Loss of funding presents college and high school media with challenges—and plenty of questions.

INSIDE: A performance of *Hazelwood* coming to a theater near you?

Introspective

Campus journalists cover their own newsrooms

PLUS: Private campus police may release more than you expect
The student newspaper at Overland High School (Colo.) finished the year without a shutdown, after a dispute with the principal threatened to halt publication. Editors said principal Leon Lundie was unhappy with a story about a dead student and had all but shuttered the paper and removed the adviser. The publication’s future is unclear.

A string of apparent newspaper thefts hit university campuses in early 2011. Papers disappeared at Towson (Md.), Henderson State (Ark.), Ottawa (Kan.), Texas A&M, Arkansas State, North Carolina Central and Pacific Lutheran (Wash.).

The newspaper adviser at the University of Texas at Tyler was suddenly fired in April, jeopardizing her insurance coverage needed for an operation. Vanessa Curry believes the move is in retaliation for critical stories appearing in the newspaper.

An attorney for student government officials at the State University of New York at Brockport demanded the student newspaper editor’s resignation in February. The Stylus had criticized student government for removing copies of the newspaper. In a letter, the attorney claimed the papers were student government property.

Gay rights advocates were outraged over a column in the Wichita High School East (Kan.) student newspaper condemning homosexuality that quoted the Bible. LGBT organizations demanded an apology from the school and planned a protest, but later cancelled it.

The newspaper adviser at Missouri Southern State University was fired in April, one year after receiving the state “outstanding adviser” award. T.R. Hanrahan will leave the position in July after years of disputes over critical coverage in the publication.

Get updates from the SPLC via E-mail: www.splc.org/joinemail
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The Student Press Law Center Report (ISSN 0160-3825), published three times each year by the Student Press Law Center, summarizes current cases and controversies involving the rights of the student press. The SPLC Report is researched, written and produced by journalism interns and SPLC staff.


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

ALY BRUMBACH, spring 2011 journalism intern, graduated from Ball State University in December 2010 with a degree in journalism and a sociology minor. She was editor in chief of the Ball State Daily News for fall 2010 and a summer copy desk intern for the Greensboro (N.C.) News & Record. She has previously been copy desk chief, forum editor, a reporter and copy editor for the Daily News.

NATHAN HARDIN, spring 2011 journalism intern, received a bachelor’s degree in history from North Carolina State University in December 2010. He worked as the news editor of the school’s daily student newspaper, The Technician, for one year and was the assistant editor of The Brick, a handbook of the university’s traditions. Hardin previously interned at the Salisbury Post, his hometown’s daily newspaper.

KYLE MCDONALD, spring 2011 journalism intern, is a senior magazine journalism major and political science minor at Kent State University in Kent, Ohio. He is currently a columnist for the university’s student-run newspaper, the Daily Kent Stater, and also served as campus editor, reporter and copy editor for the paper.


Cover photo by Brian Schraum.
SPLC working to promote, engage and inform

Journalists are excellent storytellers, creative thinkers, and proficient organizers of facts. Plus, they’re almost always the most interesting person at the party.

What they aren’t very good at is self-promotion. Think about the last advertisement you got for your own hometown newspaper. Chances are, what was advertised was (a) we have coupons, (b) you can save money by subscribing for more weeks, and (c) did we mention the coupons?

What’s almost never mentioned is the news — and that reading it makes you a smarter, better-rounded person. Journalists usually are excellent storytellers, except when the story is their own.

Because those in scholastic journalism aren’t instinctive self-promoters, they need advocates. That’s where the services of the Student Press Law Center can be uniquely valuable.

In recent months, the SPLC has helped turn the tide with timely intervention on several occasions when policymakers failed to consider the impact of their decisions on the way students gather and report news.

In West Virginia, a reporter’s privilege bill very nearly made it all the way through the 2011 legislative session without anyone taking note that it left unpaid student journalists unprotected. That meant a salaried professional journalist could confidently promise confidentiality to a source, knowing that a court could not compel disclosure of a journalist’s privileged information, but a college journalist working on the very same story could not.

The SPLC did take note, and launched a campaign of op-ed articles and editorials that resulted in a Senate floor amendment extending West Virginia’s reporter shield to anyone gathering news while enrolled in an accredited educational institution. What could have been one of the nation’s worst shield laws for students became, overnight, probably the nation’s best.

In Virginia, the State Board of Education was poised to enact a set of highly restrictive rules curtailing out-of-school communications between teachers and students. Had the rules been enacted as proposed, teachers could have faced discipline for sending even innocent and business-related messages to students via texting, Twitter or Facebook.

The SPLC persuaded the Board to delay the vote to entertain more input, sounded the alarm among teacher groups, and generated a deluge of comments that convinced the Board its original proposal was overbroad. A much-improved version that removes the messaging prohibition passed in March.

In fulfillment of its advocacy mission, the SPLC made sure that the first-ever commemoration of World Press Freedom Day held on United States soil did not overlook the shortcomings of America’s own press freedoms for those who are learning the First Amendment in theory but are denied its benefits in practice.

The SPLC assembled a coalition of 39 journalism and free-speech groups who signed a joint letter urging President Obama to speak out against abuses of journalists’ rights on U.S. campuses just as his administration has done abroad. The letter appeared as a half-page ad in the April 15, 2011 Washington Post, and it’s archived at www.splc.org/wpfd.

It is the SPLC’s commitment to stay engaged in the arena of public policy on behalf of those in scholastic journalism with busy lives and demanding careers who cannot always be. Because you may be bashful about telling the world how miraculous and how vital your work is, but we most certainly are not.

Frank D. LoMonte
Executive Director
Private college police vary in their transparency, relations with media
Crime stories can be some of the most impactful – and hard to get – stories on campus. Nearly every university across the country experiences some form of crime, be it underage drinking, drug use, theft, vandalism, assault or rape. By reporting campus crime, student journalists are able to raise awareness about new and recurring issues within their campus community.

Journalists rely heavily on the information provided in police reports to accurately report on campus crime. As state actors, campus law enforcement departments at public universities are required by state law to release incident reports and other crime records on request.

At private universities, accessing crime records isn’t as cut and dry. A gray area exists as to whether open records law should be applied to private university law enforcement. A private university may have its own police department with the same arrest powers as any public police department, but in many states it’s at the discretion of the department to release crime records when requests are made. A private university police department may respond to an open records request with the response that as a private institution, it is not governed by state open-records law.

And while the law may not mandate that the records be disclosed, private universities are free to do so voluntarily – and some do.

In February, the Student Press Law Center conducted a compliance test of incident report access at private universities. The test was done for the annual Sunshine Week. To test the waters, records requests were sent to six private universities: Emory University in Georgia, the University of Richmond in Virginia, Quinnipiac University in Connecticut, DePauw University in Indiana, Davidson University in North Carolina and Brigham Young University in Utah. The requests specifically asked for incident reports of all forcible sexual assaults for the 2009 calendar year.

Two of the universities, Brigham Young and Emory, complied with the request and disclosed the incident reports with victims’ names redacted to protect their privacy. The other four universities declined to release the records by responding that they are not obligated to do so under open-records law.

No comment at Quinnipiac

Joseph Pelletier, editor in chief of Quinnipiac University’s student newspaper The Chronicle, discussed how the Chronicle staff uses available records to report campus crime at Quinnipiac.

Pelletier said although the university issues an annual crime report and provides a daily crime log, the information doesn’t always sufficiently supply what’s needed to adequately report on campus crime.

The federal Clery Act mandates all universities, both public and private, receiving any federal funding publish an annual report of crime statistics, keep a daily crime log and issue timely notifications of campus crime.

"There’s a pretty specific set of requirements to put something into the Clery Act that we can access," Pelletier said. "There are no names, there’s not a lot of information, so it’s not extremely helpful, but then again there is that something."

Quinnipiac does not have a police department on campus. Instead, it has a campus security department, which Pelletier said interacts with the Hamden Police Department, the local city police, when necessary police force is required on campus. Student reporters at The Chronicle are able to access incident reports from Hamden police in cases where the city department is called to the scene, but Pelletier said it becomes more difficult to report when Hamden police aren’t involved.

"Security remains very tight lipped, and the university is very tight lipped in terms of infractions and crimes that are happening on campus," Pelletier said. "It makes it very difficult to accurately report these sort of things."

When The Chronicle reports campus crime, Pelletier said the first step is to talk to students to gain their perspective.

"After we’ve talked to a couple students and think we have a good sense of what’s occurred, we’ll reach out to the university..."
and see if they have a response,” he said. “Ninety-five percent of the time, a university spokesperson will say, ‘The university will not comment on student matters,’ and that’s been a cause for concern.”

Although Chronicle staff has difficulty obtaining incident reports, Pelletier said there is still a working relationship between the newspaper and campus security. Earlier in the year, The Chronicle did a major story on drug violations on campus and Chief of Security David Barger was willing to sit down and interview with the newspaper.

Pelletier said that campus crime reporting can have a significant impact on the campus community.

“I think that these are the detailed things, security and otherwise, that should be of the utmost importance to the university,” he said. “I think that the university has a responsibility to be transparent to the community. I think if there’s something where security is sending two or three guards to a dorm room, people should know about that.”

After multiple attempts to contact Barger for comment, the university responded by resending the statement declining to release the records requested by SPLC.

Weekly meetings at DePauw

Reporters at The DePauw, DePauw University’s student newspaper, share a similar situation. Christina DiGangi, news editor and former editor in chief at The DePauw, said campus police often work with the local Greencastle Police Department. When this is the case, any reports are open records, and reporters can access them through Greencastle police.

DiGangi said she meets with Angela Nally, DePauw’s director of public safety, once a week to go over items in the crime activity log. Items in the log are used for The DePauw’s blotter section and then analyzed to see if there are any trends.

DePauw’s enrollment is slightly more than 2,000 students, and DiGangi said there is very little crime in the campus community. The DePauw staff can gain some leads through word-of-mouth because DePauw is such a small school, even though public safety won’t release names.

DiGangi said there haven’t been any major crimes where records would have been needed. She said the more frequent records issue she runs into is accessing information about administrative decisions, made in what would be open meetings at a public institution.

“I think that regardless of if an institution is public or private, the goings-on of an institution—where students are a part of a community and want to feel like they’re safe—I think that all of that information should be accessible for their own personal knowledge,” DiGangi said. “Bottom line, I don’t understand why any information along those lines—concerning people’s well-being, public safety, goings-on around them—should not be public.”

Public Safety Director Angela Nally responded to an interview request by saying she had been advised not to conduct an interview.

The role of state law

Although releasing crime records beyond what’s required by the Clery Act is discretionary at most private universities, a few states have passed legislation requiring private university police departments to comply with open-records law, just as a public police department would.

In 2006, Georgia passed a bill granting increased access to police records at all universities in the state. The law reads, “Law enforcement records created, received, or maintained by campus
“Virginia’s law on the matter dates back to 1994. It requires that campus police departments make criminal incident information available for inspection at the request of ‘any citizen of the Commonwealth...’”

policemen that relate to the investigation of criminal conduct and crimes as defined under Georgia law and which are not subject to protection from disclosure by any other Georgia law shall be made available within a reasonable time after request for public inspection and copying.”

The legislation was enacted in response to a 2005 Georgia Court of Appeals ruling that open-records law did not apply to Mercer University, a private university. Attorneys at the time were seeking police records from the university of a sexual assault case from 2003.

Mississippi passed legislation in 2008 to clarify the exemptions under open-records law. The law, which applies to all campus police departments that exercise state-law enforcement power, requires that incident reports include, “the name and identification of each person charged with and arrested for the alleged offense, the time, the date and location of the alleged offense, and the property involved, to the extent this information is known.”

The law also clarifies that reports and information related to ongoing investigations and additional information about crime victims are exempt from public access.

Connecticut does not have a law specifically stating that private police departments are governed by open-records law. However, in 2008, the Connecticut Freedom of Information Commission decided that the Yale Police Department is subject to state Freedom of Information Act requests.

Public defender Janet Perrotti filed a records request with the Yale Police Department for two officers’ personnel files. Perrotti suspected misconduct when the two officers charged a 16-year-old with breach of peace for riding a bicycle on the sidewalk. Yale police denied the request, stating that as a private institution, they did not have to comply. Perrotti then appealed to the Connecticut Freedom of Information Commission.

The commission based its decision on Connecticut law, which states any institution that performs a government function, receives government funding or is subject to government involvement or regulation is considered “public” for Freedom of Information requests. Under this definition, it the commission decided the Yale Police Department was a public agency performing a government function because its jurisdiction is not limited to Yale’s campus.

Virginia’s law on the matter dates back to 1994. It requires that campus police departments make criminal incident information available for inspection at the request of “any citizen of the Commonwealth, currently registered student of the institution, or parent of a registered student.” Withholding is only permitted if it may “jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence.”

