Courts struggle to define students’ First Amendment rights off campus

INSIDE: Students launch Iraq’s first sustainable, independent campus paper

PLUS: Exposing colleges’ secret VIP admissions
A senior at St. Augustine College in North Carolina was not allowed to participate in May’s graduation ceremony because of a comment he posted on the school’s Facebook page. In a free speech lawsuit, he seeks more than $10,000 and a full-scale graduation ceremony.

Nashville Public Radio announced in June that it agreed to a $3.35 million purchase of WRVU, the FM student radio station at Vanderbilt University. Student radio at Vanderbilt will continue online and in over-the-air HD broadcasts, but the deal was met with outrage from students and alumni who decried losing the frequency.

Student journalists at St. Charles East High School in Illinois were blocked from publishing a story about the removal of the school’s popular basketball coach. The principal reviewed the story prior to publication, calling it “inappropriate.”

The student publication for incoming freshmen was pulled from orientation bags at N.C. State after a photo containing the N-word appeared in its pages. Distribution resumed with a sticker covering the racial epithet. The publication’s adviser was later fired under unexplained circumstances.

Michigan student journalists printed a black box with the words “This article has been censored by Lake Shore administration” after they did not receive approval to print a story on a substitute teacher in the district facing child porn charges.

Advocates say the 7-2 Supreme Court decision allowing minors to rent or purchase violent video games was a major victory for students’ free speech rights. The case showed the high court was reluctant to expand the definition of unprotected speech, even where minors are concerned.

For updates from the SPLC, email: www.splc.org/joinemail

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SPLC online resources now available in Spanish

At the SPLC, nos encanta los estudiantes de periodismo, en cualquier idioma. That’s why the start of the 2011-12 school year will bring an exciting new feature to the www.splc.org website – a series of Q-and-A study guides prepared for Spanish-speaking student journalists.

The 2010 Census documents a 15 percent increase in the number of Americans self-identifying as “Hispanic” since 2010, with Latinos making up 22 percent of all Americans under age 18. That tells us that a growing share of the young people publishing, broadcasting and blogging on campus will be doing so wholly or partly in Spanish.

At least a few colleges – among them, the University of North Carolina-Chapel Hill, Florida International University and California State University-Northridge – now offer courses of study in Spanish-language journalism, recognizing the need for journalists capable of serving that rapidly growing audience. (As with all other journalism education programs that are sensitive to market demand, of course, some programs are struggling to justify their existence when jobs are scarce in any language.)

As reporter Emily Gerston describes in this issue, scholastic journalism programs are more commonly encouraging Spanish speakers to create newspaper pages, or even entire editions, in their native tongue for the enjoyment of the substantial Spanish-speaking audience. This phenomenon means that Spanish speakers increasingly will be welcomed into newsrooms that once were less inviting to those who hadn’t yet attained full English fluency. As the involvement of native Spanish speakers in journalism increases, so too will their need for the reliable guidance that the SPLC provides.

Visit the “SPLC en Espanol” site at http://espanol.splc.org, and háganos saber lo que piensas.

Frank D. LoMonte
Executive Director

The Student Press Law Center gratefully acknowledges the generous support of the following institutions and individuals who have joined in our effort to defend the rights of student journalists.

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In early December 2010, Leibert Phillips suffered what appeared to be a harmless ankle sprain during a school wrestling match. Three weeks later, Phillips lay on a hospital bed, fighting for his life. He died Jan. 1.

The student newspaper at Phillips’ school — the *Overland Scout* at Overland High School in Aurora, Colo. — learned that he died after a blood clot in his right leg traveled to his lungs, causing a pulmonary embolism.

According to Phillips’ death certificate, the clot was a result of the injury sustained during the wrestling match.

The school never reported the cause of death to the public; the student journalists did — or at least they tried.

Before the staff’s piece on Phillips ever saw the light of day, Overland administrators shut down the newspaper and removed the students’ adviser.

Trouble in Colorado

Though the students at Overland were informed of the newspaper’s shutdown in mid-March, the administration’s choice to act was a long time coming.

After the staff ran two columns early in the school year — one on stereotypes of black students at school and another on coping with suicide — Principal Leon Lundie placed the newspaper under prior review.

Though the staff was cautious with its content after that, opinions editor Jaclyn Gutierrez said there was “no hesitation at all” when it came to covering Phillips’ death.

“Out of respect for him and the people who knew him, this is something that should be reported,” said Gutierrez, a rising senior. “We thought that readers needed to know not just how he died, but more importantly how he lived.”

The article, written by editor-in-chief Lori Schafer, consisted primarily of remembrances from Phillips’ mother, Linda Kore. There was only a brief mention of the cause of death.

While Schafer said the staff believed it was more important to honor Phillips’ life, she emphasized that “so many people knew that a student had passed away, but they didn’t know what had caused it. We needed to tell that.”

Gutierrez said Lundie initially informed the student journalists that the cause of death was stated incorrectly in the story could not be printed.

When the students presented Lundie with the death certificate to back up their reporting, Gutierrez said he told them “this was a district matter and was too big for a school newspaper [to cover].”

Soon after, students said the newspaper was shut down and the adviser, Laura Sudik, was told she was being removed from
her position.

Cherry Creek School District spokeswoman Tustin Amole maintains that the administration never prevented the student journalists from running the story, but merely “suggested to them that they go beyond a single source and speak with more people to balance the story. At no time did anybody tell them not to print it.”

She added that Sudik’s supposed removal was “a misunderstanding.”

“The adviser was never removed from the newspaper,” she said.

While Sudik ultimately was allowed to keep her position, she said the school made its intentions clear.

“I was told clearly that I was fired from the position for the next year initially … because [the administration] wanted the newspaper to go in a different direction,” Sudik said. “If there was a miscommunication, it came from their end.”

With statewide and national support, Gutierrez and Schafer waged a public relations campaign that succeeded in changing the administration’s mind.

