INSIDE: Public records reveal students leave thousands of dining dollars unspent

BLOWING THE WHISTLE

student athletes hit with penalties over their social media posts

PLUS: Colorado controversy raises questions about the rights of journalists, other students in yearbooks.
A Florida man sued his former high school in January, claiming the student newspaper there libeled him. The Reagen Advocate alleged published his photograph next to a story about sexually-transmitted diseases. The man’s lawyer is asking for more than $15,000 in damages.

Administrators censored a Tenn. high school student’s editorial on atheism, claiming it would be “distracting.” The piece ran on the website of a nearby professional newspaper, and the student seemed unlikely to pursue legal action.

The editors of a high school yearbook near Colorado Springs, Colo., said their adviser removed a spread that included a photo of a lesbian couple, then deleted the files. A district spokeswoman said the photos contained “physical displays of affection,” in violation of school policy.

A high school newspaper adviser in Kansas resigned in protest after administrators refused to allow information from a police report to be published. Despite the state’s anti-Hazelwood law, the principal said he didn’t think information about an alcohol-related car crash should be printed.

Jurors in Nebraska backed a school’s decision to ban shirts with the phrase “RIP Julius.” A lawyer for the three students who sued said he is considering an appeal.

A wave of newspaper thefts and confiscations hit 15 different colleges across the country between January and May.

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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.


**The McClatchy Company**

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

Emily Summers, spring 2012 journalism intern, is a senior journalism major at the University of Oklahoma. Her experience includes serving as managing editor of Sooner yearbook at OU, as a writer for the Oklahoma Gazette and writing for the Homeless Voice while participating in Will Write for Food.

Nick Glunt, spring 2012 journalism intern, is a December 2011 graduate of Kent State University in Ohio, where he climbed the ranks to managing editor of the Daily Kent Stater newspaper. He’s been a reporter, columnist and editor. Among his most memorable stories is extensive coverage of the untimely eviction of Silver Oaks Place, a retirement community in Kent, Ohio.

**SPEND THE SEMESTER WITH US IN D.C.**

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

Interns produce news content for our website and this magazine while learning about press law issues from our offices in the Washington, D.C., area.

Visit the website for details and to apply.
Catch student rights fever in the *Report* archive

If you want to appreciate how drastically the student-rights pendulum has swung in America’s courts and legislatures over the past 35 years, consider a news item from the SPLC’s *Report* magazine of December 1977.

Reporting on the enactment of what became California Education Code Sec. 48907 – the nation’s first state statute protecting the freedom of the student press – writer Gary Weinstein reported that the only organized opposition to the bill came from … the American Civil Liberties Union, which was concerned that legislators were giving schools *too much* authority by letting them censor speech that is “obscene, libelous, disruptive, or advocates breaking the law.”

Fast-forward three-and-a-half decades, and – as reporter Emily Summars tells us in this issue of the *Report* – legislation giving students some facsimile of the rights Californians have enjoyed since the ’70s is considered D.O.A. in legislatures from Nebraska to Vermont.

There is much about the ’70s not to be nostalgic for – Spiro Agnew, “You Light Up My Life,” sideburns the size of Greyhound buses – but for students, respect for basic individual liberties was undeniably better. That same 1977 edition of the SPLC’s magazine brought news of a federal appeals-court ruling, *Gambino v. Fairfax County School Board*, granting Virginia high school students the right to publish a front-page article about the importance of contraception for sexually active teens – a story that many federal judges might regard as legally unprotected speech today.

It is easier today than ever to trace the decline in regard for student rights, because – thanks to the efforts of Publications Fellow Brian Schraum and intern Sam Tobin – every edition of the *Report* magazine is now viewable online, either through the www.splc.org website or on Issuu at http://issuu.com/splc/docs.

These archived issues provide a valuable archival reference, reminding us all that a more open-minded and educationally supportive way of life not only is attainable but has existed in our recent past, with not a hint of the chaos or bedlam that school administrators so often predict if their control is anything but absolute.

Beyond that, the *Report* archives offer an entertaining look back at how some of today’s most celebrated journalists got their start.

Check out the Fall 1979 edition, which features the artwork of then-college student Bob Staake (whose indelible cartoons are now a fixture in *The New Yorker* and *The Washington Post*) and stories by student writer Barton Gellman (now a Pulitzer Prize-winning journalist and best-selling author of the Dick Cheney biography, *Angler*). We’re proud to count these luminously creative talents – and many more like them – as part of the SPLC family.

**Time to push ‘reboot’ on school tech policies**

The most effective schools govern from a place of trust, and the least effective from a place of fear. Nowhere is this clearer than in schools’ approach to the use of technology, where the widening gap between “haves” and “have-nots” is being worsened by policies that lock away access to Gmail, YouTube and other learning resources students use comfortably and safely everywhere except school.

In this issue of the *Report*, we offer a glimpse of “the rest of the story,” in which technology-savvy teachers like Colorado’s Carrie Faust harness the power of Twitter as a messaging service capable of reaching student journalists instantly in the newsroom, at the football stadium, or in their living rooms.

Stereotypes and phobias about online predators and “cyberbullies” are prompting rash, one-size-fits-all technology restrictions in schools. Student journalists – for whom 21st century communication tools are a luxury, not a necessity – are at best an afterthought, if they are thought of at all.

That is why the SPLC lent its support to the newly issued report, “Making Progress: Rethinking State and School District Policies Concerning Mobile Technologies and Social Media” from the Consortium for School Networking. “Making Progress” recommends pushing “reboot” on heavy-handed school technology bans, moving from a mindset of “acceptable use policies” to one of “responsible use policies.”

At the SPLC, we believe it’s futile for educators to hold back the ocean. It’s time we started giving swimming lessons instead. — Frank D. LoMonte, executive director
Growing trend sees college student athletes punished, stifled and closely monitored for their ‘inappropriate’ social media use

BY NICK GLUNT

In an age where Facebook and Twitter are the go-to sources for entertainment and socializing, universities nationwide are struggling with how tightly to monitor or restrict their athletes’ online activity.

The University of North Carolina at Chapel Hill got a rule awakening to the issue in a June 2011 letter from the National Collegiate Athletic Association. The letter detailed several allegations against the school’s athletic program, among them that the school could have discovered violations of NCAA regulations had UNC been more vigilant in its social media monitoring.

“In February through June 2010,” the letter reads, “the institution did not adequately and consistently monitor social networking activity that visibly illustrated potential amateurism violations within the football program, which delayed the institution’s discovery and compounded the provision of impermissible benefits” totaling more than $27,000 between seven football players.

In March, the NCAA revoked 15 scholarships after an investigation that included scrutinizing athletes’ tweets.

Howard Wasserman, a professor of law at Florida International University specializing in sports law, said since the NCAA is a private organization, it is not examined under First Amendment scrutiny. However, many of its member schools are public institutions, so the lines grow foggy.

“When it’s a public university that carries out NCAA regulations,” Wasserman said, “it runs the potential of making those regulations the equivalent of public laws because they’re being enforced by a government actor or a government institution.”

While reputation and NCAA issues pop up all across the nation, universities are turning to private companies like Varsity Monitor and UDiligence, spending up to $10,000 a year to monitor their students’ social networking activity.

Where as some athletic departments used to have staff members cruise social media for wrongdoing, Varsity Monitor and UDiligence handle the work with automated scanning technology, which searches for questionable keywords regarding NCAA regulations.

The companies work to protect universities from criticism as well. Along with words like “free,” there are searches for words related to...
illegal activities like underage drinking and drug use, as well as offensive phrases and negative comments about the university.

This sort of practice raises red flags for some free speech advocates. However, Wasserman said the First Amendment relationship between the NCAA and public universities might not apply to Varsity Monitor and UDiligence.

“We’re really not sure how the analysis goes when government delegates to a private organization what it wants to do,” Wasserman said. “In some circumstances, we’ve recognized there’s enough of a connection between what a private actor is doing for the government that we’ll treat the private actor as the government, as a state actor. It really depends on what exactly the rules are, what the government is asking the private organization to do and the like.”

NCAA spokesman Cameron Schuh wrote in an email that the NCAA does not directly ban social media.

“The monitoring, regulating and expectations of social media sites used by student-athletes on college campuses are done on a campus level,” Schuh wrote, “although at times, it can also serve as an information resource for NCAA enforcement staff investigators. If a school receives information about a potential violation and it is reasonable to believe social networking information would be helpful, they should monitor this information.”

Schuh explained that it’s up to individual schools to decide how they want to approach their student athletes’ social media activity.

“If violations are discovered via social media,” he added, “it is the institution’s responsibility to report those violations and educate the individuals on how their actions could possibly affect the school and the eligibility of themselves/student-athletes. Failure to do so could result in more severe circumstances if not addressed.”

Wasserman said he’s not heard of any cases where an athlete tried to bring a First Amendment lawsuit on the issue. Even if an athlete made the claim, though, he doubted it would be successful because the athletes could potentially be considered employed by the university.

“These athletes are playing on behalf of the university,” Wasserman explained, “and they become something akin to employees — ironic given the whole thing about being students — and there’s less First Amendment protection for employee speech, particularly speech in the course of their job. I imagine those same rules probably would be held to apply to a student athlete who plays on behalf of the school, who represents the school as an athlete.”

Ken Paulson, president of the First Amendment Center, disagreed with Wasserman’s prediction.

“I generally agree with the notion that it would be an uphill battle for students to prevail; however, students are not
employees,” Paulson explained. “They enter into a contractual relationship with a university to get an education and to take advantage of the full range of activities that are available.”

However, he did agree that universities are likely breaking no laws by monitoring their student athletes’ social media profiles.

“There are no First Amendment issues in maintaining team discipline and morale, so restrictions on student athletes tweeting during the season really can’t be challenged,” Paulson said. “On the other hand, if public universities are too broad in their attempt to restrict student speech, that could be successfully challenged in court.”

For instance, he said it would be overbroad if a coach banned voting in an election because it was a distraction to the athletes. Instead, coaches would need to impose restrictions that have a “rational relationship” with the activity, such as not posting about football because it weakens morale.

However, he said banning the use of social media entirely is completely unreasonable.

“It’s certainly not my position that we need legislation to govern this,” Paulson said, “or that there needs to be howls of outrage from coast to coast. We simply need to make sure that student athletes are given the latitude they deserve as students, and that any restrictions on their communications be rational.”

**About Varsity Monitor and UDiligence**

As detailed in a recent USA Today column written by Paulson, student athletes’ questionable uses of social media continue to lead to discipline. Last month, the NCAA stripped North Carolina’s football program of 15 scholarships after an investigation based on a player’s tweet.

Western Kentucky University suspended a running back after he tweeted negativity toward fans in October. A Lehigh University wide receiver was suspended for retweeting a racial slur in December. A high school cornerback lost his University of Michigan football scholarship after tweeting with graphic sexuality and racial insensitivity in January.

And until a court says otherwise, companies like UDiligence and Varsity Monitor will continue to peruse student athletes’ social media profiles on behalf of the universities that hire them.

UDiligence CEO Kevin Long did not return calls for comment. However, in an email to the New Jersey Institute of Technology obtained through public records, he wrote that he believes the business will grow exponentially quite soon.

“This is going to be the new drug-testing,” he said. “It will be as common as being asked to take a drug test in the next two years or less.”

Sam Carnahan, CEO and founder of Varsity Monitor, said his company advocates the use of social media — but teaches students to avoid “misuse.”

Proper use of social media, he explained, includes representing yourself the way you’d like viewers to perceive you and those you represent. It can help an athlete score a job after college and protects the university from reputation-damaging scrutiny.

“Many coaches ban the use of Facebook and Twitter,” Carnahan said, “and that is something we discourage. By using Varsity Monitor, by educating the student athletes and by using the content in a way to continue that education process, Varsity Monitor actually encourages the use of social media. It helps people use it in the right way.”

He added that Varsity Monitor is less invasive than a coach or other university official “friending” the student on Facebook. The company provides a Facebook and Twitter plug-in that students must authorize, much like popular game applications, to access their information.

Universities can edit the default list of search terms to include or remove certain phrases, and some universities include coaches in their scans. Carnahan said the company never violates social media terms of service, which means it never asks for passwords or searches private chat conversations.

Despite its purpose as a monitoring tool, Carnahan explained that Varsity Monitor is not intended to be a censorship tool.

“We think we’re a real service for student athletes,” he said. “They’ve been very positive about all the work we do because we help them understand the pitfalls and the dangers of social media, and the ways they can take advantage of it.”

**The clients**

According to the Varsity Monitor website, its “featured clients” include UNC, Eastern Michigan University, the University of Nebraska-Lincoln and the University of Oklahoma.

UDiligence, according to its website, has been hired by Utah State University, the NJIT, Texas Southern University and the University of Louisville, among others.

Jana Doggett, Utah State’s executive associate director of athletics, said students who don’t cooperate with the university’s monitoring attempts risk getting kicked off the team.

Doggett said some students asked why they needed to cooperate, and she explained, “You don’t have to do it, but you also don’t need to be a student athlete here.” After that, she said, the students moved on.

