



STUDENT PRESS LAW CENTER

REPORT

FALL 2009 VOL. XXX, NO. 3

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Covering
sensitive
subjects
can make
life difficult
for student
editors

UNPRINCIPAL

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debate the extent
of their power over
student media.

Editors, readers
get emotional
over comments
on newspaper
Web sites

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College student newspapers today continue to push the boundary of writing about sex. Take a look at what some papers have been printing and others have to deal with after publication.



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The nation's leading student privacy law is getting another look from government officials and journalists after concerns were raised about limited access to records and abuse.



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

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STAFF

Liz White, McCormick Foundation Publications Fellow, graduated from University of South Carolina's School of Journalism and Mass Communications in May 2008. She worked at the student newspaper, the *Daily Gamecock*, in various roles including editor-in-chief, and was a part of the inaugural staff to take the paper daily. She also worked at the campus magazine, *Garnet&Black*, and the journalism school's newspaper, *Carolina Reporter*.



Christopher Carter, summer 2009 journalism intern, is currently attending Olympic College in Bremerton, Wash. He has worked for two years at the student newspaper, the *Olympian*, where he served in a variety of roles including editor-in-chief, photo editor and managing editor. He has interned as a news desk reporter for the *Kitsap Sun* in Washington. He was the coalition coordinator for the Washington Coalition for Responsible Student Expression 2009 that pushed for Senate Bill 5946 to extend First Amendment rights to students.



Catherine MacDonald, summer part-time journalism intern, is a senior at Virginia Commonwealth University in Richmond, Va., where she is a mass communications major with a focus in print journalism. She has been with the student newspaper, the *Commonwealth Times*, since her sophomore year and is currently serving as its managing editor. Catherine also interned with National Geographic.



Brian Stewart, summer journalism intern, is a junior at the University of Iowa in Iowa City where he majors in journalism and English education. He is a metro editor at *The Daily Iowan*, the UI's independent daily newspaper. Brian has also worked as a beat reporter and arts and culture editor at *The Daily Iowan* and was a founding senior editor of *Off Deadline Magazine*, a semi-annual cultural magazine.



Contributors: Jake Cunningham, Jack Dickason, Michael Felletter, Lori L. Garske, Michael Felletter, Lynn Lai, Andrew Rogers, Kyle Stevens and Ryan Ulsh.

Michael Beder, the SPLC's summer 2009 law clerk and a second-year juris doctor candidate at Georgetown University Law Center, contributed to this Report.

RT @SPLC_org

A high school newspaper adviser was removed from his position at West Fargo High School in West Fargo, N.D., and swiftly replaced because school officials disagreed with the content of the paper, the adviser said.

A high school student is suing Pearl High School in Pearl, Miss., after her cheer-leading coach demanded her Facebook password and disseminated her private messages to other school officials.

The school district governing Conestoga High School in Berwyn, Pa., home to the 2008 Journalism Education Association's Journalist of the Year, is considering a new policy the students believe would institute prior review and force the adviser to censor content.

Officials at Morgan State University in Baltimore, Md., declined to renew the student media adviser's contract after student journalists refused to discuss the source of stories about discrepancies in student government spending.

The student newspaper at Virginia Tech University in Blacksburg, Va., filed a lawsuit against the West Virginia State Police to obtain documents about a student who disappeared over a decade ago.

A prosecutor is appealing the dismissal of all charges against a Penn State student photographer. The student was arrested and originally charged with several misdemeanors while covering a post-football-game riot in 2008.

A bill in the California State Assembly would include universities' auxiliary organizations — university foundations, fundraising groups or campus bookstores — in the state's open records act.

The principal of Colony High School in Palmer, Alaska, dropped a lawsuit against MySpace after the students who created a fake profile in her name confessed.

Michigan State University officials must release police documents about an in-dorm assault to the student newspaper, a judge ruled in May.

The Wisconsin Supreme Court announced it will hear a case concerning whether private e-mails sent by teachers using their district e-mail accounts are public records.

And be sure to catch the latest news from the SPLC online:

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Top programs not immune to prior review

Henry Rome and Seth Zweifler have, between them, picked up just about every honor that a high school journalist can compete for.

They shared the National Scholastic Press Association's "Story of the Year" award for a 2008 piece in the Conestoga, Pa., High School *Spoke* documenting an illegal sports betting ring run by a classmate. Their newspaper's website was voted one of the top four in the nation by the Columbia Scholastic Press Association — in its first year of operation. And last spring, Henry capped it off by bringing home the Journalism Education Association's "High School Journalist of the Year" award, the Heisman Trophy of high school reporting.

Had Henry and Seth piled up this record of achievements in any discipline other than journalism — if they were champion tennis players or debaters or clarinetists — their work would be hailed by their school district as an example for young people everywhere. That's not how it works with journalism.

After Henry and Seth topped their 2008 achievements with a June 2009 story exposing weaknesses in the school district's screening of employees for criminal records, Superintendent Daniel E. Waters responded with new policy directives that assert greater editorial control over student media. If the superintendent's proposals take effect, it will become the faculty adviser's job to prevent students from publishing anything "in poor taste as a reflection of the school" (a standard that goes beyond the censorship permissible under Pennsylvania Department of Education rules), and all student media will face mandatory prior review by administrators.

The use of prior review as a retaliatory tactic of intimidation is a depressingly familiar refrain for those in scholastic journalism. Even though the JEA — the most knowledgeable professional body — has condemned prior review as an unsound educational practice, that

has not deterred district after district from inflicting it in response to student journalistic work that takes on uncomfortable issues. This was the fate of adviser Barb Thill's outstanding program at Illinois' Stevenson High School. Earlier this year, her district imposed prior review to punish the students and adviser for what officials called an insufficiently cautionary package of stories about the increase in casual "hook-ups" among teens. Thill found the heavy-handed oversight unbearable and stepped down as adviser, as her critics undoubtedly had hoped.

Administrators will argue that they are merely providing adult training and guidance, just as professional editors would in the real world. That's nonsense. No administrator has ever told a student journalist, "Let's send out another Freedom-of-Information request so we can confirm that this scandal goes all the way to the top," and none ever will. There is no "teaching of journalism" going on in the principal's office.

The way that Henry and Seth have gone about opposing heavier administrative control exemplifies their maturity and professionalism, and could serve as a road map for anyone in the same situation. They've been respectful but forceful in dealing with powerful district officials, they've engaged allies in the news media and alumni community, and they've kept the debate focused on the compelling educational policy reasons that favor uncensored journalism.

Ultimately, the solution to situations like the one at Conestoga may be a political one. School boards respond to the ballot box.

When those who've benefited from student journalism begin putting censorship on the public agenda and holding elected board members accountable for bad votes — or better still, running for school board themselves — *then* we'll see relief for the Henrys and SETHs of the future.

—Frank LoMonte, executive director

Community college papers face tough odds to keep programs

BY CATHERINE MACDONALD

At four-year colleges and universities, newspapers can enhance the higher-level educational experience for many students. But at community colleges, student newspapers can cause staff members to crumble under the pressure.

Hersson Preciado said he has seen his college newspaper cause at least two fellow students to leave school altogether. That's because as a former editor-in-chief of *Talon Marks*, the paper at Cerritos Community College in Norwalk, Calif., he has seen students attempt to juggle the paper, school, jobs and family and social lives.

"It has taken a toll on a lot of us," said Preciado, who is also the former Journalist Association of Community Colleges' (JACC) SoCal student president.

Because of their unique circumstances, community college student journalists are often forced to tackle many issues differently than students at traditional four-year institutions — from battling with overbearing administration to keeping their papers alive altogether.

Student struggles

Preciado says it can be difficult for community college students to be successful in school while working at a paper.

"Either you start failing things or you just start taking less and less classes so ultimately you're there longer and longer," he said. "The longer you're at a community college, the more stressful it is."

Linda B. Boles, the Community College Journalism Association's Midwest region representative, calls community college students "non-traditional."

"Most (community college students) have job and family obligations that the university-level student does not have to contend with. By the time they juggle job, family, class time and homework, they have little to no time to devote to 'extras' such as a stringer on their college newspaper," said Boles, who is also the faculty adviser for Richland Community College's *Communicatur*, in Decatur, Ill. "This problem is especially applicable for the non-journalism student: a student who is a good writer or

photographer and wants to participate but who has little free time left over."

Overbearing administration

Community college students and their papers often face other hurdles in addition to feeling overwhelmed. Preciado said meddling school administration is a reality for community college journalists, more so than for their traditional four-year counterparts.

"They (administrators) don't really quite understand the role of the newspaper. They think it's just another class," Preciado said. "When they realize it's not just another class ... [and that student journalists] can 'cause more trouble,' they keep a closer eye on it."

He thinks some community college presidents interfere with their school's papers because student journalists sometimes involve the community when issues arise on campus.

"When something goes wrong at a community college, many times the paper will take it to the city and then the city will get involved," Preciado said.

Preciado said at the JACC, he saw a spectrum of community college presidents — some meddled too much and others were "upstanding defenders of journalism." The JACC honors the latter annually with the First Amendment Awards.

The JACC's Web site states: "Friendly administrators who understand and support First Amendment efforts by student publications are rare and highly appreciated."

Rich Cameron, the *Talon Marks'* adviser and head of the journalism department at Cerritos, said dealing with

administration requires a certain amount of finesse.

"It takes a confident and well-trained adviser to educate administrators and board members. I don't expect to be well liked by all of them, but I do expect to be respected," said Cameron, who is also secretary of the JACC, in an e-mail. "And I think I manage that by showing that I am not in control of content, that students are. I am their liaison, not their designated censor."

Losing the print edition

Cameron and Preciado recently battled with Cerritos' administration in order to save

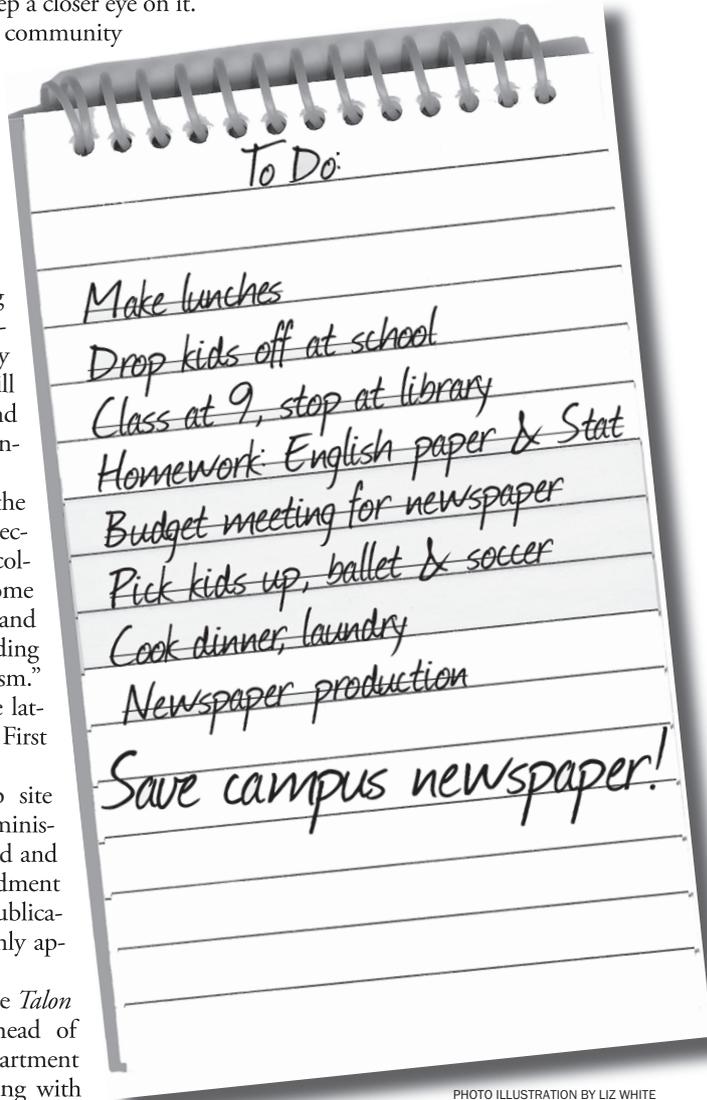


PHOTO ILLUSTRATION BY LIZ WHITE

their paper's print edition.

At Cerritos, administration decided May 21 to cancel the class that handles the production aspect of *Talon Marks*, which would have reduced the 53-year-old paper to an online-only publication.

"We dealt with the situation like any other group fighting for its rights has done in the past, through meetings, press releases, subcommittees, etc.," said Erick Galindo, a former *Talon Marks* editor who was involved in fighting for the print edition.

After the Cerritos community campaigned for several weeks to save the print edition, the school agreed to offer the production course — if at least 15 students register for the fall 2009 semester class.

"We could still lose the print edition in the fall if we fall short of the 15," Cameron said. "All we gained was a chance to save the print edition."

Cameron said losing the paper's print edition would likely be "the beginning of the end of the journalism program at Cerritos College."

"The physical product gives a lot of students a reason to stay in college, a sense of purpose, just as playing on an intercollegiate team does for athletes," Cameron said. "Athletes could survive on intramural contests, but they'd soon move on to other schools with the intercollegiate sports program."

He said if the print edition disappears, fewer students would sign up for all of Cerritos' journalism classes, and the program would be at risk.

"We need to do much more with our online journalism and we'll use this as a wake-up call," Cameron said. "But print is not dead yet and we need to keep the print edition alive."

According to Cameron, only about 70 of the 110 California community colleges have a journalism program that produces a student publication — and many of those are in jeopardy.

"Other community colleges in California are also having to make outrageous cutbacks, and we're likely to see some publications fold in the next year," he said. "It is not unreasonable to see as many as 10 percent of them go away in the next year or so. We may still be one of those as far as the print edition is concerned if we can't get our enrollments up."

Cameron said the loss of community college papers and programs would have an effect on four-year institutions in the state as well.

"At many of them (universities) that



have journalism programs, large percentages of upper-division students are community college [transfer students] who cut their teeth on community college publications," he said. "And many of the students who are doing that don't start out as journalism majors. They are undecided and then decided they like journalism after they've tried it out here."

Reviving a community paper

Community college papers are also at risk for complete dissolution. According to a study conducted by journalism professor Toni Albertson at Mt. San Antonio College in Walnut, Calif., none of the 19 community college journalism programs recently put on hiatus were ever restored.

At North Seattle Community College in Washington, the 30-year-old *Polaris* decreased publication from one edition every two weeks to one edition every three weeks and eventually stopped production entirely in 2007. Now, students at North Seattle are attempting to bring the paper back this fall.

September 29 is the tentative publication date for the first print issue, said Tracy Furutani, the *Polaris*' acting adviser, who organized the group of students to revive the paper and is paying for the first issue herself with some aid from North Seattle's Office of Instruction.

The *Polaris*, which survived through blogs run by students and Furutani, stopped publishing because of internal staff issues that left too much strain on staff structure and was always "a bit precarious," said Furutani. She said many students are "maxed out in their academic commitments."

Some of the staff problems the *Polaris*

has faced would be less of a problem at a four-year institution, Furutani said.

"On a non-commuter, four-year campus, students are more invested in their campus environment. The newspaper is one way in which they can effect change and exert control over their environment," Furutani said. "Also, four-year colleges have actual departments, like communications, which can work with students over several years to develop their journalism abilities. I'm lucky to hang on to a good writer for two quarters, let alone a year."

Furutani said after the first issue this fall, the staff will go back to the student fee board, which does the budget allocations for student groups and has previously rejected them, and "show them what has been accomplished and what campus groups thought of the first issue."

"Ideally, then, our allocation of student fee money will support publication of the print and electronic editions for the rest of the academic year," she said.

Advice from veterans

Because community college papers can be uniquely difficult to protect, community college student journalists often need to take extra precautions.

"Treat your program like a professional organization, and in that aspect remain efficient and organized," Galindo said. "Keeping a list of former staffers and even some of the contacts that you have established along the way will help out a great deal if you ever need to organize."

Galindo said students should always maintain a strong relationship with the community they cover, "because its support can be invaluable in any fight."

It is necessary for publications to "be vital to the campus," Cameron said, and an every-other-week publication is not as vital as a weekly.

"Put priority on building a viable online site in case you get reduced to just that," Cameron said. "And don't get lax in recruiting."

Galindo had some words of wisdom for struggling community college student journalists: Do not lose hope.

"No matter what the people in charge say about what little chance you have, don't give up," he said. "There were times when we felt discouraged to the point where some of the meetings we had with school administrators almost made me tear up. One administrator told me bluntly that we had no chance of saving the print edition and all I did was say, 'Thank you, but we'll see.'" ■

BACK TO THE DRAWING BOARD

Changing times have led to changing student media polices, with differing receptions

BY CHRISTOPHER CARTER

As the business model for journalism changes with the advent of new technology and more expansive schools of thought, college journalism programs change along with it.

Policies implemented to shift, alter or otherwise change the way collegiate student media operates present a path across a legal and ethical minefield for both the students and administrators. Whereas some new policies may border on censorship, others have successfully kept student media afloat in difficult times.

At the University of Utah in Salt Lake City, the school's newspaper, the *Daily Utah Chronicle*, has been on the receiving end of controversial policy changes.

In 2006, university President Michael Young created a task force to reorganize student media. Interest in reform came about in part as the university's student media faced financial difficulties.

After two years of deliberation and meetings with student media leaders, the task force presented a solution including the creation of an oversight body. The proposed Student Media Council would place all student media outlets under the watch of one umbrella entity. Along with the formation of a new body, the recommendations from the task force included the creation of various administrative positions, including the Stu-

dent Media Advocate, who would act as a mediator between the administration and the students.

Currently the *Chronicle* operates under a publications council, separating it from the radio station and other student media organizations. Under the proposed changes that line of distinction would disappear.

Chronicle Editor-in-Chief Rachel Hanson said the move to an all-inclusive unit would threaten the newspaper's editorial independence and force once-separate student media groups to co-exist closer together.

"On the surface sure, it would make them all work together," said Hanson. "I think if we were under that umbrella as just one of the student media members, it would lessen our importance on campus."

The *Chronicle's* staff published an editorial criticizing the proposed advocate position as an "unnecessary go-between who could hinder independent student media."

The advocate role would be overseeing the operations of all student media. According to Hanson, the job is not feasible because she does not believe one person could have the knowledge and training to help all forms of student media.

"I don't think it's realistic to have someone everyone has to go to for the same type of mentoring," said Hanson.

According to Ann Darling, communications department chair and one of the drafters of the new policy, similar positions

PHOTO ILLUSTRATION BY JULIA CHAPMAN

exist at universities of similar size and with comparable student media operations. She said the person hired to the position will be chosen by a council consisting in part of professional media.

Hanson said she believes those who drafted the policies included language that could allow the university to maneuver into a position leading to censorship.

"I think they definitely created it knowing they would have a hand in [editorial content]," Hanson said.

Darling said those allegations are not true and no substantial changes exist between the old and new models. Specifically, she said the language preserves the editorial freedoms that existed in the publications council language.

"It is a different version of the same council (with) the exact same language," Darling said.

According to the draft of the student media board policy, the board will abide by the Joint Statement on Rights and Freedoms of Students of the American Association of University Professors. The statement, included in the former publications council language as well, states that "the student press should be free of censorship and advance approval of copy, and its editors and managers should be free to develop their own editorial policies and news coverage."

According to Darling, the task force integrated language from both the broadcast and publication councils to make up the wording for the new policies and also had media professionals "comb" through the language for approval. She said there is no threat to editorial independence and it was only logical to have a single council instead of one for each branch of student media.

The newspaper's staff also took issue with the process the task force used to make its decisions. In the same editorial, the staff wrote that the process was "very secretive," and called a statement made by the task force claiming all concerns and feedback were reflected in the drafted policies an "incredible stretch of the truth."

The university's board of trustees approved a raise in student fees to pay for the new council; however, the policy changes including the hiring of the advocate position have been tabled until the fall and are contingent upon the university's budget.