The Virginia law was passed in response to The Collegian, the University of Richmond student newspaper, losing a lawsuit with the university over police records access. In the ruling, the judge recommended that new legislation be passed. The law was drafted and adopted soon after.

**Voluntary disclosure**

Student reporters at the University of Richmond now meet with university police once a week to go over the crime log.

Dave McCoy, chief of police and associate vice president for public safety at UR, said the police do give more information when they can, but won’t if it might jeopardize an investigation or impact the victim.

“I like to treat our police department just like we would any other police department,” McCoy said. “We’re willing to share information, discuss information as much as possible.”

If student reporters have questions about a particular case in the crime log, McCoy said the department can discuss the case to a certain degree, but does not disclose full narratives and police notes.

Reilly Moore, former editor of The Collegian, said normally crime is pretty low on campus, but in the fall there was a string of 10 assaults in four weeks.

“Normally when we have issues, when the case is closed, they’ll give us the information they need,” Moore said. “But with assaults in the fall, they used the ongoing investigation as a reason to withhold information we felt we should be getting.”

Although The Collegian couldn’t get the assault information it wanted, Reilly said that the paper and police department have a good relationship.

“Generally I have to say that it’s been pretty cooperative,” he said. “We’ve agreed on not releasing names in instances involving alcohol violation, but other than that I think we can exercise our editorial decision making in terms of what we want to publish and what we don’t.”

**‘The community needs to be aware’**

Brigham Young University’s campus police department voluntarily complies with open-records requests, even when no Utah law specifically requires it to do so.

Lieutenant Arnold Lemmon at BYU PD said this has always been the policy at the department.

“Our certification as a police department comes underneath the direction of the Utah Commissioner of Public Safety, therefore we feel that we need to comply with ground law, just like any other police department does,” Lemmon said. “I think we need to be as transparent as any other state law enforcement agency.”

Ed Carter, adviser to the Daily Universe and journalism professor at BYU, said while crime is very low at the university, the student reporters do use records requests when necessary. He also said a records request assignment is part of his course curriculum.

“Even though crime is low it does happen,” Carter said. “It’s necessary and important that we report on it because for one, the community needs to be aware of those issues for its own safety. When we’ve reported on campus crimes, those are opportunities for the community to know that justice is being done and the law enforcement works.”
7 Tips for Covering College Sports
Experts give advice on dealing with access to the athletic department

BY NATHAN HARDIN

When University at Buffalo football player Scott Pettigrew was stabbed at a downtown nightclub Oct. 9, the university's athletic department immediately sent out notifications to student athletes telling them not to speak to the press.

To Matthew Parrino, editor in chief of The Spectrum, the university's student newspaper, it was clear it was going to be another battle for access between the paper and the sports information office.

"There was an immediate cease-to-speak order put on everybody in athletics over there," Parrino said. "They didn't want any of the students talking. We ended up having to send out our reporters to the student unions to find athletes."

Spectrum adviser Jody Kleinberg-Biehl said the paper has long had access issues with the athletic department.

"As we were attempting to interview people about it, the athletic department first of all refused to comment about it," Kleinberg-Biehl said. "Second of all, as we were speaking to other student athletes they sent out an email to all of the students telling them not to speak to us about anything."

Parrino said he contacted Pettigrew at his home to discuss the stabbing. The player was willing to talk, and even submit a photo for publication.

"They told him not to give it to us. [We told him], 'People are saying you're dead. People want to know what happened,'" Parrino said.

Parrino and Kleinberg-Biehl said it's unclear whether Pettigrew faced any punishment for supplying the photo.

University at Buffalo Athletics representatives did not respond to multiple requests for comment for this story.

"The problem is we feel like it's been an issue for years," Parrino said. "We're kind of hamstring [because] they are very guarded about it."

The conflict at Buffalo isn't an isolated one, in an athletic environment at some schools where anything but positive coverage can result in the restriction of player access.

"[The athletic department's] argument is that these are athletes and they don't want them to say anything that can be taken against them," Kleinberg-Biehl said. "My argument is that they're being interviewed by their fellow students. It's not professionals interviewing. It's college students."

The Spectrum also tried to write profiles on athletes who have children, but the athletic department refused to cooperate and told student athletes they could not, either.

"We've written editorials about it (access). But it's a difficult problem because the more we write about them, the less we get from them," Kleinberg-Biehl said. "It's a problem every semester."

Kelli Hadley, editor in chief of The Argonaut, the University of Idaho's student newspaper, said she was warned when she took the position that athletic restrictions are an issue.

"They rarely flat-out refuse us to talk to anybody," Hadley said. "[But] there were a couple times where we couldn't get access to an athlete in time and we wanted an interview in a story at the last minute and I happened to know one of the athletes. They really frowned upon that. They really don't like that."

Insisting that access to players and games be run through media relations can put journalists in a bind when those spokespeople aren't available. Hadley said sports information officials have occasionally forgotten to return the newspaper's phone calls.

"There have been a couple times where a reporter of mine has tried to get access to a practice or a game and maybe the media relations person 'accidently' forgot to call them back or didn't get to them in time," Hadley said. "That's kind of the case with certain sports over others."

Deal with university PR

Jill Riepenhoff, an investigative reporter for the Columbus Dispatch, said it's important for student journalists to have conversations with editors and sports information directors when dealing with restricted access.

"I often deal with the head communication person for the university as a whole – whoever that person is, although they don't necessarily speak on behalf of athletics I'll go to them anyway – and they tend to be much more helpful and they don't have those nitpicky things like, 'I don't like the way you asked Coach that question last week,'" Riepenhoff said.

Problems with sports information directors are not limited to student journalists, she added.

"Across the country, especially at the bigger universities, [SIDs] play and exist in this kind of secretive world," Riepenhoff said. "They are not used to getting public records requests, they're just not used to those kinds of things, they're used to answering how many yards did the running back get in the game and did it break a record or something like that."

Call for backup

Riepenhoff suggests student reporters hitting access walls should work together with other local media.

"You can bring more voices to the table of 'how do we get beyond this' or 'what's the process that we can set up so we can get records or get information or get what we need.'"

Establish a rapport

Riepenhoff believes student journalists can help build relationships with SIDs by following through on public record requests.

"Establishing a rapport is very important," she said. "They know that you're going to be there. When you ask for records, you're going to look at them, you're going to pick them up, and that helps with credibility. Sometimes they'll chase all this stuff down, and then the reporter is like, 'Nevermind, not important.'"

Work the beat

Riepenhoff also said students covering sports should follow best practices when covering any beat – meet with key officials in the athletic department, discuss story ideas and things the sports department is excited about and ask plenty of questions.
“If you’re on campus and you’re covering the athletic department, you really need to go meet these people face to face,” Riepenhoff said. “Having those initial conversations will really help a lot.”

Expect openness
Mark Horvit, executive director of Investigative Reporters and Editors, said despite privacy concerns student journalists should expect transparency from athletic departments.

“You should have the same expectation of getting public information from the sports department that you can about any other department,” Horvit said. “There are going to be limitations about information you can get about individual players based on certain information based on appropriate privacy concerns.”

One of the most common legal hurdles reporters face is FERPA, the federal student privacy law. The Family Educational Rights and Privacy Act allows the Department of Education to pull funding from schools that have practice of releasing confidential “education records” — though the department has never actually done so.

Freedom of information and privacy advocates continue to spar over what information should truly be private, a debate that frequently takes place in court. Organizations like the Student Press Law Center provide free legal assistance to student reporters facing FERPA roadblocks.

Horvit said students facing aggressive sports information officials should “continue to do the journalism.”

“Often times students run into sports departments going far beyond what the law allows and too often students just don’t understand what the rules are,” Horvit said.

Horvit said journalists should not be intimidated by threats over access, adding that most disputes ease over time.

“I’ve heard of cases where sports information offices have threatened and have in fact cut off access to practices and other things for student news organizations that have either done stories they didn’t like or pushed on topics that concerned them,” Horvit said. “In those cases, the best thing to do is to continue to do the journalism and in just about every case I’ve ever heard of, ultimately the students are invited back because a) that’s what’s appropriate and b) the team wants the coverage.”

Go over their heads
Horvit also suggests student journalists contact administrators outside of the athletic department to seek relief if the restrictions threaten the quality of student journalism.

“Your newspaper, your organization, is every bit as important as whatever it is the sports department is doing,” Horvit said.

Keep doing journalism
Access restrictions based on negative coverage are never acceptable, said Joe Gisondi, author of the “Field Guide to Covering Sports” and associate professor at Eastern Illinois University.

“If there’s a situation where a sports information officer or athletics office is taking away credentials or taking away access to teams or players based purely upon negative coverage, clearly that’s unacceptable,” Gisondi said. “That’s not the way you should be running sports information or an athletics department.”

Gisondi said college-level sports reporters often just rely on athletics departments to give them all the facts.

“Most public relations people are going to spin it in some manner so that it’s not so negative, so at that point sports journalists need to be journalists. Too often they just go to the SID and expect the SID to give them everything,” Gisondi said. “They go to the game, they want the stats, and not enough sports journalists at the college level are acting as journalists in these cases.”

Horvit, Gisondi and Riepenhoff all agreed that the most important thing is to continue to do good journalism – even in the face of access restrictions.

“If somebody gets arrested, they need to go pull police reports,” Gisondi said. “Be reporters. You can’t expect the sports information director to give you all that information.”
The ability to access and cover high school sporting events is valuable to the communities involved, media organizations and the athletic associations that sponsor the events. Although media presence at these public events is a long-standing and accepted practice, the definition of news coverage continues to be under debate, especially at the tournament level.

State athletic associations are responsible for organizing high school sports tournaments. Organizing a post-season tournament involves coordinating schedules, hiring officials, renting facilities to hold the events, contracting sponsors — and managing press restrictions and credentials.

While press regulations exist at all levels of sports, from professional to college to high school, court battles over media ownership rights and press freedoms continue to arise, particularly at the high school level.

**Waiting in Wisconsin**

The constitutionality of selling exclusive broadcast rights for high school tournaments has been called into question in Wisconsin.

The Wisconsin Interscholastic Athletic Association, which runs the state high school sports tournaments for over 500 member schools, licenses exclusive rights to broadcast its events. Under current WIAA policy, an organization can purchase streaming rights for individual games. Other broadcasts without the license are limited to a two-minute length.

In 2009, the Appleton Post-Crescent live-streamed high school football tournament games without a license. When We Were Young Productions, a subsidiary company of American Hi-Fi, holds the exclusive broadcast rights for high school football tournaments, and the WIAA demanded the Post-Crescent pay the licensing fee.

The WIAA sued the Wisconsin Newspaper Association and Gannett Co., Inc., which owns the Appleton Post-Crescent and publishes newspapers across the nation including 10 daily and 19 non-daily newspapers in Wisconsin. Through the lawsuit, WIAA sought a declaration that it has ownership rights over “any transmission, internet stream, photo, image, film, videotape, audio-tape, writing, drawing or other depiction” of the events it organizes, as well as the ability to sell exclusive broadcast rights.

Gannett counter-sued, arguing that selling exclusive broadcast rights for high school sporting events is a violation of the First Amendment.

In July 2010, a U.S. District Court in Wisconsin ruled in favor of WIAA.

“Ultimately, this is a case about commerce, not the right to a free press,” according to the court’s decision. “Even with respect to those games for which American Hi-Fi holds exclusive rights, the defendants remain free to (1) publish stories on the games, (2) express opinions about them and (3) offer limited live coverage.”
Gannett appealed, and the case was argued Jan. 14 before the 7th U.S. Circuit Court of Appeals. A decision could come at any time.

Robert Dreps, the attorney representing the media in the case said, “We knew it was an uphill battle when we took it on because of a pretty long history here in Wisconsin of exclusive television contracts. But at the same time, it seemed that granting such broad exclusivity without any standards for re-licensing others was a violation of the First Amendment.”

Several media outlets joined together on a friend-of-the-court brief supporting Gannett and WNA and seeking to overturn the earlier decision. They include the American Society of News Editors, Chicago Tribune Company, the E.W. Scripps Company, GateHouse Media, Hearst Corporation, the Illinois Press Association, the Journal Broadcast Group, the Journal Sentinel, Inc., Lee Enterprises, the McClatchy Company, the National Press Photographers Association, the Newspaper Association of America, the Online News Association, Sun Times Media and The Washington Post.

In the brief, the media groups argue, “The WIAA is a state actor and the tournaments it sponsors are public events, staged on public property that is opened generally to the public and the media, and paid for with public funds. It cannot adopt the model of a private, professional sports business.”

The media also claim the WIAA has established an unconstitutional prior restraint “by requiring that media companies purchase a license to report audio, video or text transmissions on newsworthy, government sponsored events that are open generally to the public.”

