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**STUDENT PRESS LAW CENTER REPORT**

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Organizations for purposes of identification only
This edition of the SPLC Report marks the 40th anniversary of the Supreme Court’s Tinker decision, in which the Court famously declared that students do not “shed their constitutional rights to freedom of speech or expression” at the schoolhouse gate.

The 40-year history of judicial decisions since Tinker is largely a story of retrenchment. Court after court has found ways to chip away at the First Amendment protection afforded to student speech, most recently in a string of rulings allowing schools to punish students for online criticism of teachers or administrators on personal Web pages entirely created outside of school time.

I recently participated in a panel discussion at the National High School Journalism Convention on what is left of Tinker’s strong First Amendment safeguards after the Supreme Court’s 1988 ruling in Hazelwood School District v. Kuhlmeier. Hazelwood granted administrators wider (though not unlimited) latitude to censor school-affiliated publications.

The highlight of the panel was a presentation by Robert Haar, a distinguished litigator who represented the Hazelwood East school district before the Supreme Court. Haar delivered a balanced assessment of the ruling and the Court’s rationale for it. But when the discussion turned to Hazelwood’s impact on journalism education, Haar acknowledged that, were his son to study journalism, he would want his son to attend a school with the Tinker level of protection for student speech, because that is known to be the sounder educational method of teaching journalism.

Haar’s observation reflects a growing consensus among not just journalism advisors, but all educators, that censorship undermines the educational benefits students gain in journalism.

This past July, the nation’s biggest teacher organization, the National Education Association, adopted a resolution declaring firm support for free expression in student media. In the resolution, delegates to NEA’s national convention affirmed that “freedom of speech and press are fundamental principles in our democratic society granted by the First Amendment ... , and these freedoms provide all people, including students, with the right to engage in robust and uninhibited discussion of issues in student media.”

The NEA resolution echoed the sentiment of the nation’s largest professional association of college journalism instructors, which in April 2008 issued a strong declaration of the value of uncensored student expression. The words of the Association of Schools of Journalism and Mass Communications are a resounding rejection of the mindset of a minority of administrators who see the student media as a problem to be minimized or eliminated:

“Students who work on high school media learn to think critically, research topics, conduct interviews, write clearly for an audience and work together as a team. In schools with strong journalism programs, they also learn how a free and responsible press can improve their school communities by informing, entertaining and influencing their audience. … ASJMC supports strong journalism programs as not only the training programs as not only the training ground for future journalists but also as the place all students can learn about, appreciate and practice democracy in action.”

— Frank LoMonte, SPLC executive director
Money woes hit campus

As commercial media face bleak profits, some students struggle to overcome bottom lines

BY ERICA WALTERS

Across the nation college newspapers are either struggling with money or holding steady in a less-than-perfect economy. While college publications try to keep their advertising revenue and readership up to avoid job cuts and losing publication days, commercial newspapers have fallen behind.

Gannett Company Inc. publishes some of the nation’s best-known newspapers, including USA Today, 85 daily newspapers and 900 non-daily publications. In the past year, Gannett declared it would lay off 10 percent of its local newspaper workforce to remedy advertising revenue loss. The McClatchy Company, another newspaper publisher that publishes 30 daily newspapers, initiated a one-year wage freeze on all employees. With the decline in revenue worsening for the commercial newspaper industry, some college publications are avoiding their big brothers’ fate, while others are following suit.

With a budget provided primarily by advertisers or the university, some campus newspapers are experiencing money woes similar to their commercial counterparts. Because of the lack of money, the content and circulation of some student newspapers may be in jeopardy.

The Daily Bruin at the University of California at Los Angeles receives no funding from the university and is struggling to pull in money from advertisers, while the Red and Black at the University of Georgia, in Athens, Ga., rebounded after seeing a decline in advertising revenue. The Arbiter at Boise State University, in Boise, Idaho, saw its budget cut in half.

But some papers, like the Daily Tar Heel at the University of North Carolina at Chapel Hill, are experiencing business as usual as revenue has not declined and no positions have needed to be cut.

Even though college newspapers are alike in their missions, they experience different monetary fates. Recently, two national publications surveyed the health of campus media at both independent and dependent papers and came to glass-half-empty/glass-half-full conclusions.

Inside Higher Education published an article in September (“Print Journalism Squeeze Hits Campuses”) that found a drop in funding for several campus papers, while the Chronicle of Higher Education published an article days later (“Student Newspapers Escape Most Financial Problems of Larger Dailies”) reporting optimism for college newspapers.

Funding falls

The Daily Orange, an independent newspaper at Syracuse University in Syracuse, N.Y., announced it would cut publication days from five days to four, just as the Daily Californian, another independent newspaper at the University of California at Berkeley, announced it would drop its Wednesday publication.

“The Daily Cal is in a serious financial crisis from a downturn in advertising revenue,” said Bryan Thomas, editor in chief. “We had to cut a day of publication this semester, and we’ve significantly reduced other expenses, including pay for our students.”

The Daily Bruin, an independent student newspaper at UCLA, does not receive funding from the university.

“All revenue for UCLA Student Media is generated from our own staff,” said Jeremy Wildman, business manager. “We had a poor first month with a deep decline in national advertising, but we have had an increase and look to have rebounded for October 2008.”

The Daily Bruin’s revenue has fluctuated in past years, experiencing a decline in revenue between 2001 and 2005 while rebounding in 2006 to 2008.

As Arendt looks toward the future, he said he would rather cut circulation than student jobs.

The Arbiter’s funding was cut in half by a committee composed of students, faculty and administrators in the fall, and the Arbiter lost its second largest advertiser, which had been advertising with the newspaper for 12 years.

However, when it comes to lowering wages or cutting circulation days, he plans to hold off on doing so.

“The economic situation has hurt us,” Arendt said.

As Arendt looks toward the future, he said it is hard to predict what is going to happen to the newspaper. He said he would rather cut circulation than student jobs.

The Arbiter has thought about ways to ensure that it does not venture into the red. With eroding advertisers, the average amount of 12 pages per issue may drop to 10.

Because of a lack of funding, the newspaper had to cancel travel to two conferences the staff planned on attending and delay the purchase of new computers. The Arbiter staff has to deal with a lack of computers and space for its 53 staff positions, one full-time position and 25 interns. The Arbiter newspaper has five desks for interns, which cannot accommodate the 25 interns at once.

Arendt said the interns have to worry about the lack of space when it comes to working and gaining experience in the newsroom. Some have to work outside the newsroom, which hinders their hands-on internship experience.

Arendt believes that the committee that cut the newspaper’s budget in half will rein-
state its budget back to its original amount and that any miscommunication was cleared after meeting with administrators.

Miscommunication about the money the Arbiter received from student fees, the amount of money the newspaper had in reserve and money the newspaper made from advertisers, painted the Arbiter as having an abundance of money. “I have hope because the administration has recognized that we should not have been cut,” said Arenda. “They have been really supportive.”

Staying afloat

Economic shortfalls to one newspaper might be bad, but for the Good Five Cent Cigar, the student newspaper at the University of Rhode Island at Kingston, the state’s nine-figure deficit is giving the newspaper an overflow of stories to report. And as fruitful as the stories are, so is the funding.

“We definitely have more full-page ads than in recent years,” said Chloe Thompson, managing editor. “We also haven’t really had any staffing problems. The economy is giving us an overflow of stories to cover, since Rhode Island has a deficit of more than $300 million.”

The Red and Black, an independent student newspaper, is doing fine, but Harry Montevideo, publisher of the paper, worries that with the commercial newspaper industry faltering, recruiting students to work for the newspaper may become difficult.

“The malaise that affects the commercial newspaper industry and other media may make careers in newspapers or journalism less attractive to college students,” he said. “If enrollment in the journalism programs decrease, then we might find it harder to attract students to come work for us.”

Montevideo said the Red and Black has not yet seen that happen. For 25 years, the Georgia paper has been funding a reserve “to insure its long-term viability,” he said. The newspaper owns its own building and is free of any debts or mortgages. Because of the economy, the paper has only seen a small decline over the past three years. With no budget cutbacks, the newspaper staff expects to make a slight profit in 2008, according to Montevideo.

“As with most college newspapers, we’re fortunate to have somewhat of a captive audience,” Montevideo said. “Since students, faculty and staff are required to be on campus most every day, we have a large base of readers congregating in a relatively small geographic area.”

The Red and Black offers free copies and a wide variety of content.

“There’s something for everyone and very few reasons not to pick one up,” he said. “It’s generally a quick read, and when students see their friends reading copies there’s also the ‘peer pressure’ factor.”

Logan Aimone, executive director of the National Scholastic Press Association, a nonprofit educational association, said that the college newspaper is a nicely targeted product geared towards a specific audience, but it can still have its problems.

Aimone said college newspapers, like commercial papers, are facing revenue shortfalls because of the economy.

“Advertisers are spending less,” he said. Montevideo said the Red and Black does not anticipate changing anything about the newspaper.

“We think there is still a number of healthy years ahead for the Red and Black and many other college media organizations,” he said.

Montevideo is also the chief administrative officer of a small “not-for-profit.” He manages accounting, insurance and other managerial responsibilities at the Red and Black.

He said that like the newspaper industry, the Red and Black is looking at ways to increase revenues from online publishing, but the paper is having similar problems as commercial newspapers with generating the same dollar levels online as they do in print.

“I think for the short-term and perhaps as long as students continue to read our printed products, we’ll be OK,” he said. “Long-term, I think we’ll have to be more innovative in finding ways to connect our community with the businesses they patronize and vice-versa.”

But after being in the newspaper industry for many years, Montevideo admits he does not have a quick solution to the economic problems in the industry.

“I wish I had a formula to share, and I’ve been doing this for almost 30 years now,” said Montevideo. “But so much has changed with the Internet, the problems commercial newspapers are having with readership and now the economy.”
Speech rulings can impact media

Student legal cases give campus publications glimpse into limits

By Erica Walters

In 1969, the Supreme Court established in Tinker v. Des Moines Independent Community School District that students have the right to freedom of expression at school as long as their expression does not cause “substantial disruption.” But when some colleges and universities tried to govern students’ rights, those students took the matter to court and, in some cases, prevailed. These cases did not involve the media, but the court rulings may impact student journalism.

At Texas Southern University in Houston and at Temple University in Philadelphia, Pa., students spoke out against their universities to have their First Amendment rights upheld. At Texas Southern a jury ruled that three students were retaliated against, while Temple’s speech code was found to be unconstitutional. Even though the cases are different, they illustrate the struggle some students face at colleges and universities.

First Amendment Center scholar David Hudson pointed out that cases like Tinker and Bethel School District v. Fraser, in which the Supreme Court permitted a public school to punish a student for a campaign speech the school alleged was indecent, did not involve student media but the rulings may impact student publications.

“Often times cases involving non-student media have discernible impact on student media cases because the courts do not distinguish between the two to any great degree,” said Hudson.

Suing Texas Southern

In 2005, three students at Texas Southern sued the university, alleging the school retaliated against them. The retaliation came after the students exposed the mismanagement of school funds by university officials by distributing fliers documenting the corruption.

Justin Jordan, William Hudson and Oliver Brown’s lives at Texas Southern began to change as they spoke out against university officials and got Texas’ governor involved. The corruption was found unexpectedly by the students after another student was murdered on school property. Hudson, Brown and Jordan, as part of student government, were surveying campus for safety improvements when they stumbled on payroll records in the front seat of a dump truck. The records documented the corruption of some university officials. The students distributed fliers with the information from the recovered payroll records and petitioned for new administrators.

Jordan said because of their speech, the university retaliated by kicking Hudson out of the university, forcing Brown to leave and pressing criminal charges against him on identity theft because the university alleged a flier gave an official’s Social Security number.

The students involved in the case were not associated with the media, but the fact that university officials tried to stop university-critical information from being disseminated may affect student publications.

“The students at TSU got punished for telling the truth and exposing wrongdoing, two things that go to the core mission of every journalist,” said Adam Goldstein, legal advocate for the Student Press Law Center. “How could a student reporter feel like they could do their job in a climate where that happened?”

Patrick Gilpin, civil rights attorney and a former professor at Texas Southern, represented the students in their case against the university. He said the students were appalled with the amount of corruption and the disregard to correct the problem by the authoritative figures at Texas Southern.

The lawsuit alleged the students’ First Amendment rights were violated, and the students asked that all of the disciplinary actions be dropped and removed from their academic records.

In August, a jury reached a general verdict in favor of Jordan, Hudson and Brown.

Together the students were awarded $200,000. Jurors decided the students’ First Amendment rights were violated, Hudson and Jordan were falsely arrested and the university “maliciously” prosecuted them. The jury also found that the four university officials involved did not qualify for immunity in regards to mistreating the students.

In the end, Jordan said they were glad they finally got their day in court.

Overbroad speech code

On Aug. 4, the Third U.S. Circuit Court of Appeals released an opinion in DeJohn v. Temple University, upholding a federal district court decision that the university’s speech code was unconstitutional.

The speech code prohibited “generalized sexist remarks and behavior.”

Christian DeJohn was a graduate student at Temple and a sergeant in the Pennsylvania Army National Guard when he was deployed to Bosnia. While away from school, DeJohn received anti-war e-mails from a history professor. He made his dislike for the e-mails known.

After his hiatus from Temple, DeJohn returned to complete his master’s degree. But his degree was denied. Represented by the Alliance Defense Fund, a non-profit that pro-
Speech causes problems

At various universities and colleges, students faced harsh punishments for protected speech. These cases may influence how officials deal with student media on campus, as well.

- In Binghamton, N.Y., Binghamton University officials tried to ban Andre Massena, a social work graduate student, after he put up posters critical of the Department of Social Work. The university ordered Massena to apologize and leave the program for a year without the guarantee of being reinstated. However, the university abandoned its attempt after the Foundation for Individual Rights in Education took Massena’s side. FIRE sent a letter to university President Lois DeFleur about the infringing of Massena’s rights.

- Officials at the University of Texas at Austin, threatened to ban Connor and Blake Kincaid after the two posted political signs in their university dorm windows. After several attempts to make the students remove the signs, the university threatened to refuse spring registration to the students. However, the move to subdue the students’ political speech sparked national attention, and two days after the students were given an ultimatum to take the signs down, the university suspended the sign policy and said it was being reviewed.

- Beta Upsilon Chi, a Christian and male-only fraternity, was denied registration to become a student organization at the University of Florida in Gainesville because the university alleges that the fraternity discriminates on sex and religious affiliation. The fraternity believes that UF is denying registration to the fraternity as way of “dictating” the First Amendment. In a complaint filed in court, BYX said that the university’s decision to deny its application for recognition as a registered student organization because of the group’s policies violates its right of free speech guaranteed by the First Amendment.

The fraternity was allowed to register as a student organization by a special motion panel decision of the Eleventh U.S. Circuit Court of Appeals. BYX appealed a federal district court decision to the Eleventh Circuit that said BYX “has not yet demonstrated a violation of its constitutional rights.” The case is ongoing.

Lois DeFleur about the infringing of Massena’s rights.

David French, lead counsel in the case, said that DeJohn was acting selflessly in suing the university.

“He experienced actual discrimination based on his political views while he was there,” French said. “He wanted to get rid of the policy, essentially to protect the rights of all Temple students.”

In April 2007, in a federal district court ruling, DeJohn was awarded $1 in nominal damages, and the university was barred from reverting back to its original speech code. The university appealed.

“Temple University is disappointed that the court found that its former sexual harassment policy was unconstitutionally overbroad. The former policy, adopted in 1990, tracked the Equal Employment Opportunity Commission’s definition of sexual harassment,” Temple officials said in a press release.

Temple officials said the policy was amended in January 2007, and Temple’s current sexual harassment policy has not been challenged.

DeJohn’s claim that the university denied his degree because of his political views was dismissed and the university maintains that DeJohn did not meet the academic requirements for the degree.

“The opinion does not disturb the trial court’s determination that Temple appropriately exercised its academic freedom when its professors determined that DeJohn’s thesis did not meet the requirements for a master’s degree,” officials said.

After Temple appealed the federal district court’s decision, the Foundation for Individual Rights in Education and the SPLC, among other groups, supported DeJohn by filing a friend-of-the-court brief to the Third Circuit Court of Appeals.

“The constitutional rights of Americans are fundamental and may not be diluted or restricted simply because they hinder the plans of college administrators to establish an atmosphere free of discomfort or controversy,” the groups stated in the brief. “Nor can these rights be abridged under the guise of prohibiting the unlawful conduct that is distinct from speech, such as violence or true harassment.”

The groups requested that the court uphold the federal district court’s ruling. The brief said that Temple’s speech code was “vague and overbroad” and prohibited speech protected by the First Amendment for more than 20 years.

“First Amendment rights are precious and the mere fact that someone is angered or offended by your speech does not mean it loses its protection,” French said. “In fact, it is the speech that offends or causes people to get angry, that requires protection. Speech that pleases everyone does not need a First Amendment.”

In August 2008, the decision was upheld.

“What the court does a really good job of doing here, is to pierce the university facade that they can somehow re-label what is normal day dissent as harassment,” French said. Although the cases involved speech and not the media, they may have the ability to affect the press.

“One of the prime roles of the media whether in the larger community or on campus, is to challenge the status quo, to examine claims of those in power,” said French. “That can be incredibly challenging and can anger those in authority.”

However, French said that the DeJohn ruling says that students are able to question what is being taught without a fear of punishment and that because of this, the press can freely question authorities and public figures without a fear of being censored.

William Creeley, director of legal and public advocacy for FIRE, said that the DeJohn case affirms that adult speech on campus cannot be prohibited.

