place materials can be distributed would be allowed to stand.

“The district’s policy allows students to pass out written materials before and after school at school entrances and exits, and those provisions remain in effect after Judge Zilly’s decision,” said Sarah Heineman, an attorney for Everett Public Schools.

Goldstein said when a blanket restriction is placed upon time and place of free speech, any speech could have the threat of being disruptive to the mission of high schools to educate.

“Stuff that would create a risk of a disruption, stuff that would make it difficult to hold classes — that’s really what the extent of authority is in high schools,” Goldstein said. “If students get into the classroom and are sitting in their desks, that’s the extent of what speech control high schools need to have.”
A culture of intimidation and mistrust

Student journalists and former advisers at Fairmont State University allege harassment, intimidation by school officials.

BY PATRICIA LEOEUF

Years of tension, frustration and miscommunication lurking beneath the surface of Fairmont State University’s student press boiled over this year with clashes between the administration and the staff of The Columns student newspaper over investigative articles about harmful mold on campus.

At Fairmont State in West Virginia — a public school with fewer than 5,000 students — multiple newspaper editors and advisers claim they’ve had to deal with administrative intimidation that goes beyond a healthy difference of interests between the press and the university.

The latest controversy, which is still ongoing, began this past spring, when Jacob Buckland, Tyler Wilson, and Brad Riffée, editors of The Columns, investigated allegations of black mold on campus.

Buckland and Wilson’s swabs in “places that looked disgusting” revealed the presence of a potentially toxic form of black mold in campus housing — stachybotrys chartarum.

The paper’s investigative coverage reportedly soon led to administrative intimidation and bullying, which the student editors said came primarily from the head of the department of language and literature, J. Robert Baker. Baker was the administrator who oversaw the student publications.

After several months of conflict between The Columns and the administration, on July 1, Baker was removed as supervisor of The Columns by the university’s president, Maria Bennett Rose.

Deanna Shields, dean of the College of Liberal Arts, is now overseeing The Columns.

Baker remains head of the department. He declined to say why he was removed from his supervisory position, and has denied all allegations against him.

Shields said in an email in July that she will “hire a temporary advisor, meet with the students as soon as they return in order to ensure a smooth transition, and develop plans for the future of the newspaper.”

The future of the newspaper, however, took a drastic turn — in September, the student editors met with Shields and other administrators, including the university president. The meeting ended with Buckland, Wilson and Brittany Mullins, former copy editor, resigning from their positions at The Columns.

Buckland and Wilson said they were told repeatedly that The Columns had “too much controversy and negativity” last year and needed to focus on more positive news.

“They see news and the student newspaper as playing the role of a PR front for the university,” Buckland said. “We see it as an actual newspaper.

The editors were also upset with Shields’ choice for The Columns’ replacement advisers.

Rachel Ellis, a former multimedia reporter for The Times-West Virginian, has been hired part-time to serve as the paper’s main adviser and Misty Poe, the general manager and managing editor of the Times-West Virginian will serve...

“...There are bigger cultural problems at Fairmont State, starting with a lack of respect for First Amendment values.”

Frank LoMonte, executive director of the Student Press Law Center

Columns

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as assistant adviser.

Buckland and Wilson said they have concerns about the advisers’ potential biases. They claim that the Times-West Virginian’s coverage on the university was often sympathetic to the administration.

While the new advisers could not be reached for comment, university spokeswoman Ann Mazza said the student editors were asked twice to remain with The Columns.

In September, Buckland said there are only three Columns staffers still with the paper — not enough to regularly produce the newspaper, he said.

Former advisers and students claim that the controversy was just the latest in years of intimidation from the administration at Fairmont State.

Several student publications advisers, including last year’s adviser, Michael Kelley, claim that they were terminated or pushed out of their positions by administration.

“I think, when you have a series of well-credentialed advisers being pushed out of their positions, you have to start asking whether there is a toxic culture at this university,” said Frank LoMonte, executive director of the Student Press Law Center.

“It’s believable that one adviser might have some sort of personality conflict with a supervisor, not multiple people. That suggests that there are bigger cultural problems at Fairmont State, starting with a lack of respect for First Amendment values,” he said.

Backlash over mold stories

Before the investigation into mold in campus housing, the paper and administration had mostly been on good terms in the 2014-15 school year, Buckland and Wilson said.

But after the first mold story was published, the paper encountered attempts at prior review and intimidation from administration, Buckland and Wilson said, including a time when Baker allegedly threatened to not print the paper if Buckland did not give him the mold test results the paper had collected.

The paper ultimately published two news articles about the mold — the other detailed health problems suffered by a sophomore due to mold exposure.

On May 18, one week after the second mold story was published, Kelley, the student publications adviser, said he received an email from Provost Christina Lavorata, saying his appointment was up and he had to turn in his keys.

Kelley — supported by multiple members of the selection committee that hired him — maintains that he understood he was hired for a three-year appointment consisting of three nine-month contracts.

Spokeswoman Ann Mazza said Kelley was not fired — rather, his nine-month contract was complete and it was decided that it not be renewed.

Kelley has brought a grievance against the school in relation to his termination that is still in development at press time.

In June, Buckland and Wilson wrote a letter to Fairmont State’s Board of Governors, calling for Baker’s termination and Kelley’s reinstatement. They received a response from board chairman Ron Tucker that said the board was reviewing the allegations against Baker and taking them “very seriously.”

Wilson said he doesn’t believe the board is actually investigating the situation. Tucker did not respond to calls and emails requesting comment.

National organizations like the College Media Association, the Society of Professional Journalists and the Student Press Law Center wrote letters in support of The Columns.

Several media outlets also picked up the story.

Discord over stipends

Former publications adviser Kevin Smith, who was at Fairmont State from 2004 to 2010, said he also experienced conflicts with administration, mainly during his last year as adviser.

During his tenure, the newspaper reported to the student publications board — a governing agency that appointed the editors, helped set the budget and handled any issues regarding the publication process, Smith said.

The board still exists “on paper,” but has not met in a long time because of a lack of candidates for the various editor positions at the student publications, Baker said.

“When I came into the chair, the primary function of the student publications board was to select the editors ... that’s the situation I inherited,” he said.

There was no need to call the board when only one student
applied to be editor, he added.