Todd Clark, WIAA spokesperson, said the association only has jurisdiction over post-season tournament events and sponsors them “without any taxpayer dollars afforded to the association to host these tournaments.”

Clark said the tournament series the WIAA hosts are funded through admissions fees, which account for 85-90 percent of revenue, and broadcast rights agreements for transmissions of the games, which account for 5-6 percent of revenue. Clark also said the revenue generated allows the WIAA to pay the fees associated with renting the facilities used, which WIAA does not own, and hire officials for the games.

“There’s sort of a misperception that’s out there that taxpayers’ dollars are going into funding these tournaments and they’re not,” Clark said. “We are not tax driven; we support ourselves. While it’s not all about making millions of dollars, because we’re a not-for-profit association, it is about being able to pay the rental fees, for the quality facilities.”

However, the media groups argue, “WIAA’s profit motive does not insulate it from the First Amendment’s obligations. Having opened public tournament events to the public generally, and to coverage by the media, the WIAA cannot play favorites when it comes to speech.”

**An agreement in Illinois**

In 2007, an exclusive rights battle played out over photo policies and Internet streaming between the Illinois Press Association and the Illinois High School Association, resulting in a 2008 settlement rather than a court decision.

The IHSA formed an exclusive photography contract with Visual Image Photography Inc. that granted unlimited access and photography opportunities at IHSA tournaments. Newspapers were required to sign an agreement for media credentials that limited their access during the events and prohibited any photos other than those being printed in the newspaper. Newspapers covering the athletic tournaments were selling photographs of the events on their websites and VIP’s exclusive photo contract with IHSA was intended to prevent newspapers from selling photos of the events.

The IPA, representing the news media, sued the high school association in November 2007 to combat what it believed was access discrimination and prior restraint over newspapers’ “secondary use” of photographs and game coverage.

IHSA countersued in December 2007, seeking a declaration that IHSA had the right to sell any photographs taken during high school sporting events, to deny access to newspapers if they wouldn’t comply with IHSA’s policies and limit secondary use of newspaper photography.

When photographers refused to agree to IHSA’s terms for media credentials, IHSA began restricting access to photographers and newspapers. Five Illinois newspapers were denied sideline access during state football championships because they refused to comply with IHSA’s policies.

That prompted legislation in Illinois to be introduced that protected equal access at all school events — from elementary to high school, including sports and academic events. The bill also would have prevented any interscholastic association from attempting to regulate the practices of the news media.

As the bill quickly gained support, the IPA and IHSA reached an out-of-court settlement.

Part of the settlement involved stopping the bill from proceeding to passage. In addition to stopping the bill, IHSA agreed it “will assert no authority to control or regulate production, distribution or sale of any newspaper product. Nor will any newspaper access credentials to IHSA sponsored events be conditioned by any limitation on the production, distribution, or sale of any newspaper product.”

The press was also guaranteed equal access to photographer shooting zones established by IHSA in IHSA-sponsored games, and IHSA was allowed to retain an official photographer with unrestricted access to create content for the exclusive use of the IHSA.

Don Craven, IPA attorney, said the proposed legislation played a significant role in the two sides reaching the settlement.

**A new contract**

In September 2010, the IHSA signed a new exclusive broadcast rights agreement with WWWYP, the same company that holds the right to broadcast the football tournament events in Wisconsin.

Craven said the agreement shouldn’t affect newspapers’ current practices. Newspapers were streaming games prior to the agreement, and have been since, and as part of the settlement between the IHSA and the IPA, the IHSA is not allowed to interfere with how newspapers disseminate their content, he said.

Craven said the purpose of anyone streaming high school athletic games is to reach those of interest to the event. There isn’t a
huge amount of interest in high school sports, aside from family or those with ties to the student athletes, he said.

IHSA spokesman Matt Troha said exclusive broadcast rights agreements with state athletic associations aren’t uncommon.

“Everybody tends to do it a little bit differently, because all the states are set up a bit differently, but most state high school associations have some kind of deal with some entity to carry their television stuff,” Troha said. “I don’t know of any state that would simply allow anybody that would show up and start to broadcast.”

Troha and the IHSA – along with a great many new organizations across the country – are keeping their eyes on what happens in Wisconsin at the Seventh Circuit.

“We’re monitoring it because we think it has ramifications for all state high school associations, and really for all televised athletic events,” he said.
Photographers struggle for access to areas run by private businesses. But can a public college allow a media blackout?

BY NATHAN HARDIN

It was a routine story for the Western Kentucky University Herald.

The twice-weekly student newspaper was covering several football players volunteering in one of the public university’s on-campus restaurants as part of a community service project.

But The Herald’s photographers were informed they could not shoot inside one of the facilities because Aramark, the campus’ dining services company, insisted it was private property.

Herald Editor-in-Chief Josh Moore, a former Student Press Law Center intern, said this isn’t the first time they’ve had problems with Aramark.

“We’ve had a few different experiences this semester. A few different incidents with dining services where we’ve tried to take photos in dining facilities on campus and dining service employees have told us that we can’t do that,” Moore said.

According to Moore, each incident has spawned from non-aggressive stories.

“These are pretty harmless stories, stories like fair-trade products in the coffee shop,” Moore said. “So we were wanting to take photos, they said we couldn’t, claiming it was private property because they leased the space from the university.”

The increased use of private contractors on college campuses is regularly provoking disagreement over the ability of privatized bookstores, coffee shops and copy centers to declare otherwise-public property off-limits for newsgathering. The issue has become a point of frustration for student journalists who are welcomed as customers in their student role but may be excluded once their cameras come out.

At Western Kentucky, Moore said the community service story led him to contact Deborah Wilkins, the university’s attorney, to try to settle the issue and come up with a reasonable policy.

“Originally, following the football incident, we agreed to give it a day and to consult the university attorney and they talked to her and I briefly talked to her,” Moore said. “She basically agreed with them in that typically when a private entity leases a space from government it is considered private property for the course of the lease.”

Moore said after further discussion, Wilkins responded in an e-mail with details of the new planned policy media policy.

“[Wilkins] sent this e-mail to me saying the policy, in her words, was that they requested the names of every media member, their contact information, the reason for their entrance, a list of questions, what they want to take pictures of, their deadline and photographers would have to be accompanied by dining staff at all times,” Moore said.

Charles Davis, associate professor at the University of Missouri School of Journalism, said the important legal question is whether the space is a public forum.

Davis said there are three types of fora: the traditional public forum, which has the greatest level of First Amendment protection, the limited purpose public forum, and the private forum.

“Things like student dining facilities, recreation centers and student unions, I think they clearly fall upon the traditional public fora setting,” Davis said. “They are places that are reserved—and not only occasionally, but often—for expressive and communicative activities. They are public spaces in the broadest sense of the word.”

Wilkins, however, argues that property owned by a state agency isn’t always public.

“I think there’s a disconnect among people of what constitutes public property and just because a state agency owns property doesn’t make its property public,” Wilkins said. “If there’s a public park and you want to have a picnic, go for it, but if you want to have a picnic in the lobby of the president’s office suite, that’s not going to be allowed because it’s not going to be open to the public for any purpose.”

When asked if she could provide any case law on public university property being transformed into private property, Wilkins declined to do so.

“I could, but I’m not going to. We don’t have a legal dispute here,” Wilkins said. “The newspaper met with the dining services director and representatives from Aramark and based on what I’ve understood everything is fine and they’ve come to an agreement and can proceed in the future.”

Moore said he immediately began researching and gathering
information to fight the policy Aramark planned to implement.

“I guess [Wilkins] thought that we would be OK with that as long as we were allowed to take photos, but we still contend that this is public space and we shouldn't have to get permission and have staff follow us around while we take pictures,” Moore said.

Moore said he contacted an attorney with the Kentucky Press Association’s legal hotline and discussed the university’s contract with Aramark. He then had a meeting with Wilkins to discuss the problem. Sitting down with the Wilkins helped the university realize the seriousness of the situation, Moore said.

“I can’t say we’ve been successful yet. But the point is to do as much research as you can and talk to as many people as you can and have the best background of the law, and then present your argument,” Moore said. “We didn’t just go to them and say ‘We want to take pictures, and that’s that.’ We developed an argument, talked to some lawyers and saw what others schools were doing before we got too far into it.”

According to Davis, a university contract shouldn't change the nature of a public location.

“Nothing about the fact that Starbucks is running the campus coffee shop in the student union should make it any less public than it was before,” he said.

Davis said when student journalists are prohibited from photographing in public areas, they should continue to appeal internally.

“First of all, if they’re working for the student newspaper, they should talk to their adviser. Their adviser should talk to campus officials, working their way up the chain of command as far as they need to to resolve the situation,” Davis said. “Usually it’s a miscommunication, sometimes it’s an official policy, but it’s wrong-headed policy.”

Moore said he sat down with WKU’s Aramark representative and discussed the issues shortly after his meeting with Wilkins. He said the two organizations agreed to use professional courtesy and respond to requests in a timely manner.

Local and national Aramark officials did not respond to requests for comment for this story.

Moore said Aramark’s argument was that they were afraid the competition would see from the newspaper’s photos how they prepared food.

“[Their] main concern [was] protecting the way they conduct their business,” Moore said. “In a place where they sell pizza, us taking photos of the pizza endangered the way they conduct their business. That was their argument.”

But Moore said he’s far from agreeing with Aramark’s position on the property being classified as private.

“They do still maintain that it is private property and we still strongly maintain that it is not,” Moore said. “Agreed to help each other. I don’t know how well that will go but we’re trying to work together.”

SPLC Executive Director Frank LoMonte said he’s heard of numerous similar situations involving private dining vendors on campus. He said if those companies are going to prohibit student media from photographing inside their facilities, then they must also prohibit recreational photos as well.

“The First Amendment doesn’t guarantee you as journalists that you can walk onto someone’s premises to take photos or gather news, but what it does say is you can’t be singled out and treated differently just because you’re taking the pictures for journalistic use,” LoMonte said. “I would bet it’s extremely unlikely that any cafeteria operator is telling people they can’t take smart phone pictures of their friends eating lunch and put them on Facebook.”

Unlike the university president’s office, as Wilkins suggested, students have a valid reason to be at the dining hall, LoMonte said.

“As a student, you’ve got a valid business justification to walk around on that campus and patronize that dining hall,” he said. “Once you have a valid reason to be in that space then they can’t single you out for non-disruptive photographing or interviewing unless they’re prepared to apply that to all their customers.”

LoMonte said he still questions whether a university can wholesale pieces of campus to third-party companies on a long-term basis.

“It’s questionable whether a school can really transform public property into private property on a permanent 24-hour basis,” LoMonte said. “It’s one thing for a concert hall to be leased out to a promoter for a day at a time, but the concert hall remains government owned. You can’t give away the public’s property to a private entity to treat it as their own on a permanent basis.”
INTROSPECTIVE

Student journalists respond when the news hits close to home

BY NATHAN HARDIN

For Katelyn Thibodeaux and Ashley Falterman, April 7 began as a slow news day. It ended with word that one of their own had been accused of something neither could believe.

Thibodeaux, editor in chief of The Nicholls Worth, the bi-monthly student newspaper at Nicholls State University, and Falterman, the online editor, initially thought the news that one of their staff writers had been suspended was a misunderstanding.

“Then we got a copy of the police reports,” Thibodeaux said. “He was trying to hide everything.”

Over the next few days, Thibodeaux and Falterman said they were shocked to learn that their writer, freshman Preston Stock, was facing serious charges.

According to university police, Stock created a fake Facebook account and used it to send threatening messages to students and faculty members — including those he interviewed as a reporter. Stock profiled two of the victims, and was working on a profile of a third that would have run in the following edition of the paper.

Stock allegedly began sending sexually harassing messages to his math professor. After the professor blocked the account, the newspaper reported, Stock created another account and wrote to the professor, “For every week and a half you do not contact me, one of your Facebook friends will die, starting with your perfect little students. Let the games begin.”

We never debated on whether we should run the story. We knew it was something we had to cover.

Thibodeaux said hiding Stock’s involvement with the Nicholls Worth would have made the paper look worse than if they reported it.

“We never debated on whether we should run the story, but how do we run the story. We knew it was something we had to cover,” Thibodeaux said.

But Stock quickly became angry when contacted by his former employer, editors said.

“We called him and told him it was just like any other story,” Thibodeaux said. “We told him we had to do a story on it.”

Thibodeaux said hiding Stock’s involvement with the Nicholls Worth would have made the paper look worse than if they reported it.

“It was the right thing to do,” she said. “You can’t always hide everything. There comes a time where it might hurt your image but you have to face the facts.”

The Nicholls Worth is far from the only student media outlet to face ethical dilemmas when the story turns to people inside the newsroom.

When Daniel Burnett, former editor in chief of the Red & Black, was asked to watch the University of Georgia Bulldogs’ Nov. 27 home football game from the president’s box, he had no idea how quickly the story would turn on him.