Hanson said for now the newspaper staff is waiting to see what happens when school resumes in the fall. She said some aspects of the policy, including the financial distribution from student fees, may be beneficial to the newspaper, but she still remains wary of potential for administrative control.

While the creation of new policies and positions directly affect students, it is not always a negative adjustment. However, student editors say the process should be transparent and open.

In March, the staff at the *Oregon Daily Emerald*, the student newspaper at the University of Oregon in Eugene, went on strike after the newspaper's board of directors abruptly hired an interim publisher with an \$80,000 salary.

The board is made up of five students, one faculty member, one staff member and several at-large people in the community. Other than the faculty and staff board positions, the board remains, like the newspaper itself, entirely independent from the university.

The publisher position was created partly in hopes of alleviating the newspaper's financial woes and to push the newsroom to adopt newer business models. While the newsroom staff was aware the board was creating a new layer of management between the board and the editors, the students did not expect a decision to be made without a transparent and open interview process.

Emerald staff members said at a board meeting they felt the actions taken by

Policies, page 8

U. of Utah reorganizes student media groups

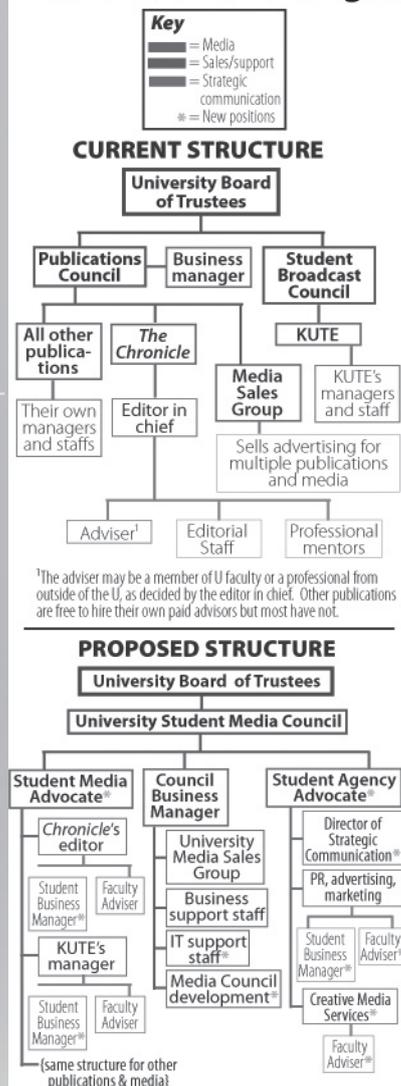
This chart displays the proposed changes in structure for student media at the University of Utah in Salt Lake City.

The major difference is that all student media will be contained under one council. Previously, the *Chronicle* and the radio station were each governed by individual councils that reported to the university's Board of Trustees.

Under the new universal council, the proposed changes also included hiring a student media advocate to serve as a go-between for the *Chronicle* and the council.

GRAPHIC ILLUSTRATION COURTESY OF THE DAILY UTAH CHRONICLE.

Media Council Changes



the board in regard to the hiring of a publisher were reckless, irresponsible and embarrassing.

The staff announced it was going to cease publication until the board met a series of demands. The staff asked the board to rescind the offer to Steven Smith, former editor of the *Spokesman-Review* newspaper in Spokane, Wash. Before the job offer, Smith was hired as a consultant to the *Emerald* and was asked to draft a plan to help the newspaper cope with changing media. He presented his plan in January, with part of that plan including the publisher position. Smith declined to comment for this story.

Among their complaints, the staffers believed the newspaper's independence would be threatened by the relationship between the new publisher and editor. The *Emerald* argued the language in the job description of the publisher allowed for too much editorial control.

Emerald Editor-in-Chief Allie Grasgreen defended the decision to go on strike, saying it helped get the board to listen to the students' concerns when it may not have otherwise.

"We felt like with the more serious issues, it was the only way to make our voice heard," said Grasgreen. "If we hadn't taken those steps, the course of events would have definitely changed."

Board Chair Jeanne Long said the newsroom "surprised" the board with its actions. She said the board may have underestimated how strongly the news staff would oppose the new management structure.

Long said although she does not agree with everything the newsroom did, the editors showed "passion" and "commitment" for their First Amendment rights.

"They made a very lasting statement to the board," said Long. "In the end, it turned out really well."

Grasgreen said after negotiations and discussions, the concerns raised over the publisher's scope of authority have been squelched and since production has resumed, the board is working side-by-side with the newsroom now that the board has hired Kellee Weinhold, former publications director at the University of Illinois at Urbana-Champaign, as publisher.

According to Grasgreen, one of the primary points of contest was whether the publisher should be able to control how the newspaper's budget was expended.

The two parties compromised that the

publisher can set the budget, but only the editor-in-chief can choose how funds are spent, according to Long.

Students who have gone through a dispute over publication policies say one way to avoid administrative red tape involved with changing the face of student media is for students to take the lead on forming new policies, or at the very least, make sure they are involved.

At Central Washington University in Ellensburg, Wash., the students working for the university's weekly student newspaper, the *Observer*, are operating under a new department-created student media board. The board was created in part by Lois Breedlove, chair of the communications department.

Breedlove said the charter for the board was written not long after she arrived at the university in 1995, but no action was taken until a year ago when it was approved by the provost. The university's board of trustees has yet to formally adopt the policy, but is expected to soon, according to Breedlove.

Breedlove, who served as adviser to the *Observer* between 1995 and 2003, said the key to a successful board lies in the wording of the policy. She said because she wrote it, she knew the terms and conditions of the board's charter would work in favor of the

students and protect them if necessary.

"If we drafted it, we could make sure it was the language that got used," said Breedlove. "Ours is pretty standard, but it was done by us with specific goals in mind."

According to Breedlove, having the support of the administration contributed to being able to create such a policy.

Central Washington President James Guadino said it is critical administrators do not get involved any more than they have to.

"The importance is to not interfere. Understand that they are an independent news operation," said Guadino, who was the founding dean of the College of Communication and Information at Kent State University in Ohio. "It is important so we don't think we can control the editorial policies."

Observer adviser Tony Staab said the board was created to foster a healthy relationship between the students and the administration as well as to be mutually beneficial.

"It protects the academic side from libel of student work and supports the students' First Amendment freedoms," said Staab. "In a sense, it codifies the university's commitment to free speech and their commitment to not intrude."

If an administrator attempts to introduce any kind of board formation, Breedlove suggests editors and advisers "co-opt the process immediately" to ensure their interests are considered.

According to Hanson, students should be reading between the lines when administrators are in charge of creating new policies.

"Look out for language that's really vague," said Hanson. "It might not specifically spell out power but leave it open for someone to have a lot of sway."

Breedlove, who came from other northwest schools Portland State University and Washington State University -- both of which had similar media boards -- said having the boards can provide the basis for a strong program.

"I don't think there is any situation where it can't help," said Breedlove. "It takes the burden off the adviser, it stabilizes the department, and the student media have a forum where they're held accountable but protected."

Grasgreen said although change can be intimidating for an established newspaper like the *Emerald*, it is necessary to keep up with changing media.

"Some of the changes that we're going through with are scary because they are new to us," said Grasgreen. "(However) in this

Monitoring the changes

Updates to student media may not be a negative change, but watch out for these issues.

Distribution of funds — Give close attention to how funds are disbursed, requested and withheld. Language assuring student media the chance to appeal a funding issue or suspension can always be helpful. Be cautious of language that gives editors or managers only limited say in how funds are spent.

Editorial freedom and responsibility — In the case of the University of Utah, the new student media council language includes a section protecting the editors from being suspended or otherwise retaliated against for student speech.

Board/Council Members — Successful student media boards typically have at least one member of the publication (usually an editor) represented. Be wary of language that allows for more administrative voice, and voting capacity, than from students or the community. These boards often make important decisions, sometimes financial, and having too much administrative influence can lead to censorship.

THE GREEK BEAT

Parties, pledging and philanthropy

BY CHRISTOPHER CARTER

Covering the rousing parties, philanthropic activities and exclusivity of social fraternities and sororities on campus can be tricky ground for college journalists.

Bad press can upset well-connected students and stories of exclusive houses can mold cultural misconceptions. However, the Greek community often plays a significant role on campus and is an important part of campus coverage.

Given the prominence of those involved in fraternities and sororities, experts and student journalists argue media scrutiny comes with the territory.

Those choosing to be members of such organizations need to come to terms with their leadership position on campus and the risk of close scrutiny, said Steven Good, director of education and technology at the Phi Delta Theta fraternity international headquarters in Oxford, Ohio. Good's job involves dealing with the media and public relations for the Greek organization and its 162 chapters.

"If people know about you, people know of you, you're going to get more press," said Good. "Do papers highlight more bad press than good? I don't know." The fear of bad press has caused Greek leaders to take measures to protect their reputation.

At the University of West Georgia in Carrollton, Ga., former *West Georgian* Editor-in-Chief Ellis Smith said he believes Greek leaders have used their positions of power to limit the operation of the student newspaper.

In April, the university's student government President Alan Webster proposed a bill that would temporarily freeze funding to the paper. Webster is a Chi Phi fra-

ternity member. The bill was introduced following a satirical opinion piece about Greek life that appeared in the *West Georgian* the day before. The column sarcastically referred to fraternities as havens of rape and underage drinking.

"What's also great about being a part of a social frat is the set of opportunities one gains from being in a group of over-aggressive alcoholics that have no sense of responsibility. If you're like me, then you probably know how great and freeing it feels to be a part of a pack, much like being a dog or a sheep," Jacob Lovell wrote in the column "Join a Frat with Buck Futter, Jr."

The bill said the newspaper's name was "synonymous with division among students, faculty, and staff at the university as well as irresponsibly publishing faulty information and assumptions in a damaging matter to the Institution." Smith said he allowed Lovell to write the column, not wanting to infringe on his right to free speech. He said he does not know why Webster, who had typically been a supporter of the newspaper, would try to suspend it. Smith said he suspects Webster's Greek constituents, and their reaction to the story, were to blame.

"People need to realize the best solution to bad speech is more speech, not shutting down speech," Smith said. "The knee-jerk reaction is to shut down speech across the board. It's just a basic failure." According to Smith, the relationship between the Greeks and the newspaper has not been affected too much by the incident and he credits that to the newspaper's staff reporting the issue fairly and speaking with members of fraternities about the role of the newspaper.

"When we gave it to them straight, some people in the Greek community got

introspective," Smith said. "There was some immediate anger, and then as people kind of understood, they took a step back."

In 2008, the Pennsylvania State University Interfraternity Council (IFC) president pushed a public relations policy into effect that mandated fraternity members get approval before speaking to any member of the press, specifically the student newspaper, the *Daily Collegian*.

An e-mail posted on the *Collegian's* Web site from former IFC President Abraham Gitterman that circulated around the same time the policy was proposed suggested the IFC was concerned with its image in the university community.

"This is a major issue right now, managing our image, and rebuilding our credibility with the University, Penn State, and all of the fraternity [communities] around the country," said Gitterman in the e-mail to campus fraternities.

Gitterman also blamed the *Collegian* for the negative reputation of the Greek community.

"They don't look at our letters, they see 'Frat.' They look at us as 'news,' 'drama,' and continue to bash our names, mess up our stories, and make false stories out of an 'independent-confusion,'" wrote Gitterman.

The policy was implemented but removed a month later after Gitterman voluntarily resigned as president before his term was up.

Collegian Editor-in-Chief Rossilynne Skena said the relationship between the newspaper and the Greek community has improved since then. She said she believed Gitterman may have had personal issues with the press which led him to introduce such a policy.

"In this case I honestly feel like it was kind

of a personal thing, an opinion,” Skena said. In a more crude form of censorship, some Greeks have resorted to stealing newspapers off the racks when threatened by the newspaper’s coverage.

In 2006, the Sigma Chi fraternity chapter at the University of North Carolina in Chapel Hill, N.C., reportedly stole 10,000 copies of the university’s student newspaper, the *Daily Tar Heel*. The fraternity’s president came forward to apologize for the incident, and the newspaper reported the papers were stolen to keep students from reading a front-page story about the fraternity’s hazing violation and suspension.

The same year, members of the Zeta Tau Alpha sorority at Stetson University in Deland, Fla., responded to a story about mold in their house by stealing approximately 700 copies of the newspaper. After the sorority came forward, they paid \$1,200 to reprint the *Stetson Reporter*.

Nearly one-fourth of all newspaper thefts reported to the Student Press Law Center in the last decade involved the Greek community specifically.

The stories of hazing, pranks and underage drinking, when magnified on the front page, can create undue negative reputations, according to one former Greek house leader.

“There are publications that do go out of their way, that nitpick and find faults in groups that are perceived to be bad,” said Joe Russo, former Phi Delta Theta chapter president at Ashland University in Ohio. “What sells papers, what gets attention is when stories give in to the sensationalism.” Russo also wrote a social and political column for the university’s student newspaper, the *Collegian*, and said the blame for these distorted perceptions often lies with Greek row rather than the newsroom.

“If you have a PR problem it is because you screwed something up,” Russo said. “If someone sees your fraternity as an ‘Animal House,’ it is probably for a reason.” Dan Merica, senior staff member at Bentley University’s student newspaper, the *Vanguard*, agrees. He said the gossip about Greek life often precedes newspaper coverage and the blame for a negative reputation comes from what the community is already talking about.

“There are a lot of rumors that go around college campuses,” said Merica, who wrote an investigative piece for the *Vanguard* after hearing about disciplinary infractions within the Tau Kappa



Members of Penn State’s Greek community participate in an annual Greek Week chariot race in April 2009 . PHOTO COURTESY OF RYAN ULSH/ THE DAILY COLLEGIAN.

Epsilon fraternity. The group was permanently suspended from the Waltham, Mass., campus as a result of the article Merica wrote. “It is the job of the newspaper to get the factual information.” According to Russo, the Greek community is partly responsible for seeking out the coverage it wants from student media. He said having fellow Greeks in the newsroom increased coverage of events like Greek Week, a week-long celebration of Greek life, typically uniting the Greek community with events and fund-raising opportunities. Greek Week is a popular occasion on campuses across the nation.

“I think fraternities, sororities or any organization that wants to get taken more seriously needs someone that is taking the lead on PR issues,” Russo said.

On the San Diego State University campus in San Diego, Calif., with more than 50 Greek organizations, a Greek leader said getting the publicity he wants is not such an easy task.

San Diego State IFC President Eric Licata said the Greek community has a “decent” relationship with the student newspaper, the *Daily Aztec*, but good press is hard to come by.

“Getting enough publicity is the hardest thing,” said Licata. “They (the *Aztec*) also like to publish controversial issues rather than all the good the Greek community does.” According to an editor for the Vanderbilt University newspaper in Nashville, Tenn., the larger the Greek community on campus, the more effort required to cover it.

“Everything is in context. You have got to look at who you’re covering,” said Michael Warren, editor-in-chief of the *Hustler*.

The *Hustler* stirred up controversy

when Warren chose to run the mugshots of 54 members of the Sigma Chi fraternity arrested at a campground.

Comments left on the story’s online version suggest the Vanderbilt community considered the decision to be in bad taste. Posts called for the resignation of editors and accused the newspaper of defamation and unethical conduct.

According to Warren, the president of Sigma Chi requested Warren not publish the photos. Warren said the story that ran with the photos was important because it was one of the largest recorded arrests in the area and it was not meant to sensationalize the event. He said the photos were meant to show the magnitude of the situation.

The staff at the *Hustler* responded to the criticism with a letter from the editor that said “the story was newsworthy and informative, yet the pictures gave a much clearer story and highlighted the extraordinariness of the details.” Merica said stories on the Greek life beat are a mixed bag of positive and negative for the Greeks. He said the bottom line is making sure the newspaper fulfills its duty to the students.

“Obviously you’re going to cover the things people are talking about,” said Merica. “We’re not out to make people look bad. We’re truly just covering stories.” Skena said the *Collegian* strives to cover the campus fairly and Greek organizations typically are more prominent on campus; therefore, they attract more coverage. She said however, the newspaper does not go out of its way to find the negative press.

“The thing with us is, if the art club violates some kind of university

Administration's pawns

Media advisers face pressure from school officials over editorial content

BY CHRISTOPHER CARTER

"Something's wrong. They didn't say Christina's name," Marcia Roi said after the Clark College Board of Trustees chairwoman read off the names of the college's newest tenured faculty. And then, the chair announced to the board Christina Kopinski, Clark's only journalism professor and adviser to the student newspaper, would be denied tenure.

Kopinski's record was clean and her tenure committee recommended her to the board with a unanimous vote for approval, according to Roi, who is the faculty union president at the Vancouver, Wash., college.

So it came as a surprise to Kopinski, Roi and the journalism students that she had been denied job security. The decision by the board equated to her losing the job she had come to love over the past three years.

Roi and Kopinski said the board has not given an explanation.

One of Kopinski's students and the *Independent's* Editor-in-Chief Audrey McDougal, said the members of the newspaper's staff began to suspect their investigative reporting was to blame.

McDougal said she remembers the administration getting upset when the newspaper ran a story about the school's fire extinguishers not being up to code. She said an administrator told Kopinski the students should not concern themselves with such matters.

"I can't think of any other reason why they would deny her tenure," McDougal said.

"I immediately came to that conclusion, a lot of us did."

The situation at Clark is reflective of cases across the country bringing the issues facing student media advisers — like job security and ethical practice — to the forefront of journalism education.

Mike Hiestand, legal consultant for the Student Press Law Center, said it is not uncommon for administrators to control student media by removing the adviser. He called it a "creative sort of censorship."

With administrators straying away from interfering directly with students, advisers sometimes become pawns, being forced into an ethical quandary.

"A part of that is the realization on the part of administrators that the law is protective and

doesn't allow administrators to go after the publication itself or the student editors," Hiestand said. "The adviser is an easy target."

In June, Denise Brown became that easy target.

Officials at Morgan State University in Baltimore, Md., chose not to renew Brown's contract when students failed to reveal to administrators their sources and evidence in stories detailing the misuse of student funds.

Brown, like Kopinski, believes she is being targeted by the administration in retaliation for student speech.

After the stories were printed in a February issue of the *Spokesman*, Brown was sent a memorandum in June by Floyd Taliaferro III, director of the university student center and student activities, informing her that renewal of her contract would depend on whether her students met with him individually to discuss their sources. Her students never met with Taliaferro.

A week later, Brown was told in a letter her contract would not be renewed, effectively firing her by the end of the month.

The administrator who wrote the letter did not provide a specific reason why. Brown said she is considering legal action.

Efforts to reach school officials for comment were unsuccessful. However, a Morgan State spokesman told the *Baltimore Sun* newspaper Brown was "more or less out of control" and said the matter was a personnel decision.

Brown said that during her time advising both the newspaper and yearbook, she never received an evaluation and her removal does not make sense.

"For six years I put in the blood, sweat, tears and money ... in an effort to enhance the program," Brown said.

Brown, who calls herself a "casualty of war," said she is hoping that she may return to her role and continue building the program at Morgan State if and when things are settled.

The debated role of advisers

The role of advisers exists in a state of legal and professional limbo. They are typically paid out of the pocket of those whom their students may criticize. The adviser is hired to teach ethical journalism, sometimes investigative in nature, while also serving as a member of the institution's faculty.

The College Media Advisers Code of Ethics for advisers states advisers should steer clear of modifying student work if it "robs student journalists of educational opportunity and could severely damage their rights to free expression."