Revisions for the student publications handbook were drafted in 2010, but never completed, and the handbook has been out of use for several years, Mazza said in an email.

Smith said the board’s involvement in the student newspaper changed once Rose became president at Fairmont State.

Rose did not respond to requests for comment.

Previously, any decisions Smith wanted to make about student stipends had to go through the student publications board, he said.

But in Smith’s last year, he said that Baker began to demand approval over the stipends.

Baker said the newspaper adviser reported to him, as journalism is part of the department of language and literature.

Still, Lavorata, the provost, said the adviser has the ultimate oversight over the paper.

Typically, student newspaper editors have control over newsroom personnel decisions and input into the budget along with the paper’s adviser, LoMonte said.

In 2014-15, most of the Columns student journalists’ stipends were cut — but Baker and the journalists disagree on the circumstances surrounding the cuts.

This past spring, Kelley said Baker decided to lower the stipends, to which Kelley was “completely opposed.” The historical stipend amount for student reporters is $250 a semester, Kelley said, and he told Baker he would not agree to a cut below $200.

But Baker “pretty much” unilaterally cut the stipends for reporters to $150, Kelley said.

Meanwhile, Baker said in an email that historically, reporters have received a $150 stipend. He said Kelley had requested $250 stipends last fall, and Baker agreed, with the stipulation that the paper might not be able to afford to continue paying staffers that amount. After a semester, Baker said the publications budget did not have the money to continue paying reporters that amount and returned to $150 stipends.

The two parties both deny the other’s claim.

“Dr. Baker’s lying through his teeth,” Buckland said. “It’s always been $250 per semester, per reporter.”

Buckland has worked at the paper for two years, and this was the first time the stipends had been cut during that time, he said in an email.

In the spring semester, Wilson, managing editor, said his stipend was cut from $500 to $400. Buckland, the editor-in-chief, said his stipend was the only one that remained uncut — $750 per semester.

Requests to see the budget

Mazza, the university spokeswoman, said Baker, who has been removed as supervisor of the newspaper, is no longer the organization manager of the student publications budget — which he had been since July 2008.

No one but the organization manager has guaranteed right of access to the budget, said Debbie Stiles, budget director of the business office at Fairmont State. If the manager decides to share the budget — say, with the newspaper adviser or student editors — they can, but it is his or her right not to do so, she said.

In an email, Baker said that he has always consulted the student publications advisor and taken his or her advice, until this spring when the stipends were changed.

Baker said that no one has ever asked to see the budget — a claim that Kelley, Buckland and Wilson vehemently deny.

They maintain that they each made attempts to see the budget — both in-person and through email — to Baker and Enrico Porto, vice president of fiscal affairs at Fairmont State.

Those attempts were met with resistance and refusal, they said. In his time at Fairmont State, Kelley said he never saw a copy of the budget.

Buckland said he ultimately received a copy of the budget almost immediately after he sent a Freedom of Information Act request to Porto in June.

LoMonte said problems can arise when the editor does not have control over the budget — like in a recent case at Northern Michigan University, where student editors were delayed in receiving FOIA-requested documents by the paper’s board of directors, who denied them the money to pay the high fees associated with the requests. (The fees were eventually waived.)

“It’s not fair, and it’s not good management, to leave the editor in the dark about how much money he has to spend,” LoMonte said.

Smith said in an email that Baker did not attempt to control the budget until the 2009-10 school year — the school year after he was listed as the organization manager and the year when Smith said there was “general discontent” from administration over stories that The Columns published.

“[The title of organization manager] was bestowed upon him as a way by which administrators could access the pocketbooks of the student press and use it to leverage or punish journalists,” Smith said.

“Cut their salaries, the number of papers they print, when they print — all of that is about controlling the purse strings.”

Bryan Bumgardner, who served as editor-in-chief of The Columns in the 2010-11 school year, said he had the sense that Baker was caught in between multiple interests.

“I think people like John [Baker] legitimately tried, but I also think he was trying to balance ‘let’s have a student paper’ versus his bosses, who were saying ‘shut that stupid
paper up — it’s making us look bad,” he said.

Multiple advisers terminated
Kelley is not the first adviser to claim that his contract’s termination came as a surprise.

Smith, who worked for Fairmont State as student publications adviser and professor of journalism for six years, was told that his contract was not being renewed a week after he received the professor of the year award for the 2008-09 school year, he said.

After Smith’s colleagues went to the president’s office and demanded an explanation for his dismissal, he was given one more year as a temporary assistant professor.

In the 2010-11 academic year, Katie Wilson Cook, yearbook adviser, had her contract terminated.

Wilson Cook said that Baker informed her she would not have the job next year soon after she had taken a week off from her other job at the Times West-Virginian to go on a yearbook trip for the university. She said he did not explain why her contract would not be renewed.

Prior to that incident, Wilson Cook said that her yearbook dealings with Baker had gone well. Baker declined to comment on that accusation, saying it was a personnel matter.

Further allegations of intimidation, censorship
Sharon Brescoach, the journalism professor and adviser of The Columns from 2011 to 2013, said she also dealt with retributive actions from Baker.

“I was told what to print and what not to print by Dr. Baker,” she said in an email. “The conversations always began with ‘I’m not trying to practice prior restraint, but...’”

Brescoach said that she attempted to produce investigative stories, but all attempts were squashed.

“I always felt as if I had been in an extremely hostile work environment, but most people wouldn’t stand up,” she said. “Many people were afraid of retribution, including myself.” Baker denied Brescoach’s accusations.

Smith said that he and his staff had multiple run-ins with Baker and President Rose.

During Smith’s tenure in fall 2009, The Columns reported on the chairman of the Board of Governors at Fairmont State getting into a physical altercation with the football coach after a game.

“Suddenly, the [newspaper’s] website became an issue,” Smith said. Smith met with Rose, where he was told that The Columns had to put its stories on the school’s server, he said.

The Columns refused to move the newspaper off its server.

Bumgardner, who worked at The Columns during that time, said that Baker was opposed to the administration’s demand that the paper move its online publication to a university-controlled server.

Another spring, The Columns reported on a conflict of interest between the liaison for the presidential search committee and the president of the search firm — the two were close friends, said Smith.

“Of course, that created more angst and hardship,” he said.

In subsequent meetings with Baker and Rose, Smith said he was asked questions like how many newspapers were printed and where they were placed.