Burnett would resign from the top editor position just two days later, following an alcohol-related incident in which he was escorted from the Sanford Stadium box.

Burnett later told the Red & Black he had been drinking before the game and spoke to university president Michael Adams, Georgia governor-elect Nathan Deal and Gov. Sonny Perdue inside the box.

Mimi Ensley, former Red & Black news editor and current editor in chief, said the incident happened so fast that decisions about the coverage had to be made on the fly.

It wasn't that formal just because it was happening so quickly, but those [coverage] conversations were had,” Ensley said.

The editor in chief position is just like any other campus leader, Ensley said, and that’s the message she conveyed to her staff.

“We just had to think in that case—we kept asking ourselves, ‘if this was the president of [student government] that had done something, would we write the story,’ and the answer was always ‘yes we would,’” Ensley said.

Ensley has no regrets about the way the Red & Black covered the episode, and said the publication continues to maintain a commitment to “full transparency.” She said the transition was tough on members of the organization, but they insisted on fair reporting.

“It was definitely a difficult time for people on staff, but we had to act as a source of news on the issue because it was campus news and we’re a campus paper,” Ensley said. “We just had to put aside our personal feelings about the situation and do the reporting as best we could.”

Full disclosure

Kevin Smith, ethics committee chairman at the Society of Professional Journalists, said transparency is the watchword for student journalists reporting on internal issues.

“The first thing I would recommend to them is the same thing I would recommend to any professional organization and that is making sure you provide full disclosure, and I think that’s really important whenever you’re dealing with subject matter that is
that close to home,” Smith said.

“One of the things you have an obligation that you owe to your readership or your viewers is to make sure you’re up front and honest about every aspect of that.”

Ed Morales, adviser to the Red & Black, said the newspaper also took steps to lessen the inherent conflict of interest that comes with a publication reporting on itself.

“The reporter that we chose to write it really didn’t have any connection with the person in charge,” Morales said. “He was the editor in chief, obviously, but the reporter that we had covering the editor in chief didn’t really deal with them as much and therefore there was no sense of personal involvement there and I think you need that as much as you can.”

Morales also gave advice for other publications facing issues involving their newspapers.

“I think you need to detach whoever’s covering it as much as you can from the person that they’re covering,” Morales said. “You have to make sure that your feelings about that person don’t come into play. That has to be the same attitude if it’s someone in your office. You have to make sure that everything you would do for someone you don’t know, you would do for someone you do know.”

He said despite the embarrassment brought on by Burnett’s actions, he did receive praise for the newspaper’s coverage.

“I heard from some other people at other papers that they were happy that we covered it the way that we did with a matter of full disclosure,” Morales said, “because clearly the whole situation is a bit of an embarrassment for the Red & Black, in the sense that someone who is leading your organization… their actions were not what they should have been. It wasn’t a best representation of the paper itself in front of a lot of the really powerful people on campus.”

Morales said the incident provided an opportunity for young staff members to learn about the position they hold at the news-
A lot of people were like ‘Hey, good for you for covering this person in that way and not holding back and trying to hide the truth or trying to shield for that,’” Morales said. “The Red & Black is very good about making sure the people that work here know that they are going to be—if they do something wrong or improper—that they’re going to be covered with the same zeal that we cover other things and maybe even more so because we have to have full transparency.”

Focus on the j-school

There are other forms of “self coverage” conflicts, as David Teeghman, a journalism student at the University of Missouri, recently discovered.

Teeghman recently launched the blog “J-School Buzz,” which serves as a source of news and discussion about Missouri’s journalism school.

“I’ve always thought that blogs can be really useful in communicating information to really small niche audiences. I thought specifically that the journalism school was well-positioned for this sort of blog because we’re always so interested in what’s going on with the journalism school, any piece of news, no matter how insignificant, is shared around the journalism school on Facebook and Twitter. And it’s the source of many conversations and there was no one way to unify all of those conversations, there was no one place to start those conversations,” Teeghman said.

For Teeghman, it started with a vending machine.

“When I realized there was really a need for this was a really small event, it was just a vending machine being added to a computer lab here,” he said. “It was a vending machine filled with like pens and pencils and different things that journalism students would need. I tweeted out a picture of it on my personal account and it was retweeted four or five times and the photo got more than 100 views and people were talking to me about it, and I realized ‘Wow, people really have an interest in this sort of stuff.’”

When it comes to ethical principles for a group of journalism students covering their own journalism school, J-School Buzz has pushed aside a strict adherence to objectivity.

“We’ve never tried to be objective,” Teeghman said. “I’ve just been very frustrated with how objectivity has been warped into the notion that two opinions are—as long as they’re on opposite sides—are treated equally. I feel like that’s what objectivity has become.”

Teeghman’s ethics faced their biggest test when things at the journalism school literally came to blows. An argument between a student and a professor turned into a physical altercation in the computer lab where Teeghman himself happened to be working.

Teeghman tried to intervene and found himself in a headlock—according to surveillance camera footage of the incident later posted on J-School Buzz.

“It came under a lot of scrutiny because I was the one reporting it because I was involved,” he said. “I just did that because I could do it quicker because the other editors weren’t there and also, in a media saturated town like ours, I had something interesting to add to the story.”

The coverage was not without its critics. One online commenter called Teeghman’s posts a “monologue of emotionally charged crap.” Another said the incident was being used as “vehicle for ardent narcissism.” Others praised the editors for being transparent about why they chose to cover the story.

The unique environment of a college campus means young journalists often have to take into account special ethical concerns. And while decisions on exactly how to cover your own newsroom may vary, the consensus seems to be, above all, not to ignore stories because they hit close to home.

When publications exhibit bias in choosing which information gets published, it hurts the credibility of the news organization, Smith said.

“It erodes the credibility of the media to the point that when someone’s watching you on television or reading your copy of the paper they have to start second guessing whether your interest is for the public information and the good of the citizenry or if it’s for your client or where your allegiance lies,” he said.
You don’t need a diploma in your hand to be a “real” journalist.

The landscape of the media industry is changing. Newsrooms are shrinking but the public’s need to know remains. Student journalists are stepping up to meet that demand, engaging in hard-hitting reporting across all mediums. And the SPLC is right beside them.

The Student Press Law Center is leading the fight to reform federal secrecy laws that prevent students from reporting on their own campuses, to protect online speech against intrusive government regulation, and to assure student journalists the full benefit of reporter shield laws.

Join the SPLC and become part of the most trusted First Amendment authority on campus.

Because students aren’t the future of journalism— they’re the present.

On deadline?
Consider running one of our camera-ready house ads, available for download right now under the Get Involved tab at www.splc.org
Newspaper theft is a continuing problem for college publications. Thousands of copies of The Towerlight at Towson University disappeared from their racks in February. The staff believes they were stolen and thrown in trash bins.
Mass theft of newspapers is a consistently reoccurring problem college journalists around the country face. The motive behind each instance is different, but every year thousands of student newspapers are removed from the stands, keeping them out of public hands.

In many cases, when student newspapers disappear from racks they are taken in response to controversial content published within that specific issue. In March, a press run of The Campus, the student newspaper at Ottawa University in Kansas, went missing after the newspaper ran an issue focusing on sex. A photograph of sexually positioned naked dolls was thought by Campus staff to have motivated the removal. More recently, copies of the Herald at Arkansas State University were allegedly stolen within two hours of hitting the stands the day an article was published exposing a sorority email that condoned underage drinking.

‘An opportunity to enlighten’

At the end of February, a small group of Texas A&M Corps of Cadets members removed copies of The Battalion before returning them later that day. The act was in response to The Battalion’s coverage of a Fighting Texas Aggie yell leader candidate who received a ticket for an alcohol-related incident.

Editor Matt Woolbright said each year the student body elects yell leaders, who serve as the official school spirit leaders at athletic events and are members of the Corps of Cadets. Woolbright’s article ran shortly before yell leader elections.

Although the Corps members were quoted saying the newspapers were returned by 9 a.m., Woolbright said at 11 a.m. he did a sweep of campus, finding only about 30 to 40 newspapers on the main part of campus – out of the total press run of 18,000. By 3 p.m., Battalion staff checked campus again, finding 30 percent of the newspapers placed back in the racks by Woolbright’s estimation.

The Battalion compensated advertisers, whose ads went mostly unseen, by re-running all the ads for free, at a cost of $5,447.32 to the newspaper. Initially, the Battalion was looking to pursue restitution from the Corps through the university justice system, but has since decided to drop a judicial remedy.

“We’re not pursuing any financial remedy from those who took the newspapers because they returned them pretty quickly,” said Battalion General Manager Robert Wegener. “This was an opportunity to enlighten the campus community that it is a theft.”

The Battalion responded to the incident by publishing an article calling the act a theft in addition to an editorial by Woolbright titled “No Regrets,” defending the Battalion’s right to free speech amidst both student backlash and support.

The Corps of Cadets never apologized to the Battalion, something Wegener said he was never seeking, and it’s unknown whether any disciplinary action was taken within the Corps. Corps of Cadets Media Relations Coordinator Annette Walker said, at both the initial time of the incident and at a follow up, she knew nothing more than what the Battalion had published about the incident.

Flying Squirrel reflects

While the most consistent motive behind taking student newspapers is to cover up a controversy, it isn’t always the case. The act
of stealing student newspapers has also been the focus of many college pranks, with no malicious intent other than humor.

In 2003, the SPLC reported a prank-gone-sour at the University of Wisconsin at River Falls. A group of students calling themselves the “Army of the Flying Squirrel” took 2,000 out of 3,400 copies of the Student Voice to fill a professor’s office. A “ransom” email was sent to then-editor Jen Cullens demanding the Student Voice print on its front page a picture of a flying squirrel, a naked picture of actress Bea Arthur and a football helmet full of cottage cheese—the latter two demands a reference from the movie “Airheads.” The email, signed “Squirrel Master, a.k.a. ‘Big Nut,’” also demanded the Voice print a “public apology… for everything it has ever printed.” “Squirrel Master” threatened that if the demands were not met, the Voice would be taken again the following week.

Cullens received a tip early that morning by a Voice staff member about the displaced newspapers and quickly mobilized fellow staffers to redistribute the papers. Campus police were notified by newspaper staffers – who also began their own investigation. Cullens said an IT department employee traced the email to Ashton Flinders.

Looking back on the situation eight years later, Flinders – now pursuing his PhD in oceanography – said the “Flying Squirrels” were simply a group of friends having fun, with no malicious intentions.

“We weren’t the type of kids going out and drinking all the time and partying and causing trouble,” Flinders said. “I mean, we were all chemistry and physics majors—we were just kind of blowing off steam in our own way.”

Cullens recalled that she was in rough spot as editor of the Voice.

“We laughed at it because it was stupid and funny, but at the same time working on a student newspaper is very time consuming and you’ve got a full course load,” she said, adding that she was also working a full-time job. “I had no doubt that if we didn’t figure out who did it and if they didn’t get in trouble, that they would have tried to do the same thing the following week.”

The incident sparked a debate on campus over whether free student newspapers could be actually be “stolen.” Instead of pressing theft charges, the Voice pressed charges under a misconduct policy that states the university is an “environment that is safe from violence and free of harassment, fraud, theft, disruption and intimidation.”

The university judicial hearings resulted in a year of non-academic probation for Flinders and two other students involved. Flinders was also required to do 10 hours of community service to the newspaper by distributing the paper for two hours at a time on distribution days, which Cullens signed off on.

Flinders still has mixed feelings over the decision. He said delivering the newspapers wasn’t a big deal, but he felt “overtones of maliciousness” from the newspaper staff during the hearing process.

“A lot of the newspaper editorial staff kind of spun it into this personal attack, not just on the student newspaper, but on them personally. I guess I was a little disappointed that they took it this way,” Flinders said. “We all had a professor that we liked to play jokes on, so it kind of spun off the idea of filling his office with student newspapers. We didn’t destroy any newspapers.”

Cullen said she was very impressed with the decision from the university judicial hearings.

“Go to jail, pay a fine

Victims of theft may decide to keep the issue within the campus community by seeking a decision through the university judicial system, like Cullen. But a newspaper staff’s options don’t stop there.

Gene Policinski, senior vice president and executive director of the First Amendment Center, said any state criminal law

SPLC’S NEWSPAPER THEFT
CHECKLIST

☐ Include a price tag. Provide a disclaimer stating that the first copy is free, but additional copies must be paid for.

☐ Get a number and a dollar figure. If a theft occurs, be sure you can tell police how many copies were taken and at what cost.

☐ Launch an investigation. Attempt to interview witnesses and seek out tips, but do not interfere with the work of police.

☐ Set up a Dumpster Patrol. Search all university trash collection sites. Get photos and notify police if papers are found.
should be sufficient for prosecution.