“The ruling indicates that the student press is entitled to the same protection,” he said.
By Erica Walters

When former editors at the university-sponsored newspaper, the Chronicle, leaped to an independent, online-only newspaper, Quinnipiac University officials in Quinnipiac, Conn., isolated themselves from the student journalists.

The fall 2008 semester brought many problems for the Quad News, the newly independent paper. Interviews with university officials were off-limits.

Along with 15 editors and 25 contributors, Jason Braff, a senior and editor in chief of the Quad News, kept covering news stories without the cooperation of university officials.

“We have to continue covering the stories we want to cover,” said Braff. “They may not be as good as we hope, since we don’t have the access we would like.”

In September, Daniel W. Brown, student center director, told the student chapter of Society of Professional Journalists that its status as a registered student organization on campus was in danger if it continued to interact with the Quad News. The threat was made after Quad News personnel used a campus meeting room that had been booked by SPJ.

Kendra Butters, co-managing editor at the Quad News, said the reserved room in question was approved and that is why the Quad News used it, but the room was later denied. She said the explanation of the room’s use mentioned the paper. After the threat, the university chapter of the SPJ said it would continue to support the Quad News. Now the newspaper staff meets in the cafeteria.

In a letter to university officials, the national SPJ expressed its concern for the threat. The letter emphasized that banning the SPJ would hurt the university’s reputation as an institution that respects the First Amendment rights of students, faculty and staff.

Lynn Bushnell, vice president for public affairs, responded with an e-mail to the university student body that explained the situation and accused the Quad News of trying to put the Chronicle out of business.

“It soon became clear that the real intentions of the students involved in this online-only paper / blog were decidedly hostile: they aggressively sought to undermine the continued existence of a University-supported newspaper for students,” said Bushnell in the memo.

Bushnell pointed out that the Quad News is not a registered student organization, and it has to be independent from the university in all aspects.

“These students want to be independent of the university when it involves student organizational rules and responsibilities, but they want to be part of the university when it comes to having access to university resources and the privileges of being a recognized student organization,” she said. “Unfortunately, in the real world, responsibility and playing by the rules go hand in hand with the privileges of membership.”

Student editors at the Quad News had no First Amendment recourse to challenge the university’s tactics, because the First Amendment does not regulate the conduct of private actors.

“It makes all the difference if we’re talking about public or private, because private is not governed by the First Amendment,” said Ronald Collins, scholar at the First Amendment Center.

Collins said that any type of censorship is a bad idea, but as a private institution, Quinnipiac has the right to do whatever it wants.

While Braff may not have the help of university officials, the Quad News has received help and donations from alumni.

“They should continue what they are doing and be sure they get their facts straight,” Collins said. “Probably, the best way to deal with this kind of censorship is to get faculty members, alumni and local papers to speak out.”

In October, the New York Times wrote an editorial denouncing the threat against SPJ. The editorial resulted in the university lifting its threat.

“While there were some disagreements, occasionally vigorous, with the student newspaper (Quad News) last year and at the beginning of this year, those differences were resolved,” Bushnell wrote in the letter.

Jaclyn Hirsch, president of the SPJ and co-managing editor of the Quad News, said she received a conciliatory letter from Brown, and she looks forward to working with the administration.

She said the Quad News has met with administrators to open communication. By the end of the fall semester, the newspaper had a good relationship with the university.

“It is good to see the work pay off in the end,” Hirsch said.
From Florida to Texas, newspaper thieves are learning after the first free copy of a newspaper, if they do not pay monetarily, they will pay somehow. But theft prevention tips may help to thwart a thief’s plan and save the newspaper money.

Just as a newspaper bandit surfaced at Texas Christian University, in Fort Worth, Texas, making off with 1,361 newspapers, the University of Texas at El Paso, reported 3,500 newspapers were stolen. The University of Central Arkansas, in Conway, Ark., reported 1,300 stolen newspapers, too. And the University of Tampa in Florida, in two separate incidents, reported about 800 stolen newspapers collectively.

In each incident, the thief sought to suppress information, ranging from a homecoming queen’s fans trying to preserve her image to a professor wanting to withhold bad news from incoming students.

**Thieves**

At Tampa, racks once filled with Minaret newspapers were emptied but not by readers. A professor who did not want incoming students to read about a crime that took place on campus disposed of the papers and later admitted to the act. And a few months later, a student stole newspapers because of a “cheer or jeer” section that jeered God.

While Tampa was having problems keeping its newspaper in the racks and out of trash bins, editors at TCU and UCA were experiencing similar situations. At TCU, a student dumped more than 1,300 copies of the Daily Skiff because he thought the it went too far in publishing a picture of his favorite professor, who was allegedly involved in a domestic violence dispute. A few days later, the thief confessed. Empty racks at UCA left speculation that an editorial critical of the Student Government president caused the theft. And at UTEP, an article covering the resignation of a homecoming queen prompted thieves wearing sorority and fraternity symbols to dump the newspapers.

**Punishment**

As the student staffs filed police reports, most posted editorials explaining why stealing newspapers is considered theft. At Tampa, Peter Arrabal, Minaret editor in chief, discovered that a university-issued punishment took six months with little results.

“I’m pretty sure that if we had gone to the Tampa Police Department, we would have seen full restitution, and she would have actually had to do some real community service in lieu of jail time,” Arrabal said in reference to the second theft.

He said the campus police took weeks to review videotapes and gave the thief a “ludicrous” punishment. The Minaret thief was fined $150 and forced to work 20 hours at the newspaper. The Minaret has not received the money but was notified that the student’s record was on hold until the she paid.

“If this happens at another school, I’d advise them to skip the campus police. Go directly to the local police department,” said Arrabal.

The Daily Skiff staff also took its case to the campus police and expects to receive about $700 for the stolen newspapers because of its policy that makes additional copies 50 cents.

The Echo at UCA and the Prospector at UTEP let the university handle their newspaper thefts. The investigations are ongoing. UTEP did not have a policy against unlimited free newspapers, and the Echo thief was never found.

“It was clear who it was, but with no concrete evidence to go off of, they basically pushed the case aside,” said Aprille Hanson, Echo editor in chief.

She advises other schools with theft problems to get the word out that it is a crime.

“I do not know if you can ever really prevent something like this, but surely you can make people aware,” she said.

**Prevention**

Some states are proactive in newspaper theft laws. California, Colorado and Maryland have laws that make emptying a box of free newspapers a punishable crime, said Frank LoMonte, executive director of the Student Press Law Center.

“Student publishers ought to be working with their press associations at getting more such laws enacted,” LoMonte said.

LoMonte said stealing newspapers is the

See Theft, Page 10
Arizona students protest ‘racist’ cartoon

ARIZONA — The Associated Students of the University of Arizona (AUSA) asked for staff members at the student newspaper, the Daily Wildcat, to receive mandatory training in diversity and tolerance after a controversial cartoon was published.

While the AUSA claimed it does not seek to censor the Daily Wildcat, ASUA President Tommy Bruce, as reported in the Daily Wildcat, said “the university paper needs to not be offensive.”

The controversial cartoon used the “N-word” in mocking racist attitudes about President-elect Barack Obama and ran in the Daily Wildcat after the election. Backlash from the cartoon started the next day as students complained to Editor in Chief Lauren LePage.

While some students wanted to see a front-page apology for the cartoon mishap, others attacked LePage personally. A forum was held to discuss the Daily Wildcat’s motive for publishing the item, and LePage admitted in an editorial on Nov. 7 that the cartoon was a mistake caused by a miscommunication.

“Whoever is responsible for not communicating properly with the Daily Wildcat staff, I hold myself accountable for the comic that ran,” she said in the editorial.

While apologizing, the newspaper did not agree to make editorial policy changes to eliminate anything readers might find offensive.

“Because the community decided, on its own, the (Daily Wildcat) editorial decisions would be to abdicate its responsibility as an independent newspaper — something we refuse to do,” the newspaper stated in an editorial.

Armstrong Atlantic settles funding suit

GEORGIA — University officials at Armstrong Atlantic State University in Savannah, Ga., agreed to restore full funding to the student newspaper, the Inkwell, settling a lawsuit filed by student editors in July.

“We wanted to settle with the school before it reached litigation level,” said former Editor in Chief Angela Mensing, after the Nov. 11 settlement was reached. “I am very happy. We just filed in July, and here it is, we are already settled, and it has been dismissed.”

The university agreed to reinstate the newspaper’s funding after the Student Government Association knocked $14,760 off of the Inkwell’s budget during the spring semester. The newspaper’s original budget was $69,500, which included university funds and advertising money.

Mensing sought legal advice from the Student Press Law Center and attorneys Richard Goehler and Gerald Weber, who are part of the SPLC Attorney Referral Network. The lawsuit stated that the budget cut was the result of articles critical of the university. During a budget hearing, Mensing said that there was mention of the newspaper’s content and of deficient coverage of the SGA.

Weber said that the settlement, which also included a payment of $7,500 in editors’ attorney fees, took steps toward advancing and securing journalism at AASU.

University may revise policies after sex issue

KANSAS — The University of Kansas in Lawrence, Kan. is reviewing its procedures on educating campus staff on public access to facilities after the student newspaper, the Daily Kansan, published a provocative photo in its “Sex on the Hill” issue.

The Daily Kansan published its annual sex issue in September and photos deemed too racy by some led to many complaints. Most of the controversy surrounded a photo that depicted two seemingly naked students posing in front of a KU World War II memorial, the Campanile.

Many students complained the photo was inappropriate and should not have been taken at the memorial. Matt Erickson, editor in chief, admitted that the newspaper was careless in publishing the photo.

The university said the review in procedure did not restrict the Daily Kansan from taking photos at the World War II site but protocol would be better enforced when it comes to accessing certain places on campus in regard to safety concerns.

States with statutes

Three states have newspaper theft law on the books to protect against one of the basic forms of censorship.

Maryland: Prohibits anyone from exerting control over a newspaper with the intent to stop the public from reading it. Someone caught violating the statute, if convicted, can be fined no more than $500 or imprisoned for no more than 60 days.

Colorado: Taking more than five copies of a newspaper from a distribution container is considered newspaper theft, a misdemeanor that is punishable by fine up to $5,000.

California: Taking more than 25 copies of the current issue of a free newspaper to deprive someone of reading it is considered theft, which can be an infraction or a misdemeanor punishable by no more than a $500 fine, 10 days in county jail or both.

Source: SPLC Newspaper Theft Forum
Photo by Zach White
Campus crimes slip through cracks

By Caitlin Wells

On April 5, 1986, 19-year-old Jeanne Clery was asleep in her dorm room at Lehigh University in Bethlehem, Pa. Another student broke into her room, tortured, raped and killed her. Her killer had entered the building through a door that was supposed to be locked but was propped open. Jeanne’s parents found out after her death that there had been 181 reports of doors propped open in her building in the four months before her murder and that students had not been told about multiple violent crimes on campus over the past few years.

The Clerys met resistance from Lehigh as the university denied negligence and asserted the campus was safe. The Clerys filed suit against the school for negligent failure of security and failure to warn of foreseeable dangers on campus, and in its settlement Lehigh agreed to improve campus security.

The Clerys also campaigned for federal legislation requiring colleges and universities to keep students informed about campus crime. The Crime Awareness and Campus Security Act passed in 1990 and was renamed in 1998 as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, usually known as the Clery Act.

Of the many aspects of the college experience, the effects of the Clery Act are prevalent but not necessarily striking. Many students probably cannot name what the Clery Act is, but they encounter its effects every time they read the campus police blotter in their college newspaper or get an e-mail notifying them about recent break-ins on campus.

The Clery Act was passed almost 20 years ago to ensure that college and university students are informed of criminal activity on campus. The act requires campus security forces to maintain a log of all crimes committed on campus and to distribute an annual report of crime statistics.

Amendments signed into law in August 2008 require universities to publicize their emergency response plans and to “immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation,” a measure included after the Virginia Tech shootings in April 2007.

However, as many universities are working on installing and testing their emergency notification systems, some institutions are still having trouble fulfilling the act’s original reporting requirements.

Crime logs

Since it was first passed, the Clery Act required that campus security departments keep a log of all crimes reported and that this log be made available to the public and kept up-to-date with incidents within two days of their occurrence. But some schools are still falling behind on this reporting.

Reporters at Sidelines, the student newspaper at Middle Tennessee State University in Murfreesboro, Tenn., published an editorial on July 23 noting the crime log had not been updated for nearly three weeks over the summer and 418 crime reports were missing from the campus crime logs.

Sidelines Managing Editor Andy Harper said that many of the 418 crime reports not in the campus crime log were in a separate “case log,” which he was told contained only miscellaneous items like medical emergencies and fire alarms. Harper found that some of the reports that appeared in the case log included vandalism, thefts and drug charges.

“I’m not really sure what’s ‘miscellaneous’ about those items, but they were missing from the crime log, and I found them in the case log,” said Harper.

S. Daniel Carter, director of public policy for campus safety advocacy group Security On Campus, said that consistently updated campus crime logs are important in keeping students informed about crimes occurring on and around campus.

“Each entry in the crime log is supposed to contain an easily understandable description of the crime,” said Carter.

Annual security reports

In addition to maintaining campus crime logs, some universities have found inconsistencies in the way they file the annual security reports that must be distributed to students and employees.

An Oct. 22 audit of the State University of New York system by the New York State Comptroller’s Office found inconsistencies in 19 out of the 29 colleges between the crime statistics published in the annual security reports and the reports submitted to the Department of Education. One college, Empire State College, reported statistics to the Department of Education but had not created an annual security report.

“We’re not saying that we think anyone deliberately did it, but there is certainly information that’s very concerning,” said Jennifer Freeman, a spokesperson for New York State Comptroller Thomas DiNapoli.

The audit found some of the colleges overreported crimes to the Department of Education, while others underreported incidents on their annual security reports. One school reported nine sexual assaults to the Department of Education, but only four in the annual security report. Some of the schools misclassified crimes by categorizing crimes that fell under...
Amending the Clery Act

Since it passed in 1990, the Clery Act has undergone several amendments. The most recent amendments were signed into law on Aug. 14, 2008, as part of the Higher Education Opportunity Act. The amendments expand the act’s reporting and emergency preparedness requirements.

- One of the more well known amendments to the Clery Act is the added requirement of a statement of “emergency response and evacuation procedures” to the annual security reports. Institutions are also required to immediately notify the campus of an imminent threat to students or staff. These measures are in part a response to Virginia Tech and other campus shootings, and many campuses have installed e-mail, text message and loudspeaker systems to meet this requirement.

- Schools must now report hate crime-related larceny-theft, simple assault, intimidation and vandalism in their Clery Act statistics. Previously, schools were not required to report hate crimes that fell under these categories.

- Whistleblowers exposing Clery Act violations are protected from retaliation.

- Campus security departments are required to disclose the extent of their law enforcement authority as well as any agreements between campus security departments and state or local police on investigation.

- The Department of Education must report to Congress each year on what it is doing to enforce the Clery Act.

Source: Security on Campus

the Act’s definition of reportable burglaries as larcenies, which are not required to be reported.

Carter said that the biggest question arising from the SUNY case was the definition of burglary versus larceny or theft. While burglary denotes unlawful presence or trespass into private areas, such as a dorm room, larceny covers the theft of items from public areas. Burglary is much more serious, said Carter.

“We’re very sensitive to that because the element of illegal presence signifies a far greater potential threat than someone merely stealing a book bag out of the library,” he said. “That’s someone who’s not supposed to be there.”

Freeman said that the comptroller’s office had reported the inconsistencies to the Department of Education but it would be up to the federal government to determine whether to take disciplinary action.

Lauren Sheprow, a spokesperson for SUNY at Stony Brook, one of the colleges cited in the audit for underreporting in its annual security reports, stressed that the Clery Act violations only mean that the school is not reporting correctly and that overall safety is not an issue. The university has taken steps to correct its information and update the annual security reports to match the Department of Education information.

“We take it very seriously. Obviously, we want to be completely compliant with the Clery Act,” she said.

The Washington Square Times, the student newspaper for New York University, recently reported that NYU’s Clery statistics were misleading because most of the campus dorms were categorized as “non-campus buildings” rather than as campus residence halls in the annual security report.

“Most people would look at the statistics and, not knowing the fine points of the Clery Act, would probably assume that all the residential facilities were probably included in the student residential facilities column,” said Carter in the Washington Square Times article. He recommended that the school specify which non-campus buildings are dorms in order to clarify the information.

Immediate response

The Clery Act has long required that colleges and universities notify students in a “timely manner” to threats to their safety. Following the Virginia Tech tragedy, amendments were signed into law in August 2008 to require schools to have “emergency response and notification procedures.”

Many colleges have adopted a text messaging alert system that allows students to receive emergency notices on their cell phones, and others send out e-mails or have installed public address systems.

But there have been reports of bugs in the new systems. At Oregon State University in Corvallis, Ore., the campus phone system lagged behind the text messages and e-mails, as some calls came in 30 minutes after the initial alert. Only a small fraction of the school’s students and faculty had signed up for text messages by the test date.

Jonathan Dolan, associate director of network services at the university, said that the low participation in text messages was “disappointing,” but that the delays in the phone messages are a case of human error and would be corrected. He said the phone delays did not affect public opinion.

“Everyone was very positive and very supportive of the system in general,” he said.

Alison Kiss, program director for Security on Campus, said that schools should have multiple methods in case one malfunctions.

“We encourage schools to have a multi-modal system, instead of one method to have many,” said Kiss. “This can be high or low technology, anything from text messaging systems to on-campus loudspeakers to instant messaging systems.”

At Western Kentucky University in Bowling Green, Ky., reports of armed gunmen on campus caused officials to send out emergency alerts via text message, e-mail and outdoor speakers telling students to seek shelter. Bob Skipper, the university’s media relations director, said that about 1 percent of around 14,000 individuals did not receive a text message.