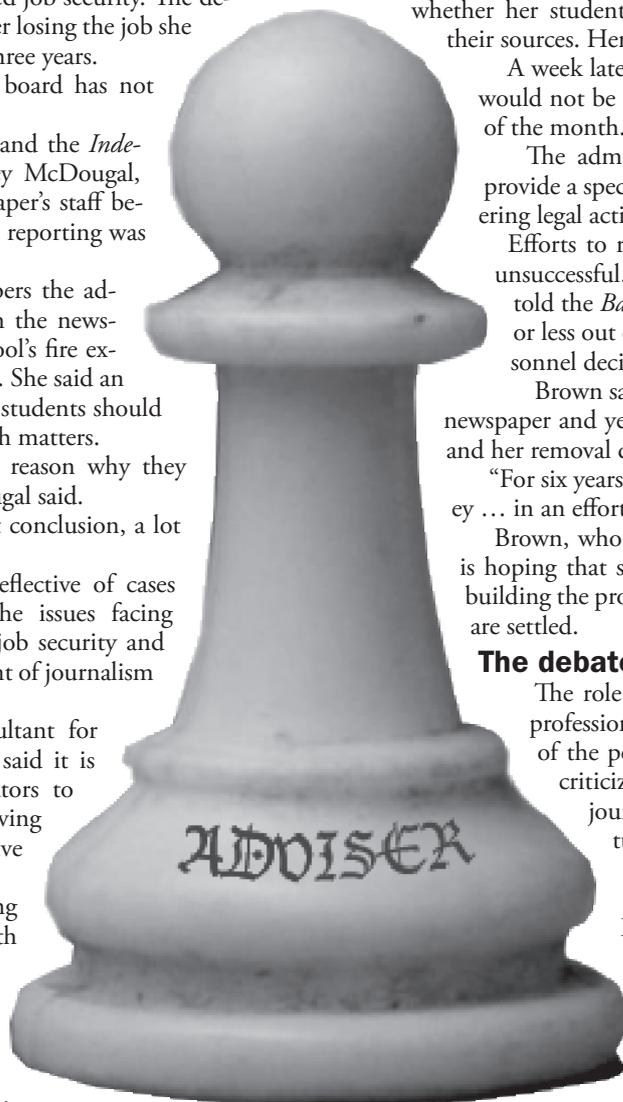


PHOTO ILLUSTRATION BY LIZ WHITE

Risque Writing

Sexual content causes controversy

BY CHRISTOPHER CARTER

“Feel free to experiment during all positions when having sex. If on top, sit up and reach back to grope and fondle. It’s sure to add stimulation and perhaps take him by surprise - in a good way.”

The *Orion*, the student newspaper at California State University at Chico, published this titillating piece of advice as part of a sex column in April. It is something that likely would not have been seen in college newspapers only a short time ago.

Whether in the interest of education, risqué humor or shock value, student newspapers have transcended the health reporting boundaries and ventured into writing *Sex and the City*-type revelations and sexual exploits. As student writers bump up against some readers’ notions of taste and propriety, these columns and special editions have created their share of controversy.

“You pretty much cannot cover a sexual topic it seems without angering some part of your readership,” said Mike Hiestand, legal consultant to the Student Press Law Center.

Hiestand said that he receives calls from student journalists who want to practice safe sex-writing but are unaware of the limits. A few have asked if they are allowed to discuss sex on the page at all.

According to Hiestand, while there are a few publications that aim for shock value, most of the calls he fields are from students who genuinely want to educate their readers, not anger them.

“You have to decide early on what your focus is, what your goal is,” said Hiestand.

Hiestand said editors must choose whether they want to provide healthy and accurate information or whether they are “just trying to be another skin magazine.”

Take for example, the *C-Spot*, the erotic review magazine published by students at Columbia University in New York City. The magazine, which had its inaugural issue in October 2008, features photos of students in sometimes-artistic poses sans clothing, accompanying articles reviewing pornographic Web sites and describing sexual experiences.

According to the magazine’s Editor-in-Chief Jessica Tang, the *C-Spot* is “absolutely” pushing the boundaries of sexual literacy in college.

“Gender and sexuality are not tradition[al] subject departments at universities; they have been relatively recently introduced as legitimate topics in the world of academia,” Tang said in an e-mail. “As for the pictorial aspect, the idea of students photographing other students in the buff is also novel. Students at most universities do not get to see their classmates, floor mates, team mates, etc. posing nude/semi-nude.”

For those sticking to the pages of traditional newspapers, experts say students must still be aware of what it means to go too far. Hiestand said while it is true that obscenity can land student journalists in legal trouble, in his 20 years of advising students of their legal rights, he has never seen student publications that “really even come close to crossing the legal boundaries.”

In the 1973 case *Miller v. California*, the U.S. Supreme Court established guidelines

for identifying obscenity. These tests included assessing “whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest” and determining whether the work in question lacks “serious literary, artistic, political or scientific value.”

Simply put, a judge can apply the *Miller* test to determine if the average person would find a piece of work offensive and if the work exists only to fulfill the lustful nature of the consumer instead of providing value.

Hiestand adds that editors have an ethical responsibility to be sensitive of their readership when publishing anything sex-related, even if it is not obscene.

In 2008, the staff of the *University Daily Kansan* at the University of Kansas in Lawrence got an earful after their annual “Sex on the Hill” issue hit newsstands. The sex-themed special edition featured a cover shot of students in a sexually suggestive pose on top of a World War II memorial on campus.

Readers were more upset over the location of the shot rather than the scantily clad models in it.

Editor Matt Erickson published an apology stating the staff did not intend to offend anyone by the location of the cover shot and the editors were unaware it was a memorial. The *Kansan* also removed the issue from its online archives.



PHOTO COURTESY OF THE UNIVERSITY DAILY KANSAN. "SEX ON THE HILL" BY LIZ WHITE. NEWSPAPER PAGE FROM THE UNIVERSITY DAILY KANSAN. "SEX ON THE HILL"

There are those who raise their voices in opposition to college newspapers facilitating sexual discussion and then there are the proponents, who believe there is educational and cultural value to be gained by allowing students to openly discuss the issues facing them every day.

Drew Singer, editor-in-chief of the *Pitt News*, the student newspaper at the University of Pittsburgh, said publishing sexual content is a matter of duty.

"If we don't, who will?" asked Singer, who helped produce the paper's February 2009 sex issue. The special issue was on hiatus for nearly four years before being reinstated, according to Singer.

The *Pitt News* published stories discussing things across the sexual spectrum from condom, strip club and pornography reviews to features on student thrill-seekers who enjoy having sex in public around campus.

According to Singer, the readership responded well to the steamy edition and the staff received no more criticism than a normal day's issue. Singer said despite its potential for popularity and more reads, the reason for putting out the edition was more humble. He said he encourages editors to publish sex-related stories and find a way to do it that works for their audience.

"Not doing anything about it would be doing a disservice to our community," he said. "It would be ignoring a giant issue."

For a professor at the University of Montana, the disservice is content that, in her opinion, has no educational value.

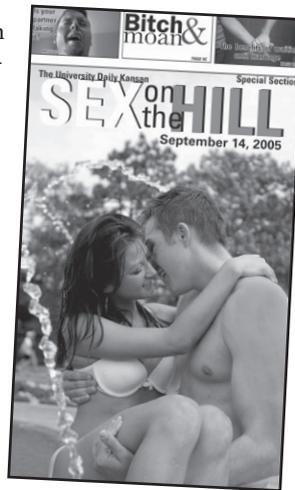
Law professor Kristen Juras objected to a sex column in the university's student newspaper, the *Montana Kaimin*, and asked the administration to get involved.

In February, the *Kaimin* ran a letter to the editor from Juras, in which she complained that the column written by student Bess Davis was "embarrassingly unprofessional" and had a negative effect on her as a faculty member.

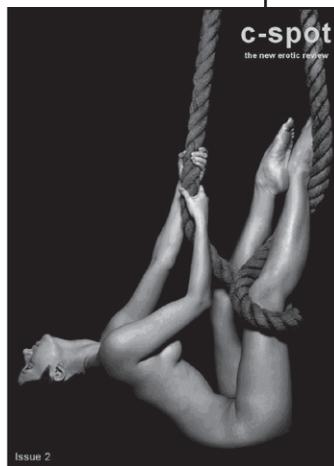
Juras told the SPLC in March she was not opposed to the idea of a sex column but rather Davis' specific content. Davis' topics included oral sex as seen by different generations and suggestions on sexual Valentine's Day gifts.

Juras said the newspaper should serve an educational purpose and that if the *Kaimin* is going to have such a column, an expert should write it.

Juras approached the editorial board as well as the student gov-



"Sex on the Hill"
The University Daily
Kansan
U. of Kansas



C-Spot
Columbia University, N.Y.



The Pitt News
U. of Pittsburgh

Sexcerpts: What some college columnists spread around campus

Staff members at student newspapers address all aspects of the sex culture on campuses — from the salacious to the scientific — in sometimes controversial columns.

"After the abrupt ending of a serious relationship, I was thrust into the hook-up culture on campus, where casual sexual encounters are frequent and exalted. For the first time since I started having sex, I was forced to make the decision on a regular basis: yes or no? Overwhelmingly, my emotions were against it and they would annoyingly shout at me as I eyed the boy at the bar (Stop! No! Don't do it!)."

— **Carmel Deamicis** for *The Daily Californian*, **U. of California at Berkeley**

THE DAILY CALIFORNIAN

Daily Nexus

"Rompng under the radar is no easy task, especially in Isla Vista, where the shoebox nature

of our living quarters makes concealing even the details of our toenail trimmings and plunger use difficult. Although annoying, the challenge of stealthy sex can also be exhilarating. The painstaking planning - the "my roommate has class from 4 'til 4:50," and the "I'll have the place to myself five Thursdays from tomorrow" - can leave you dripping with anticipation."

— **Jenni Perez** for *The Daily Nexus*, **U. of California at Santa Barbara**

THE DAILY TEXAN

"Engulfed in oxytocin-induced

feelings of comfort, people frequently partake in intimate talk after sex — most commonly called pillow talk. And while pillow talk can be a fun time to exchange intimate details with your partner, thus bringing you closer together, it can also turn into an opportunity for your partner to realize how much they don't want to have sex with you again."

— **Mary Lingwell** for *The Daily Texan*, **U. of Texas at Austin**

THE TIGER

"Though not always the first thing you think of while hopping into bed with someone, your sexual health is the

most important part of your sexuality. In college it is easy to get caught up in the moment and the emotion, but it is important to overcome the irrationality that our hormones place on us and ask yourself, 'Am I putting myself at risk?'"

— **Ivanna Johnson** for *The Tiger*, **Clemson University, S.C.**

"Don't give in to your boyfriend. Hold

THE UNIVERSITY DAILY KANSAN

your ground and don't have sex with him if you don't feel like it. You will only be adding to the problem by reinforcing his behavior. On the bright side, you already have a stand by 'excuse.' If you don't feel like having sex, you can just say that you have been having really sporadic periods lately and he has called at the wrong time(s) of the month. Just hope his desires don't decide that taking a ride on the crimson wave is better than a break from sex."

— **Peter Soto** for *The University Daily Kansan*, **U. of Kansas**

Advisers, from page 11

Although advisers have a role that may be clearly defined as hands-off, they may still find themselves held accountable for student work.

Chris Evans, student media adviser at the University of Vermont in Burlington, said administrators will look to advisers to improve student media, and when that does not happen, there is no one else left to blame for it but the adviser. Evans writes a blog about student media advisers and their roles on campus and in the newsroom.

“We are expected to improve the quality of the paper. That’s why we’re hired,” Evans said. “When the paper doesn’t get better, the administration looks to us.”

The legal rights of media advisers

The legal rights of advisers vary slightly from state to state depending on employment standards. Some advisers, like Kopinski, are hired specifically to teach journalism while others perform the duty apart from being a full-time professor or staff member.

State laws typically favor employers, and although many contracts contain some sort of due process, administrators can still successfully remove advisers, according to Hiestand.

Some states have enacted laws preventing instances like Brown’s or Kopinski’s from happening.

In September 2008, California Gov. Arnold Schwarzenegger signed such a measure into law. California joined Kansas, which has a similar statute that protects school employees from being targeted by administrators for student speech.

The California law protects high school and college employees from being “dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against” for acting to protect student speech.

Jim Ewert, legal counsel for the California Newspaper Publishers Association, said the law has helped advisers in the state feel less vulnerable, but he said there are still concerns advisers can still be targeted.

“Does it mean an administrator can’t come up with another excuse? No,” Ewert said.

Ewert said unless advisers are employed in one of the few states with protection, they can find themselves without a legal defense when the administration attempts to punish them.

In Kopinski’s case, Ewert said he assumes she would have a retaliation claim against the college if she was in California, but since Washington does not have a comparable law, she may have to fight it some other way.

“The difference is in a state that doesn’t have such protections, teachers can’t make that claim,” said Ewert.

“Advisers have to be seen as teachers and not editors. Many, many administrators, co-workers and people just don’t get that.”

Chris Evans
student media adviser, University of Vermont



Former journalism advisers Christina Kopinski (left) of Clark College and Denise Brown (right) of Morgan State University both faced repercussions from the universities for whom they worked.

In states without legal protections, organizations have formed to defend and support advisers who may be wrongly removed from their duties.

For advisers at the college and university level, CMA has adopted a procedure that puts pressure on offending schools to take responsibility for their actions after being censured and condemned for taking questionable actions against media advisers.

Since the policy was adopted in 1998, CMA has censured eight schools.

CMA President Ken Rosenauer said censures are issued when attempts at resolution fail. The CMA often sends members to mediate conversations between the adviser and school officials. Rosenauer said that while CMA shows interest in coming to a peaceful resolution through mediation, schools sometimes will not agree to it.

In Brown’s case, CMA offered to send Evans to speak with school officials at Morgan State but they have not accepted the offer, according to Rosenauer.

The CMA policy states the organization may respond to instances that include “threats of or actual job reprimand, demotion, reassignment, or dismissal as the result of an adviser’s unwillingness to abridge students’ First Amendment guarantees, for advocating or teaching student press rights, or as retaliation for material disseminated by the student press.”

According to long-time advisers, the best way to combat tricky misconceptions is to educate colleagues of the adviser’s purpose.

Evans said part of an adviser’s job is to teach the campus, including the administration, about the limits of advising. Evans said it is not uncommon for staff and other faculty to misunderstand the position of the student media adviser.

“Advisers have to be seen as teachers and not as editors,” Evans said. “Many, many administrators, co-workers and people just don’t get that.”

Both Brown and Kopinski, who are now unemployed, say all they can do is wait — wait for the opportunity to get back to their position beside the students.

Brown, who calls herself “savvy enough to handle the administration and hip enough to handle the students” said she hopes her students will use their resources and continue asking questions and reporting the way she taught them.

Kopinski left her students with a piece of advice about the administration she hopes they will take to heart: “Don’t let them intimidate you.” ■

Sex, from page 13

ernment, insisting that the *Kaimin* adopt hiring and publishing guidelines to allow only more experienced writers to pen columns.

However, then-Editor-in-Chief Bill Oram stood his ground. He said the column was valuable because it provided perspective, and it sparked discussion.

“We were not naive enough to think that she could just spout off on whatever she wanted each week,” said Oram in an e-mail to the SPLC. “It was a substantive column that added to the campus discourse and had a loyal readership — even among the people who hated (it).”

According to Oram, students are not only qualified to talk about sex, but they can relate to each other, giving them an advantage over older writers.

According to Ann Whidden, communications director for the National Sexuality Resource Center, having sexual

health experts publish columns in college newspapers is not feasible, and she believes students are capable of printing accurate sex-themed articles.

“If they’re hoping and waiting for someone to have that experience, administrators will be waiting for a very long time,” said Whidden. “It’s not that they can’t fact check their articles like anything else they were doing.”

Incoming Editor-in-Chief of the *Kaimin* Allison Maier said she plans on running a sex column when the newspaper resumes operation in September. While Davis has since graduated, Maier said students have already shown interest in taking over her column inches, and she plans to have a male and female alternate each week.

Both Maier and Oram said they are interested to see what, if any, reaction there will be from the campus and primarily Juras. According to Maier, Juras threatened to bring the issue to state legislators, but

she is unaware whether it got that far.

“I don’t think she will be happy,” said Maier. “I’m kind of bracing myself. I’m sure there will be some sort of reaction.”

For those college journalists who want to start writing about sex, Singer said they should not be afraid but careful.

“As long as you approach the publication professionally and seriously, it can be a big hit on campus and can really contribute to your community,” said Singer.

Hiestand agrees. He said that students are finding more opportunity to write about issues related to sex, and if they feel comfortable doing it, they should bring the stories to their readers.

Whidden said she believes college is the perfect place to facilitate discussion about sex, and student newspapers provide the platform.

“Part of being a young adult is exploring who you are,” said Whidden. “There should be space to do that.” ■

Greek, from page 10

policy we would report on them just as much as a Greek organization violating a policy,” said Skena. Merica and Russo agree student journalists can get in trouble when they go out of their way to find a story.

“When a newspaper starts covering Greek events specifically because they are looking for something — some screw-up — is when you get in trouble,” said Merica. Warren said the best bet for a newspaper to keep a good relationship with the Greek community is for student journalists to use discretion and consider what is a story and what is not.

“Newspapers get a little too hopped up on things like underage drinking violations,” Warren said. “It can devolve into sensationalism. There are good things that need to be talked about.” He said, he and his staff dealt with both the positive and negative reactions from the Greeks and at the end of the day, his staff covered them like anyone else.

“I really tried to instill in my staff that ‘hey we are part of the community we need to cover the community like any real newspaper,’” Warren said. “I try not make it a big deal.” ■

HIDE AND SEEK

Concealing newspapers can qualify as theft

In the cases of the more than 7,100 campus newspapers stolen this past year, the circumstances were clear: Free newspapers were removed from stands in overt acts of theft, amounting to thousands of dollars in stolen property. In other situations, it can be unclear what, if any, crime has been committed.

At Boston University this past spring, *Daily Free Press* staffers became concerned when they heard rumors about staff at the Admissions Reception Center hiding copies of their paper. Specifically, copies that prominently displayed stories about the “Craig-slist killer,” allegedly a BU medical student accused of murder and robbery, were said to be in a “huge pile” in a back room, according to an April *Daily Free Press* article.

“Whether it’s theft or not is a tricky question,” said Kase Wickman, the *Daily Free Press* reporter who covered the hidden newspapers situation, in an e-mail. “From the newspaper side, it’s easy to see it as stealing, because we pay our own printing costs and would clearly like those papers to see the light of day.”

Frank LoMonte, executive director of the Student Press Law Center, said if a person conceals newspapers so they are no longer useful with the passage of time, they

have deprived the paper of valuable property, which could qualify as theft.

“That’s not to say that people should be criminally prosecuted for misunderstandings, but people should understand that it’s a serious matter to take newspapers away from the readers and even the best of intentions doesn’t justify that,” LoMonte said.

BU’s Executive Director of Media Relations Colin Riley said to consider the incident of hidden newspapers as theft is “silly.” He also said the hiding newspapers accusation was a “rather exaggerated claim.”

Riley said BU does not engage in censorship, and an individual acting alone committed any incidence of hiding newspapers.

“This was just one person,” Riley said. “If one person makes a bad decision, how does that accrue?”

LoMonte said even if an individual makes the decision to hide newspapers on their own, they could still be committing theft.

“It’s more worrisome if it’s the official policy of higher up university administrators to hide newspapers,” LoMonte said. “Even if it’s just an individual employee, that person should suffer some consequences — even if it’s just a reprimand and a talking to.”

— By Catherine MacDonald



LGBT content a target for censorship



With gay marriage and the rights of the lesbian, gay, bisexual and transgender (LGBT) community being debated on the national level, some school administrators seek to limit such speech in the schools, and student journalists are find it tough to report on the issues.

PHOTOS ILLUSTRATION BY JAKE CUNNINGHAM

Student newspapers are an important forum for discussing issues facing students. However, administrators have stepped in the way of students who want to report on LGBT issues affecting students.

In Berwyn, Pa., the staff of the *Spoke* newspaper at Conestoga High School got the administration's attention after it published a series of three stories exploring the harassment of LGBT students throughout the year.

Spoke Editor-in-Chief Seth Zweifler said he believes the stories are part of what provoked the Tredyffrin/Easttown School Board to propose a new policy that could facilitate censorship.

As circulated at a June school board committee meeting, the policy states that the adviser must read and approve all stories before publication and a copy must be submitted to the principal for review prior to publication.

Zweifler, who wrote one of the stories called "Coming out in the classroom," said the reports were well received by students and the community but that the administration may have had different feelings. Zweifler's story followed two Conestoga students who came out about their sexual orientation both at school and at home.