“I was president of the largest journalism organization in the country at the
time [the Society of Professional Journalists],” he said. “I told
them, do you actually think I’m going to ask my students
to stand down and not do what they’re supposed to do and
report these things?”

Smith said his role changed from adviser to protector in
the last year of his employment.

He said he was out of town and got a phone call from the
student editors, who said that Baker and members of the
purchasing department of the university had started “going
through drawers” in the newsroom, doing an inventory of
the 12 cameras the newspaper used for reporting.

When Smith talked with Baker, he said he wanted to
know where the cameras were, as they couldn’t find two
during inventory, Smith said.

Smith said he had to track down the students who had the
cameras for reporting purposes.

“I blew a gasket,” he said. “I believe it was a power play.
It was an attempt to intimidate, by saying, for no other
reasons, we wanted these cameras back so we could count
them.”

Baker denied this and all other allegations of intimidation.
Buckland and Wilson said they suspect that the hostility
towards the newspaper came from higher up than Baker.

“A lot of the interest wasn’t necessarily his own at first,”
Wilson said.

“Once the articles got more hard-hitting, especially with
the mold thing, he became [the mouthpiece] for a couple of
the senior-level administrators.”

Bumgardner, who served as editor-in-chief of The
Columns in 2010-11, said he never personally experienced
demands not to publish.

He said Baker worked with him to make the paper better
and had a genuine interest in maintaining its editorial
legitimacy. Baker worked with him to do a full visual
redesign of the paper and put standards in place, he said.

Bumgardner said he never dealt with the budget. He was
primarily focused on the editorial process and keeping the
paper alive, he said.

The newspaper lacked the kind of “robust” advertising
department that would enable it to be independent, he said.

“Frankly, I’m still stunned that the paper is around,” he
said. “I don’t know who in this place that’s kept this thing
alive, because the university could have just stomped it out
so easily. So somebody in this place is fighting for this paper,
and I don’t want [it] to be lost in this hubbub.”

Future of journalism at Fairmont State

Fairmont State does not have a journalism program in the
traditional sense, said Mazza, the spokeswoman. There is an
18-credit journalism minor.

Kelley maintains that he was hired to build the program
back up to a major over his three-year appointment.

His grievance against the university regarding his
dismissal is still pending. Buckland and Wilson are still
waiting to hear the status of Fairmont State's Board of
Governors investigation into the allegations against Baker.

They said Rose, the university president, told them in their
September meeting that there would be an investigation
into Baker’s actions. Mazza declined to confirm that there is
an investigation, saying that she cannot “comment further
on any other personnel matters regarding Dr. Baker.”

With only a couple staffers left at The Columns after the
editors’ mass resignations, the paper’s future is uncertain.

“It is anticipated that the Columns publication will
continue — as it has for much of the past 75-plus years — with
a new issue in the next month,” Mazza said in September.

But Buckland and Wilson said they believe the
administrators’ actions have effectively shut down the
newspaper since the remaining staffers will not have the
resources to print the paper on its current schedule.

They, along with Britany Mullins, the former copy editor
of The Columns, plan to launch an independent watchdog
news site called The Broken Column. They want to continue
to investigate the campus.

Wilson Cook said she was impressed with the students’
mold investigation this year, and administrators at
Fairmont State should have praised their work.

“The students started acting like real reporters, long before
they had to, and the university never really had that before,
certainly not large enough to make them look stupid. And
God, they’ve handled it badly,” she said.

“When they release a statement that says, you know,
‘we’ve handled it, the mold has been cleaned up’ — it’s
basically saying there is no story... it starts to make the
students look like they’re hysterical, like they’re panicking.
That’s not the case. They did the best job that they ever
could have. Those students deserve awards, and their
adviser deserves an award and a pay raise.”

“**I blew a gasket. I believe it was a power play. It was an attempt
to intimidate...**”

**Kevin Smith**, former publications adviser from
2004 to 2010 at Fairmont State University

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**SPLC staff writer Madeline Will contributed to this report.**
Parents and educators debate the balance between the public’s right to know and privacy when it comes to releasing teacher evaluation data.

BY DAVID LIM

As parents and educators debate the validity and effectiveness of teacher evaluations, some states, courts and teachers’ unions have doubled down on preventing personal details from evaluations from being released to the public.

State laws across the country vary greatly in terms of what in a teacher evaluation is deemed private and what is public. Some states, like Rhode Island, have specifically exempted teacher evaluations from public records laws.

The components of teacher evaluations also vary by state, but most include student scores from state standardized tests, as well as some other indicators of student achievement.

Most states also determine the ‘value added’ by teachers, meaning the difference between a student’s expected growth and actual performance on state tests. That model is an attempt to ensure teachers are not unfairly disadvantaged by students who were already low-performers when they started the school year.

Still, there has been much national debate over how best to measure teacher success. Public interest is high, and efforts to balance it with teachers’ privacy have resulted in several different interpretations across the country.

In many states, existing public record laws do not address the topic of teacher evaluations directly, which leaves room for interpreting the extent the public has access to evaluations.

Some states, like Colorado, New York, North Dakota and Ohio, have open record laws that allow for the public inspection of teacher evaluation records. Other states, like Kansas, Louisiana, Massachusetts and Missouri, exempt teacher evaluations as public records.

For still other states, public interest must outweigh privacy concerns in order for teacher evaluations records to be publicly released.

“If you know that you have a teacher who’s not effective, is it fair to ask a parent to put their student in that classroom?”

Brian Davison, a Virginia parent who is suing his school district to obtain teacher evaluation data

The controversy over releasing teacher evaluations to the public heated up in 2010, when the Los Angeles Times compiled and released a database of thousands of third-through fifth-grade teachers’ names and their “value added” scores, from school years 2002-03 through 2008-09.

The decision to publish was denounced by the Los Angeles Unified School District and teachers’ unions. Some feared that parents would pull their children out of classes taught by teachers with lower scores.

“At the time, the school district and their attorneys argued that it would cause mass hysteria, a massive outcry by parents,” said Emily Richmond, public editor of the Los Angeles Times.
Education Writers Association. “That sentiment didn’t happen. *The Los Angeles Times* gave individual teachers the opportunity to challenge their ranking via email or on the website, and no one took them up on that.”