“We know there are going to be someone who don’t get the text message for whatever reason,” he said. “That’s why we use the multiple layer approach.”

Other students say that their campuses have emergency alert systems, but have not used them. Student editors at the University of Nevada at Reno’s the Nevada Sagebrush wrote an angry editorial in fall 2008 about how the campus police did not issue either an emergency alert or a “timely warning” to students after a September shooting one block from campus.

“The only way we found out about was through sheer dumb luck,” said Sagebrush Editor in Chief Nick Coltrain. He said that although the university police responded to the shooting as a backup unit, the incident was not included in the campus crime log.

Commander Todd Renwick of the UNR police department told the Sagebrush that students had not been alerted because the incident posed no risk to students. Coltrain disagreed, saying that a shooting near campus is something that students need to know about.

“The point of the staff editorial was to say police didn’t tell us about that,” said Coltrain. “That is unacceptable. They should be alerting us to violent incidents so close to campus.”
Finding truth takes time
The dispute started on Oct. 14, 2007 when a female student-athlete was allegedly assaulted in her dorm room.

Alleged victim meets with Athletic Department. She is informed that an informal investigation would take less time and be handled immediately. She elects to go informally.

Iowa City Press-Citizen starts inquiring with UI police about the alleged assault. Police say they are unaware of such an incident.

Alleged victim contacts UI police for the first time.

Press-Citizen issues an FOI request for correspondence between several university administrators and a request for reports of sexual assaults from the beginning of October.

UI news release acknowledges alleged assault.

Iowa state Board of Regents notifies UI president that it would investigate the university’s handling of the assault. This investigation concludes that the university followed procedure.

Mother of alleged victim writes a letter to university criticizing Athletic Department.

UI releases some documents requested by Press-Citizen but not others.

Press-Citizen files suit against UI for documents.

Mother of alleged victim sends another letter to the university.

Arrest warrants issued for two UI football players. Both later surrender to authorities and are charged.

Board of Regents learns of letters from alleged victim’s mother.

Regents vote to re-open investigation of university’s handling of alleged sexual assault case.

UI releases an index of all the documents relevant to the Press-Citizen lawsuit and the reasons for withholding each one.

Independent law firm releases report to Regents that says university did not adequately protect alleged victim but no cover-up was involved.

UI President fires vice president for student services and general counsel.

UI files lawsuit against Des Moines Register to have a court clarify what the school is allowed to release in relation to an Oct. 1 FOI request.

Sweeping under rugs
Sexual assault is a serious cause for concern at any university, and when student athletes are involved, the cases can cause a media sensation. Recent developments in an assault case involving two former football players at the University of Iowa in Iowa City have caused more than the usual furor.

In addition to the criminal trial, open records lawsuits, inquiries into the university’s handling of the case and accusations of former administrators suing for wrongful termination have sent the university into a media relations nightmare.

On the night of Oct. 13, 2007, a female athlete says she was raped in an unoccupied room in her dormitory by football players Abe Satterfield and Cedric Everson. The woman went to the Athletic Department, where she was told that an informal investigation would allow the matter to be resolved quickly.

In a letter to the university in November 2007, the woman’s mother contends her daughter was harassed by Satterfield, Everson and their friends following the assault and that no steps were taken to remove her from the situation until she brought the case to the police. The complainant also discovered that the Athletic Department had not told her that a third student had allegedly been involved, and that this student had been living down the hall for several weeks.

The local newspaper, the Iowa City Press-Citizen, filed a lawsuit in January 2008 to obtain records relating to the school’s investigation into the alleged sexual assault when UI failed to deliver all of the requested documents within the 20-day time limit. The university refused to release around 2,400 pages of documents, citing the Family Educational Rights and Privacy Act (FERPA) and other privacy laws. Both professional and student journalists have encountered a recurring conflict in the case between open records requirements and student privacy laws.

The Press-Citizen requested the incident report as well as other documents relating to the alleged assault soon after it occurred.

“We asked many different officials about these rumors, and they basically wouldn’t respond,” said Jim Lewers, executive editor for the Press-Citizen. “And then once the university did acknowledge that this investigation was going on, they wouldn’t answer other questions or release other documents.”

The university released several hundred pages of documents in September 2008, along with an index of all withheld documents and the reasoning for withholding them. Lewers said he did not know why the university initially withheld these documents only to release them voluntarily 11 months later. Diane Staley of the Iowa Attorney General’s Office, which is representing the university in the lawsuit, said that the documents were released because they were not of a confidential nature and part of the public record, but she declined to comment on why the documents were not released during the initial request period.

Olivia Moran, the courts reporter for the student newspaper, said she has encountered problems when tracking documents between multiple attorneys once the information was released.

“I’ve been having a little bit of trouble getting documents from the university because they’re still kind of unsure as to which documents they can release,” she said.

Staley cited three main types of confidentiality affecting the documents being withheld: student privacy laws, including FERPA and the corresponding Iowa law protecting student records; medical records protected under the Health Insurance Portability and Accessibility Act (HIPAA); and matters of attorney-client privilege. These documents include administrator letters and e-mails concerning the case, a summary of the alleged incident given to University Housing and two letters from the female student’s mother.

The university did not release these letters to the Iowa Board of Regents, which governs all of the public universities.

See Iowa, Page 18
Shining a light on campus politics

BY CAITLIN WELLS

This spring, banners and signs will adorn campuses. Students will stand behind tables around campus, handing out flyers and trying to convince passersby that their candidate is the best for the job.

For many, this scene will seem pretty familiar. Students across the nation mobilized in November to get out the vote for the national election, with supporters of both Sens. Barack Obama and John McCain plastering campuses with buttons, stickers and signs. But for many students, spring marks another election season: campus elections.

High school and college students will vote for the student leaders to represent and work for them in the coming year. Many schools hold elections for student body presidents, class officers and student legislature positions, and some of these contests can get intense.

For student journalists, covering elections can lead to some interesting questions that can make or break a journalist’s coverage.

Public versus Private

Information obtained through student government meetings and records, especially those relating to elections, can be essential to holding student governments accountable. However, student governments may not be aware of open records and meetings laws, and in some cases, might not know these laws apply to them.

At the University of North Carolina at Chapel Hill, the student government Board of Elections closed a meeting to reporters from the *Daily Tar Heel*, the student newspaper. The board was discussing whether to fine student candidates for breaking campaign rules, and the university’s student code allowed for closed meetings. After contacting open-meetings law experts, the newspaper found that student government bodies in North Carolina are subject to the state’s open government statutes, and that the section of the student code cited by the board chairman was in conflict with these laws.

Whether a school is a public or private institution can make a big difference when it comes to open records and open meetings law. According to Adam Goldstein, Student Press Law Center’s legal advocate, private school governments are not subject to these laws because they are not public entities. Public schools are considered part of state government, and most school administrators and school boards are subject to state sunshine laws — or open records and open meetings laws. Charles Davis of the National Freedom of Information Coalition said that students interested in whether their state sunshine laws apply to student governments can look at the language of the law that defines public bodies.

“If it’s one that says public bodies are agencies or subagencies of public bodies that have decision-making authority, for example, then I would say it’s fairly clear that a student government is covered under that state statute,” Davis said.

He said that even if student governments are legally covered by state sunshine laws, they may still refuse to grant access to meetings or records. He recommends a preemptive approach by asking student government officials whether they think they are subject to the sunshine law.

“If you get them on the record saying, ‘We’re absolutely subject to the sunshine law,’ well, you’ve saved yourself a lot of time and money,” Davis said.

Rick Blum of the Sunshine in Government Initiative said that all student governments should try to follow sunshine laws because those are the rules by which civic governments function.

How much is too much?

A reporter for the campus paper finds pictures of a student presidential candidate on a social networking Web site in which the candidate is holding a marijuana pipe. Can the reporter write about his find?

When personal information is easily accessible from MySpace, Facebook or the campus rumor mill, it can be difficult for student journalists to sift through it and determine what they can — or should — report.

Most media law experts agree that it is hard to invade a candidate’s privacy. James Tidwell, chair of the journalism school at Eastern Illinois University in Charleston, Ill., notes that “unless you’re peering in keyholes,” a reporter can write about almost anything a candidate says or does in public.

“I think that assuming they’re doing it in public, that’s fair game,” said Tidwell. “If you do it in public, in a public situation, you can’t complain when somebody says something about it.”

One source of personal information that is becoming more and more pertinent to campus elections is social networking Web sites such as MySpace and Facebook. While many college students might consider this private, it is public as soon as it hits the Web.

“Employers are going to look at Facebook pages to see what people are really like,” Tidwell said. “You’d think journalists would want to do the same thing.”
Butch Oxendine, executive director of the American Student Government Association, believes that students who are running for office at public institutions should be prepared to reveal everything about themselves.

“That’s your job as the campus press, to point out. ‘Look, this guy had a DUI two years ago. Does that show good judgment? Do you want him representing you?’” he said.

Law of the Student Press, a student media law guide published by the SPLC, noted that while some documents, such as court records, are considered public, there are certain documents and information that could be considered sufficiently private to give rise to a privacy lawsuit if publicly disclosed without consent. Grade transcripts, medical records, student evaluations and information from private sources — such as diary entries or personal e-mails — are generally not considered “public records.” And, the book cautions, whether information is “newsworthy” can make a difference. Information that has no connection to a public issue might not stand up to legal scrutiny.

Student journalists covering campus elections should watch out for defamation and libel. These are false statements that cause embarrassment or harm to another person’s reputation, and may lead to a lawsuit. Tidwell notes the easiest way to avoid a libel suit, especially when reporting on something sensational or when accusing someone of doing something embarrassing or illegal, is to make sure the information is true.

“Oh, obviously, from a libel standpoint, they have to make sure what they’re publishing or airing is accurate,” he said.

Another factor when it comes to libel is whether the person is a public figure. A public figure is defined by Law of the Student Press as someone who “voluntarily increased their exposure to the public spotlight by assuming roles of special prominence in the affairs of society” and who has some access to the media to respond to false statements.

Tidwell said that when it comes to student media, “a person running for office could be a public figure and someone in office could be a public official, assuming they put themselves in the limelight concerning controversial issues on the campus.”

Public figures have to prove a higher degree of fault in order to prove defamation. Law of the Student Press cautions that it can be difficult to determine exactly who is a public figure, especially when it comes to school officials, and that student journalists should always write as if their subjects are private citizens.

Ethical issues

Candidate endorsements and political advertisements can seem like tricky areas. Some professional newspapers choose to endorse candidates for local and national elections, and many allow political advertising, but student journalists may feel uncomfortable. Tidwell said that whether to endorse student candidates is an ethical decision that is up to the editors, but that there are no legal impediments to publishing an endorsement even in a publication that receives public funding.

Eric Roper, editor in chief of the George Washington University Hatchet, said its editorial board has endorsed candidates for student governments for many years and the newspaper hosts a debate. He believes the endorsements benefit the campus by putting the paper’s news coverage in context and allowing experienced editors to analyze the practicality of each candidate’s platform.

“When you’re an average student, it might be helpful to get that sort of synthesis,” he said.

One of the arguments against endorsements is that they can make a paper seem biased, but Roper had never heard anyone complain about the Hatchet’s endorsements. He explained that the paper goes to great lengths to ensure that the editorial and news sections are completely separate.

“We make it very transparent on the page who’s participating in this meeting,” he said.

Matt Day, co-editor in chief of the Macalester College Mac Weekly in St. Paul, Minn., said that because Macalester is a smaller college, campus politics are laid back, and the Weekly does not endorse candidates.

“It just doesn’t seem like we need to provide that voice,” he said.

Tidwell said that he sees no problem with campus media endorsing candidates as long as the endorsements are made early to give the other side a chance to respond.

Goldstein said there is no legal difference between political ads and any other form of advertising.

“Political ads are subject to the same amount of protection and the same amount of deference as anything else in the paper,” said Goldstein.

SGA strikes back

Retaliation is a possibility that all student media face, but with emotions running high during elections, student journalists could face uncooperative student representatives and obstacles from students and administrators.

See Elections, Page 18
April Fools’ Day issues may seem funny, but can be no laughing matter

BY CAITLIN WELLS

April 1 is traditionally a day for practical jokes like changing your friend’s MySpace picture, stuffing the toes of your sibling’s shoes with socks or resetting your roommate’s alarm clock to 5 a.m. Many high school and college newspapers also jump into the act, publishing an April Fools’ Day issue to skewer school policies and poke fun at the news they cover seriously for the other 364 days of the year.

Sometimes, though, the students working on the paper are the only ones who get the joke. Student newspapers have faced suspension, theft, and angry students and professors in response to controversial pieces in April Fools’ issues. Articles with immature humor or questionable taste can reflect poorly on the newspaper long after April 1 ends.

However, creating a humorous publication that entertains writers and readers, while not easy, is not impossible.

Easy to mess up

Many schools have a tradition of publishing a joke issue on April Fools’ Day, with stories that stretch the truth. It provides students the opportunity to poke fun at campus events and issues they usually take seriously.

“They’re a lot of fun,” said Mike Hiestand, legal consultant for the Student Press Law Center. “I think that [students] recognize it as an opportunity to get away from the day-to-day routine of doing regular news, and that readers also appreciate and have some fun with it.”

ReAnne Utemark, editor in chief of the Washburn Review at Washburn University in Topeka, Kan., said that despite problems in the past, she really wanted to put out an April Fools’ issue for 2008.

“I really think that in college papers we have a unique opportunity to not only provide the campus with news but also to provide them with not necessarily a commentary, but a kind of flavor that you can’t necessarily get in professional journalism,” she said.

However, as many student media experts point out, satire and comedy are not as easy as professional comedy writers make them seem. Student journalists spend most of the year writing about factual events, and the one-day leap into comedic writing does not always turn out well.

There are several cases of April Fools’ issues that attempted to satirize racism only to come off as racist themselves. The 2005 April Fools’ edition of the Drew University Acorn caused a campus-wide uproar because it contained a letter to the editor written in a style mocking African-American speech. Offended students at the Madison, N.J., school stole copies of both the April 1 issue and the following week’s, which contained a letter of apology. Two campus meetings between offended students and editors ended in shouting matches, and the university considered instituting a prior review policy. In the end, editors estimated that they lost about $2,700 in printing and advertising costs from the theft.

Students have faced retaliation for inappropriate or offensive April Fools’ issues, with offended students stealing and destroying newspapers and administrators suspending student editors or publication of the paper altogether.

Another sort of problem can arise when the humor is immature. James Tidwell, a professor at Eastern Illinois University in Charleston, Ill., noted that many April Fools’ issues are “either lame, or they can’t come up with anything else and put ‘fuck’ in 96-point type.”

Bathroom humor and gratuitous cussing may not bring down the wrath of the campus, but could lose readers’ respect and undermine the paper’s reputation as a trustworthy source of campus news, said Dave Reed, a student media expert and former journalism professor at Eastern Illinois University.

“Nothing makes a student newspaper look worse than when you do an April Fools’ edition that makes you look like a bunch of morons,” said Reed.

Tidwell agreed, saying that students often underestimate the amount of effort necessary to create a thoughtful and funny issue and can end up paying for it long after the issue goes to print.

“Everyone wants to have fun and that’s fine, but if you have fun and make jokes at the expense of your reputation as a serious journalist, then you’re not doing yourself any favors,” he said.

Satire is hard

Satire is an extremely tricky area for any writer, student or not, said Kelly McBride of the Poynter Institute, a school for professional journalists. Because its goal is to mock existing people or situations, it has the potential to be very funny or a huge headache.

“The problem is that satire is very difficult to do well, and most [students] don’t do a very good job at it,” said Tidwell.

Stephen Colbert and the Onion make satire seem effortless. But McBride warned that satire is an especially touchy and inflammatory form of comedy, even for professional journalists.

“Satire is always risky; take it out of its intended audience and it’s certain not to fly,” she said. “And with the Internet, we can always take any piece of information out of its intended audience and deliver it to another audience that will be offended.”

Administrators at Stetson University in DeLand, Fla., fired the entire staff of the campus newspaper, the Reporter, over a 2003 April Fools’ issue that contained a satirical sex column that advocated rape. The student editors said they had not realized how inflammatory the column would be and that had they known how it would affect campus, they never would have published it.

Hiestand said that students tend to un-
derestimate the effort that goes into crafting truly effective satire.

“They really do need to be thought about and worked on, and have a couple pairs of eyes take a look at it before it goes to press,” he said. “Things that are funny at 2 o’clock one morning aren’t necessarily funny at noon the next day.”

High school vs. college

Students who publish controversial or offensive material in their April Fools’ issues may find themselves defending their content to their fellow students or, in some cases, to their school’s administration.

“I often joke that April 2 is our busiest day of the year at the Student Press Law Center,” said Hiestand.

However, what actions administrators may take can differ depending on whether the students involved are in high school or college.

“High school publications could be controlled a lot more by principals and school officials,” said Tidwell, adding that high school students have the added burdens of creating content that is age-appropriate and relatively inoffensive while still being funny. McBride noted that high school students may face steeper consequences for infractions than their college peers.

An Eighth U.S. Circuit Court of Appeals decision in Stanley v. McGrath directly addressed the issue of satirical issues at public universities. The Minnesota Daily, student newspaper of the University of Minnesota in Minneapolis, published a finals week issue in 1979 that lampooned the administration and contained satirical pieces that offended students, administrators and members of the religious community. The Board of Regents, the governing body for the university, attempted to cut funding to the newspaper, and the students took the case to court. The court concluded that cutting the paper’s funding due to its content violated the First Amendment.