"Basically what they've done is turned an 86-word policy into a 17-page policy and regulation proposal," Zweifler said. "We feel fairly certain that the content of the policy ... was in response to some of the content we published this year."

Former *Spoke* Editor-in-Chief Henry Rome agreed with Zweifler and said administrators may be uncertain about a student's ability to take on a sensitive issue. "There was controversy surrounding this piece because we handled a topic that society itself is oftentimes not entirely comfortable discussing," Rome said. "But ... our readers appreciated what we wrote."

At Woodlan High School in Woodburn, Ind., the journalism adviser lost her job after the staff at the school's newspaper published an editorial in 2007 that encouraged tolerance toward LGBT students.

Principal Ed Yoder said the editorial was unsuitable for younger students and accused *Tomahawk* adviser Amy Sorrell of neglecting her responsibilities in exposing her students to the issues.

Yoder declined to comment for this story.

Sorrell said she is not sure why the piece attracted controversy.

"I still don't know quite who was upset [about the column]," Sorrell said. "Most of the parents I talked to were like, 'Well yeah, don't beat up kids in a hall. What's the big deal?'"

The students at Woodlan have been able to see the negative effects of LGBT speech censorship firsthand, Sorrell said.

"Students are learning about First Amendment rights from this experience," Sorrell said. "And students need to understand their rights, regardless of the topic."

Sorrell, who was given the 2007 Courage in Student Journalism Award after the incident, was forced to transfer to another school and was barred from teaching journalism for three years. She said community members rallied behind the students and submitted letters to the editor to local newspapers.

With the Gay, Lesbian and Straight Education Network (GLSEN) reporting that nearly 90 percent of LGBT students say they are harassed because of their sexual orientation, the issue is likely to be raised in the classroom at some point.

Daryl Presgraves, the public relations manager for GLSEN, said although there are signs the climate is slowly changing, ad-

“ [Censorship] is contributing toward an atmosphere of intolerance toward LGBT students.

Christine Sun
senior counsel with the ACLU

ministrators are still "looking the other way" when LGBT students face harassment at the hands of their peers. He said this makes it difficult for students to cover the issue in the student media.

"Many students still live in a place where educators deny there are even any LGBT students that attend their school," Presgraves said. "When you have educators and principals that won't even admit the LGBT students go to the school, it's just that much harder to talk about LGBT issues in a fair and respectful way."

Zweifler said the student newspaper is a good forum for reporting on these and other issues that are clearly facing students.

"I think if a newspaper really does make a courageous and honest decision to report on the real issue here, lives really can be changed, tolerance can be increased, and ignorance can really be destroyed," Zweifler said.

By not allowing discussion on LGBT issues, administrators are preventing students from becoming part of an informed society, according to Tricia Herzfeld, an attorney for the American Civil Liberties Union (ACLU).

"It isn't good for the education of our students when we're supposed to be raising an informed society that [is] supposed to be the next generation of leaders," Herzfeld said. "Keeping information from them is never good for society in general."

It is not just student journalists who face censorship. Administrators have punished students for supporting gay rights and raising the issue at school.

In 2007, a group of 11 students at Ponce de Leon High School in Ponce de Leon, Fla., found themselves being punished by the administration for expressing their support of gay rights. Students had written "GP" and "Gay Pride" on their arms with markers. Some students also wore homemade shirts with similar messages on them. The principal, David Davis, told the students they were being suspended for being part of a "Gay Pride" movement and for belonging to an "illegal organization."

It took a courageous high school junior, the ACLU and a district judge to tell Davis he was wrong to punish students for their point of view.

Davis did not respond to requests for comment.

The actions by school administrators to silence speech about issues facing LGBT students can be detrimental to student development and social interaction according to Christine Sun, a senior counsel with the ACLU.

"[Censorship] is contributing to an atmosphere of intolerance toward LGBT students," Sun said. She said the administrators need to make sure all viewpoints are represented. "(It is) doing a disservice to the students they are responsible for."

Sun has served as counsel to the ACLU for five years and also works on the agency's LGBT Project, which promotes LGBT rights. Sun was involved in litigating the case at Ponce de Leon.

Sun said it is not uncommon for administrators to silence pro-LGBT speech on the grounds that it is — or can become — a distraction to students. Davis made a similar argument, although

Digital yearbooks capture memories with new medium

For decades, high school students have anxiously awaited the arrival of yearbooks — a day filled with gushing over prom photos or exchanging books to sign personal messages.

But Greg Ruiz thought there was a better way to remember his high school memories than with a traditional publication.

BY BRIAN STEWART

To commemorate his senior year in 2006, Ruiz put together a slideshow — complete with photos from the year and comments from his best friends — burned it onto a DVD and gave copies to his friends as a state-of-the-art “yearbook” of sorts.

The concept, which he calls a “year video,” helped Ruiz and his brother, a recent high school grad, win second place in the *Miami Herald* Business Plan Challenge Student Contest for a plan to create DVD yearbooks. Ruiz said the contest, judged by successful entrepreneurs, gave them confidence that “year videos” could be successful.

And digital yearbooks are proving to be popular with schools across the country. As yearbook companies report more sales of supplemental DVDs, companies like Taylor Publishing are developing tools to help schools create and publish yearbooks as Web sites.

In June, the Texas-based company launched Cliq-in, an online interactive yearbook available as an additional feature — not a replacement — for yearbooks. They piloted the program at 100 schools.

Using the software — essentially the meshing of a yearbook and a social networking site — yearbook staffs create traditional pages documenting events and trends. Students then create customized personal profiles, connect with fellow teammates or club members, and subscribe to alerts from the student newspaper.

“The concept was to provide a yearbook tool that aligns with what students are doing these days,” said Karl Hall, a product manager with Taylor. “It takes the content from the print yearbook, but it adds a little more concise presentation.”

At Jostens — the Minnesota-based yearbook company that has been creating products celebrating special moments for over a century — digital supplements have been a part of yearbooks dating back to the days of VHS tapes, said Rich Stoebe, director of communications.

As yearbooks find a niche online, students like Ruiz think the future of yearbooks resides in catchy technology, not the print, hard copy.

But those in the yearbook industry disagree. Officials say the advent of new platforms — like DVD and online, interactive yearbooks — are not replacing the “traditional” yearbook.

“We feel very strongly that print yearbooks will continue to have a place, a very important place, in schools,” Stoebe said. “It becomes a permanent, tangible, portable record of what happened in that school for that given year.”

Even with Taylor’s online book — which presents

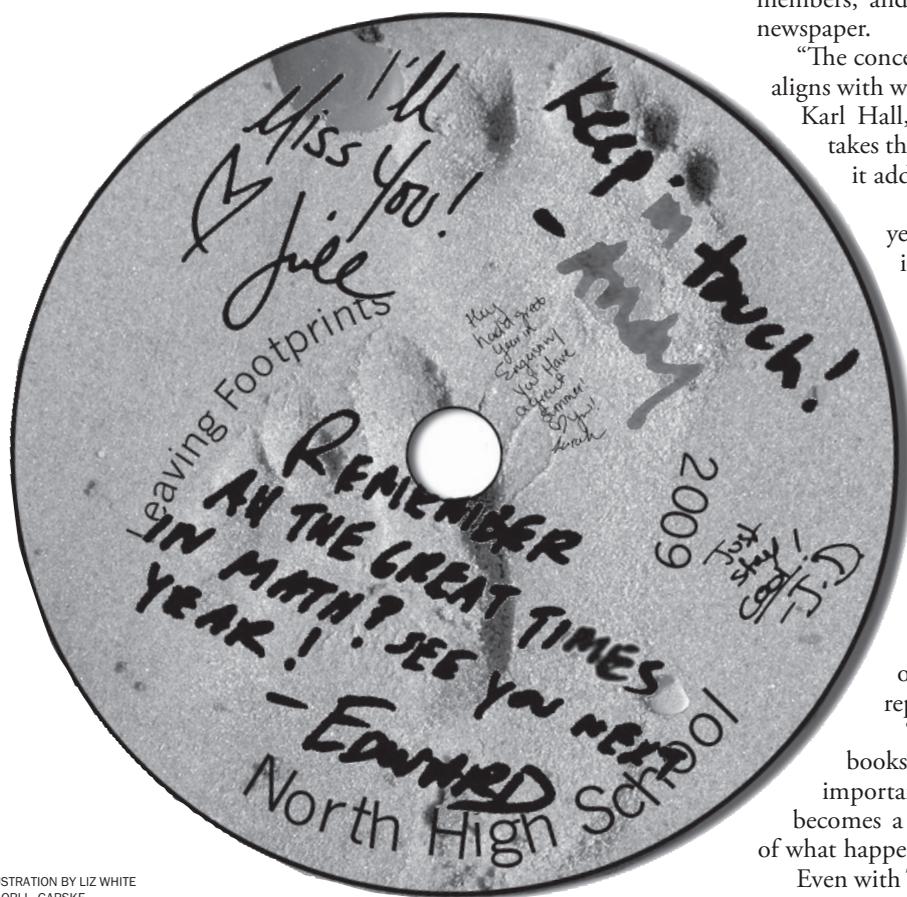


PHOTO ILLUSTRATION BY LIZ WHITE
PHOTO BY LORI L. GARSKE

all the same content of the print version in a more flashy, modern form — Hall said the print yearbook is still supreme.

“We get a lot of feedback every year from parents and students saying they love their print yearbooks, so we don’t see that [digital] is where it’s heading,” he said.

Catherine Cook disagrees.

As she and her brother flipped through an old yearbook, they believed it did not accurately portray members of their class.

So in 2005 then-15-year-old Cook and her brother David — along with a \$250,000 investment from their older brother, an investor and Internet entrepreneur — launched MyYearbook.com, an online, interactive yearbook.

Beyond writing on a friend’s “auto-graph page,” users of the social networking site can play games like statewide superlative contests or donate to charity with points earned by using the site frequently.

Today, MyYearbook.com has 20 million registered members, is backed by two venture capital firms, employs 70 full-time staff members and earned over \$10 million in revenue last year.

Cook said social networking sites like hers are taking over for yearbooks. She said students in the fast-paced modern world do not want to wait for a two-page spread about the senior prom when their friends’ pictures are posted online.

“Social networking is making yearbooks less popular,” said Cook, who was not on her high school yearbook staff at Montgomery High School in Skillman, N.J.

Cook, who said she feels digital platforms will dominate, said students will want printed memories. But instead of a school-sponsored book, she envisions companies that print pages from social networking sites to create a customizable yearbook.

“I think the traditional yearbook group in high school is just going to wither away,” she said, noting her site allows graduates to keep up with only the students they were “close to” in high school.

But Hall said yearbook companies are not too worried about social networking sites.

“In my opinion, they’re almost like apples and oranges,” he said. “Social networking sites are really kind of a snapshot not so much of a year but of just a day or two. Over time, what’s going to happen, in my mind, is that the yearbook becomes



Students at Woodstock High School in Woodstock, Ga. use interactive yearbook software to document summer vacation. SCREENSHOT COURTESY OF TAYLOR PUBLISHING.

more valuable as you move on in time and whatever you have on a social network becomes less valuable.”

Stoebe said while social networking sites have existed for several years, including back to the launch of Friendster in 2002, yearbooks have not seen a significant drop in sales. Both Taylor and Jostens do not release information about annual revenue.

“Virtually every high school, junior high and elementary school for that matter, still has a form of a print yearbook,” he said. “We haven’t really seen a replacement at all.”

And yearbook advisers said they feel the yearbook will remain a strong staple of high school life. Kathy Habiger — who advises the yearbook at Mill Valley High School in Shawnee Mission, Kan., and was recognized as a Distinguished Adviser by the Journalism Education Association in 2007 — noted nearly 90 percent of students purchase a yearbook annually.

But Habiger said she worries switching entirely to online or DVD yearbooks could jeopardize a student’s ability to enjoy them later. In the same way the devices for playing 8-track tapes faded away, the technology to view a DVD video of memories could become obsolete.

“Personally, I think the yearbook stands by itself,” she said. “I think that’s what makes the yearbook special is that the printed copy is something that you can have, no matter what, forever.”

Linda Drake, who has spent 29 years

advising the yearbook at Chase County High School in Cottonwood Falls, Kan., said yearbooks need to embrace social media, channeling the technology in ways to help the staff instead of hinder it.

Drake — the 2008 recipient of the Journalism Education Association’s Yearbook Adviser of the Year award — said her students began to use sites like Facebook to involve other students in the making of the yearbook. By tapping into students’ online lives, staff members can stumble upon new story ideas, events or a popular trend.

That has been particularly helpful in ensuring the yearbook represents the entire student body, she said.

“They’ve got to have some ownership in it,” Drake said. “If they haven’t had any say or any input, they won’t want to buy a book.”

At Taylor Publishing, Hall said their new interactive yearbook, Cliq-in, offers students just that — the ability to share and collaborate. Students can share pictures and quotes with the yearbook staff to help create the final copy of the yearbook.

Involving students is the key for keeping the traditional yearbooks relevant, Habiger said.

“That’s always the biggest obstacle,” she said. “Keeping the coverage there so kids feel like they’re a part of the book. It’s up to the teachers to keep the pictures still looking wonderful, keep the report-



Power of the principal

Principals have struggled with how to handle their power over student media since the Supreme Court shifted a portion of responsibility for school-sponsored publications to administrators.

The *Report's* **Brian Stewart** takes a look at principals' power over the press — when they use it and how they abuse it.

S.K. Johnson was in a position of power.

As principal at Orange High School in Orange, Calif., Johnson was not happy about this year's issue of *PULP*, the school's annual student-produced magazine.

The cover of the 2009 edition of *PULP* featured a photo illustration simulating a person's back tattooed with the magazine's name and an image of a panther, the school mascot. Johnson said he was afraid the city's "heavily Hispanic community" might think OHS was a "gangster school." He said the article "romanticized tattoos," and felt it needed to convey that "tattoos are forever and while it may be removed, it's a painful process."

So Johnson used his power as principal to confiscate all of the nearly 300 copies before students could distribute the magazine. For principals like Johnson, administrative authority sometimes trumps the rights to a free, uncensored student press.

Today, a principal's power creates an everyday struggle for many student journalists, said Warren Watson, a journalism professor at Ball State University who has conducted several studies on principals' attitudes toward student media and the First Amendment.

"Everything about being a principal is about control," Watson said. "And they step a little bit too far when it comes to student press."

While some principals have taken a hands-off approach with the student media, placing the investigative, editorial power with the budding journalists, others continue to use censorship and prior review as tools to control the high school press.

"There are certainly administrators who care; they're the ones who encourage their kids to do a good job," said John Bowen, a Kent State University professor and chair of the Journalism Education Association's Press Rights Commission. "But the ones who don't care and who say 'It's my school,' think they have to look good above all else, their whole concept is really not based on education but on 'What power do I have?'"

Crossing the line

In 1988, the Supreme Court's ruling in *Hazelwood School District v. Kuhlmeier* ensured principals retained some power over the student press.

PHOTO BY JAKE CUNNINGHAM

Under *Hazelwood*, high school administrators can censor many school-sponsored publications if they can show a legitimate educational reason for doing so.

But long before the Court's ruling 21 years ago in *Hazelwood*, students faced censorship from administrators.

In 1859 Peter Lander became the first documented pupil to be punished for exercising free speech. After calling his principal "Old Jack Silver," he suffered a whipping for the remark, according to Watson's most recent study.

The first time a student's battle for free expression made it to the Supreme Court was over a century later in 1969, when the Court held in *Tinker v. Des Moines Independent Community School District* that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Forty years after the landmark decision that ensured students' First Amendment rights on campus, Watson said principals turn to *Hazelwood* before they turn to *Tinker*, leaving the door open to censor more freely. He noted many principals "think they have the ability to censor for any reason."

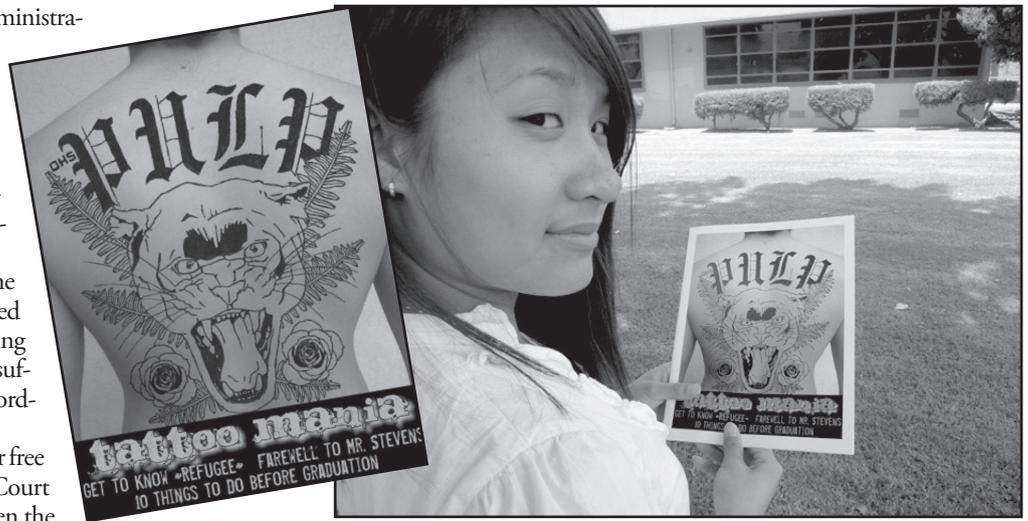
"Most of the time principals use *Hazelwood* to cover a story or stories they don't believe should be published or are going to create too much controversy within the school district," he said. "That was not one of the reasons why *Hazelwood* was formulated."

But *Hazelwood* only gives school officials the power to control school-sponsored publications when they have a legitimate pedagogical reason, Watson added. That means schools could censor content officials feel is poorly written or researched, vulgar, unsuitable for the audience, or promotes drugs or alcohol. Since the high court's decision, six states have passed "anti-*Hazelwood*" legislation to protect the free expression rights of high school students and prevent principals from turning first to *Hazelwood*.

For Watson, determining when an administrator has crossed the line is easy.

"A principal's power goes too far when he or she institutes prior review," he said. "The act of censorship itself, not allowing something to be published, ripping it out of the paper, or not working with the students and the adviser to come up with a reasonable accommodation are all actions that go too far."

But school districts across the country continue to institute prior review or penalize teachers who refuse to overrule their students'



PULP Editor-in-Chief Lynn Lai holds a copy of the student-produced magazine that Orange High School principal S.K. Johnson confiscated.
PHOTO COURTESY OF LYNN LAI.

editorial decisions.

In April, the school board in Harrisburg, Ill., approved a policy that gives Harrisburg High School Principal Karen Crank the final authorization of the student newspaper. The same month, Barbara Thill, the newspaper adviser at Stevenson High School in Lincolnshire, Ill., resigned after a new policy with more official oversight was enacted.

At schools free from prior review, administrators can still wield an iron fist over student publications by using the adviser as a pawn for censorship.

Officials at West Fargo High School in West Fargo, N.D., did not practice prior review over the school's award-winning paper, the *Packer*. But they were not happy with several articles the paper's adviser had allowed the staff to print, according to 286 pages of e-mails obtained by the *Forum*, the local newspaper, in response to a Freedom of Information Act request.

In June, West Fargo Principal Gary Clark fired Adviser Jeremy Murphy from his role as the newspaper adviser for what Murphy called a difference in leadership philosophy. School officials only wanted the *Packer* to cover positive issues, he noted.

"I felt the role of the adviser should be to advise," Murphy said. "And they felt it should be to control."

Murphy's students rallied around him, creating a Facebook page, gaining media attention and writing letters to school board officials in an attempt to have their adviser reinstated. Though officials did not censor the paper's content, then-*Packer* co-editor Meagan McDougall said she thinks admin-

istrators did not like Murphy's hands-off approach and desire to leave editorial control with the staff — qualities she fears other advisers might not champion.

In July, a group of about 75 students expressed to the West Fargo School Board the necessity of a student newspaper free from administrative control. Shortly after the students' comments, the board passed a list of consent items, including the employment of a new adviser to replace Murphy.