Many parents already had informal ways of spreading news about effective teachers among friends and local neighborhoods, minimizing reaction to the released ratings, Richmond said.

*The Los Angeles Times* wrote in a frequently asked questions section that they decided to publish the scores because research shows that teachers are “the single most important school-related factor in a child’s education. Until now, parents have had no objective information about the effectiveness of their child’s teacher.”

But the *Los Angeles Times*’ decision to publish those scores was a significant factor in prompting several states to pass laws that would block the release of teacher evaluations.


Section Z of Rhode Island’s Open Records Law was amended in 2013 to say that “any individually identifiable evaluations of public school teachers made pursuant to state or federal law or regulation” are not deemed public.

This year, a bill passed in the state Senate that would expand section Z to include all public school employees. The bill has not made progress in the state House.

“The ACLU opposed this bill just as we opposed the earlier legislation,” said Steven Brown, executive director of the American Civil Liberties Union of Rhode Island. “This went one step further and exempted employees in public schools.”

Brown said the ACLU opposed the changes to the state open records law because a balanced test of the right to privacy and the public’s right to know now leans too far towards exemption.

In 2014, Oklahoma’s legislature exempted individual public teacher evaluations from being requested through the state’s Teacher and Leader Effectiveness Evaluation System.

Since 1984, Connecticut teacher evaluations have not been classified as public records, but teachers can give permission to release their records to the public.

Legal challenges

In 2012, *The Los Angeles Times* sued the Los Angeles Unified School District over public access to teacher evaluations in order to see how students performed within individual classrooms.

After the publication of the original database, the district had refused to release the Academic Growth Over Time scores that had identifying information for individual teachers or a link to the schools where they taught.

*The Los Angeles Times* had argued that the information should be released due to public interest under the California Public Records Act, but lost the case.

In 2014, an appellate court ruled in favor of Los Angeles Unified School District by saying that it could redact teachers’ names upon the release of teachers’ performance ratings.

“We consider those to be personnel records and they are used for the purpose of having teachers improve in specific areas. We don’t see that much value in releasing evaluations to the public,” said Frank Wells, spokesman for the California Teacher Association. “One may not be a good representation of a teacher’s performance, so we think that they should be internal documents and not entirely released to the public.”

“The public interest is in if teachers and professors are doing their jobs properly, and that seems like that outweighs any speculative concern that privacy may get compromised.”

Frank LoMonte, executive director of the Student Press Law Center

In Loudoun County, Virginia, a parent has been fighting through the courts to obtain teacher evaluation data. The parent, Brian Davison, seeks the data due to his belief that the public has a right to know how teachers are performing in classrooms.

“If you know that you have a teacher that’s not effective, is it fair to ask a parent to put their student in that teacher’s classroom?” he told the *Washington Post* in March.

In January, the Virginia Department of Education was forced to release English and math improvement scores for students in Loudoun County, due to a FOIA request from Davison.

Davison has filed more than 60 FOIA requests to retrieve Student Growth Percentile Data. He filed a suit in April, claiming that the school district failed to fulfill his requests and deliberately withheld information from the public.

The Loudoun Circuit Court ruled that the county schools were not in violation of the state Freedom of Information Act because the schools don’t have the documents, and
Pennsylvania – The Pennsylvania legislature closed a loophole that would have allowed faculty salaries to be reported in dollar ranges rather than specific salary. The legislature is working to increase the amount of state employees whose salaries are publicly reported and the bill would expand the required publicly-disclosed salaries to include all officers and directors of state institutions.

Wyoming – Lawmakers in the Wyoming legislature rejected a proposal to exempt student emails from all public record requests. The proposal would have prevented student emails relating to government business from being open to the public. A committee consisting of the Wyoming Press Association, students, and university officials will make recommendations to a legislative task force.

Wisconsin – A change in employment disclosure laws allows Wisconsin public universities to keep from disclosing who applied for a high-level position. Persons applying for the UW-system president, vice presidents and senior vice president, and the chancellor and vice chancellor of each UW institution will still be disclosed under the new law if “seriously considered” for the position, but there is no set number of candidates who must be revealed.

Michigan – A resolution to change the state constitution in Michigan would eliminate the classification of “formal sessions,” or meetings that don’t have to be open, for governing boards of public Michigan universities. The resolution still has to pass the state House and Senate by a two-thirds vote, and then be put on a ballot which Michigan voters would have to pass by a majority.

Illinois – A bill in Illinois, which would have made many private college police departments’ day-to-day actions open to the public, died in the state Senate after passing in the House. The bill would have brought requests to private colleges’ police departments in line with open records requests to public police departments.

UNDER THE DOME

According to the Loudoun Times-Mirror, Davison might appeal the ruling.

Meanwhile, Florida was forced to release value-added data for individual teachers after the Florida Times-Union sued for the data. Florida’s First District Court of Appeal ruled that the value added scores were public data in 2013.

The court wrote that the value-added scores were “only one part of a larger spectrum of criteria by which a public school teacher is evaluated; it is not, by itself, the ‘employee evaluation.’”

Randi Weingarten, president of the American Federation of Teachers, said in a statement after the state’s release of the data that the value-added scores are not “an accurate or reliable assessment tool” and Florida has done “a grave disservice to students, parents, the broader community and its educators by pretending it is an releasing the results publicly.”

“Florida wants to reduce students and teachers to data points,” she said.

While much of the national debate over teacher evaluations is centered on the K-12 level, some university professors are also concerned about access to their own evaluations.

Darnell Rhea, a former adjunct mathematics professor at Santa Fe College in Gainesville, Florida, filed a lawsuit saying that a student’s name on an evaluation cannot lawfully be withheld on the grounds of the Family Educational Rights and Privacy Act.

In 2013, a Florida appeals court ruled against Rhea that a student’s name on an evaluation is protected from being revealed under FERPA. The case was dismissed with prejudice.

“We reject any suggestion advanced by Rhea that a record cannot relate directly both to a student and to a teacher,” Judge Victor L. Hulslander wrote in his opinion. “If a record contains information directly related to a student, then it is irrelevant under the plain language in FERPA that the record may also contain information directly related to a teacher or another person.”

In addition to university-sponsored evaluations, sites like RateMyProfessor have allowed students to post anonymous critiques of their professors’ performance in the classroom.