“When push came to shove, he (Lundie) backed down from censoring an article that could have made the school look bad,” said Mark Silverstein, legal director of the American Civil Liberties Union of Colorado.

Silverstein, who assisted the student journalists in cooperation with the SPLC, added that the administration seemed to be “concerned primarily about their liability for the wrongful death of a student.”

On April 4, Lundie announced in a statement that the newspaper would resume regular operations – without prior review and with Sudik leading the program.

In line with the district’s goals, Sudik said the newspaper will begin publishing an online supplement to its print edition this school year.

Looking back, Gutierrez said Phillips’ injury “was clearly not the school’s fault. But their covering it up made it seem like it was.”

Carrie Faust, president of the Colorado High School Press Association and a teacher in the district, agreed.

“Sports injuries happen all the time,” she said. “For the district to react so extremely to this article makes me think they were concerned about liability and reputation. That’s no basis for censorship.”

For Amole, there was “never any negligence on the part of the school … This was just an unfortunate series of events that came together at one time.”

The students ultimately published the story — with the original mention of Phillips’ cause of death intact — in their April edition.

Though Kore, Phillips’ mother, said she was displeased with how the school handled the situation, she will not pursue any legal action against the district.

She said the student journalists’ work provided a sense of closure in what has otherwise been a trying time.

“They did a wonderful job [with the article],” she said. “I appreciated everything they did.”

**Getting the truth out**

Adam Goldstein, attorney advocate at the SPLC, said the fear of liability by school administrators — whether expressed publicly or not — is increasingly being used as a justification for censorship.

In reality, though, Goldstein explained that it is far more likely for a school to be held liable for restricting a student journalist’s First Amendment rights than for a school to be sued successfully on the basis of what a student newspaper reports.
“It’s not like parents are going to read an article in the newspaper and suddenly discover that their son or daughter was severely injured at a school event,” he said. “If the concern is that someone will sue because the newspaper accurately reported on what happened, that doesn’t make any logical sense.”

While the Overland Scout dispute centered on an article in the newspaper, liability issues can extend to other forms of content.

Chase Snider, former executive editor of Prairie News Media at Kickapoo High School in Springfield, Mo., knows that from first-hand experience.

Snider, who graduated in May, had a trying senior year with his school administration.

It began in August 2010 at “How Night” — an annual back-to-school festival that most of the student body attends.

Parts of the festival resemble a “mosh” event — students participate in a “giant food fight” and fling mud at each other in close quarters, Snider said. School administrators are on hand to supervise.

Midway through last year’s event, though, Snider began to notice some commotion.

“About 100 or 200 students had created a giant mud pit and were gathered around it,” he said. As Snider approached the scene, “I noticed there was a student stuck at the bottom of the pit … clearly in pain.”

Snider began taking photographs, trying to capture what was unfolding in front of him. He kept his photos general, he said, so as not to show the injured student’s face.

Soon after, an ambulance arrived to tend to the student — a
operate, then how can a community ever be expected to challenge
he said. “If student newspapers aren’t going to be allowed to freely
schools for student newspapers to act as public relations firms,”

The student administration showed him the importance of a free student press.

Snider continued to take photos, asking fellow student journalists in attendance to start gathering reactions for a story on the event.

Neither the article nor any of Snider’s photos, however, would ever make their way into print.

On Sept. 1, Snider said his principal instructed him to turn over all of his photos from How Night, claiming that the district needed “evidence” of what had happened at the festival.

Snider complied, but said he was later told the photos and a draft article could never be published.

The school administration cited the Family Educational Rights and Privacy Act, a piece of federal legislation designed to protect the privacy of student education records, in refusing to release Snider’s photos.

District spokeswoman Teresa Bledsoe wrote in an email that the photos have since been returned to the school’s journalism department. She declined to comment further.

To date, Snider has not received the photos.

Goldstein said images captured by a student journalist are the property of the student, regardless of who owns the equipment used.

“The claim that the district owns the photos because they own the camera is as utterly, legally baseless as Canon saying that they own the pictures because they manufactured the camera,” he said.

Though Snider chose not to pursue legal action, he still thinks the district’s decision was motivated by a desire to protect itself from potential liability for student injuries.

“The fact that they stood by and watched as the situation [at How Night] continued to build, I think there’s definitely some liability there,” he said. “If student safety was the first priority, then this should have been handled differently.”

Snider’s problems, however, didn’t end there. A few weeks later, after he tried to take photos of a car accident involving students in the school parking lot, he was told he would face suspension if he did not put his camera down.

Upon posting a write-up of the accident to the newspaper’s website, Snider was suspended from his role as executive editor for the remainder of the school’s quarter.

Patrick Doran, a Kansas City-based attorney who consulted with Snider throughout the school year, said “the school saw the photos as the output of a school-related function … and felt it was under their umbrella of rights and obligations to control.”

Though Snider said the remaining months of his senior year were tense, he made it through with no more major issues.

Looking back, he said his dealings with the school administration showed him the importance of a free student press.

“What I’ve learned most is that there’s a sense in many high schools for student newspapers to act as public relations firms,” he said. “If student newspapers aren’t going to be allowed to freely operate, then how can a community ever be expected to challenge or change something?”

A fine line

While Goldstein said Snider’s experience was a clear-cut instance of censorship in which the school district was trying to save face, other examples are a bit hazier.

In May, the principal of Libby High School in Libby, Mont., held the school’s student newspaper, the Tamarack, from newsstands until its staff changed a front-page report about an in-school accident.

The accident occurred when Caleb Lapka, a then-LHS senior, was severely injured in a car care class after a fragmented scrap of steel thrown by another student struck him in the neck.

The student journalists had initially written that the steel “resembled throwing stars” — typically considered violent weapons.

Upon learning of the students’ description, Principal Rik Rewerts instructed the staff to replace the “throwing stars” reference with “scraps of sheet metal.”

“The story was written very quickly after the accident and contained an incorrect reference that may have implicated a student … who was involved in the accident,” he said.

