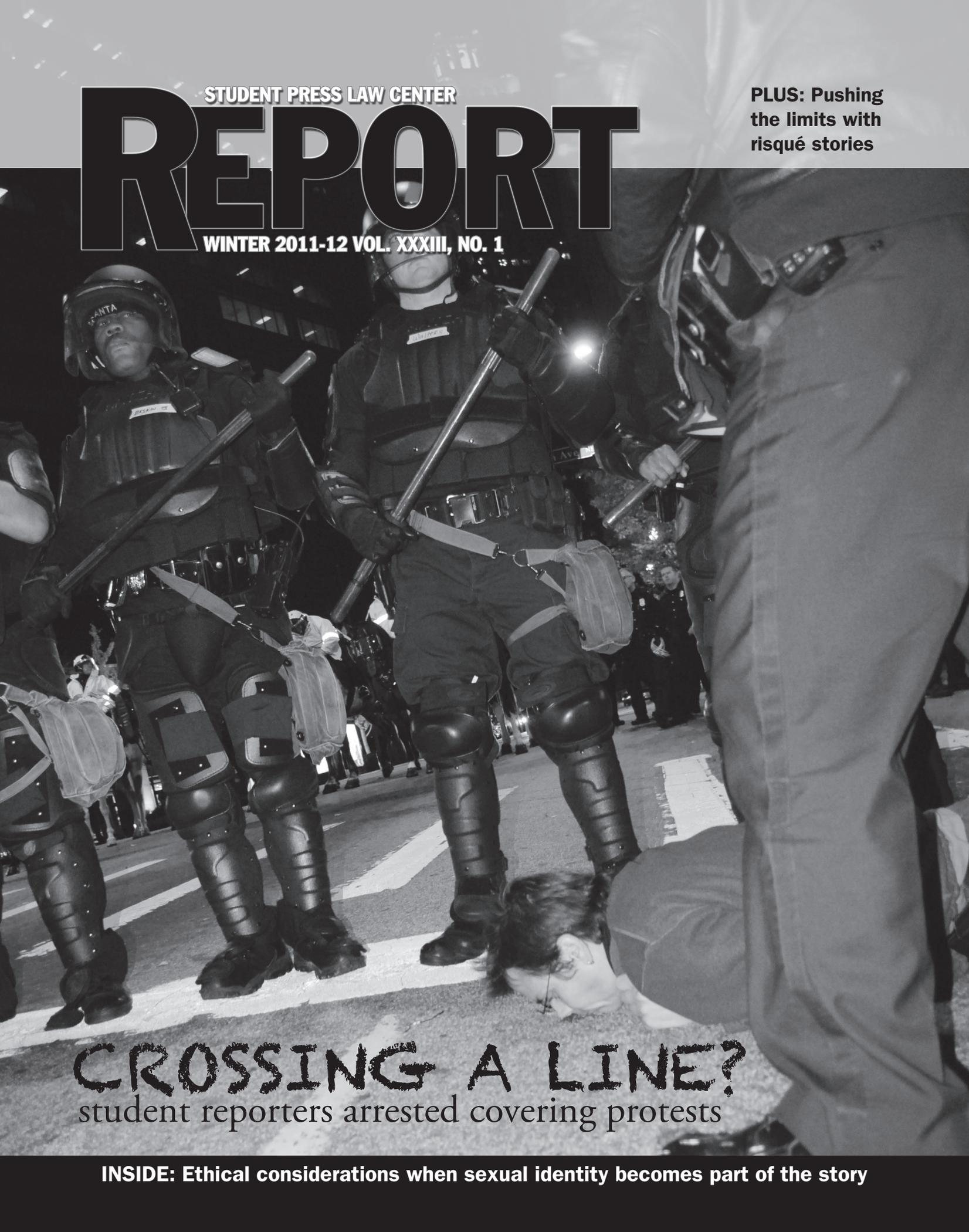


STUDENT PRESS LAW CENTER

PLUS: Pushing
the limits with
risqué stories

REPORT

WINTER 2011-12 VOL. XXXIII, NO. 1



CROSSING A LINE?
student reporters arrested covering protests

INSIDE: Ethical considerations when sexual identity becomes part of the story

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An Ohio high school newspaper's coverage of homosexuality may land it under prior review. The paper published a spread of student viewpoints on the subject. After receiving complaints, school officials had the section removed from the remaining papers in December, and said it would not appear online with the rest of the stories.

The SPLC and a former college journalist sued Johnson County Community College in Kansas over public records fees. The college quoted the student more than \$24,000 for one month's worth of emails. The case ended out of court, with the SPLC paying \$450 for about three months of emails.

A New Mexico principal spiked an editorial cartoon from his school's student newspaper because it criticized the football team. Responding to the team's 3-7 record, the cartoon depicts a student asking "When does basketball season start?"

College journalists reported newspaper thefts at Texas A&M-Kingsville, Christopher Newport, East Carolina and the University of Wisconsin-Milwaukee. The Milwaukee paper announced in December it plans to sue two former student government officials for their alleged role in the theft and destruction of 800 papers.

A judge in October dismissed a 4-year-old libel lawsuit against the *Daily Nebraskan*. A former regent claimed the paper defamed him when it accused him of plagiarism. The judge found the man failed to meet his burden of proof in proving the story was false.

A federal appeals court in late August upheld the constitutionality of exclusivity contracts for high school sports broadcasts. Local newspapers in Wisconsin challenged the practice, which prevents them from live-streaming games.

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REPORT

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Nicole Hill, fall 2011 journalism intern, graduated in May 2011 from the University of Oklahoma with a bachelor's in journalism and a minor in history. In college, she served as editor-in-chief of *Sooner* yearbook along with filling other editorial roles on various OU Student Media publications. Most recently she was a Dow Jones News Fund copy-editing intern at the *Austin American-Statesman*.



Peter Velz, fall 2011 journalism intern, graduated from Virginia Tech in May 2011 with a degree in English. He was the 2010-11 editor in chief of the *Collegiate Times* student newspaper, previously working as a multimedia reporter and the managing editor of editorial. He also worked as a coach at the school's writing center.



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The SPLC offers paid journalism internships for college students during the spring, summer and fall semesters.

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Student journalists need laws to match new role

In November, the *Washington Post's* investigative team published the kind of labor-intensive blockbuster that – in today's economy – has become almost prohibitively costly: Deconstructing an extravagantly mismanaged \$32 billion federal housing program that has littered America's landscape with never-to-be-completed apartments.

In the latest installment in its series, "Million Dollar Wasteland," the *Post* meticulously documented how some \$40 million in grants from the Department of Housing and Urban Development got squandered on unfinished housing units due to lax, or nonexistent, oversight.

How did the *Post* manage to inspect 75 locations from Santa Clara, Calif., to Irvington, N.J., to West Palm Beach, Fla.?

It didn't. College journalists did. More than four dozen students fanned out across the country to eyeball what were supposed to be newly built affordable housing units – and often were, instead, vacant lots.

This is journalism's new reality – the reality that students are not the future of journalism, but the present. Even more than they realize, readers are dependent on students as front-line newsgatherers, telling essential stories that have nothing to do with keggers and sorority rush.

A good-government think-tank, the New America Foundation, focused on the growing need for journalism schools to feed their communities' appetite for news in an October 2011 report, "Shaping 21st Century Journalism."

The report analogizes the role that j-schools can play to that of teaching hospitals, where doctors-in-training serve the community by providing direct patient care.

The authors challenge journalism schools to step up and assume responsibility for being primary news sources for audiences beyond the campus. But if we are to place big-time professional responsibilities on the shoulders of student journalists, then they need big-time professional legal rights to match. That means enacting laws in every state that protect college journalists against censorship – and their advisers against retaliation – for what they say and write. And it means ending college journalists' "second class citizen" status under the reporter shield laws of Florida, Texas and a handful of other states, where only salaried professionals are assured the right to protect confidential sources and information against compelled disclosure.

– Frank D. LoMonte, executive director

Hiestand departing after 20 years of service

If you've ever cracked open a copy of the SPLC's reference book, *Law of the Student Press*, or referred to one of the educational publications housed on the splc.org website, then you've heard Mike Hiestand's voice.

Mike's wisdom and compassion animate everything that we do at the Student Press Law Center, and for 20 years, he has been our conscience, keeping us focused on the ultimate goal: Helping young people develop the critical-thinking skills they need to become educated owners of their democracy.

It is inconceivable to think of a Student Press Law Center without Mike Hiestand's upbeat voice on the hotline – where he has given individualized help to some 15,000 students and educators in his time with us. But starting June 30, we will have to try.

Mike is leaving the SPLC at the end of the 2011-12 school year to devote full-time to some exciting ventures that he and his brother, Dan, have been developing. (To check out what they are working on, visit www.homehistorybook.com.)

In recent years, Mike's contributions to the field have earned him the National Scholastic Press Association's Pioneer Award, and the Louis B. Ingelhart First Amendment Award, given by College Media Advisers. These honors assure Mike a place on the "Mount Rushmore" of student press freedom.

Mike's legacy will not be measured in plaques and trophies, but in lives improved and lessons taught. We will miss his kindness, his fortitude, and his wise counsel.



INSIDE

College

4 Campus publications employ new digital strategies to balance the books – but are they working?

8 Journalists, students and experts reflect on the ethics involved in covering a source's sexual identity.

12 To name or not to name? Different practices, philosophies surround campus crime blotters and stories.

Cover Story

Student reporters, photographers arrested covering the 'Occupy' movement, raising questions about the actions of police.

16

High School

20 Can you really use that photo from the Internet? What about April Fools? Our experts clear up the tall tales of student press law.

22 From sex columns to drug stories, how some student publications are pushing the envelope.

Access

26 Some legislatures, courts are shining the sunlight on records of state school board associations.

Advisers

30 What free speech rights to teachers have? Despite legal setbacks, recent controversies show the issue still isn't settled.

DEPARTMENTS

SPLC TipSheet

7 Using accreditation reports to shed light on school performance.

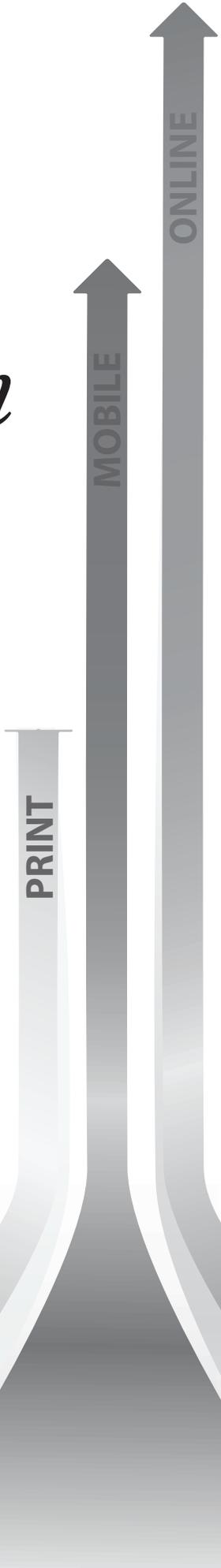
On the Docket

28 Iowa court finds state law provides broad press freedom for students.

Legal Analysis

32 How to respond if school officials try to search your cell phone.

a new
direction



for
campus
media

College newspapers look at paywalls, reducing print publication to help keep the books balanced; some still not convinced

BY PETER VELZ

Student journalists have heard doomsday predictions of print journalism's demise for years now as professional newspapers are continually being forced to adapt to a changing industry climate or shut off the presses for good.

Many factors, including the explosion of the Internet and 24-hour news networks, have made the daily newspaper seem antiquated and delayed — literally yesterday's news.

But are student newspapers facing the same financial challenges? Dan Reimold, a college journalism scholar who runs the College Media Matters blog, follows and reports on student press trends from across the country. He said student journalists generally are not experiencing the same degree of gloom and doom as their professional brethren.

"I would not say by any means that we are in a freefall financially among major and minor student media across the U.S.," Reimold said.

In the past few years, Reimold said some student papers have cut back on the number of issues per week or reduced the number of pages in each issue to address a number of concerns — fewer ads, shifting readership, increasing paper returns. But the student press differs in one major way: funding.

"The main difference is that instead of having to rely solely or at all on advertising and other outside financial support, a majority of student media in this country continue to rely on the support of their schools, either through student fees or literally some sort of administrative arrangements," he said. "In general it's the funding mechanism which is probably going to allow student papers in decades to come to be the last bastion of the print press when all around them professional papers are falling."

Still, Reimold said student papers, regardless of size and funding, are not seeing the financial greener pastures of years

gone by, giving some an incentive to be adventurous with new endeavors.

"I do think there are ever more cracks around the edges and a few different ideas that are beginning to be taken more seriously, including paywalls and doing a ton more online, possibly at the expense of print," Reimold said.

Paywalls

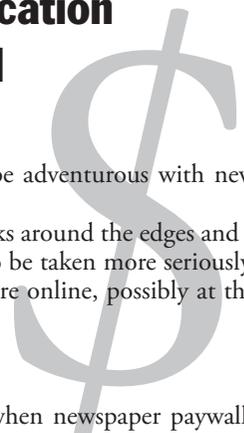
2011 might go down as the year when newspaper paywalls went mainstream. The *New York Times* launched its divisive metered system allowing 20 free articles before readers are told to pay. In practice, the system encouraged readers who wanted unlimited online access to subscribe to the print edition, resulting in an increase in print subscribers and circulation.

Press+, a paywall platform launched in 2010, received a great deal of attention in student media circles when the Knight Foundation announced in October a grant encouraging college papers to add the service to their sites. The grant covered the \$3,500 set-up fee, available to the first 50 papers that signed on. Through its agreement with the Knight Foundation, Press+ would not release figures on how many colleges signed up for the service.

The Daily O'Collegian at Oklahoma State University was the first student paper to implement Press+ in March, even before the grant, and General Manager Ray Catalino explained how the system works.

"When you go to our website, if you don't have a '.edu' (email) address and you are farther than a 25-mile radius from campus, you get three free clicks in a month," he said. "After that, a pop-up window and says do you want to subscribe to a year's worth of this for \$10."

Catalino decided on the \$10 fee, thinking it's what people would be willing to pay for a year of access, but said he thinks



“Bottom line, it seemed to make sense from a profit-and-loss business aspect that we would make more money in expenses than we would lose in revenue.”

— Harry Montevideo, publisher, *Red & Black*

it undervalues the content. Press+ takes a commission on each subscriber, but Catalino said it isn't all about the money — he wants the paywall concept to be introduced and adopted by users before considering a higher price.

Catalino is “pleasantly surprised” with the adoption rate, especially since the paying audience is very limited. He said he hoped to have 100 subscribers in the first year but had nearly 90 subscribers by early November.

Reimold, however, was critical of the underlying concept of paywalls and cautioned that papers need to be realistic in their expectations that readers will open their wallets.

“We need to be excited to get people to our website, any way shape or form,” he said. “By putting up any sort of hurdle to that, it will be very easy for people to simply go elsewhere.”

Reimold also expressed concern that “accidental readers,” one-time visitors who get to stories from search engine or social media referrals, can be shut out from sites. A worldwide audience, Reimold said, is an important motivator for student journalists who can get “feedback and sources for follow-up stories that can only come if you allow (access to) the site by anyone who is able to come across it.”