Private colleges, however, have a great deal more power to punish student newspapers for offensive or inappropriate content, said Hiestand. A cartoon in the April Fools’ issue of the Tartan at Carnegie Mellon University in Pittsburgh, Pa., sparked student protests and forced the resignation of the editor in chief and managing editor. At the University of Scranton in Scranton, Pa., the vice president of student affairs shut down the paper, locked the editors out of the publication office and refused to allow the paper to publish again until it published a “statement of ethics.”

Hiestand said that though students from private schools face harsher punishments if administrators find the paper offensive or inappropriate, the standards for libel and other legal issues are pretty much the same.

Protect yourself

When it comes time to put together an April Fools’ Day issue, there are several things editors can watch for to decrease the likelihood that their humor will backfire. Libel and defamation suits can be a problem with April Fools’ Day issues. Tidwell, an attorney, said that most libel and defamation suits are based on the claim that a reasonable person who read the story would believe that it is based on actual fact, and taking certain steps can decrease what people would believe is true.

Tidwell recommended separating the “joke” stories of the April Fools’ issue from the real news of the regular reporting, whether by labeling the section, changing the name of the paper in the “joke” section to indicate that it is not the “real” paper, or including the satirical and comedic stories as a supplement to the regular newspaper.

“We always tell them to make sure that somehow people can figure out pretty quickly that it’s an April Fools’ edition and intended to be fun, not intended to be taken seriously,” said Reed.

This advice should be applied to online versions of the stories as well. Administrators at Hamline University in St. Paul, Minn., shut down the newspaper’s Web site temporarily after the university was flooded with calls from alumni and others who had misinterpreted the April Fools’ story for fact when it showed up on search engines without a disclaimer.

The Michigan Journal, the student newspaper of the University of Michigan at Dearborn, had a similar problem. Editor in Chief Kristina Calvird said that one already-controversial story — which satirized the campus’ many candlelight vigils by describing a fictional candle factory fire — was put on the paper’s Web site and picked up by a local news outlet that mistook it for fact.

In addition to physically separating the humorous stories from rest of the paper, Tidwell said that the subject matter of the stories themselves make a difference.

“The more outrageous something is, the less likely you are to get into legal trouble, because the bottom line is for something to be libel, it’s got to be something which a person can reasonably interpret as fact,“ he said.

McBride said that because of the risks inherent to satire and the maturity level necessary to get it right, she advised against high school students attempting satire.

Reed warned student journalists that although April Fools’ issues take up a great deal of time and energy, they should be sure not to neglect their regular reporting duties.

“Whatever time you put in to try to get out an April Fools’ edition is time you’re not putting into the regular paper and serving your readers by trying to find out what’s going on, and keep them alerted to problems, and things a newspaper is supposed to be doing,” he said.

“But,” he added, “they’re great fun when they’re well done.”

Not-so-funny mistakes

April Fools’ issues and satirical articles intended to cause gut-busting laughter have ended in tears.

Controversy: In their April Fools’ edition, included a cartoon containing a racial slur and poems about rape
Consequences: Protests on campus; editor in chief and managing editor both resigned; university established a commission to review the paper

Drew University Acorn in Madison, N.J.
Controversy: Featured satirical letter to editor about Pan-African Studies major entitled “Afrocan Studiez be all up in my grillpiece bout diver- shizzle and izzie”
Consequences: Some students and faculty believed piece was racist; paper ran apology in next issue; copies of both April Fools’ and following issue stolen totaling loss of $2,700

Stetson University Reporter in DeLand, Fla.
Controversy: Officials believed the issue contained racist joke and a sex advice column advocating rape
Consequences: University fired entire staff and suspended publication of the paper for the remainder of the year

Pioneer High School in Ann Arbor, Mich.
Controversy: Seven students published four-page satirical underground newspaper that made fun of students and teachers
Consequences: Teachers found the paper offensive and upsetting, and the students were each suspended for five days
From Elections, Page 15

The Messenger at City College of New York faced difficulties in 1998 after a standoff with the college administration. The college had elected a slate of activists to the student government that opposed the administration, and the college president declared the student government elections void and changed the locks on both the student government and the newspaper’s offices. She justified these actions by saying that the newspaper had been biased toward the candidates. A lawsuit filed by the student candidates against the president was heard in U.S. District Court in October 2008 and has yet to be decided.

James Tidwell pointed out that trouble can come not only from the administration, but from student candidates that feel the newspaper’s election coverage was overly negative or biased. Often, this resentment can take the form of funding cuts.

“Campus politics can certainly get nasty,” he said. “And of course, the student media that have to go hat-in-hand to student groups for funding and so forth are obviously asking for trouble.”

Newspaper theft can also be a problem. Several thousand copies of the University of Central Arkansas Echo in Conway, Ark., were stolen in September, and editors for the paper believe the copies were stolen because of an article criticizing the student president.

Tidwell added that balanced coverage could prevent these problems.

“It’s important to make sure you cover everyone and not give people the excuse to say your coverage is biased,” he said.
1969 / Peace
Three Iowa students’ silent protests with black armbands led to a landmark victory for student speech 40 years ago.

It was November 1965 when teenagers John Tinker and Chris Eckhardt were on a bus to Des Moines, Iowa, after participating in a protest against the Vietnam War in Washington, D.C. A discussion began about wearing black armbands to show disapproval of the conflict.

The death toll had not reached its peak, and the war was in its infant stages of public discourse. But to John, 15 at the time, and Eckhardt, 16, the lives being sacrificed in Vietnam were too many.

John described his parents as activists against discrimination and the Vietnam War. John said they raised him and his siblings to be aware of the world around them at a young age.

“We have two active wars going on right now. Back then, war and the killing was a horrible thought,” he said. “Now it just seems everyday reality. For us it was just a human reaction to a horrible thing.”


The Tinker and the Eckhardt families felt they had a mission after hearing

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2008 / Policy
Today, three Arkansas students still struggle for a voice inside the schoolhouse gates.

When Chris Lowry, Colton Dougan and Michael Joseph walked into their high school in Arkansas on Oct. 6, 2006, they did not expect to be filing a lawsuit against the school in federal court four days later.

And their attorney from the American Civil Liberties Union in Arkansas, Holly Dickson, did not expect to find herself in front of the very same U.S. Court of Appeals that had handled a similar case almost 40 years earlier that she thought had conclusively settled the students’ right to peaceful protest — Tinker v. Des Moines Independent Community School District.

It all started when Lowry’s mother, Wendy Crow, joined other citizens in addressing the Watson Chapel school board with concerns regarding the school dress code policy. Crow felt it was unfair to impose punishments on her son, who has Attention Deficit Disorder and sometimes could not remember to bring his name tag or belt to school.

After the meeting, parents met to discuss what actions could be taken by the students to stand up for themselves. Crow and Lowry decided to go on the Internet to find ways to peacefully protest at the high school. They found the Tinker case and immediately wanted to do the same type of peaceful protest to oppose the school’s dress code policy.

They bought black fleece and made armbands. Crow printed out the Tinker Supreme Court decision, and her children handed copies out to other students in school with the intention of teaching them their First Amendment rights.

It was nearly four decades earlier that Mary Beth Tinker, John Tinker and Chris Eckhardt were disciplined for wearing black armbands to protest the Vietnam War, challenged the discipline and won their case at the U.S. Supreme Court in

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Stories By Alberto D. Morales
Then and now

From Tinker, Page 19

Kennedy’s plea. They felt the arm-
bands had to be worn to protest the war and support Kennedy’s urgency
for a truce.

Mary Beth Tinker, John’s then-
13-year-old sister, said she knew her viewpoint on moral and politi-
cal issues while watching television
reports from the war.

“The images from the Vietnam
War on TV that we would see every
day after school . . .” she said. “Like families fleeing from their homes, soldiers injured on the
ground and being put in body bags.”

The armband protest became public when student Ross Peterson wrote an article about it for Roosevelt High School’s newspaper that
the adviser turned over to the principal. Prin-
cipals around the Des Moines Independent
Community School District were also
informed of the student protest, and on Dec. 14, 1965 — two days be-
fore the protest — in a secretly held
meeting, they adopted a policy to ban
armbands.

Tinker said he remembered being
worried and felt that he and his fellow
students should appeal to the princi-
pals to change the policy. When the
day of the protest came around, Eck-
hardt and Mary Beth wore the arm-
bands to their schools. Mary Beth was
the only one at Harding Junior High
School wearing a black armband.

“I was nervous and scared, and I went to my morning classes and not too
much happened,” she said. “But after lunch I was going to go to
Mr. Moberly’s class, my math teach-
er. And I knew I was going to get in
trouble there because the whole day
before in class he talked about how
kids were going to get in trouble if
they wore armbands to school.”

And she did get reprimanded
when the math teacher told her to
go to the principal’s office where she
was ordered to remove the black arm-
band. She did. After the students were suspended, they met at the Eckhardt’s home to call the school board president. But he
refused to speak to them.

John and some other students decided to wear the armb-
bands the next day. He was told he could not return to school wearing an armband, and John compiled after the American
Civil Liberties Union of Iowa felt they would lose a case if the
students were labeled disobedient. John said he was prayed by
some teachers, including one teacher who asked him to talk
about the Vietnam War in front of the class.

But Eckhardt’s recollection of that day is not so pleasant.
Eckhardt said his father dropped him off at school that
snow-felled morning. His plan was to go into school, reveal
the armband and immediately walk to the principal’s office to turn himself in.

“I had butterflies in my stomach, and I was scared,” Eck-
hardt said.

His mother, Margaret, was scared for his safety. The day before the protest, pro-war students verbally threatened any fellow students they thought were going to protest.

The principals’ ban on armbands largely succeeded. The
senior’s who initially were to protest feared it would hurt their
chances at getting into college. But Eckhardt, a sophomore at
the time, said he felt he was doing the right thing.

“When the vice principal threatened me with a busted
nose, a tear fell from my eye,” Eckhardt said.

The vice principal called in an advisor who tried to con-
vince Eckhardt to take the armband off because protesters were
not accepted in college and that he was too young to have an
opinion. “I told my advisor that school was more important than
putting him up to it. Eventually, Eckhardt was suspended until he
came back to school not wearing an armband.”

According to the evening paper, the “De Moines Tribune,
John, Mary Beth, and Eckhardt returned to school after
Christmas break on Jan. 4, 1966 without armbands, but with
another form of protest.

They decided to wear black clothes for the remainder of
the school year. There was no opposition from school admin-
istration or students, “and, everyone knew what it stood for,”
John said.

It was during this time in 1966 that the students and
their families set in motion what would become a First Amendment
landmark, the case of Tinker v. Des Moines Independent Community
School District, which failed at both the district and
federal circuit levels.

Dan Johnston, the cooperating attorney who took on the
case for the ACLU of Iowa, was a few years out of law school at
the time. He said he never thought the case would go past the

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Black armbands continue to raise important speech questions
for students protesting issues on-campus

From Lowry, Page 19

1969. The decision now protects students’ rights to express
their views at school nationwide.

The only difference between the modern day case and
the one 40 years ago was that Lowry, Douglas and Joseph
protested the dress code policy by wearing the black armb-
bands on their wrists, forearms or biceps. None wore the
black armband over any part of their uniforms; the dress code
policy allowed wristbands as long as they did not overlay the
uniforms. The school even sold black rubber wristbands at a
papel rally with the school’s name on it. Still, the students were
suspected for wearing the armband.

As Lowry v. Watson Chapel School District began its trial
at the federal district court level on Sept. 11, 2007, Dickson
did not agree. On Oct. 31, 2007, the district court ruled in favor of the students. The school district appealed the case, to the Eighth U.S. Circuit Court of Appeals, arguing
the district court ruled incorrectly in relying on the Tinker
precedent.

“Defendants attempt to distinguish Tinker by empha-
sizing that the Tinker students protested the federal govern-
ment’s Vietnam War policy, whereas here the protest object
was merely a dress code,” the three-judge panel on the Eighth
Circuit wrote in their opinion.

This point was argued also by Ivy Lincoln, an assistant
superintendent of finance and compliance and civil rights
coordinator with the school district, saying Tinker was
misinterpreted by the ACLU because protesting a national
event was different from protesting a local event.

“If a second-grader wants to protest the War in Iraq to
morrow, then that kid won’t get in trouble here,” he said.

But the appeals court did not agree, saying, “Whether stu-
dents choose to express national foreign policy or local school
board policy is not constitutionally significant.”

Watson Chapel School Board’s attorney also argued to the
Eighth Circuit that Tinker was different than Lowry because
the dress code policy in place was made well before a protest
even occurred. In Tinker, the policy to ban armbands was
made after a school principal learned of a planned protest.

But again the Eighth Circuit disputed Watson Chapel’s
argument by saying, Tinker and Lowery were similar in facts.

“We hold that Tinker is so similar in all constitutionally
relevant facts that its holding is dispositive,” they wrote. “In
both cases, a school district punished students based on their
non-disruptive protest of a government policy.”

A few days after the three-judge panel’s decision was filed,
Crow said she did not think her son understood the mag-
nitude of the case. Crow did not realize that her son’s case
would be legal precedent, not just in her state, but also in six
other states.

“I don’t think he understands that he’s done a really
great thing,” Crow said.

Lowery said he was not nervous at all when he went to
school that day and knew the other kids at school disagreed with the dress code
policy.

“Everybody wanted to wear one because they didn’t like the dress code policy,” Lowery
said. “And, they wanted to stand up for their rights.”

The Watson Chapel School Board ap-
pealed the Eighth Circuit’s decision at the U.S. Supreme Court in
December.

“They weren’t punished for wearing the armbands, but for
the message,” Lincoln said. “We are fighting to determine whether
or not it’s permissible to regulate the time, the place, and manner of
a student protest of a school rule using ap-
pell.”

Lowry’s case caught the eye of John
Toptin, one of the lit-
giants in the case 40 years ago. Tinker had a few choice words to say about Lowry’s case and
about the school district’s position.

Lincoln said he did not agree with the way the ACLU was interpreting the Tinker
law suit.

“Tinker is not on point,” Lincoln said. “Black armbands are a logical
trap.”

Tinker heard of the case and re-
sponded to Lincoln’s comment.

“Yeah they were a logical trap,” Tink-
er said. “And they fell for it.”

Dickson said Watson Chapel School District believed their policy was the law.
She said Americans, in general, are not standing up when their rights are being violated, but in this case, teenager

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district court level.

"I thought we should have won at the trial court, and I thought we should have won at the Court of Appeals," Johnston said. "And, I was surprised both times we didn't win."

Johnston said he took the case because he felt a strong empathy for the rights of the students because he felt they were a minority.

"They were certainly a minority in their views," Johnston said. "They were a religious minority first of all because they were Quakers and Unitarians. And out of those religious traditions came this political view, which was a minority political view at the time, which was opposed to the Vietnam War."

The case was argued before the U.S. Supreme Court on Nov. 12, 1968, and the decision was handed down in favor of the students on Feb. 24, 1969. The final ruling was 7-to-2.

Eckhardt said watching Johnston argue the case in front of the Supreme Court justices was a moment he will never forget.

"Dan, as far as I was concerned, was a rooster cocked with his feathers full blown and he knew in his heart we'd won also. I felt grand, and Dan was walking on clouds."

Justice Abe Fortas wrote one of the best-known opinions in Supreme Court history that continues to defend students' free speech rights around the country.

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," Fortas wrote.

Fortas addressed the U.S. district court's ruling that concluded the actions of the school district to punish the students who wore armbands was reasonable because they feared it would cause a disturbance.

"In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid discomfort and unpleasantness that always accompany an unpopular viewpoint," Fortas wrote. "Certainly where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained."

In the dissenting opinion, Justice Hugo L. Black, who had been an ardent supporter of the First Amendment, stunned the Tinker family and Johnston with his views.

"It may be that the Nation has outworn the old-fashioned slogan that 'children are to be seen not heard,' but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach."

Johnston said he remembered reading Black's dissent and being disappointed because he was one of his favorite justices since his undergraduate studies.

"He was really good on free speech stuff, and he just seemed to have a blind side on this case that I'll never understand," Johnston said. "He was just mean."

While John and Johnston say they do not feel the case molded their lives or careers in any direction, Mary Beth said the case defined or changed her life, leading her to be a nurse who largely works with kids and teenagers. Today, Mary Beth travels around the country to speak at First Amendment events to encourage young children to think differently.

"I realized that kids need not only First Amendment rights, but kids have a right to clean air, clean water, a safe place to live, a place to live and a world that is safe and is not filled with so much violence," Mary Beth said. "So, I thought if I could encourage kids to speak up for themselves and make things better for themselves in these areas, then I should do that, and I should tell them my story about the armband case and how speaking up for what you believe in can make a big difference."

Mary Beth recalls seeing her math teacher in 1992 when the Des Moines School District invited her, John and Eckhardt back to speak.

"Mr. Moberly was there, and he gave me a big hug," she said. "And I asked him would he do the same thing now and he said the administration made the ruling and he had to comply."

John lives in Missouri and runs an informational Web site where he hopes more social activists will go to get educated about the world around them.

Johnston, who is semi-retired and living in New York, takes on a few cases. He said he does a lot of sailing and jokingly commented, "I answer a lot of questions about Tinker."

As an adult, Eckhardt had a scrape with the law and served time in prison on a charge of misappropriating money. He said Tinker molded his life.

"Two out of my top five peak experience moments were, one, walking out of the Supreme Court knowing we'd won and, two, when I was officially told we won," he said.

Eckhardt currently lives in Florida and is an advocate of human, prisoner and gay rights as expressed through his writings on his personal Web site. He said he would never take back any events that occurred in response to the lawsuit — bad and good.

"It shaped my life, it affected my life, and I loved it all," Eckhardt said.

So, I thought if I could encourage kids to speak up for themselves in these areas, then I should to that, and I should tell them about my story, about the armband case and how speaking up for what you believe in can make a big difference."