Rewerts added that “while I don’t think the school was at any fault for the accident … who knows what would happen with the way the court systems are today.”

No legal action has been taken against the school district, he said.

Jolee Holder, one of the co-authors of the piece, stands by the original reporting.

“Whether the administration wants to admit it or not, these were clearly throwing stars,” she said. “I felt like saying something else would be lying to readers when we should have told the news.”

Although the newspaper had already been printed at a nearby facility and was set for distribution throughout the school when Rewerts stopped it, the district paid for a reprint early the following week with the revised wording in place.

Sarah Barrick, the Tamarack adviser, said she saw some concern on the school’s part for potential liability.

“There was some worry that people might read this and think the school was allowing the students to make throwing stars in the class,” she said.

In hindsight, though, she thinks the administration handled the case well.

“There was no censorship here,” Barrick said. “The story still ran … and was sensitive to everybody involved.”

Though Goldstein said stories like the Tamarack’s may have no clear right or wrong side, he advised administrators to take a “common sense” approach when dealing with possible liability issues.

“Every time a school gets away with this type of censorship [where liability is a concern], the school is going to try it again,” he said.

LoMonte agreed.

“As a general matter, schools are getting more brazen about censoring because of the widespread belief that they can get away with it,” he said. “Experience is teaching them that very blatant acts of censorship will be left unchallenged. That mindset has to change.”
When Robert Ochshorn decided to file a lawsuit against his former school district, he never anticipated his involvement in the case lasting more than a couple of years.

But more than half a decade later, Ochshorn, the former editor in chief of the Tattler — the student newspaper at Ithaca High School in Ithaca, N.Y. — remains at the center of a legal dispute that has captured the attention of much of the scholastic journalism community.

For Ochshorn, that involvement still does not have a clear end in sight.

Along with seven other plaintiffs, Ochshorn has been fighting the removal of a stick-figure cartoon from the newspaper that had accompanied an article addressing sex education.

The eight plaintiffs — each 2005 Ithaca High School alumni and former members of the Tattler’s editorial board — have also been pushing to overturn a student publications policy they feel oversteps the Constitution.

Recently, however, the students’ case took a major hit.

On May 18, the 2nd U.S. Circuit Court of Appeals came down with a decision in R.O. v. Ithaca City School District that student journalism advocates say is one of the most damaging rulings for free speech in the nation’s high schools in decades.

“This case, along with emerging case law surrounding off-campus speech through Facebook posts, will determine the future of a free press on America’s high school campuses,” said Ken Paulson, president and CEO of the First Amendment Center. “At a time when almost no one is keeping an eye on the world of public education, we can and should protect freedom of the press at the high school level as fervently as we do at the professional level.”

Since the May ruling, free speech advocates have decried the court’s opinion as destructive to the ability of students to express themselves freely, without fear of administrative retribution.

At the same time, Ithaca City School District administrators are applauding the decision as a positive, final remedy to an ongoing content dispute.

But if students like Ochshorn are to have the last word, the court’s holding will be anything but final.

Along with their attorney, Raymond Schlather, the student plaintiffs have filed a petition to have their case heard by the U.S. Supreme Court.

“We’ll take this as far as it can go,” Ochshorn said. “We still believe now as much as we did six years ago that not only were we in the right, but that this is a vitally important issue and case. We’re not giving up.”

The Tattler story begins in 2004, the start of Ochshorn’s senior year of high school and tenure as editor in chief.

Having operated as an extracurricular publication relatively free from administrative oversight for more than 100 years, the Tattler experienced several “warning signs” early in the school year, Ochshorn said.

In the fall, the staff printed an editorial critical of principal Joe Wilson. Soon after, the student journalists reported on an incident in which Wilson had walked into a classroom and called himself the “food Nazi,” telling students who had been eating in class that he would send them to the “food gas chamber” if they did not stop.

Ochshorn cited both instances as factors that led to the implementation of a new set of guidelines for the newspaper.

The student journalists disagree.

BY SETH ZWEIFLER

Stick Figures:
‘Unquestionably lewd’

Ruling puts public forum status in doubt

BY SETH ZWEIFLER

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Ochshorn cited both instances as factors that led to the implementation of a new set of guidelines for the newspaper.

Along with adviser Stephanie Vinch, Wilson informed the students in January 2005 that they would be operating under a revamped system of administrative oversight, made official through the guidelines.

Under the guidelines, the newspaper adviser was instructed to “read, edit and approve all articles prior to publication.” No issue of the Tattler was to be sent to the printer without the adviser’s final approval.

Judy Pastel, former district superintendent, said the guidelines did nothing more than formalize existing practice.

The student journalists disagree.
Bryan Ellerbrock — who said he “grew up in the Tattler office as a little kid” while his mother, Eileen Bach, served as adviser prior to Vinch — does not remember any instance in which the final say over newspaper content lay beyond the students’ control.

“My experience with the Tattler is that it’s as independent and student-run as possible,” said Ellerbrock, the newspaper’s 2004-05 distribution manager and another named plaintiff.

In their February 2005 Valentine’s Day edition, the students planned to run an article entitled, “How is sex being taught in our health classes?” Along with the article, the student editors were set to run a satirical cartoon, which depicted a teacher standing in front of a chalkboard that displayed eight stick figures in various sexual positions.

After reviewing the newspaper, the students were told that the cartoon violated the standard for obscenity set forth by the new guidelines. They were not permitted to run it.

Pastel stands by the district’s decision.

“In a publication that you’re sending out to 12, 13, 14 year olds, this cartoon was not going to help our efforts in trying to educate younger students about acts that might impact them for the rest of their lives,” Pastel said. “I’d like to give [the student journalists] as much freedom as we possibly can, understanding the world under which a district-sponsored newspaper must operate.”

The newspaper staff ran a blank white box where the cartoon would have gone.