Press+ has various granular options to decide who pays and who doesn't. Press+ is also used as a donation system for websites such as the TuftsDaily.com and ProPublica.org, another revenue stream student papers can consider.

Shifting the focus online

The University of Georgia's *Red & Black* newspaper surprised many in collegiate journalism last summer when it announced it was shifting the paper's focus online, cutting its print publication from daily to weekly and adding a monthly magazine.

The move responded to a growth in online readership, and editorial adviser Ed Morales said the mindset of critics needs to change as well.

“People say, ‘Well you got rid of the daily newspaper and added a weekly.’ We actually added a weekly and a magazine, and we kept the daily newspaper — it's just in digital form,” Morales said. “I think the word ‘newspaper’ is catching everybody, because there's really news, all the time, everywhere. Whether or not it's in a paper form with ink on it or if it's on a computer screen, doesn't negate the fact that something like that is being created.”

Morales ran through several striking statistics. Mobile traffic increased by 500 percent since the switch. More than 20 stories hit the site each day. At least 50 videos went online by early November by 10 different staff members — up from the output of a single videographer last year. Sunday page views on the website surged from about 12,000 in fall 2010 to more than 30,000 last semester, though the football team's improved performance likely helped.

Morales said the new publication system prepares students for the online-first environment of many professional papers, and from the business side, *Red & Black* publisher Harry Montevideo said it was good financial move.

“Bottom line, it seemed to make sense from a profit-and-loss business aspect that we would end up saving more money in expenses than we would lose in revenue,” he said.

The *Red & Black* management started looking at different

publication options the year before the switch, and analysis showed most advertisers bought space only once a week. Montevideo said the paper approached 25 advertisers to hear how they felt about moving to a weekly print product and only “one or two expressed any concern at all about no longer being daily.”

The weekly print product is considerably heavier than the daily — a 24-page, four-sectioned broadsheet feels more substantial to advertisers than a six- or eight-page broadsheet, Montevideo said. But it also presented problems: Racks can't fit the same number of papers as they could before, so the paper had to change some of its distribution procedures.

Though just one example of a successful transition to an online focus, Montevideo said the *Red & Black's* circumstances may not exist at all papers.

“I don't think by any means it's a one-size-fits-all model,” he said. “We're in enough of a financial shape to experiment and not feel like it would jeopardize the future of our organization, and we've done enough research to where we felt pretty good with the premise. It might not work elsewhere.”

Morales said UGA's large journalism school makes it easy to recruit students eager to enter journalism, regardless of the paper's publication frequency. The paper itself is completely financially independent of the university and has its offices off campus.

The paper mainly covers campus news since Athens, Ga., has its own commercial paper. Montevideo noted that Chapel Hill, N.C., for example, has no daily commercial newspaper. Therefore, the *Daily Tar Heel* at the University of North Carolina-Chapel Hill serves more of the community so a similar switch to a weekly could be problematic for readers and advertisers.

Reimold sees a major shift in the coming years: “I would make the bold prediction that within a decade or so, we will see almost as many papers adopting the [*Red & Black*] model as we will still see student papers publishing daily,” he said.

However, he said a *Red & Black* model of reducing print frequency in favor of a larger online product could create a problem where the readers don't follow the priorities of the newsroom.

“There's a lot of worry that if you lose the print presence on campus, if you're not screaming in students' faces via the headlines glaring out them at them from the newsstands that it's going to be a lot tougher for them to sign on to the online arm of what you've got going,” he said.

A change in mindset

Paywalls and the shift in priorities from print to online show new financial innovations that arrive amid a transitioning journalism industry. For the latter in particular, fewer printed bylines might leave student journalists concerned in a tough economy and job market — and for that Reimold offers some advice.

“What really needs to change is the mindset that the printed and photocopied clips are still what hold the most value for internships or potential jobs post-graduation,” he said. “The college media-sphere is following the professional media community, and in some cases leading the way, to the idea that the online portfolio is really students' biggest selling points these days.” ■



accreditation reports

Colleges and K-12 schools are subject to periodic “check-ups” by regional agencies that issue “accreditation” – a seal of approval that tells consumers the institution is meeting basic standards of quality. Accreditation reports are like a snapshot of everything that is going on at the institution, from its financial stability to the quality of teaching, and these reports can provide leads to pursue about where the institution is heading and how it is measuring up against comparable schools.

what’s out there...

The accreditation process typically renews every six years, and it produces two types of reports. The accrediting association’s report is like a report card identifying the areas in which the college is or isn’t meeting benchmarks. The other is a “self-study” or “periodic review” that the college itself must submit to the accreditors. Under federal law, any current or prospective student is entitled to get a copy – even from a private college. A copy often is on file in the main library or on the college’s website. (Remember, of course, that the self-study may be slanted to portray the most optimistic picture.)

Institutions are evaluated in a variety of categories, including the quality and diversity of educational programs, the makeup of the faculty and student body, the caliber of support services (such as libraries and computer labs), and financial and physical resources.

Accreditation reports are a wealth of information about statistics and trends. Are donations going up, or down? How does tuition compare with national and regional averages? Are students being taught by full PhD-holding professors, or by grad students? How has instruction been impacted by budget cuts? All these, and hundreds more, questions are addressed.

At K-12 schools, the end result of accreditation generally is a “school improvement plan.” These plans are kept on file by many state Departments of Education. Readers can find out which teachers are teaching outside their certified area of specialty, how many students have been suspended, how much is being spent on dropout prevention, etc.

...and how you can use it

First, find out which regional body accredits your institution, and bookmark its website. Accrediting organizations normally do not abruptly withdraw accreditation without giving the school or college a chance to improve. An institution may be put on “warning” status or (even worse) “probationary” status, indicating that a loss of accreditation is possible if certain standards are not met. Accrediting bodies put out “Public Disclosure Statements” (or “Public Disclosure Notices”) to alert students and families of changes in status. Now that accreditors all have an online presence, it’s easy to check your institution’s name periodically for any Public Disclosure Statements that might signal accreditation is in peril.

A college may be given “Provisional” accreditation or an “action letter” that requires some corrective measures. Ask for copies of all such correspondence, as it may identify deficiencies that need addressing. (It’s a good idea at a public institution to make a yearly request.)

Accreditation reports often will set benchmarks that must be met and improvements that are to be delivered – everything from hiring more tutors and counselors, to upgrading the registration system, to diversifying the student body, to speeding up Internet service. Journalists can use the targets set in accreditation reports as a yardstick to track whether the school is making adequate progress.

Accreditation reports also are useful for trend-spotting to generate news features. If a college has a noticeably high employee turnover rate, it may be indicative of bigger problems. Are salaries and benefits lagging? Compare your institution against comparable ones: Are students paying a bigger, or smaller, share of the total cost of their education? How large is the endowment fund on a per-student basis?

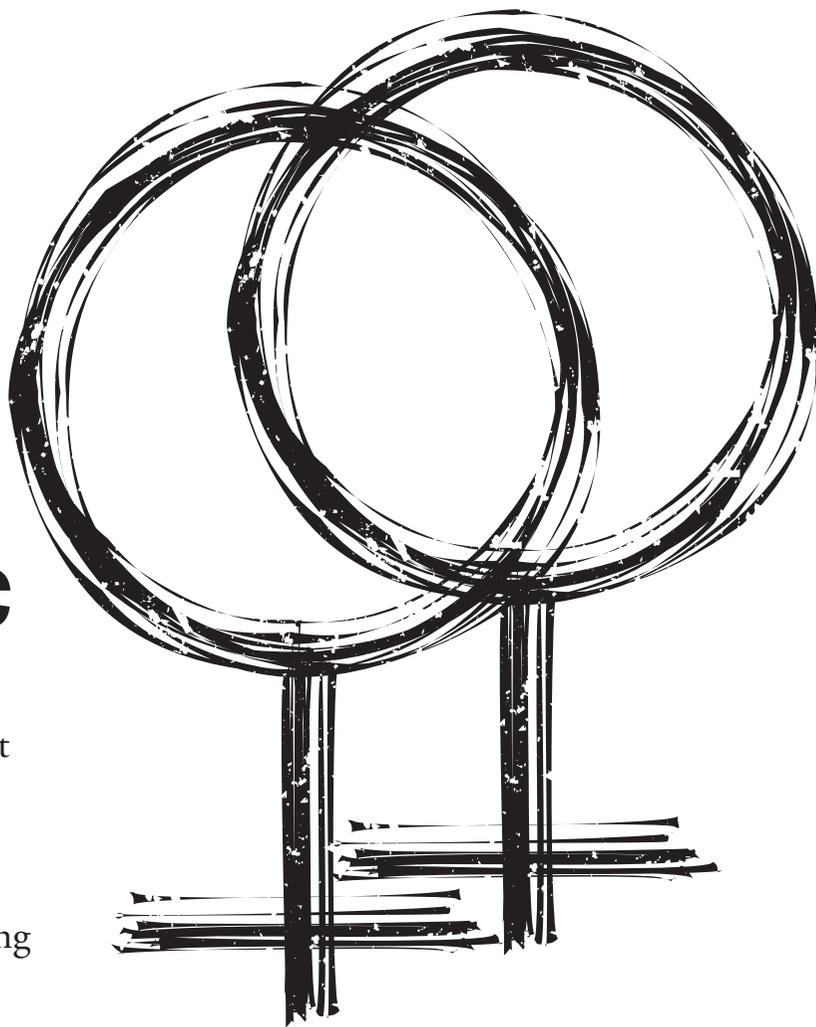
the news peg

Financial woes are placing more and more institutions’ accreditation at risk. In recent months, Tennessee’s Fisk University, North Carolina’s Greensboro College, and Virginia’s Saint Paul’s College all have been placed on “probationary” status due at least in part to financial instability. At the K-12 level, accreditors have been handing out warnings or probation because of inadequate facilities – another casualty of the economy. For instance, Maine’s Sanford High School was put on notice in December 2011 that it will be placed on probationary status because of shortcomings that include outdated science labs and excessive use of portable classrooms.

Loss of accreditation is extremely serious, sometimes equivalent to “the death penalty” for an institution. Graduates of an unaccredited school may have difficulty gaining admission to their next level of schooling, sitting for professional licensing exams, or qualifying for certain types of financial aid.

Getting Personal, Going Public

When a person's sexual orientation becomes the subject of a story, what is the balance between reporting a complete picture and respecting privacy? Two stories from last year offer different approaches to covering the potentially sensitive topic.



BY PETER VELZ

Veteran tech reporter Ina Fried is acutely sensitive to disclosing sexual identity, both in a story and in her career.

Fried's AllThingsD.com writer bio contains a blink-and-you-miss-it acknowledgment: "Her reporting spanned several continents, two genders and included chronicling the Hewlett Packard-Compaq merger, Bill Gates' transition from software giant to philanthropist, as well as the 2010 Winter Olympics in Vancouver."

"Ian Fried" was her byline starting as a staff writer for CNET.com in 2000. Three years later, she transitioned from male to female in the workplace, though she was privately out to friends and family for years.

More so than many journalists, Fried is aware of the politics and problems in writing about sexual identity but said journalists shouldn't shy away from the topic.

"One big question is, 'When is it relevant?'" she said. "One question is, 'When would I include whether someone is heterosexual or bisexual?' Typically that might be in a features story on a person in their personal life."

Fried suggests writers working on personal stories offer sources opportunities to talk candidly without making assumptions.

"I think sometimes it's just indicating that you're open to it," she said. "If you're interviewing a subject, instead of saying, 'Are you married?' say, 'What's your home life like?' — something that's a broader question that doesn't presuppose heterosexuality."

Entering an interview with an open mind and broad agenda can lead to untold stories. One writer at the University of Virginia reflected on the school's history and its perception as an institution catering to southern gentlemen — perhaps even prejudicially so. He wondered if LGBT communities felt those stigmas and stereotypes, a question that led to the series "Gay at UVA."

'Gay at UVA'

Over the decades, as the common definition of "gay" went from merry to almost exclusively homosexual, so too did the UVA tradition of singing the school's "Good Old Song" after touchdowns.

"We come from old Virginia, where all is bright and gay," fans would sing, immediately followed by a chant of "not gay!"

Reflected across years of articles, columns and letters in the pages of the *Cavalier Daily*, the "not gay" chant provoked a movement by students who argued it created an insensitive climate for LGBT communities on campus. Though the tradition has faded in recent football seasons, the stigma that UVA is

LGBT-unfriendly stuck around.

Tom Anderson, focus editor at the *Cavalier Daily*, wanted to cover the issues facing gay students but was unsure where to start. He contacted student leaders at various LGBT groups for some background.

“I sat them down and we talked about issues facing students right now,” Anderson said, “and I wanted to know their thoughts about the community here, if they were comfortable being gay at UVA, and what needed to be done to make life easier for LGBTQ students.”

Anderson published “Gay at UVA,” a three-part series covering diverse issues such as employment, Greek life and curriculum changes — topics he discovered from the initial conversations with student leaders.

“I started with very open-ended questions and got the issues together, and I used that to guide the article,” he said.

He pursued sources by emailing LGBT groups, asking them to forward a general request for students willing to speak with him. Anderson got many responses but saw some voids — he heard back from more men than women, for example. If he felt a specific voice was missing, such as a transgender student, he asked the group for someone in particular.

Since the sources responded to him, Anderson said they didn’t express concern over what they were comfortable with him printing. If a source was wary about specific details that emerged during interviews, he said he likely would have respected their wishes and not printed them.

Anderson found letting the sources open up gave him plenty of material to work with. The first story focused on faculty benefits for same-sex couples, and professor Ellen Bass openly talked about what issues were important to her.

“She told this narrative about how it costs her thousands of dollars to be gay,” Anderson said, “and I thought it was a great way to start that article and thought it was a great quote.”

Even though Anderson knew a source’s sexual identity, was it necessary to label the person for the reader? He said he wasn’t always consciously thinking to label sources on first reference, but contextual clues in quotes were enough for the purpose of the stories. Notably, one source was identified as straight, but perhaps not for an obvious reason.

“I was never thinking, ‘I have to make sure this person has to be labeled as straight because I don’t want people thinking they’re gay,’” Anderson said. “I was just thinking I want to label this person as straight so the reader knows that all different types of voices are weighing in on this and that it’s a balanced article.”

The paper wrote an editorial based on issues Anderson profiled in the series, which was well received by readers and sources alike. Anderson sees LGBT coverage increasing in the future for college journalists as communities grow more prominent.

“I just felt like it was worth writing about and worth educating people about this community that exists at this university and kind of separated from many facets of the university,” Anderson said.

News vs. features

When Ina Fried decided to let co-workers and sources in on her private life as a transgender individual, she took a methodical approach. She told some co-workers in person, others in an office-wide email. Fried cycled through her Rolodex of industry contacts, further expanding the circle of people who would know her as “Ina.”

“I thought my co-workers would be accepting,” Fried said. “I

thought the people that I covered would be generally accepting, but I was pretty overwhelmed.”

People whom she hadn’t heard from in years re-emerged with support. Instead of building a wall between her co-workers and sources, the admission created bonding experiences.

Eight years later, Fried’s story is well known in the tech industry, and she has since begun advocating for all LGBT journalists. Fried served as secretary and vice president of print and new media at the National Lesbian and Gay Journalists Association, currently acting as chair of the Transgender and Allied Task Force.