"I think these prosecutions should be brought under criminal statutes as would any other theft," Policinski said. "It's a very First Amendment friendly approach because it’s not asking for any special treatment for a campus newspaper or any other newspaper. It simply says [if] you steal something that doesn't belong to you, you commit a crime."

Three states, Maryland, Colorado and California, have gone beyond the generic theft statutes by passing specific newspaper theft laws. In Maryland, anyone successfully prosecuted under the newspaper theft statute can receive a $500 fine and up to 60 days in jail. In Colorado, a newspaper thief can receive up to $5,000 in fines if 500 or more newspapers were taken. Colorado's law also explicitly refers to the student press. In California, a first violation can result in a $250 fine. A subsequent violation can result in a $500 fine and 10 days in jail or up to 40 hours of community service.

Policinski said he has seen polar opposites as far as university responses to newspaper theft. He’s seen a great many universities that have adopted policies within student handbooks that specifically say theft is criminal conduct.

"But you still have a few campuses where the attitude is that [newspaper theft] is a anything from a prank to a harmless activity," he said.

A reoccurring stance taken by university police, administrators and suspects is that a free newspaper can't be stolen. Although most student newspapers are free, there is money associated with them. Student activities fees help support many student newspapers, every ad in a newspaper has value to its advertisers and many student newspapers have paid staffers editing and writing the content that goes into each paper.

"I think Americans are just used to seeing price tags," said Mike Hiestand, consulting attorney with the Student Press Law Center. "There's this conception that it's just a freebie. It's important that [newspapers] educate folks that the only reason they're putting them out for free is because they're prepaid for and that's the cheapest way to do it."

Policinski said when a student newspaper is stolen it's an act that dismisses the value of the student press.

"I think it's not only saying that the product has no value—that it's a tangible product—they're saying that the student newspaper itself has no value."

Newspaper theft is also a very ineffective way of preventing content from reaching readers. Policinski said a combination of a growing aggressive attitude from publishers and editors, the web and national groups like the SPLC and Society of Professional Journalists who support journalism, easily transforms what was a local story to a national story.

"Because student audiences come and go, I don't think there's a realization that the theft actually heightens the attention to the story," Policinski said. "It might seem like common sense, but student populations renew basically every four or five years and I think there has to be this lesson learned over and over again that stealing editions of a newspaper will result in more publicity, not less."

Student newspapers have taken their own proactive steps to dissuade theft. One of these steps is printing a policy in each issue stating that the first issue is free, but additional copies have an associated cost.

"Because we have the turnover in student population, it is a lesson that probably needs to be taught every couple years, hopefully by instruction not by prosecution," Policinski said.

He recommends that universities include a policy or statement in handbooks for incoming freshmen as a preventative measure against newspaper theft.

The SPLC receives about 20 reports of newspaper theft each year, though the exact number is almost certainly higher. The center reported on seven thefts in the first three months of 2011 alone. And despite the increased publicity, successful prosecutions and newspaper theft laws, newspaper theft isn't going to vanish overnight.

"I think the realization is now that this goes on much more than we might have thought," Policinski said. "There's a sense that it's becoming an increasing problem and more attention needs to be devoted towards it, so it's a bad time to steal editions if you're a person contemplating it."

FOR THE COMPLETE CHECKLIST...

... go to www.splc.org and visit the Newspaper Theft Forum to get additional information.

Alert the (rest of the) news media.

In addition to writing about the theft yourself, notify other local media outlets about it.

Notify the Student Press Law Center.

Let us know as soon as possible so we can track and assist in these types of thefts.

Work with campus police.

Don't accept the answer that ‘free’ newspapers can’t be stolen. Press charges against the thieves.

Consider your options.

In addition to criminal and campus charges, you could file a civil lawsuit to recover costs.

FOR THE COMPLETE CHECKLIST...

... go to www.splc.org and visit the Newspaper Theft Forum to get additional information.
Solving the social media puzzle
Teachers weigh the risks, benefits of communicating with students online

BY ALY BRUMBACK

As school administrators work to reconcile their conduct policies with expanding technology, teachers have started to think twice before posting that rant to their blog or picture to their Facebook profile. Yet, when it comes to their First Amendment right to freedom of speech, should they have to think twice?

In one case that received national attention, Natalie Munroe, a teacher at Central Bucks East High School in Pennsylvania, was suspended in February after an online rant about students and parents on her personal blog was discovered. She wrote certain unnamed students were “lazy whiners,” “rude” and “jerk offs.”

The Pennsylvania dispute is among many across the country causing school officials to rethink and rework their policies on how teachers interact with their students.

Andrew Ford, president of the Florida Education Association, which represents teachers in the state, said social media are evolving more quickly than laws and rules.

“I think teachers need to be cautious,” he said. “Things that adults take for granted should not necessarily be posted where students can see. [We’re] trying to make sure that we get teachers to understand that just because it is private on their own time doesn’t mean that it’s completely private.”

Figuring out which policies work

The Manatee Education Association filed a lawsuit in November after Manatee County School District officials in Southeast Florida approved a policy that would restrict how teachers can communicate with students outside of school.

According to the policy, “communication with students via any communication tools that are not approved by the District … requires written notification to the students’ parents via the District’s approved form at least ten days in advance.”

Additionally, the policy would restrict what employees can personally post about the school district.

“Employees are to refrain from electronically posting in publicly accessible websites any statements, documents, or photographs that might cast the employee, the students, or the District in a negative, scandalous, or embarrassing light,” according to the policy.

The teachers union agreed to drop their legal objections to the policy and will work with the district to revise it.

John Bowen, attorney for the district, said all parties have agreed to work together to resolve concerns.

“They were thinking it was some First Amendment problem and we’re going to work on that,” he said. “We’re not trying to say you can’t communicate, but we’re saying when you do, make sure you comply with the code of ethics and principles of the teaching profession.”

Bowen said the ultimate goal is to give employees explicit guidelines on how to use electronic resources when communicating with students because that “communication is subject to the same rules as in the classroom.”

“It doesn’t matter where they’re communicating on their home computer, using a social network, or at the beach or in the mall, or in the classroom, they’re bound by those same rules,” he said.

If concerned teachers want to turn to their local or state education association for rules about how to use the Web to communicate with students, they likely won’t find them. Most organizations give few guidelines, while the federal Department of Education website offers no directives on social media policy for teachers, other than to tout the ability of students to learn through social media and technology.

“We have suggested that the teacher does not interact [with a student] as a friend on social networking,” Ford said when asked what the Florida Education Association recommends. “Even though you may be home, sitting in your living room on a computer, that it is still at work if you’re communicating with students.”

Some state boards of education trying to address the issue have found that crafting an acceptable policy is easier said than done.

The Virginia Board of Education was forced to back away from a model policy proposed last fall, which would have banned texting and all social media interaction between students and teachers. The policy was designed to prevent sexual misconduct, but drew the ire of groups including the Student Press Law Center because of its potential impact on student journalists and advisers.

The policy that was adopted in March does not include the restrictions, but instead calls for transparency and the development of local “best practices.”

Andrea Kayne Kaufman, associate professor of educational leadership at DePaul University, teaches masters and doctoral students — almost all of them teachers — who are working to become principals and superintendents. She said administrators in many schools are playing catch-up with social media.

“Social media policies are sort of handled on a teacher-by-teacher basis, which can cause a lot of problems,” Kaufman said, “because you can have teachers who have really great intentions when ‘friending’ their students, but they don’t have the proper screen, like on Facebook, so students see them drunk at a bachelor party.”

Kaufman said other issues arise when “students who don’t like a teacher post to their friends and on Facebook things about the teacher, or students create false Facebook accounts.” With bullying in the spotlight at many schools across the country, she expects these concerns to become part of the policies administrators create.

“I think the principals that are the most proactive, or sometimes reactive, are the ones who’ve created policies such as, ‘You can’t friend a student unless the student has graduated from the school,’ or ‘If you use Twitter there needs to be a password.’”

Another professor at DePaul University, Paul Booth, recently
taught a lesson on social media and privacy to a class of freshmen.

“I asked, ‘How many of you in your high school had someone suspended or disciplined because of something that happened on Facebook, or something that happened over a text message, or sexting, or something like that?’” he said. “Half the class raised their hands and they kind of shocked me. I wasn’t expecting that.”

Booth, an assistant professor of new media and technology, said he expects high schools will focus on literacy in the future as they come to terms with technology. Too often, he said, schools focus on what students should avoid instead of showing students positive ways to use technology.

**Higher education and social media**

While DePaul is one of a few universities to take the lead with a social media policy, typically referred to as “best-practice guidelines,” Booth said there aren’t strict rules about how professors should use social media on or off campus.

“There aren’t universal rules for professors in the way they use social media,” he said. “There are general guidelines we are given when we get a job … It’s usually left up to the professor.”

Booth said his own personal policy is not to ‘friend’ under-graduate students on Facebook.

“I’m upfront about it because I teach social media … because that’s not the relationship that we have. Once you graduate, then we can be peers,” he said. “Then you have a degree and we no longer have a student-professor relationship. But that’s just my own personal policy and I know some professors ‘friend’ undergrads and some professors absolutely don’t use Facebook at all.”

Universities are also beginning to incorporate social media into their marketing and communications practices. At Seattle University, DJ Weidner is the school’s social media coordinator. His job involves managing all social media communications for the university, communicating the university brand online, and watching for mentions of the university on social media. He also helps faculty and staff learn better ways to use the tools.

Weidner’s department launched Seattle University’s social media presence in February 2009 and quickly found an audience who wanted to communicate with them in that way. They also wanted to make sure everyone understood what the expectations were, Weidner said.

“Our guidelines apply to faculty and staff in their use as official representatives of the institution,” he said. “As far as taking social media into the classroom, that’s really the role of our pro-
vast and our academics and they have looked at the policy we've created for assistance, but haven't necessarily formalized that into the classroom yet.”

Weidner said that research suggests universities “are more successful when they have a social media policy in place when communicating their messages online.”

“In the future, I believe the social media coordinator role will become the role of more people in the office, and not just the role of a single person,” he said, “but rather part of media relations in general.”

**What does the future hold?**

Kyu Ho Youm, the Jonathan Marshall First Amendment Chair at the University of Oregon, said landmark cases such as *Tinker v. Des Moines* and *Hazelwood v. Kuhlmeier* are normally what K-12 school officials look to for perspective on First Amendment protections when developing social media policies.

“The First Amendment protection of free speech should be given careful consideration by the school authorities,” he said. “Some schools are more restrictive and that's creating problems, and also some school policies tend to be rather overbroad and also, at the same time, they're vague.”

In 2006, the U.S. Supreme Court decided in *Garrett v. Ceballos* that when a public employee speaks “pursuant to his official duties,” the First Amendment doesn't protect against discipline. The Court hasn't ruled whether that same logic applies specifically to public high school teachers or public university professors.

Youn said free speech law has yet to catch up to the technology outpacing it. He said law in the U.S. tends to be “more reactive rather than proactive.”

“The Supreme Court will sooner or later define the First Amendment status of social media,” he said, “but the fundamental question is, 'How?'”

Booth, the new media professor at DePaul, expects broader guidelines, especially as administrators catch up and discover that “what's specific one year is outdated the next.”

“Social media is constantly changing,” he said. “If someone had said in 2005 the world was going to go crazy because they can write messages in 140 characters, I would've said you're crazy. Now Twitter is all the rage, text messaging is all the rage. Who knows what it's going to be in 2014?”

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**Calif. legislator tries again on university foundation records bill**

**SACRAMENTO** – After twice being vetoed, legislation to make the records of university foundations open to public is again up for debate.

This time, however, the process has one major difference: a new governor.

Sen. Leland Yee, D-San Francisco, is sponsoring the bill. It requires that private auxiliaries of public colleges, such as university foundations, comply with California’s public records laws.

It passed the Senate Education Committee on May 11 and was scheduled to receive an unexpected, additional hearing before the Senate Appropriations Committee.

The legislation has passed both houses twice before being vetoed by former Gov. Arnold Schwarzenegger, a Republican. Since then, Jerry Brown, a Democrat, was elected as governor.

Some universities argue the bill will result in fewer donations to the cash-strapped institutions.

**Utah passes, then repeals major changes to state open-records law**

**SALT LAKE CITY** – In the course of a week, legislators in Utah introduced, passed, recalled, delayed and again passed a controversial change to the state public records law.

Three weeks later they repealed it.

HB477 would have eliminated the presumption of openness in government records. It also would have exempted text messages and many electronic records held by government officials.

Shortly after it was introduced near the end of the legislative session, the bill became a political lightning rod. Transparency advocates claimed the bill would completely dismantle the state’s public records act. Hundreds rallied via social media and in person at the Capitol in protest.