Frustrated, the students decided to publish the cartoon in an independent newspaper — one they created on their own time, without any district support. But administrators refused to let them distribute the so-called March Issue on campus, citing the same obscenity standard.

The students used the cartoon’s censorship, along with the decision to prevent distribution of the underground publication, as a legal platform to challenge the guidelines under which the newspaper was operating.

“For us, the cartoon has always been a secondary issue,” said Andrew Alexander, the 2004-05 Tattler news editor and another plaintiff. “The real question here is whether it is permissible for a school to take an independent student newspaper and turn it into the mouthpiece of the administration. We think that it clearly isn’t.”

A federal district court judge, however, agreed with the school district and upheld both the restriction of the cartoon and the distribution of the March Issue in a March 2009 ruling. The judge, however, did not offer a final decision on whether the underlying Tattler guidelines were constitutional.

Schlather, who has been representing the students on a pro-bono basis, said he expects the guidelines to move to a separate trial in the near future.

For now, though, Schlather’s primary concern is righting what he sees as a major wrong: The Second Circuit’s opinion.

“Their decision strikes the death knell to high school journalism as we have known it at least in this commu-

The real question here is whether it is permissible for a school to take an independent student newspaper and turn it into the mouthpiece of the administration.

— Andrew Alexander
nity, and my guess throughout the country,” he said.

**A far-reaching decision**

Two years after the district court’s decision, both the cartoon and independent *March Issue* were once again on center stage as the students appealed.

This time around, however, the Second Circuit’s decision was far more damaging than any that had come previously, said Frank LoMonte, executive director of the Student Press Law Center.

The court began by classifying the *Tattler* as a “limited public forum” — a legal term with significant importance to student media.

In years past, LoMonte said any classification of a student publication as a “public, designated or limited forum” allowed the publication to seek protection under the “Tinker standard.” The Tinker standard refers to a 1969 Supreme Court case, *Tinker v. Des Moines Independent Community School District*, which held that public school students have a right to speak freely, with the exception of speech that is illegal or causes a substantial disruption to school activities.

The Second Circuit chose instead to apply the “Hazelwood standard” — which refers to a 1988 case, *Hazelwood School District v. Kahlmeier*, in which the Supreme Court held that schools may censor non-forum, curricular publications for legitimate educational reasons. The Second Circuit used the *Tattler’s* “limited public forum” classification to unanimously rule in the school district’s favor.

“While ICSD apparently opened the newspaper to *some* — or even *many* — types of speech, there is no evidence that the school permitted ‘indiscriminate use by the general public,’ as is required to create a traditional public forum or designated public forum,” Judge Jose Cabranes wrote.

Looking back, LoMonte said the ruling was “the most hurtful decision for high school journalism since *Hazelwood.*”

Schlatter agreed, adding that “there has been what appears to be an erosion and rendering hollow of those very ringing words in *Tinker* that ‘students and teachers do not shed their constitutional rights of freedom of speech and expression at the schoolhouse gate.’”

He called the Second Circuit’s decision “a mischaracterization of the law surrounding public fora and a botched opportunity by the court.”

As a practical manner, there is no way for a student-run newspaper to operate as a forum “wide open to the entire citizenry,” LoMonte added. He explained that a student publication is a classic example of a limited public forum because “nobody thinks that a citizen can walk off the street and demand access to the editorial page of the student newspaper … In that way, a student newspaper is still a public forum, but only for a particular class of people or a particular type of speech.”

John Bowen, adjunct professor of journalism at Kent State University and chairman of the Journalism Education Association’s Scholastic Press Rights Commission, said the decision means that student publications will have to be particularly careful about what they call themselves in the future.

“If you’re going to say that you’re a public forum, then you’re going to have to be able to explain why and how,” he said. “A lot of high school newspapers today aren’t using the language correctly.”

Starr Sackstein, JEA’s New York state director, said there is no hard data on how many student newspapers claim to be limited public fora, but guessed that a majority of her state’s publications operate that way.

LoMonte emphasized that student publications in the future will need to have their forum status not just in name, but in practice, as well.

Turning to the independent newspaper, the Second Circuit applied the 1986 Supreme Court case *Bethel School District v. Fraser*, which held that a school did not violate a student’s First Amendment rights when it suspended him for giving an in-school speech full of sexual innuendo.

The Second Circuit said the cartoon met the standard for “lewdness” set forth in that case and could be regulated by school administrators.

“Although the Supreme Court has not clarified the extent to which the *Fraser* doctrine applies in contexts beyond the facts of that case … we have not interpreted *Fraser* as limited either to regulation of school-sponsored speech or to the spoken word,” Cabranes wrote.

Schlatter said the circumstances surrounding *Fraser* were clearly limited to a “captive audience,” which he feels is not the case when it comes to reading a student newspaper.

For Paulson, of the First Amendment Center, the Second Circuit’s decision embodies “a far-reaching misunderstanding by adults of the climate in today’s high schools.

“This cartoon was probably one of the least explicit things in the lives of the 14- or 15-year-old readers,” he said. “This decision suggests a total lack of understanding about what’s going on among our nation’s youth.”

**A troubled future?**

If not overturned by the Supreme Court, the Second Circuit’s opinion will become binding precedent in Connecticut, New York and Vermont.

While the 2005 *Tattler* alumni remain optimistic about the future of the case, *R.O. v. Ithaca City School District* is largely a relic of the past for the current newspaper staff.

“Very few people in the high school even know that this was ever an issue,” current *Tattler* Editor-in-Chief Ingrid Sydenstricker said. “I’d like our staff to get a bit more involved with it next year, because this is a big part of our history.”

Though Sydenstricker is sympathetic with the students’ objections to the censorship six years ago, she feels that “because the *Tattler* is not independent, the school should have some say.”

She added that members of the newspaper staff have been hesitant to pursue potentially controversial stories over the past few years, mainly because of the “distant legacy” left over from the case.

Deborah Lynn, who has served as adviser to the *Tattler* for the past three years, agreed, adding that she hopes future staffs will take a more critical approach to the reporting process.