In a similar situation in California in 2008, administrators removed Fallbrook High School's newspaper adviser after he spoke out against the principal's illegal censorship. Later that year, California enacted Senate Bill 1370, which protects teachers from being punished for protecting students' speech.

"What saddens me is that you still have principals trying to exercise prior restraint, trying to retaliate against teachers for just simply doing their job of teaching students to think freely and think critically about issues," said California State Sen. Leland Yee, D-San Francisco/San Mateo, who authored the bill. "That's pretty frightening. It's the arrogance of power that undermines our democracy every time, and it is the arrogance of power that is used to undermine our freedom every time."

Trend is still toward censorship

High school principals might be becoming more knowledgeable about students' rights to free speech and free press, according to Watson's most recent findings. But this increase in pro-First Amendment attitudes is not matched with a decreasing amount of censorship.

"The trend is still toward more censor-

ship,” Watson said, citing recent controversies with high school journalism programs. “It’s a difficult time for student media.”

In 2004, two University of Connecticut faculty members conducted massive research for the *Future of the First Amendment* study, which Watson said showed that principals were prone to censor student media. Roughly 75 percent of principals surveyed in 2004 said they felt high school students should not be able to report on controversial topics without the consent of administrators.

To follow up, Watson conducted a similar survey in 2007 with a smaller sample, finding that as a whole, the group of principals’ attitude towards censorship of student speech was getting stronger.

In 2009, Watson contacted 5,000 high school administrators across the country to gauge how they view student expression. From early indications, principals seem to be less likely to censor than in the past five years, said Watson, who is still collecting the data.

Two high school journalists in Arizona are battling a case of censorship they say shows a lack of respect toward the students’ right to a free press.

Thunderbird High School Principal Matt Belden pulled a story that presented some critical views of the district’s teacher assessment testing before the May edition of the student newspaper, the *Challenge*, went to press.

Then-*Challenge* Editor Vaughn Hillyard and another staff member appealed the decision to the superintendent, who upheld the censorship because she felt the story was biased.

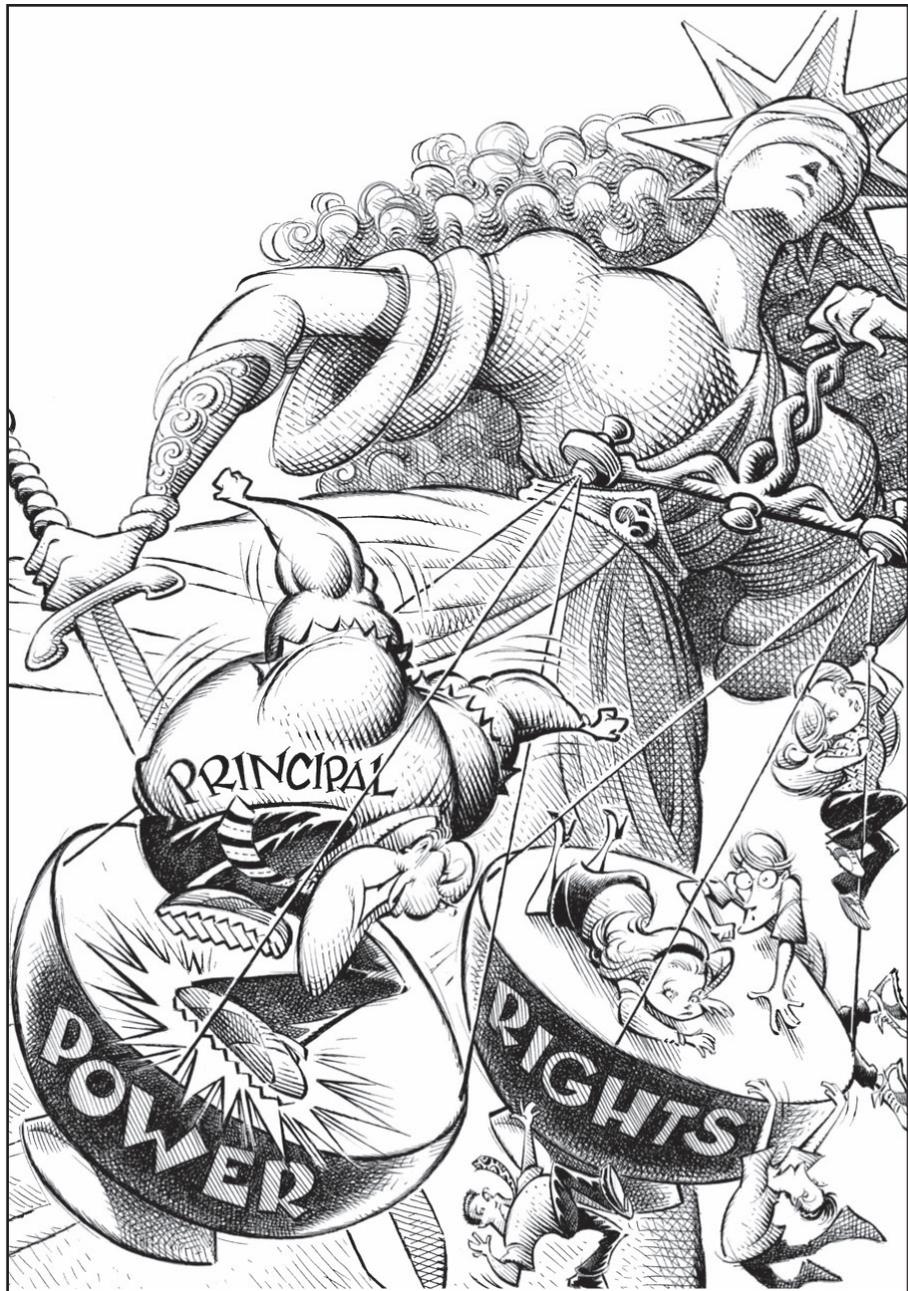
Hillyard said the article was accurate and fair, and should have been published. They presented multiple views and conducted a survey of more than half the school’s teachers.

When principals censor for reasons that are not protected under *Tinker* and *Hazelwood*, it can have a devastating effect on the school’s program, Watson said.

“When it crosses the line, it violates the trust that the adviser and the students have with the principal about covering legitimate stories,” he said.

“It devalues the work of students, and it intimidates them to the point where they may not want to engage in another fight with the administration.”

Watson said one of the worst “tragedies” as a result of *Hazelwood* is an increasing number of students who self-censor to avoid a dispute or confrontation with an administrator. The serious consequence is failing to produce



provocative journalism because of a fear of being censored, he added.

Debra Munk, principal of Rockville High School in Rockville, Md., said the principal’s duty is to ensure what the student newspaper plans to print is appropriate for the specific community before the paper goes to press.

“Ultimately, the buck stops with me,” said Munk, who with her students shared the 2008 Courage in Student Journalism Award for a series of stories about gang violence in local schools.

“If something gets out of the school that’s inappropriate, I’m the one that’s held responsible for it. But I think that doesn’t become a

problem when you develop a good rapport with both your newspaper and yearbook sponsors and students.”

Munk said the newspaper’s adviser brings her an article if he feels it could be controversial or embarrass a student or teacher. Because she has a trusting relationship with the adviser, Munk said she only sees roughly 5 percent of the content before publication. But without faith in the adviser’s judgment, things could be different.

“If I had a brand new sponsor who I hadn’t worked with a number of years, hadn’t worked through some touchy things with, then I probably would do more prior review

until that person got a sense of where I'm coming from," she said.

Yee, the California state senator, said administrators should consider the effect censorship has on students' perceptions of free speech and press.

"We send our children to school hoping that teachers will teach [First Amendment ideals] and they will learn those concepts and those ideas," he said.

"When you have someone like an administrator basically flaunting the First Amendment and suggesting to our children that it is OK for someone in charge to willy nilly, to simply suspend an individual's First Amendment rights, then we all need to resoundingly say 'No' to administrators and those actions. For those students to see that person of trust, that person of authority, break the law and get away with it is very dangerous."

The 'biggest fans' of students

When a group of parents complained to the Lake Oswego School Board in Lake Oswego, Ore., about the high school's newspaper, they asked the board to take the reins from the students, naming the school's principal as publisher and the teacher-adviser as editor.

Lakeridge High School Principal Mike Lehman was not comfortable with the request.

"I was personally a little concerned with some of the proposed roles and responsibilities that it appeared some people wanted me to play in that process," Lehman said.

The principal of 20 years said he has high confidence in the paper's staff and the adviser, adding he is "one of the biggest fans of our student writers" and is usually "one of the first to read the *Newspace* when it comes out." He said he appreciates the school board keeping him in his current role and leaving the editorial control with student editors.

Lehman is one of a handful of high school principals who voice their positive support of the student press.

Mel Riddile, the associate director for high school services for the National Association of Secondary School Principals, said the main focus for most principals is ensuring the school is a safe, inviting environment where students can express their views — including through the student newspaper.

"A lot of principals around the country do have the right of prior review, but many do not exercise it and prefer not to exercise it," Riddile said. "Principals typically don't want to wade into this area, and they do so reluctantly."

“If a principal feels that he or she can censor, it's not going to give students a complete media experience.”

Warren Watson

journalism professor, Ball State University

Tim Dorway, principal of Mayo High School in Rochester, Minn., and a former journalism adviser, said he feels like the minority when it comes to his views on students' free expression rights.

"I really feel that student publications are student publications, and they need to reflect the voice of the students in the school and not the adults in the school," he said. "Students need to have a place for that voice, and the student newspaper is a perfect place for that."

Dorway, who is also on the board of directors of the National Scholastic Press Association, said many principals do not deal with First Amendment issues as a classroom teacher and then are unfamiliar with their rights as administrators.

Yee said he believes teacher and administrator training programs must spend more time addressing students' First Amendment rights. Teachers should receive significant training on students' free speech issues before being granted administrative credentials, he added.

David Clark, principal of Columbus North High School in Columbus, Ind., said officials who lack knowledge of student press law should develop a close, trusting relationship with the adviser and staff.

"I trusted that they knew the law and they knew what they were doing," he said, noting they are the ones educated to make journalistic decisions. "I trust them and don't really step in a whole lot."

In 2006, Clark was awarded the Courage in Student Journalism Award — presented by the Student Press Law Center, the Newseum and the National Scholastic Press Association — for defending students' editorial decision to print an article about oral sex to angry parents and community members.

Kit Moran, who has been principal at Dexter High School in Michigan for three years, said he does not like to use the word "power" when referring to a principal's authority. Principals need to remind themselves they are not the editor of the newspaper, he said.

"It's the student paper not the mouthpiece for the school district, much like a city

newspaper ... is not the mouthpiece for the local village," Moran said.

"When you hand over that feeling of ownership to kids, they create an incredible product."

Watson said he feels censorship of high school publications has not decreased significantly, though his studies show principals' knowledge of student press rights has slightly improved.

Principals who stand up for student journalists — instead of belittling them — would be a "great service" to high schools, he said.

"A student media program is not going to be successful without the backing of a principal," Watson said. "If a principal feels that he or she can censor, it's not going to give students a complete media experience. They'll never really learn what it's like to practice journalism."

Yee agreed censorship takes away the practical opportunities a student newspaper grants high school students.

"The principal is giving students an opportunity to vigorously discuss issues and learn how to do that, and as you begin to censor something, you don't award these students the opportunity to examine ideas and to challenge kids to write about ideas," Yee said. "When working on student publications, they have a right to write about what they understand, what they believe, and what they want to report on."

Dorway said his time spent as an adviser shaped his belief as a principal that student publications are not for pictures of the Homecoming queen or boasting about the school's numerous achievements.

Instead, the student media should question authority on tough issues, discuss ways the school can improve and share stories about what actually goes on in students' daily lives. Otherwise, it's not a true reflection of that school, he added.

"I used to tell my kids, 'Journalists don't tell people what to think, they give people things to think about,'" Dorway said.

"If our school publications are doing that, and they're creating discussion that is meaningful to students, why would we want to take that away?" ■

Student governments close doors

Journalists across the country face a lack of transparency when seeking documents.

BY BRIAN STEWART

Government officials are no strangers to scandals.

And — as some Texas college journalists learned — neither is student government.

After staff at the *Daily Texan*, the student paper at the University of Texas at Austin, received a leaked e-mail tipping it off to a scandal involving the student government elections board, editors filed an open records request, asking for e-mails from some student government officials.

But the *Daily Texan* staff quickly and unexpectedly learned another thing about student government: At many universities, it has become a tight-lipped, tightly sealed bureaucracy that is often free from public and media scrutiny.

“There’s just this attitude that’s incredibly condescending and disrespectful toward the student press,” said Leah Finnegan, former editor of the *Daily Texan*. “We basically were denied over and over again anytime we asked for records.”

Frank D. LoMonte, executive director of the Student Press Law Center, said college journalists are more frequently hitting roadblocks when trying to access student government information.

“It certainly seems like student governments are getting more assertive about claiming legal separation from the state,” LoMonte said.

Butch Oxendine, executive director of the American Student Government Association, said keeping student government business open to the public is important.

“I think there’s an appearance of impropriety when student governments intentionally withhold information that’s been requested; it just feeds the reporter’s instinct to search,” Oxendine said. “To me, you want to be as transparent as you can and that would include e-mails because those are usually part of open records laws.”

Editors at the *Daily Texan* were never given the e-mails they requested, after school officials cited federal student privacy



University of Wisconsin’s Student Association Senate Appropriations Committee (SAC) holds a meeting with officers of student organizations. The SAC is responsible for allocating a portion of student fees to student organizations. PHOTO COURTESY OF KYLE STEVENS.

cy laws. Other student government documents the staff requested were turned over heavily redacted and of little use to the student journalists.

Student governments frequently cite a federal student privacy law when barring access, whether they are shutting reporters out of meetings, denying copies of officers’ e-mail records or refusing to turn over information on state-funded activities.

That privacy law, the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment, has become a keyword for student government officials when denying public records requests, LoMonte said.

When Congress enacted FERPA in 1974 it was intended to protect only students’ educational records, LoMonte said. But in recent months, universities have cited FERPA when denying access to a range of records — from spending reports to recordings of committee meetings at which students spoke. FERPA is not reasonable enough to close meetings or deny records requests, LoMonte said.

But Finnegan said FERPA was the only reason student government officials cited when denying the *Daily Texan*’s e-mail request this year.

University officials, not student governments, typically determine when FERPA applies to student government records,

said Charles Davis, executive director of the National Freedom of Information Coalition.

When student government officials receive a request for public records, they often turn to the university officials or legal counsel for assurance that open government laws do not apply to them, Davis said.

“Rather than, I would argue, do the right thing and say they’re a public body just like [universities] are, the university usually rushes to protect them and provide them with cover,” Davis said. “[Most student government business] can be made far, far more transparent within the rubric of FERPA and without being violative of FERPA.”

Davis said many student governments still attempt to keep much of their business and communication private.

“I find it somewhat humorous how student governments mimic their grown-up mentors almost immediately by taking this combative, secretive approach right off the bat,” he said.

Oxendine said student governments “very rarely” receive any training on open records laws. He said educating student government officials on being transparent is a good idea, but noted most student governments have bigger issues like low

Open records advocates push for FERPA changes

BY CHRISTOPHER CARTER

In 1975, U.S. Sen. James Buckley told an assembly of parents their children's education should not be left solely to the educators. He stressed the importance of holding schools accountable via better access to educational records for parents and expressed concern about keeping certain sensitive student information private. Those same principles motivated Buckley, a year earlier, to propose what became the Family Educational Rights and Privacy Act (FERPA).

More than 30 years later and months after the latest round of legal interpretations, open records advocates, elected officials and journalists are questioning FERPA's application and wondering just how far from the law's original intent schools are willing to go to shield information from the public.

FERPA, also known as the Buckley Amendment, applies to any K-12 schools or colleges that receive federal funding whether they are public or private. The law prohibits them from releasing confidential "education records" including grades, health reports and test scores, for example, to anyone other than the student, or the student's parents if he or she is under 18.

If a school violates FERPA, it runs the risk of losing its federal funding. To date, that has never happened.

FERPA does not prevent schools from releasing "directory information" such as names, phone numbers and addresses to outside sources like reporters or researchers who may share the information with the public. FERPA does not, however, force a school to release such information.

The Department of Education, which monitors the use of the law and deals with violations, defines "directory information" as information that is "generally not considered harmful or an invasion of privacy if released." The department has left it up to schools to decide what does, or does not, fall into that category.

The law has become a roadblock for

student and professional journalists covering education, and its vague definitions and broad — sometimes conflicting — interpretations have led schools to apply the law in ways its sponsor never intended.

At the center of the matter is the ambiguous term "education record" and what it does or does not refer to.

The language in FERPA does not offer much in the way of a definitive answer. The statute refers to an "education record" as "records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution."

Buckley told the *Columbus Dispatch* in Ohio that schools have taken liberties with FERPA that he never imagined.

"The law needs to be revamped," Buckley told the *Dispatch*. "Institutions are putting their own meaning into the law."

The *Dispatch* helped gather support for the movement toward reform when it published the first of a two-part series called "Secrecy 101" in May about the misuse of FERPA primarily in university athletic programs.

Reporters sent records requests to more than 100 universities and compiled a database with different information schools shielded using the law. The report found widespread discrepancies between what a college considered a private education record and what was public.

Paul Gammill said the stories helped bring the issue to the Department of Education's attention.

"Apparently there is some misunderstanding of what colleges can and can't do," Gammill said. He also said the law was never meant to be a shield for institutions.

Gammill is the director of the educa-

tion department's Family Policy Compliance Office in charge of monitoring the law's use. He said the department is listening to concerns and is currently working on putting together "guidance policies" to help put schools on the same page.

Experts for and against redefining the law agree that sensitive information such as Social Security numbers and academic records should be kept private; however, access to anything else remains up for debate.

Some schools cite FERPA to protect records strictly relating to a student's coursework and performance, while others have taken a more conservative approach to privacy and will keep the public from getting their hands on anything with a student name on it, whether it is academic or not.

There are schools that advise staff to consider all records of students maintained by the university, regardless of their academic relevance, protected under the law. At the University of Massachusetts at Amherst, the FERPA tutorial guide for staff states that "any record created during a student's tenure at the University is considered a student's education record and is FERPA-protected." And while it may not be what Buckley intended, the university's view is not clearly beyond the FERPA statute's broad definition of "education record."

Student Press Law Center Executive Director Frank LoMonte said the law's vague wording is its "fundamental flaw" and that schools should be using common sense in considering a record's release. He said that while some schools may choose protection of public records over their disclosure in the faith that the law will up-

FERPA, page 26

hold such an application of FERPA, courts have overruled them.

“Every piece of paper with a student’s name on it is not an education record,” LoMonte said. “If the courts have no problem applying common sense, the agencies should have no problem either.”

In a case reported by the *Dispatch*, the University of New Mexico did not consider flight manifests or complimentary tickets for student athletes to be “education records” and would release them if requested. However, Texas Tech University would only release the manifest and refused to release lists of complimentary tickets. Gammill said the education department is in the process of determining whether such documents can be considered “education records.”

Government officials have sent letters to the department to urge it to reconsider FERPA’s language and to clear it up.

U.S. Sen. Sherrod Brown, D-Ohio, wrote to the department encouraging more precise definitions.

“I am asking that the Department take additional steps to clarify for students, parents, colleges, universities, and the public what is an educational record that is protected under FERPA and what information can be disclosed under what circumstances,” Brown wrote in a letter dated June 15.

Ohio Attorney General Richard Cordray also asked the department to take another look at the ambiguities in the law.

“...[T]he law has been interpreted and reinterpreted in ways that stray far from its original purposes, and it has been construed throughout the country in different ways by different courts and educational institutions,” Cordray wrote in a letter to the department on June 25.

Clifford Ramirez, who has helped teach school officials about FERPA for 10 years, said the law is clear enough and institutions should be able to define for themselves what is or is not an “education record.” Ramirez is the author of several books on FERPA, most recently *FERPA Clear and Simple: The College Professional’s Guide to Compliance*.