“Being a student athlete at Utah State is not a right; it’s a privilege,” she said. “You’re given the opportunity to come here, you’re recruited and given the opportunity to have a scholarship. So we feel you need to do the right thing and represent yourself appropriately publicly, and unfortunately for this generation, that means social media.”

She said free speech advocates may indeed have something to worry about.

“To some extent, they’re correct,” Doggett said. “It is (a free speech issue), but we’re responsible for keeping them healthy. We’re responsible for making sure they get their education. To some extent, we’re pretty involved all the way around.”

Unlike USU, Eastern Michigan is only on a trial basis with Varsity Monitor.

Christopher Hoppe, EMU associate director of athletics, said despite monitoring the students, the university is very concerned with privacy regarding social media.

“We were interested in keeping track of anything that could be an NCAA violation like inappropriate recruiting and amateurism.”

Hoppe said the university is hiring Varsity Monitor to review only the public information on social media profiles. He was surprised to hear that Varsity Monitor requires students to accept an application invitation and planned to call Carnahan for an explanation.

“If you couldn’t find (the information),” Hoppe said, “we don’t want it.”

If something concerning is found, it would be dealt with on a case-by-case basis. He declined to comment whether removal from a sports team could be among the penalties.

NJIT Athletics Director Lenny Kaplan said the university has had very few problems since hiring UDiligence.

“Ninety-nine times out of 100, we’ll get the email and look on the kid’s Facebook page, and there’s really nothing wrong with
it," Kaplan said. “It’s not meant to be a police thing, it’s meant to help the students, as well as making sure they’re not embarrassing themselves or the university.”

He said NJIT’s use of UDiligence does not limit the students’ social lives. Instead, it teaches them not to share potentially damaging details. For that reason, its use is entirely optional. Still, Kaplan said, most students choose to take the opportunity.

“We don’t make it like a punishment,” Kaplan said. “We’re not turning them in. It’s not about us getting you in trouble. We take care of our own stuff, but at the end of the day, it’s about protecting them. They don’t know what they’re doing.”

UNL Life Skills Coordinator Jessie Gardner said the university declined to comment on its relationship with Varsity Monitor.

Validity

Law professor Wasserman said monitoring the accounts may not be illegal, but he sees it as morally wrong.

“We ought to be encouraging students to express themselves and speak out on things and what they believe and how they want to say it,” Wasserman said. “It seems part of being a student, and if we really think these people are student athletes, then we ought to encourage student athletes to do it in the same way we encourage students to do it.”

College, he said, is a time when students are supposed to make the transition into adulthood. Since public debate is part of being an adult, he said punishing disfavored speech goes against that transition.

Paulson agreed, explaining that just because something’s not illegal, does not mean it’s the best course of action.

“These are adults we’re talking about,” Paulson said. “It just sets a terrible tone that says, ‘We can’t trust you, and we’re going to watch your every word.’ I think that doesn’t speak to the maturity of the students or the stability of the program.”

But student athletes likely won’t challenge it because they’re afraid of being kicked off the team.

“If you’re playing for a prominent football program you’ve dreamed of all your life,” Paulson said, “you’re not going to risk that for the sake of 140 characters.”

And coaches won’t have any reason to stop until someone challenges the issue in court.

“That misses the point, because part of exploring and engaging in what — let’s face it — is constitutionally protected speech,” he said, “should be that I do it without the fear that I am going to have something of value taken away from me.”

“No, I don’t have the right to be on the basketball team,” he continued, “but nor should I have to choose between something that I enjoy and something that I’m good at — playing basketball — and something that’s going to fund an education that I might not otherwise be able to afford, and speaking out on matters of public concern.”

This graph shows the approximate annual rate for the two most common social media monitoring services, based on the total number of student athletes enrolled in the program.
#FeedFrenzy

As teachers continue to grapple with Facebook, Twitter and even newer technologies, the debate grows louder: should social media become part of the classroom curriculum?

BY EMILY SUMMARS

It's 9:30 p.m. Journalism adviser Mitch Eden is on Facebook looking at the yearbook staff's recent photo uploads. He gets a message from the photographer. How can she get the perfect shot? Because of Facebook, Eden is able to offer instant advice to the photographer. The next day she captures a stunning frame.

Eden is sick for the week and away from the classroom but his staff needs guidance on deadline. The Pioneer yearbook staff posts spreads on Facebook. Eden critiques the spreads from home, leaving comments on each.

“That’s an instantaneous teaching moment,” said Eden, who teaches at Kirkwood High School in Missouri. “She asked a question through the Facebook group and before she shot the next day, I was able to give her photo advice right there.”

The adviser at California’s Whitney High School, Sarah Nichols, begins class with a warm-up exercise showcasing a photo or article she found on Twitter. Nichols said Twitter helps her deepen her curriculum and broaden the worldview of students. Her students follow news organizations, writers and blogs, such as The New York Times’ Lens blog.

“When I’m reading my feed in the morning and something strikes me, I’m certainly going to incorporate it into my schedule for the day,” Nichols said.

Nichols’ Advanced Placement U.S. History class shares links and opinions in the class Facebook group. Facebook allows a student to continue the educational conversation on his or her own time, Nichols said.

At Wheat Ridge High School in Colorado, teacher Stephanie Rossi’s family started her a Facebook account. Soon current and past students began “friending” her. Rossi accepted the requests and uses the account to highlight her students’ accomplishments.

“I accidentally found two of my students were cheating on Facebook,” said Rossi, a social studies teacher. “One of the students posted on their status, ‘Does anyone have Rossi’s notes so I can turn them in?’ I replied with something quirky like, ‘I’ll be interesting to see who gets the points.’”

And at Smoky Hill High School, also in Colorado, publications adviser Carrie Faust said faculty at her school used Facebook to help students after one of their peers committed suicide. Facebook became a help and support line, Faust said.

Eden, Nichols, Rossi and Faust have something in common: all believe social media, when used correctly, enhances the educational experience. Compared to many other teachers across the country, they’re bucking the trend.

Digital communication

The use of Twitter and Facebook has skyrocketed in the past five years. Since 2006 Twitter has grown by more than 35,000 percent and Facebook nearly 6,000 percent, according to Media Bistro. When something is shared on the web, 52.1 percent of people use Facebook to spread the news.

In December 2011, Facebook reported having 845 million active monthly users. Twitter had 100 million active monthly users, according to Media Bistro.

At Missouri’s Francis Howell Central High School, Matthew Schott uses Google Docs to communicate with students, along with Facebook, Twitter and other platforms. The program allows students to upload and change projects on their own time but still have access at school — a plus for night owls, Schott said.

“In class, they don’t have to spend all of their time writing,” Schott said. “It’s an easy way to help the writing leave the classroom so we can focus on areas where they’re having trouble.”

Social media is a teaching tool, not merely a tool for social interaction, Eden said. He said there’s too much information on the Internet and sometimes kids get lost.

“I use social media to point things out,” Eden said. “Examples of photography and design, so students don’t have to sift through everything. They can model everything out there and become better journalists.”

Ryan Bearden, a senior at Kirkwood High School, said Eden posts articles about different design elements, often things he’s noticed in The New York Times.

“It’s great because instead of doing nothing on Facebook, they [students] can read something on there that enhances their education,” Bearden said.

Eden’s students also use Facebook to verify quotes. The staff messages a student to let him or her know their quote will be used in the yearbook. This process, Eden said, allows students to keep up the book’s credibility.

Faust said her publications staff began using Twitter as the solution to their frustrating miscommunications. The students came up with the idea.

When a camera is needed in the cafeteria, the request is tweeted. When a student has a question, that’s tweeted. Faust even advertises her Facebook, Twitter and cellphone number on her syllabus for parents and students.

Faust’s students use social media to connect with other students, teachers and follow local news outlets. Students use smart phones as dictionaries and encyclopedias, not just...
peer communication. Students are always plugged in.

“Sometimes it’s rough,” Faust said. “I found myself at home after a late night and I got a text from a kid regarding our publication. I sat back and thought, ‘Gosh, I wonder what it’s like to be one of those teachers who is actually done for the day when they go home.’”

Bearden said while he personally uses Facebook to connect with friends, he uses social media more for his school’s student newspaper, The Kirkwood Call.

“It’s a great opportunity to reach out to people who are interested in our stories,” Bearden said. “Our stories apply to their [student’s] lives and we post on Facebook and Twitter because they’re on there all the time.”

Bearden said in other classes, his teachers use Facebook to organize students. His Advanced Placement classes use Facebook groups, posting when a deadline is approaching and allowing students to talk about assignments if they have problems. Bearden said he thinks the groups are a nice way to communicate outside of the classroom.

“Everybody knows that when they’re writing in the group, they’re communicating with everyone,” Bearden said.

Politically correct

Some teachers are finding their use of technology hitting a wall set by state law or district policy.

Missouri’s Senate Bill 54 went into effect in January. The bill requires all school districts in the state to have a written policy on teacher-student and employee-student communication.

“The policy acknowledges that social media can enhance collaboration and efficiency but allows exclusive access with a current or former student,” states SB 54.

As a result, Eden and Schott are not friends or followers of their students, impacting their teaching tactics and curriculum.

Kirkwood School District’s policy states, “when communicating electronically with students for educational purposes, staff members must use district-provided devices, accounts and forms of communication... The district discourages staff members from communicating with students electronically for reasons other than educational purposes.”

Eden said it’s difficult to use social media because of the rules and expectations.

“Why not be there and educate and model for them [students] how they should properly use it?” Eden said. “We should have a presence and we should be a part of it so we can use it to educate.”

In the past, Schott has used both Facebook and Twitter to inform students of breaking news. Now because of SB 54, Schott doesn’t use Facebook and is very cautious using Twitter.

“SB 54 cooled me off on it [social media],” Schott said. “I still use Twitter with my editors to share a link but I always make sure it’s journalism related and school related. I try not to do too much off the education path.”

Schott’s school district, Francis Howell, has an electronic communication policy that addresses the ways teachers should communicate with students and social media’s effectiveness as a communication tool.

According to the district’s website, the policy acknowledges that social media can enhance collaboration and efficiency but
states, “employees who utilize social media are prohibited from using their personal accounts to communicate with students unless the employee and student are related. Employees must limit electronic communication with students to school-related matters, including, but not limited to, communications regarding any instructional coursework or extra-curricular activity involving the employee and students.”

Eden said SB 54 failed to define proper use of social media, which hurts both students and teachers.

Diana Peckham, an English teacher at Northeast High School in Maryland, disagrees. Peckham does not use social media, particularly when it pertains to her students, unless they have graduated from college. Peckham doesn’t use social media because of the risk associated for teachers.

“I’ve seen too many instances where teachers have been fired or accused of inappropriate actions or behavior on their personal time,” Peckham said. “They may have posted inappropriate pictures on Facebook or they’ve tweeted or texted with students and because of the language… you know, 140 characters, things get misconstrued. Nobody’s speaking the same language.”

Peckham said she notices a clear division between younger teachers, those fresh out of college, and more seasoned teachers. Peckham said school districts need a clear social media use policy stating the appropriate and inappropriate uses of the technology.

“People don’t recognize the boundaries,” Peckham said. “Students get caught up in so much of the drama. It was bad enough when they were passing notes… but now they’re doing the texting and tweeting. It’s instantaneous and continuous.”

Tim Mennuti, president of the teachers’ association in Maryland’s Anne Arundel County, said he advises his members not to use social media to communicate with students.

“People are doing things online where it should be done in person,” Mennuti said. “The reality is, once you’re out in the open, there is no privacy. The only defense you have is to not get involved.”

Mennuti said he understands the lure of using social media to teach but once teachers are connected with one student, they are inadvertently connected with all because of the networking capabilities of social media.

“If a teacher makes one mistake online, it’s likely they’re going to get fired,” Mennuti said. “Why would anybody subject themselves to that type of scrutiny?”

Mennuti and Peckham understand that Facebook and Twitter may be where students are conversing, but they insist teachers should not follow them.

“People go into places like bars and toilets,” Peckham said. “Just because they are there doesn’t mean I have to follow them in there to talk to them. I wait for the appropriate place and time… I am not a friend of these students. I am their teacher.”

**Districts fight access**

Another common roadblock to teaching through social media: Internet filters.

In 2000, Congress passed the Children’s Internet Protection Act, requiring federally funded schools and libraries to filter online content. Twenty-five states, including Missouri, have laws requiring public schools and libraries to have Internet use policies.
Of 311.6 million Americans, 46 million check their social media accounts multiple times a day. Nearly 40 percent of those using social media do so from their cellphones.

*The Social Habit 2011, Edison Research
*NielsenWire, Social Media Report: Spending Time, Money and Going Mobile

Internet filters commonly rely on blocking keywords or phrases, such as "sex" and "breast," according to the National Coalition Against Censorship. By blocking keywords, filters may also be blocking information concerning civil rights, feminism and politically charged topics.

“When you just use filters on keywords, that’s going to remove all kinds of educational material,” said Michael O’Neil, communications director for NCAC.

Most districts block access to social media sites like Facebook, Twitter, Tumblr and Pinterest. But some teachers say their students access these sites from their smart phones or using smartphone maneuvers around filters. HootSuite is a social media platform that provides students’ access to their social media accounts while bypassing traditional Internet filters.