Though the *Tattler* guidelines have been revised since the court proceedings began, the adviser must still review all content.

Lynn said there have been no major content disputes during her time with the newspaper.

For Ochsorn, any requirement to submit articles to the adviser for approval remains unacceptable. Though he was disappointed to hear that the newspaper may be shying away from certain coverage, he hopes that will change in the future.

“The court is one way to set the standard for behavior, but there are other means of adopting a law that protects the rights of students,” he said. “At the very least, I hope [this decision] motivates us around organizing a legislative correction … not just for the *Tattler*, but for all student journalists.”
For most student journalists, covering the news in English is challenging enough. But at a handful of schools across the country, students are leaping beyond expectations by publishing all or part of their publications in multiple languages.

Some have published bilingually for decades, but for other publications, going bilingual is a new experiment.

And with more and more schools requiring coursework in a second (or third, or fourth) language to graduate, multilingualism in the United States may be here to stay. About 20 percent of people over the age of 5 living in the United States speak a language other than English at home; 8.6 percent of people speak English “less than very well,” according to a 2009 survey by the U.S. Census Bureau.

Fostering community

At the University of Arizona in Tucson, El Independiente has published in both English and Spanish since its inception in 1976. “Tucson, especially with its proximity to Mexico, is a largely Spanish-speaking area, and a lot of the residents who live there, if they’re not bilingual, then they’re mainly Spanish speaking,” explained Cassandra Weinman, who was news editor of El Independiente in the spring semester. “They’ve kind of been left out from other publications, so they’re literally, literally unable to read what’s being printed.”

El Independiente was founded by the university to help seniors complete their capstone projects in journalism. It serves the entire community of southern Tucson rather than just the college campus.

“They (South Tucson residents) didn’t want to know what was going on at U of A because it wasn’t affecting them,” Weinman said. “They wanted to know about what was going on in their neighborhood with their people, what they were doing.”

Weinman said the community has responded in a huge way to the multicultural and bilingual emphasis of El Independiente.

“If we didn’t [publish], people in south Tucson, which is where our target audience is, they would notice if the papers weren’t there,” Weinman said. “Every time I went someone would say, ‘Oh, I love your newspaper, it’s so great to hear about things going on, I had no idea.’ It’s definitely really gratifying to know that your work is being seen in such a positive way.”

At Seton Hall University in South Orange, New Jersey, The Stillman Exchange has kept the campus updated on the business world for five years as the first dedicated undergraduate business publication in the country. In 2009, the staff attained another first by publishing their inaugural Chinese issue of the paper.

“Our Chinese exchange students are the largest population of foreign exchange students, so it made sense to pursue a bilingual publication in that language,” said Meg Reilly, managing editor of both the regular and bilingual editions of The Stillman Exchange.

The special bilingual editions of The Stillman Exchange pro-
vide the traditional business stories routinely covered in regular editions of the paper, but also provide commentary and analysis from the perspective of Chinese students attending business school in America.

“We also aim to educate the Seton Hall community on a deeper level. Anyone can regurgitate the afternoon headlines, and I fear sometimes that is what our regular edition has become,” Reilly said. “We have a Chinese perspective on Chinese news… but also with an American perspective woven in. Our news is truly unique and our readers certainly recognize it.”

When Galen Rosenberg started advising Los Altos High School’s newspaper, The Talon, in 1985, it was not yet a bilingual newspaper. But Rosenberg saw drawing a fractured community together as part of his job, and he thought including articles in Spanish could help.

“The population actually has become more ethnically balanced over the years, and more fully integrated, but when I started there it was still very much in a transition period,” he said. “So one of the goals of the paper was to make it more representative of the school as a whole.”

Initially, Rosenberg had trouble recruiting students who previously attended Mountain View High School, which had a large minority population before it was closed. He said he thought having students from different backgrounds would help ease the transition to a unified school.

“There’s still issues, obviously, but I think having a newspaper print in Spanish and having Spanish byline stories and having students from the neighborhoods of kids who had gone to the other high school was one of the key pieces of making the school feel like a place everybody was an equal member,” he said.

**Bridging cultures**

Richard Campanaro, student media adviser at Eastside Memorial High School in Austin, Texas, faced similar issues. English is not the first language for many of his students, who come from places like Sierra Leone, Mexico and Nicaragua.

“For me it was just kind of like a marketing idea. Light bulb – like, duh, if 85 percent of your population speaks Spanish, why not?” he recounted. “And then I saw all the benefits of having a bilingual newspaper.”

For Campanaro, the ability to write stories in Spanish has been crucial to helping his students learn to write.

“It’s actually really useful because when you have a student who comes in and they don’t speak very much English, that shouldn’t be looked at as a bad thing… That’s actually a tool you can use,” Campanaro said. “If the student understands the skills, if they need to do it in Spanish first to really let it hit home, heck yeah!”

At Seton Hall, Reilly also found publishing bilingually to be productive for the both Chinese students who work on the special bilingual editions of The Stillman Exchange and the American students who read the paper.

“Aside from the great value that is provided to our reader community, the Chinese exchange students have an opportunity to share their voice and test it out in their second language,” Reilly said, referring to the students in a 1+2 program the Seton Hall University business school runs with a Chinese university.

The Chinese students who write in both Chinese and English learn a lot, but Reilly said American students also take the opportunity to practice their language skills when reading the bilingual editions.

“Even students in our Chinese language program have found great value in our bilingual releases and learn a lot more about the Chinese people and culture than they could ever read in a book,” Reilly said.

**Speaking their minds**

At some schools, going bilingual has given students a unique opportunity to use their voices and share their stories in their own languages.

“I have teachers who say [my students] are not going to be able to do it. And I say, ‘No, they can do it, it just depends on whether you want to get out of your seat and really teach that student how to do it and not just rely on their pre-existing skills,’” Campanaro said. “A lot of these kids, for the first time, they’re saying, ‘I think this is my thing, I really like writing, I really like going out and meeting people, and I love doing interviews and I love seeing myself in the paper.’”