Mary Beth Tinker

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the status quo.

"The silence is sometimes deafening when it comes to civil liberties violations," Dickson said. “Because we have been complacent about exercising and protecting our civil liberties, you get enclaves of entities like this who certainly won't respect them and are surprised that anyone would dare call them on a civil rights violation.”

Tinker said his lawsuit, nearly 40 years ago, gave him a degree of added confidence. Forty years later, one more person has gained a little more confidence, as well.

"It makes me want to do a lot more activism," Lowry said. "I like standing up for myself."

In December, the Watson Chapel School District filed a petition for certiorari to the U.S. Supreme Court asking for it to hear the case.

The school district is asking the Court to decide whether the Eighth Circuit improperly applied Tinker saying the "misapplication of Tinker can have far reaching effects” and that the Supreme Court must intervene to resolve a “split among the Eighth, Fifth and Ninth Circuit Court of Appeals concerning the application of Tinker to school dress codes."
Rights undressed

By Alberto D. Morales

As millions of high school and middle school students walked through the schoolhouse gate after summer vacation, many found their T-shirts were not so accepted by strict administrators and teachers.

Since late August, a cluster of students wearing T-shirts with messages deemed inappropriate by faculty or administrators have been reprimanded. Some First Amendment advocates are saying they do not remember when T-shirts have been a problem like this.

Nearly 30 students from Millard South High School in Omaha, Neb., were suspended on Aug. 27 for a three-day period for wearing a T-shirt memorializing a fellow student who was murdered during the summer. Kelsey Penrod, a 17-year-old senior, said she did not expect to walk into school and be suspended for wearing something school officials deemed “gang-related.”

The shirt read “Julius RIP” on its front, with a photo of slain student Julius Robinson, 18, smiling. While Penrod had no agenda other than to memorialize a classmate, administrators claimed “RIP” was a gang symbol. The American Civil Liberties Union of Nebraska got involved and eventually the district quietly removed all the suspensions and allowed the students to wear the shirt.

Robinson’s story is not the only T-shirt censorship story in the country. A dress code violation mishap occurred on Sept. 16 at Dos Palos High School in Dos Palos, Calif., after student Jake Shelly came to school wearing a tie-died American flag T-shirt with the message, “United States of America, Washington, D.C.” The new school vice principal deemed the shirt a violation of the dress code policy that prohibits “shirts/blouses that promote specific races, cultures, or ethnicities.”

For the rest of that school day, Shelly was forced to wear a bright yellow replacement shirt given by the high school principal that read “DCV: Dress Code Violator.” Vice Principal Heather Ruiz realized her mistake and apologized to Shelly and his parents. But soon after, local media reported the story and students protested by wearing red, white or blue to school the next day. The superintendent of the district also made a public apology, calling it a misunderstanding of a line in the dress code policy.

More cases have popped up across the country in which students were disciplined for what they called expressive apparel, including face paint, eyeliner and piercings. David Hudson, with the First Amendment Center in Nashville, Tenn., is not sure why there has been a sudden spike of cases.

“I don’t know whether it’s just students are more cognizant of their First Amendment rights or it’s that school officials are stricter in enforcing dress codes and uniform policies,” Hudson said.

One thing Hudson is sure of: this is not the first time he’s heard of students being censored by school administrators for the messages printed on their shirts. He became interested in studying cases of T-shirt censorship in the early 1990s when he said it became continuous and caught his attention.

A federal district court in 1992 took up the case of a Norfolk, Va., student attending Blair Middle School, who caused an uproar when she wore a T-shirt of her favorite pop band New Kids on the Block. The shirt’s message: Drugs Suck!

The district court ruled in Broussard v. School Bd. of City of Norfolk that Kimberly Broussard’s T-shirt was not protected under the First Amendment and could be prohibited “based on reasonable forecast of disruption,” and that the “school’s determination that ‘suck’ was lewd, vulgar, or offensive was not merely prudish failure to distinguish vigorous from vulgar, but was (a) decision to regulate middle school children’s language into socially appropriate speech.”

But a less restrictive ruling was handed down in 1992 when the Ninth U.S. Court of Appeals in Chandler v. McMinnville School Dist. ruled in favor of high school students who wore buttons reading: “I’m not listening scab”; “Do scabs bleed?”; “Scabs” with a line drawn through it; “Scab we will never forget”; “Students united for fair settlement”; and “We want our real teachers back.”

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Dress Code violators

September 2007 – Heather Gillman, a student at Ponc de Leon High School in Ponc de Leon, Fla., wore a rainbow belt and a handmade T-shirt that read: “I support gays” in support of her cousin who was chastised by school administrators for being a lesbian. Gillman sued the school district for banning pro-gay symbols. A federal judge ruled in favor of Gillman in May 2008 and ordered school officials to lift the ban. In July 2008, the court ordered the school to pay $325,000 in attorney’s fees, saying the Holmes County School Board violated the students’ First and Fourteenth Amendment rights.

April 2008 – A student at Hutchinson Middle School in Hutchinson, Minn., was banned by administrators from wearing T-shirts with pro-life messages on National Pro-Life T-shirt Day. The student sued and the school settled with him, paying attorney costs and $1 in damages.

August 2008 – Twenty-seven students at Millard South High School in Omaha, Neb., were suspended for wearing a T-shirt that read “Julius RIP.” School officials said the term “RIP” was gang-related. The district eventually lifted the suspensions from the students’ records and let them wear the shirts after the American Civil Liberties Union of Nebraska got involved.

September 2008 – Jake Shelly, a student at Dos Palos High School in Dos Palos, Calif., was disciplined for wearing a tie-died American flag T-shirt that read, “United States of America, Washington, D.C.” Shelly was forced to wear a yellow shirt that read “DCV: Dress Code Violator” as substitute for his shirt. The school district later apologized after protests.

Daxx Dalton, a fifth grader at Aurora Frontier K-8 school in Aurora, Colo., was suspended for wearing a homemade T-shirt that read, “Obama is a terrorist’s best friend.” The boy’s father said he was thinking of pursuing a lawsuit.

Alison Reinholtz, a student at La Quinta High School in La Quinta, Calif., was told she could not wear two stripes of “war paint” on her face for her yearbook picture. Reinholtz said she wore the stripes to represent her recently discovered Cree Indian roots.

November 2008 – Students reportedly were told to take their anti-Obama T-shirts off because of the message: “Obama Loves Osama BFF” at Klein Oak High School in Spring, Texas. A school official said students were allowed to wear shirts supporting a presidential candidate but not if the candidate was paired with an offensive message that creates a disruption.
From *Dress Codes*, Page 23

The political messages protesting the school district’s decision to hire replacement workers during a teachers strike were deemed a disruption by a vice principal, and the two students involved were suspended. The court later ruled in favor of the students, upholding their right to express their political views on the buttons.

Hudson said courts nationwide have not had a consistent pattern on cases of free expression regarding T-shirts and other forms of expression and that the U.S. Supreme Court will have to make that decision.

Mike Hiestand, legal consultant for the Student Press Law Center, said he is amazed that schools are fighting in court to defend what appears to be clear-cut violations of the First Amendment.

“There’s a lot of these cases where I don’t know why they are ending up in court,” Hiestand said. “In years gone by, school officials would have realized pretty quickly that this is not something the court is going to allow me to get away with.”

Hudson agreed, saying some administrators do not have a good understanding and grounding with the U.S. Constitution.

“I think they are in the mindset that courts should defer to school administrators and courts should not be in the business of being a grand superintendent,” he said.

Hudson advised students to challenge some of the dress code policies in their schools through peaceful civil disobedience such as wearing protest buttons or armbands.

He said that some students, in order to gain more rights in their freedom to express their ideals on clothing might have to “go through some trials and tribulations.”

**Prior review policy removed from Mount Si High School**

WASHINGTON — Administrators and students at a Snoqualmie, Wash., high school came to a compromise in November to get rid of a prior review policy that prompted the students to withhold publishing their paper.

Student editors of *Cat Tales* refused to create content for the paper after they learned in September that their principal wanted to enforce a 14-year-old prior review policy. Administrators claimed that the prior year’s editor had used offensive language.

The students published their first issue on Nov. 10 without prior review. The Washington Journalism Education Association mediated the new policy with the principal and the students to make sure a high standard of journalism is practiced. If students are not sure whether content should be published, they will get advice from the local paper’s editor.

**2 Calif. high school papers shut down**

CALIFORNIA — Two California high school newspapers, in Belmont and Fallbrook, were shut down after administrators deemed published content inappropriate.

At Carlmont High School in Belmont, administrators shut down the paper after editors published a satirical column of a student deeming himself as “sexy.” A school spokeswoman said the decision had nothing to do with the column but instead was because the adviser to the paper quit. But a letter from a vice principal said the paper was shut down because of the column.

The school district in Belmont re-started the Carlmont High School paper a week after their local senator, Leland Yee, publicly chastised the school for the censorship.

At Fallbrook High School, the Toma-hawk student newspaper was shut down after two articles critical of the school administration were censored. The Student Press Law Center and the American Civil Liberties Union have filed a lawsuit claiming the school violated the First Amendment.

**‘Bong hits’ case settled out of court**

ALASKA — After nearly seven years of litigation, including a decision from the U.S. Supreme Court, the high school free speech battle known informally as “Bong Hits 4 Jesus” is over.

According to a press release by the American Civil Liberties Union of Alaska, both parties settled all claims, including $45,000 to be paid to former student Joseph Frederick. Of that amount, $25,000 will come from the City and Borough of Juneau. The remaining amount will be paid from the school district’s insurer. Frederick’s actions punished by the school were expunged from his official school records, as well.

The informal moniker, “Bong Hits 4 Jesus,” refers to the landmark First Amendment case that reached the U.S. Supreme Court in 2007. Frederick later said he intended for the message, which he saw on a bumper sticker, to be “a little bit controversial” and “absurdly funny.”

Know before you fight

The First Amendment gives students the right to express themselves but with some limits. Know your rights before going up against administrators.

1) Decide whether the T-shirt or sticker is truly meant to express a message. Once speech is the reason for wearing attire, the first hurdle has been jumped.

2) Speech advocating the use of drugs is not protected according to the U.S. Supreme Court, unless the speech is a political view.

3) Stay away from speech that is considered indecent or vulgar.

4) Don’t be subtle in your political speech. In Morse v. Frederick, a 2007 Supreme Court decision in which an Alaskan student held up a vague and unclear message, the court ruled against the student. Hiestand said overbroad statements are something students want to avoid in their political speech.
Two thumbs **UP**

The Student Press Law Center gets calls every day from student journalists with problems ranging from access questions to outright censorship. For many students, these legal issues can be daunting. But students from three schools decided to take a stand and make sure their rights were recognized. The SPLC gives Curtis High School’s *Viking Underground*, University of North Carolina at Chapel Hill’s *Daily Tar Heel* and Eastern Kentucky University’s *Progress* two thumbs up for preserving their rights.

**By Alberto D. Morales**

Colin Moyer, 18, has no current plans to become a professional journalist but felt it was his civic duty to start his own independent newspaper at his high school.

Curtis High School in University Place, Wash., has not had a school newspaper for four years, according to the principal and Moyer. So when Moyer went to Principal David Hammond in April 2008 to tell him he wanted to spearhead the effort to create the publication, Hammond had no objections.

“I talked to him about why we don’t have a paper and if he had some interested kids, then we could probably find somebody to run the school paper,” Hammond said. “And he didn’t want to do that. He wanted to do it this way, kind of outside the school.”

Moyer said he has not had any problems yet, and that his teachers have spoken to him and his staff about how they support his efforts.

Moyer said he decided to create the paper after a separate issue with the school made him feel that a student voice was needed.

See *Viking*, Page 26

**By Erica Walters**

The freedom of expression torch once carried by former editors at the *Daily Tar Heel* was passed to a new editor to ensure that the legacy of the 2005 freedom of expression agreement remains at the University of North Carolina at Chapel Hill. But after a new chancellor was named in 2008, the agreement had to be signed again.

Allison Nichols, editor in chief, was a freshman when two former UNC editors approached then-Chancellor James Moeser for his signature on a freedom of expression agreement. It was 2005 when the agreement became an idea after the federal appeals court case *Hosty v. Carter* challenged the idea of freedom of the press on college campuses in Indiana, Illinois and Wisconsin.

*Hosty v. Carter* delivered bad news to the student newspaper at Governors State University in University Park, Ill., after it allowed the college to censor the student newspaper. Margaret Hosty and two other student reporters sued the dean after she stopped the publication of the *Innovator*, the student newspaper, because the staff refused to submit articles for prior review. However, the freedom of expression issue was soon resolved.

See *UNC*, Page 27

**By Caitlin Wells**

Editors of the *Eastern Progress*, student newspaper for Eastern Kentucky University in Richmond, Ky., scored a victory for open records in an appeal to the Kentucky attorney general that challenged the university’s redaction of information from campus police reports.

Former police reporter Ben Kleppinger, a 22-year-old senior, noticed that the summary crime reports provided by the campus police department contained numerous redactions that seemed to be growing more and more excessive as time went on. Early in 2008, Kleppinger observed that the department was redacting not just highly personal information such as Social Security numbers, but curse words, portions of conversations and other information, often without explanation.

“They were censoring stuff that was just absurd,” Kleppinger said.

The campus police department had been voluntarily supplying the *Progress* with free police reports, and the university took the position that it could freely redact these summary reports. A full report made via an open records request, however, could be
High schooler starts own paper

Moyer, with help from classmates, began Viking Underground to speak out

From Viking, Page 25

needed at the school. He said he determined it was easier to start an independent paper because administrators and former advisers made it sound too difficult to start one in school.

So, with his final year at the high school coming up and with no prior experience in journalism, Moyer started planning at the end of the 2007-08 school year to find students and organize an effort. He went to the Washington Journalism Educators Association conference and spoke with journalism advisers at other schools to learn the methods of putting a print newspaper together.

While at the conference, Moyer said he picked up a business card of a company he felt would do a good job printing the paper. He then put out a business letter and started meeting local businesses to get advertising to support his cause. He also created a mission statement, journalistic ethics policies for his staff to follow and a “statement of freedom,” which was crafted with First Amendment protections in mind.

On Aug. 19, a few weeks after the conference, the Viking Underground was born. Its motto: “For the students, by the students.”

The paper came at a cost, though. He had little time to attract advertisers for the first issue to pay for the printing costs, so Moyer used the money he earned over the summer. With that, he was able to get 750 copies for the first issue and hand out 650 copies during the school’s registration day before the school year officially began.

“We got not one single, negative reaction,” Moyer said. “But we didn’t have anything in the first issue that would make administrators unhappy.”

Moyer does not take all the credit though. He said his “right-hand woman,” fellow senior Juliya Vaskina, does a great deal of the work. As the managing editor, she shoots and edits photos, draws cartoons and designs graphics. She also created the paper’s Web site.

Vaskina, 18, said she heard about the idea of starting a newspaper from a teacher in her English class.

“I really, really like it,” she said. “This is one of the things I’m passionate about. I don’t know why, but there’s just something about it that I like.”

Vaskina said the staff has not heard any objections from administrators at the school, but said they were prepared for such a conflict.

“Even if they did, they couldn’t do anything to stop us,” Vaskina said. “Since we’re underground, we’re protected by the First Amendment. And, besides, we’re responsible not to write anything inappropriate.”

Hammond said he was a little uncomfortable after hearing the description of the paper, but kept an open mind. He said he understood the school’s rights to determine the manner of distribution for the paper, and as long as it did not “disrupt the educational process,” he had no problems.

“When you have something called an ‘underground newspaper’ and you’re a high school principal, obviously there are some concerns,” Hammond said. “But Colin is doing a great job, and one of his goals, if you look at the Web site, is to be fair and balanced. He’s a very ethical young man, so I don’t have any issues with that.”

He admits, though, if the paper had content in it that he felt was unethical, then he would tell the students they would not be allowed to hand the papers out during school hours but would still be able to do so outside of school.

“I told him that I would be looking at the content, and I would want the first copy to review before he hands it out because if there’s a story in there that’s favorable I don’t have a problem with that,” Hammond said. “But if it’s unfavorable and they haven’t thoroughly researched both sides and aren’t representing both sides, I do have a problem with that.”

But Hammond remains optimistic saying the superintendent of the school district has seen the paper and showed her support to Moyer by e-mailing him and praising him for his work.

Vaskina said the staff has not had any ethical or legal concerns.

“A lot of it, at least to me, seems like common sense, stuff that you can and can’t put in it,” she said. “But if we do have advice issues, I know we have the SPLC.”

The staff hopes the paper will survive through next year when Moyer, Vaskina and the majority of the staff graduates. They plan on having a recruiting cycle of sophomores or juniors to take on the paper.

Moyer said other students who are interested in starting their own publications should be prepared to dedicate much time and effort to it.

“I would tell them if you really want to do this, don’t do it half way,” Moyer said. “You have to really go all the way into it and find people that are really strong leaders for your staff.”

He said he still has time for a personal life and not all is dedicated to just the newspaper. He said his grades have not been affected and not all is dedicated to just the newspaper.
Ensuring freedom to all

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a federal appeals court in Hazelwood v. Kuhlmeier — in which the Supreme Court decided that public high school newspapers, not established as public forums, are subject to lesser First Amendment protection — to the college level for the first time.

Although the ruling only applied to the Seventh Circuit, former Daily Tar Heel Editor in Chief Ryan Tuck sought an agreement with Moeser out of fear that campus publications at UNC may be censored. It was signed in 2005.

While remembering what the former editor did, Nichols said the process to have the agreement was easy because the chancellor was willing to cooperate with the newspaper.