O’Neil said districts can’t treat the Internet as a cybermonster. Districts need to admit students use the Internet and social media sites to teach them how to properly use the technology.

Nichols said she always sees students on their phones. Faust said some students use applications to avoid the filters. Some teachers, Faust said, are embracing the fact that students use their phones, allowing them to access the web and dictionaries for research during class.

O’Neil said students do care about their privacy, despite frequent assumptions otherwise.

“Young people do care and engage in partition strategies online,” O’Neil said. “The more they know their options, the more they care. Kids learn a lot better by engaging in social media rather than keeping their training wheels on.”

Many students don’t have Internet access at home, making their only online experience a censored experience, O’Neil said.

**Testing the water**

Nichols agrees students and teachers shouldn’t be social media friends, but said new technology shouldn’t be ignored.

“I teach my students the benefits of using social media as a source of news, information, examples, inspiration,” Nichols said. “I teach them the responsibility of and how to share their work by providing examples on a daily basis.”

Eden agrees: when students are accessing the information anyway, why not educate them?

“Why not be there and educate and model for them how they should properly use it?” Eden said. “Kids are always one step ahead of adults.”

In the age of instantaneous communication, it appears to Schott that social media has replaced older tools like email, and it’s here to stay.

“I can’t imagine not teaching with it because of the collaboration possibilities and the freedom it gives students,” Schott said. “I think more schools need to embrace social media because students are familiar there…Students know a lot and they’re very comfortable there…they’re natives.”

Nichols said whether you’re in favor of using social media or against it, the bottom line is educating students about responsible practices and positive educational uses.

“I think it gives them a broader understanding of the vast possibility for learning with social media versus the trivial high school use of saying, ‘so-and-so did this,’” Nichols said. “Once they realize through class activities the ways they’re able to reach out or find new information…they take that with them.”
Searching for Momentum

With efforts to roll back Hazelwood School District v. Kuhlmeier stalled in several states, student press advocates are searching for new strategies. The Report looks back at lessons learned from the past 35 years of state legislation.

By Emily Summars

Within the first 48 hours, the Student Press Law Center received 143 calls from the media. The calls from concerned students and advisers were off the charts.

There was no Internet back then when, on a snowy day in January 1988, the U.S. Supreme Court decided Hazelwood School District v. Kuhlmeier. The case upheld the decision of a public high school administrator in Missouri to censor student newspaper stories on teen pregnancy and divorce because the publication did not have a policy or practice establishing it as a public forum. The censorship was considered a reasonable educational response.

Former SPLC Executive Director Mark Goodman said the Hazelwood decision pulled the rug out from underneath free speech advocates.

“The immediate reaction was, 'how do we portray this,'” Goodman said. “It was in the weeks and days that followed that we were suddenly confronted with the fact that we're in a brave new world.”

Goodman describes the years before the decision as the “golden years,” when courts relied on Tinker v. Des Moines Independent Community School District. Under the Tinker standard, administrators could not punish student speech unless it would cause a “material and substantial disruption of normal school activities.”

In 1988, the Supreme Court wiped that protection away for many student journalists.

Within 48 hours, Goodman and other advocates decided that administrators and legislators had to be pressured to start conversations about their student media policies.

“Student journalists and media advisers historically had not been politically sophisticated,” Goodman said. “They didn't really understand how lobbying for legislation worked. The first challenge we had was to point out how this could make a difference.”

The Hazelwood decision left it to local districts and state legislatures to create enhanced protections for student journalists. State laws provide a separate set of rights that were not impacted by the Supreme Court’s decision. Momentum picked up in the late 1980s and early 1990s as states passed student expression laws in reaction to Hazelwood.

Seven states have such laws, protecting public high school student publications from censorship: Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon. Washington, Pennsylvania and the District of Columbia have protection for student speech in their administrative codes.

Goodman said in the hours after Hazelwood, California's existing law became the template for legislative change.

California

California is the only state that had a student free expression law before Hazelwood. Passed in 1977, California’s law was edited over the years to include additional protection for teachers and school personnel in public high schools and charter schools.

The first time the legislation was proposed, it didn't pass. The Journalism Education Association, advisers and legislators began pushing for a state law to help student expression after several high school students were censored. Retired journalism adviser...
Gil Chesterton said several years later the bill passed. “Support is the key to the whole thing,” Chesterton said. “I mean, even with the state law there are ways administrators can impact students by firing advisers or delaying the publication by going to court.”

Chesterton said California’s law isn’t well known to new advisers. He hears complaints from advisers who are pressured by administrators concerning publication content.

“That pressure trickles to students. Advisers fear the action of students could cost them their job,” Chesterton said.

While California’s law is more than 30 years old, student free expression is still a struggle.

Chesterton said one student newspaper ran an investigative piece about the district. The next year, the adviser was reassigned to teach five freshman English classes.

“These people don’t even know their rights,” Chesterton said. “Advisers and students need to come up with publication guidelines to avoid more issues.”

**Colorado**

In 1990, Colorado passed its own student free expression law. The law states, “If a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school.”

The law capitalizes on a free-expression loophole left by *Hazelwood*: making a publication a public forum.

“That’s something we realized in the beginning: loopholes, the things that still made protection of student press freedom possible,” Goodman said.

The Journalism Education Association was having a state workshop that fall and that’s all Colorado advisers could talk about, said Mark Newton, now national president of JEA.

Newton said the law is a way to train kids as they would be trained for anything else in life.

“Students have to be trained in the English language, in tools for shop class, math,” Newton said. “If we teach kids, ‘here’s what you need to do and here is the community,’ nine out of 10 times, they’re going to do what’s right.”

Newton suggests student journalists have a conversation with administrators about policies and the state law, so they know what can be published and what may get them into legal trouble.

“You need to know where you stand and know where you can go,” Newton said. “At the very minimum teachers and students need to know where they stand.”

**Arkansas**

In 1993, professor Bruce Plopper suggested a student free expression bill to a legislator. It failed.

Censorship of the student newspaper at Little Rock Central High School brought Plopper’s suggestion back into the light. Student editors at Little Rock Central were threatened with suspension if they published content about gangs and vandalism.

In defiance, students produced an “underground” newspaper issue spurring free expression advocates to meet with legislators. Supporters had about seven months to solidify the bill and gain support. Arkansas’ Student Publications Act passed in 1995.

Plopper isn’t happy with the final language of the law but he said school administrator organizations were threatening to lobby against the bill if the language didn’t change. Fearing a loss of support, advocates agreed to water down the bill. The act requires local districts to create their own student publications policies, which sometimes resulted in more restrictions on student speech.

“One administrative association sent out model guidelines for everyone to work from when creating policies in their district and, of course, they were very conservative and many gave power to censor material,” Plopper said.

The law states districts are supposed to consult publications advisers when creating the policy. Yearbook adviser Beth Shull said she and fellow advisers fought with their districts to be included in the drafting plans.

“I remember my superintendent at the time saying that he just wanted everyone to be calm,” Shull said. “In my district, it was a real fight to get my policy to reflect the freedom the students needed.”

Shull, who helped Plopper lobby for the bill, said some advisers were sent only an after-the-fact copy of the policy.

“It said, ‘here’s what we’ve come up with and deal with it,’” Shull said.

The new effort, Plopper said, is educating the educators about student free expression and making sure every district has a policy. Plopper said small communities with inexperienced advisers are hurting because advisers are less knowledgeable about the law.

**Keeping Momentum**

In 2007, Oregon became the most recent state to pass a student free expression law. Goodman said there are several reasons for the 12-year gap after Arkansas. Legislatures became more conservative. School administrators become more effective at stopping legislation. And then Columbine changed the landscape.

After April 20, 1999, the day two students opened fire at Columbine High School in Colorado, Goodman said legislatures began seeing student rights through the lens of violence.

“Students’ rights became equated with the risk of violence,” Goodman said. “What happened as a result with that single incident was a push to curtail students’ rights.”

Goodman said legislation was still proposed but there wasn’t an enthusiastic push as there was right after *Hazelwood* was decided. The effort is being revitalized, as American values shift to more discussion of civic education and politics, Goodman said. The younger generation is becoming involved with legislation and politics, as proven by the presidential election of 2008, Goodman said.

Hawaii, Wisconsin and Illinois pushed student expression bills all the way through their legislatures, only to have them vetoed by their governors.

“Because I am confident that existing Department of Education policies sufficiently protect students’ right of expression, I believe school officials should be given the benefit of the *Hazelwood* decision,” former Hawaii Gov. John Waihee wrote in vetoing the bill there.

Former Wisconsin Gov. Tommy Thompson vetoed that state’s bill in a surprise move, arguing that local school boards should set their own standards.

Bills in several other states fizzled early in the process. Just this...
Student expression laws have spread slowly since the Supreme Court decided *Hazelwood* in 1988. Advocates are hoping to make additional progress in the next several years.

Yearbook adviser Beth Shull remembers when she lobbied for legislation in Arkansas. “I think the biggest fear of any adult when talking about students having rights is that they’re just teenagers,” said Shull, adviser at Warren High School. “Who knows what students are going to say but they’re aware of their responsibilities.”

**Oregon**

Oregon implemented two free speech laws to protect student journalists in 2007. One applies to high schools and the other to college and universities.

Rob Melton, interim executive director of Northwest Scholastic Press, said he tried for 15 years to enact legislation. Finally, Melton found the puzzle piece he needed: a state representative with a journalism background.

“The legislature that particular year wanted to do something that would be student centered,” Melton said. “The best thing I was able to do was find students and parents from more conservative parts of the state to talk about what would happen if their voice was silenced.”

Former state Rep. Larry Galizio read about a Washington state representative who brought his passion for student free speech to the legislature there.

“It showed me that we’re not reinventing the wheel,” Galizio said. “The republic that we have is the free exchange of ideas and in journalism, not all students who are writing for the student newspaper or online paper will become professionals but it’s such a cornerstone for our society. To hold them to a radically different year, legislation was proposed in Nebraska and Vermont but died in committee.

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To hold them to a radically different standard is problematic.

—Larry Galizio
Former Oregon State Rep.

standard is problematic.”

Melton said the biggest challenge now is administrators aren’t aware of the rules pertaining to student publications and as a result often censor students.

“Schools are a critical part of sustaining a democratic society,” Melton said. “What people must do every generation is create people who live and think in a democratic society. When you have a free speech law, it’s the opportunity to teach each generation to talk about issues.”

Wisdom of actions past

Twenty percent of the United States has student expression protection with the help of a state law or education code provision. Goodman said he wants to see 15 to 17 states enact laws in the next ten years to change the mindset of Americans. Censorship will still happen, he said, but laws are an excuse for legislatures to pay attention to scholastic journalism in public schools.

States that do not have student freedom of expression laws need to place pressure on legislators and gain support from both advisers and students, Goodman said. The key is keeping momentum.

Melton said democracy and free speech is a foundation for the U.S. and that doesn’t exclude students.

“The real argument is when some voices are allowed to be heard and others are not,” Melton said. “Full, enriched conversations can’t happen with that.”

Goodman said enacting a law isn’t just a case of writing your local representative.

“You can’t just go and say, ‘we really want this law,’” Goodman said. “You have to make the case and marshal your resources to justify this issue being a priority. Then you have to anticipate opposition.”

Shull said Arkansas is considered a conservative state so, “why do they have a student free expression law?” She laughs; the key she says was using lobbyists from advocating organizations and students sending letters to their legislators.

“Those letters had to have an impact, especially for the legislators from our district, because they knew those kids, knew their families,” Shull said.

Goodman said student expression laws are not an issue of the political left or right, because it’s not just one side being censored. Legislation needs support across the spectrum. Goodman warns it takes energy and effort from a group of people, not just one person.

Galizio, now president of Clatsop Community College in Astoria, Ore., said there is one big difference that could impact the outcome: professional and intellectual interest. Regardless of the legislation, if someone is interested, that helps, Galizio said.

“Don’t underestimate the strength of the opposition because there’s always concern on the part of school board members and principals,” Galizio said. “Communicate and work with the opposition throughout the process. Show them where it’s worked in other states.”

Speaking Out

In 1995, high school students from across the state of Arkansas filed written testimony in support of House Bill 1777, which became the Arkansas Student Publications Act:

Nowhere in the Constitution does it say that freedom of the press is guaranteed only after the writer successfully completes high school.... Just because we are young, we still have guaranteed rights. Just because we are young doesn’t mean we are not able to produce responsible, ethical, well-developed writing.

—Brad Hargrave

God has blessed me with expression. Let me write with freedom.

—Sabrena Harris

Student journalists are journalists too. Just because we are not yet as old as professional media people does not mean we won’t act responsibly.

—Chad Haygood

I’m in favor of House Bill 1777 simply because as a member of the newspaper staff at my school and a part of a group of students who make up journalism staffs across Arkansas, I feel we should be given the right to write what we want, as long as it is appropriate and does not overstep the boundaries of ethical journalism.

—Jeremy McDougald

As a student journalist, I feel it is my duty to defend and support House Bill 1777, the Arkansas Student Publications Act. In the First Amendment of the Constitution, everyone is given freedom of expression. Were students not included in this ‘everyone?’