Critics have said that student evaluations often tend to be biased and an inaccurate representation of professors’ teaching abilities, with greater criticism levied at female professors or professors who assign a hefty workload.

‘No compelling privacy justification’

There is a disconnect between how individuals view educational policies and ratings across the country versus their own experience in their own school districts, Richmond said.

“One consistent thing when you poll parents about education is that at the national level they’ll say they’re unsatisfied, but at the local level, parents are satisfied with their local teachers,” she said.

While K-12 teachers have said they don’t want to be publicly identified as an ineffective teacher without the opportunity
to respond to evaluations (and because some don’t see evaluations as a complete measure of teacher effectiveness), proponents of open records believe that public interest can outweigh privacy concerns.

“I think that unless it’s unmistakable that an evaluation will be traceable to a specific individual student, then there’s no compelling privacy justification for withholding it,” LoMonte said.

“It’s rare that a student will give away something individually identifying in an evaluation, and if they do, that portion can be withheld. The public interest is in if teachers and professors are doing their jobs properly, and that seems like that outweighs any speculative concern that privacy may get compromised.”

For students and parents at public schools in states that allow teacher evaluations to be open to the public, submitting a Freedom of Information Act letter may be the most effective way of obtaining records, LoMonte said.

But for private schools in those states, it may still be difficult to get access to teacher evaluations, he said. Administrators at private institutions can set policies that govern how individuals can access records.

Richmond emphasized that the debate about teacher evaluations must extend beyond public access — the effectiveness of the evaluation models and controlling for factors such as income and geography are important steps to take when looking at the data.◆

How to make a FOIA request

Student journalists at both the high school and college level should be in the practice of requesting records as often as possible to hold those in power accountable and to provide a public service. Here are a few tips on submitting successful Freedom of Information Act requests:

1. Know what is public record in your state. Read your state’s public records law to see what is exempted from disclosure and what is fair game. The National Freedom of Information Coalition tracks every state’s law, available at www.bit.ly/stateFOIA.

2. Use the Student Press Law Center’s open-records letter generator to request access to records held by a state or local government agency or body. That includes a public school district, public university, city or campus police, etc. All you have to know is the name and address of the government official responsible for keeping those records. Go to www.splc.org/page/lettergenerator.

3. For inspiration and ideas on what records to request from your school, visit splc.tumblr.com for excellent records-based college journalism and www.splc.org/page/story-ideas for story ideas for high school journalists, with reporting tips from Education Week reporters.
Copyright or copywrong?

Students and administrators frequently misunderstand copyright law and how it relates to student work.

BY PATRICIA LÉBOEUF

When Texas student Anthony Mazur was called into an assistant principal’s office in March and told to take down his online Flickr account — which displayed photos he took of school sports games and sold for $5 to interested parents — Mazur insisted that he owned the rights to his own work under U.S. copyright law.

After that, Assistant Principal Jeffrey Brown changed arguments, saying that Mazur had to take down the pictures because he had posted them with the intent to profit, Mazur said.

“I didn’t even really know what policy I was in violation of, because nothing ever said I couldn’t make a profit off my images,” said Mazur, who is a rising junior at Flower Mound High School.

Mazur and his parents contested the administration’s order to take down the website all the way to the Lewisville Independent School District’s school board. The board set aside the order at its June meeting, but questions still remain about what rights students in the district have to their work.

“The student will be allowed to use their own equipment to photograph LISD events open to the public, and from public viewing areas,” said Elizabeth Haas, a spokeswoman for the district, in an email. Haas refused to answer any follow-up questions or clarify the decision.

Mazur and district officials disagreed over whether he was given “special access” in photographing the games or instead took his photos from public areas, and the board has not defined the distinctions between either area, Mazur said.

Although he has reposted his Flickr and will continue selling images, Mazur, who bought his own camera and stopped using a school loaner camera as a result of the ordeal, is worried that the board will change the rules in the future.

In September, Flower Mound High School gave students in the yearbook class a contract to sign — essentially a “work for hire” agreement. It says the school district owns the copyright to any work students produce as part of the class.

Students who don’t sign the contract may be denied access to district-owned equipment and/or press credentials, except for school-specific assignments.

Mazur, who is now the photo editor of the yearbook, is refusing to sign the contract. He was denied a school camera to take pictures of a pep rally in September.

“It’s really frustrating,” he said. “It’s insane. I’m the photo editor of the yearbook and I can’t even go take pictures with the [school] camera.”

Mazur’s case highlights the confusion regarding copyright law in schools — students and administrators alike are often uncertain about who owns student works.

Students own the copyright to any works they create, unless the work was created as part of employment under “work for hire,” or they have signed an agreement stating otherwise, said Lindsey Forson, copyright and government affairs coordinator for Professional Photographers of America.

Students also own the copyright to their work even if they produce it as part of a class, said Leza Conliffe, a senior staff attorney in the Office of General Counsel for the National School Boards Association.

Mark Goodman, former director of the Student Press Law Center and current Knight Chair in Scholastic Journalism at Kent State University in Ohio, believes it is “very common” for schools to have policies in place on photo ownership that are not legally enforceable.

“The fact that no one has contested these policies means
that the courts haven’t had the occasion to rule on it, but
that doesn’t mean that the policy is legally enforceable,” he
said. “It just means it hasn’t been contested.”

Students often don’t contest these legally unenforceable
policies due to a lack of resources and support, or because
they’re scared of being seen as a “troublemaker,” Goodman said.

He added that there are many situations in which students
have legal grounds to sue their schools, but few actually do.

#IAmAnthony

Mazur started tweeting about his fight with the school
board with the hashtag #IAmAnthony, a play off of
#JeSuisCharlie, which became an international symbol
to support freedom of speech and of the press after the
shootings at the office of the French satirical weekly
newspaper, Charlie Hebdo.

Mazur’s hashtag exploded on Twitter with members of
the artistic community and the general public using it to
show support.

“I never expected the overwhelming, international,
worldwide support for all this,” he said. “I was getting
constant updates and comments from people. Overnight,
I’ve been getting hundreds of retweets and postings and
sharings, and my Flickr has almost 40,000 views, and news
stations are showing up at my house.”

As photographers around the world rallied around Mazur,
the larger issue of who exactly owns student work remains
a point of contention between students and administrators
in the Texas district.