“The education institution is responsible for defining education records specifically for its community,” Ramirez said. “Some institutions will be very restrictive and not give out any information whatsoever about their students. Others will take a more community-based approach.”

That approach can differ within an institution and illustrates how widely the law is interpreted. For example, the University of Illinois at Chicago considers photos of students to be directory information and will publish or otherwise release them unless a student specifies otherwise in writing. The university’s flagship campus at

Urbana-Champaign however, does not.

Carol Malmgren, registrar on the Urbana-Champaign campus, acknowledged the discrepancy and said the different campuses decide for themselves what they want to disclose.

“We have got to set the environment that is best for our campus,” Malmgren said.

Gammill agrees and said the Education Department does not try to attach too strict a formula for determining what constitutes directory information because schools know what is best for their students.

“Our university has taken a more conservative approach to maintain a trust relationship with our students,” Malmgren said. “We do real well by FERPA on this campus ... being good stewards of student records.”

LoMonte said he would like to see Congress redefine the law to more accurately protect only academic records as opposed to simply any record maintained by the school.

“We’re only talking about records in which a student is acting in an academic capacity,” said LoMonte.

Getting documents from schools has become increasingly restrictive for members of the media and with the Department’s latest rules changes giving schools more leeway to deny requests, it has only

• **Aug. 21, 1974**

President Gerald Ford signs the Family Educational Rights and Privacy Act (FERPA) into law.



• **Nov. 8, 1990**

President George Bush signs the Campus Security Act into law. The Act amends FERPA to allow the release of the results of a campus disciplinary proceeding to an alleged victim where there is an allegation of violence.

• **Oct. 7, 1998**

The Higher Education Reauthorization Act amends FERPA by allowing institutions to notify parents when students have violated alcohol or drug policies. It also allows the release of the results of disciplinary proceedings against a student who was found responsible for a violation of institutional rules.



• **Oct. 26, 2001**

George W. Bush signs the USA Patriot Act into law. The law includes an exception to FERPA that allows the U.S. attorney general to use educational records linked to investigations regarding domestic or international terrorism.

• **Dec. 31, 1974**

The first amendments to FERPA by Senators Buckley and Pell are enacted.

• **Nov. 19, 1974**

FERPA goes into effect.

• **July 23, 1992**

FERPA is amended to exclude from the definition of education records “records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.”



• **Oct. 28, 2000**

The Campus Sex Crimes Prevention Act is signed into law. The new exception to the statute is to “ensure that an educational institution may disclose information concerning registered sex offenders provided to it under State sex offender registration and community notification programs.”

grown more difficult.

The Department's FERPA rules were amended in January to address concerns over what constitutes personally identifiable information, among other items. Giving greater access to journalists, or the public for that matter, was not on the agenda.

One amendment in particular made accessing records, especially those disciplinary in nature, more difficult for reporters and the public. Schools can now withhold already-redacted information if school officials determine the requester already knows the identity of the student to whom the record relates. School officials can also withhold the information if they believe that people with inside knowledge within the school could figure out the anonymous student's identity.

The Society of Professional Journalists, a media professionals advocacy group, voiced its objection to the new rules in a letter to Congress. The Indianapolis-based organization was prompted by its Freedom of Information Committee to respond to the threats against access for reporters.

Dave Cuillier, the committee's chair, said the new regulation gives schools too much discretionary power.

"I think that's a dangerous idea," Cuillier said. "Secrecy is being committed based on an agency's ability to guess the purpose of the information."

The amendment follows on the heels

of court cases deciding how and when FERPA can be used to shield information about students.

In one of the more recent cases, the Montana Supreme Court ruled in 2007 that a community newspaper was entitled to documents relating to the disciplinary actions taken against two students at a high school.

In 2005, the editor for the *Cut Bank Pioneer Press* newspaper in Cut Bank, Mont., requested the redacted documents after the Cut Bank Public Schools Board of Trustees met in a closed session to determine actions to take against the students who had shot other students with plastic BBs on school property.

When the board refused to comply, citing privacy concerns, both the newspaper and the board filed petitions in district court to determine whether the documents could be disclosed.

The court wrote that FERPA does not prevent the public release of student disciplinary records with identifying information redacted and the newspaper had a legitimate reason for requesting the information.

The court referred to other similar cases in Ohio and Georgia where disciplinary records were determined not to be covered under FERPA.

LoMonte said while the decision was a victory for open records advocates, the prec-

edent remains at the state level only and he fears the new rule will make it harder for journalists to get similar information.

In the meantime, LoMonte said universities will not get any more liberal with the information they choose to disclose until the threat of withdrawal of federal funding is addressed.

LoMonte describes the department's authority to suspend federal money as the "financial death penalty" and said schools will continue to excessively classify records as confidential as long as the threat is there.

Cordray also took issue with the fact that schools may act out of their own self-interest rather than that of the student or the public.

"I am concerned that legitimate public information is shrouded in secrecy, in part because significant sections of the law are so vague that universities might decline to disclose records in order to protect themselves from lawsuits," Cordray wrote in his letter to the Department of Education.

Cuillier said the loss of federal funding is a "huge incentive to keep things secret." Considering the minor penalties for violating various state open records laws and the "harsh" punishment for failing to abide by FERPA, it makes sense schools would err on the side of caution, Cuillier said.

"If we don't do something, it will definitely get worse," Cuillier said. ■

May 8 2007

The Montana Supreme Court decided in the case Board of Trustees, Cut Bank Public Schools v. Cut Bank Pioneer Press that the Press was entitled to redacted documents relating to disciplinary procedures taken against two students who had shot other students with BBs on school property.

Jan. 8, 2009

The education department's proposed changes go into effect.



May 31, 2009

The Columbus Dispatch in Columbus, Ohio publishes the first installment of "Secrecy 101," a series detailing the misuse of FERPA at universities across the nation. The series has been credited with publicizing the issue.



April 16, 2007

A student kills 32 people on the Virginia Tech campus before fatally shooting himself. The incident helped prompt the Department of Education to adopt new rules regarding the release of information in an emergency situation.



Jan. 4, 2008

The Iowa City Press-Citizen in Iowa City, Iowa, files a law suit against the University of Iowa after the school refused to hand over documents relating to a sexual assault investigation. The newspaper requested documents in November and the university released 18 pages in December but said it was withholding further records because of privacy.

March 28, 2009

The U.S. Department of Education proposes regulations amending FERPA. Amendments include changes to health and safety records and giving institutions the power to deny requests if they believe a requester knows the identity of those to whom the records relate.

voter turnout and media relations is often not an important focus.

At schools where there is a daily student newspaper acting as a watchdog, student government officials tend to be more comfortable with transparency because the media pressure is much stronger, Oxendine said.

At the University of Wisconsin at Milwaukee, student government officials refused to release documents about the organization's trip to New York City and attempted to ban reporters from a meeting about student government election violations.

In response, three students asked the state's attorney general in a 147-page presentation to determine whether student governments must abide by open records laws. They researched how open government laws have been applied to "quasi-governmental" bodies like a student government.

"The issue was a really a gray area," said Jonathan Anderson, who wrote the letter as a project with two other students.

Anderson said student journalists were getting "mixed messages" from university officials, who simultaneously claimed the student government was a branch of the institution while maintaining that branch was not subject to open records or open meetings laws.

At many public universities, student governments are responsible for the allocation of student activity fees — a percentage of students' tuition, which funds campus student groups.

For that reason, LoMonte said student government officials need to operate under open government practices.

"When you take on a student office, potentially spending millions of dollars of public money, you're not acting as a 'student' anymore," LoMonte said. "The fact that you're registered as a student in classes doesn't make everything you do private."

At the University of Wisconsin's campuses, student governments distribute over \$25 million in student fees annually. That alone should require them to abide by the same transparency as any group doling out state funds, Anderson said.

"When you're spending the public's money and you're doing the public's business, that at minimum should be open to public scrutiny aside from anything else," he added. "There were millions of dollars

of public money being allocated without any accountability."

And accountability is the key, said Anderson, who was also the editor-in-chief of the student newspaper, the *UWM Post*, before graduating recently. After battling over records concerning the trip to New York City by several officers, the university turned over some documents, but the *Post* was ultimately unsuccessful in getting any records from the student government.

Anderson said reporters discovered from the university records that the group had stayed in a luxury hotel, rented private vans, and spent \$12,000 of public money. The group also brought another student, who was not a student government member, on the trip, according to interviews and Facebook photos.

Experts agreed student governments should be required to comply with states' open records laws, even though they are "quasi-governmental" bodies.

"Student government elected positions are public officials so it's a little different than a general student who is not a part of this and has not chosen to put him or herself on a public stage," Oxendine said.

As states tackle the issue of whether student governments must operate transparently, Davis said he thinks they will "favor openness time and time again for the fairly simple reason that student governments are agencies of public bodies that dispense taxpayer monies." He said student governments have "all the components" of public governmental agencies based on past legal interpretations.

In addition to spending state money, Anderson said many student governments, including the one at the University of Wisconsin, are involved in the university's

policymaking process — a responsibility Anderson said students have the right to monitor and college media has the duty to cover.

"They're not a student council that plans homecoming; they have these very powerful rights and obligations," Anderson said. "The student media have an important role to play, even an obligation, to cover what student governments are doing because they're really the only ones who do that."

At Montclair State University in Montclair, N.J., the student newspaper's attempts to report on actions by the Student Government Association were hindered by closed sessions, leading the *Montclarion* to sue the SGA.

The recent lawsuit — filed by the American Civil Liberties Union of New Jersey on behalf of the paper — stemmed from a February student government meeting over whether an on-campus Latin-American group would be shut down for violating finance policies. The SGA went into closed session for an hour and later denied to release minutes from the meeting.

In response to the paper's initial request for minutes, university counsel Valerie L. Van Baaren wrote that the student government is not a "public body" under the state's open meetings and public records acts. Therefore, she wrote, SGA minutes are not "government records."

In January 2008, the SGA stopped funding the *Montclarion* when editors refused to turn over their communication with a lawyer, whom they hired to investigate whether the student government had broken open meetings laws. The dispute

TRAVEL SETUP FORM - LODGING

Organization Name: [REDACTED] Telephone: [REDACTED]
 OCT Chapter/Office: [REDACTED] Name of Conference/Event: ASGA's American City Student Government Training Conference

ATTACH CONFERENCE/MEETING BROCHURE
 Fill out only the sections to be paid for by segregated fees.

Lodging:
 Hotel Name: Millennium Hilton Phone: (212) 199-2001
 Address: 255 Orchard Street, NY, NY
 Arrival Date: 2/22/08 Departure Date: 2/24/08 Confirmation No.: [REDACTED]

ACTUAL HOTEL COST TABLE	
No. of rooms x	[REDACTED]
No. of days x	2 nights
A. Rate per day	[REDACTED]
Room cost x	[REDACTED]
Hotel tax %	[REDACTED]
Hotel fee %	[REDACTED]
Total Hotel Cost	[REDACTED]

Attendee List (For additional participants, use reverse side of this form):

Attendee	Room #	Rate per day	Room Tax %	Hotel Fee %
1	11	[REDACTED]	[REDACTED]	[REDACTED]
2	12	[REDACTED]	[REDACTED]	[REDACTED]
3	13	[REDACTED]	[REDACTED]	[REDACTED]
4	14	[REDACTED]	[REDACTED]	[REDACTED]
5	15	[REDACTED]	[REDACTED]	[REDACTED]
6	16	[REDACTED]	[REDACTED]	[REDACTED]
7	17	[REDACTED]	[REDACTED]	[REDACTED]
8	18	[REDACTED]	[REDACTED]	[REDACTED]
9	19	[REDACTED]	[REDACTED]	[REDACTED]
10	20	[REDACTED]	[REDACTED]	[REDACTED]

SAC Allocation for Lodging: [REDACTED]
 Total Lodging Cost: [REDACTED]
 Difference: [REDACTED]

Officer Signature: [REDACTED] Date: 2/24/08

Left, documents disclose information about the money spent on University of Wisconsin Student Association's trip to New York City. Below, a photo posted on Facebook documents the Student Association's trip to an American Student Government Association conference in February, 2008. PHOTOS COURTESY OF UNIVERSITY OF THE WISCONSIN-MILWAUKEE POST.



prompted Montclair's president to declare the newspaper independent of the SGA in June 2008.

The *Montclarion* and the student government settled the recent lawsuit out of court, with the SGA agreeing to amend its bylaws to include notification of any closed sessions and to provide minutes of closed sessions to the public.

"We maintained from the beginning that they should be covered under the [New Jersey] Open Public Meetings Act," said Bobby Connor, staff attorney with the ACLU of New Jersey, who represented the *Montclarion*.

"Students have the right to hold their student government associations accountable. You can't have democracy without transparency."

Anderson said student journalists having trouble obtaining student government documents should pursue any options, including publicizing the issue, asking for legal advice from an organization like the Student

Press Law Center or calling on state lawmakers to pass a bill that clarifies student governments' status as a public body.

Ultimately, Anderson said student governments need to be recognized as public bodies of elected officials and should be expected to operate transparently.

"In the real world, the public generally has access to the government's information," he said. "Why not emulate that on a university level?" ■



Former Daily Texan Managing Editor Vikram Swaruup (left) and former Editor-in-Chief Leah Finnegan work in their newsroom. PHOTO COURTESY OF ANDREW ROGERS.

Signing away FERPA rights

At University of South Florida in Tampa, Fla., student government officers must sign waivers for their privacy.

This is what the statement says.

Affirmation of Status of Student Government Records and Privacy Rights For USF Student Government Officers, Appointees and Employees

I, Student Body President, voluntarily assume the responsibilities and rights afforded to me as a USF (Print name) Student Government Officer/Appointee and/or Employee and acknowledge that although as a student at the University of South Florida my student records are confidential and protected by both Federal (FERPA) and State (Fl. St. 1002.22) Privacy Laws, as an active participant in the USF Student Government my actions and any records created as a result of my elected, appointed or hired position in USF Student Government (herein, SG Records) are subject to both the Florida Sunshine Laws (Fl. St 286.011) and Florida Open Records Laws (Fl. St. Chapter 119) and I waive any confidentiality in those SG records created in the event of a public record, public meeting or audit and compliance or investigation or any review by student government, the university, the state or other agency.

Student Body President

LGBT, from page 17

the judge ruled that his suspension of students for wearing clothing that supported gay rights was more distracting than the students' symbolic speech itself.

Davis has since been replaced and now teaches American government and economics at the high school.

Some schools are not owning up to their responsibilities to truly be a place of education, according to Sun.

"When school districts decide to censor speech about LGBT issues, it sends the wrong message about LGBT students," Sun said.

"It also shuts down debate about some of the most pressing political issue of our times."

Sun was also involved in the litigation of a recent case out of Tennessee in which students became concerned when schools blocked Web sites with educational, pro-LGBT content.

Some of the blocked sites included the Human Rights Campaign, GLSEN and the Gay-Straight Alliance Network. Sun said one of the major issues in the

case was that the Web filters did not prevent students from accessing anti-gay sites, including sites that supported reparative therapy, which seeks to convert gay individuals to become heterosexuals.

A federal judge dismissed the case in August after the Knox County School District in Knoxville decided to alter its Web filtering system to allow for Web sites like that of the Human Rights Campaign to be accessed by students using school computers.

"It certainly crosses the line when schools decide to censor one viewpoint and not others," Sun said.

"Administrators can't pick and choose what type of speech they are going to allow on campus based on their views on that topic."

As part of the settlement, the school district agreed to inform the ACLU anytime the Web filtering software changes access to educational LGBT sites.

Herzfeld, who worked on the case, said the most "disturbing" factor was that someone had deliberately allowed viewpoint discrimination.

"It is ridiculously harmful and amazingly shortsighted," Herzfeld said. ■

Yearbooks, from page 19

ing there, and if that continues to happen, I can't see anything that will happen negatively to the printed copy of the book."

One way staffs are using new technology to keep the books relevant is by informing students how many times they personally appear in the book, Stoebe said.

While those in the yearbook business still debate the future of the printed version, they agree new media will play an important part in keeping the books appealing.

Cook, who said she was inspired to launch MyYearbook.com after concluding that traditional yearbooks "suck," admits the printed yearbook still serves a purpose.

"People still want the sentimental value of the yearbook that they can touch for the senior year of high school, the big year," she said.

But Habiger, who has been advising yearbook staffs for 14 years, is confident the traditional, paper yearbook is here to stay.

"I can't imagine the printed copy would ever go away," she said. "There's something about opening that box and taking that book and cracking it for the first time. I would hate to never have that opportunity." ■

Police v. press

Who

Michael Felletter, a photographer on assignment for his campus newspaper, the *Daily Collegian*

Where

Pennsylvania State University in University Park, Pa.

What happened

Felletter was charged with six misdemeanors after he covered a post-football-game riot in October 2008. His attorney said these charges violated Felletter's First Amendment rights because he was specifically targeted as a member of the press.

During the riot, police asked Felletter to disperse several times, and each time he left and resumed his coverage elsewhere. At one point, Felletter was standing on the sidewalk when an officer asked him again to leave and threatened him with pepper spray. As Felletter walked away, the officer informed him he was under arrest and demanded his drivers license, according to police testimony and Felletter's attorney, Andrew Shubin.

How it turned out

On March 4, a judge threw out Felletter's disorderly conduct charge and four of his five failure-to-disperse charges. The remaining failure-to-disperse charge was dismissed this summer by Judge David Grine.

"The Court does not believe that Defendant refused to or knowingly failed to obey dispersal orders," stated Grine in his order to grant Felletter's pre-trial motion to dismiss. "The Court believes that the arrest of Defendant was made in good faith by an officer who believed that he was doing what was necessary to keep the peace."

Grine's decision said police testimony made it clear that rioters were becoming more disorderly around Felletter's camera.

"That, however, is not Defendant's fault, and is the responsibility of those who were at the riot and actually acting disorderly," Grine stated.

Shubin said selecting someone for

Search warrants, arrests, pepper spray — most student journalists manage to avoid extreme situations involving law enforcement while doing their jobs. However, two college photojournalists recently found themselves in situations that highlighted tensions between the press and the police.

The *Report's* **Catherine MacDonald** addresses their impact on the student media.

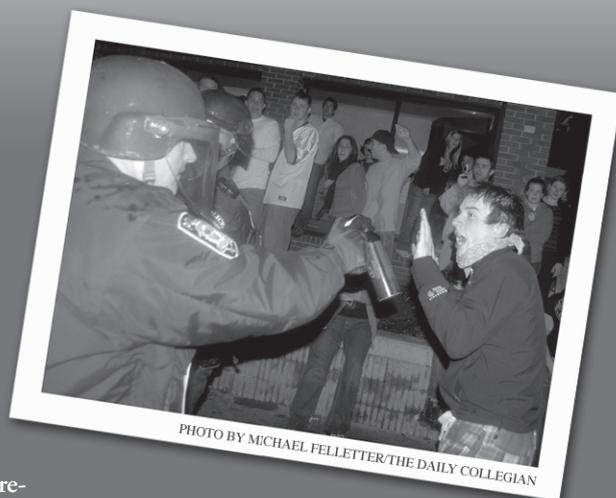


PHOTO BY MICHAEL FELLETTER/THE DAILY COLLEGIAN

re-
moval specifically because they are a member of the press "legally problematic and fatal to the prosecution."

"The First Amendment ... doesn't give a member of the media special rights to be in a place where the general public is excluded, but ... my client was surrounded by hundreds, if not thousands of other people, and he was selected for police contact," Shubin said.

Centre County District Attorney Michael T. Madeira then filed a notice of appeal opposing Grine's decision.

Why it matters

Steve Zansberg, an attorney with Levine Sullivan Koch & Schulz, LLP in Denver who represents news media organizations, said the press, which includes student press and student photojournalists, enjoy exactly the same rights as the public — no greater and no less.

"There cannot be discriminatory exclusion of the press from any place that the public is allowed to be," Zansberg said. "There can't be disparate treatment by the government to treat journalists differently than the general public."

Even though following police instruction is imperative, Zansberg said officers cannot legally prohibit all coverage of riots and protests.