—Brent Houser
Shining the Light
on campus dining cards

Public records reveal students leave thousands of dollars unspent on their meal plans and campus debit accounts each year. In fact, some schools appear to anticipate unused meals as a revenue-generator. SPLC’s freedom of information project also found that obtaining public documents from some schools can be particularly challenging.
A visit to the dining hall is a daily part of the college experience for most freshmen. Parents buy a meal plan at the start of each term with the idea that it’s a down payment on food for their eager young scholar. But what new students and their parents may not realize is that much of that money often goes unspent — and in many cases, there are no refunds.

In cooperation with student journalists in several states, the SPLC used public records to sample the dining card practices at major universities. The purpose of the unscientific sampling — done as a part of Sunshine Week 2012 — was to call attention to the growing practice of “cashless” campus transactions and the issues raised when students are required to prepay for goods or services they may not use.

Our findings revealed students forfeit many thousands of dollars every year in unused meal and debit dollars — though what the school does with that money varies widely by location.

At the University of Nevada-Reno, for example, students left more than $47,000 in campus dining value unspent in 2009 alone. At Washington State University, students left $43,000 unspent during the 2009-2010 school year — at rival University of Washington, students forfeited more than $90,000 during the same time period.

Exactly what happens to that unused money varies from school to school. Under UW policy, all unused dining dollars are forfeited at the end of the academic year and become property of the university. WSU allows funds to carry over to the following fall semester, so long as the student remains in the residence hall system. Neither school offers refunds.

Rutgers University allows students to receive refunds of unused balances in excess of $25, for as long as 18 months since the last use of the card. At the University of Wisconsin, students automatically receive a refund for unused dining dollars over $20. Balances under $20 are transferred to another account on the student card — which operates similar to a debit card.

In fact, many schools have multiple accounts linked to a single student ID card. Most have dining accounts linked to prepaid meal plans, in addition to a debit account of money that can be used at other locations on campus. Some of the schools, including WSU and Georgia Tech, have agreements with off-campus vendors to accept these “student bucks” as well.

From the records obtained by the SPLC, unspent money on these “debit” accounts seemed far more likely to be refundable or transferred into holding accounts as unclaimed property.

At both Washington schools, for example, unspent cash is held for two years during which students can request refunds. UW closes accounts after a student stops enrolling for five quarters, holds the money for two years, then turns it over the state as unclaimed property. Similarly, WSU waits for accounts to be inactive for 12 months, then places any unused funds in escrow for another year. However, at the end of that two-year period, WSU automatically processes the balance as a donation to the university foundation in the student’s name.

Records show the WSU Foundation received more than $48,000 in unused card “donations” between 2009 and 2011.

Lowell Adkins, executive director of the National Association of Campus Card Users — which represents administrators who oversee card programs — confirmed that refund policies are all over the map.

“Some schools ask the student to request it, some schools refund it all,” he said.

Adkins said he thinks most colleges do offer refunds for unused dollars over a certain threshold, like $20 or $25.

That was true of debit accounts reviewed in the SPLC audit, but not of meal plans.

None of the schools covered by the requests used outside contractors to manage their card or dining account systems, though some did charge outside vendors a fee for the right to accept student account money as payment.

Several did purchase proprietary software to help manage their card accounts — the two most common among the schools we surveyed were Blackboard Transact and CBORD Odyssey.

Mississippi State also contracted with Blackboard to recruit and manage off-campus vendors who accept its MoneyMate debit account. The program, called BbOne, costs the university a $5,000 per year flat fee. Blackboard, for its part, charges merchants a fee to participate in the program, then sends a percentage of that money back to the university.

More schools are entering into contracts with banks and other financial institutions as part of their card programs. Some offer credit card features and bank debit accounts by “co-branding” student cards. Adkins predicts the trend will only grow in the coming years, and may put more money in the hands of both universities and banks.

“Clearly the banks are going to have an opportunity to see a revenue stream out of that, ultimately,” he said. “But banks, in order to have that opportunity, usually provide some incentives to the school.”

That can include help marketing the cards, assisting with the distribution of financial aid, even having employees in the university card office, Adkins said.

Student journalists at the University of North Carolina-Chapel Hill conducted their own investigation and found that 25 percent of all meals purchased through dining plans went wasted each semester. In fact, a school official suggested to the Daily Tar Heel that the university actually budgets around the idea that meals will go unused.

Scott Myers, UNC’s director of dining and vending, told the Tar Heel that if students were to eat every meal they purchased, prices would go up.

State law regulates how a business is supposed to treat a con-
• Request annual unspent meal plan totals for five years and compare over time.
• Obtain documents from other schools in your state, region or conference to see whether your school is an outlier -- or part of a larger trend.
• Interview unclaimed property experts, such as specialized attorneys or leaders in your state’s unclaimed property office or revenue division.
• Ask for records showing the student with the highest amount of unspent money.
• Conduct follow-up interviews to help you understand the documents you receive. Staff members in the campus card office can help you decipher coded spreadsheets.
• Follow the money. If students forfeit their unspent dining dollars, request financial documents showing where that money ends up and how the school is using it.

surer’s unclaimed money, such as cash left in a safe-deposit box in a bank or stocks left in an account with a stockbroker (for example, if the owner moves away and leaves no contact information, or dies). If a rightful owner cannot be found, then the money must be turned over to the state to be held in an “unclaimed property fund” in case the owner turns up. (The legal term for this process is “escheat.”)

The money that a customer prepays for a product or a service can also (depending on state law) be treated as unclaimed property. So, under some state laws, the money left over on a stored-value card such as a meal-plan card may have to be escheated to the state.

For example, New Jersey in 2010 passed a very broad unclaimed property law that applies to all types of stored-value cards. The law says that, after a card has had no activity for two years, it is assumed to be abandoned and -- along with the last known address of the buyer -- the remaining cash value must be transferred to the state Department of the Treasury.

There are no known court cases testing whether a college is violating state unclaimed-property laws by keeping the money left on student meal cards instead of turning it over to the state.

The SPLC and its partner student journalists sent requests to 13 schools in mid-February. Twelve ultimately produced records.

The requests sought contracts and financial records associated with “stored value cards” issued to students, including the amount of unspent money for the past two fiscal years.

Of the 11 requests sent by SPLC staff, two were denied outright, with the universities claiming no such records existed. In both cases, a follow-up request was sent clarifying that “stored value cards” includes any prepaid card issued by the university. Both schools responded that they had the records.

Washington State, for example, first responded that “WSU does not issue any type of card on which value is stored. We offer stored value plans. The distinction is subtle but clear.”

Obtaining records from Texas A&M proved particularly challenging. The school initially responded Feb. 23 that, “TAMU does not provide or contract with anyone to provide a stored value system to Texas A&M University students.” When an SPLC reporter sent a clarified request, the university responded by saying it was seeking an opinion from the state attorney general’s office. It’s a

process under Texas public records law which allows a government agency to get the AG’s opinion on whether certain records can be withheld. The process also puts the agency’s obligation to fill a request on hold while the attorney general drafts an opinion.

Five days later, TAMU announced it was withdrawing its request for an opinion and providing the records. The response consisted of PDFs of a campus dining brochure, pages from the university catalog and two spreadsheets of data. The spreadsheets listed dollars amounts by account code and were largely indecipherable.

Three of the universities asked for clarification about the records requests, then promptly provided the records. Most schools responded to the mid-February requests by the end of that month or early March. The University of Rhode Island took the longest time, requesting an additional 30 days provided by the state public records law, and providing the records on April 3. The University of Nevada–Las Vegas responded April 2.

Only three of the universities charged fees for the records. Mississippi State charged $48.30 for labor and copying, Georgia Tech University charged $105.06 to produce a three-page document with the total amounts of unused dining dollars.

The University of Massachusetts at Amherst charged by far the highest fee. It provided general policy information and the terms and conditions for its campus UCard at no cost, but estimated it would cost $327.56 to provide the records containing the unused card balances. Alternatively, UMass offered to provide “general ledger” documentation for $141.05. The SPLC opted not to pay for the documents, given that the university automatically provides refunds for unused card dollars over $10.

The schools that were part of this project included: the Georgia Institute of Technology, Georgia Southern University, Mississippi State University, Rutgers University, Texas A&M University, University of Massachusetts–Amherst, University of Missouri, University of Nevada–Las Vegas, University of Nevada–Reno, University of Rhode Island, University of Washington, University of Wisconsin–Madison, and Washington State University.

Contributors to this report include Brian Schraum, Nick Glunt, Emily Summars and Frank LoMonte of the SPLC staff, and student journalists Samantha Sunne (Missouri), Pam Selman (Wisconsin) and Andrew Averill (Wisconsin).
Using corporate records

Colleges spend billions annually contracting with private vendors to supply everything from staplers to stadiums. At times, colleges have been caught steering their purchases to politically connected vendors, or those with ties to campus insiders, instead of going after the best quality and price. And at times, colleges have failed to do their homework on vendors that turned out to be unsavory. That’s where you — and public records — come in.

what’s out there...

In almost every state, the Secretary of State maintains a registry of corporations, and many of them now are searchable online, both by the corporation name and by the key corporate officers. It can be revealing to get the names of top college officials — especially members of the board of trustees or comparable governing body, as well as top university donors — and run them through a corporate records search to see what companies they run. (Of course, always double-check identities, particularly with common names.)

The U.S. Securities and Exchange Commission’s online EDGAR system is one of the most exhaustive and easy-to-browse collections of government records anywhere. If a company is big enough to be traded on a stock exchange, then every major event in its history is recorded somewhere in an SEC filing. The past four years’ worth are full-text-searchable through EDGAR, and copies of older ones can be ordered easily. SEC filings will reveal, for example, whether a company is facing investigations or lawsuits that threaten its stock price.

A multitude of agencies scrutinize and regulate businesses, and their records — unlike the businesses’ themselves — normally are open to the public. Some of the most helpful places to start in backgrounding a suspicious business are the websites of the U.S. Justice Department (which investigates and prosecutes fraud), the Financial Industry Regulatory Authority (a nonprofit entity that oversees financial-services companies and brokers), and of course, the SEC.

...and how you can use it

If a company is doing a lot of business on campus — staffing the college’s cafeterias, paving its roads, managing its investments — it’s worth finding out how they got the business and whether they deserve it, especially if the company provides something like food service that directly impacts a lot of student customers. A good place to start sometimes is simply asking who are the largest-dollar contractors doing business with the college. If the college won’t readily give up that information when asked, an agency like the State Auditor’s Office sometimes will.

Using SEC and FINRA records, a student reporter at Kent State nailed the story that a $1 million university donor — whose name came within days of being placed on the college’s basketball court, until the story broke — had been successfully sued by regulators for involvement in a securities fraud scheme. The SEC keeps a glossary of its forms at http://www.sec.gov/about/forms/secforms.htm. It’s sometimes hard to understand all the legalese, but a local expert (such as a business professor or CPA) can help walk you through it.

Recently, questions were raised about whether it’s proper for the president of the University of Miami to serve on two corporate boards where university trustees are the CEOs. The president, Donna Shalala, makes $360,000 a year from corporate board service — which can entail just attending two or three meetings a year — and that’s on top of her university compensation of some $1.2 million. SEC filings will show who sits on the company’s board and how they are compensated (which often includes stock options — the right to purchase shares in the company at a below-market price — as well as cash).

A study by The Chronicle of Higher Education in 2010 found that at least one-fourth of the foundations at private universities report doing business with companies that are connected with the foundations’ board members. For example, six universities in Pennsylvania do business with PNC Financial Services — while PNC executives sit on the foundations’ boards. Insider deals of this kind aren’t necessarily wrongful, but it’s at least worth asking whether the university shopped around, and whether the foundation has a conflicts policy that prevents directors from influencing decisions where their own companies stand to gain.

As an additional records source, many states also regulate corporate misconduct through agencies such as a division of consumer affairs or a state securities division — and many secretary of states’ offices have the power to investigate and punish unscrupulous nonprofit charities.
For someone who should never have become a lawyer, Mike Hiestand has a lot of reasons to be glad he did.

More than 15,000 of them.

Hiestand is leaving the Student Press Law Center this summer after more than 20 years answering calls for help from student journalists and advisers. He’ll still be helping people tell stories, but he’ll have the chance to take off his attorney hat for a while. By his own admission, the law was a peculiar career choice from the beginning.

“I hate reading the fine print, I hate arguing – it ruins my day when I get in an argument,” he said.

Nevertheless, Hiestand has been among the nation’s fiercest student press advocates for more than two decades. Working at the SPLC has been Hiestand’s only job since graduating from law school, putting him at the center of some of the organization’s most important cases.

“I can tell you any success I had at the SPLC and the work that we were able to do, the achievements we were able to make during my time there… were just as attributable to Mike as they were to me,” said Mark Goodman, SPLC executive director from 1985 to 2007. “He really made the SPLC work.”

The son of a career Air Force pilot, Hiestand moved around the country before finally stopping in Alaska long enough for four years of high school. He wasn’t involved with the “newspaper” there, such as it was, and remembers it only for reprinting his girlfriend’s calligraphy and some of her photographs.