In May, Tommy Ellington, student services executive
director for the school district, wrote a directive to all school
classes that use cameras to cease and desist the posting or
selling of images taken on a school camera, Mazur said in
an email.

“That was pretty outrageous, because what’s the point of
taking a picture if you can’t share it?” he said.

That directive, and the new policy that yearbook students
must sign a contract that gives the district the copyright to their
work, contradicts the district’s policy on intellectual property,
which states that students “retain all rights to work created as
part of instruction or using district technology resources.”

Ellington did not respond to requests for comment, and
district spokeswoman Haas declined to elaborate on the
work-for-hire agreement, other than to say that the district
believes its policy is legal because students can still actively
participate in class if they don’t sign the form — they will
just have to use their personal camera equipment.

Mazur’s situation is unusual, Goodman said, because
of the “very intentional” infringement on the part of the
administration.

“When schools take these actions, it’s largely out of
ignorance,” he said. “They want to be able to control how
information is used. I think schools have become very
focused on public relations and their image, and they see
this as just another way to control it.”

When confronted with the law, most schools will concede
that they do not own the rights to students’ work, Goodman
said.

In 2012, University of Colorado student Andy Duann’s
photo of a bear falling from a tree on campus became a viral
hit, becoming a meme and gaining media attention from
across the country.

The adviser for the CU Independent gave permission
for other media outlets to use the story, not realizing that
Duann did not acknowledge the campus newspaper’s claim
to own the copyright.

Duann did not sign a release granting such rights to the
university, and the photo was taken independent of an
assignment from the campus newspaper.

The university acknowledged that Duann owned the
copyright after adviser Gil Asakawa realized that Duann
had not signed a release. The university agreed to pay Duann
$250, which he could use as a credit toward his tuition.

Students should create their own agreements as to who owns the rights to their work done as part of the campus media versus photos taken on their own time, Goodman said.

“The law is the law”

The U.S. Copyright Office states that the creator’s work is under copyright protection from the moment it is created and “fixed in a tangible form that it is perceptible either directly or with the aid of a machine or a device.”

The law also doesn’t distinguish between public and private high school or college students, Goodman said. “The law is the law, and schools, despite what they think, can’t supersede the law because they think it should be different,” Goodman said.

Changing a student’s work through prior restraint, particularly if the alteration is done without student consent, is also a form of copyright infringement, said Vincent DeMiero, past president of the Washington Journalism Education Association and a member of the JEA’s Scholastic Press Rights Committee, in an email.

If a school administrator tells a student journalist that publication is contingent upon the student making requested alterations to his or her work, that would be a form of de facto copyright infringement, DeMiero said. “In a sense, the principal of a school is analogous to the mayor of a small town (the campus community), but no mayor wields the kind of power over the local editor of a newspaper the way a principal does over a student editor,” he said.

‘Treat the university like a client’

Student photographers don’t have to choose between retaining the copyright to their work and allowing the school to utilize it, Forson said.

Students can give the school written permission to use their work via an unlimited usage license, but they can still use the photos for their own portfolio, or any other purpose.

Forson recommends that students proactively avoid copyright infringements to prevent losing the value of their work and avoid the cost and effort it takes to hire an attorney. “[Students should] treat the university like a client,” Forson said. Sitting down with school officials and making sure an agreement is reached on copyright issues will prevent the school from utilizing the work in an inappropriate way, she said.

If students just hand over the images, school officials might assume that they can do whatever they want with the photos, Forson said.

Paul Wintruba, a senior at Robert Morris University in Moon Township, Pennsylvania, was walking through campus one day in spring 2015 when he saw a photo he took — and published on the school newspaper’s website — of a statue on campus in a brochure made by the Office of Residence Life.

Officials didn’t agree when Wintruba told them that taking and publishing photos that the office didn’t own was illegal, so he went to the head of student life, John Locke.

Locke originally told Wintruba that he thought the university can use anything the student newspaper publishes, but Wintruba said after he explained that the paper is independent and the university is governed by copyright law, Locke agreed to look into a solution for the university’s photo use over the summer.

RMU is in the process of examining its policies regarding intellectual property. The university plans to start a public information campaign to educate the university community about rights and responsibilities under copyright law, said Jonathan Potts, a spokesman for the university. “This particular incident — it was honestly someone who didn’t realize what they were doing,” he said.

Wintruba called it “blatant cluelessness” on the university’s part.

“I think personally that one of the main issues is that in the digital age — to steal a picture is three clicks of a mouse,” he said.

The university did not offer to pay Wintruba for the image, he said. He has decided to no longer press the issue, he said. “My concern is that this doesn’t happen to other students,” he said. Wintruba said he has many photographer friends who have had their images stolen, primarily by local media and bloggers.

Goodman cautioned students to not simply presume that what someone else says about copyright law is correct — rather, they should make the effort to learn about copyright law on their own and be vocal in defense of their rights.

“The ultimate harm is control over the work is in control of the school if they own the copyright, and if we believe that students learn best by making their own decisions, and students deserve to benefit from the work that they create, it’s the wrong thing for schools to do,” he said.

SPLC staff writer Madeline Will contributed to this report.
Protecting student journalists in Michigan

In August, the John Wall New Voices Act of North Dakota became law, protecting both college and high school student journalists from administrative censorship and faculty advisers against retaliation. The statute has ignited a nationwide movement to enact similar legislation. New Voices campaigns have popped up in Michigan, Maryland and New Jersey and are being discussed in half a dozen other states.

Jeremy Steele, a journalism professor and director of the Michigan Interscholastic Press Association, is heading up the effort in Michigan. The SPLC’s outreach intern Danielle Dieterich spoke to Steele about how he launched the New Voices of Michigan campaign, where it is now and why he thinks student journalism is worth protecting.

Q. What was the process of getting this off the ground?
A. We took a lot of inspiration from what happened in North Dakota and the way folks there put together their New Voices coalition. That whole situation kind of changed the way that a lot of people across the country — including us here in Michigan — thought about how to move forward with student expression legislation. We’ve had a lot of support from the Student Press Law Center and from that, we’ve just started to move forward to have conversations with different like-minded organizations that we think also would be supportive of this.