"Police cannot completely stop the press from covering an event of this type," Zansberg said. "There has to be somewhere where a student photographer, such as Mr. Felletter, can lawfully document the actions of the police and the protesters."

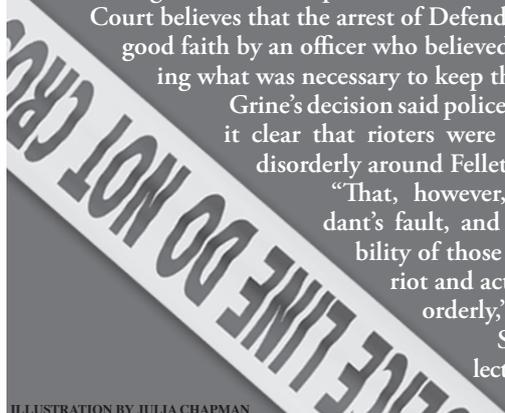


ILLUSTRATION BY JULIA CHAPMAN

Who

A 22-year-old San Francisco State University student who was working on a long-term photojournalism project and is not being named for his safety

Where

Bayview-Hunters Point, Calif.

What happened

The 22-year-old student had been following 21-year-old Norris Bennett for months for a project he was planning to try and sell to several publications, and was present April 17 when Bennett was shot during a dice game in Bayview-Hunters Point, Calif.

Police observed the student taking photographs when they arrived at the scene. They subsequently obtained a warrant and searched his apartment and car in May, taking several items including personal photographs.

In response to the search, the student invoked California's shield law, which allows journalists to keep sources confidential and to withhold unpublished information obtained during reporting from law enforcement.

How it turned out

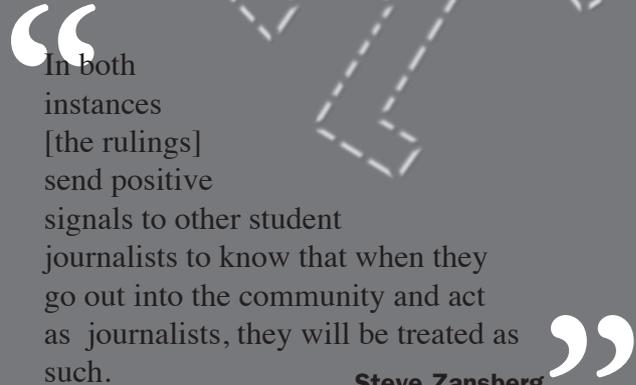
This summer, San Francisco Superior Court Judge Tomar Mason agreed the student qualified for shield law protection and ordered police to return what they removed from his apartment.

"He was present at a murder and [the police] went after the material," said Ken Kobre, the head of the photojournalism department at San Francisco State and a former professor of the student. "They didn't think clearly about ... whether they really had the rights to do that, and apparently they don't."

Why it matters

Kobre said when anyone is operating as a journalist they should not be providing materials for law enforcement — that is not their job.

"Your job is to try to maintain your sources, and the shield law helps you do that," Kobre said. "[Sources'] lives might [involve] doing something that is legal or not legal, but it's ... very important that the person who is giving



In both instances [the rulings] send positive signals to other student journalists to know that when they go out into the community and act as journalists, they will be treated as such.

Steve Zansberg

attorney with Levine Sullivan Koch and Schulz

access to the journalist knows that this material won't be turned over to the police. The journalist does not want to be operating as an arm of the police."

The California Supreme Court has recognized that the primary purpose of the shield law is to protect the "newsperson's future ability to gather news," according to a motion to overturn the search warrant by Michael Ng, the student's attorney.

"A reporter's ability to gather news in environments like Hunters Point evaporates the moment a reporter is forced to become a government witness about what he or she observes," Ng stated in the motion. ■

Expert tips for student journalist/police interaction:

In an event such as a riot or a protest, journalists and law enforcement sometimes struggle to do their jobs in the same space if the situation gets out of hand. Steve Zansberg, an attorney with Levine Sullivan Koch and Schulz who represents news media organizations, offers these tips to student journalists who interact with police:

- Make sure you have press credentials and identify yourself to law enforcement on the scene as early as possible. Make it clear you are not a participant.
- Be courteous and respectful.
- If you are prohibited from filming or photographing from a particular area that police are clearing, inquire where you may lawfully stand and

- conduct your newsgathering activities.
- Remain calm in the face of confrontations between police and protesters. It never helps to add fuel to the fire.
- If you anticipate police-protester confrontations, contact law enforcement in advance to come up with a plan ahead of time and to avoid surprises and improvised rule-making in the field.

Add a comment

Controversial posts lead to questions

BY BRIAN STEWART

When Kymberly Clem was kicked out of a local shopping mall for wearing a dress that a security guard said was too short, it was enough to upset her. But when an anonymous comment accusing her of a crime appeared on an article about the incident in the *Richmond Register*, Clem took legal action.

The Eastern Kentucky University student filed suit against the anonymous poster, known only as “l2bme,” and subpoenaed the *Register* to reveal the identity of the person who posted the online comment. But the *Register* is contesting the request, contending the poster has a right to comment anonymously under the First Amendment, said Kenyon Meyer, an attorney for the *Register*.

For both the student and professional media, user comments on Web sites are the basis of a growing number of lawsuits. Editors are attempting to grapple with how they should respond — ethically and legally — to controversial comments left on their sites by anonymous posters.

Jonathan Handel, a digital media law attorney with TroyGould Attorneys in Los Angeles, Calif., said online comments pose tricky legal questions because libel and privacy claims are matters of state law and can vary with the location. He noted comments are a different kind of material than a news story.

“The difficulty of these situations with newspapers is that historically the stuff that goes into a newspaper has been edited and vetted by the newspaper, so there’s kind of a built-in expectation that that’s the case when it

comes to comments as well,” Handel said. “But comments are not sourced and double sourced, and they’re not typically content that’s been subjected to rigorous journalism standards.”

Posting from a personal computer or behind the veil of a pseudonym does not necessarily protect online commenters from legal action, said Sandra Baron, the executive director of the Media Law Resource Center in New York City.

“It is not a law-free zone,” she said of newspaper sites. “The laws of this nation apply whether you’re posting online or posting a letter, whether you’re writing a book or publishing a newspaper. When you go online and post information, you’re subject to the laws of libel, privacy, trademark and the rest.”

In March, a student at The Ohio State University in Columbus, Ohio, was arrested for posting threatening messages on the student newspaper’s site.

The student, Rahat Islam, commented on a story by the *Lantern* about Melissa Stredney, a teaching assistant who had recently been fired after being accused of persuading her students to cheat and threatening them with e-mails after she was questioned by officials.

Posing as Stredney and posting with her name, Islam left two comments on the story, according to the *Lantern*.

Both posts referenced the campus shootings at Virginia Tech in Blacksburg, Va., which left 33 people dead in April 2007. In the second comment, Islam wrote, “You guys better

watch your back, cause come finals week its going to be Virginia tech all over again, I swear it!”

When the *Lantern* staff was alerted to the comments, the paper’s adviser, Tom O’Hara, called campus police. From there, the officers contacted the university’s IT department to track the student back to his dorm room, O’Hara said.

The *Lantern* does not have a policy regulating online comments or monitor them on a regular basis — mostly because online posts have not been a “chronic problem,” O’Hara said. Editors determine on a case-by-case basis whether a comment violates the newspaper’s legal or ethical standards.

O’Hara stands by his decision to alert campus police, though the ability for users to post anonymously or under another person’s name still bothers him.

“I like comments with people’s identities behind them,” he said. “But the digital world is different. I see the benefits, but frankly it still bothers me that people can comment on these things anonymously.”

Baron said her organization has seen a growing number of issues with newspapers’ online operations, especially with anonymous comments left on stories by readers.

But whether newspapers can be held liable for what users post on its site is unclear, said Christine Corcos, an associate law professor at Louisiana State University in Baton Rouge, La. She noted it largely depends on the publication’s level of involvement with online comments.

In most cases, the newspaper

Submit

 I agree to terms and conditions

“When you go online and post information, you’re subject to the laws of libel, privacy, trademark and the rest.

Sandra Baron

executive director, Media Law Resource Center



would likely be immune to legal action under Section 230 of the Communications Decency Act, she said. The act states “interactive computer service providers” should not be considered the publishers of content posted by other users. Section 230 prevents providers — newspaper sites, blogs, listservs, and other online forums — from being held liable for content they did not create. Under the section, providers can still take editorial control over comments by editing, deleting or prescreening them without changing the meaning of the content.

In April, East Baton Rouge District Court Judge Todd Hernandez agreed newspapers are not liable for users’ comments, dismissing a lawsuit filed against the LSU student newspaper.

Patrick Esfeller, an LSU student, had sued the *Daily Reveille* and its senior editors, claiming they should be held accountable for comments posted on stories about the student’s litigation against the university.

Esfeller told the SPLC in April that he was considering individually suing the person or people who posted the five anonymous comments.

Recent attempts to discover who was posting on professional newspapers’ sites have resulted in differing views over whether papers can legally be asked to reveal the identity of posters.

In September 2008, a district court ruled posters on the Web site of the *Billings Gazette*, a Montana newspaper, should remain anonymous after a candidate in a local election asked the paper to identify two commenters.

The Maryland Court of Appeals — the highest court in the state — ruled in February that a local newspaper was not required to disclose the identities of three people who posted anonymous comments on a story. A local Dunkin’ Donuts owner had sued the paper to determine who posted the comments, which said his store was “one of the most dirty and unsanitary-looking food-service places I have seen.”

But in May, an Illinois judge ruled a newspaper must reveal who posted two com-

ments that could aid police in a murder investigation. The judge allowed three comments, which appeared to be only discussing the story, to remain anonymous.

And in June, the editor of the *Las Vegas Review Journal* refused to comply with a subpoena that would identify the users who posted roughly 100 comments about a federal tax fraud case, claiming the subpoena was overbroad. The paper later agreed to release only the identity of two posters, whose comments were possibly threatening jurors or prosecutors.

Based on past court decisions, citizens have a constitutional right to speak anonymously, Handel said. But whether that right still applies in an online forum is disputed.

“There is a First Amendment issue here that overarches this,” he said.

“In general, the First Amendment preserves the right to speak anonymously and so it could be that people leaving comments actually have more protection than journalistic sources and not from shield laws but from the First Amendment.”

But when posters began to use their anonymity as protection for posting offensive comments, editors at the *Daily Egyptian*, the student newspaper at Southern Illinois University in Carbondale, Ill., stopped allowing the online comments.

In a letter to readers, then-Editor Allison Petty said the privilege to post comments on stories had been rescinded because users were not mature enough.

“It is not easy to offend college students who spend most of their time in a news-room,” she wrote. “But some of you have persevered, pursuing standards of bad taste to depths so subterranean we could not help but take note.”

Petty noted users had bashed the paper for the way it covered the death of a co-worker’s family members. An anonymous poster also called a black, female student leader an “ape” in a comment posted to a story.

“It is sometimes so baffling to imagine that comments born of such blatant igno-

Editors Speak Out

Across the countries, student newspapers vary in their approach to online comments.



Amanda Davis - *The Daily Gamecock*, University of South Carolina in Columbia, S.C.

“Our policy is that all users or readers can post comments but we have the right to edit them for vulgarity or anything that’s not right or people posing as someone else. ... I think online comments are a good way for readers to be more involved in the media. The whole point of a college newspaper is to be a voice to and of the students. I think it’s good to allow students to have that place where they can talk about the issues.”

The Daily Northwestern

Emily Glazer - *The Daily Northwestern*, Northwestern University, Evanston, Ill.

“It’s rare that we would take away the ability for a reader to comment. When we do, there’s always a lot of discussion among the editorial board because we want to make sure we’re doing it for a legitimate and fair reason. We’re not just going to take something down that might have been mean but is constructive. Part of a college newspaper and the atmosphere surrounding it is this continuous dialogue and we would have to cut people off from talking about articles. To cut off that aspect of communication, especially now that we’re in a digital world and the Internet is so much more prevalent, it would hurt the newspaper because what are we without our readers?”



Zach Thompson - *Iowa State Daily*, Iowa State University, in Ames, Iowa

“We specifically restrict commenting on the police blotter. I think that’s the only thing that we intentionally block commenting on. The point of the comment system and the stuff we put in the paper is to create a fair discussion for the community.”

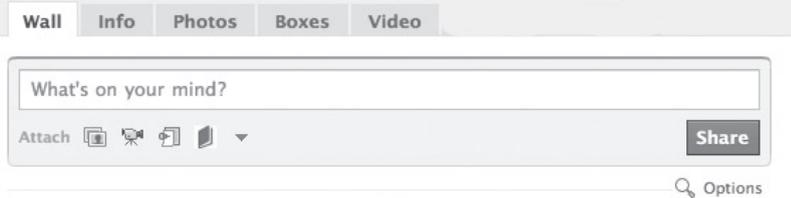
INDIANA DAILY STUDENT

Sara Amato - *Indiana Daily Student*, Indiana University, in Bloomington, Ind.

“We have a flagging system; anyone can flag a comment if they think it’s inappropriate. The editor-in-chief and the two managing editors can look through the ones that are flagged and delete them if it violates our policy. I usually don’t delete them that much.”



Social Networks getting students into trouble.



Profiles cause crackdown

BY BRIAN STEWART

A student logs onto her MySpace account to vent about a situation with one of her teachers. Another signs into Facebook to see pictures of himself at a party last weekend, holding a red plastic SOLO cup. And with a swift swoop of their school district's jurisdictional arm, both students are suspended.

The reach of school officials has extended beyond the school-house gate to the World Wide Web, where pictures on Facebook, a posting on MySpace or a comment on a personal blog can now mean punishments for students.

While information from social networking sites has served as supplemental evidence when reprimanding students, districts are clarifying their intentions to discipline students *for* online behavior in their conduct codes.

"Codes that restrict the off-campus speech of students on Facebook, MySpace or blogs, are popping up all over the country now and raise serious questions on the free speech rights of minors," said Clay Calvert, a scholar in communications at the University of Florida.

In June, the school board for the Des Moines Public Schools in Des Moines, Iowa, approved changes to its discipline code for students involved in extracurricular activities. The code now specifies that reliable evidence used to prove a violation includes "information from social networking Web sites such as MySpace and Facebook."

Officials can now punish students for illegal acts — mostly underage drinking — even if they are not arrested or found guilty in court, said the district's attorney, Beth Nigut. The code also allows officials to punish students who are in the presence of illegal activities.

Nigut noted the school's policy on extracurricular groups — which includes sports teams and academic clubs — is more stringent than the standard student conduct code.

"There is a privilege, not a right, to participate in these types of activities," Nigut said. "Therefore, we are holding those students to a higher standard just as every other district here in our state does."

But Calvert, previously the co-director of the Pennsylvania Center for the First Amendment, said there are serious legal concerns with codes that punish students for material on social networking sites.

It is tricky, Calvert said, because schools can punish students for their conduct but not for their protected speech. For instance, a school could punish a student for drinking after discovering a Facebook photo — but only if they can completely prove the cup in the minor's hand is filled with alcohol. While the drinking is student conduct, the posted picture qualifies as speech.

David Hudson, an attorney and scholar at the First Amendment Center, said he is worried about what effect the school's discipline could have.

"The problem is schools reaching into areas of jurisdiction that are either matter of parental authority or, in certain egregious cases, law enforcement authority," Hudson said. "I think it's going to create more student disciplinary cases, probably create more lawsuits, and it's probably going to create a chilling effect on student online speech."

Nigut said the Iowa district would not seek out potential violators, adding it is "not interested in playing 'Big Brother.'" Instead, officials will use information that is brought to them. But at other some schools, Nigut said officials peruse through online content to monitor students' behavior for any red flags.

At State College Area High School South in State College, Pa., school officials created a Facebook account in a fictitious name to access and monitor students' pages, Principal Debra Latta told the local paper, the *Centre Daily Times*. Latta did not return multiple calls for comment.

"We're not breaking any ground here," Nigut said, noting other officials like college admissions officers and employers monitor social networking sites. "We are basically coming into line with what the practices are in our world today."

Colleges across the country took the leap first by putting clauses in the conduct code. At the public Truman State University in Kirksville, Mo., officials investigate online conduct if there is "substantial university interest." At the private Concordia University Wisconsin in Mequon, Wis., students' online social activity is punishable by the university if the students publicly affiliate themselves with the school.

At the Regent University in Virginia Beach, Va., a former law student sued the private institution after he was suspended for posting to Facebook a picture of university President Pat Robertson displaying his middle finger. His suit was thrown out of district court in June; he has not appealed.

In Chicago, Ill., University of Chicago officials demanded that student Andrew Thompson remove a Facebook album he posted in January titled "[Name of Thompson's ex-girlfriend] cheated on me, and you're next!" University officials told the Foundation for Individual Rights in Education (FIRE) they could censor "disrespectful" speech.

But both Regent University and University of Chicago are private institutions, giving them greater ability to muzzle students' speech, said Adam Kissel, director of the Individual Rights Defense Program for FIRE. He noted the University of Chicago incident would be a "major violation of the First Amendment at any public college," but is not at the private school.

At the high school level, First Amendment advocates say of-



Red Cup is in trouble. Too many photos. 2 hours ago clear

Wall Info **Photos** Boxes Video

+ Create a Photo Album

Photos of Red Cup

View Comments

1 2 3 4 5 Next



ficials might be overstepping their bounds because it is difficult to determine when speech is considered “on-campus.”

Montana Miller, an assistant professor of popular culture at Bowling Green State University in Ohio, said school officials traditionally could not punish students for their off-campus speech, but the Internet complicates things.

“It’s very hard to draw the line and say that the Internet is off-campus and that the school setting is separate,” said Miller, who specializes in youth culture and Internet communities. “The Internet is everywhere. It’s not in one location; it’s not on-campus or off-campus.”

A U.S. District Court attempted to determine in January whether a Connecticut principal was right to discipline a student for her blog, which called school administrators “douchebags.”

But U.S. District Court Judge Mark Kravitz said in *Doninger v. Niehoff* that there is confusion in courts over how to determine whether off-campus speech is punishable because of its effect on the school.

“If courts and legal scholars cannot discern the contours of the First Amendment protections for student internet speech, then it is certainly unreasonable to expect school administrators ... to predict where the line between on- and off-campus speech will be drawn in this new digital era,” Kravitz said in his opinion.

Hudson acknowledged that there is still “some uncertainty at

the outer perimeters to what is truly on-campus and what is off-campus” speech.

In *Morse v. Frederick*, also known as the “Bong Hits 4 Jesus” case, the Supreme Court decided in 2007 that school officials could rightfully punish a student for holding a banner near school grounds because his action was directed to the school community and occurred at a school-sponsored event.

Hudson said he thinks many courts have applied this “school audience rationale.”

“If off-campus, online speech’s intended audience is the school audience, that’s enough to trigger the school’s jurisdictional arm, and then they can apply the regular precedents of *Tinker* and *Fraser*,” he said.

In *Tinker v. Des Moines Independent Community School District*, the Supreme Court said student expression is constitutionally protected unless it is unlawful or disrupts school activities. The Court said in *Bethel School District No. 403 v. Fraser* that schools can legally “prohibit the use of vulgar and offensive terms in public discourse.”

Kevin Goldberg, a Washington, D.C.-based attorney who specializes in First Amendment issues and Internet publishing, said if schools continue to punish students for their online content it could lead to more self-censorship, which is “no less censorship ...

Social, page 36

Comments, from page 33

rance and hate come from real people,” Petty wrote. “Debate is one thing; libel is another.”

Denying anonymous comments altogether might not be the best option though, Corcos said.

“The purpose of allowing comments is to encourage debate on a site,” she said. “If you put a mechanism in place to verify a poster’s identity, that would discourage people from posting at all.”

Reporting on an online comment can be an equally controversial issue, as a high school student journalist recently discovered.

Laura Uncapher, the editor of *Hi-Lights*, the student newspaper at Boone High School

in Orlando, Fla., wanted to report on a student who was disciplined for calling the principal a “dumb-ass” on the school board’s comment site.