Fried said sexual identity shouldn’t be taboo in a feature story, but news articles can be different, as they don’t always have willing sources. Newsrooms have to make tough decisions, balancing news value against privacy concerns when reporting on LGBT issues, sexual identity in particular.

“Certainly there are times when it might be relevant,” Fried said, “but I think one also has to consider the environment: Is it safe for this person to be publicly identified in this way? In general, I think there’s a difference between asking somebody the question of how they identify and what ends up going in the story.”

The discrepancy Fried highlights played out at the University of North Carolina-Chapel Hill last fall. A vague news tip rapidly turned into a major campus story, pushing the college to reevaluate its non-discrimination policy and inciting reader response that put the paper on the defensive.

Controversy at UNC

Andy Thomason, university editor at the *Daily Tar Heel*, heard from a fellow news editor that campus Christian a cappella group Psalm 100 apparently removed a member who was gay. As the paper was wrapping up production for the week on a Thursday in August, Andy discovered the member in question was Will Thomason — no relation — a well-known senior on campus who considered a bid for student body president.

On Friday, after a chance encounter on campus, the two set up a call that afternoon. Over the phone, Andy said Will was “cagey” with the details as nothing official had happened. Psalm 100 was holding an official vote Saturday, so the two planned to meet the day after once Will knew more.

“I was committed to being really sensitive and very careful about the way that I approached this,” Andy said.

On Sunday, Andy set up a private room in the *Daily Tar Heel* office to talk with Will, initially keeping everything off the record given the sensitive situation.

“I basically get the sense that he has been kicked out for not agreeing with the rest of the group members’ views that homosexuality is a sin,” Andy said. “He makes that very clear. He also is very careful not to demonize the group because he’s still friends with them.”

That Will was kicked out for “not agreeing” with the other members’ views on homosexuality was a fundamental distinction. Like all student groups, Psalm 100 is subject to UNC’s non-discrimination policy, which states that sexuality and other characteristics cannot be used to exclude members. The group’s school-ratified constitution, however, allows it to limit membership to those who share a certain set of beliefs as defined by the Bible. Will’s situation exposed, as Andy put it, “a gray area” in the policy that wouldn’t be resolved for weeks.

But to write a story, Andy needed details from other members.

Will returned to the newsroom a few hours later with two Psalm 100 members who said he would be let back into the group,

which Andy chalked up to the possible threat of negative press.

“Part of me was kind of disappointed because we wouldn’t have the story, and part of me was happy for Will because he clearly liked being in this group,” he said.

A text from Will later that night made it clear the story was not over. Psalm 100 members again voted Will out of the group, and Andy continued discussions with his source.

“At this point, he had become sort of indignant, so he was willing to talk to me a lot on the record,” he said.

Identifying sources

Reflecting on his removal three months later, Will may have lost some indignation in his tone but remained firm in one regard: Despite the group’s stance, he said he was kicked out of Psalm 100 for being gay.

“I’ve had a specific belief about and been an advocate for gay rights since I got in the group,” he said, “and I have had discussions about things with members of the group, so I do think it was about my status as opposed to my belief.”

For Psalm 100, Will said being an ally to the LGBT community was not an issue until he came out.

Although Will had a girlfriend his freshman year, he said he otherwise remained ambiguous about his sexuality. Last spring, a Psalm 100 member confirmed with Will a rumor that he is gay. That member brought it to the attention of the group’s directors, and they held an initial vote for all members to decide whether to remove Will.

Will chose not to be present during the Saturday vote but understood it was based on his sexuality. It was unanimous, with three abstentions, to oust him.

After meeting with Andy and the two other Psalm 100 members the next day, Will spoke prior to the second vote — again unanimous but with two abstaining members who then left Psalm 100.

Andy used his editorial discretion during interviews with Will to navigate what he was comfortable talking about on and off the record, determining what could go in the paper. Andy said off-the-record interviews are rare at the *Daily Tar Heel*, but when they occur the paper’s policy is that details stay between the source and the writer.

But what remained elusive throughout their interviews was the disclosure of Will’s sexuality, a vital detail in the story because it raised the question of whether he was kicked out for not sharing fellow group members’ views.

“Even that afternoon the day before the story, he was telling me he would really only feel comfortable as ‘not identifying as a heterosexual,’” Andy said. “Kind of a convoluted thing, but this is such a sensitive issue that I say, ‘OK, that’s fine.’”

Despite attempts to simplify Will’s non-identification identification, Andy said Will remained steadfast on the phrasing. Andy labored over the wording and structure on his story working Monday night on the paper’s 12:30 a.m. deadline.

Daily Tar Heel Editor-in-Chief Steven Norton and Managing Editor Tarini Parti were concerned with the muddled phrasing of “Thomason, who does not identify as heterosexual” and wanted Andy to contact Will to clarify, but he was initially reluctant.

“I guess as any writer,” he said, “I was attached to my source’s wishes, and I had spent a lot of time talking with him about what was acceptable — what he would accept — to write the story.”

Andy went back and forth with the editors, who argued that for clarity’s sake and the truth’s sake, he should call Will to see if he was comfortable with the simpler identification of “gay.”

“It was kind of a touchy thing,” Andy said, “but I called him back and basically said, ‘Will, I think that if people read this, they’re going to be really confused about what the issue actually is and what the truth is.’ And he basically says, ‘I’m trying to understand why it matters that I’m gay.’ And I reply with, ‘well, I agree, but that doesn’t change the fact that people are going to be confused while reading this.’”

Will offered a candid explanation for the confusing label, one that shows how he has since positioned himself at the school as an advocate for gay rights.

“Maybe it’s because of my personal internalized homophobia or the stigma of saying someone is gay that I did prefer ‘non-heterosexual,’” he said. “And because, I don’t know, it’s not about one gay person. It’s about the rights of all people who identify not as the norm or not heterosexual. I thought it might be a better way to not make it a personal story and make it more of a recognition that I feel this way about a variety of different people.”

Still, Will understood the need for clarity in the story and knew readers would make the assumption anyway, ultimately agreeing to be identified as gay.

“I saw that Andy was really respectful to me,” he said. “I think he was trying to tell it straight-up like it was, but yet also willing to work with me to tell my story and be able to tell the truth about what happened.”

The article ran Tuesday, Aug. 30 with the matter-of-fact identification of “Thomason, who is gay.”

‘Not black and white’

Almost immediately, it seemed, the story caused controversy. The first indication came from within the *Daily Tar Heel* itself.

“Right after this story went up online,” Andy said, “I got an angry call to my cell phone from one of the members of the editorial board, completely irate. I think he thought that I had outed Will for some purpose of journalistic ambition or something.”

There was some concern from readers that Will’s sexual orientation was a label casually tossed into a larger story, but a column by Norton tried to answer to critics from the opening sentence: “The *Daily Tar Heel* didn’t out Will Thomason.”

The column went on to say Will was out to the people who mattered to him most and the phrase “Thomason, who is gay,” was heavily debated. Beyond the concern for Will’s privacy, public concern turned to the group that voted him out.

“A lot of people on campus were very angry at this entire thing, and how seemingly illogical it was that a group would kick out a gay member, not because he was gay but because he was OK with people being gay, including himself,” Andy said.

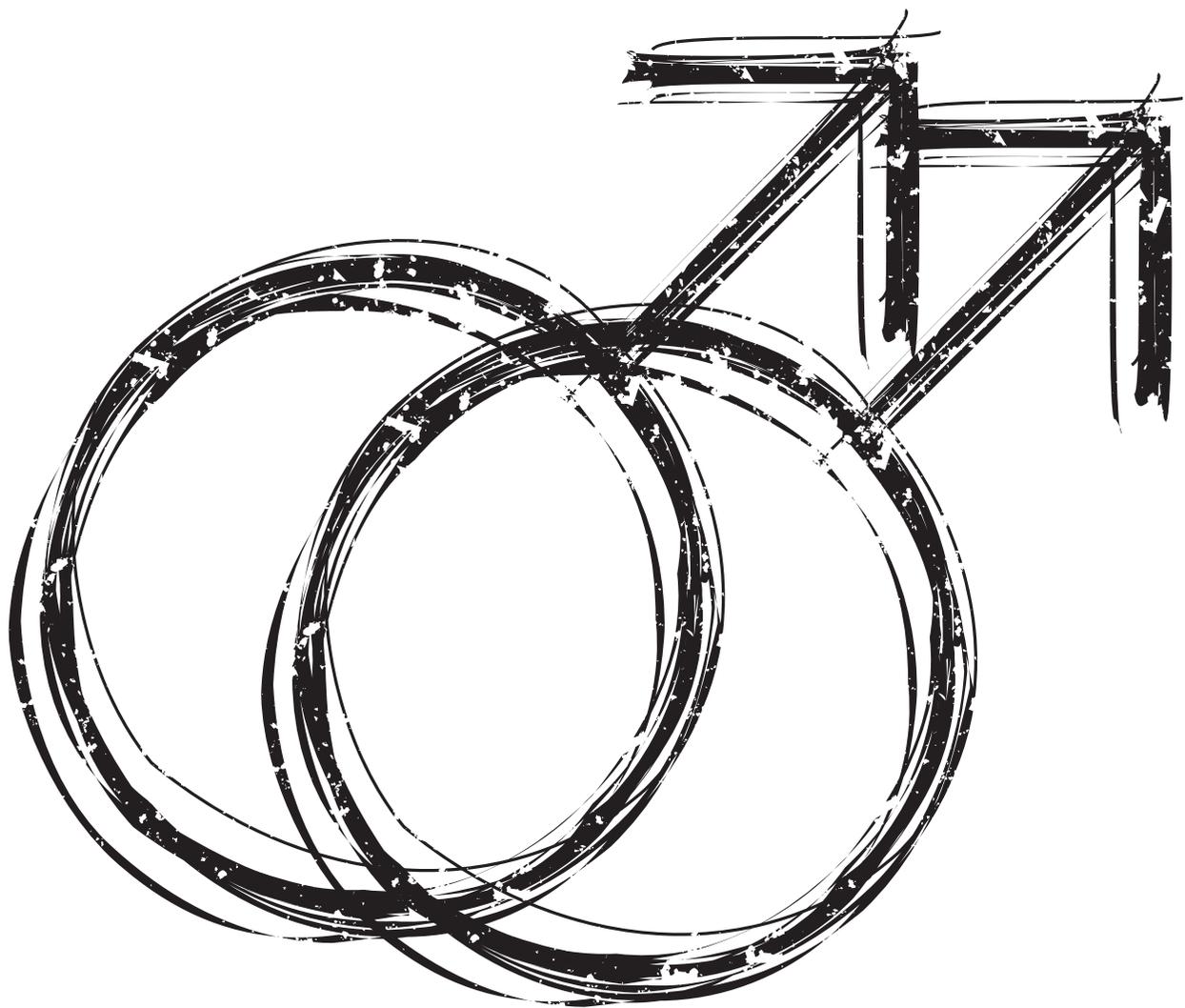
After an investigation, the university ruled Psalm 100 did not violate policy in removing Will because it ruled members voted in accordance with its constitution. With the ordeal behind him, Will is working alongside students, the school’s legal counsel and UNC’s vice chancellor to clarify the school’s non-discrimination policy, ensuring a similar situation doesn’t happen in the future.

Will said the process has to strike a balance by being both efficient and thorough. Still, if he could have his way he knows when he would like to see a revised policy: “Ideally it would be tomorrow.”

Hearing how the events played out at UNC, Ina Fried noted Will’s sexuality was integral to the potential controversy.

Fried said the source’s willingness to talk about sexuality is an important consideration in the interview and writing processes.

“I think it does a disservice to LGBT people to assume they



don't want to talk about it, just like I think outing is unfair because I think there are good reasons why some people may not choose to be publicly identified as LGBT, safety being one of those," she said.

Outing someone for the sake of a story has long been a divisive issue among journalists, one Fried said was debated within the National Lesbian and Gay Journalists Association.

For example, is political hypocrisy justification to out a politician? Fried identified ethical questions in the very definition of hypocrisy: Is it voting against what is perceived to be an LGBT issue? She pointed to the outing of Pete Williams, former spokesman for the defense department.

Williams was outed in the pages of *The Advocate* by journalist Michelangelo Signorile in 1991 when the department maintained policies that dismissed thousands of gay service men and women. Signorile condemned Williams for remaining in the closet while others lost their jobs. Fried noted that Williams did not take a stance on gay issues so much as repeat the government's policies, illustrating one of many gray areas journalists face when writing about sexual identity.

Fried said journalists can expect to encounter these questions as LGBT issues become more prominent, and the conversations

can easily move to high school publications as young people are coming out earlier than ever. She reiterated that safety considerations are the primary concern when journalists — and student journalists especially — are writing about someone's sexual identity.

It is also important for journalists to remember their subject's sexual orientation is just one part of someone's identity, a point Will Thomason made throughout the controversy that placed him at the center.

Will was dismayed by some reader responses and online commenters who used his story to push their own agendas, be they pro- or anti-gay, pro- or anti-Christian, and every nuanced sentiment in between. Many distilled Will simply into the "gay Christian," and he said he felt tokenized as they ignored his multi-faceted personality.

Similarly, Will is quick to point out the same could be said for the members of the group that voted him out. He cautions against pegging Psalm 100's members, some of whom he remains friends with, as ignorant or mean-spirited simply based on this outcome.

"We like to think in black and white, and just as the issue of homosexuality and Christianity is not black and white, neither is this story," he said. ■

Identity **Crisis**

When it comes to campus crime reporting, journalists have different philosophies on whether — and when — to name names.