Mike Hiestand, legal consultant at the Student Press Law Center, said that the idea that the independent student press can bring about change remains strong.

“The agreement shows a commitment to the idea that student free speech on American college and university campuses is an essential ingredient to a robust learning environment,” he said. “The biggest drawback to the agreement is the fact there has to be an agreement, but a little preventive medicine — in the form of a free expression agreement — never hurts.”

Although Nichols, a senior, was a freshman at the time, she understood why the editors before her were proactive in ensuring the Daily Tar Heel’s right to freedom of expression and the press. In 2008, UNC appointed a new chancellor, which meant that the freedom of expression agreement needed renewal with a new signature.

Chancellor Holden Thorp signed the agreement on Aug. 13 solidifying the Daily Tar Heel and UNC student publications’ freedom of expression. However, he amended the original version to pertain only to “exclusively” student-edited publications. The agreement now states, “As chancellor of the University of North Carolina at Chapel Hill, I, Holden Thorp, support the editorial independence and press freedom of all exclusively student-edited campus media.” The agreement allows for the students to work freely at the university-level without fear of being censored.

“The Daily Tar Heel is the only independent publication on campus free of student fees. The other dozen or so publications are not. “We feel like we have to advocate for all of our peers,” Nichols said.

The agreement that Nichols kept alive protects all student media, including the Daily Tar Heel, even though it has been independent since 1929.

Gene Policinski, vice president and executive director of the First Amendment Center, said when a university signs such an agreement it is valuable on many levels.

“It provides for some additional legal protection from censorship,” he said. “It is a statement to the broader college community that that institution supports freedom of expression and free press.”

The Daily Tar Heel’s request for a speech agreement is not common on most campuses. Policinski said he wished more universities, public and private, would have such agreements or statements about their policy.

Nichols said Thorp has been open and accessible to the Daily Tar Heel and that he has demonstrated a commitment to working with the newspaper. The agreement, however, is not one sided; the Daily Tar Heel and the university are in good relations.

Erica Perel, adviser and former editor, said the paper has not had a problem with the university censoring the paper in the past.

“The Daily Tar Heel, since it is an independent newspaper, the agreement doesn’t change a whole lot,” she said. “It is good to know the chancellor believes in the mission of our newspaper, that it is student-produced and a teaching newspaper.”

Perel said that learning is an important part of student newspapers, and even though mistakes may occur, Chancellor Thorp believes in the newspaper’s teaching mission and does not wish to censor the content. Her advice to students who want to have a freedom of expression agreement should point out how journalism enhances education and is beneficial for college.

“College should be a loci of free inquiry and free expression,” said David Hudson, author and scholar at the First Amendment Center.

Although UNC officials signed an agreement to freedom of expression, the newspaper continues facing issues that student media commonly confront. In October, the Board of Elections closed its doors to student reporters during a meeting. The Daily Tar Heel argued that the group could only declare a closed meeting after giving nine specific reasons why the meeting should be closed. However, the board only cited one. Because of this, the Daily Tar Heel published articles regarding the incident and spoke with the chancellor.

Even though the Daily Tar Heel is not completely free from journalistic problems, the freedom of expression agreement and its financial stability without university funds has kept the newspaper from being censored.

Nichols said that becoming financially independent as well as having a good relationship with administrators are the best ways to ward off censorship.

"We feel like we have to advocate for all of our peers."

Allison Nichols
Editor in Chief of the Daily Tar Heel, student newspaper at the University of North Carolina at Chapel Hill
Uncoding the redactions

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Ben Kleppinger, editor in chief of Eastern Kentucky’s student newspaper, challenged his university’s police report redaction policy.

PHOTO COURTESY OF BEN KLEPPINGER

addressed from the reports.

“We are aware of no prohibition on disclosure of campus addresses appearing in an incident report, or according them greater protection, with the exception of the addresses, whether campus or home, of victims of sexual offenses,” Attorney General Jack Conway stated in the decision.

Kleppinger changed the look of campus police reports

As a police reporter, Ben Kleppinger noticed crime logs were unusually black from redactions. Now the student newspaper can report on crimes fully.

Kleppinger and the Progress staff were thrilled by the outcome.

“Basically, it verified everything we claimed when we made our appeal,” Kleppinger said. “It told the university that they can’t censor just whatever they want to in the police reports based on the KRS statute they were citing.”

Progress faculty adviser Reggie Beehner praised Kleppinger for filing the initial requests and appeal, noting that he did this largely on his own.

“I’m just proud of Ben, that he saw what he thought was unjustified action and took it upon himself to see it through to the end,” Beehner said.

Following the attorney general’s ruling, the university made it clear that they accepted the decision and were going to work with the paper to deliver reports.

“In light of the recent AG’s opinion, the University is specifically reviewing how it provides police reports to The Eastern Progress,” Associate Vice President of Public Relations Marc Whitt stated in an e-mail.

Kleppinger returned to the Progress as editor in chief for the new school year. Throughout the fall semester, he and the Progress staff worked with the Eastern Kentucky general counsel and the police department to obtain full police reports without having to file open records requests. Now, the department issues full reports to the Progress every week, and in cases where the reports must be redacted due to an ongoing investigation, the department provides a summary report of the case.

Kleppinger is glad to be finally working with the university to keep the campus informed. When considering what he would have done differently, he wished he had learned more about open records law before the case began because some of the information he requested was actually legal for the university to withhold.

“I would probably research what the law specifically allows the university to redact before I complain to the university about things they actually were allowed to redact,” he said.

Kleppinger also noted that the case took up a lot of effort and time, and that anyone in a similar situation should expect to fight hard to achieve any change. However, he had no regrets about the appeal.

“I think we did exactly what we needed to do,” he said. “We saw a problem, developed a plan to fix the problem and got the university to work together with us on that.”
Do-it-yourself

Going underground

**Step 1:** Decide whether you want your independent/underground paper to be online, in print or both. Once you have done that, figure out what laws protect you locally and federally. This may be different depending on whether you are in a private or publicly funded school.

**Step 2:** Decide what kind of content will be published. Be vigilant for libelous or obscene content in your publication. The First Amendment does not protect this type of speech.

**Step 3:** Do not lightly defy school policies. Some school policies could be considered unlawful, but some may not. Courts look unfavorably on censorship claims by students who are defiant just for the sake of defiance.

**Step 4:** Observe the line between legitimately provocative journalism versus inciting disruption. You can advocate on controversial matters, but do not create a “how-to-guide” that instructs readers on violating the law or disrupting the learning process.

**Step 5:** Do not use shock value just for attention. Using racy or vulgar words/photos is a lightning rod that attracts censors’ attention and may detract from the seriousness of your message. Some edgy content is fine if used in context and newsworthy, such as controversy over a coach’s use of profane insults.

**Step 6:** Do not use other people’s photos or graphics without permission. Whether online or on paper, publications must respect copyright laws. Get legal advice if you are unclear on what is a lawful amount of excerpts from others’ work.

Fighting for freedom

If possible, get an agreement in place before a censorship incident occurs. It’s much harder to negotiate a blanket policy during (or immediately after) a dispute, so wait until any open hostilities have died down.

Have the student publications staff, not administrators or their lawyer, draft the policy. Seek independent advice from a licensed attorney knowledgeable about media law, if needed.

Take the “Goldilocks” approach to detail: Not too much, not too little, just right. Avoid making exclusive lists that limit your rights – for instance, even if you aren’t publishing online today, make sure the policy leaves room for that in the future.

Although policies should protect student speech in all forms, a policy should specifically mention student media and student editorial control.

Cover the agreement as a news story in your medium. Help students understand the importance of free speech, and that they — not just the media — are protected.

You should have good access to your college president, but if you don’t, work your contacts and use go-betweens. Outside third parties – alumni, attorneys, the professional media – can be allies if carefully cultivated.

Remember that, at a public university, an agreement makes life easier but should not be a necessity. Except for the states covered by the Hosty decision (Wisconsin and Indiana), college student media enjoy broad First Amendment protections, and in those states, an agreement merely confirms what the Constitution already requires.

Online

Get the SPLC’s full guide to surviving as an underground publication by visiting us online at: http://www.splc.org/legalresearch.asp?id=40

Search for records

Freedom of information laws allow journalists to request government records. These laws ensure that government records and meetings remain open to public scrutiny.

Freedom of information laws can be divided into five categories:
1) federal Freedom of Information Act
2) state open record laws
3) the federal open meetings law
4) state open meetings laws
5) miscellaneous state and federal freedom of information provision

You can check your own state’s laws at www.splc.org/openrecordlaws.

Records requests can be made verbally in many states by calling or visiting the relevant office. Written requests are needed for federal records and can be helpful for obtaining information from state agencies that may not respond to a verbal request.

When writing a request letter:
- cite the relevant FOI law
- note the specific time constraints and any penalties
- describe the material you are requesting in such a way that someone familiar with the subject matter would be able to find it; try not to be too broad or narrow in your requests
- be courteous and professional

You can find SPLC’s open records law letter generator at www.splc.org/foiletter.asp, which allows you to fill in the blanks to create your own FOI request letter. In the event that your FOI request is rejected, you may be able to appeal. The appeals process should be described in the relevant FOI law. The appeal usually involves writing a formal letter to a higher authority. If the appeal is denied, there may still be hope. Some states allow for administrative review or a court case. At this point, you might want to consult a professional for advice.

Source: Law of the Student Press

If you have any problems or questions, contact the Student Press Law Center at (703) 807-1904 to get free legal help.
Undefined attacks: Gossip sites prompt ‘bullying’ crackdown

BY ALBERTO D. MORALES

If you did a Google search for the name “Thaddeus Grage” you would find the Indiana University at Bloomington sophomore’s name associated with some unsavory allegations on the anonymous gossip Web site JuicyCampus.com.

Grage says what is posted on the Web site could possibly hurt his chances with future employers, especially if the site becomes as popular as social-networking sites like Facebook or MySpace.

“You really don’t care until you’re the victim, until you are publicly humiliated,” Grage said. “As long as someone wasn’t saying anything about me, I didn’t go on (JuicyCampus.com), and I didn’t really care.”

But Grage says he was a target of a female former student who wanted a relationship with him. Grage said she was the one who anonymously posted his name and labeled him a “disgusting lying sleaze ball” who “sends naked pictures of himself” and “has unprotected sex.”

He first learned of the post from his neighbor’s girlfriend from another Indiana-based college. Grage did not know who posted the comment in March 2008, but he had an idea it was his former classmate. He cut ties with her before his name was posted on JuicyCampus.com.

Grage said the former classmate confirmed she wrote the post after trying to apologize to him two weeks before her college graduation. When contacted, the former classmate declined to discuss the matter except to say the “original posting as far as I know, is in fact true” and that “I wouldn’t care if anyone posted about me because I’m not insecure enough to really care what some anonymous person has to say about me.”

For the first week the rumor was on the Web site, Grage said it only slightly bothered him, and he tried to laugh it off with friends who poked fun. But then more students started posting replies on the original rumor, making it more popular among Indiana University students visiting the site for the latest gossip.

“For someone to be able to publicly humiliate somebody and not tell who it is and for people to be OK with that, I think is ridiculous,” Grage said.

Grage said he understands the likelihood of the posting being taken down is “slim to none” but wishes the college was able to come up with in-house policies protecting students from defamation on sites like JuicyCampus.com.

That suggestion is not so far from reality.

Legal ramifications

In August 2008, New Jersey Attorney General Anne Milgram sent a two-page letter to New Jersey college presidents explaining that Milgram’s office was launching an investigation into JuicyCampus to “protect residents of the State.” Milgram wrote that with increased access to social-networking Web sites with “personal information regarding students … posted on the Internet using these forums, increased harassment has occurred.”

Milgram then asked the presidents to check school policies and to “incorporate the topic of cyber-harassment, which includes stalking, bullying, and/or sexual exploitation, into your school’s code of conduct, with consequences for those who engage in these activities.”

David Wald, spokesperson for the New Jersey Attorney General’s Office, confirmed the letter was sent to all the state’s colleges and universities, including private institutions.

He said personal information like college students’ dorm room addresses and phone numbers was part of the reason Milgram wrote the letter to college and university presidents.

“That’s part of it and of course things that are malicious and just wrong,” Wald said. “Those are the things we worry about when people abuse the Internet.”

New Jersey is believed to be the first state to seriously contemplate disciplining college-aged adults partaking in cyber-bullying. Most enforcement efforts have focused on the elementary, middle and high school levels.

Mark Goodman, Kent State University Knight Chair in Scholastic Journalism and former executive director of the Student Press Law Center, said that while policies like this are becoming popular among administrators in elementary and high schools, this was the first time in his decades advocating for students’ First Amendment rights that he has seen this type of recommendation at the college or university level.

“It fails to recognize that we’re talking about adults here,” Goodman said. “Admittedly, some may be young adults, but on many campuses some are 21 and older. The idea that the state attorney general, let alone the college administration, should play the role of nanny for these adults is just ludicrous.”

Goodman said college students writing off-campus speech on Facebook or MySpace as well as independent college publications could be punished, if a policy like this is approved.

“A mainstream student newspaper or a more traditional college student publication probably won’t have a lot of problems,” Goodman said. “But what I would be more concerned about is the more alternative publication; especially those that are Web-based that may publish harsh criticism of other students.”

Goodman advised public colleges or universities in New Jersey and elsewhere who feel they are being put in a situation to reprimand students for cyberbullying to make sure they talk to attorneys who understand how the courts have applied the First Amendment on college campuses. He said colleges could oppose this type of request from the state attorney general on constitutional grounds.

“What I see this letter and press release doing is not even just inviting, but almost demanding that college and university officials intervene when unpleasant expression occurs
Defining “Cyberbullying”

**cyberbully** |ˈsɪbərˈbʌlɪ| noun
1 “Cyber bullying is the use of modern communication technologies to embarrass, humiliate, threaten, or intimidate an individual in the attempt to gain power and control over them.” — Glenn Stutzky, Michigan State University
2 “Online bullying, called cyberbullying, happens when teens use the Internet, cell phones, or other devices to send or post text or images intended to hurt or embarrass another person.” — National Crime Prevention Council
3 “One or more acts by a pupil or a group of pupils directed against another pupil that constitutes sexual harassment, hate violence, or severe or pervasive intentional harassment, threats, or intimidation that is disruptive, causes disorder, and invades the rights of others by creating an intimidating or hostile educational environment, and includes acts that are committed personally or by means of an electronic act.” — California Assembly Bill 86
4 “Cyberbullying” is when a child, preteen or teen is tormented, threatened, harassed, humiliated, embarrassed or otherwise targeted by another child, preteen or teen using the Internet, interactive and digital technologies or mobile phones. It has to have a minor on both sides, or at least have been instigated by a minor against another minor. Once adults become involved, it is plain and simple cyber-harassment or cyberstalking. Adult cyber-harassment or cyberstalking is NEVER called cyberbullying.” — StopCyberBullying.org

Fargo said he understands the concern that some people who are topics on JuicyCampus may have, but said on the flip side of things, the Internet is really the only medium that is still free, open to the public and not government-regulated.

“I can’t speak for the world, but I get the sense there are mixed feelings about this,” he said. “Everyone can picture themselves having 3,000 e-mail messages saying, ‘I just read you’re a lying sleeze ball on the Net’ and having the feeling you can’t do anything about it.”

A group of First Amendment advocates including the SPLC, the New Jersey Society of Professional Journalists and the Foundation for Individual Rights in Education wrote a letter to the New Jersey attorney general in November 2008 raising caution flags about a blanket prohibition on “bullying.” In the letter, the groups acknowledge that threatening speech is not protected by the First Amendment but warn that prohibiting harmless speech under the undefined legal term “bullying” could cause constitutional problems.

“An open-ended directive that colleges enact codes of conduct that punish the use of computers for ‘bullying’ will invariably cause some administrators to penalize lawful speech that falls within the protection of the First Amendment,” the groups wrote. “There is a difference — qualitatively, and constitutionally — between speech that threatens versus that which merely causes hurt feelings.”

Goodman agreed and said “bullying” is not illegal as long as it does not reach legal harassment or libel.

“‘Bullying’ doesn’t have a legal definition is what it boils down to,” Goodman said. “What they are trying to do is use amorphous, undefined terms as a legitimate justification for restricting constitutionally protected speech.”

He also said students on college campuses in New Jersey who have a MySpace page, blog, or any other form of communication on the Internet should be worried.

“Those who are most likely to fall victim to this request are the Web-based publishers of information critical of others,” he said. “For example, any student who on a Facebook page says something mean about another student could find themselves in a situation if university officials take this seriously, that suddenly they’re threatened with punishment as a result of that.”

See Cyberbully, Page 34

online,” Goodman said. “It is setting up these schools for First Amendment lawsuits by people they attempt to punish or censor.”

He also recommended to students who are punished or censored for protected speech at the university or college levels to make sure they take action against those institutions for violating their First Amendment rights.

“The students can take them to court, and I hope they will,” Goodman said. “But what I believe is that colleges will be smart enough to get advice from lawyers about what legally they can do before they take any actions.”

**Ethical concerns**

Anthony Fargo, an associate professor at the Indiana University School of Journalism, specializes in media law and media ethics. He addressed Grage’s conflict with his media law class after reading about it in the local newspaper. He said two-thirds of his class knew what JuicyCampus was. Fargo said courts across the country have been split on defamation cases like Grage’s.

“The problems this highlights is kind of a growing problem that there are conditions that exist with the Internet that don’t exist with other publishing groups,” Fargo said. “Mainly, you can be anonymous on the Web, and there is law that protects them.”

Fargo said the Telecommunications Act of 1996 gives exemptions to Internet service providers, which includes sites like JuicyCampus.