Q. What made you personally invested in the issue of student expression?
A. I’m the director of our state high school press association, a faculty member in the school of journalism at Michigan State and president of the board of directors of the State News, it’s our campus newspaper. And, you know, I was a student journalist at one time too in high school and in college, and I think it’s important for young people who are doing journalism — whether they are going to be journalists later in life or just going to move on into other careers — to really get that full experience. You can’t be a journalist without practicing those press freedoms, without having the full responsibility of the press on your shoulders, without being able to report issues that matter to your community freely.

Q. Are the organizations supporting New Voices of Michigan mostly collegiate or scholastic or a mix of both?
A. I would say that the effort right now is really being pushed in large part by MIPA (Michigan Interscholastic Press Association) at the high school level. The College Media Association nationally has put out a statement in favor of what we’re doing in Michigan and we’re having very positive conversations with both the Michigan Collegiate Press Association and the Michigan Community College Press Association. We think it’s important that any legislation that moves forward would include both the scholastic and collegiate communities.

Q. What are the next steps to get legislation passed?
A. So at this point we are still in kind of a coalition building mode. We’re talking with the two SPJ (Society of Professional Journalists) chapters in our state. Hopefully the Michigan Press Association and [Michigan Association of Broadcasters] will come on board with us, and should that happen, the next step is going to be having conversations with specific lawmakers to see if we can get the legislation introduced. Those two groups (MPA and MAB) have lobbyists and they have experience with getting legislation through the process here in Lansing.

Q. What is it you wish people knew about student press freedom or specifically about New Voices of Michigan?
A. I think the most important thing for people to learn about is the educational benefit to students at the scholastic and collegiate levels of learning about journalism. On one hand, we are training future journalists but on the other hand, we are giving young people real world, hands-on experience in core American values; the value of freedom of speech and freedom of the press.

Especially at the high school level with all the kids who I work with, maybe one or two kids out of any high school program are going to be a journalist, and that means there are 20 to 30 to 50 kids under that program who are going to use those skills in their lives in another way. They’re going to be better communicators, they’re also going to be better citizens: they’re going to know how government works, they’re going to know how to get engaged with an issue in their community and how to improve things.

To get involved in the New Voices of Michigan campaign, visit www.newvoicesmi.com or email info@newvoicesmi.com. Interested in starting or getting involved in a campaign in your own state? Contact Frank LoMonte at director@splc.org.
Legal Analysis

Student journalists and online video: When are closed captions required?

By Kathleen Kirby, Partner, Wiley Rein LLP
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Congress passed the 21st Century Communications and Video Accessibility Act (CVAA) to update our nation's telecommunications protections for people with disabilities. Signed into law in 2010, the CVAA follows a string of laws--passed in the 1980s and 90s--that were designed to ensure that telephone and television services would be accessible to all Americans with disabilities. These laws were not able to keep up with the fast paced technological changes that our society has witnessed over the past decade, however. The CVAA included new measures to enable people with disabilities to access broadband, digital and mobile innovations—the emerging 21st century technologies for which the act is named.

Among the new legal requirements imposed by the CVAA is that certain content delivered via the internet be closed captioned. This may leave student journalists wondering—does my web-only newscast need to be captioned? If my broadcast class creates content and posts it on the internet, do we have to caption it? Adding to this confusion is recent legal action initiated by advocates for the deaf and hard of hearing against Harvard and MIT. These advocates argue that the Americans with Disabilities Act ("ADA") requires that additional online content—such as lectures, massive open online courses ("MOOCs"), and podcasts—be made accessible via captions.

So, what needs to be captioned, and what doesn’t?

Roots of Today’s IP Closed Captioning Regulations

The Federal Communications Commission ("FCC") is responsible for promulgating rules regarding captioning and enforcing those rules, at least as far as they pertain to programming within the FCC’s jurisdiction. In 1998, the FCC adopted rules mandating closed captioning of video programming aired on television and established deadlines for a phase-in of captioning over the years that followed. The rules applied (and continue to apply) to video programming distributors, such as television broadcasters and cable operators. The captioning phase-in deadlines established by the FCC in 1998 have all passed, and today all “new” programming aired on television, whether in English or Spanish, must be captioned (unless the programming is subject to one of the FCC’s specific captioning exemptions).

Pursuant to the CVAA, the FCC in 2012 expanded its closed captioning rules to cover full-length video programming delivered using Internet Protocol ("IP"). Then, in 2014, the FCC amended its captioning rules again, this time to require captioning of certain IP-delivered video clips.

Because of the way video programming is defined, and because the FCC only regulates certain kinds of entities, not every video on the internet is governed by the FCC. In fact, the FCC’s captioning rules likely do not apply to lectures, MOOCs, and podcasts posted online by colleges and universities, which is why advocates for the deaf and hard of hearing have filed suit under the ADA to mandate captioning for this type of content. More on that later.

The FCC’s “Aired on TV” Trigger for “Video Programming”

So, what types of programming delivered via the internet must be captioned? First, the programming must be made available by either a Video Programming Distributor (“VPD”) or a Video Programming Owner (“VPO”). VPDs are entities that make video programming available directly to end users via IP distribution. VPOs are entities that either: (i) license video programming to a VPD, or (ii) act as the VPD and possesses the right to license the video programming to a VPD. Second, the programming must be “video programming,” which the FCC defines as “[p]rogramming provided by, or generally
considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.” From there, what needs to be captioned depends on whether the programming constitutes a full-length video program, or a video “clip.” Common to both full-length programming and video clips, however, is the requirement that the content have aired on television in order for the captioning rules to apply.

Full-Length Video Programming
“Full-length video programming” is basically any programming except “video clips or outtakes.” The actual length of the program doesn’t matter. For example, a full-length program could be an hour-long in-depth analysis of gun violence in America, or a five-minute summary of the day’s news. So long as the program isn’t chopped-up into pieces, the FCC will consider it to be a full-length program.

The FCC’s IP captioning rules only apply to full-length programming that aired on television in the United States with captions after April 30, 2012. Note that there are four elements here – the programming must have (1) aired on television, (2) with captions, (3) in the United States, (4) after April 30, 2012. If any of these elements aren’t met, the programming need not be captioned. For example, if a media class at a local university or college produces a 10-minute news program that it then distributes exclusively via the internet, the news program need not be captioned.