Police Blotter

The following items were reported by campus police:

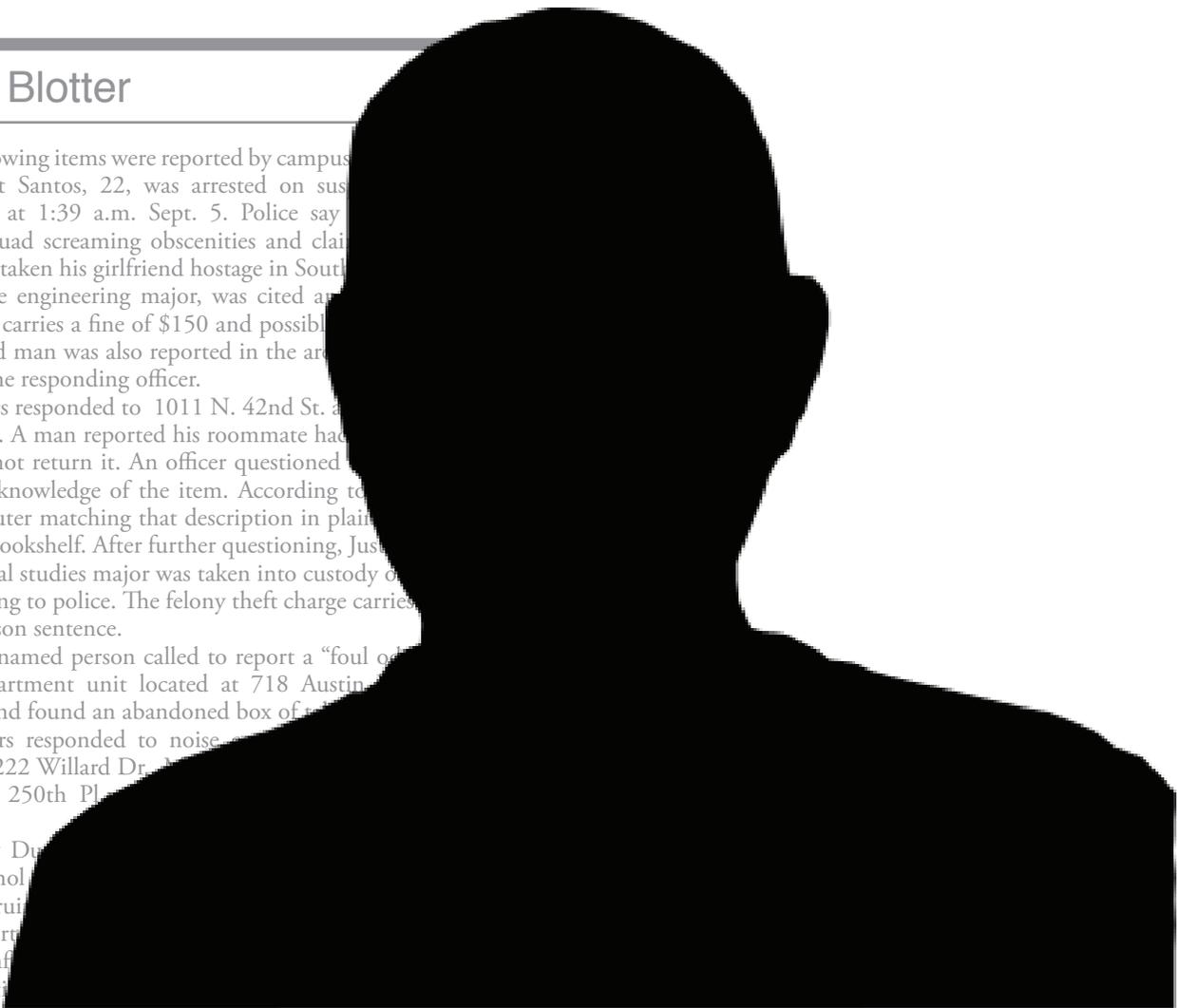
- Robert Santos, 22, was arrested on suspicion of public intoxication at 1:39 a.m. Sept. 5. Police say Santos ran across the quad screaming obscenities and claiming that police officials had taken his girlfriend hostage in South Austin. Santos, a sophomore engineering major, was cited for public intoxication carries a fine of \$150 and possible jail time. Santos said a second man was also reported in the area but was not located by the responding officer.

- Officers responded to 1011 N. 42nd St. at 11:30 p.m. Sept. 6. A man reported his roommate had a laptop computer and would not return it. An officer questioned the roommate, who denied any knowledge of the item. According to police, the officer saw a computer matching that description in plain view on a shelf out from a bookshelf. After further questioning, Justin Jones, a junior general studies major was taken into custody on charges of theft and lying to police. The felony theft charge carries a possible five-year prison sentence.

- An unnamed person called to report a “foul odor” coming from an apartment unit located at 718 Austin St. Police responded and found an abandoned box of food.

- Officers responded to noise complaints at the following addresses: 8222 Willard Dr., 8222 Willard Dr., 8222 Willard Dr., Ave.; 32 S. 250th Pl., 32 S. 250th Pl., 32 S. 250th Pl., Martinez St.

- Ashley Du..., a student, was cited for serving alcohol to minors. She was also cited for recruiting for new recruits. A witness report was filed under the information communication act.



BY NICOLE HILL

A female student at a small West Virginia college accuses three basketball players of sexual assault.

Her name makes no appearance in any newspapers; the names of her alleged attackers, however, are splattered across regional front pages. They appear again when those same men are kicked off their basketball team and expelled.

More than a year later, the woman sits atop a witness stand and admits she made the whole thing up.

What happened in the 1980s at Salem College is rare, said Society of Professional Journalists Ethics Chairman Kevin Smith, who worked in the area at the time as a journalist, but college papers are still operating largely under the same model that cost those three men their reputations.

The ethics of crime reporting are slippery, subjective and hard to define. Few stories have more at stake than those that deal with life and death, guilt and innocence. The decision-making — from how to word allegations to what information to include or exclude in a crime blotter item — is something that requires ethical discussion and dissection.

Ironically, the crime beat is often relegated to those reporters lowest in the newsroom food chain.

“I think that crime reporting is one of the most difficult things to do,” said Smith, who teaches journalism at James Madison University. “It’s one of the hardest things to cover, and, for whatever reason, they take the youngest people and put them in that situation.”

The art of crime news stems from the intense attention to detail required, Smith said. A transposed letter or omitted initial can mean an innocent person is essentially accused of a crime.

“Sometimes we approach them fairly loose,” Smith said.

On the blotter

Every front page will see its fair share of news stories on criminal activity. Often, however, it’s what’s inside the paper that gets the most eyeballs. Appearing every day, once a week or just online, the campus crime blotter remains a popular source of community knowledge, whether it’s seeing who was caught brawling outside a bar or pinpointing where thefts are happening around town.

When it comes to informing the campus community about criminal activity, deciding what details to include can be nearly as important as getting the information right.

Georgetown University’s *The Hoya* newspaper runs a crime blotter in every Friday’s edition. Included are alleged crimes, locations, times reported and a quick one- to two-sentence summary of the report.

Hoya Editor-in-Chief Eamon O’Conner said the blotter is

part of the newspaper’s duty to its campus.

“We publish the complete blotter that the Department of Public Safety provides us each week because we take it as our responsibility to inform the community of all instances of crime on campus — regardless of whether or not we write a story on it, and even if the reports are available on the DPS website, too,” he said.

On the other coast, UCLA’s *The Daily Bruin* compiles incidents for Crimewatch, a graphic map of police reports in the campus area, instead of a traditional blotter.

Visually, Crimewatch makes it easier for students to be aware of incidents, said editor-in-chief Lauren Jow, and it also helps the paper spot trends in and hotspots of criminal activity.

What’s in a name?

Both Jow and O’Conner said their papers omit names from these everyday crime reports. They don’t run the names of victims — and they also don’t run the names of suspects, something that sets them apart from many other publications.

The danger posed to campus by someone caught for public intoxication is minimal; identifying suspects is likely more embarrassing than informative in these situations. But that’s not a school of thought shared by everyone.

As to whether his paper runs the name of a criminal suspect in a full news story, it’s a decision that depends on the severity of the charge, O’Conner said.

“We’re not in the business of causing irreparable harm to someone’s image,” he said.

For Jow, the decision on whether to run a suspect’s name depends on the potential harm to other students and staff on campus. Those accused of violence are more likely to see their names in print.

In instances of alleged sexual assault or incidents that pose “greater danger to the public,” *Bruin* policy is to leave out the name of the victim, but run the identity of the suspect.

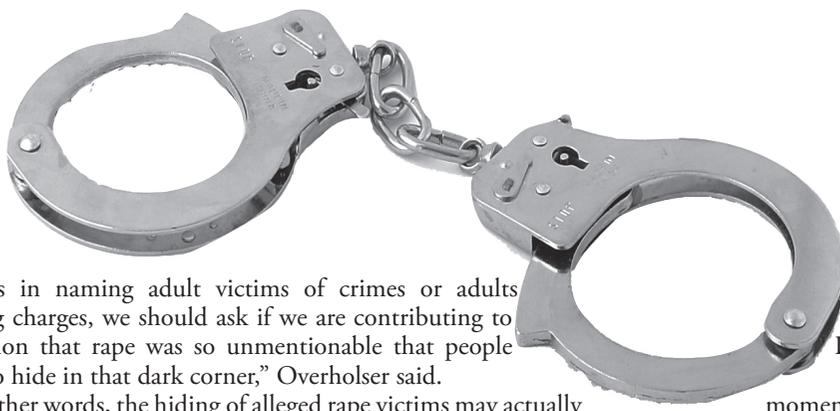
“Our main priority is the safety of our campus community,” Jow said.

That practice of keeping alleged sexual assault victims anonymous is the widely accepted standard at both collegiate and professional papers; but newsrooms should have a discussion about whether it’s the right policy, said Geneva Overholser, director of USC’s Annenberg School of Journalism.

During her time as editor of the *Des Moines Register* in the late ‘80s, Overholser began asking victims of sexual assault to come forward and identify themselves, in hopes of overcoming the stigma attached to rape.

The result was a Pulitzer Prize for the paper and an ongoing discussion about the ethics of identification.

“We should be aware that in not following our normal



practices in naming adult victims of crimes or adults bringing charges, we should ask if we are contributing to the notion that rape was so unmentionable that people ought to hide in that dark corner,” Overholser said.

In other words, the hiding of alleged rape victims may actually feed the stigma that they should be ashamed. Furthermore, in the digital age, newspapers are no longer gatekeepers. Overholser uses the example of the 2004 rape accusations against Los Angeles Lakers player Kobe Bryant to illustrate the point that victims’ names are likely to surface and, when they do, at the hands of “more unsavory people.”

“There were people on the Internet who were big Kobe Bryant fans who were scurrilous in defaming her,” she said. “Meanwhile, the editor of *The Denver Post* is proudly noting he’s protecting her.”

Not only is there an argument to be had about whether anonymity protects alleged victims, but also whether it is a journalist’s job to shield them.

“What gives us this wisdom as journalists to determine who needs our protection?” Overholser said. “To me, the major question is why any journalist would be comfortable taking a stand, which seems to indicate that the journalist understands who needs protection, when there has been no judgment in court?”

Points of contention

On the Georgetown campus, student editors contend campus secrecy leaves them with little say when it comes to publicizing the names of student sexual assault suspects.

In an Oct. 25 editorial, *The Hoya* discussed what it deemed a lack of seriousness on campus when it comes to discussing sexual violence. The university’s disciplinary policy is cited as one of the factors in creating a “relaxed attitude about sexual violence.”

The student conduct code states that, generally, only the person accused of a violation is told of the case’s outcome. However, in certain cases the alleged victim will also be informed -- provided they sign a non-disclosure agreement. That requirement does not apply in sexual assault cases, but the *Hoya* argues the policy is problematic anyway.

“Perhaps if assailants knew their names could be made public, they would be less likely to even consider committing a sexual crime in the first place.”

O’Conner said the policy is “largely a PR move” for the university.

However, Rachel Pugh, a spokeswoman for the university, said the editorial is inaccurate and cited the confidentiality exception in the student conduct code for sexual assault cases.

The paper’s broader concern, stated by both O’Conner and the editorial, revolves around a perceived trivialization of certain crimes.

The policy acts as a protection for those accused and not as a deterrent for the behavior, O’Conner said.

But naming suspects as a deterrent has its own ethical considerations, even in lesser offenses than violent or sexual crimes.

The potential consequences of identifying those accused of crimes are “far-reaching and, in this high-tech world, forever,”

said Ivan Dominguez, a spokesman for the National Association of Criminal Defense Lawyers.

“We know many people out there, the moment they see someone arrested or charged, they decide in their own mind that person is guilty,” Dominguez said.

Dominguez refers to the practice of running mug shots of arrested individuals — without an accompanying story — on newspaper websites; but the consequences of identification apply to all instances, including blotter items and crime stories.

“Apart from never really being able to scrub that perception from all the minds of all those who’ve seen that posted, you’ve got the very real consequence of ... you were wrongfully arrested, (and) you’re going to apply for a job somewhere and never know that they ran your name through Google and made a decision based upon things they saw,” he said.

The importance of the follow-up

What happens when the person accused of a crime is exonerated?

A secondary story on the outcome of the case can be just as important — and fair — as the initial reports. But Smith says many newspapers have spotty records when it comes to following up with the fate of the alleged, which Smith calls “one of the great collapses of reporting.”

“It’s amazing to me that you can report a crime, and you can report someone having been arrested, but if the case is thrown out, we do not exonerate that person’s behavior on the front pages of the paper,” he said.

That lack of follow-up can be of dire consequence to a suspect who’s been named.

“As we all know, we’re not so famous in the journalism world for getting back on stories and saying with equally prominent play, ‘It turns out this guy was not found guilty,’” Overholser said.

For their part, student journalists like Jow and O’Conner recognize this inequality of coverage.

Jow said she and her staff always make an effort to report that charges were dropped, especially for crimes that warranted a full article as opposed to a spot on Crimewatch.

The follow-up is crucial for that person’s reputation, she said.

But the lapse in reporting doesn’t stop with neglecting to acknowledge dropped charges, Smith said. In the effort to be impartial and fair, an acquittal or exoneration should receive the same weight as allegations, he said.

“Instead, it’s usually two to three paragraphs in one column under a three-deck (headline),” he said. “That’s a legitimate complaint.”

Discuss, then publish

Journalism is a balancing act, and the scales do not always tip in favor of “innocent until proven guilty.”

When deciding what information should be made public about victims and those accused of crimes — no matter how large or small — experts say each newsroom should have an ethical discussion to weigh the potential harm against the benefit.

There is a balance to be struck between the public’s right to

know, the victim's right to privacy and the accused's right to a fair trial.

"To me, it's a matter of having a discussion of what's appropriate," Smith said. "I think you have to take a look at your community standards."

Each crime story involves ample deliberation on the value of publishing details, O'Conner said.

Overholser's advice to college editors, who live and work in a "charged environment," lies in consideration for all sides, including the perspectives of victims but also those of the accused.

"The main thing I want them to think about is these questions that I'm raising that I don't think get considered enough," she said. "I do want them to think about the particular stigma attached to women, so unfairly and cruelly and ignorantly ... I don't really feel inclined to tell people what to do, but I do want them to think."

More than anything, consistency is key for judicious news judgment.

"I think that it's important for every newspaper to have some policy or understanding," Smith said. "You need to know and be consistent." ■

A Daily dose of the funnies

There are other ethical decisions to be had when it comes to crime, including just what to put at the top of the page.

The student journalists at the *The Michigan Daily* have taken a slightly different approach when reporting criminal activity.

Every day on Page 2 of the print paper, the crime report takes center stage. While the blurbs themselves are often mundane or inconsequential, the headlines atop them are what make them unique.

"Fire gets canned," *The Daily* reported Oct. 24. "Trailer trauma" and "Inappropriate drunk man" marked the edition 10 days earlier.

"We do try to do attention-grabbing headlines," said editor-in-chief Stephanie Steinberg. "The crimes themselves aren't really funny, but the headlines are."

This semester, Steinberg began the Crime Report blog on the newspaper's website. The content is identical to what runs on Page 2, but now the blotter blurbs — culled from Department of Public Safety incident logs — are given more prominence online.

Previously, the crime reports had been lumped in with the news story on *The Daily's* The Wire blog.

The Crime Report is a popular feature, and Steinberg said that stems from an understanding between the paper and its campus audience — though the headline may be in tongue-and-cheek, the story is not making light of the incidents reported therein.

That said, every now and then reporters take the joke a little too far.

"I will change a lot of them if they're just too inappropriate or just too out there," Steinberg said. "Sometimes our reporters go a little crazy. But we try to keep them to a certain standard."

SUGGESTED READING

resources for campus crime reporting

Until Proven Innocent

This 2007 book chronicles the saga of the Duke lacrosse case in which former players were accused of rape -- charges eventually declared unfounded. It raises questions about the fairness of the media coverage involved, its role in the case and its impact on the players.