After passing by a large margin, the bill was “recalled” under threat of veto by Gov. Gary Herbert. The effective date was delayed until mid-summer. A few weeks later, Herbert called a special session to repeal the law entirely. A committee is now studying the issue.
The old saying “any press is good press” is no longer true according to some high school coaches and teachers.

Besides being historical records for their schools, student newspapers and yearbooks serve as educational tools about the First Amendment rights of freedom of speech and press. However, according to some journalism educators, many people within the educational system itself don’t always seem to understand or uphold these rights.

While it is well-recognized that administrators often pressure student editors and journalism advisers to censor their publications, sometimes the pressure comes from other sources within the school.

Melissa Dixon, a teacher at Oak Mountain High School in Birmingham, Ala., met resistance this year from a basketball coach at her school when she tried to get the team’s scores for the yearbook. In her 12 years advising the yearbook staff of the Paragon, she hadn’t come across that problem before.

The coaches hadn’t kept track of the freshman team’s scores, so Dixon asked a parent for the win-loss record. After she had gotten that information, the coach asked her not to publish the record at all.

“He just decided that he didn’t feel like it was appropriate to make the team look bad,” she said. “When I explained to him that it was a historical record, he said that the parents are very upset with the coaches because of the [season] and he just asked that I didn’t put it in.”

Because Dixon is friends with the coach and sees him at the school often, she worried about their future relationship. After corresponding with other advisers by email, she ultimately decided to publish the win-loss record in the yearbook.

Tom Gayda, Region Six director for the Journalism Education Association and a teacher at North Central High School in Indianapolis, said whenever teachers have issues within their own schools, he encourages them to explain the role of the press to those in opposition.

“I find [not giving scores] silly, because at the end of the day it’s not the end of the world if you have a bad season,” he said. “I don’t know why they think that by not giving that information or acting like it didn’t happen it makes the truth go away. Had the kids been keeping track themselves, they wouldn’t have had to ask and it would’ve been included anyway. Situations like that are a little bizarre.”

Bizarre as they may be, situations where journalism advisers are pressured by those within the same school system to withhold certain information or publish favorable facts aren’t uncommon.

Dana Juenemann, teacher and adviser to the The Stampede newspaper and Bison yearbook staffs at McCook High School in Nebraska, dealt with a similar situation this school year. A student working on the swim team’s page for the yearbook went to the coaches to get the scores and was told she couldn’t have them.

“I honestly never thought it would be a problem to get scores, ever,” she said. “Our swim team improved a lot, but they didn’t win, and they don’t want that in the yearbook. My thought was, ‘Don’t ever tell a journalist that they can’t have something, because they will find a way to get it, especially if it’s factual information.’”

Juenemann turned to the community newspaper to get the scores. When it comes to being pressured, she said, more often it’s requests for stories that show the school in a favorable light.

“Overall, they want us to make them look good,” she said. “It doesn’t matter whether it’s newspaper or yearbook. It seems like coaches, the administration, anybody gets upset if we bring anything to their attention that is not only controversial, but might show there are problems.”

Juenemann said she’s also dealt with comments from community members and those within the school who’ve said they can’t believe the staff writes articles about a team not winning.

“I really preach to my sports writers that … it’s an article, it’s
not ‘Yay team let’s do better,’” she said. “That’s not your job, and if you want to be a cheerleader, go try out for cheerleading. In here you’re a writer and I need you to be objective and tell it like it is, as long as you back it up.”

**Trying to find a balance**

Oftentimes many bright-eyed, fresh out of college journalism educators and publications advisers are plopped into unfamiliar school systems and wished good luck. In response, the Journalism Education Association started a mentoring program through its regional organizations to help support those teachers in their first two years.

Georgia and Wayne Dunn taught journalism in Ohio for 28 and 30 years, respectively. After retiring, they began working with the JEA’s mentorship program in their area when it began five years ago. While mentoring the teachers lasts only two years, the Dunns said they continue to provide help and advice thereafter.

Wayne Dunn said it can be precarious for new teachers who are trying to find a balance covering the school while also trying to avoid trouble.

Georgia Dunn said the impulse to give in to censorship pressure can be especially strong when journalism programs are endangered. “Here in Ohio, as in many other states, we’re having tremendous financial problems for schools. They’re cutting teachers right and left, and programs like newspaper are being dropped,” she said.

She said one of the most important things she and her husband tell teachers is to educate students about their rights, because the students may have to fight the battle. With many teachers starting off with one-year contracts, sometimes they can’t afford to push back because “if he or she is given a direct order not to do something they have to follow it or risk being fired for insubordination.”

While the First Amendment guarantees freedom of speech and press, student journalists aren’t necessarily afforded the full extent of those freedoms. The 1988 *Hazelwood School District v. Kuhlmeier* decision by the U.S. Supreme Court gave public high school administrators greater ability to censor school-sponsored student publications, unless policy or practice indicates that the publication operates as a “public forum” run by students.

In the years since, seven states — California, Oregon, Arkansas, Massachusetts, Iowa, Colorado and Kansas — have passed laws giving high school students stronger protections for freedom of expression than under *Hazelwood*.

While the First Amendment and state law may protect student journalists against official acts of censorship by principals, superintendents or school boards, there is not necessarily a First Amendment right to be free of harassment by peers and community members — and that is sometimes where journalists suffer the most severe backlash for what they write.

In a particularly extreme case, student journalists at Muncie Central High School in Indiana who broke a story about a 2004 scandal involving allegations of illicit payments to members of the school’s popular basketball team found themselves targeted for retaliation both officially and unofficially. Their photo credentials for several sporting events were yanked, a writer received a threatening text message, and the editor’s car and home were vandalized.

‘**Bodies to be controlled**’

Experts in student journalism say it’s important to educate the whole school community, from administrators to students, about the constructive role that an uncensored news outlet can play in bringing problems to light to be fixed.

SPLC Attorney Advocate Adam Goldstein said it’s often “controversial” articles about problems within the school or with athletic teams that inspire things to go right in the future.

“From the perspective of a coach who has never had to teach journalism or never had to be a journalist, writing about how the team lost just feels mean,” he said. “Journalism students don’t
report these things to antagonize the athletic teams or to make anybody feel bad about themselves, they report about these things so people can adjust and people can change and offer more support.”

Juenemann, the adviser in Nebraska, said it’s usually the articles that don’t seem controversial that end up being problems.

“It’s kind of a deal-with-it-as-it-comes type of thing,” she said. “When it happens to my kids, if they are going to do something controversial in our newspaper, they have to be able to defend it to me and a couple other teachers before it’s going to go to press. Because I teach in Nebraska and we don’t have a Student Freedom of Expression Act, we have to be very, very careful. I just prepare my kids the best I can so that [censorship] doesn’t happen.”

In a time when schools are being criticized for lackluster test scores or for wasting tax money, “student journalists researching or writing a truthful story can be seen as damaging a school’s public reputation,” said Edmund J. Sullivan, executive director of the Columbia Scholastic Press Association in New York.

“Few teachers other than journalism advisers have a real interest in helping student journalists practice those rights,” Sullivan said. “Too many adults in schools look at students as bodies to be controlled and not young minds to be educated.”

**Image isn’t everything**

Dixon, the Alabama adviser, has been able to face down peer pressure to censor because of a supportive relationship with her administration, which she cultivated over years of successfully advising the yearbook staff at Oak Mountain. By demonstrating she was capable of dealing professionally with controversy in the yearbook program, Dixon was able to avoid the mandatory prior administrative review imposed on the newspaper under a previous adviser.

This doesn’t mean that the yearbook always runs without a ripple. In one instance, a student in Dixon’s yearbook class asked a football coach for confirmation of a player in a photograph for a spread. She said the coach saw a prominent quote on the page that he didn’t like.

“The coach asked them to pull it out,” she said. “I stood my ground there and said something to the effect of, ‘I don’t go on your field and coach your kids and tell you what plays to run, and so you won’t be telling me what goes in the yearbook.’”

Dixon said dealing with pressure, especially from those within the same school, isn’t something you can be trained for — it’s about learning from mistakes.

Ultimately, it’s not the job of student journalists or journalism educators to provide public relations material for the school, Goldstein said. The most important message journalism educators can impart to administrators, coaches or fellow teachers is the need to educate students is greater than the school’s image, he said.

“When you’re educating them in journalism, that means writing about things that aren’t always good,” he said. “Go out and pick up any newspaper and you’ll see stories about athletic teams that lost and, you know what, people still love the team. Every year, every newspaper in Chicago has been writing about how the Cubs lost, but there are still a ton of Cubs fans.”
Right up there with insurance companies, drug manufacturers and utilities, colleges and universities are big players on Capitol Hill and in state capitols across the country. Colleges spend many millions hiring lobbyists to secure grants, to obtain relief from regulations, and to otherwise influence public policy. Federal law, as well as the law in many states, requires those who hire lobbyists to disclose who they hired, what they paid, and what legislation they tried to impact.

The federal Lobbying Disclosure Act of 1995 has been a boon to journalists covering the politics of influence in Washington. The nonprofit watchdog group Center for Responsive Politics maintains a searchable database of disclosure reports at www.opensecrets.org, showing who’s spending what to lobby Congress, and on what issues. A quick search for the term “college” or “university” will bring up some very interesting tidbits.

Almost every state requires that lobbyists publicly register the identity of the clients they represent, which will include colleges and universities. Many states require even more, even of private colleges. The National Conference of State Legislatures, www.ncsl.org, has a 50-state database on its website that links to every state law or rule explaining what lobbyists – and those who hire lobbyists – must disclose. Their disclosure reports generally are available through your state’s Secretary of State or through a state-level Ethics Commission.

Many colleges also maintain their own stable of “government relations” professionals on the payroll. At a public institution, what is spent on those employees – their salaries, benefits, travel and entertainment expenses – should all be a matter of public record.

The nonprofit affiliates of universities – such as foundations and teaching hospitals – often employ their own lobbyists. Their pay and perks are likely disclosed in the annual Form 990 tax return that every nonprofit, including those affiliated with private as well as public colleges, must file with the IRS and make publicly available on request.

One of the highest-stakes education issues pending in Congress is whether for-profit colleges should continue qualifying for federal financial aid even if their graduates have trouble getting jobs. According to CNN Money, one trade group representing for-profit colleges spent more than $1 million in 2010 lobbying Congress to protect against tougher rules that might disqualify some for-profit colleges with low placement rates from receiving federal aid. This is an example of the information that lobbyist disclosure reports can reveal even when the colleges themselves are not subject to a public-records request.

An example of the kinds of information available from the www.opensecrets.org database: The powerhouse D.C. lobbying firm Patton Boggs LLP made more than $1.8 million last year lobbying for universities and their affiliates. Among the biggest clients were Wake Forest University and Clemson University.

Important policy decisions affecting young people – from the standards for federal financial aid to the ability of undocumented immigrants to attend college on the same terms as permanent U.S. citizens – are being made in Washington, D.C., and in statehouses across the country. While journalists can’t get into the back rooms where deals are made, lobbyists’ disclosure reports can at least offer a peek inside, giving a clue as to who has a stake in the outcome of government decisions and how hard they’re pressing.

In many states, the amount spent on gifts to legislators is reportable public information. Prime seats to sporting events often are used to cultivate relationships with elected officials, and those on campus who can’t get tickets may be interested in reading how many are being given away as political freebies. (In Arizona, organizers of one of college football’s jewels, the Fiesta Bowl, are facing legal jeopardy because they showered state legislators with free tickets and trips while lobbying them for legislation financially benefiting the bowl game.)

Remember that your state’s board of regents or board of trustees also will have lobbyists who register and report separately from those at the individual campuses. These agencies generally are based in the state capital, so they’ll have influential relationships with state legislators.

Also, remember that there may be other umbrella groups representing colleges whose lobbying activity is worth a look. For example, the organization that represents private colleges in Virginia spent nearly $80,000 on lobbying the last legislative session, putting it among the top 40 spenders in Richmond, according to figures compiled by the nonprofit Virginia Public Access Project.
Valedictorians earn the ability to give graduation speeches through their continuous hard work. They get the opportunity to close the high school chapter for their classmates and themselves. And while graduation speeches rarely cause riots or uproars, that hasn't stopped some administrators from censoring, or even rewriting, the speeches.

Whether graduation speeches, poems, T-shirts, drama club productions or 'I Heart Boobies' bracelets, high school students have at one time or another seen all these things fall victim to censorship.

The door was opened in 1988, when the Supreme Court rolled back students' rights in *Hazelwood School District v. Kuhlmeier* – a case about journalism that increasingly is being applied to student activities beyond the newsroom.

But some students are fighting back – and winning.

In November, the Montana Supreme Court ruled the Yellowstone County School District violated the First Amendment rights of then-senior Renee Griffiths when it forbade her from mentioning God or Christ in her graduation speech. The trial court had previously ruled Griffiths' speech was curricular and subject to restrictions as an official message of the school.