Campanaro encourages his students to write for the paper, the yearbook and the literary magazine to share their stories and publicize the things they are passionate about.

“The literary magazine… it’s a very emotionally charged class because I think everybody’s got a story. I think the newspaper as well has exposed them to new issues,” he said. “I had a freshman looking up state legislation and he found something that he was really impassioned by… and so he wrote a letter to his congressperson and we published it in the paper. He saw it in the paper and everyone was going up to him and patting him on the back, and he was like, ‘This feels great.’”

For Chinese students working on the bilingual edition of The Stillman Exchange, writing for the paper is often their first taste of expression without government intervention, and the first chance to truly speak their minds.

“The great thing about our bilingual publication is that we give our students some of their first opportunities to write in ‘free press,’” Reilly said. “In China, publications are often censored by the government or forced [to be] biased.”

In fact, The Stillman Exchange was subject to such censorship when they tried to mail a box of newspapers to the students’ hometowns in China.

“[W]e used to ship a box of our bilingual releases to China for our students’ family and friends to enjoy,” Reilly said. “Un-
The great thing about our bilingual publication is that we give our students some of their first opportunities to write in ‘free press.’

— Meg Reilly

fortunately, our issues never made it to their final destination due to censorship by the government, and we discontinued shipping issues that would never make it anyway.

Dilemmas, dilemmas
While the small number of bilingual student publications may be ahead of the curve, they also face unique challenges. None of these four newspapers have been able to publish entirely in a second language.

Weinman estimates each edition of El Independiente is between 30 and 50 percent bilingual.

“In an ideal world we would be able to put everything in Spanish as we did in English, but with time constraints and deadlines and all that stuff we have to pick and choose the stories that we feel are most important and that need to be out there for all of our readers to grasp,” she said.

Stories for El Independiente are often written in English by non-Spanish speakers and then translated by volunteers from the Spanish language department at the University of Arizona. Because of the extra step in the editing and production process, Weinman said it simply isn’t feasible for them to publish more articles in Spanish.

“We try and find the stories [to translate] that we feel are most applicable,” Weinman said. “For example, in the last issue we did this past year, there was a good piece on the HPV virus, which apparently is pretty prevalent in Latina women. So we made sure to translate that in Spanish because it’s something that as a newspaper, we felt the information should be out there easily.”

The Stillman Exchange goes through an equally rigorous organization, translation and editing process as El Independiente. The editor of the special edition, a Chinese student, assigns articles. Once stories are assigned, they are written by in Chinese and translated back into English. Two different editors then review each story in both Chinese and English, to make sure the changes align. A professor fluent in both Chinese and English double-checks the edits.

“There is certainly a challenge in preparing the bilingual editions, and that is why we have significantly less releases than our regular edition,” Reilly said. “The editing process can seem tedious at the surface, but is necessary to ensure that the translations not only make sense but follow the same tone.”

Campanaro’s biggest issue has been maintaining a staff and giving them the confidence to publish consistently up to his professional standards. A graduate of Texas Tech University and a former professional journalist, he started teaching at Eastside Memorial High School two years ago amidst tumultuous change.

“We’re on the east side of Austin, which is... underserved, underprivileged kind of kids from really low-income areas. They see it as ghetto, and they’ve kind of embraced that ghetto mentality,” he said. “A lot of these kids, the nature, the culture of the school, there’s a lot of excuse makers. Everybody thinks because they have hardships that rules don’t apply to them.”

Countering these ideas and low academic expectations is one of Campanaro’s jobs, and he holds his journalism students to high expectations. They use the same tests and materials that college students use. He wrangled the necessary computer and camera equipment out of the school’s budget so their publications will look professional.

“I’d have about 45 kids in a class, very few of them were at grade level writing or reading-wise. None of them had any experience,” he said. “It was just kind of a scramble to get it done, and we did. It was a great experience, and then I have that benchmark to say ‘Okay, here’s our gauge, look at what we want with the returning students... what can we do better next time?’”

As difficult as getting the paper off the ground has been, Campanaro pushes his students to put out the best product they can, no matter what the circumstances.

“What I try to do is to emulate the program that I was taught in. I basically focus on – look, you’re only going to be judged by what people see,” Campanaro said. “You’re judged by the final product, so that’s going to be the basis for how successful you are in this class. And I really put the burden on them to create something.”

Back at Los Altos High School, The Talon no longer publishes bilingual.

Current Talon adviser Michael Moul said he felt publishing bilingual was not really fixing the problem it was intended to solve: to help integrate two different groups at the school and make sure everyone was being represented.

“My feeling was that if we really want to cover our entire population on campus, we need to be actually covering that population instead of just translating two articles an issue and calling it done,” Moul explained. “So my feeling was let’s really work to the heart of this issue as opposed to just kind of Band-Aid fixing it with translation.”

Moul’s goal is to get more multilingual students on his staff to better represent the school’s diversity. However, he is not opposed to reinstating bilingual issues of the paper in the future.

“The battle I’m fighting right now is to get more of that other half of the campus represented on our staff,” he said. “Once we’ve sort of made steps towards that, then I feel like that staff can decide whether they feel like that’s a necessary thing.”

Weinman said she felt that in addition to providing a service for the local community, the sprinkling of bilingual newspapers currently in existence are a glimpse of media’s future.

“I know people are resistant because there’s the argument that English, you know, ‘This is the U.S., we should all speaking English.’ But there’s absolutely nothing wrong with letting another group in on all the amazing things that are being offered not only in Arizona but across the U.S.,” she said. “I guess it’s up to the whole system to just change and start understanding that there is a larger community out there.”
Iraq’s independent Voice
The country’s first continuously published, independent campus newspaper is an outlet for students that ‘doesn’t wave a flag’

BY NICK DEAN

In a corner of the bottom-floor cafeteria of the American University of Iraq-Sulaimani are two makeshift walls with two couches, a table and one iMac computer set up between stacks of proofs and old newspaper issues.