Name the Accuser and the Accused

In this article for the Poynter Institute, Geneva Overholser offers her perspective on naming rape victims. She argues that names of all parties involved should be included for the sake of transparency and balance. "Leave the trial to the courtroom," she says. Available at <http://bit.ly/kLTwPW>.

Covering Campus Crime

The Student Press Law Center's handbook includes information on obtaining access to police logs and records, crime statistics and other essential tools for journalists. Available as a PDF at www.splc.org or in hard copy by emailing the Center.

When to Name Names

This discussion from the Society of Professional Journalists features perspectives from the organization's ethics committee on naming children and the victims of sex crimes. Available online at <http://bit.ly/viGdNw>. Also see the SPJ Code of Ethics, which urges reporters to be "cautious" when using these names.



CEASE AND DESIST

Student journalists face arrest while covering ‘Occupy’

In nearly every story, student journalists remain outside observers. But the Occupy movement signified that slim percentage of coverage where reporters become actors in the story.

The images of police pepper-spraying students at the University of California at Davis became indelible icons of the movement and underscored the power of news media. The overnight raid of Zuccotti Park in New York City demonstrated equally the struggles journalists on the ground were having with law enforcement for access.

And then came the arrests. Around the country, police corralled journalists along with the protestors they were covering. At least 31 incidents nationwide arose of reporters, some of them students, being detained or arrested during the course of their coverage.

‘I wasn’t scared, I was just angry’

Alisen Redmond and Judy Kim were covering the Occupy Atlanta protests Nov. 5 for their respective publications. For their trouble, both Redmond and Kim ended up spending a night in jail, caught in a police roundup of 20 people at the event.

The pair of student journalists was arrested while gathering news at the protests near Woodruff Park, which was the scene of a similar police roundup Oct. 26 when 52 people were brought in following a scheduled park closing, according to *The Sentinel* newspaper.

Kim, photography editor at Georgia State University’s *The Signal*, covered the Oct. 26 protests and thought she knew how the arrests would play out. She told her editor she would photograph the protests once the situation between police and protestors had time to escalate. Kim arrived at the protest at 11:20

p.m., ready to document the arrests — less than 10 minutes later, she was the one in handcuffs.

“From what I remember, three officers just came at me,” Kim said. “They started grabbing my wrists, and I realized they were arresting me.”

Redmond, news editor at Kennesaw State University’s *The Sentinel*, was documenting the scene from a street that was closed to traffic but used by other members of the media.

“I was crouching in the street taking video,” Redmond said, “and then this officer comes out of nowhere, comes up from behind me, grabs my left arm and pulls me out of the street and says, ‘You’re going to jail.’”

Redmond identified herself as press to the officer, but he continued with the arrest, she said.

“I said, ‘Why aren’t you arresting channel 5, channel 2, channel 11 and the *AJC*,’ because they were in the exact same area I was,” she said. “And he ignored me.”

The two journalists were arrested on the same charge — “Pedestrian Obstructing Traffic.”

At the time of her arrest, Kim was wearing a blue T-shirt adorned with the name of her publication, *The Signal*, and her camera was visible. Her press pass was in her bag.

Unlike previous Occupy Atlanta incidents, the police were not using park or police car speakers, making them difficult to hear over yelling protestors, both Redmond and Kim said.

Redmond said she didn’t hear audible warnings.

“This time they used the bullhorns, and that could not be heard in a crowd of a couple hundred people,” Redmond said. “I was standing about maybe 15 feet away from the person with the bullhorn, and I could not understand what he was saying.”



An Atlanta officer is seen pointing at the photographer, a Georgia State University student journalist.

BY NICOLE HILL & PETER VELZ | PHOTOS BY JUDY KIM

In a letter to Atlanta Police Chief George Turner, Society of Professional Journalists president John Ensslin urged him to drop the charges against Kim and Redmond.

“They were documenting for the public the details of a newsworthy story,” Ensslin writes. “This was not an act of civil disobedience on their part; it was straight-up journalism, pure and simple.”

The two journalists were kept in holding cells for 14 hours. But once released on bail, the ordeal did not end.

Redmond was told her property — a phone and voice recorder — would be at the Atlanta Public Safety Annex at 8 a.m. Monday. When she arrived, her belongings weren’t there. She was sent to two other precincts, neither of which could locate the items.

Eventually both items were returned to Redmond, but the journalists still face charges and have a court date scheduled for March.

“People ask me if I was scared,” Redmond said. “I was just angry. Very angry.”

An occupied journalist

Jonathan Foster, too, thought he was just doing his job. The photographer for the *Reporter* magazine at the Rochester Institute of Technology in New York was shooting photos at an Occupy event in Washington Square Park on Oct. 28 when he found himself in unfamiliar territory — handcuffs.

A Tweeted photo shows Foster wearing a shirt emblazoned with the word “reporter” being led away from the scene.

In a Nov. 17 post on the wall of a Facebook group called “Occupied Journalists,” Foster wrote about his ordeal.

“The assistant district attorney offered me ‘the same thing as

all the other protestors,’ an ACD (adjournment in contemplation of dismissal) with 24 hours of community service or a hearing on the (December) 14th,” Foster wrote. “I was not protesting that night, nor have I in the other times that I have photographed at Occupy Rochester or Occupy Wall St. I wanted to spread the word, and to emphasize knowledge of rights, professionalism, and a belief in the credibility of what we do.”

With more than 900 members, Occupied Journalists bills itself as “a discussion place for working journalists, be they staff, student or freelancer, to share experiences and advice about covering Occupy protests nationwide.”

The group is maintained by The Newspaper Guild-Communications Workers of America.

Foster is being represented by Mickey Osterreicher, general counsel for the National Press Photographers Association. He had an initial hearing in December and as of press time was scheduled to have another court date in January.

Professor v. Chicago Police Department

Though not covering the protests, Loyola University Professor Ralph Braseth had his own run-in Nov. 12 with police while on the job.

Braseth was photographing for a feature on low-income teenagers who flood the Loop, a Chicago community, on weekends when he happened upon a completely unrelated scene inside a subway station.

As he watched two plainclothes officers arrest a teen jumping the subway turnstile, Braseth had his video camera on and recording.

Braseth was standing on the other side of the turnstile about

40 feet away, he said.

“They got through putting the handcuffs on the young kid,” he said. “One of them turned around and saw me and locked eyes on me and started coming toward me.”

His reaction was quickly to put the camera in his pocket, a move that did not go unnoticed by the officer.

The officer told Braseth he was interfering with an investigation and cuffed him, he said.

“The young man and me, we walked up the stairs in handcuffs,” he said.

While sitting in the back of the police car, Braseth was told by officers that it was illegal to videotape police in the course of their duty, apparently a vague reference to the Illinois eavesdropping law, which makes it a felony to record a conversation without the permission of all parties involved. The penalties can be even harsher when a police officer is recorded, though that part of the law is being challenged in federal court.

But Braseth said neither of the officers mentioned that specific law, and he was standing too far away to record audio of their conversation anyway.

After the lecture, Braseth said the officer asked to see the video. He obliged.

The officer then reached down and deleted the file, he said.

Though he knew his rights had been violated, it wasn't until the next day that Braseth decided he wanted to take action about what had happened.

He has filed a complaint with the department, and has yet to hear back. He will wait for the results before deciding on further legal action, he said.

Avoiding confrontations

As to how students should deal with law enforcement, whether at an Occupy event or an unrelated story, Braseth said they should avoid becoming confrontational.

“I don't believe in heroism when you're in that kind of a situation,” he said. “If there's 300 journalists covering it, and you have the opportunity to walk away unscathed, do it. That's what I'd say to students.”

But he was quick to add that students should be covering Occupy, especially if they know of fellow students involved.

“Do they have the right to cover it? Of course they do,” Braseth said. “I admire the student journalists for being there.”

Newsroom discussions on protocol during these events remain important. Redmond said she was aware of her rights as a journalist because she'd attended a forum the week prior.

Of course, things may still not go as planned, and for students on the scene, it is likely a newsgathering experience they'll be hard-pressed to forget.

“Those 10 minutes where I thought I was doing my job turned into 14 hours of sitting and waiting,” Kim said. “An awful experience to say the least.” ■

Staying safe while getting the story

6 tips for student journalists covering protests

FROM SPLC'S MIKE HIESTAND

Bring credentials: Every student journalist covering the event should have something that clearly identifies him or her as a member of the press. A personalized credential from your local, county or state police department may be the best identification, but an official credential document issued by the publication, identifying the journalist by name and photo, may be the next best alternative.

Avoid the appearance of being a participant: Wearing insignias, carrying signs or joining in chants with protest participants (or counter-protesters) increases the likelihood that a journalist will be perceived as there for a purpose other than to collect information and cover the news.

Bring a cellphone and at least \$50 cash: If detained or threatened with arrest, the ability to contact outside help quickly can be important. Have a means for contacting your editor, adviser or an attorney if necessary. It might be wise to make a plan for all reporters and photographers on the scene to check in periodically with an editor or another newspaper staff member outside of the protest area who will be on-call.

Obey all police orders: If ordered by police to leave an area or disperse, move outside the crowd and find a place to observe and cover as close as possible. If possible, identify yourself as a journalist to the officer in charge and ask for guidance as to where you can continue your job without interfering with theirs. If you believe police are acting unlawfully or unreasonably in orders given to you, do your best to document the names and titles of those involved as well as the names and contact information of other witnesses. It is generally not a wise idea to disobey a police order on the scene.

If arrested or detained, act immediately: First, inform the police officers in question that you are a journalist there to cover the events and show them your press credentials. If they disregard your status, ask that they contact a superior officer before they take any action against a member of the press. Second, contact your editor or other staff representative and let him or her know what's happening. Third, if police insist on arresting or detaining you, let them know that you wish to contact your lawyer and do so immediately. Do not agree to plead guilty (or “no contest” or pay a “post and forfeit fee”) to any charge without first talking to legal counsel or fully understanding what you are doing.

Bear witness: If you're doing what you're supposed to — and if the police are not — video, still photos or audio of the event can prove an invaluable ally in making your case. Journalist Amy Goodman of Democracy Now and her crew confirmed this when they were awarded a \$100,000 settlement after being roughed up and detained by police — much of it caught on video — while covering the 2008 Republican National Convention in Minneapolis. If you are being arrested by police or otherwise prevented from doing your job as a journalist, ask that those around you record the event and send their material to your newsroom as soon as possible.

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WE CARE ABOUT THE PRESENT.

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

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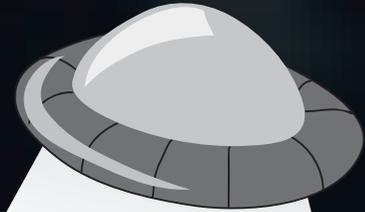
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MYTH You can't use photos you find online.

Taking a random photo from a Google image search is never a good idea, and including photo credit won't get you out of a copyright claim. But that doesn't mean free and fair use photos can't be found online. Enter "Creative Commons" — a label photographers attach to images that can be used without consent for noncommercial use when proper credit is given (but be sure to read the fine print). Got a story that could use a photo of President Obama or some other government subject? Well, good news, because many federal .gov websites have online photo libraries that are fair game.

REALITY



MYTH Go ahead and be ruthless with that April Fools issue. It's a clear parody so there's no legal trouble to worry about.

This is questionable territory, so tread carefully. In short, an April Fools issue may be OK if no reasonable person would read it as fact. You might want to leave the funny business to comedians, but a paper can implement safeguards to let readers in on the joke. A banner reading "April Fools Parody" isn't surefire protection from a libel suit, but it might help. Just remember that not everyone shares your idea of what's funny.

REALITY

MYTH You can't get in trouble for picking up all the campus papers and dumping them -- I mean, it's not stealing if they're free!

This is theft and should be treated as such. The newspaper is out the printing and distribution costs, plus lost ad revenue. Thieves can face criminal charges for taking newspapers, and several have been successfully sued to recover damages. If the theft is done by a government actor, journalists have an additional claim for censorship. Publications should consider putting a disclaimer in the paper that the first copy is free but additional copies cost a nominal fee, perhaps 25 cents. While this isn't required, it reinforces for potential thieves that even though the newspapers are "free," they do have value and stealing them is a serious offense. The SPLC maintains a database of these thefts along with additional resources at www.splc.org.

REALITY

CLEARING THE FOG

SPLC attorneys clear up common myths about the law

MYTH You can't report that a student was suspended, or pretty much anything they do at school, because of privacy laws.

Not even close. Schools may mistakenly argue that the Family Educational Rights and Privacy Act prevents you from printing discipline or academic information about students. Simply put, FERPA applies to school officials, not student publications. It deals with information that comes from someone's school records, not things a person tells you voluntarily or that you learn from some other source. If you broke into the school records office, you probably have bigger problems to worry about. Otherwise, if you hear this excuse, someone's mistaken — and it isn't you.

REALITY



MYTH It's not libel as long as you include "in my opinion" in the sentence and run it in the opinions section of the paper.

There's no magic phrase to get you off the hook for defamation. If your "opinion" convinces people that an underlying fact is true, and it's not, it could be libelous even though you called it "your opinion." For example, writing, "In my opinion, principal Smith's alcoholism is entirely out of hand," could be libelous. Your opinion is that it's "out of hand," but you're asserting a fact — that he's an alcoholic. If he isn't, you've got a problem.

REALITY



MYTH You can't take photos of or interview students at school without a permission slip from their parents.

Actually, you can. Minors can consent to an interview if they understand the consequences of what they're doing. So unless you're questioning someone with a disability or a really young student, you're free to run what they tell you without parental permission — though it may be advisable in a few extreme cases. They can also consent to having their photo taken; and if you're in a public space you likely don't need their permission anyway.

REALITY

MYTH If a student takes a photo using the school's camera, then the school owns the picture.

If this is true, then millions of moms with drawings on their refrigerators made with school paper and school crayons are in possession of stolen property. Copyright law recognizes that ownership belongs to the person who created the photo, not the person who provided the materials. The only exception is where a contract transfers ownership or where the photographer is a salaried employee. Neither is likely to be the case in school.

REALITY

COMPILED BY PETER VELZ

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When it comes to running risqué content in publications, journalists say administrators, parents (and sometimes students) can be **‘blinded by the sex’**

BY NICOLE HILL

Every journalist looks for the money quote — the soundbite that will put the whole story in context. Student journalists at a Puyallup, Wash., high school had no issue gathering such quotes; their war of words would come later.

“I was 15. I was horny. It wasn’t really a relationship at that point. I’d known the guy for a week.”

Those words from a senior at Emerald Ridge High School — and similar sentiments from four other peers — hurtled the Puyallup School District into a 2008 legal battle that remains active today.

The February 2008 issue of the high school’s newspaper, *The JagWire*, focused on an issue that the student staff thought was important for their audience — casual sex among teens. Content was diverse, ranging from the biology involved to debates over morality.

“In general, those are really real issues for high school kids,” said Lauren Smith, one of the editorial board members at the

time. “It’s important they know what they’re getting themselves into.”

The notion of serving the audience often gets college and high school publications in hot water when their relevant content runs afoul of what administrators, parents or even other students deem good taste.

Risqué content can quickly become risky for student journalists. A few bleep-worthy words or a more-than-suggestive sex column can earn editors and reporters anything from an inbox flooded with angry emails to an earful from school officials to threats to the publication itself.