He said that if someone were to take a case like Grage’s to court, the facts would be highly sympathetic on the side of the complainant, but the law would favor the Web site operator.

Fargo said that if the owner of JuicyCampus does not create content on the Web site and is just a “common carrier,” then the owner is not liable. He compared the relationship of a common carrier to the phone company — a person can make an illegal phone call but the phone company is not responsible for the call.
From the pen to the masses

Web 2.0 tools can get student news out quickly, cause new legal issues

BY ALBERTO D. MORALES

Twitter. It is a name many student journalists coming back from media conventions have heard so often.

The “micro-blogging” service is used to communicate with people on the Web with similar interests. The purpose of the Web site is to “tell us what you’re doing in 140 characters or less.”

Instead of creating a blog post with a headline, photo and body of text, Twitter users give status updates (aka a “tweet”) similar to features used on social-networking sites like Facebook but with the same amount of content space as a text message. And the service has become a social-networking hit. According to September 2008 Nielsen Online ratings, Twitter had 343 percent growth in comparison to the prior year.

While Twitter is still young, student journalists have taken advantage of its marketing capability. Ashlee See, a student disc-jockey for Seattle (Wash.) University College radio station KSUB, said she started tweeting for personal messages and decided to expand it to the student radio station.

“It’s been kind of mixed reviews,” See said of the reaction to her use of Twitter in conjunction with her radio program. She said she “Twitters” when she is on-air for her weekly show and gets a small audience that listens to the online-hosted radio show.

Some college newspapers are using Twitter, too. The Daily Tar Heel at University of North Carolina-Chapel Hill uses the service to get information out quicker and to a different audience, student editor Andrew Dunn said.

See and Dunn are just a few of the students worldwide using Twitter to get their information out quicker. They both say reaction to the service has been unnoticed to some but hope more students will recognize its simplicity soon.

But with the popularity of these social-networking tools, it is only a matter of time before freedom of speech and press is tested for student journalists using these tools for reporting.

Alana Taylor, a journalism student at New York University, learned that instant blogging can bring an instant backlash — in her case, from a journalism professor who was the target of her commentary.

“It was just the kind of stuff you would say on Twitter. And I’m so used to blogging and micro-blogging about what happens to me in my daily life, that was just another event to me,” Taylor said.

Taylor, 20, says her NYU journalism professor told her not to tweet or blog about class discussions after she wrote an online entry on the popular blog MediaShift. The site is run by the Public Broadcasting Service (PBS) and is widely read among the journalism community.

In the opinion article “Old Thinking Permeates Major Journalism School,” Taylor wrote that her professor started explaining how blogs “are becoming more important” and asked the 16 students if they had a blog.

“One hand slowly rises. It’s mine. None of the other students in the class have a blog. It comes as a shock to me that the students in a class about ‘how our generation is very much invested in the Internet’ are not actually involved,” Taylor wrote. “Again, perhaps I am an exception to the norm, but I like to think that having a blog is as normal as having a car.”

Her professor read Taylor’s 1,500-word opinion article and several tweets about the class and was not happy, according to Taylor. Taylor said her professor called her to her office and told her not to blog or “tweet” about class or what the professor said. Taylor said her professor, Mary Quigley, told her “that I bashed the school, burned her as a source, went behind everyone’s backs, and I invaded privacy in doing everything that I did.”

The article and several Twitter posts later turned into an ethics and First Amendment discussion after MediaShift Editor Mark Glaser wrote a follow-up article saying that Taylor’s professor “stifled” her use of blogging and tweeting. Quigley later e-mailed Glaser to say that, while students should not send e-mail or make calls during class, after class students “were free to text, Twitter, blog, email, post on Facebook or whatever outlet they wanted about the course.”

Taylor has decided not to write about the class and admits to self-censoring because of the precarious situation.

“There are a lot of times when my first instinct would be, ‘Wow I want to Twitter what she just said’ or ‘I want to Twitter what just happened,’” Taylor said. “But I don’t because already I know there’s so many people watching me and not everyone agrees with it.”

While remaining active in part-time journalism jobs she gained through Twitter, Taylor says the future looks bright for Web 2.0 tools for the future of journalism.

“I think with all these new tools and everybody sharing their information, it’s like there is just going to be so much more content to find in smaller micro-communities that can be created,” Taylor said.

While there has been high-profile First Amendment litigation concerning students’ rights to comment about school events on social-networking sites, Taylor’s is believed to be the first instance of a college student drawing a rebuke for comments made using Twitter.

With journalism migrating into popular Web 2.0 tools like Twitter, MySpace, Facebook, YouTube and Flickr, the question is how traditional principles of the First Amendment and media law will apply in these instantaneous and sometimes highly informal channels of communication.

Adam Goldstein, Student Press Law Center attorney advocate, says people using these Web services could face all the same legal problems that may occur on more traditional platforms — like a newspaper. While these problems on Twitter are so far more hypothetical than real, Goldstein said that the majority of laws to protect journalists were well-established before the advent of Web 2.0 and have not changed for decades.

Basic copyright law did not change until 1998, “but in terms of what a journalist does, the copyright law for a journalist was the same as it was in 1978 as it is today,” Goldstein said. “Libel law hasn’t changed in light of the Web. Invasion of privacy hasn’t changed in light of the Web. The laws that they might violate by using these services are virtually all the same.”
Ask Frank: A student journalist’s guide to instant journalism and media law

Student Press Law Center’s Executive Director Frank LoMonte gives some guidance to what student journalists should avoid when using popular Web 2.0 tools. While this may cover the basics, LoMonte reminds journalists to follow each site’s Terms of Service agreement, get permission whenever possible and follow the Society of Professional Journalists’ Code of Ethics.

**Twitter** is a micro-blogging service where you can send and receive messages with a 140-character limit answering the question, “What are you doing?” Journalists are using it for reporting on-the-ground live news as users can “tweet” with text messages on cell phones or use a computer.

“In terms of legal issues, the main thing to look out for would be in the haste to meet the strict character limits in a ‘tweet’ that you have oversimplified something in a way where it’s misleading or deceptive. You can defame somebody by oversimplifying something. For instance, if your tweet says ‘Trump Jailed’ when in fact he was taken to the jail for a booking photograph and was immediately released, was he defamed by that?” LoMonte said.

**Facebook / MySpace** are social-networking sites used by millions of people around the world. Both sites provide a forum to keep up with friends or family and upload an unlimited amount of photos, videos and share interesting Web sites. Every age demographic can use the sites, but Myspace tends to have younger users. For journalists, these sites have become another “phonebook” to find sources.

LoMonte says the general rule journalists should follow with Facebook is to always assume that everything online is someone else’s copyrighted property. “Everything that someone has written on a Facebook or MySpace page is theoretically a copyrighted property or it may be the copyrighted property of the person who provided it to them. For example, a picture of me is not my copyrighted property. It is the property of the person who took the photograph,” he said. Exceptions to this rule would be if the copyrighted material becomes newsworthy. If a student creates a Web page saying he wants to blow up his school, that content is newsworthy and can be reprimanded for.

**Flickr** is used primarily for image hosting. You upload photos to the Web site and users can view them. You can grant or reserve rights for each photo in case you do not want them to be used commercially, or to protect from someone else using your creation. Recently, Flickr added video, but this feature is not yet as popular as other Web sites. For users on the go, you can instantly upload cell phone photos via e-mail to the site.

LoMonte said it is hard to generalize about Flickr because each photo may have a different level of protection. Many of the photos have a Creative Commons license, which waives some copyright protections. He warns to make sure student publications review the terms of each license on the Web site. “Much of the stuff on Flickr is reusable by a student publication without having to go through the routine of having to get express permission,” he said.

**WordPress** is a free service that allows users to create blogs about whatever topic they wish. “Blogging is, for all intents and purposes, print journalism. All of the same rules are going to apply. There are some misperceptions by some schools that online publishing is subject to greater school control because it’s theoretically accessible by more people. But, that’s really not the rule. There aren’t two First Amendments. There’s only one,” he said. LoMonte says the Communications Decency Act, which states that proprietors of a Web site are not legally responsible for content put on the site by third parties, gives additional protections to online speech. LoMonte said student journalists should try to avoid replying to comments in message boards or in a comments section that are critical of their stories.

**BlogTalkRadio** is a podcasting service where users can set up call-in talk shows similar to traditional radio stations. Listeners can listen to archived shows on iTunes. LoMonte says the Federal Communications Commission (FCC) does not regulate online speech currently. So, you are not constrained by the FCC’s indecency standards as to the content of an online or closed circuit broadcast (campus radio only heard on campus). “Depending on how much the content is connected to the school and how raw it is, you may still be subject to the Tinker standard. So if you use the school network to broadcast hardcore, sexual content or something that appeared to be stirring people up to violence, you might find yourself violating the Tinker standard. As long as you’re not using school property and school time and school resources to broadcast it to people on school grounds during school time, you ought not be subject to the school’s authority either. In terms of the editorial content, it becomes an ethical and not a legal standard.”

**YouTube** is a video sharing Web site where users can upload video content they have created. Some videos on YouTube are copyrighted material that third-parties have “pirated” without consent. Otherwise, there is a good deal of original content created for the world to see online.

LoMonte said student journalists should avoid copyright issues such as using others’ music and videos. He said everyone should be mindful that YouTube content may be posted in violation of someone else’s copyright. So, avoid embedding YouTube videos to your Web site such as episodes of TV series. “They could post a link to it and I think would not be liable for copyright infringement, although there would be an ethical consideration of knowing that what you were doing is encouraging people to view copyright infringing material. Is that really what you want to do? It would be like pointing to a Web site that teaches you how to make a bomb.”

**Ustream.tv** is a video streaming Web site where you can broadcast using a Web cam. While “lifecasters” are the norm on Ustream, another set of users often use the site to broadcast shows similar to radio but with live video and a broader audience.

LoMonte says anytime you have an open microphone broadcasting to the world, you run the risk of saying something defamatory and invasive of somebody’s privacy. “In a broadcast studio setting, if somebody blurts out a libelous statement, it doesn’t protect them to say, ‘oops, I thought the mic wasn’t on.’ It’s the same thing if you had a streaming Internet broadcast in your newsroom, it’s not a legal defense to say, ‘oops, I didn’t mean to say that.’”
Ditching the “Red Cup”
Have you been punished for Facebook photos?

Who would have thought that when Illinois-based Solo Cup Co. first introduced the red plastic drinking cup on Nov. 20, 1972, students would be getting reprimanded nearly 35 years later for posing in a photo with the telltale red container?

In January 2008, the Minneapolis Star-Tribune reported that 42 students were questioned, including 13 who were disciplined by administrators at Eden Prairie High School in Eden Prairie, Minn., for photos posted on Facebook.com of them at a party with red cups in hand. While some were shown drinking in the photos, it was reported, “students holding a red cup were enough to merit a call to the dean’s office.”

And at the University of California at San Diego, the college newspaper, the Guardian, reported on Dec. 13, 2007, that ultimate Frisbee student athletes at the school were hit with five conduct violations after Facebook photos including alcohol consumption by the players at a sports club event and a claim of hazing suspended the students from competing in an upcoming tournament.

Has this happened to you? When does a school cross the line when they punish students for photos posted on Facebook or MySpace? Is this a First Amendment issue? We want to hear your thoughts by posting a comment on our Facebook or MySpace page.

— Alberto D. Morales

INTERNET IN BRIEF

Tennessee State bans popular, anonymous gossip Web site

TENNESSEE— JuicyCampus.com, a popular but controversial Web site where campus gossip is encouraged through anonymous posts and comments, was banned from Tennessee State University servers on Nov. 12.

The Nashville, Tenn., college was one of the top five searches on the Web site at the time, but Michael Freeman, vice president for student affairs, said that had no impact on his decision to ban the Web site.

Freeman said a parent called and complained about an anonymous comment concerning her daughter that he felt could cause a safety concern.

Matt Ivester, the CEO of JuicyCampus.com, likened Freeman’s decision to “joining the ranks of the Chinese government in internet censorship.”

Freeman said he did not consult legal professionals before imposing the ban the same day the parent called to complain to him. But after consulting legal counsel from Tennessee State University, Freeman said his decision was legal because according to TSU’s Office of Chief of Staff and University Counsel, the ban did not violate the First Amendment for two reasons. The first reason explained was that students have newer ways of accessing the Internet using their cell phones and through other wireless network providers. Freeman said since the servers are not a “public forum” then free speech rules do not apply.

JuicyCampus.com is a Web site targeted toward college students who are encouraged to post anonymous comments with the latest gossip from their campuses. There is no registration process and anyone can post an anonymous comment.

Tennessee State University is the first publicly funded university in the country to ban JuicyCampus. A few private colleges have imposed bans on using school computers to access the Web site.

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JuicyCampus controversies

Matt Ivester, JuicyCampus CEO and president, does not do many public interviews, and initially turned down a phone interview, agreeing only to answer e-mailed questions. Ivester said in the e-mail exchange that he started the site he labels “the ultimate gossip platform” over a year ago.

When asked about harm to the future employment of people like Grage who are attacked by posts on the site, Ivester said he cannot say whether any given post is defamatory and only courts can determine that.

“We encourage everyone to take what they read with a large grain of salt,” Ivester wrote. “And we don’t think that a responsible employer will make decisions based on unsubstantiated anonymous gossip.”

Ivester would not comment on the investigation being led by the New Jersey Attorney General’s office, only to say he felt confident his company was operating within the law.

In November, Ivester accepted a phone interview to address his outrage with Tennessee State University’s decision to ban the Web site from being accessed through its Internet network. The decision to ban JuicyCampus.com from the university’s servers came after an upset student’s parent complained to Michael Freeman, vice president for student affairs, about an anonymous comment posted about her child.

Ivester said he would support any student at Tennessee State if they wanted to sue the school for First Amendment violations.

“His [Freeman’s] inability to quell the concerns of an angry parent and explain the free speech implications is really not an excuse,” Ivester said.

He said many people are reacting too emotionally to the less appealing anonymous comments that are posted on JuicyCampus and that the U.S. Constitution protects those comments. He said the issue of banter on the Internet needs to be addressed sooner or later by students.

“Ever since Facebook, people can comment on other people’s profiles. They post pictures of themselves drunk with their friends,” Ivester said. “This is an issue that this generation is going to need to really deal with.”

In the meantime, Ivester said JuicyCampus is doing well in numbers. The site gets about 150,000 hits a day and nearly one million unique visitors come to JuicyCampus every month.
Keeping your case alive after graduation

A student plaintiff’s guide to avoiding mootness

BY ROBERT CORN-REVERE, RORY EASTBURG AND MICAH RATNER
DAVIS WRIGHT TREMAINE LLP

Although graduation day is traditionally a time for celebration and for new beginnings, it can bring an unhappy ending to the legal claims of a student who is challenging school censorship. In general, challenges to school policies must be raised by currently affected students. When a student graduates, a court may dismiss her claims as moot.1 Several federal appeals courts have agreed.2 Lane v. Simon, a 2007 case decided by the Tenth Circuit, illustrates how this mootness problem can present serious challenges to student press plaintiffs’ ability to secure their First Amendment rights through litigation. But Lane also provided a road map of possible ways to overcome a claim of mootness.

In Lane, the Tenth Circuit held that the claims of two former editors of Kansas State University’s newspaper became moot after they graduated.3 The student editors had filed a federal civil-rights action under 42 U.S.C. Section 1983, alleging that the university violated their First Amendment rights by removing the newspaper’s faculty advisor based on the content of the newspaper. The district court granted defendants’ motion to dismiss, and the two editors, who had since graduated, appealed to the Tenth Circuit. In holding that the former editors’ claims were moot, the court reasoned that university defendants could no longer impinge on the former student editors’ exercise of freedom of press after their graduation. The court also noted that plaintiffs had not (1) substituted current editors as plaintiffs; (2) sued for damages; (3) added the separately incorporated newspaper as a plaintiff; (4) sued in a representational capacity in a class action, or (5) alleged that the First Amendment infringement caused them any present or future consequences.4

The Tenth Circuit’s decision outlines some of the obstacles in front of student press plaintiffs. By requiring continual substitution of plaintiffs and pleading for monetary relief, with its qualified immunity challenges, Lane complicates the way student press plaintiffs must plead. As a result, school administrators have a perverse incentive to censor underground media outlets, which may not have the succession structure to substitute plaintiffs, or to censor students close to graduation. But Lane also presents an opportunity to discuss strategies that student press plaintiffs may use to avoid mootness upon graduation in the future.

The Challenge of Injunctive Relief

As a fundamental matter, courts are unable to address moot issues because, under Article III of the Constitution, the courts may only hear live cases or controversies.5 In other words, federal courts have no power to give opinions on moot questions or declare principles of law that cannot affect the matter at issue in the case.6 Cases become moot when the parties lack a legally recognized interest or a personal stake in the outcome of the controversy.7

Students fighting censorship almost always ask for an injunction – a court order directing the censor to cease interfering with student editors’ autonomy. They may also seek a declaratory judgment – an order that does not actually direct any party to do anything, but simply declares that a certain practice is legal or illegal. Federal courts generally have held that graduation moots a claim for declaratory or injunctive relief against a school’s action or policy, even if the student retains a live claim for money damages.8 In addition to the importance of stopping an unlawful practice, injunctive relief is also a valuable recourse for another tactical reason – unlike money damages, state government officials do not enjoy Eleventh Amendment immunity from court injunctions that merely direct them to cease doing something in the future.9

Given the need for some sort of injunctive relief in most media cases, student plaintiffs should ask whether any exception to general mootness rules might apply.