It’s headquarters of The Voice — the first independent student newspaper in Iraq — a paper with a future teetering much like the walls that surround it.

After a year of publication, the budding paper lies in the hands of a new staff and adviser. As the only student-run paper in the school’s three-year history to take root and publish more than one issue, The Voice is looking to continue what it started while facing educational hurdles and a professional media culture that operates completely opposite of American-style journalism.

Where it started

The Voice is the brainchild of former Washington Post reporter Jackie Spinner, who worked at the Post’s Baghdad bureau for two years before beginning her stint at the American University of Iraq.

In January 2010, she joined the staff at AIU-S as the director of media relations with the intention to begin an independent newspaper for the students. She wanted students to have a newspaper based around the American style of journalism — where the goals are objectivity and accountability.

In Iraq, professional newspapers are heavily connected to political parties and religious culture. From who prints the paper to what makes the front page, executive decisions at Iraqi newspapers are the antithesis of objective. Where American papers traditionally hold a watchdog position, Iraqi papers more often operate as mouthpieces for certain agendas.

Spinner’s intention for The Voice was to stay true to journalistic values while remaining plausible. There would be no racy headlines or a weekly sex column in The Voice. Spinner and the paper’s new editor in chief, Namo Kaftan, both said the purpose of the Voice is all in the name.

“It’s called the Voice because that’s what it is meant to be. A voice for students. A voice of the students, too,” Kaftan said. “We don’t have any political connections. We don’t cover any political happenings. We just want to be something the students continue to look at.”

Located in the northern region of Iraq known as Kurdistan, the American university and The Voice face region-specific challenges unparalleled in the collegiate press. The region of Kurdistan maintains a vivid and distinct identity separate from Iraq — though it is not a different country.

A people hardly embraced by the rest of Iraq, the Kurdistan region has created a regional government and largely operates by its own cultural standards established by the Kurds. The American university brings together Kurds and Iraqi Arabs. Seeking to be the voice for all students, the paper has chosen to steer clear of most political coverage.

“The newspaper doesn’t wave a flag, and I think that was a hard concept for many of our students to understand given that they live in a nationalistic culture. I was asking them to put aside their national identity, their allegiance in the spirit of pursuing objective journalism,” Spinner said.

“The ethnic tensions and political tensions are raw and fresh and ongoing in Iraq and in the Kurdistan region. It is a very difficult environment to be an independent journalist and even more difficult to be a student journalist learning about those concepts that many American students have engrained in them.”

Dan Reimold, a college newspaper adviser at the University of Tampa and creator of the blog “College Media Matters,” visited the Voice for ten days in May 2011.

“I think the most fascinating part was recognizing extremely quickly that while I felt I was in Iraq, the locals felt they were in Kurdistan. They really do see it to be a region apart,” Reimold said. “There was a huge amount of patriotism among locals and it makes the university stand out because they are trying to be completely open.”

The Voice has developed practices around its precarious situation. Kaftan, who was recently named this year’s editor in chief, said the paper is chiefly guided by culture, not law.

“We know what will offend and we know what we will not put in our paper,” Kaftan said. “The culture means everything.”
Without professional role models

The partisan professional papers that students had grown accustomed to made Spinner’s task of teaching American journalism even more challenging.

“It is difficult for the students to operate an independent newspaper in the press environment that exists in Iraq because students want to advocate,” Spinner said.

She started with basic concepts to show the students the ethical standards that many Iraqi papers disregarded. The Voice uses a printer with no political affiliations. While it accepts funds from the university to print its issues, it maintains an independence from any administrative influence, Spinner said.

“It is not a tool of the administration,” Spinner said. “We were fortunate that the administration that established the Voice understood the importance of editorial independence.”

The editorial setup for the Voice echoes that of most of America’s college papers. Page 2 is a designated opinion section with an editorial written by a team of student editors to establish a viewpoint of the paper as a whole.

Spinner said the team-crafted editorial workflow was “radical” to her students.

“It is hard to get them to understand that it is best for the newspaper to advocate for a free press, for an open environment, for a place where all ideas can be exchanged and not just the ones from the ruling parties or the best financed parties,” Spinner said.

The ideals seem to have caught on, though, as Kaftan quickly listed the paper’s four main goals: accountability, responsibility, gatekeeping and objectivity. Kaftan now believes that Iraqi journalism should be accountable and independent, and he said that as editor he wants to make sure the Voice remains that way.

“Iraqi journalism should be first accountable before anything else. It has to be that way. That is journalism,” Kaftan said.

Kaftan has heard complaints from students on campus about the paper’s content being repetitive, but he has never heard anyone complain about any political affiliations.

“We cover campus news, which is small. But we are just starting and we don’t want to have problems,” Kaftan said.

In observing the paper during his visit, Reimold said the cultural tension between Kurds and Iraqi Arabs — who are outnumbered at the school — was handled well by the student newspaper.

“There are Arabs who serve on the paper and readers who are Arab that criticize the paper. It is interesting to watch them too, because they have to battle the idea that they are in the minority,” Reimold said. “They have their own strong feelings and they have to fight louder to be heard and yet they want to work together to create a good newspaper.”

The staff’s work so far has put them in a place no student paper has ever been before: past the first issue. Kaftan and Reimold both said that the school — opened in 2007 — has seen three or four attempts at a student-run paper.
All but the Voice, however, have never published more than one issue. Kaftan said that the other paper's staffs lost interest in the publication or the papers were not well received by students.

What sets the Voice apart? Reimold and Kaftan had the same answer: Spinner.

**A free press pioneer**

“No one more than Jackie is responsible for the Voice existing,” Reimold said.

Spinner’s love for the Middle East is apparent in her actions. After two years of reporting from the region for the Post, she made her way back to begin the first independent student newspaper.