So how to handle it? Students and advisers dished on the agony and ecstasy of pushing the limits in campus journalism.

‘Is it too risky?’

The idea to cover oral sex arose from a brainstorming session at a journalism camp. Three *JagWire* editorial board members were throwing out story ideas, and that one stuck, Smith said.

The trio brought the idea back to the other board members, and with their support, presented it to the newspaper class.

After an hour-and-a-half discussion about the pros and cons, the students reached an accord — they would run it.

“We expected people to be like, ‘Whoa, can’t believe they covered this,’ at first,” Smith said, adding that they never anticipated legal ramifications.

What the journalists deemed relevant to their peers was not what parents considered appropriate. And what raised the most eyebrows, and eventually a lawsuit, were five testimonials from students who were quoted by name about their experience and views on oral sex.

The students and their parents cried foul, alleging the reporters had identified the interviewees without their consent. The students and their parents sued the school district for invasion of privacy, while the paper’s staff countered that the students had given their consent to be interviewed.

In 2010, a jury ruled that by talking openly with clearly identified student journalists, the plaintiffs had given consent to have their information published.

One month later, the students filed an appeal, which is headed for oral arguments in January.

But even as its lawyer argued that the newspaper was a public forum that should be free of administrators’ meddling, the school district handed down a new policy the following academic year that placed every publication under prior review.

Under Regulation No. 3220R, the principal would be allowed to restrict student expression if there was reason to “forecast that the expression is likely to cause material and substantial disruption of, or interference with, school activities” or if the speech was “offensively lewd or indecent.”

It was a reversal that took the students by surprise. Smith, who had graduated by the time the policy took effect, said Principal Brian Lowney had always been supportive of their free-press rights.

“He was never trying to impose prior review,” Smith said. “When he came in the newsroom, he would cover his eyes.”

Despite protests from students and free speech advocates, including the Student Press Law Center, the prior review remains in effect, even after the school’s legal victory last year.

Students like Allie Rickard, who joined the *JagWire* after the oral sex issue, say the policy has had deep consequences on what issues the paper covers and how it covers them.

On certain topics, editors thought they should hold off and “be more conservative,” said Rickard, now a freshman at Barnard College.

“We were under the microscope,” she said. “It was like, ‘Why don’t we just not take chances?’”

The impulse to self-censor was frustrating to students who had little experience with journalism. What was more frustrating was the continuation of the policy — something students considered a reaction to the lawsuit — after the district and the paper had been cleared of wrongdoing, Rickard said.

The high school problem

High school journalists undoubtedly walk a finer line than their college counterparts, and the Supreme Court cases governing school expression haven’t made the waters any less murky.

“It can hardly be argued that either students or teachers shed their constitutional rights of freedom of speech or expression at the schoolhouse gate,” reads the 1969 *Tinker v. Des Moines Independent Community School District* ruling.

Tinker is often called a beacon for the rights of high school students; the Supreme Court confined schools’ ability to regulate speech or expression on school grounds to “carefully restricted circumstances.”

Yet, nearly 20 years later, the Court would take a step back from *Tinker* in *Hazelwood School District v. Kuhlmeier*, which allowed school officials to censor publications not deemed public forums for “legitimate pedagogical concerns.”

There is no denying *Hazelwood*’s continued impact. In May, the 2nd U.S. Circuit Court of Appeals went so far as to cite the *Hazelwood* standard in legitimizing the censorship of a non-curricular, independent high school newspaper in *R.O. v. Ithaca City School District*.

Sexually suggestive stick figures may not seem like a major First Amendment fight, but they became one when staffers at Ithaca High School’s *The Tattler* newspaper were barred from running an editorial cartoon in 2005.

The cartoon, riffing on sex education, depicted stick figures in various sexual positions.

To get out from under the restrictions, the students opted to publish an independent, underground paper with the cartoon — which the school then banned from campus.

The students sued, alleging the school had violated their First Amendment rights. But the appeals courts sided with the district, and the Supreme Court declined to intervene, meaning the precedent will stand in New York, Connecticut and Vermont.

Show good taste

Even as the courts battle over legal standards, the issue of whether students *should* run controversial content remains separate and distinct.

The Society of Professional Journalists’ Code of Ethics doesn’t discuss covering taboo topics specifically, but it does encourage practitioners to “show good taste” when compiling articles.

But that tenet shouldn’t lead administrators or students themselves to believe school publications should shy away from touchy subjects, according to experts.

“If student journalists have solid reasons to publish profanity or sexually suggestive content, they should consider it, but they need to carefully weigh the potential benefits against the potential harms,” said Neil Ralston, SPJ’s vice president of campus chapter affairs and assistant professor at Western Kentucky University.

Those benefits may include relevance to the audience.

The pages of Texas Tech University’s *La Ventana* yearbook have been graced by everything from STDs to the stomach contents of a student who had, perhaps, too much to drink. It’s not your stereotypical yearbook fare, but adviser Andrea Watson said the content reflects the campus experience.

“They’re college kids. They drink,” Watson said. “They see these things on a regular basis. More power to them for wanting to show this is part of college life.”

Watson, who has been *La Ventana*’s adviser since 2002, said she’s never steered her students toward or away from subjects. Instead, she’s tried to “empower” them to cover what they think is relevant.

“We try to make an effort to look at other aspects of college life,” she said. “It’s not all football games and classes.”

Not everyone loves the book’s inclination to push the envelope. The 2009 book devoted a spread to STDs and tackling the “Raider Rash” stereotype. They caught some flak from students and parents, Watson said.

But *La Ventana* staffers have been lucky to avoid run-ins with

school administrators, who “understand that our publications are student-run,” Watson said.

“In some respects, our students are a little spoiled by that,” she said. “I don’t know what they’d do if they had to face that situation.”

Of course, there can be other consequences for risky content, as the editors of East Carolina University’s newspaper found out this fall.

Around 600 of the 9,000 copies of *The East Carolinian*’s Nov. 8 issue were stolen from racks. The reason? Likely the front-page, full-frontal photo of a streaker that the editorial board opted to run.

There were multiple reports of filched copies, and a large stack of papers was found in a trash bin in an on-campus parking lot.

The photo came from a home football game three days earlier, where the streaker was detained.

“We decided that we wanted to, as an editorial board, publish the uncensored photos to give our readers, which are primarily college students, access to unedited photos,” editor-in-chief Caitlin Hale told the SPLC in November.

Hale said reader response was mixed, though the theft was something they didn’t expect.

“We’ve heard from not only students but professors affiliated with the university, a lot of communication journalism professors who have talked to us about it and maybe not necessarily would have made the same decision but still support it because they do understand the journalistic integrity that goes with the decision made,” she said.

A mounting trend

While streakers on front pages may draw the ire of parents, students and faculty, few things result in more letters to the editor than good old-fashioned sex columns.

Little more than a decade ago, sex columns in college newspapers simply did not exist. Today, they’re often some of the most talked about and widely read pieces in the papers in which they run.

What’s the reason?

“Four words: *Sex in the City*,” said Dan Reimold, creator of the College Media Matters blog and author of *Sex and the University: Celebrity, Controversy, and a Journalism Revolution*.

While listing Carrie Bradshaw as the sole reason for the rise of sex columns is an oversimplification, she remains undoubtedly an influence, said Reimold, also a journalism professor at the University of Tampa and adviser to *The Minaret*.

Reimold has found columns, ranging in tone from salacious to studious, in 48 of 50 states and, at any given time, around 100 to 150 sex columns run in collegiate newspapers, he said.

More and more papers that have never before run a column of this type are stepping into the arena. The most recent of these belongs to Penn State’s *Daily Collegian*.

In Mounting Nittany’s September debut, under the headline “Let’s talk sex, hugs and handjobs,” Kristina Helfer explained to readers that she likes to have sex. She likes to talk about sex. And she likes to write about sex.

“The thrill of having sex is like nothing else. It’s exciting, and everyone’s talking about it,” Helfer wrote. “College is the time

when those whispers become a reality, when people take others’ virginity and roommates are sexed. And it’s time we start talking about it.”

Shortly after the column’s birth, news of the allegations of child abuse and sexual assault against former assistant football coach Jerry Sandusky broke. And then exploded. Coverage of the scandal has dominated *Collegian* front pages since.

And in an example of the many ethical considerations that accompany content decisions, Mounting Nittany was pulled from the print edition for the time being in light of new community standards.

“Based on the current situation and mood at Penn State, we have decided to remove the column for now,” *Collegian* Editor-in-Chief Lexi Belculfine wrote Dec. 1.

The return of the column is being considered on a week-to-week basis, Helfer said.

During its run, Mounting Nittany has covered wink-and-a-smile topics like the hookup campus culture and also addressed the importance of health and safe-sex practices. Reimold said it’s typical for columnists to cover both ends of the spectrum; columnists’ motivation may vary, but they often share the same goals.

“I think in some cases it’s to shock. I think in some cases, it’s for students to build up personal brands,” Reimold said. “I do think at their heart, in the most idealistic sense, there’s a rebelliousness of the student writers of, ‘Yes, it’s OK to talk about sex. We’re having it. Adults have to wake up to that.’”

The life of independence

“If it’s happening, we need to cover it,” said Rachel Bowers, editor-in-chief of the *Red & Black* newspaper at the University of Georgia. “That’s the bottom line for me.”

As editor of the *Red & Black*, an entirely independent newspaper operation, Bowers knows a few things about running content outside the norm.

Before Sept. 25, it was conceivable many on Georgia’s campus did not know the term “sugar baby.” But on that day, the *Red & Black* defined it for them as “a young person who provides companionship to an older sugar daddy or mommy in exchange for money and gifts.”

What’s more, the paper showed that there were more than a few sugar babies roaming its own campus.

“We got a lot of letters to the editor saying ‘you’re degrading women,’” Bowers said. “And it’s like, no, we’re covering women getting degraded.”

The story, pitched by a crime reporter, generated a lot of conversation on campus and an ample amount of criticism from staff and alumni.

But Bowers and her staff didn’t flinch. Just as they didn’t shy away from running documents this spring detailing a sexual harassment complaint against a professor – above the fold. Without censoring any of the profanity or vulgarities.

“If a professor is saying these things, the university community needs to know about it,” Bowers said. “It’s important. It’s relevant. And it’s pertinent to the audience we’re supposed to be catering to.”

Confidence in content, of course, is made much easier

*Sunshine
at the
schoolhouse
gates?*

With public funds and private lobbying aims, state school board associations are the focus of a nationwide transparency debate

Here's a riddle for the nation's courts: What do you call a publicly funded lobbying organization that seeks exemption from open records laws?

The answer is a school board association, an advocacy organization whose purpose — whether on a state or national level — is to represent the interests of school administrators.

The question both student and professional journalists would like answered, however, is to which laws these quasi-governmental bodies must answer.

The associations often do not view themselves as public agencies, so why should they be confined by the transparency regulations imposed upon such entities?

"Really, what we are is we're a primary advocate for outstanding public education for all Iowa students," said Marti Kline, a spokeswoman for the Iowa Association of School Boards.

Because of recent changes to state law, that organization does operate under the same disclosure requirements as other public organizations, "even though we really are not," Kline said.

But if an association receives public funds, however large or small, should it then follow that they are subject to public disclosure regulations?

"If it were Shell Oil Company who sells gas, just hypothetically, if they sell gas to school buses, they're providing a service," said Molly Spearman, executive director of the South Carolina Association of School Administrators. "If you go on the grounds that just because you get state money, then you have to be FOI-able, then that means there are a lot of businesses that are."

Recent court decisions and legislative battles have outlined a murky forecast for the applicability of sunshine laws to state school board associations. Actions in Iowa, as well as South Carolina and New Jersey, have muddied the waters when it comes to just how transparent these organizations are required to be and whether they do, indeed, qualify as public entities.

Sun shines on scandal

In Iowa, the state school board association has been included in open records and meetings requirements for two years, but it made news recently when financial foibles by its upper management became public.

The Iowa Association of School Boards' financial mismanagement spurred the introduction of House File 645, which incorporated an earlier Senate bill, in the state Legislature. The bill was designed to require school-related associations to make their financial records public and require them to abide by

the state's open meetings law.

The bill was also an attempt to broaden the regulations IASB has followed since 2010 to cover other public lobbying agents, such as the School Administrators of Iowa, which represents principals statewide.

The school board association came under fire in March 2010 when reports of inflated salaries for its top executives came to light, including more than \$350,000 to its then executive director, according to the *Des Moines Register*.

Along with financial reforms for the association, House File 645 had much to say about transparency, for all similar organizations.

The bill would have required these entities to post on their websites: a list of the school districts that pay fees or dues to the association and the amounts paid; the total revenue the organization receives from the school district, and the net profit made from products sold to the district by the association; accounting of reimbursements and expenses paid to the ten highest paid employees; and a list of all reimbursements and expenses paid to legislators and lobbyists.

Gov. Terry Branstad vetoed the parts of the House bill pertaining to disclosure in July, saying the language was overly broad and could have unintended consequences on other non-public entities.

In its advocacy role, the IASB provides services for its "school-board teams," including programs in board development and school financial services; conferences for board secretaries and business managers; policy and legal services; legislature lobbying for educational issues; and year-round training opportunities.

Funding for this mission stems mostly from partnership with business services, Kline said. For example, a construction firm that provides low-cost counsel on architecture and construction planning will pay the IASB a certain portion of the profits for any jobs they contract with schools.

Yet, around 17 percent of the association's funding comes from member dues paid by school boards.

Though the IASB does not consider itself a public body, the organization has had no problems working under the sunshine regulations, Kline said.

A courtroom challenge

A South Carolina judge agreed in August that school board associations do not fall under purview of the state Freedom of Information Act.

In that state, a radio talk-show host, Rocky "Rocky D" Disabato, had requested documents from the South Carolina

Association of School Administrators. The documents in question referred to a debate over federal stimulus funds in the 2009 American Recovery and Reinvestment Act.

When the association refused to hand over the information, Disabato sued.

Circuit Judge G. Thomas Cooper Jr. granted on Aug. 15 the association's motion to dismiss Disabato's request. While SCASA is partially funded by taxpayers and would fall under FOIA's definition of a public body, it is first and foremost a corporation that engages in "core political speech and issue advocacy," Cooper ruled.

"A State 'cannot foreclose the exercise of constitutional rights by mere labels.' ... However by pinning the label of 'public body' onto corporations like SCASA engaging in issue advocacy and political speech this is precisely the effect of the FOIA," the ruling reads.

Essentially Cooper ruled the public's right to know is outweighed by SCASA members' First Amendment rights not to speak publicly.

SCASA funding comes from three principal sources, Spearman said. Along with professional development fees and business support, membership fees paid by school administrators pay for the association's lobbying and training mission.

However, many members, from both public and private schools, do pay their membership fees out of pocket, Spearman said.

"Our members, those school leaders, do have a right to

associate and they do have a right to meet and form their own political views," she said. "And they also have a right to discuss policies that are important to them and develop those, and because of that right to meet and speak out, they are not under the FOIA request."

Disabato's attorneys are appealing the case to the South Carolina Supreme Court.

Light at the end of the tunnel

Bright news for transparency advocates emerged from New Jersey this fall. The state Supreme Court ruled Sept. 20 that the New Jersey State League of Municipalities — a nonprofit that represents the state's 566 municipalities — was subject to open records law.