Butte High School administrators left the speech topic up to the speaker. Griffiths decided to give her speech on what she learned in high school. The superintendent, after reviewing her speech, relayed to Griffiths that she would need to change her references to a deity.

While the district has a no-censorship policy for presentations and a disclaimer on graduation programs that student speech is solely that student's, the district also has a policy forbidding references to religion to prevent the appearance that the school holds a religious preference. In addition to protecting free speech, the First Amendment – through its “establishment clause” – also prevents the government from endorsing an official religion.

In the 6-1 decision, the Montana high court said the school district “violated Griffith's constitutional right to free speech because this matter does not fall within any of the three recognized situations in which it is permissible for school officials to impose a viewpoint-based limitation on student speech.”

Those three situations are based on the U.S. Supreme Court's 1969 *Tinker v. Des Moines Independent Community School District* ruling and later cases applying it. As described by the Montana court, censorship is permissible only if the speech incites a substantial disruption, is part of an official school activity or promotes the use of illegal drugs.

William O’Connor II, Griffiths' attorney, said the school district's censorship of the speech “just was wrong. It was a clear violation of her constitutional rights.”

He said the easiest thing for a school district to do is censor student speech due out of fear of parental backlash, without taking the law into consideration.

“They've been doing this for years and it appears other students have buckled,” O'Connor said. “They could thank their Uncle Louie, they could thank their teacher, their parents, their dog, their track coach, but you couldn't thank a deity.”
Despite winning the case, Griffiths gave up her chance to speak as valedictorian when she refused to change her speech. “Several people have asked me why she didn’t just take it out and then say it [anyway],” O’Connor said. “She didn’t want to lie, which is against her religion, and she also believes in the First Amendment. Even if she didn’t get to speak, those in the future should be able to.”

‘Grown out of control’

The Hazelwood decision applies to “educationally justifiable” censorship of speech that is part of a school-sponsored activity or for credit. In the original case, this meant the high school student newspaper. Since then, Hazelwood has been used as a justification in countless court cases involving high school students in other contexts.

In one case, Pounds v. Katy Independent School District, a Texas elementary school tried to use Hazelwood as justification for forbidding an outside vendor from offering a holiday card with a Christian message as part of a fundraiser, though the cards would be delivered directly to private homes. The judge in that case decided the cards didn’t constitute Hazelwood speech.

In Nurre v. Whitehead, the 9th U.S. Circuit Court of Appeals decided the Everett School District in Washington State was justified in using Hazelwood to prevent Kathryn Nurre from performing “Ave Maria” at her high school graduation ceremony. Administrators believed the song could be seen as the school endorsing a particular religion.

After the Columbine High School shooting, the school opened part of a tile-painting project in the school to community members who wished to use the area as a remembrance forum. The school prevented some slain students’ family members from writing messages with any mention of the tragedy or offensive or religious symbols, though a plaque in the office at the high school says “God Weeps Over Columbine.”

In Rohrbough v. Harris, a lawsuit challenging the Colorado school’s policy, the 10th U.S. Circuit Court of Appeals decided Hazelwood applied, as the tiles could be seen as school-sponsored speech. The U.S. Supreme Court later refused to hear the case.

Frank LoMonte, executive director of the Student Press Law Center, said there are many students who would be surprised to learn their rights are compromised by Hazelwood. “Hazelwood grew out of a newsroom and it was always understood and contemplated that it would apply to student publications,” he said, “but over the years its application has really grown out of control to where almost any activity taking place in association with a school is classified by the courts as Hazelwood speech.”

LoMonte said while it could be argued that a theater or musical production on school grounds could be curricular speech, it’s difficult to imagine how individual graduation speeches or presentations are part of the school curriculum.

“I don’t think the reasonable listener hearing a graduation speech thinks of that as a curricular school function. I think they recognize it for what it is: the expression of the individual speaker’s opinion,” he said. “That’s why it’s valuable. Nobody would want to hear the valedictorian read the school press release. They want to hear that student’s individual thoughts beliefs and feelings and students ought to be able to voice those without the principal editing their thoughts.”

In Florida, editing of thoughts is quite literally what happened. Springstead High School’s principal, Susan Duval, rewrote 2009 valedictorian Jem Lugo's speech. While no court case resulted, the St. Petersburg Times learned of the issue and published Lugo’s speech before and after the revision.

Lugo’s original speech included observations about the class, references to pop culture and practical life lessons. Her original opening said: “Springstead High School’s class of 2009. Look around you. This is it. No more essays, no more FCAT; no more required reading. We survived 13 grueling years of school, all for this moment, where we get to wear gowns that kind of remind me of a silk version of a Snuggie...”

The edited speech opening read: “Springstead High School’s class of 2009. Look around you. This is it. Ever since I learned what the letters GPA stood for, I have striven to be a part of this ceremony, presenting this valedictory address. Yet, I stand before you tonight, speechless.”

In a letter, Lugo, who is now a student at Harvard University, told the Times, “Graduation is no longer about the students at all. It’s about the school, proudly presenting another fine batch of perfectly acceptable programmed graduates to the rest of the community.”

Reading canned remarks written by your principal probably doesn’t provide the best educational experience, LoMonte said.

“I think, just as with journalistic publications, administrators sometimes want to dumb down school activities to the point where even the most delicate person in the world couldn’t be shocked or offended,” he said.

Svetlana Mintcheva, program director for the National Coalition Against Censorship, agrees. She said there are occasions when a principal will edit parts of a student play — the bad words will be cut out or outfits will be changed, for example — and “those issues tend to go under the radar because they don’t completely cancel the play.”

“Theres a lot of second guessing,” she said. “What might a parent say if they see their kid on stage saying ‘fuck’ or engaged in a play that has any kid of sexual reference? You could probably read it in class, but you can’t put it on stage, though we do have many books being censored for the same reasons.”

Curtain falls on critical play

A group of New York City students recently found their play cancelled for an entirely different reason – it was critical of an administrator.

The play focused on the school reform movement initiated under outgoing Chancellor Joel Klein. Principals from the two participating schools informed students in December they were uncomfortable with the play’s criticism of Klein and were pulling the plug, according to The Washington Post.

After a public outcry, administrators reversed their decision and rescheduled the play.

On the NCAC website, the group suggests that someone who finds a play objectionable “merely need not purchase a ticket to see it. Trying to shut down a production or threatening physical violence on any person involved is an inappropriate attempt by one group to suppress the viewpoint and free expression of another.”

Mintcheva said a lot of the censorship in high schools is aimed at “sheltering kids unnecessarily.”

“When a play gets censored, students learn a lot about free speech. They become quite passionate defenders of free speech,” she said. “They’ve been rehearsing and living with this play they probably now understand better than the principal or teachers. This can really damage the trust between the education system and the students. We want them to have the respect of their prin-
principal and their teachers, and if their principal respects them they would probably also trust their ability to handle challenging materials."

In November, NCAC wrote a letter, alongside the Dramatists Guild of America, to express concern when Flagler Palm Coast High School in Florida canceled a student production of To Kill a Mockingbird, a literary classic that is part of the curriculum at the school. Administrators were concerned with "offensive language" and "did not want the students to be in the middle of a 'highly charged debate.'" After widespread criticism, the school board voted to allow the play to be rescheduled. Mintcheva said in a number of cases, students have found an alternative place outside school to stage a censored play.

That is exactly what a high school student at Lexington High School in Massachusetts did. Student-director Emma Feinberg's production of "Columbinus," which details the 1999 school shooting in Littleton, Colo., was canceled by school administrators. However, Huntington Theatre Company offered to let Feinberg show the play at Calderwood Pavilion in Boston in April.

They can handle it

Millie Davis, anti-censorship representative for the National Council of Teachers of English, said she thinks that while all parents want to protect their children, "some parents want to do that by putting their students in bubbles."

She said some parents tend to think that if their child doesn't read curse words or sex scenes, or even "something awful like murdering somebody, that somehow none of those things will ever infringe upon their lives."

"People that believe that also believe that students don't have the ability to read a whole novel and take that whole novel at its worth," Davis said, "but rather that they will get hung up on a word on page 59, or a racy scene on page 78, and that that will just ruin them. They often see things as pieces rather than as wholes."

She said most students are smarter than they are given credit for and, under the guidance of a teacher, can handle reading about controversial subjects.

"Kids are able to read those books and many others and have experiences through those characters," Davis said. "Through that experience they learn empathy, they learn about the world around them, they learn about themselves, and those are really important things."

The best way to prevent censorship in high schools is to work with teachers and principals, Mintcheva said.

"Principals are worried about the PR relationship," she said. "They should realize that it's part of the educational mission to have kids engaged in something that really interests them. The more principals and teachers have the language and arguments to stand up for the freedom of students to explore ideas, the better served they are in their own mission."

LoMonte said he wants students to understand that the Hazelwood decision can affect them, even if they aren't journalists.

"If they think Hazelwood is someone else's problem they're wrong," he said. "It very well may be your problem and you may not discover it until Hazelwood gets thrown in your face."
An update on the latest legal developments of importance to student journalists

Supreme Court won’t hear cheerleader’s lawsuit

The U.S. Supreme Court declined to hear an appeal from a Texas high school cheerleader disciplined for refusing to cheer for her accused rapist.

The move leaves in place a lower court decision rejecting the student’s First Amendment lawsuit.

During a February 2009 basketball playoff game, the cheerleader refused to cheer when Rakheem Bolton went to the foul line. The reason: The girl alleged Bolton had sexually assaulted her four months earlier.

Officials at Silsbee High School in Southeast Texas removed her from the cheerleading squad as punishment for refusing to cheer, and she filed suit.

In September, the 5th U.S. Circuit Court of Appeals ruled the student’s silent protest interfered with the work of the school and could be punished under Hazelwood as “school-sponsored” expression.

“In her capacity as cheerleader, H.S. served as a mouthpiece through which SISD could disseminate speech -- namely, support for its athletic teams,” according the Fifth Circuit’s opinion.

Bolton, meanwhile, was indicted for sexual assault and would later plead guilty to Class A Assault. He said the incident was a misunderstanding.

Student speech advocates denounced the court’s ruling as lacking basic decency.

“The law is intended to serve as the lowest level of behavior we can accept before society ceases to function,” SPLC Attorney Advocate Adam Goldstein wrote in the Huffington Post. “I believe that forcing a girl to cheer for someone who may have sexually assaulted her is beneath that level.”

Court gives green light to students’ ‘Be Happy, Not Gay’ T-shirts

ILLINOIS -- The 7th U.S. Circuit Court of Appeals in March upheld a permanent injunction allowing students to wear “Be Happy, Not Gay” T-shirts to school.

The case began when students wore the shirts to school in 2006, one day after the Day of Silence to protest harassment of gay students.

School officials altered the shirts to read only, “Be Happy.” The students sued, claiming their First Amendment rights were violated.

The appellate court agreed.

“A school that permits advocacy of the rights of homosexual students cannot be allowed to stifle criticism of homosexuality,” Judge Richard Posner wrote for a unanimous three-judge panel.

College athletes’ parking tickets, phone numbers not private records

NORTH CAROLINA -- The parking tickets of student athletes and phone records of college athletic officials are not shielded by federal privacy law, a state court judge held in April.

The names and salaries of student tutors hired for the athletes, however, are private, the judge ruled.

The case stems from the University of North Carolina at Chapel Hill’s denial of requests for the records. The university football program is under investigation for possible improper benefits from sports agents and academic misconduct. The school cited FERPA in denying the requests. Yet to be decided is whether records of the university’s internal investigation into those allegations must also be released.

The university is considering whether it will appeal the decision.
When 50-something graduate student Judith Heenan enrolled at Auburn University School of Nursing, she could never have envisioned that her course of study would culminate in a disciplinary removal from the school, followed by protracted litigation in federal court – or that her fate would be decided on the basis of the same legal standard that would apply to an adolescent girl. But that is just what occurred.

Judge Myron Thompson of the Middle District of Alabama concluded that, because inculcating civility is within the curricular mission of the Nursing School, and because Ms. Heenan had behaved in an “uncooperative” and “rude” manner, her protestations against the disciplinary system of the school were not protected speech under the First Amendment. Accordingly, the judge ruled, Auburn did not violate Heenan’s constitutional rights in expelling her after a series of disciplinary “strikes.”

In reaching this legal conclusion, Judge Thompson took a position that is becoming increasingly common at the federal district court level in recent years: that the Supreme Court’s 1988 ruling in Hazelwood School District v. Kuhlmeier extends beyond primary and secondary school classrooms to reach onto university campuses, in ways that have allowed colleges to both censor and penalize speech at the undergraduate and even post-graduate levels.