It wasn’t until college at Marquette University that Hiestand had a chance to experience journalism. A broadcast major, he got his hands – and mouth – dirty on the campus radio station, spinning up everything from Peter Frampton to Donny and Marie on WMUR’s The Alaskan Pipeline.

Searching for a next step, he convinced himself to go to law school after taking a media law class in college.

“[This was] back in the day where the standard advice you got from everybody was like, ’well law school can never hurt. It helps you think,’” Hiestand said. “It was before, you know, you had to mortgage your soul to actually go to it.”

He became a legal intern with the SPLC the following summer, just months after the Supreme Court released its decision in Hazelwood School District v. Kuhlmeier. A year later he decided to try an internship at a corporate law firm – but hated it.

Meanwhile, the center’s requests for legal help began surging in the wake of Hazelwood. Goodman made the decision to create a year-long attorney fellowship in 1991, doubling what had long been a one-man legal staff.

Hiestand was at the top of the list, but Goodman wasn’t optimistic he’d even be interested in the job.

“Remember, we’re talking the early ’90s here,” Goodman said. “Lawyers made a lot of money right out of law school. It would not be at all surprising for an attorney graduating from a law school like Cornell to be offered at a big law firm in a major metropolitan area like D.C., $75-, $80-, $85,000 as a starting salary.”

Instead, Hiestand jumped at the opportunity to work for a nonprofit organization with an annual budget at the time of about $100,000.

“And that paid Mark’s salary, my salary, our interns’ salary, anything else that came up,” he said. “I mean, we were non-profit – and it was awesome.”

After extending the fellowship an additional year, it became clear the SPLC could not handle all of its legal calls without Hiestand’s help. He served as the center’s staff attorney for the next 10 years.

In that time, he worked with thousands of student journalists, operating what he calls a “legal triage” for the student media. He answered the first call for help in what would later become known as the Dean v. Utica case, in which a Michigan student reporter scored one of the most significant post-Hazelwood victories for scholastic journalism.

He also helped coordinate the center’s work on two major cases involving the First Amendment rights of college journalists – cases that continue to frustrate him.

“I can’t believe, in some ways, that we are where we are today with student press law,” Hiestand said. “I never, never would have thought we would have had to take up a case like Kincaid, where
a college official is locking up yearbooks in a closet because she doesn’t like the color of the yearbook cover – and having a judge say that’s OK.”

An appeals court later overturned that decision, but a subsequent case – Hosty v. Carter – once again opened the door to the possibility of censorship at the college level.

“I mean, if you don’t have free speech on a college campus in this country, where the hell are you going to have it? I mean, seriously. That we even think that is something that should be debated is just crazy to me.”

In 2003, Hiestand moved to the West Coast to be closer to family and escape the frenzy of Washington, D.C. He continued to work full-time, remotely from his home office near Bellingham, Wash., just south of the Canadian border. With the help of technology, the transition was seamless for most users of the SPLC’s attorney hotline – and despite Goodman’s initial apprehension, ended up expanding service.

“I missed Mike, I missed being able to walk next door and talk to him about something, but I also knew he was only a phone call away or an email away,” Goodman said. “Again, I think functionally, it not only didn’t hurt our work, but in some ways helped because we had that added benefit of somebody being in a time zone that allowed them to deal with things in those hours after the rest of us hopefully were not working.”

The move also put him in close contact with journalism educators in the Pacific Northwest. He has been a regular fixture at conferences in Washington State, frequently making the multi-hour drive to Seattle and beyond. He testified on several occasions before the state legislature during the state’s effort to pass student press freedom legislation.

“We’ve been so fortunate because other people around the country don’t have a Mike Hiestand just to the north, who they can call on any time they want to,” said Kathy Schrier, executive director of the Washington Journalism Education Association.

Hiestand contributed to and would become the primary author of the SPLC’s reference book, Law of the Student Press. He also built and coordinated the center’s Attorney Referral Network, connecting student journalists with local lawyers willing to work pro bono.

On one such referral, Hiestand assisted student editors at Miami University of Ohio who sued to get access to campus disciplinary records. The university claimed the federal Family Educational Rights and Privacy Act protected the information. The students succeeded before the Ohio Supreme Court in what became a major victory for transparency on campus, and an early interpretation of FERPA.

“When I spoke or visited with him during that time, it was clear to me that this was more than a job to him,” said Jennifer Markiewicz Wagman, editor of the Miami Student at the time. “Although my path to the law had been forged before I met Mike, his support and attention made the walk down that path easier and a lot less uncertain. He gave me the self-confidence to propel through many challenging times.”

Wagman is now a writer and a lawyer herself.

One of Hiestand’s most memorable calls involved a high school student newspaper near New York City. Editors documented what they called “filthy” conditions in the school’s restrooms, which they found lacked soap and toilet paper and were overcrowded. The newspaper reported there being one working restroom for every 2,000 students at the school.

Administrators required the story changed to have a more positive tone, and the editor said they threatened to remove him from his position and put negative letters in his permanent file. The editor ultimately agreed to some changes to the story.

“It just was so stereotypical of the sort of crap that student journalists have to put up with in simply telling the truth,” Hiestand said. “It wasn’t sex, drugs and rock and roll, it was simply showing a bad situation that needed to be fixed that school officials didn’t want exposed.”

One of his earliest calls for help had a more positive ending. A high school editor near Los Angeles was told she couldn’t walk at graduation the following day because of her underground newspaper. Hiestand and his volunteer attorneys were able to reverse the school’s decision before the ceremony. About a week later, she received a letter in the mail with the student’s graduation tassel – which continues to hang proudly near his desk.

The SPLC also named Hiestand interim executive director in 2007 after Goodman left for Kent State University and the organization searched for a new leader. While Hiestand decided to keep his family on the West Coast, his leadership during the search kept the organization steady, said Rosalind Stark, who chaired the SPLC’s board of directors at the time.

“Hiestand decided in 2011 to begin phasing out of his role with SPLC to focus on a new project. Together with his brother Dan – a former SPLC intern – he’s started his own company, Houstory Publishing. The pair created the Home History Book, an archival journal for homeowners to record information, memories and photos of their homes. The company is also preparing to launch its second initiative, an online historical registry of heirlooms.

“Where do you go when you’ve gotten your dream job right out of the gate?” he said. “I guess that’s why I had to create my own new job.”

Hiestand doesn’t like the color of the yearbook cover – and having a judge say that’s OK.”

He isn’t giving up his student press law roots entirely, however. Hiestand will continue to serve as a project attorney for the SPLC, picking up occasional assignments. He plans to use his business success to continue supporting the SPLC’s mission, and hopes student media can use Houstory products as fundraisers.

“We’re really going to miss Mike,” Schrier said. “He’s just been a gem to all of us.”

Goodman said Hiestand leaves a lasting legacy in the student media community.

“Honestly, I don’t think there is any one person I could name who’s made a bigger contribution to student press freedom than Mike,” he said.

After answering 15,000 calls for help, presenting at countless conferences and making an impact on two coasts for 21 years, Hiestand wants those who follow to remember one thing: It is worth fighting for.

“The whole idea of freedom of speech being this inalienable right – it comes from some place higher than the First Amendment. The First Amendment, to me, only exists to memorialize the fact that people ought to have the right to speak freely. But the First Amendment has failed. At least it’s failed for students and for our next generation of citizens, and I hope that students realize that. We all need to realize that and we all need to wake up to the notion that something scary is going on that needs to be fixed, something not right.”

“It’s worth fighting for,” he said. “You know, I hope we don’t lose sight of that.”

― By Brian Schraum
Nicole Youngblood wasn’t in her 2002 high school yearbook. Neither were Ceara Sturgis and Kelli Davis. Each young woman wanted to wear a tuxedo instead of a drape for her senior portrait. As a result, their photos weren’t printed.

In 2004, Blake Douglass took his senior portrait with a shotgun and navy sportsman’s vest. An avid sports shooter, Douglass’ photo wasn’t in the yearbook because student editors deemed the portrait inappropriate.

“The thing you have to ask yourself is, what’s the problem?” said Douglass’ lawyer, Penny Dean. “The problem is somebody else doesn’t like it because it’s different.”

Sydney Spies of Colorado found herself in a similar situation this year, after submitting a photo in a short yellow skirt and black shawl around her chest, exposing her midriff. Spies’ photo was removed from the book after editors decided the photo was inappropriate.

Within limits, students in public schools have a First Amendment right to wear expressive clothing, jewelry and haircuts, and some have successfully sued their schools when forced to change their appearance. But there are no published court rulings addressing whether that right extends to a student’s choice of apparel for a yearbook portrait. And the issue is complicated by the fact that other students’ First Amendment rights – the editors’ – can override the individual students’ stylistic choices.

Adam Goldstein, attorney advocate for the Student Press Law Center, said the cases involving yearbook photos all have one thing in common: misaligned expectations.

“In general, everybody in these cases wants the same thing,” Goldstein said. “Sydney Spies wants to have a photo that encapsulates who she is and the yearbook editors want to have a book that encapsulates what the school is. Douglass wanted a photo that encapsulated his love of sports shooting and the yearbook editor’s wanted a photo that captured their students the way they were.”

Goldstein said in these situations, things didn’t have to get hostile. Spies protested the yearbook, taking her story to the TODAY Show. Douglass chose to have “censored” written where his...
photograph was placed. Every case but Spies’ resulted in a lawsuit.

“It was about people having different ideas of how to accomplish the same goal and when everybody wants the same goal, you should be able to sit down and find a way to compromise and reach it,” Goldstein said.

**Portrait problems**

Douglass lost his case in 2005. Dean said as a result of Douglass’ photo, the school board implemented a policy during the case addressing the use of props. In the end, Douglass wasn’t in the yearbook, but he printed sticky-sided photos for his friends to stick in their books.

Sydney Spies became an overnight celebrity, using the momentum to place pressure on her school’s yearbook editorial board.

Spies submitted her photo Dec. 2. As editorial board member Brian Jaramillo flipped though the different portraits to decide on a layout, he said the photo immediately caught his attention.

“It kind of shocked me, which is when I told the other editors,” Jaramillo said. “We started to discuss the photo and worry about how people in the community would view the photo.”

Spies herself has been on the yearbook staff for four years and said adviser Tammy Schreiner spoke with her right before Christmas about the photo.

“I said, ‘are you sure you want to put this photo in here?’ She said she wanted to make a statement to the administration,” Schreiner said.

Spies was told her photo was inappropriate for the yearbook but Spies disagrees.

“I don’t think it’s too provocative,” Spies said. “You see more when you go to the beach and I know there’s been worse pictures in the yearbook that this one.”

Goldstein said student editors always have the last say when determining book content. As a result, editors can reject a photo because they think it’s inappropriate.

“They can reject your photo because they don’t like that there’s a grin in it,” Goldstein said. “They can reject your photo because they don’t like the photo. They can reject your photo because they think you’re too sexy.”

Regardless, Goldstein said editors should have standards and adhere to those standards. He said editors should be specific about why they reject a photograph.

“Yearbook photographs are sort of uniquely likely to become a pingpong game when you reject someone’s photograph,” Goldstein said. “They’ll come back at you with another photograph that probably also won’t meet your standards. You can shorten that game as much as possible by being as clear as possible about what it is you expect in photos up front.”

A pingpong game is exactly what developed between Spies and Durango High School’s yearbook, the *Toltec*.

**Pingpong**

“We decided the photo was inappropriate and that’s not what our yearbook (is),” Jaramillo said. “The student body, for the most part, agreed with the editorial staff on their decision. Not only did we think it was inappropriate but so did the senior class.”

Both Jaramillo and Schreiner said the administration had nothing to do with the decision concerning Spies’ photos. Schreiner said she had to tell the principal to stay away from the situation and let the students handle it.

*Toltec’s* editorial board gave Spies a “Plan B,” allowing her to run photos in the senior ad portion of the book. Spies jumped at the chance, buying a full-page ad. On the ad: her senior portrait covering the full page.

“We didn’t expect her to run the photo full-page,” Jaramillo said. “We told her she could run her ad, but she had to mix her photo with other photos or submit a different senior portrait.”

Spies submitted a second photo that was also rejected by the board. In the end,
Spies pulled her photos and ad from the book. Spies’ mugshot from her student ID is being used instead.

Goldstein said the tug-of-war could have been shortened if the board’s explanation for rejecting the photo was more detailed.

“Everybody understands the concept of a portrait shot,” Goldstein said. “Not everybody has the same concept of sexy… I want to emphasize the editors are within their right to reject those photographs without those specific explanations but you should expect if you don’t have the level of specificity, you’re going to hear about it.”

Goldstein said ultimately, student editors have the final say over content in the yearbook. To minimize miscommunication, student editors should have a policy or clear set of standards that is known to all students and his or her photographer.

**Portrait censorship**

Ceara Sturgis’s senior portrait wasn’t rejected by yearbook editors but by administrators. Wesson Attendance Center seniors traditionally wore drapes and tuxes for their portraits. Feeling “uncomfortable” in the drape, Sturgis wore the tux.