The league meets the definition of a public agency under the state's Open Public Records Act, the 6-0 decision held. In part that decision stems from the fact that 16 percent of the league's budget comes from taxpayer funds via membership fees from each municipality, according to the ruling.

In this instance, the judge ruled, the organization was an extension of the governmental bodies that comprised it, despite being a corporate entity.

Though the court did not rule specifically on school associations, the league is of a similar composition to the New Jersey School Boards Association, which bills itself as a "federation of district boards of education." ■

on the **DOCKET**

Iowa court reaffirms press freedom protections of 'anti-Hazelwood' law

IOWA -- A state appeals court held in November that the Iowa Student Free Expression Law provides broad protection for student journalists.

The court, in the first interpretation of the 1989 statute, held that state law gives students greater rights than the federal *Hazelwood v. Kuhlmeier* standard. It found in favor of a former newspaper adviser who was reprimanded for not censoring controversial stories. The court also found that the April Fools edition in question was not libelous or disruptive to school.

The decision reverses a lower-court ruling that the law provides no more protection than *Hazelwood*.

The school district is asking the Iowa Supreme Court to hear the case.

Six other states have similar laws.

High court may reset boundaries of on-air indecency in ruling this term

WASHINGTON, D.C. -- The U.S. Supreme Court will weigh in on TV and radio expletives this spring in a decision that could reshape the law of broadcasting.

The justices must decide whether the Federal Communications Commission's fines for one-time uses of swear words on air violate the First Amendment. A lower court struck down the FCC's policy.

Since the 1970s, the Court has given less free speech protection to broadcasting on the theory that it is pervasive and uniquely accessible to children. Some free expression advocates say that rationale no longer makes sense in the digital age, and are urging the Court to overturn its earlier decision.

A ruling in favor of the TV stations could dramatically alter the rules surrounding broadcasting, which currently bar "indecent" broadcasts during the daytime.

Supreme Court may take up off-campus speech

Student First Amendment advocates await word on a potential landmark

The U.S. Supreme Court is closer than it's ever been to addressing the free speech rights of students on Facebook and other social networking sites. The Court will likely announce in January whether it will rule on the issue.

In the fall, attorneys in four separate cases asked the Court to take up the matter, which has quickly become the focus of the free expression debate in schools.

The justices have already decided not to hear one of those cases, *Doninger v. Niehoff*, which centered on a Connecticut high school student's blog post. School officials prevented her from becoming class secretary after she wrote a post criticizing the district over a Battle of the Bands concert. The high court's move leaves in place a decision by the 2nd U.S. Circuit Court of Appeals in favor of the school, which held that a student's First Amendment right to criticize school officials online was not "clearly established." The lower court did not directly address what legal standard applies to off-campus speech, and the judges were criticized for not providing guidance.

Two of the remaining cases are being appealed jointly from the 3rd U.S. Circuit Court of Appeals. There, two Pennsylvania students faced discipline for fake MySpace profiles they created that ridiculed their school principals. The appeals court sided with the students and held that, at a minimum, school officials have to show off-campus speech would substantially disrupt school in order to be punishable. It rejected a lower standard – that schools can punish speech if it is "lewd" or "vulgar" – and left open the possibility that even disruptive online speech is beyond school control.

The final case, *Kowalski v. Berkeley County Schools* comes from the 4th U.S. Circuit Court of Appeals. That court ruled against a West Virginia student punished for a MySpace group that contained insulting comments about another student. The court held that off-campus speech like Kowalski's that causes a school disruption can be punished by school officials. It also suggested that it might accept an even lower standard in future cases.

The Supreme Court justices will decide whether to hear *Kowalski* or the Third Circuit cases at a conference in January. If they accept any of the cases, a ruling would come before July.

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

Appeals court to address 'boobies' bracelets as second lawsuit is filed

WISCONSIN/PENNSYLVANIA -- A Wisconsin middle school student in September filed the second First Amendment lawsuit challenging a ban on the "I (Heart) Boobies" breast cancer bracelets.

Wisconsin's Sauk Prairie School district claims the slogan is lewd, offensive and inappropriate for school. Student Kaisey Jenkins and her parents argue the bracelets, produced by the cancer-awareness Keep A Breast Foundation, are protected expression.

As of press time, a motion to resolve the issue was pending before a federal district judge.

The suit comes as the 3rd U.S. Circuit Court of Appeals prepares to hear arguments over a similar bracelet ban from a group of Pennsylvania students.

A lower court struck down the ban in April 2011.

Judges back bans on anti-Islam, American flag shirts; others TBD

FLORIDA/CALIFORNIA/NEBRASKA -- Judges were busy in late 2011 adding to the debate over what students wear to public schools.

A Florida judge sided with a school that prevented students from wearing T-shirts with the phrase "Islam is of the Devil." The court ruled the shirts created a disruption at the school, which has Muslim students.

In California, a judge ruled in favor of a school that prevented students from wearing American flag shirts on Cinco de Mayo. The court agreed the shirts would inflame racial tension. That case is being appealed.

A Nebraska case will go to trial in 2012, in which a school banned "Julius R.I.P." memorial shirts.

The U.S. Supreme Court has never decided a student dress case, and the lower courts are often divided.



BY EMILY GERSTON

When it comes to freedom of expression, many students believe they have it rough. Dress codes, “free speech zones” and censorship can make it difficult for students to speak their minds. But if recent controversies are any indication, teachers may have it just as bad – if not worse.

Teachers have the same First Amendment rights as anyone else — so long as they are not speaking as representatives of the school or in a school setting. But if they’re within school walls, or even just acting as an employee of the school, their speech can be – and often is – limited.

“One major difference between how a district can regulate employee speech and student speech is that regulation of student speech is, at least in part, geographic,” explained Student Press Law Center Attorney Advocate Adam Goldstein. “A student has more freedom at home than he or she does in a classroom. Control over employee speech varies with topic, not geography.”

This means that although a student can go home and shout from the rooftops that he thinks his teacher is stupid, a teacher may not be able to announce to the world that she finds her students repulsive.

Garcetti-ed

A 2006 Supreme Court decision, *Garcetti v. Ceballos*, is at the root of most restrictions on teacher speech. Richard Ceballos was an attorney with the Los Angeles District Attorney’s office who voiced his disagreement with a warrant that had been issued, and later claimed he was retaliated against for airing his legally protected opinion.

The Supreme Court disagreed. As Justice Anthony Kennedy wrote in the majority opinion, “Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”

In other words, as Goldstein explained, “Whatever a teacher’s job duties are, a public school can regulate speech about those job duties to some extent, and fire teachers who don’t follow those regulations.”

That decision enabled an Indiana school district to fire

elementary school teacher Deborah Mayer after she expressed her opposition to the war in Iraq while teaching current events. The 7th U.S. Circuit Court of Appeals found in 2007 that based on *Garcetti*, “[W]hatever the school board adopts as policy regarding what teachers are permitted to express in terms of their opinions on current events during the instructional period, that policy controls and there is no First Amendment right permitting teachers to do otherwise.”

However, Goldstein noted that *Garcetti* still leaves much room for interpretation.

“The five votes from the majority in *Garcetti* are all still there, but I genuinely don’t know if they would vote the same way in an educational context,” he said. “*Garcetti* involved an employee’s criticism of his employer in the context of his employment. I just don’t know if it was really the justices’ intent for that rule to apply to an eighth grade science class learning about evolution.”

Social media

The Internet has changed speech for both students and teachers. Several cases regarding student online speech are working their way through the court system now, and the Supreme Court is being asked to take up three of them, which involve blogs and social media.

Much as it may dismay students, teachers also have lives outside the classroom, including using social networking sites. But many have found themselves more restricted by school administrators than their students.

In March 2011, Jennifer O’Brien of Paterson, N.J., made a comment about her first-graders on her Facebook page: “I’m not a teacher – I’m a warden for future criminals!” According to Reuters, her Facebook page was only viewable by friends, but a few people forwarded the message until it reached parents’ hands. O’Brien said she was just letting off steam, but the school insisted that her comments became disruptive when they caused parents to arrive at the school demanding her removal.

O’Brien is hardly the only teacher to find herself out of a job thanks to a slip-up on a blog or social networking site. In Georgia, former Barrow County teacher Ashley Payne is suing her district for forcing her to resign over two Facebook photos

Big questions remain about ‘academic freedom’

of her at a dinner table with glasses of beer and wine, taken during a European vacation. A tipster sent the photos to Payne’s supervisor, who asked for her resignation, claiming that she used bad judgment in posting photos with alcohol that could be seen by students -- even though her Facebook profile was not publicly viewable and there was no evidence any student ever saw it.

Pennsylvania high school English teacher Natalie Munroe was more fortunate. She was suspended after being “outed” as the unnamed author of a blog ranting about incorrigible students — whom she referred to as “lazy whiners” destined for work as garbage collectors — and their demanding parents. After an internal investigation, Munroe was notified in August 2011 that she could return to the classroom.

According to Goldstein, teacher free speech challenges have become more difficult to win since *Garcetti*, because schools can argue that speech about students arises out of teachers’ “professional responsibilities.”

“[T]hese cases probably would be pretty rare, since they require speech that’s offensive enough to discipline someone, yet legitimate enough to defend,” he said.

Although schools can seek cover from the *Garcetti* ruling even without creating an explicit social networking policy, many schools are also creating local codes dictating how teachers can use their online accounts if they’re used to discuss or facilitate their time in class. According to the Huffington Post, school boards in at least five states have adopted or are considering adopting a set of “guidelines” for teachers using social media. The suggestions range from recommending that teachers refrain from communicating with students online to keeping their personal social media profiles “rated G.” These codes are new enough that they have yet to be tested in court, but cases challenging these guidelines may provide clarification on just how far a school’s discretion under *Garcetti* can go.

Of course, there are practical as well as legal considerations in a teacher’s ability to challenge the punishment of her speech. Non-tenured teachers typically work on year-to-year contracts, and a district generally is not obligated to furnish any explanation for refusing to renew a one-year contract. So a teacher may never learn that her Facebook posts cost her a job.

Colleges and universities

While teachers at public K-12 schools have limited rights, and teachers at private schools even less so, their counterparts at the college level may have more leeway when it comes to speaking their minds in class.

“Generally speaking, courts have viewed what goes on in primary and secondary classrooms as being under the total control of the school board, however lousy the school board might happen to be,” Goldstein said. “At the same time, there seems to be a bit more of an understanding at the higher education level that, if you hire a professor to talk about a topic, and the professor talks about that topic, there might well be some kind of First Amendment right to express an opinion on that topic.”

The Supreme Court hinted in the *Garcetti* case itself that the justices might rule differently in a case involving professors rather than prosecutors: “There is some argument that expression related

to academic scholarship or classroom instruction implicates additional constitutional interests ...(.) We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”

One case is already testing *Garcetti*’s limits in the context of higher education. In *Adams v. Trustees of the University of North Carolina-Wilmington*, a college professor, Michael Adams, claimed he was unfairly denied tenure because of his vocal conservative activism. When the case got to the 4th U.S. Circuit Court of Appeals in 2010, the court determined that *Garcetti* does not apply in the academic setting of *Adams*, raising the question of whether *Garcetti* has an exception for professors. The Supreme Court has not ruled on the issue to this point.

Anita Levy, associate secretary in the department of academic freedom, tenure, and governance at the American Association of University Professors, said her organization strongly opposes attempts to restrict professors’ speech.

“There have been calls, primarily by the right, to limit professorial speech in the classroom, and indeed in general,” Levy said. “But as far as we’re concerned, I can’t think of an instance where that would ever be appropriate.”

The AAUP has issued several statements on its website emphasizing the importance of upholding “academic freedom” for professors on college and university campuses. However, Levy noted that their statements are merely guidelines for schools. Some courts have viewed the notion of constitutionally protected academic freedom with scepticism.

The issue may be addressed soon by 9th Circuit U.S. Court of Appeals, which covers the West Coast. A Washington State University communication professor is challenging evaluations he received, claiming they were given in retaliation for his comments on how to improve journalism training at the university. A lower court sided with WSU, citing *Garcetti*. The professor, David Demers, has said AAUP will file a brief in his case.

Goldstein cautioned that the law may not be as accepting as organizations like the AAUP would like.

“I wouldn’t say that’s been reflected in the [case law] in any way... I think we just expect the world to work that way,” Goldstein said. “If Hypothetical State College decided to fire a professor for teaching that the world is round and is not the center of the universe, I don’t know of any First Amendment precedent that would prevent them from doing that. That said, generally speaking, an institution that exists for educational reasons tends to have policies and internal and external pressures to prevent that from happening.”

Social media policies could also be a concern for college professors. Levy said she has yet to hear of such speech codes at the university level, but that the AAUP would strenuously object to the implementation of such policies, particularly if the case law establishes classroom freedom for professors.

“I don’t think it should change all that much, although I think again there have been instances where universities have attempted to discipline faulty members for online speech,” she said. “Under our policies, I don’t think there would be all that much difference between online speech and not.” ■



A call for help

Analyzing school searches and seizures of cell phones

BY LAURA NAPOLI

Many K-12 schools ban or restrict the use of cellular phones in school. Imagine that you attend a school with a strict no-cell phone policy: phones can't be turned on during school hours, and you can't use your phone to text or to access social networking sites while at school. Can your school conduct a search to determine which students are violating this rule? If school administrators find out that students have been using phones during school, can they search the phones to see who the students have called or texted, or what websites they've visited?

School searches and seizures of students' cell phones are becoming increasingly common. The confiscation of phones is of special concern to student journalists, because "smart" phones are becoming the Swiss Army knife of newsgathering, capable of shooting photos and video, recording interviews, and holding endless virtual pages of notes.

While administrators often argue that searches are necessary to protect students from harassment and to protect the school from liability, the searches also impact student privacy rights. This article will describe the current law on cell phone searches and seizures, and explain why many school policies and practices are skirting on the edge of what is constitutionally allowed. It will also offer some practical tips for how to intelligently assert your rights if your phone is searched or seized, especially if you are using the phone as a newsgathering tool.

Student privacy vs. student protection

Because public schools are government agencies, their ability to seize and search property is limited by the Fourth Amendment. The Fourth Amendment provides that people have a right to be free from unreasonable searches and seizures.¹ This right applies to minors as well as adults; however, the question of what constitutes an "unreasonable" search and seizure in a K-12 school is different from what is "unreasonable" in the adult world.

Outside of school and for all adults, law enforcement needs to show "probable cause" before a person's possessions may be searched. "Probable cause" essentially means that the person conducting the search (usually a police officer) must have a reasonable belief that the person or place to be searched is concealing evidence of a crime.² In contrast, school administrators need only show "reasonable suspicion" before they may search a student's possessions. To show "reasonable suspicion," school administrators don't need the same level of certainty that would be required to establish probable cause.³ Thus, although "reasonable suspicion" may sound similar to "probable cause," courts have acknowledged that it is a less exacting standard. What constitutes a "reasonable" suspicion in the school context depends on the dangerousness of the suspected offense and the certainty of the information that the school has.⁴ Importantly, having a "reasonable suspicion" means that administrators must be reasonably certain that their search will turn up something related to a rule violation or a crime.