Almost twenty-five years ago, the Supreme Court decided the landmark Hazelwood case. In that case, three former students accused Hazelwood East High School in Missouri of violating their First Amendment rights when the school deleted two pages of articles from a newspaper that the students published as part of a journalism course. The Supreme Court found that the school had acted within constitutional bounds. The Court said that, because of the “curricular” context of the speech, the school district was exercising reasonable educational judgment. As a policy matter, the Court wanted schools to have the ability to “disassociate” themselves from disagreeable speech that would “bear the imprimatur of the school.” In other words, the school’s interest in controlling the content of the paper was heightened by the fact that community members may have attributed viewpoints expressed in the paper to the school itself.

The general pronouncement of law that undergirded the decision – and to this day serves as the starting point in the analysis of many student speech claims – is that “educators” may regulate school-sponsored [i.e. curricular] speech “so long as their actions are reasonably related to legitimate pedagogical concerns.”

Despite the murkiness, there is still a certain subset of speech that is clearly subject to Hazelwood. The prototypical case of curricular speech is classroom speech, such as an oral presentation, written assignment or class discussion. Grading such speech, even grading it harshly, is without a doubt a regulation in service of “legitimate pedagogical concerns.”

“School-sponsored” speech is more nebulous. Speech distributed by official student organizations (e.g., the newspaper, yearbook club, student government); speech at school events (e.g., school performances, assemblies, commencement); and speech using school-provided modes of communication (e.g., bulletin boards, school-issued email, those ubiquitous marquees outside high schools that declare “Go [MASCOTS]!!!”) all might – de-
pending on the circumstances – qualify as “school-sponsored” speech. As one can see, just attempting to define the basics of the Hazelwood standard is a thorny endeavor.

The Hazelwood Court was equally unclear whether the new legal standard it was creating should apply in the post-secondary context. In an oft-cited footnote, Justice White, speaking for the majority, remarked that the Court “need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level.”

Since that time, the few references that the Supreme Court has made toward Hazelwood’s applicability at the college level have been as opaque as Justice White’s footnote. In Board of Regents of Univ. of Wis. System v. Southworth, a case involving the disbursement of student funds to campus clubs, Justice’s Souter’s concurrence, accompanied by two other justices, dropped a notable footnote of its own. In it he cited Hazelwood as an instance in which the right of institutions to limit the expressive freedom of students has been confined to high schools, and then generalized that high school “students and their schools’ relation to them are different and at least arguably distinguishable from their counterparts in college education.” In 2010, ten years after deciding Southworth, the Supreme Court again cited Hazelwood in a case involving the post-secondary context. In Christian Legal Society v. Martinez, which determined that the state-run Hastings College of Law could require school-funded student activity groups to “accept-all-comers” and not discriminate, Justice Ginsburg offered a cursory citation to the Hazelwood case, in support of the proposition that courts should “resist substituting their own notions of sound educational policy for those of the school authorities which they review.”

Neither Souter’s nor Ginsburg’s citations are sufficiently definitive so as to clarify whether the rule of Hazelwood applies to colleges.

There are powerful arguments that Hazelwood is simply the wrong standard in the adult world of a college campus. Hazelwood case set in the context of a student newspaper. In that case, the appeals court dismissed the censorship claims of college students at Illinois’ Governors State University on the grounds that the level of First Amendment protection owed to the student newspaper, under the Hazelwood standard, was so unclear that reasonable administrators would not have known whether they were violating the students’ constitutional rights.

Initially the Ninth Circuit appeared to adopt Hazelwood regulatory authority at the college level, but the California-based circuit has, in a more recent case, disowned that stance. The New York-based Second Circuit has cited favorably to Justice Souter’s footnote in Southworth, which suggests that the circuit’s judges are wary of applying Hazelwood to the college level.

The divide among the circuits continues to the present. In 2010, both the Third and Fifth Circuits heard constitutional challenges to student codes of conduct (at the University of the Virgin Islands and Louisiana State University, respectively). In the UVI case, the speech code banned “offensive” and “unauthorized” speech. In the LSU case, the code banned “extreme, outrageous or persistent” communications that are reasonably likely to “harass, intimidate, harm or humiliate.” There was a striking disparity in not only the outcome of the cases, but in the manner in which the two courts approached the question. The Fifth Circuit upheld the LSU code, perfunctorily quoting Hazelwood to buttress the argument that “a school need not tolerate student speech that is inconsistent with its basic educational mission.”

The Third Circuit struck down sections of the UVI code, meticulously considering the significant differences between high school life and university life; the maturity of the students; the educational missions of the institutions; the administrators’ roles; and “the fact that many university students reside on campus and are thus subject to university rules at almost all times.”

Trickle down

With almost every circuit court of appeals having had occasion to weigh in on the question, one might think that the job of federal trial courts, the district courts, would be rather rudimentary: simply adhere to the case law of the particular circuit in which the district court is located. In reality, however, there has been a recent trend in district courts around the country of adopting expansively unprecedented applications of Hazelwood at the university level. Although, as noted in the previous section, several circuits have employed the Hazelwood test at the college level, including the Fifth Circuit’s cursory citation to Hazelwood last year, no appeals-level court has expressly applied Hazelwood to college student speech that is independently generated by the students (that is, not part of a class assignment) and is not school-
sponsored or funded. Nevertheless, over the past few years, several district court opinions have used Hazelwood’s precedent in just this type of situation.

In the recent Alabama case, Judith Heenan argued that the opposition that she voiced against the nursing school’s disciplinary point system was met with further retaliation, in the form of disciplinary “strikes” against her that added up to grounds for expulsion. The district court determined that her speech about the disciplinary system was itself curricular – even though it was speech in opposition to school policies, clearly not at the direction of the school or attributable to the school.

In response to Heenan’s request for reconsideration, Judge Thompson yielded slightly from his initial position to a softer one acknowledging that some of her out-of-class speech was not curricular and thus not subject to regulation under Hazelwood. Still, the judge maintained that “grievances that were made to, or in the presence of, her instructors and supervisors and were related to her training” are within the rubric of Hazelwood curricular speech.25

The reasoning of Heenan v. Rhodes is not an isolated occurrence. Rather, at least two other district courts have adopted similarly aggressive expansions of Hazelwood in recent cases. The Northern District of California court did so in Head v. Board of Trustees of The California State University,26 in which a student at a teacher’s college alleged that he was coerced to affirm political views with which he personally disagreed. Stephen Head argued that he should not be forced to profess what he considered to be a thinly veiled Democratic platform of race-conscious multiculturalism. His professor had gone so far as to campaign against a state ballot proposition during one class. Nonetheless, in finding in favor of the university, the Northern District of California court concluded that “foster[ing] educators who can function effectively and sensitively in the multicultural, multilingual . . . environment of today’s secondary schools” is a “legitimate pedagogical purpose” in furtherance of the university’s curricular mission.

The court’s reasoning raises the related question of how far a school can extend its curricular reach over the beliefs, and not merely the actions, of any student. Can any professional school justify compelling its students to pledge allegiance to a certain political affiliation, as long as that school offers a blanket assertion that Republicans, Democrats or any other political ilk are better suited to succeed as a professional in that particular career? Can a psychology class at a state university administer a multiple-choice exam in which “the right answer” is that blacks are genetically inferior to whites and women are genetically inferior to men? This is the peril of accepting uncritically that the school gets to decide what are the “right” ideas and attitudes a successful graduate should hold, and that diverging from the school’s notion of “right thinking” is constitutionally unprotected.

The federal district court for the Southern District of Georgia confronted a similar situation in Keeton v. Anderson-Wiley,25 involving a dispute between Augusta State University and a student seeking to have the court remove her from a school-instituted probationary plan. The student, Jennifer Keeton, who was studying to be a counselor, repeatedly voiced her religious-based views on the immorality of homosexual conduct to professors and classmates in her academic program, including relaying an interest in “conversion therapy” to change the behavior of homosexual and bisexual people. The school placed Ms. Keeton on a mandatory “remediation plan” under a school policy that read “[w]hen a student’s progress is not satisfactory on interpersonal or professional criteria unrelated to academic performance, she or he may be placed on remediation status.” Ms. Keeton refused the plan and brought a lawsuit to prevent the school from expelling her, on grounds that expulsion would violate her right to freedom of speech.

U.S. District Judge J. Randal Hall disagreed, however, that compelled participation in a remediation plan would violate her First Amendment rights. Rather, he concluded that Augusta State was within its right to impose the guidelines, as part of a legitimate professional curriculum. From this perspective, Ms. Keeton’s avowed anti-homosexual sentiments were in essence curricular speech, because they violated principles of professional ethical conduct that were embedded in ASU’s curriculum.

The court purported to be following the case of Ward v. Wilbanks,26 decided only a month earlier by a Michigan federal court. In Ward, another guidance counselor student, also fiercely opposed to homosexuality, refused during a practicum course to counsel a homosexual student for depression. When she was ultimately dismissed from the program, the counseling student sued the school on grounds that her dismissal violated her First Amendment free speech and exercise of religion. Invoking Hazelwood, the Michigan court decided that there was no constitutional violation because Eastern Michigan University’s dismissal of Ms. Ward was a reasonable regulation of her curricular speech – in this case, her refusal to counsel a patient. It was reasonable, the court ruled, for the school to import the American Counseling Association’s ethical principle of non-discrimination in treatment into its curriculum.

Yet, the contrast between the two cases is stark. Ms. Ward was placed on remediation for refusing to comply with a curricular requirement – not speech, but conduct (refusal to offer treatment). It is as if she did not turn in her final paper or complete her final exam, which everyone recognizes to be legitimate grounds for academic sanctions. She sought an exemption for her religious views, but as the court noted, there existed no system of particularized exemptions. Ms. Keeton was punished, on the other hand, for politically unpalatable speech alone. Not once did she refuse to comply with a general curricular requirement. Rather, the school removed her for the beliefs that she expressed, and in particular, her advocacy of radical conversion therapy. This distinction makes the Keeton case a much more questionable use of college disciplinary authority.

Unquestionably some cases present close calls, verging on...
the speech/conduct line. For instance, Ms. Keeton might have (though she did not in fact) said that she would refuse to treat those who engaged in what she considered to be sexually immoral behavior. This proclamation would have been tantamount to a threat not to complete a valid curricular requirement at some point in the future. Instead, the most that Ms. Keeton said was that “it would be hard to work with the population” of gay and lesbian students. This falls short of a refusal to perform a curricular task, and is much more akin to pure speech rather than speech mixed with conduct. Judge Hall, nevertheless, viewed the curricular reach of the school more expansively.

The intriguing question is why has there been this recent string of district court decisions broadly expanding the reach of Hazelwood at the college level. Certainly, the dearth of Supreme Court guidance is one factor. Another may be that the current climate is charged with heightened sensitivities to anything regarded as stigmatizing others, especially based on gender, race or another personal characteristic. “Cyberbullying” has been the buzzword of school administrators for the past few years, and although no court opinion has advanced the position that Hazelwood permits the regulation of an individual student’s online speech, it is not absurd to anticipate schools pressuring the courts in that direction. Like the judges above, there may be other jurists who, sympathizing with the goals of the schools, view the administrator-friendly standard of Hazelwood as an easy way out, a way to rule for the school at an early summary judgment stage, without the ordeal of a full-blown trial. Eventually, though, Hazelwood will be contorted beyond recognition, at which time the Supreme Court will be forced to issue some much-needed clarification.

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Endnotes
3) Id. at 272.
4) Id. at 273.
5) Id. at 273 n.7.
7) Id. at 239 n.4.
8) Id.
9) 130 S.Ct. 2971 (2010).
10) Id. at 2988 (internal quotation marks omitted).
11) 236 F.3d 342 (6th Cir. 2001) (en banc).
12) Id. at 352.
13) Student Government Ass’n v. Bd. of Tr. of Univ. of Mass., 868 F.2d 473, 480 n.6 (1st Cir. 1989).
14) Alabama Student Party v. Student Government Ass’n, 867 F.2d 1344, 1347 (11th Cir. 1989).
16) Hosty v. Carter, 412 F.3d 731 (7th Cir. 2005)(regarding censorship of a college paper); Axson-Flynn v. Johnson, 356 F.3d 1277 (10th Cir. 2004)(regarding an acting student’s refusal to say certain imprecations as part of her assignments).
17) 412 F.3d at 731.
18) Brown v. Li, 308 F.3d 939 (9th Cir. 2002) (regarding a graduate student’s appendix of a “disacknowledgments” section to his thesis).
19) Flint v. Dennison, 488 F.3d 816, 829 n.9 (9th Cir. 2007) (“we need not consider whether the principles of Hazelwood… apply with full force in a university setting – a question neither we [citing a concurrence/dissent in Brown v. Li], nor the Supreme Court, have definitively answered.”)
20) Amidon v. Student Ass’n of State Univ. of New York, 508 F.3d 94, 104 (2nd Cir. 2007).
22) McCauley v. Univ. of the Virgin Islands, 618 F.3d 232, 243 (3rd Cir. 2010).
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