As a result, Sturgis was told her photo would not appear in the yearbook because it violated school policy. Sturgis filed a discrimination lawsuit, “on the basis of sex and on the basis of sex stereotypes,” in August 2010.

In December 2011, Sturgis’ photo was displayed alongside her classmates’ in the Wesson Attendance Center library, part of a settlement Sturgis reached with Copiah County School District.

“I am thrilled that my photo will join my classmates on the wall of our school library,” said Sturgis in an ACLU press release. “It’s important that nobody else will be forced to wear something that doesn’t reflect who they are.”

As a result of the suit, the district implemented a new portrait policy that all students will wear caps and gowns in senior portraits.

“Hopefully no other students will be excluded from this important rite of passage simply for expressing themselves,” said Bear Atwood, legal director of the ACLU of Mississippi, in the press release. “Copiah County School District has done the right thing by changing the yearbook policy so no students have to feel as if they’re out of place.”

Goldstein said an administrator who wants to censor a photo has to satisfy the applicable legal standard for the yearbook, regardless of whether the content is provided by editors or a third party.

“So, in your typical Hazelwood yearbook, you’re going to have to have some legitimate educational concern for censoring that content,” Goldstein said.

Public school administrations can’t spike a photo just for the sake of censoring or because it’s not traditional for a girl to wear a tux, Goldstein said.

McKinney High School adviser Lori Oglesbee said when deciding if a student’s photo is appropriate, the editorial staff at McKinney discusses the clothing choices as it relates to the student’s personality and coordinates with the publications policy.

McKinney High was impelled to revisit its policy for a very unexpected reason.

In 2008, students at the Texas school received their books to find that, in a few portraits, female heads had been edited onto male bodies and vice versa. The yearbook photographer, Lifetouch Inc., received instructions to ensure that the photos had a uniform appearance. Those that didn’t were “assigned” new torsos.

Oglesbee said as a result, the staff implemented a new photo policy. Oglesbee said her students have what they call the “Ron Pitt Rule,” named after a former editor.

“If it improves the life of one student or makes our school a better place, it’s worth the risk no matter what,” Oglesbee said. “You have a standard there, is it worth pushing?”

**Student decision**

Schreiner said it’s ironic her students in Durango, Colo., decided not to run Spies’ photo because they had the legal option to run the portrait. "That’s not the place to go. We have the freedom to do what we want to do," Schreiner said.

Oglesbee said she can counsel students, but ultimately it’s [the] students’ book and their decision.

“In most states, yearbook is part of the curriculum and students having editorial decision is a class expectation,” Oglesbee said. “Just because you’re a student of the school doesn’t (necessarily) mean you have the right to put whatever you want in the book.”

Goldstein said to avoid confrontations student editorial boards should have a policy relating to portrait expectations. If the district hires a photographer and has a commercial relationship, then the district should also have a policy. But in the end, the buck must stop with yearbook editors.

“The only vision that really determines the outcome of what a yearbook is, is the vision of the editors,” Goldstein said.
When an ad for Hofstra University’s communications school appeared in *The Pioneer*, the student newspaper at Long Island University’s C.W. Post campus, the school’s provost wasn’t pleased. The provost complained to the newspaper’s faculty adviser, and since then, the paper has been banned from running ads for other colleges, said Anne Winberry, co-editor of *The Pioneer*. The paper had already committed to two more ads from Hofstra, but had to refund the money. Just recently, two more ads came in that the paper couldn’t accept. “We actually have to turn away money,” Winberry said. Since C.W. Post is a private institution and is not covered by the protections of the First Amendment, there is little *The Pioneer* can do legally to combat the policy. Private universities across the country are cracking down on their student media advertising policies — a practice that would likely be considered unconstitutional at a public university. Targets are many, from alcohol to off-campus housing, but perhaps most damaging to newspaper revenues is the bar on ads for degree programs at competing schools. “Our student newspaper is a student club. It is funded through the Student Government Association using student activity fees that the university collects,” C.W. Post Provost Paul Forestell wrote in a statement. “I have the fiduciary responsibility to make sure those funds are used in ways that most benefit our students.” “Running ads from other universities would be a poor business decision on the part of the student newspaper,” Forestell continued. “This is not a free speech or student service issue. Our position is that it does not serve our students well to allow others to use the student newspaper to entice our students to go elsewhere.” Forestell declined to elaborate further. In following Forestell’s policy, Winberry said the paper had to pursue other advertising options, which placed a greater burden on the business department. Hofstra and other universities used to save them the trouble by approaching the paper for advertising space, not the other way around.
“We accepted, of course,” Winberry said, “because it’s money being generated for us.”

The student newspaper at Connecticut’s Quinnipiac University is facing a similar setback, but Chronicle Editor-in-Chief Lenny Neslin seems to have accepted the school’s policy as a fact of life.

“It’s been a pretty weak fight,” Neslin said. “We tried to (fight) it last year, but our adviser talked us out of it. We have bigger battles to push for.”

The policy at Quinnipiac reads, “Advertising (in university-funded student media) that promotes the use of alcoholic beverages, off-campus housing, non-Quinnipiac degree programs, violations of any local, state or federal laws, or University policies is prohibited.”

Neslin said the policy isn’t worth fighting because The Chronicle is making plenty of money despite the ban. Quinnipiac University continues to pay for The Chronicle’s printing — meaning the private university still has a say in newspaper policy.

The Chronicle faculty adviser Lila Carney referred interview requests to Quinnipiac spokesman John Morgan before she could comment. Morgan disregarded requests to speak with Carney, instead asking for a list of questions via email.

“The university reserves the right to refuse any advertising in university-owned publications,” wrote Lynn Bushnell, vice president for public affairs, in a statement emailed by Morgan. University officials declined to comment further.

Close calls?
Staffers at The Griffin student newspaper at Canisius College in Buffalo, N.Y., said they managed to avoid a similar proposal in February by Dean of Students Terri Mangione.

Business Manager Kim Nowicki and another staff member sat down with Mangione to discuss her financial concerns with The Griffin featuring ads promoting other universities’ degree programs and off-campus housing.

“She wanted us to agree to a ‘no-compete clause,’” Nowicki said, “saying anything that, basically, she deems to be a direct competitor of the school, that we would agree not to let them advertise. In return for the money we would be losing, she would help us find a different source to make up for that.”

“Direct competitors” included off-campus housing and non-Canisius degree programs, Nowicki explained. As far as she is aware, The Griffin has always run those types of ads.

Mangione, however, said she was only trying to inform The Griffin of the university’s budgetary concerns. She said she never even considered a “no-compete clause,” and the paper is safe to run any ads it chooses.

Though he was not present for the initial meeting, faculty adviser Rob Kaiser said Mangione did not mention a “no-compete clause” in a later meeting on the subject between him, Mangione and his supervisor, Barb Irwin.

Last year, the paper made about $15,000 in revenue. Nowicki estimated that about half of that was made off the kinds of ads she claimed Mangione wanted to ban.

A similar situation could have occurred last year at Boise State University, a public school. Administrators, however, put a stop to any attempt at discouraging the advertising.

Brad Arendt, director of student media, said he was ap-

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proached by a university employee at a freshman orientation event. She criticized the paper’s practice of running advertisements for other universities.

“Aren’t we all on the same team?” he recalled being asked.

That employee wasn’t the only person to question the practice, either. In the end, though, the criticism never escalated past lower-level administrators.

“I feel so fortunate,” Arendt said.

David Swartzlander, president of the College Media Association and Doane College student media adviser, has experience with this kind of situation. An administrator at the private school in Crete, Neb., tried to block competing ads about a decade ago.

“Well, that’s advertising,” Swartzlander told the administrator. “If you want to run an ad for Doane College, this is what it costs.”

He explained further to the administrator, “We pay some of the bills — especially our student-received paychecks — through advertising.

Once Swartzlander had explained the situation, the administrator backed off.

Swartzlander’s luck with the situation, though, appears to be uncommon among student media that face bans on advertising. He said the CMA listserv, which includes student media advisers around the country, gets inquiries on the subject every couple years.

Advice from a lawyer

Frank LoMonte, executive director of the Student Press Law Center, said even student journalists at private institutions have options when facing new advertising rules.

“So if you’re at a private institution,” LoMonte said, “obviously you can’t invoke the First Amendment, but you can always appeal to practical self-interest.”

Anything that brings in money, he explained, should be viewed positively — even if the money is coming from competition. After all, LoMonte said, more competition is a good thing in the long run.

“If the campus bookstore or the campus housing can’t stack up against the competition,” he added, “then maybe it needs to be improved.”

In past situations, advisers at both public and private institutions have been concerned about their job security. If the paper tried to fight the university’s policies, the advisers could lose their jobs — so they try to stay out of it.

LoMonte said that’s exactly what advisers should do — but the student editors shouldn’t give up.

“The adviser can coach the students and teach the students principles of press freedom,” he said, “but at the end of the day, the adviser has to sit on the sidelines. The publication belongs, at the end of the day, to the students, and its continued economic welfare is their responsibility.”

The argument, he said, should be more about “economic reality” than freedom of speech or of the press.

“One of the things that people can learn out of these situations is how to use diplomacy where the law offers no recourse,” LoMonte said. “You very often have to resort to tact and negotiation to get your way. If you succeed on this small stage, it really is great preparation for the business world.”

Arizona, Connecticut consider restrictions on ‘annoying’ speech

PHOENIX/HARTFORD -- Bills in Connecticut and Arizona to criminalize “annoying” speech online failed to pass during the 2012 session.

Both bills would have made it a misdemeanor to communicate electronically with the intent to annoy another person. The Arizona legislation would have applied to any “obscene, lewd, or profane language,” while the Connecticut bill was limited to embarrassing or humiliating information based on someone’s “actual or perceived traits or characteristics.”

Free expression groups in Connecticut managed to have the bill held in committee without a vote, though it may return next year.

In Arizona, where the legislation passed both houses and appeared almost certain to pass, an amendment stripped out the “annoying” speech provisions. The remaining portions of the law, dealing with cyberstalking, were signed into law in May.

If they had passed, both bills would likely have been challenged in court under the First Amendment.

Responding to student’s case, Colo. lawmakers repeal criminal libel law

DENVER — Libel is no longer a crime in Colorado, after lawmakers repealed it in response to a former college student’s eight-year legal battle.

Thomas Mink sued a local prosecutor after police seized his computer while investigating his satirical newsletter, The Howling Pig, in 2003. One of Mink’s professors claimed the newsletter defamed him. Mink was never charged.

A federal appeals court declined to rule on the constitutionality of the law, but a judge did find the prosecutor should not have signed the search warrant because the Howling Pig was clearly protected speech. Mink settled his lawsuit in 2011 for $425,000.

After hearing about Mink’s case, a legislator introduced a bill to repeal the criminal libel law. Colorado’s governor signed the repeal in April.

Criminal libel laws remain on the books in at least 12 states, though prosecutions are rare. Those who believe they’ve been libeled can continue to file civil lawsuits for money damages.
Like many student journalists, Jessica Pourian's time at her student newspaper has taught her the skills of the trade — from interview techniques to news sense to AP style. There's just one detail that sets her significantly apart from typical student journalists.

Pourian isn't studying journalism.

Pourian, editor-in-chief of The Tech at the Massachusetts Institute of Technology, is among many student editors who face the challenges of student media, even though the lessons they learn won't necessarily translate in their future careers.

Schools like MIT do have student newspapers, even though most students who attend those schools are hardly there to study journalism. And these “nontraditional” journalists face the same hurdles as those at major J-schools, even if they don't all dream of reporting jobs after college.

**Unique challenges**

The Oredigger student newspaper at Colorado School of Mines doesn't have a single staff member pursuing a journalism career — yet its 50-person staff manages to produce a weekly newspaper with diverse content.

Oredigger Editor-in-Chief Katie Huckfeldt said the toughest part about producing the paper is recruiting competent writers and editors.

“A lot of us enjoyed English in high school, but we didn't pursue an English major,” Huckfeldt said. “There's not many outlets for us here, so the newspaper is a nice way to express yourself with your writing and to get into a more fun atmosphere.”

There is no journalism program at CSM, and many of the paper's staffers study complex subjects. Huckfeldt is studying environmental engineering, specializing in water treatment technologies — and other staff members are pursuing similar degrees.

“It’s really hard to get someone to really pursue a story or get them to research a story thoroughly like it needs to be,” Huckfeldt said. “Beyond that, a lot of us don’t have a lot of journalistic practice. We're figuring it out as we go along, and we're all doing full courseloads on top of other things. Yeah, we don't sleep a lot.”

On the other side of the country, if one were to take a random sample of college students in Blacksburg, Va., those studying journalism would be heavily outnumbered by those studying engineering, biology or technology. The staff list at Virginia Tech's Collegiate Times student newspaper isn't so different.

Editor-in-Chief Zach Crizer said only about a quarter of
the staff is actually studying journalism, though others intend to pursue journalistic careers through other fields of study. As a result, his staff is made up primarily of students pursuing degrees in English, political science, engineering and biology.

Consequently, reporting the news at Virginia Tech can be challenging for new staff members. Non-traditional journalists, Crizer explained, are taught only the basics; problems are bound to arise.