Requiring that government agents have a provable factual basis to believe that a rule or law has been broken before conducting a search helps protect people from unconstitutional invasions of privacy. The courts have developed standards such as probable cause and reasonable suspicion as a means of balancing public safety against personal privacy. Some schools, however, are stretching these limits with policies that push student privacy into the background when it comes to the contents of cellular phones.

Troubling occurrences

Changes in technology are presenting greater opportunities for conflicts over student privacy. A generation ago, book-bags and lockers were the center of disagreements over the scope of schools' search-and-seizure authority. Today, advancing phone technology has given students the ability to carry around vast amounts of information, as well as to communicate through texts, chats and Facebook messages.

Now that students can send instantaneous electronic messages, administrators fear that harmful communication, such as harassment or bullying, will proliferate. Schools have responded to this perceived threat by adopting policies and practices that increasingly encroach on students' personal privacy. In recent years, administrators have attempted to access student information in new and unprecedented ways, including punishing students who refuse to provide the information requested.

In one recent example, a high school cheerleader in Mississippi was told that she needed to provide her Facebook login information to her coach as a condition of remaining on the cheerleading squad.⁵ Mandi Jackson was disciplined after her coach logged into Jackson's Facebook account and read private electronic messages in which the student criticized a classmate. The school justified the coach's behavior by saying that the coach was looking at all team members' social media pages for evidence of alcohol or drug use.

The Jackson case exemplifies the aggressiveness with which some schools have probed into their students' electronically documented private lives, even where there is no particular reason to believe that a law or rule has been violated.

In 2010, a school in Virginia sought guidance from the state's Attorney General, asking whether a teacher could confiscate and search a student's phone if a classmate complained that the student had sent a harassing text message.⁶ Attorney General Ken Cuccinelli responded that the teacher's actions would not violate the student's Fourth Amendment rights; however, he went further, noting that searches of student cell phones and laptops were permissible whenever they were based on reasonable suspicion that the student was violating the law or school rules.

Although Cuccinelli did say that the scope of the search must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction," the broad language of his opinion gave wide license for school officials to search student electronic devices anytime they believe any law or rule has been violated, even one not requiring the use of a phone. (While it seems likely that the Attorney General intended that the law or rule violation should somehow relate to actions taken with the phone, he did not employ such limiting language in his opinion. Read literally, the opinion could give an administrator the green light to search a student's phone even if the student is simply tardy or is walking the halls without a pass.)

Although the Virginia opinion is merely advisory and affects

only one state, many schools across the country have adopted similarly worded policies that are comparably overbroad or that fail to address the extent to which a student's phone may be searched. For example, the policy at one high school near Bakersfield, Calif., provides for the confiscation of phones if students bring them to school; however, the policy does not state whether and how a school official may search a seized phone.⁷ Without guidance or limitations, administrators may feel free to search confiscated phones as they see fit.

A more balanced policy can be found at Linden Unified School District, another California district. Linden's policy states that administrators may not read private text messages stored on students' phones unless there is "good reason to believe" that the search will show that a student has violated a law or school rules.⁸ Even if good reason exists, the policy requires that the search be limited to the alleged infraction that led to the phone's seizure. This means, for example, that administrators cannot search all of the text messages on a student's phone if the infraction is merely having the phone switched on during class. Precisely worded policies that place limitations on the extent to which administrators can search more closely adhere to the balance struck by the Fourth Amendment.

A split in the courts

Some of the lack of clarity in schools' approach to the privacy of cell phones can be attributed to the failure of federal courts to set down clear constitutional standards. Courts have reached differing results when analyzing the constitutionality of cell phone searches, whether in schools or in the off-campus realm of citizen/police encounters.

In 2006, a district court in Pennsylvania heard a case in which a teacher confiscated a student's phone after the student displayed it during school hours, in violation of school policy.⁹ The teacher and assistant principal proceeded to use the phone to call nine other students listed in the student's directory to ascertain whether those students also had their phones on in school. The administrators also searched the student's text messages and voice-mail, and held an instant message conversation with the student's younger brother. The court denied the school district's motion to dismiss the case, holding that the student stated viable claims that his rights had been violated.

In contrast, a court in Mississippi recently held that, upon witnessing a student improperly using a cell phone at school, it was reasonable for school officials to conduct a relatively extensive search of the phone. In that case, *J.W. v. DeSoto County School District*, a teacher saw the student using a cell phone and confiscated the phone.¹⁰ Although the teacher suspected no further wrongdoing by the student, he opened the phone and viewed the pictures stored on it. Several pictures depicted the student dancing in his home bathroom, and one of them showed another student holding a BB gun. After viewing the photos, the teacher ordered the student to the principal's office, where the student was punished for the content on his phone.

The court declined to overturn the discipline. The judge reasoned that the student's phone was contraband the moment it was brought on campus. Consequently, school officials could use the phone to determine to what end the student was improperly using it, and that their search of the phone's photos was not unlawful.

The U.S. Supreme Court has not yet weighed in on the subject of searching and seizing phones in school. But the Court's most recent school-search case gives some idea of the standards



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that the justices would apply if a student challenged a search under the Fourth Amendment.

In *Safford Unified School District v. Redding*,¹¹ the Court decided that Arizona school administrators violated the Fourth Amendment by strip-searching an eighth-grader who, according to a tip, was believed to be carrying ibuprofen pain-relief pills. The Court ruled that the legality of a search varies according to: (1) the severity of the intrusion on privacy, (2) the reliability of the school’s information, and (3) the dangerousness of the item that is being searched for.

According to the standards set forth in the *Redding* case, it should be more difficult for a school to justify searching truly private material on a cell phone (such as text messages between individuals) as opposed to non-private material, such as postings to a publicly viewable Facebook wall. And the intrusion will be easier to justify if the school believes that the messages involve dangerous behavior – for example, arranging a drug deal or a fight.

Courts have not decided many school cell phone search cases, so often it is logical to analogize to searches of adults’ phones to determine whether and to what extent a student’s phone may be searched. Yet, the courts are clearly divided about whether law enforcement may search a cell phone without first obtaining a search warrant.

For example, the California Supreme Court has held that law enforcement may search a phone without a warrant during an arrest of an individual because the phone is the arrestee’s personal property, and personal property may be searched incident to an arrest (for example, the trunk and glove box of a car may be searched after a car is towed and impounded).¹²

In contrast, the Ohio Supreme Court has held that unless an officer’s safety is at stake or there is an emergency, the Fourth Amendment prohibits warrantless searches of cell phones seized during an arrest.¹³ The court reasoned that a cell phone’s ability to store extensive data gives owners a higher level of privacy, thus necessitating a warrant before a search can be performed. Overall, about three-fourths of the publicly available court rulings have taken the side of the California court, while the rest follow the approach of the Ohio court.¹⁴

This division in the courts indicates a need for clear rules setting out when and how extensively a phone can be searched. Until such constitutional standards are clarified, schools will be left to make policy on their own, and at least some are likely to overreach and allow for the content of phones to be searched even when administrators have no reasonable suspicion that the phone is related to a violation of a school policy or rule.

Policy arguments against searches

Legally, schools’ ability to take away and search phones is limited by the Fourth Amendment. But there are also significant public policy and practical arguments against giving administrators wide-open authority to look through the content of students’ phones.

For example, giving administrators an unfettered license to search students’ possessions necessarily sets a questionable example for students. Schools are the government, and the message that government agents get to read people’s private messages with little or no basis for suspicion is likely to breed distrust and cynicism.

Students who are experiencing family or emotional turmoil may use their phones to reach out confidentially for help to a trusted friend or counselor. A student who believes that her phone is at risk of being searched and its messages read or played by school administrators may be less likely to get needed help. As phones can store increasingly more information, unlimited phone searches can probe very deeply into students’ lives. Students may also use their phones for activity that they legitimately want to keep private from their school administrators for fear of retaliation, such as filing complaints about the school or contacting legal counsel.

Additionally, many schools are awakening to the learning possibilities that can be furthered through the use of phones, and programmers are constantly designing educational apps for school use. Searching and seizing phones detracts from their emerging potential as classroom tools. In today’s world, media literacy is a fundamental life skill, and in order to acquire this literacy, students must familiarize themselves with technology and learn to use it responsibly.

Student journalists face particular concerns when their cell phones are searched, as cell phones are increasingly becoming a journalist’s newsgathering tool of choice. As student journalists increasingly use their smart phones to communicate with sources and to store information, searches of student journalists’ phones can reveal sensitive and confidential information. In addition to invading a journalist’s personal privacy, these searches also present the risk that confidential sources and information will land in the wrong hands, thus compromising the journalist’s credibility and ability to properly do her job.

What to do if your phone is seized

Although phone searches and seizures can be intimidating, students can take precautions to protect themselves.

As a student, it is critical to know your school’s policy toward cell phones. By doing so, you can both make sure that you are complying with it and also assess whether the policy is consistent with constitutional principles. A policy that gives administrators total discretion to look at anything in a student’s phone for any reason is almost certainly unconstitutional.

If you identify ways in which your school’s policy is constitutionally deficient or simply overreaching, take steps to publicize these shortcomings and to pressure your school district to adopt changes. Often, such policies have been purchased as “one size fits all” standardized policies, and have been enacted with very little input from those most affected.

In particular, it is advisable for the search policy to prohibit

an administrator from conducting a search unless it is related to the particular violation for which the phone was seized in the first place. For example, a student found violating a policy requiring all phones to be off could not have his phone searched for any reason other than to determine that the phone was in fact on; once that is determined, then the search should end.

Even if the school's policies look good on paper, they may still not be carried out properly in practice. Once again, knowing the contours of your policy will help you assert yourself if your phone is taken away and searched in violation of the school's own rules. As a journalist, you should ask questions about the school's seizure of phones. How often does it happen? Which school personnel are allowed to search the contents of phones, and what standards are they given? Do not be afraid to publicize searches that violate established school rules, as administrators must comply with the policies they establish.

As a journalist, if your phone is taken by a police officer (as opposed to a teacher or principal), then you may have additional legal protections beyond the Fourth Amendment protection that every citizen enjoys.

A federal law, the Privacy Protection Act, limits the type of journalistic material that can be seized by law enforcement without a court order.¹⁵ The Privacy Protection Act protects any place that a journalist stores work product, including inside of a cell phone. Although the Act has never been applied in court to a student journalist, the law's broad language clearly favors an interpretation that includes student journalists; in fact, Congress enacted the law in 1980 specifically because of a search of a student newsroom at Stanford University.

If your phone contains unpublished photos, video, notes or interviews gathered for a legitimate journalistic purpose and the police try to take it away, you should mention the Privacy Protection Act and – if the phone is taken anyway – call a lawyer as soon as possible to try to prevent police from searching it.

The Privacy Protection Act, however, is limited. It probably does not apply if the person doing the search is not a law enforcement officer or working on behalf of a law enforcement agency. And there is an exception that allows police to search without a court order if the journalist himself is suspected of breaking the law. So if the police are searching your phone because they believe that you made a threatening Facebook post or sent a threatening text message, then the PPA may not help you.

Journalistic material stored in a phone may also be protected by your state's reporter privilege law, sometimes called the reporter shield. Shield laws vary by state, but they usually allow a reporter to, at the very least, refuse to give up the identity of confidential sources (and some laws go much further and allow a reporter to refuse a demand for any unpublished material, such as notes).

If you are concerned that your phone contains confidential journalistic material that would cause harm if it fell into the hands of school authorities – such as compromising the identity of a confidential source – then you should claim the protection of the reporter's privilege and (politely and calmly) ask that you be given a chance to consult an attorney before surrendering the phone.

Finally, the photos and recordings that you have made with a phone are your property, and even if a school is legally entitled to search the phone, it is never permissible for a school to simply destroy a student's photos or other personal property. (Because many school employees don't fully appreciate – or respect – this legal principle, it's a very good idea to back up any essential data from a phone, such as emailing yourself copies of news photos.)

Above all, if your phone is seized or searched, remain calm, and politely express your disagreement with the search, citing the law or school policy if necessary. Do not try to interfere with or obstruct the search, but remember as much as you can about it so that you can report the details later. If you feel the search was in violation of your rights, report it to higher-up school authorities or contact the Student Press Law Center for help.

Conclusion

Although schools are increasingly implementing invasive search and seizure policies, students need not feel intimidated. By becoming informed about the law and your school's policies, you can stand up and knowledgeably defend your rights. Schools rarely are thinking about journalists when they make policy about cell phones – many administrators are not schooled in the journalistic uses of a smart phone. So you may have to educate your school about why, as a journalist, you have a special privacy interest in what is recorded on your phone, and that you may be entitled to additional privacy protection.

Attorney Laura Napoli, a former SPLC legal fellow, practices with the New York law firm Weil Gotshal & Manges.

Endnotes

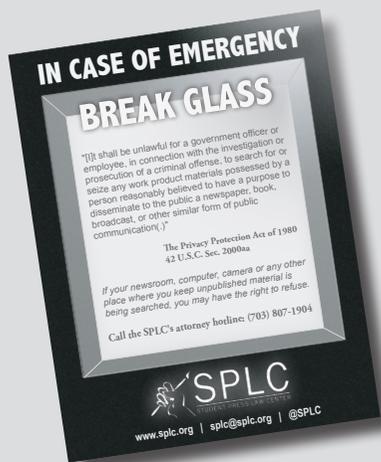
- 1) U.S. Const. amend. IV.
- 2) *See, for example, Carroll v. United States*, 267 U.S. 132 (1925) (allowing the warrantless search of an automobile if there was probable cause to believe that evidence was present).
- 3) *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (requiring that school administrators have a "reasonable suspicion" before performing a search).
- 4) *Safford Unified School District v. Redding*, 129 S.Ct. 2633 (2009) (holding that strip search of middle school student violated the Fourth Amendment when school lacked reasonable suspicion that over the counter drugs in student's possession presented a danger or that drugs were concealed in student's underwear).
- 5) Brian Stewart, "Student files lawsuit after coach distributed private Facebook content," SPLC News Flash (July 22, 2009), <http://www.splc.org/news/newsflash.asp?id=1938>.
- 6) *See* Frank LoMonte, "AG Cuccinelli's go-ahead to search student cell-phones raises Fourth Amendment questions," SPLC Blog (Nov. 29, 2010), <http://www.splc.org/wordpress/?p=1246>.
- 7) Jorge Barrientos, "Schools Examining Cell Phone Policies to Address Distractions," Bakersfield.com (Jul. 18, 2010), <http://www.bakersfield.com/news/local/x1685666237/Schools-examining-cell-phone-policies-to-address-distractions>.
- 8) "School District Agrees to Protect Student's Privacy," ACLU of Northern California, http://www.aclunc.org/issues/technology/blog/school_district_agrees_to_protect_students_privacy.shtml.
- 9) *Klump v. Nazareth Area Sch. Dist.*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).
- 10) 2010 WL 4394059 (N.D. Miss. Nov. 1, 2010).
- 11) 129 S.Ct. 2633.
- 12) *People v. Diaz*, 244 P.3d 501 (Cal. 2011).
- 13) *State v. Smith*, 124 Ohio St.3d 163 (Ohio 2009).
- 14) Stephanie Francis Ward, "States Split Over Warrantless Searches of Cellphone Data," ABA JOURNAL (Apr. 1, 2011).
- 15) Privacy Protection Act § 2000aa, 42 U.S.C. Ch. 21A (2010).

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