A. Can You Add New Parties?

Plaintiffs may employ several common strategies to prevent the mootness problems discussed in Lane. Perhaps the most obvious is simply to add other plaintiffs who will not graduate in the near future. This strategy of “rolling plaintiffs” requires the plaintiff to file a motion with the court, which the judge may grant “on just terms” at his discretion.10 The drawbacks to this strategy are numerous. First, under federal rules, a judge has discretion whether to add a party, and some judges will not permit plaintiffs to completely roll over.11 Second, as in Lane, students that come later may not wish to get involved in the litigation and may decline to become parties. This is especially likely where “rebellious” editors have been replaced by more compliant editors. Third, it takes considerable planning and diligence to ensure that plaintiffs who are far away from graduating are added to the litigation with sufficient time to prevent the controversy from becoming moot. Fourth, some student press outlets, such as underground newspapers or blogs, do not have a clear chain of command and may not have the organizational structure to add plaintiffs later. Still, adding plaintiffs is a popular strategy where it is feasible.

B. Do the Past Acts Have Lasting Consequences?

A simpler strategy is to characterize the First Amendment violation as having some present, future, or collateral consequences that the court may address. If the student plaintiff continues to suffer consequences of the wrongful action and pleads for injunctive relief, the student’s graduation will not moot a controversy.12 Courts have held that when a student’s record contains negative information based on allegedly unconstitutional school regulations, that information may jeopardize the student’s future employment or college career.13 If a former student’s record contains evidence of disciplinary sanctions, and she seeks an order requiring school officials to expunge the discipline from her record, the action will likely not be moot.14 For example, in a Ninth Circuit case decided in 2007 where a student was reprimanded for student election code violations, a claim by the student seeking to cleanse his record was not moot even though he had graduated.15 Student press plaintiffs can argue that
they continue to suffer consequences of the wrongful action, and thus, the court should not moot their claims for injunctive and declaratory relief upon graduation.

C. Was the School’s Action Capable of Repetition Yet Evading Review?

Another relevant exception to the mootness doctrine applies to a limited set of cases that are capable of repetition, yet evading review. This exception applies when the allegedly unconstitutional practice has a finite term that makes it impractical to bring a legal challenge; the textbook example is a challenge based on a woman's pregnancy, which will run its full course in nine months before a court case can be tried and appealed. But the practice must have the potential to affect the very same person; it is not enough to argue that the unconstitutionality could injure other people. Consequently, the Supreme Court has held that, in the absence of a class action, this exception is not available when students request prospective or injunctive relief and have graduated from the defendant college.

Following this rationale in *Lane*, the Tenth Circuit refused to adopt the exception for cases “capable of repetition, yet evading review,” because the case failed the second prong of the test. The court stated that “there is no reasonable expectation that Lane and Rice will be subjected, post-graduation, to censorship by defendants in connection with that newspaper.” Similarly, in *Cole v. Oroville Union High School District*, the Ninth Circuit refused to apply the “capable of repetition yet evading review” exception to the mootness doctrine to a high school valedictorian whose speech was censored by school officials, but who had graduated by the time the case reached appeal.

However, this exception may still be useful for some student plaintiffs. In *Lee v. Weisman*, the Supreme Court found that this exception applied to a student who objected to a prayer at her middle school, even though she had graduated from middle school, because she had enrolled in a high school in the same district. Therefore, it appeared “likely, if not certain, that an invocation and benediction [would be] conducted at her high school graduation.” While this case falls under First Amendment jurisprudence relating to the Establishment Clause, its reasoning may be applicable to student free speech cases where a student’s free press rights are violated in middle school and she enrolls in a high school within the same district. Or, this case may be applicable, where a college student graduates, and enrolls in a graduate program at the same school. Students bringing First Amendment press challenges should not rely on the “capable of repetition, but evading review” exception, but they should continue to argue that exception should apply to the student press setting.

D. Is Declaratory Relief Available?

The Declaratory Judgment Act provides in part that “in a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration.” Although most courts will consider an action for declaratory judgment moot if a request for injunctive relief is moot, it may be worth challenging this conventional wisdom.

In *Super Tire Engineering Co. v. McCorkle*, the Supreme Court held that district courts are obligated to decide the merits of declaratory relief claims even where a request for injunctive relief is moot. The Court found that “even though the case for an injunction dissolved with the subsequent settlement of [a labor strike],” the parties to the underlying dispute “may still retain sufficient interests and injury as to justify the award of declaratory relief.”

Thus, while most courts will moot a declaratory judgment claim along with a mooted claim for injunctive relief, plaintiffs should challenge the court to make a separate determination and uphold standing on the declaratory judgment relief.

Seeking Damages May Avoid Mootness, But Has Drawbacks

Probably the most straightforward way a student plaintiff may avoid mootness concerns is to seek monetary relief. For example, in *Husain v. Springer*, the court found that student newspaper plaintiffs’ injunctive relief and declaratory judgment actions were moot upon graduation, but their graduation did not moot the claims for damages. A student plaintiff should request monetary relief from the beginning, since in some circumstances courts may not grant plaintiffs leave to amend their complaint and request monetary damages.

But requesting money damages is not a cure-all, because doing so raises public-relations and Eleventh Amendment immunity concerns. Student press lawsuits ideally aim to protect free speech principles rather than to pad the pocketbook, and it would distract from those principles if student press plaintiffs sought large sums of money. One way to avoid public relations concerns is to request nominal damages – often a single dollar. Yet even if a plaintiff requests nominal damages, the plaintiff must jump over high hurdles of Eleventh Amendment immunity.

Qualified immunity shields public officials from having to pay money damages when sued under 42 U.S.C. Section 1983 as individually named defendants. Qualified immunity requires the court to rule in favor of a government employee sued for money damages unless the employee’s conduct violates clearly established statutory or constitutional rights, of which a reasonable person would have known.

Qualified immunity is challenging to overcome. For example, in *Husty v. Carter*, where student journalists sued university officials and a dean for prior restraint of their speech. After a college newspaper printed stories critical of the dean, the dean instructed the paper’s printer not to print any further issues unless the dean approved them in advance. The students sued seeking injunctive relief and damages for a First Amendment violation. The district court dismissed the university officers, but granted summary judgment in favor of the student plaintiffs against the dean. The dean appealed and the Seventh Circuit reversed, holding in part that the dean was entitled to qualified immunity because, at the time the dean acted, it was unclear whether the Su-
The Supreme Court’s Hazelwood v. Kuhlmeier decision applied to college as well as high school newspapers. The Hazelwood decision allowed public schools to regulate the content of curricular media paid for by the school, if the regulation advanced “legitimate pedagogical concerns.” Thus, the student newspaper’s right to be free from prior restraints by the university was not a clearly established constitutional principle that a reasonable person should have known, and the dean was entitled to qualified immunity.

Husain and Hosty notwithstanding, many free press protections are clearly established constitutional principles of which a reasonable person should know. In these cases, First Amendment plaintiffs have made it past qualified immunity. For example, a federal appellate court recently upheld an award of nominal damages and attorneys fees and costs where students were disciplined for wearing black armbands in protest of school policies. Similarly, another federal appellate court refused to grant a motion for summary judgment on behalf of Alabama teachers who allegedly disciplined a student for “silently raising his fist during the daily flag salute instead of reciting the Pledge of Allegiance with the rest of his class.” That court held that immunity was inappropriate because the Supreme Court “clearly and specifically established that schoolchildren have the right to refuse to say the Pledge of Allegiance.”

Other Strategies to Consider to Avoid Mootness Upon Graduation

A. Corporate Standing

Where a publication is separately incorporated, student plaintiffs should consider making the corporation a co-plaintiff. In Hazelwood, for example, the students may have avoided the mootness of their claims if the publisher had become party to the litigation. The Tenth Circuit expressly pointed out that Student Publications, Inc., the non-profit corporate publisher, was not named initially as a party, and did not seek to join litigation. Unfortunately, corporate standing will work to avoid mootness only for those media outlets that are incorporated, which excludes nearly all high school media. Moreover, challenges may arise if faculty members who are sympathetic to the university sit on the board of the corporate entity. However, where possible, separately incorporated entities should become parties to the litigation, as the corporate entity will have a continuing stake in the litigation, even after individual students graduate.

B. Third-Party Standing

Another creative solution is to claim third-party standing, although the chances of succeeding with this strategy are uncertain. Courts sometimes permit one plaintiff to stand in as the representative for another, if the injured party would have difficulty bringing suit on his own behalf; for instance, physicians have been allowed to bring suit to address injury to their patients. In Lane, however, the Tenth Circuit expressly rejected the plaintiff’s request to confer third-party standing on former editors of the student paper, on behalf of the newspaper’s current and future editors.

Though it is not common, some courts have held that third parties may bring suits on behalf of student publications whose rights were violated, but who cannot bring a claim because the affected students graduated. In State Board for Community College and Occupational Education v. Olson, the trial court held that the students’ claims were moot because one student could exercise her First Amendment rights through a replacement newspaper and the two other student plaintiffs had graduated during the litigation. On appeal, however, the Colorado Supreme Court held that a faculty adviser had third-party standing to challenge the student senate’s termination of funding for a community college sponsored newspaper, to protect student journalists’ First Amendment rights. The court reasoned that the faculty adviser had a substantial relationship with the students and would be an effective proponent of their First Amendment rights. Further, the court recognized that without third-party standing, the rights of students would be diluted, since students would be mooted out upon graduation.

Following Olson, student press plaintiffs should consider alleging third-party standing if mootness becomes an issue, especially if a faculty adviser is willing to join the suit. While few such claims are successful, third-party standing may be more successful in the future if courts find that mootness upon graduation prevents students from enforcing their First Amendment rights.

C. Class Action Lawsuits

When a defendant’s conduct affects a large number of students and a claim against a defendant is brought as a class action under Federal Rule of Civil Procedure 23, the case may stand a better chance of surviving a mootness challenge. The lead individual plaintiffs in a class action are known as the “class representatives,” who sue on behalf of themselves and others sharing their interests. The claims of unnamed members of a class may remain alive even though the claims of the class representatives have become moot.

Students occasionally have successfully used class actions to protect their First Amendment rights, by challenging school policies on behalf of all current and future students in a district. For example, in Hernandez v. Hanson, plaintiffs sought to enjoin enforcement of policies and regulations of the Omaha School District, which required students to obtain prior approval before distributing literature on behalf of non-school sponsored organizations within public schools. Even though these students had graduated, the court held that certification of the case as a class action pursuant to Rule 23 precluded a mootness defense.

Plaintiffs who wish to bring class actions must be careful to specifically request Rule 23 class action status, because the courts will not imply it. In Board of School Commissioners of the City of Indianapolis v. Jacobs, the Supreme Court explained that six students’ First Amendment claims would be dismissed as moot after they graduated, unless the case was properly certified as a class action. The named plaintiffs in the class action were students involved with the student newspaper, who alleged that the defendants interfered with the publication and distribution of the paper. The students sued as representatives of a class of all students attending schools managed by the defendant board, but did not adequately comply with Rule 23(c), which requires the named plaintiffs to certify, identify, and describe the class. The Court noted that the class description is especially important in cases where the litigation is likely to become moot as to the initial named plaintiffs prior to the exhaustion of appellate review.

Similarly, in Fox v. Board of Trustees of SUNY, the court would not regard the lawsuit as a class action, where the students who had graduated did not attempt to have a class certified, or allege in their pleadings that they were bringing an action behalf of similarly situated students.

Plaintiffs attempting to bring a class ac-
tion for violations of First Amendment rights should be careful to comply with all of the elements of Rule 23. If students bring a class action correctly, it may provide protection from mootness claims after the named plaintiffs graduate. Class actions may be most applicable to challenge policies that affect large numbers of students, such as challenges to school district policies.

D. Relief Under State Law

California legislators took action in 2008 avoid the inequity of depriving student plaintiffs of their claims in mid-stream. The legislature approved, and Gov. Arnold Schwarzenegger signed, a statute providing that students whose free-speech rights are violated while they are in school do not forfeit their claim when they graduate. While California’s is the only explicit “claim saving” statute enacted since Lane, student plaintiffs should at least consider whether a state-law remedy provides more relief than that recognized by the federal courts.

Conclusion

To prevent the mootness issues raised by Lane v. Simon and similar cases, student press plaintiffs may be best off if they request several forms of relief, including injunctive relief, declaratory relief, and nominal monetary relief. When requesting injunctive relief, plaintiffs should attempt to add students who will not graduate in the near future and should continue to do so throughout the litigation. Furthermore, if plaintiffs successfully argue that the defendant’s violation of their First Amendment rights has present, future, or collateral consequences, claims for injunctive and declaratory relief will not become moot upon their graduation. With declaratory relief, plaintiffs should challenge courts to determine separately whether the issue is moot. In requesting monetary relief, plaintiffs will avoid mootness upon graduation, but must be prepared to argue that the First Amendment right violated was clearly established and that reasonable people would have known of that right. Students should continue to argue that the “capable of repetition, yet evading review” exception should apply. Such arguments will challenge the courts to address these critical student mootness issues.

When student plaintiffs employ more creative strategies, they should be mindful of the school setting. For those student press outlets that are separately incorporated from the school, those plaintiffs should add the corporate entity as a plaintiff. That will prevent mootness upon graduation of individual students. Also, student press plaintiffs should continue to make third-party standing arguments, which may be more successful in schools where the faculty advisor has a substantial relationship with the outlet in a teaching capacity. Finally, for secondary school press plaintiffs and potentially students from large universities, a class-action lawsuit may successfully prevent mootness upon graduation of the named plaintiffs representatives. Overall, student press plaintiffs and their attorneys should pursue common and creative pleading strategies, with awareness of the challenges associated with each, to navigate and prevent mootness issues.

Endnotes

2 See Lane v. Simon, 495 F.3d 1182, 1186-87 (10th Cir. 2007) (holding that since plaintiffs had graduated and no longer served on the board of their student newspaper, defendants could no longer impinge on their freedom of press, and the claims for declaratory and injunctive relief were moot); Fox v. Bd. of Trustees of SUNY, 42 F.3d 135, 140 (2d Cir. 1994), cert. denied, 515 U.S. 1169 (1995) (holding that declaratory and injunctive claims were mooted by graduation); Alexander v. Yale Univ., 631 F.3d 178, 184 (2d Cir. 1990) (holding that graduation prevented the court from hearing the claim); Pederson v. Louisiana State Univ., 213 F.3d 858, 873-75 (5th Cir. 2000) (holding that injunctive relief was asserted by female university student in a Title IX effective accommodation suit, but not the damages claims, were mooted by graduation); Supp. v. Renfree, 511 F.2d 172, 175 (5th Cir. 1975) (holding that graduation from school terminated existence of live controversy); Caldwell v. Craighead, 432 F.3d 213, 218 (6th Cir. 1970), cert. denied, 402 U.S. 953 (1971) (holding that a free speech case was mooted by graduation); Jordan v. Indiana High Sch. Athletic Ass’n, 16 F.3d 785, 787 (7th Cir. 1994) (holding that student’s graduation rendered claim moot); Johnson v. Florida High Sch. Activities Ass’n, 102 F.3d 1172, 1173 (11th Cir. 1997) (holding that a 19-year-old high school football player’s suit seeking to enjoin enforcement of a rule forbidding students 19 and over from participating in high school athletics was moot because the football season had concluded and the student planned no further participation in high school athletics).
3 Lane, 495 F.3d at 1186-87.
4 Id. at 1187.
6 Church of Scientology of California v. United States, 506 U.S. 9, 12 (1992); Lane, 495 F.3d at 1186.
8 Cole v. Orrville Union High Sch. Dist., 228 F.3d 1092, 1100 (9th Cir. 2000).
9 Wood v. Strickland, 420 U.S. 308, 314 n.6 (1975); Will v. Michigan Dept. of State Police, 491 U.S. 58, 70 (1989); Ex Parte Young, 208 U.S. 123 (1908).
12 Flint v. Dennison, 488 F.3d 816, 823-24 (9th Cir. 2007).
13 Id.
14 Id. at 824 (citing Hatter v. L.A. City High Sch. Dist., 452 F.3d 673, 674 (9th Cir. 1971)).
15 Id.
17 Flint, 488 F.3d at 824 (citing Weinstein v. Bradford, 423 U.S. 147, 149 (1975)).
18 See Bd. of Sch. Comm’rs of Indianapolis v. Jacobs, 420 U.S. 128, 129-30 (1975) (dismissing as moot a challenge by high school student to regulations of their school newspaper after the court learned at oral argument that all plaintiffs had graduated).
19 Lane, 495 F.3d at 1187.
20 Cal. 228 F.3d at 1098.
22 Id.
25 Id.
27 Hutton v. Springer, 494 F.3d 108, 121 (2d Cir. 2007).
29 Id. at 2640 (Breyer, J., concurring) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).
30 Springer, 494 F.3d at 113.
31 Id. at 131.
33 Id. at 738.
34 Id. at 739.
35 Lowery ex rel. Crow v. Watson Chapel Sch. Dist., 540 F.3d 752, 762 (8th Cir. 2008).
36 Holloway v. Hardin, 370 F.3d 1252, 1259 (11th Cir. 2004).
37 Id. at 1269; see also Seamons v. Snow, 84 F.3d 1226, 1238 (10th Cir. 1996) (’’[i]n the light of the well established principle that the government may not deny a benefit to a person because of his constitutionally protected interests, and the well established framework of the Tinker analysis, we cannot say at this point that Defendants are entitled to qualified immunity’’) (citation omitted).
38 Lane, 495 F.3d at 1187.
39 Id.
41 Id. at 434.
44 Id.
45 Fox v. Bd. of Trustees of SUNY, 42 F.3d 135, 142 (2d Cir. 1994).
46 2008 Cal. Legis. Serv. Ch. 525 (S.B. 1370) (West), to be codified at Ca. Educ. Sec. 48907 et seq.
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