“It’s hard to tell a reporter they screwed up really bad when they don’t have any basis or reason to know that what they did was wrong.” Crizer said. “We’re asking them to do this, and if they get into some really obscure part of media ethics or media law that no one really thought they would ever run into, it’s hard to fault them for things like that.”

It’s to combat these sorts of situations that Crizer devised a training program for new Collegiate Times staff members. Reporters learn the basics of media law and ethics, then shadow a more experienced reporter on a story. Only then are they turned loose on their own assignments.

“That (policy) was completely in response to being a non-journalism school.” Crizer explained. “Because we have a lot of people who might be interested, but if you just throw them in the water and see what happens, most of them are going to say, ‘I don’t feel comfortable doing this, I’m going to go try something else where I don’t publicly embarrass myself.’”

Despite these problems, Crizer said he rarely faces problems that a staff at a more prominent journalism school wouldn’t face too. At its core, the Collegiate Times is just like any other student newspaper.

The same can’t be said for student journalists at MIT. Their main challenge lies in recruitment.

“We will just essentially take what we can get,” Editor-in-Chief Pourian said. “We just have to convince people that writing for the newspaper is fun, that writing is a good thing and that they should write for us, as opposed to having too many people that we need to narrow it down.”

She contrasted the process to The Harvard Crimson, whose editors must choose staff members very carefully since they get so many applicants. The Tech struggles to recruit a staff of 100, though nearly 11,000 students attend MIT.

As MIT does not have a journalism program, few students plan to pursue the career after graduation. As a result, potential writers and editors may not be as committed as those at a newspaper made up primarily of journalism students. Even Pourian does not intend to work in the media after college; in fact, she’s double-majoring in neuroscience and music.

“Sometimes you end up with editors who probably would not be editors at other papers,” she said. “But since there’s a lack of people, they’re editors instead.”

Once The Tech finds reliable writers and editors, though, Pourian said the paper functions much like a journalism class.

“We joke that we are MIT’s school of journalism,” she said. From news sense, design and the inverted pyramid to AP style, ethics and editing, MIT’s student journalists “start from a blank slate” and must learn everything they know from one another.

Last year, the rate of student suicide on MIT’s campus was growing, but The Tech had trouble deciding how to present the issue. The editors didn’t want the story to appear callous, so they ran a letter next to the story from MIT’s chancellor, who encouraged students to seek help if thinking of suicide.

Maybe we would have been able to come to that conclusion a little faster or done something a little different,” Pourian said, “had (the editors) been more experienced with how people receive media, because none of us really know about that kind of thing.”

**Unexpected benefits**

The University of Denver, unlike Virginia Tech and MIT, has a relatively prominent journalism program on campus — but its newsroom is not made up primarily of journalists anymore.

Cory Lamz, editor in chief of DU’s The Clarion, said the staff was largely journalism majors when he joined the paper in 2009. Now, however, it’s shifted so non-journalism students outnumber those looking to enter the field.

“Having them come in without that news sense so finely honed, there’s a lot of learning going on back and forth,” Lamz said. “While the journalism majors tend to be set in their viewpoint of what’s news, there’s a lot of collaboration as to, This might be interesting to this set of people,’ or, ‘This might be interesting from an international perspective,’ or, ‘Let’s think of some new or different angles.’”

This has proved to be highly beneficial to the stories that inevitably get recycled every year. Instead of handling it just as they did the previous year, a story can take on a whole new face with a diverse staff taking a fresh look.

The Virginia Tech student newspaper has its own advantage: a staff fluent in the latest technologies. Crizer confirmed this by praising the paper’s website. He joked the paper has “IT guys bursting out the ears.”

The Collegiate Times website, Crizer explained, works side-by-side with the print production staff, meaning the website isn’t just a place to display finished products.

The photography staff is also booming, he said, adding, “Engineers like cameras, I think.”

But Crizer said one of the biggest benefits is the diversity of knowledge. If a reporter is having trouble with a story on robotics, for instance, someone in the newsroom is likely to be knowledgeable in the subject — meaning a better quality story.

Finally, Crizer said with fewer journalism majors, the newsroom at Virginia Tech becomes less intimidating for new staff members.

“It’s probably a lot greater than the ones at schools with J-schools because the J-school kids probably dominate newsrooms,” he said. “It might be a little more uncomfortable for outside majors or outside interests to step in. That is maybe a problem that no one intends to create, but j-schools probably do foster that a little bit. We don’t have that issue.”

Pourian agreed, explaining that The Tech at MIT is just as much a student group as it is a newspaper. Instead of career prep, staff members join the staff to have fun.

“We really get to get our hands dirty teaching people how to
Like any newsroom, The Tech staff members spend a lot of time with one another; but unlike other newsrooms, there’s more basic journalistic learning going on.

“Maybe this doesn’t make us a better newspaper,” Pourian explained, “but certainly as a student group, I think it brings us closer together that we get to build people from the ground up and watch them grow. And I think that’s a really rewarding experience for everybody on staff.”

And maybe that’s what keeps papers like The Tech and similar papers reporting the news. Even though most of them aren’t planning to score that great newspaper job, the staff camaraderie may be worth the newspaper stress.

**Facing the challenges**

Students don’t have to go it alone, however. A range of resources are available to help both traditional and non-traditional student journalists thrive.

Frank LoMonte, executive director of the Student Press Law Center, said utilizing a paper’s faculty adviser can be the most immediate reference in times of uncertainty — but not every news organization has one.

“It’s certainly possible to have an excellent newspaper without an adviser,” LoMonte said.

Among the schools mentioned earlier, only the University of Denver’s newspaper has a faculty adviser that the editor said is directly involved with the paper. Some faculty members serve as “advisers” in name only, because student organizations are required to have a faculty sponsor. Virginia Tech doesn’t have an adviser at all.

“The adviser’s most important role seems to be helping to keep journalistic work on track,” LoMonte said, “by reminding people what’s been done and tried in the past.”

Because of the high turnover rate in student newsrooms, the adviser is often the one who has been there longest, and knows better than anyone what works and what doesn’t.

As helpful as an adviser can be, LoMonte said having an adviser without a journalism background — often the case at schools without journalism programs — could be detrimental to the paper. An untrained adviser could “do more harm than good,” because they may know as little about journalism as starting staffers at those schools, he said.

Aside from relying on an adviser, LoMonte suggested reaching out to other professional journalists. Forming a campus chapter of the Society of Professional Journalists, he explained, opens up a “direct line” to the national organizations, and building relationships with local journalists at nearby papers could flatter them into acting in an “informal advisory role.”

He also suggested keeping a contact list of the paper’s alumni to contact for advice, as well as attending journalism conferences and conventions to network with other journalists in similar situations.

Finally, LoMonte said there are a variety of free or low-cost resources online for student journalists. The Poynter Institute and iTunes University each offer online courses and lectures, and websites for the Journalism Education Association, SPJ and SPLC also offer a range of free information.

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**Appeals court extends Hazeldwood to college students in counseling case**

**MICHIGAN** -- A federal appeals court extended the high school Hazeldwood censorship standard to college students in January.

The 6th U.S. Circuit Court of Appeals applied the standard in deciding the case of Julea Ward, an Eastern Michigan University graduate student expelled after saying she wouldn’t support homosexuality when counseling patients as part of her studies.

Ward sued on First Amendment grounds, and won her appeal despite the court’s application of Hazeldwood. The case now returns to a lower court, which will decide whether EMU had a legitimate educational reason for expelling Ward.

The ruling applies only to Ohio, Michigan, Kentucky and Tennessee. A prior ruling by the same court suggests Hazeldwood does not apply to student media.

**Judge: Chicago State violated fired adviser’s First Amendment rights**

**ILLINOIS** -- Chicago State University was ordered to reinstate a former student media adviser, fired after controversy in the student newspaper there.

A U.S. district court judge found the university unlawfully retaliated against Gerian Steven Moore after editors of The Tempo printed stories critical of CSU.

Although the university will rehire Moore, he will not be advising the newspaper as it no longer exists.

In the same ruling, the judge denied any relief for former Tempo editor George Providence II. She found the newspaper folded because of a lack of interest after Providence voluntarily resigned. The only thing keeping Providence from re-enrolling at CSU is outstanding tuition debt, the judge ruled.

Providence hopes to eventually restart The Tempo.
**Courts continue to struggle with students’ online speech rights**

**MISSOURI/MISSISSIPPI/MINNESOTA/INDIANA** — Although the U.S. Supreme Court in January decided not to weigh in on the First Amendment rights of students off-campus, a range of cases are working their way through the lower courts.

A judge reinstated two Missouri students, expelled for six months over blog posts. A different judge, however, threw out a lawsuit by a Mississippi student punished over rap lyrics he posted online.

Meanwhile, a Minnesota student is suing after she received detention for “rude” Facebook posts. She claims school officials demanded her password.

Three middle school students are also suing their Indiana school for punishment over Facebook comments.

The Missouri and Mississippi cases are up on appeal.

**Students fight back against bans on ‘I (Heart) Boobies’ cancer bracelets**

**WISCONSIN/INDIANA/ PennsYLVANIA** — Judges across the country are trying to sort out whether breast cancer awareness bracelets can be banned at school.

The 3rd U.S. Circuit Court of Appeals heard oral arguments on the issue and could rule at any time. A lower court judge in Pennsylvania found the bracelets, which contain the slogan “I (Heart) Boobies,” are protected speech.

On the other hand, a Wisconsin judge sided with school officials who banned the bracelets there, finding them lewd and vulgar. The student decided not to appeal, and her attorney hopes a similar case in nearby Indiana will turn out differently.

The Indiana case, filed on behalf of an eighth-grade boy, is in the early stages. At press time, it appeared the case would be settled out of court.

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**TRAINING RESOURCES**

**The Poynter Institute**
The institute offers free resources for improving reporting and writing skills. Training series and webinars are also available.

**News University**
Provided by Poynter, NewsU offers dozens of online courses on topics from feature writing to interviewing to using desktop publishing programs. Some are free, others are available for a fee.

**Society of Professional Journalists**
A membership organization open to students, SPJ offers both virtual and on-site training and a magazine for journalists.

**Student Press Law Center**
The SPLC website is full of story ideas, tip sheets and other tools for college journalists. It includes weekly ideas for using public records and a monthly podcast.

**Investigative Reporters and Editors**
IRE offers hundreds of documents to its members, including tipsheets from investigative reporters and guides to covering various news beats.

**National College Media Conventions**
Typically held each spring and fall, conventions provide journalism training sessions specifically for students and advisers.

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An update on the latest legal developments of importance to student journalists.
Tweeting your favorite things
What your editorial staff must know about federal rules governing endorsements in print and online

BY ADAM GOLDSTEIN

In every student newsroom, a certain amount of free stuff will show up.

It just does. Sometimes it’s review copies of CDs. Sometimes it’s a T-shirt advertising a new flavor of a soft drink. Sometimes it’s a free ticket to a play with an invitation to write a review.

Marketers want to get their products and services in front of a student audience, and for some of these topics, there’s no review quite as valuable as the review from a fellow student. (If someone on your campus paper wrote that the new flavor of Mountain Dew was able to wash away the taste of the cold cafeteria pizza, who else would be able to tell you that?)

But according to the Federal Trade Commission, if you received anything of value in exchange for writing a review, you have to tell your readers about it. And while lots of journalists may understand that, they may not understand that the FTC thinks your personal tweets, Facebook status updates, and blog posts are “testimonials.”

That’s right: if you tweet that you like something, you’re reviewing it, as far as the FTC is concerned. And if you like it because you got a free sample, you’re supposed to disclose that.

Let’s take a look at the FTC’s rules, what they mean, and how to follow them.

Who is this FTC, anyway?
The FTC is a federal agency designed to protect consumers. Generally speaking, the FTC’s mission is to prevent deceptive and unfair trade practices. It defines a practice as deceptive if it is likely to (1) mislead consumers and (2) affect consumers’ behavior. For a practice to be unfair, it has to be likely to cause (or actually cause) an injury that is (1) substantial, (2) not outweighed by other benefits, and (3) not reasonably avoidable.

Periodically, the FTC publishes guides that explain how the agency believes advertisers and publishers should interpret its rules. While not technically binding law themselves, the guides serve as practical advice on how not to get in trouble.

In 2000, the FTC published “Advertising and Marketing on the Internet: Rules of the Road,” a guide that applied the FTC’s existing restrictions on marketing and endorsement to the Internet as it then existed. Among its clarifications, the FTC declared that “advertising agencies or web designers are responsible for reviewing the information used to substantiate ad claims. They may not simply rely on an advertiser’s assurances the claims are substantiated.”

Also in 2000, the FTC published a guide called “Dot Com Disclosures: Information About Online Advertising.” In this guide, the FTC directed that, when disclosures are necessary to prevent an advertisement from being misleading, those disclosures must be “clear and conspicuous,” placed near the text to which they relate, and be prominent enough to be noticeable to consumers, among other things.

After the publication of these guides, the rules were clear: advertisements and endorsements had to be honest and include disclaimers about any information that might confuse or mislead consumers. But as the socially generated “Web 2.0” came into existence, what became less clear was what, exactly, was an “endorsement.”