The online poster criticized the school board for implementing rules that forced the cross-country team to shower in the school’s locker room, which had no shower curtains. Using his IP address, school officials tracked down the student and punished him, hurting his chances at induction into the National Honor Society and causing him to quit the cross-country team.

When Boone’s principal learned Uncapher was reporting on the story, she refused to let the student paper publish it. After Uncapher appealed to the school board and the

district’s attorney, her story never ran.

Editors should tackle the issues surrounding online comments before a controversial post becomes the subject of a news story or a legal battle, Handel said. The first step is usually to develop a guideline for online comments, including when the paper will delete or edit them and whether users can post anonymously, he said.

Handel said comments are proving particularly difficult for student journalists. At the university level, editors are not typically forced to deal with widespread backlash or scrutiny from outside the campus or college town. But an offensive comment on their Web site, Handel said, could spark outrage hundreds of miles away.

“The Internet really erases distinctions between local, national and global, distinctions between professional content creators and non-professionals,” Handel said.

“It erases distinctions between transient or temporary and permanent availability of content. As you have a whole bunch of lines being blurred, a lot more uncertainty gets introduced into the potential direction that court decisions would go.” ■

“If you put a mechanism in place to verify a poster’s identity, that would discourage people from posting at all.

Christine Corcos

associate law professor, Louisiana State University

Social, from page 35

because it leads to direct government influenced, perhaps government-mandated, speech.”

Goldberg said it is clear that schools have not grasped an understanding of when online speech becomes a school’s problem.

“There has to be a division between on-campus and off-campus speech because otherwise schools will effectively run a student’s entire life,” he said. “The only area in which a school can properly discipline off-campus online speech is when it is clearly, unquestionably something that affects, impacts, and disrupts the on-campus experience.”

Until the Supreme Court takes on student Internet speech, educators should be cautious with their actions, Hudson added, to prevent a lasting impact on student rights. The freedom for students to express themselves online is vital, he said.

“[The Internet] is the medium that these students grew up in,” Hudson said. “It’s where they feel comfortable expressing themselves.”

For two Pennsylvania students, it was the medium they chose to employ when mocking their principals with fake

“There has to be some division between on-campus and off-campus speech because otherwise schools would effectively run a student’s entire life.

Kevin Goldberg

attorney specializing in First Amendment and Internet publishing

MySpace pages. But the two similar cases are unfolding with contrasting rulings.

In *Layschock v. Hermitage School District*, Judge Terrence McVerry ruled in the U.S. District Court for the Western District of Pennsylvania that officials overstepped their bounds when punishing Justin Layschock for his fake profile of his principal.

“The mere fact that the Internet may be accessed at school does not authorize school officials to become censors of the World Wide Web,” McVerry wrote in his opinion.

But in *J.S. v. Blue Mountain School District*, Judge James Munley upheld the 10-day suspension of Jill Snyder, who created a fake profile of her principal, describing him as a pedophile who enjoyed “hitting on students and their parents,” and was “put on this world with a small dick.”

Munley, in the U.S. District Court for the Middle District of Pennsylvania, said school officials could punish Snyder because her speech was vulgar and lewd, and encouraged illegal behavior.

Both cases have been argued before the 3rd U.S. Circuit Court of Appeals, where different sets of three-judge panels seemed split on the issue, based on their comments during the attorneys’ arguments.

Hudson said it is vital that students maintain their rights to free speech online. If students lose that right, he said the consequences could be severe.

“It could create a generation that either is very cynical about constitutional freedoms or a generation that doesn’t grow up with a full appreciation of the value of those freedoms if they’re denied them,” Hudson said. ■

Understanding cybershield law

BY MICHAEL BEDER

Student evaluations posted on the Internet described a professor at a San Francisco college as “mentally ill,” “incompetent” and a “homomaniac.”¹

A commenter posing as a university professor insulted one of the professor’s students in a message posted on a student newspaper Web site.²

A printed student newspaper might be liable under traditional rules of defamation law for publishing such statements. But an online publication generally will not be liable if users leave similar messages on a comment board.

Why would an online publication be held to a lower standard of liability than a print version? A federal law passed in 1996 provides the answer.

Section 230 of the Communications Decency Act³ states that providers and users of interactive computer services are not liable for posting information provided by other sources.

For the student media, this could mean broad immunity for content that is created by non-staff members. But there are some pitfalls to avoid. If students add content to material provided by others or rewrite sentences as part of the editing process, for example, a court could conclude that the student newspaper helped to “create” the information. In that case, the publication could be liable. Student journalists and school administrators should be aware of the protection Section 230 may offer — as well as its limits — when they venture into cyberspace.

Cybershield’s background

Before the CDA, courts applied traditional libel law to the Internet. Internet service providers could be held liable for what they disseminated as either “publishers” or “distributors,” depending on their level of editorial control.

Publisher liability applies to reporters, authors, editors and publishers, as well as the publications they work for. Publishers are fully liable for defamation because they are “creatively involved in the process of publication”⁴ and it is fair to assume they know about any libelous information.

Distributor liability applies to commercial printers, bookstores, libraries and

news vendors. Distributors are liable only if they know or have reason to know that information is defamatory. They are not required to independently investigate material before they distribute it. The lower standard is justified by distributors’ lack of control over the information they disseminate.⁵

Courts initially treated ISPs that monitored their message boards as publishers, making them liable for defamatory content posted to their services.⁶ By contrast, ISPs that took no steps to screen messages were treated as distributors and were not liable.⁷

Given these rulings, members of Congress feared many ISPs would choose not to monitor their discussion forums. Section 230 was designed to shield ISPs who wanted to screen offensive content.⁸ Section 230(c) states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”⁹ In addition, the law states, “no provider or user of an interactive computer service shall be liable on account of . . . any action voluntarily taken in good faith to restrict access to . . . material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected. . . .”¹⁰

Court interpretations

Generally, courts have taken a broad view of Section 230’s protections. The Fourth Circuit set the tone in *Zeran v. America Online, Inc.*, the first case to interpret the law.¹¹ That court found Section 230 “creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.”¹²

Over the next decade, this analysis was almost universally adopted by other courts.¹³ Some have since backed away from *Zeran*’s broadest language. But at a minimum, almost all courts agree Section 230 applies when a suit (1) against a provider or user of an interactive computer service (2) would treat the defendant as a publisher or speaker of information provided by another information content provider.¹⁴

(1) WHO IS PROTECTED

Section 230 protection applies to any “provider or user of an interactive computer service,”¹⁵ specifically including services provided by libraries and educational institutions.¹⁶

The earliest cases applying Section 230 dealt with large ISPs, such as AOL, that directly connected customers to the Internet; those companies clearly are covered as “providers.” Courts have expanded their definition of “providers” to include Web sites and e-mail lists, whether they are operated by large corporations or by individuals.¹⁷

Moreover, the statute also provides full protection to any user of an interactive computer service who merely re-posts content from someone else.¹⁸ By definition, any Web site uses such services to connect with readers. Thus, any Web site or e-mail list — including online student publications — should be covered.

(2) SCOPE OF PROTECTION

Even for those covered by Section 230, the law’s protection has two main limits. It protects only against certain types of legal claims, and it applies only to content provided by someone other than the person claiming immunity.

Types of claims

Section 230 protects against any cause of action — however phrased — that treats service providers or users as publishers of content provided by someone else.¹⁹ This includes defamation claims,²⁰ as well as claims such as fraud, negligence and false light.²¹ The immunity does not protect against claims involving federal criminal statutes or any intellectual property violations, including copyright.²²

The statute shields service providers and users from both publisher and distributor liability.²³ In *Zeran*, for instance, the plaintiff sued AOL after an anonymous user posted messages advertising “offensive” T-shirts regarding the 1995 Oklahoma City bombing. The phony messages urged readers to call the plaintiff to order the shirts, and the plaintiff sued for negligence after receiving many insulting calls and death threats. The plaintiff argued AOL should be held liable as a distributor because it failed to remove the defamatory messages quickly enough after the plaintiff complained.

But the court held that, under Section 230, “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions — such as deciding whether to publish, withdraw, postpone or alter content — are barred.”²⁴ If AOL were held liable as a distributor, the company would have to investigate every complaint of a defamatory posting and decide whether to publish or remove the statement, thrusting it into a publisher’s role.²⁵ Given the volume of messages, ISPs would face an “impossible burden,” likely prompting them to avoid screening messages and to remove messages upon complaint (whether legitimate or not) rather than risk liability.²⁶ This is what Section 230 was designed to prevent. Therefore, the court found Section 230 bars lawsuits based on both distributor and publisher liability.

Section 230 does not apply, however, to claims challenging conduct beyond a publisher’s traditional editorial functions. For instance, although service providers cannot be liable for refusing to remove third-party content, they might be liable under contract law if they promise to remove content and then fail to do so.²⁷ In *Barnes v. Yahoo!*, Barnes sued Yahoo for failing to remove a prank personal ad that caused Barnes to receive many unwelcome overtures.²⁸ Barnes alleged a Yahoo official promised to “personally walk [Barnes’ complaints] over to the division responsible for stopping unauthorized profiles and they would take care of it.” When, two months later, Yahoo still had not acted, Barnes filed suit.

The Ninth Circuit said Section 230 did not affect Barnes’ breach-of-contract claim because the claim alleged conduct — Yahoo’s decision to make and then break a promise — that was separate from Yahoo’s role as a publisher.³¹ The court emphasized, though, that “a general monitoring policy, or even an attempt to help a particular person” would not create liability, and that Web sites can avoid liability by stating that they are not making any legally binding promises.³²

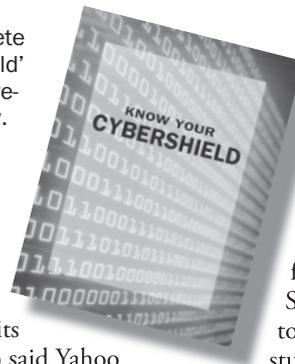
Source of challenged content

The other limitation on Section 230 immunity is it applies only when “another content provider” wrote the relevant material. This distinction can become complicated in practice.

Web site owners will always be responsible for content they create. For instance,



For the SPLC’s complete ‘Know your cybershield’ guide, visit the legal resource center at www.splc.org.



the court in *Anthony v. Yahoo!* said Yahoo had no immunity against a claim that the company itself created fake profiles on its dating service.³³ The court also said Yahoo could be liable if it deliberately misrepresented real but expired profiles as profiles of active users.³⁴ In effect, it would be Yahoo, not the original users, “creating” the misleading implication that users still were active.

At the other extreme, service providers are not liable merely for passing along someone else’s expression. In *Zeran*, the message writer was an anonymous user, who was clearly a distinct entity from AOL. A federal district court in *Blumenthal v. Drudge* ruled Section 230 immunity also protected AOL from claims arising out of Matt Drudge’s online gossip column, even though AOL promoted the column and paid Drudge to make it available to AOL customers. The court found Congress chose to provide immunity even when the ISP “has an active, even aggressive role in making available content provided by others.”³⁵

However, a service provider might be liable if it is responsible for the “creation or development” of content “in whole or in part.”³⁶

The precise point where a service provider or user becomes a partial content creator has yet to be determined. In *Ben Ezra, Weinstein & Co. v. America Online, Inc.*,³⁷ the Tenth Circuit made clear a service provider will not lose immunity simply by deleting inaccurate information (in that case, erroneous stock data).

Section 230 also protects providers who select or highlight outside content. In *Batzel v. Smith*, for instance, Ton Creemers, the operator of an e-mail list, distributed a message he received from Bob Smith.³⁸ The Ninth Circuit ruled Creemers could not be held liable merely for distributing Smith’s allegedly defamatory message, even though Creemers had selected Smith’s message for distribution and had made minor edits to it.

However, the court said Creemers could be liable if — as Smith claimed — Smith

had not intended his e-mail for public distribution. In that case, the e-mail would not qualify under Section 230 as content “provided” by another party unless Creemers reasonably believed Smith intended the e-mail for online publication.⁴⁰ Such ambiguities are unlikely to arise in the context of a student newspaper’s comment boards or other areas where it is clear users are submitting content for public display.

The Ninth Circuit provided the most detailed discussion so far of what might constitute “partial” content creation in *Fair Housing Council v. Roommates.com, LLC*.⁴¹ The court said an online roommate-matching service was not immune from claims that its Web site violated fair-housing laws. The site required users to answer questions about their sex, sexual orientation and whether they have children or are willing to live with children. The court said the site could not claim immunity from claims that merely posing those questions violated fair housing laws (regardless of users’ answers) because the site was the “content provider” of the questions.⁴⁴

But the court went further, holding the site also could be liable for displaying the answers to these questions on users’ profile pages and using the answers in the site’s search system to screen which listings users saw. The court said the site partially developed the content by posing the allegedly illegal questions and requiring users to answer them, thus “contribut[ing] materially to the alleged illegality of the conduct.”⁴⁶

In contrast, the court said, merely editing user content for purposes such as shortening, correcting spelling or removing profanity generally would not jeopardize a service provider’s immunity. The only exception would be if the editors contributed to a statement’s illegality, such as by removing the word “not” from the statement “[Name] did *not* steal the artwork.”⁴⁸

The court also said the site was not liable for discriminatory statements users wrote in the open-ended “Additional Comments” portion of their profiles. Speaking directly to Web site operators, the court wrote: “If you don’t encourage illegal content, or design your website to require users to input illegal content, you will be immune.”⁵⁰

Implications for student media

Although no published decisions have directly applied Section 230 to student media, it now is well established that the statute covers virtually all Web sites.

To qualify for immunity, student media must prove the content at issue was created by an entity distinct from the publication. Obviously, student media are “content providers” for material they create themselves. For example, student media will be liable for any defamatory content in stories written by student reporters, regardless of whether those stories appear in print or online editions.

On the other hand, publications will not be liable for user-posted comments or similar materials, so long as it is reasonably clear to users that they are submitting material for publication. Other content provided by non-staff members — such as letters to the editor or syndicated material — might also be protected, even though print publications have always been treated as publishers of all such content.⁵¹

However, no court actually has ruled that online publications are protected from liability based on such materials. Unlike message-board operators, who might face an overwhelming volume of user postings, publications routinely screen materials like letters to the editor. In addition, it is common practice for newspaper staff to require letter writers to sign their names and provide a phone number, so that newspaper staff may verify who the author is before the letter is printed. If similar practices are used when publishing online letters to the editor, immunity might not apply.

Regardless, students must be careful not to cross the line between host and content provider. Students should avoid rewriting or adding content to material provided by others. A student outlet also should not ask readers to provide material the publication knows is illegal or defamatory.⁵² In both cases, a court could find the publication liable as a partial content creator or developer.

While legal protection is strongest when students avoid making substantive revisions to material provided by others, there are many good reasons why students may hesitate to give up editorial control. Editors are supposed to fix sloppy writing, correct errors and fill in gaps in reporting. If editors stop serving these functions in an effort to avoid liability for content, the quality of student media may suffer. But when it comes to avoiding liability for content provided by others, student edi-

tors who avoid adding content and rewriting sentences will have stronger protection under the law. Student editors who are uncomfortable with a post — for whatever reason — will be on much safer ground if they simply remove the post entirely.

Georgetown University law student Michael Beder served as the SPLC’s summer law clerk
-SPLC Legal Consultant Mike Hiestand contributed to this analysis.

1 See *Student Group Seeks Dismissal of ‘Libel-by-Linking’ Lawsuit*, 17 No. 16 Andrews Computer & Online Indus. Litig. Rep. 10 (May 16, 2000); Pamela Mendels, *Web Reviews of Professors Prompt a Lawsuit*, N.Y. TIMES, Oct. 27, 1999.

2 Kelsey Beltramea, *Old Issues, New Questions*, STUDENT PRESS LAW CENTER REPORT, Fall 2008, at 15.

3 47 U.S.C. § 230 (2006).

4 Steven M. Cordero, *Damnum Absque Injuria: Zeran v. AOL and Cyberspace Defamation Law*, 9 FORDHAM I.P., MEDIA & ENT. L.J. 775 (1999).

5 Id.

6 See *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

7 See *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991).

8 The CDA was also designed to regulate “obscene” and “indecent” material on the Internet by making it a crime to transmit such material to minors. Section 230 was to ensure that ISPs taking steps to screen out “obscene and “indecent” material would not be treated as publishers for content created by others. The CDA’s regulation of indecent material was held unconstitutional by the Supreme Court in *Reno v. ACLU*, 521 U.S. 844 (1997), but Section 230 remains.

9 47 U.S.C. § 230(c)(1) (2006).

10 § 230(c)(2)(A).

11 *Zeran v. American Online, Inc.*, 129 F.3d 327, 331-32 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998).

12 Id. at 330.

13 See, e.g., Chi. Lawyers’ Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666, 669 (7th Cir. 2008) (citing cases from the First, Third, Fourth, Ninth and Tenth circuits as supporting the “broad immunity” interpretation).

14 *Barnes v. Yahoo!, Inc.*, No. 05-36189, 2009 WL 1740755, at *3 (9th Cir. June 22, 2009).

15 47 U.S.C. § 230(c)(1).

16 Id. § 230(f)(2).

17 See *Donato v. Moldow*, 865 A.2d 711, 718-19 (N.J. Super. Ct. App. Div. 2005) (collecting cases).

18 See *Batzel v. Smith*, 333 F.3d 1018, 1030-31 (9th Cir. 2003) (individual operator of Web site and e-mail list is covered either as a provider or a

user); *Barrett v. Rosenthal*, 146 P.3d 510, 529 (Cal. 2006) (individual who reposted article on another comment board is covered as a user).

19 See Chi. Lawyers’ Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666, 671 (7th Cir. 2008); *Doe v. MySpace, Inc.*, 528 F.3d 413, 419-20 (5th Cir. 2008).

20 See *Barnes v. Yahoo!, Inc.*, No. 05-36189, 2009 WL 1740755, at *4 (9th Cir. June 22, 2009).

21 Id.

22 47 U.S.C. § 230(e). But see Digital Millennium Copyright Act, 17 U.S.C. § 512 (2006) (significantly limiting online service provider liability for copyright infringement resulting from third-party activities).

23 *Zeran v. American Online, Inc.*, 129 F.3d 327, 331-32 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998).

24 Id.

25 Id. at 332-33.

26 Id. at 333.

27 See *Barnes v. Yahoo!, Inc.*, No. 05-36189, 2009 WL 1740755, at *9 (9th Cir. June 22, 2009).

28 Id. at *1.

31 Id. at *9.

32 Id. at *10.

33 *Anthony v. Yahoo!, Inc.*, 421 F. Supp. 2d 1257, 1262-63 (N.D. Cal. 2006).

34 Id. at 1263.

35 Id. at 51-52.

36 47 U.S.C. § 230(f)(3).

37 206 F.3d 980 (10th Cir. 2000).

38 *Batzel v. Smith*, 333 F.3d 1018, 1021-22 (9th Cir. 2003).

40 Id. at 1035.

41 521 F.3d 1157 (9th Cir. 2008).

44 Id. at 1164.

46 Id. at 1167-68.

48 Id.

50 Id. at 1175. *Accord FTC v. Accusearch Inc.*, No. 08-8003, 2009 WL 1846344, at *9 (10th Cir. June 29, 2009) The Tenth Circuit found a Web site operator liable for developing content because it “solicited requests for confidential information protected by law, paid researchers to find it, knew that the researchers were likely to use improper methods, and charged customers who wished the information to be disclosed.” Id. at *11.

51 David R. Sheridan, *Zeran v. AOL and the Effect of Section 230 on the Communications Decency Act Upon Liability for Defamation on the Internet*, 61 ALB. L. REV. 147, 149 (1997).

52 For instance, a New Mexico appellate court said a Web site operator might be liable for incorporating a third party’s e-mail into her own post because the operator “apparently requested potentially defamatory material for her own stated purpose of making fun of” the plaintiff. *Woodhull v. Meinel*, 202 P.3d 126, 133 (N.M. Ct. App. 2008) (internal quotations omitted), *cert. denied*, 202 P.3d 870. ■

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