Video Clips
The IP captioning rules adopted by the FCC in 2012 originally applied only to full-length programming, exempting video clips from the captioning requirements unless the clips in the aggregate constituted all, or substantially all, of the program. In 2014, however, the Commission amended its rules to require captioning of video clips, regardless of whether the clips, considered in the aggregate, would constitute full-length programming. Importantly, the IP captioning rules for video clips continue to apply only to video clips that aired on television in the United States with captions after the applicable compliance deadline. As with the IP captioning rules for full-length video programs, there are four elements to the IP captioning rules for video clips – the clips must have (1) aired on television, (2) in the United States, (3) with captions, (4) after a certain date (more on that below). If the clip (either by itself or as part of a longer program), never aired on television in the U.S. with captions, it need not be captioned when distributed via the internet.

The IP captioning rules for video clips haven’t yet taken effect, but they will in 2016 according to the following schedule:

- By January 1, 2016, VPDs and VPOs must provide captions for “straight lift” clips of pre-recorded programming. “Straight lift” clips contain a single excerpt of a captioned television program with the same video and audio that was presented on television.
- By January 1, 2017, montages of straight lift clips must be captioned.
- Finally, by July 1, 2017, VPDs and VPOs must provide captioning for clips of live and near-live programming; however, VPDs and VPOs will have a grace period of 12 hours for live programming and 8 hours for near-live programming. “Live” and “near-live” programming is programming shown or aired on television within 24 hours of when it was performed and recorded.

ADA Captioning Requirements
As discussed earlier, not all video content available on the internet is regulated by the FCC. That’s why, in February 2015, advocates for the deaf and hard of hearing filed lawsuits against Harvard and M.I.T. in federal court arguing that the universities violated the ADA and Rehabilitation Act of 1973 by failing to provide closed captioning of their online lectures, courses, podcasts, and other educational materials.

The ADA and Rehabilitation Act do not discuss captioning of online content directly. Rather, they are broader statutes that seek to address disability discrimination. Most of us are familiar with the ADA, which, among other things, requires certain buildings to be handicapped accessible, such as by having wheelchair ramps and elevators. More broadly, the ADA requires that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns . . . or operates a place of public
accommodation.” The Rehabilitation Act is related. Section 504 of that act specifies that: “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”

In the lawsuits, the advocates argued that Harvard and M.I.T. violated the ADA and Rehabilitation Act because much of the online content produced by those universities or made available on university platforms has no captioning, or has captioning that is so inaccurate as to make the content inaccessible to deaf or hard of hearing individuals. “Just as buildings without ramps bar people who use wheelchairs,” the advocates argued, “online content without captions excludes individuals who are deaf or hard of hearing.”

As Harvard and M.I.T. point out in their responses to the advocates’ complaints, online videos and audio files, and even the modern Internet itself, did not exist when Congress enacted the ADA and Rehabilitation Act. Therefore, because the statutes, the regulations that implement them, and the agencies that enforce them (i.e., the Department of Justice (“DOJ”) and Department of Education (“DOE”)), are silent as to whether or how online content should be made accessible to the deaf and hard of hearing, Harvard and M.I.T are under no legal obligation to provide captioning. In addition, Harvard and M.I.T. argue that the courts should dismiss the lawsuits because the DOJ very soon is expected to promulgate rules specifying accessibility standards for websites generally and online video content in particular. These rules would help colleges and universities to understand what needs to be captioned and when.

In Conclusion...

So what’s the lesson here?

Student journalists would likely be considered VPDs or VPOs under the FCC’s rules, and therefore the FCC’s closed captioning requirements would apply them – but only in two very limited circumstances. First, if student journalists produced a full-length program that aired on television in the United States with captions after April 30, 2012, that program must be captioned when uploaded to the web. Second, if student journalists produced video clips that aired on television in the United States with captions after the applicable compliance deadline, they must be captioned when posted online.

As to the ADA’s captioning requirements, although captioning of lectures, MOOCs and the like is not required by current law, it may not be long before colleges and universities are required to caption this kind of online content. To the extent feasible now, therefore, it’s a good idea to caption as much online content as possible.

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Endnotes:

1. There are two types of “new” programming. The FCC defines “new” analog programming as programming that was first exhibited on or after January 1, 1998. “Exhibited” includes any public showing—in a movie theater, on pay cable, home video, etc., not just on broadcast television. “New” digital programming is programming...
prepared or formatted for display on digital televisions that was first exhibited on or after July 1, 2002.
2. 47 C.F.R. § 79.4(a)(1). “Consumer-generated media” include home videos and the like.
3. Id. at (a)(2) (defining “full-length video programming” as “Video programming that appears on television and is distributed to end users, substantially in its entirety, via internet protocol, excluding video clips or outtakes”).
4. Id. at (b)(2).
5. For example, if you had a newscast broadcast on television with captions that included 20 stories, and you then posted clips of just five of those stories online, those five clips would not have needed to be captioned. By contrast, if you posted “substantially all” of the stories as clips so that in the aggregate a substantial portion of the newscast was online, then those news clips need to be captioned. Why? Because, when considered in the aggregate, the clips would qualify as “full-length programming.”
7. The new rules also come with three important carve-outs. First, clips posted before the appropriate phase-in deadlines do not need to be captioned after the deadline passes. In other words, clips that are currently posted and that will be posted prior to the phase-in deadlines do not need captioning. Second, the rules do not currently apply to “advance video clips,” which are clips posted online after the phase-in deadline but before the clip airs on television. Third, the rules apply only when VPDs post clips on their own website or app, not when the clip is posted by third-party websites.
8. The cases, both of which were filed in the U.S. District Court for the District of Massachusetts, are NAD v. Harvard, case no. 3:15-cv-30023 and NAD v. MIT, case no. 3:15-cv-30024.
10. 28 C.F.R. § 36.201(a).
12. In 2010, however, the DOJ and DOE issued a joint statement in which they expressed their concern that colleges and universities were violating the ADA by not making electronic book readers accessible to blind or low vision students. See Department of Justice and Department of Education Joint Statement, available at http://www.ada.gov/kindle_ltr_eddoj.htm. “A serious problem with some of these devices,” the DOJ and DOE wrote, “is that they lack an accessible text-to-speech function.” Id. Thus, “[r]equiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities—individuals with visual disabilities—is discrimination prohibited by the [ADA] and Section 504 of the Rehabilitation Act of 1973 ... unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” Id.
ATTENTION: STUDENT MEDIA

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