FTC rules vs. “commercial speech” cases
As a threshold matter, it’s worth mentioning three things about the FTC’s rules: one, they use a definition of commercial speech broader than the one used by courts; two, that means some potential applications of the FTC’s rule might violate the First Amendment; and three, the FTC has not, as of yet, attempted to enforce the rules in any of those “close call” situations.

The FTC’s definition of commercial speech is anything you write when “acting on behalf of an advertiser.” But the Supreme Court’s definition of commercial speech is much narrower. Indeed, in Bolger v. Youngs Drug Products Corp., the Court considered advertising pamphlets discussing contraception and wrote, “[t]he mere fact that these pamphlets are conceded to be advertisements clearly does not compel the conclusion that they are commercial speech.” Courts have defined commercial speech as speech that is driven by an economic motive that is part of a proposed commercial transaction.

A reviewer typically has no expectation of gain after the review is written—he or she already has the product and has no further incentive to be nice about it, except the aspirational hope to receive more products in the future. Furthermore, the review proposes absolutely no commercial transaction, and the reviewer is in no position to complete such a transaction. Accordingly, under the definition used by the Supreme Court, reviews aren’t commercial speech and probably wouldn’t be subject to the FTC’s regulation.

The FTC’s enforcement actions thus far have not gone after speech promulgated by genuine reviewers. For example, Legacy Learning Systems paid $250,000 and entered into a consent order with the FTC after paying online “affiliate marketers” posing as neutral reviewers for sales made through the affiliates’ sites. Reverb Communications entered into a consent order after paid employees posed as consumers and entered positive reviews of games on iTunes. These are not neutral reviewers who happen to get free review products; they’re reviews by people incentivized to make sales happen.

Most student publications, however, don’t want to become the “test case” if the FTC decides to flex its muscle—even if ultimately the publication wins, years down the road. And from an ethical standpoint, disclosing that a reviewer received a product or service for the review is journalistically the right thing to do. Just be aware that, should the FTC actually come knocking, there is some question as to whether it has the authority to police as
broadly as it purports to.

**FTC rules vs. ethical guidelines**

Let’s put aside our legal discussion for a moment and consider journalism ethics. While the FTC rules appear to restrict some First Amendment speech, they don’t quite hew to the contours of existing ethical guidelines, either.

For example, the Society of Professional Journalists’ Code of Ethics says that journalists should “refuse gifts, favors, fees, travel and special treatment… if they compromise journalistic integrity.” It also says to resist pressure from advertisers trying to influence news coverage, which sounds like the entire purpose of free review products. Finally, it advises to “disclose unavoidable conflicts.”

Taken together, this sounds as if the SPJ ethics code operates on the assumption that nominal gifts—ones of such low value that they wouldn’t really impact news coverage—may not constitute a conflict. For example, if Mountain Dew sends you a coupon for a free bottle of the drink, you’re unlikely to tell people you enjoyed the drink based on the hope that you might get another coupon in the future. The FTC rules, on the other hand, say that anything free, no matter how small, must be disclosed, if it is only given to potential reviewers (e.g., no disclosure is required if bottles of soda are being handed out on street corners to anyone passing by).

The National Scholastic Press Association’s Model Code of Ethics also has a rule that appears more restrictive than the FTC’s guidelines: it states that a student journalist should “[a]ccept no gifts, favors or things of value that could compromise journalistic independence, journalistic ethics or objectivity in the reporting task at hand.” It uses an example of a reporter covering a buffet event, explaining that the reporter should not stop reporting to eat. It also advises disclosing any real or perceived conflicts and not giving special treatment to advertisers.

All of the ethical principles above are good advice, and worth following. But the FTC rules are the ones that purport to be interpreting federal law with federal penalties. To the extent there is ever a conflict between an ethical guideline and the FTC rules, the safest thing is to follow whichever is more restrictive.

**What endorsements need to be disclosed?**

Much of the confusion about the FTC rules is about deciding when a disclosure needs to be made.

Historically, identifying an endorsement was simple. When Wilford Brimley came on television during a commercial break on the History Channel to tell you how happy he was with his diabetes testing supplies, it was clear to everyone involved, without any special disclosure, that Brimley gets a check to promote the product. While FTC rules require that Brimley must be sharing his honest opinions of the product, no special disclosure is required, because consumers understand that celebrities are paid to endorse products during television advertisements.

But let’s say Wilford has a Twitter account, and he logs in and tweets: “Checking my blood sugar with my Acme Medical testing supplies. So easy! #checkitoften.” While celebrities may be paid to endorse products on television, it’s trickier to tell whether this is...
a paid endorsement or just Wilford’s enthusiasm for the product.

This becomes even trickier when the endorser isn’t a celebrity. Take, for example, a person on the campus paper who typically reviews video games. Assume he tweets: “Star Wars: Knights of the Republic is awesome. These ARE the droids I’m looking for.” Your readers might well assume this is a neutral review, just as the one in the campus paper are. But now assume that the game’s publisher sent the reviewer a free copy of the Collector’s Edition of the game, which retails for $150. Under the FTC’s rules, this would be considered an endorsement and would need to be disclosed.

This type of regulation punches through the wall newsrooms attempt to put between advertising and editorial, because it regulates based not on an economic incentive to publish the speech, but whether readers of the content would view it differently if they knew the reviewer had received something of value for providing the opinion. In other words, it doesn’t matter that your reviewer makes no money from sales of the video game, because the FTC thinks consumers would care if they knew he was playing it for free.

Nor is there a bright line that says gifts of nominal value don’t have to be disclosed—in fact, one FTC guide suggests disclosing a $1-off coupon, if the coupon is given only to people reviewing the product. If your movie reviewer writes a positive review of The Avengers, and it turns out the movie producers sent your staff four tickets to a preview screening, that would need to be disclosed.

Social media coverage: Paid or free?

Some advertisers may actually want to negotiate positive social media coverage into their advertising contracts. While the FTC rules do not prohibit such arrangements, they do create certain obstacles—though, largely, this depends on whether what your advertiser is seeking is an “endorsement” in the first place.

Under FTC rules, an “endorsement” is an advertising message that “consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser,” even when the sincere belief of the endorser is identical to the advertiser’s. Technically, organizations can be parties that make endorsements, but only to the extent consumers believe the organization has opinions, findings or experiences.

In other words, social media accounts that are not typically “personalized” by staff members are less likely to create any endorsement problems because readers are less likely to view what a faceless organization says as an endorsement. If the Washington Post’s official Twitter account tweeted, “We just had a six-piece McNuggets and they were delicious,” query whether a reasonable reader would understand this to reflect the beliefs, findings, or experiences of a corporate entity. Nevertheless, the FTC rules do require that this opinion “fairly reflects the collective judgment of the organization[,]” so you’ll want to cut those McNuggets into pretty small pieces for the taste-test.

Most advertisers are probably going to prefer the personal touch, particularly if you have popular columnists. A local pizza place would probably love to negotiate into the advertising contract that your popular sports columnist tweet, “Join me at Joe’s Pizza after the big game!” before a school championship. That is precisely the kind of arrangement that the FTC wants you to disclose—and that tweet would have to carry, at a minimum, a hashtag that would tip off readers to the relationship. The FTC suggests #paid, or even #ad, would work.

What if it isn’t an ad, though? Let’s say Joe’s Pizza advertises in your newspaper. And let’s also say that, as it happens, Joe’s Pizza is fantastic. Your sports columnist raves about it all day in the newsroom to the point where you’re sick of hearing about how good the pizza is. The columnist goes on his personal Twitter account and tweets: “Join me at Joe’s Pizza after the big game!”

From the FTC’s perspective, the important question is whether your columnist received anything of value for his tweet. But this area gets even more gray when the twitter account is the “official” newspaper account for this columnist’s communications, or if he uses the account for both newspaper and non-newspaper tweets. While the FTC has shown no inclination to reach into these close calls, one way to avoid problems is to disclose the ad in the tweet itself. “Join me at Joe’s Pizza after the big game! See their ad on page 4!”

Form of disclosure

The FTC’s most recent guidance on the form of disclosures was in June 2010. It encapsulates the most useful advice about the form of a disclosure in a single phrase: “What matters is effective communication, not legalese.” In the example of the video game tweet, it would be enough to say, “Got a free copy of Star Wars: The Old Republic and these ARE the droids I’m looking for!”

The disclosures do have to appear either in the content itself or in close proximity. The guide specifically says that buttons linking to disclosures are not going to meet the FTC’s standards, because, as the guide points out, “[h]ow often do you click on those buttons when you visit someone else’s site?”

There are two basic ways you can comply with the rule: either identify the content as a paid advertising message, or disclose in the body of the content the nature of the relationship between the author and the product/service being discussed. For legitimate editorial uses, it will almost always be preferable to disclose the nature of the relationship, because presumably most editorial content of this nature is not going to be produced specifically with the intent of creating a paid advertisement on behalf of the company.

What is equally interesting about the disclosure rule is that it does not require disclosing the origin of the product. The 2010 guide discusses disclosure of products from an advertiser “or someone working for an advertiser,” but only requires disclosure that the product was free, not where it came from. But if a retail store sends you a product, is the retailer “working for the advertiser?”
For example, if the local 7-11 sends you a free package of Double Stuf Oreo Cakesters to try, the local 7-11 presumably works for the national 7-11, who has a contract with a distributor, who has a contract with Nabisco. It’s hard to look at that chain of events and say that your reviewer’s opinion of the new Oreo is due to any relationship with Nabisco.

**What editorial staff members need to know**

While not every question is answered by the FTC’s current guides, there is enough information in the guides—when coupled with ethical guidelines—to create a few points of guidance that might help inform the editorial side of a publication in determining when and how to make disclosures under FTC rules:

1. Anytime a manufacturer or service provider offers you anything of value that you accept, you must disclose what was provided whenever you discuss the merits of the product or service in question, in any media.

2. Disclosures must appear on the page where the discussion occurs (or in the body of the text itself) and be prominent enough and clear enough for an average reader to understand them.

3. Disclosures must appear any time the qualities of the product or service are discussed, even if the disclosure was made in earlier media when the product was originally discussed.

4. The publication may want to adopt a standard hashtag for paid advertisements or for tweets that mention advertisers. For example, advertisers could be identified with “#SeeTheAd.”

At the end of the day, the best advice for student journalists is one rooted in ethical guidelines: if it makes you uncomfortable to disclose that you got something of value before you wrote about it, online or offline, then you shouldn’t be taking this thing in the first place. If you think it would compromise your opinion in the eyes of your readers if they knew the relationship, it’s probably not ethical to write about it, even if the likelihood of FTC penalties is remote.

*Adam Goldstein is the SPLC’s Attorney Advocate.*

**Endnotes**


2) *Id.*

3) *Id.*

4) *Id.* under “General Offers and Claims: Products and Services.”


6) *Id.* at pp. 1-2.


8) 463 U.S. 60, 66 (1983) (note, however, the court ultimately did find that the pamphlets were commercial speech—but not merely because they were sponsored).


13) *Id.*

14) FTC’s Revised Endorsement Guides, *supra* n. 7.


16) *Id.* One wonders whether this is because the guide does not envision the concept of a nominal gift (in which case, there would be no need to qualify that only gifts that could compromise independence or objectivity should be refused) or if, for a student journalist, a free lunch isn’t “nominal.”

17) *Id.* at 5.6.

18) *Id.* at 5.10.

19) See 16 C.F.R. Sec. 255, example 6.

20) See 16 C.F.R. Sec. 255.5, example 2.

21) See *id.* at example 7.

22) See FTC’s Revised Endorsement Guides. See also Shanno, *supra* note 9, at 475.

23) FTC’s Revised Endorsement Guides, *supra* n. 7.

24) What this means for review CDs is unclear. Typically these are identified as remaining property of the record label; nevertheless, the regular practice is to permit the publications to retain these discs and dispose of them however the publication sees fit. A CD reviewer who takes the copy home, presumably, is as obligated as the movie reviewer who takes a free ticket.

25) 16 C.F.R. Sec. 255.0(b).

26) 16 C.F.R. Sec. 255.4.

27) See FTC’s Revised Endorsement Guides, *supra* n. 7, at “What about a platform like Twitter?”

28) See FTC’s Revised Endorsement Guides, *supra* n. 7.

29) *Id.* under “How should I make the disclosure?”

30) *Id.*

31) *Id.* under “When do the Guides apply to endorsements?”

32) An even more bizarre series of events would be the speculation surrounding Snooki’s handbag change between seasons of MTV’s *Jersey Shore*. One commenter noted that Snooki’s change from a Coach bag to a Gucci bag led to widespread Internet speculation that Coach had sent Snooki their competitor’s bag to rid Coach’s brand of any association with her. See Leah W. Feinman, *Celebrity Endorsements in Non-Traditional Advertising: How the FTC Regulations Fail to Keep up with the Kardashians*, 22 Fordham Intell. Prop., Media & Ent. L.J. 97, 116-17 (2011). In that case, disclosing the origin of the bag without disclosing where it came from could actually mislead consumers.
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fourth edition

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