“We got a really professional journalist when the newspaper was formed and she kind of put us on the right track,” Kaftan said. “We started with the standards of American journalism because of her and know those because of her, even though we have never had freedom of the press.”

Spinner said she sees much power in the craft of journalism and what it can do for those in the Middle East.

“It teaches responsibility and accountability, the power of the pen, how important it is to be precise with language, to gather a variety of viewpoints, to learn and to understand,” Spinner said.

“As reporters, we seek to understand more than we seek to be understood. Of course that is a hard concept to preach in a country where people have not had a voice, in a country where voices have been oppressed.”

After only nine months working at the university, Spinner was awarded a Fulbright to work in Oman for a year.

Her choice to leave struck Kaftan, who was then the web editor of the paper, hard.

“It was difficult,” he said. “I literally cried.”

Spinner has completed her time in Oman and has accepted a job offer at Columbia College in Chicago, where she will teach journalism and assist with a hyper-local news outlet for the Arab-American community.

Her short time at the university was enough to instill American journalism in Kaftan, who said that he is both nervous and excited about journalism and how journalism contributes to society. It is to learn how empowering it is to give voice to a community, even while keeping your own personal opinions to yourself,” Spinner said.

“Spin’s love for the Middle East is apparent in her actions. After two years of reporting from the region for the Post, she made her way back to begin the first independent student newspaper.

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“Jackie never discouraged you,” he said. “She only encourages you to do whatever it takes – even if you do not have the skills for it, you will.”

“I am hoping to train the staff and new students to learn about journalism and how it can contribute to society.”

**Staying on track**

With Spinner gone, most of the original staff members not returning and an entirely new campus, Kaftan has many obstacles to surmount if he hopes to avoid the fate of past newspapers at the campus.

“The biggest challenge now for the Voice is to make certain that the university supports it by hiring an experienced journalism educator to oversee it and to teach the students excellent standards of journalism,” Spinner said.

Currently, university registrar Paul Croft is the faculty adviser for the paper.

Reimold said this staff transition is pivotal to the Voice’s success.

“I worry that the group we have confidence in will be too small to keep it going,” Reimold said. “There is not an as passionate journalism adviser and they are working in an environment that is not entirely journalism friendly.”

Kaftan said he would begin interviewing potential volunteers to assign positions at the start of the school year and he hopes to use the benefits of American-style journalism as the basis for his recruiting.

“I am hoping to train the staff and new students to learn about journalism and how journalism contributes to society. It is to serve your community, not just to get paid,” Kaftan said.

For Spinner, that comes full-circle.

“College journalism in Iraq is a wonderful way for students to learn how empowering it is to give voice to a community, even while keeping your own personal opinions to yourself,” Spinner said. “You are stronger and more powerful charged with telling someone’s story than telling your own. And the Voice, in telling someone else’s story, is really telling the story of itself, this new freedom.”
In 2009, the world of public higher education was taken by storm when the Chicago Tribune set its sights on one school — the University of Illinois. Just one month after a team of three Tribune reporters began investigating a secretive, formalized system of preferential admissions at the state's most selective public university, the newspaper published its first piece in a series it dubbed “Clout goes to college.”

The premise of that story — and of the more than 90 that followed over the next six months — was simple: university trustees, administrators and elected officials were using their power to give under-qualified applicants a boost in the admissions process.

College admissions is an area that offers “tremendous and untapped potential for student journalists to report on,” said Jacques Steinberg, who covers admissions for the New York Times.

This past year, the eight schools in the Ivy League alone — which offer some of the most coveted spots for incoming freshmen — saw 31,659 applications submitted, the largest number ever. Of those, just 12.3 percent were accepted — a record low.

Numbers like these, said Eric Hoover, who covers college admissions for the Chronicle of Higher Education, have “driven a public fascination with the process that borders on obsession.” And yet, while the admissions process remains a rite of passage for anyone hoping to call himself a college graduate, few have a real sense of what happens behind the closed doors of the admissions office, Hoover said.

Today’s student journalists can be at the forefront of efforts to shed more light on college admissions. From a team of editors keeping up with the Tribune series to an enterprising reporter at the University of California - Los Angeles poking around the School of Dentistry, admissions coverage has taken on more and more prominence at many student publications.

“Admissions is something that attracts a lot of people and appeals to a wide audience,” said Naveen Srivatsa, president of the Harvard Crimson, Harvard University’s student newspaper. “Who Harvard accepts bears on who Harvard students and professors interact with, so that’s obviously worth covering.”

The Tribune’s investigation began in April 2009, when reporter Jodi Cohen filed a request under the Illinois Freedom of Information Act for records from the University of Illinois admissions office.

Among various records, Cohen sought access to admissions office logs, emails from admissions officers and other written correspondence by university officials. Though the university chose to redact much of what Cohen requested — citing the Family Educational Rights and Privacy Act — she was able to uncover the existence of a so-called “clout list” operating at the school’s Urbana-Champaign campus.

In one email exchange between admissions officers, reported by the Tribune, an applicant was described as having “terrible credentials.” In another email, an admissions officer wrote that there “is absolutely no reason to expect anything other than failure” on the part of a law school applicant. However, because of the applicants’ endorsement by public officials, both were admitted.

After the publication of the first article in May 2009, “the story evolved into an almost breaking-news type story,” Cohen said. “Clout plays a part of everything here in Illinois … so the series seemed like a perfect storm. As we learned more about the admissions system, we also learned more about what documents to request, and additional layers kept unfolding.”

As the Tribune continued to dig deeper into the university’s practices, other newspapers began to take notice. Among those was the Daily Illini, the student newspaper at Urbana-Champaign.

Melissa Silverberg, who was serving as managing editor when the Tribune first broke the news, said the Daily Illini staff decided to add its own “clout list” coverage into the mix because “it was taking place right on our campus and we had to respond.”

The night before the first Tribune piece was set to run — which was when Silverberg first learned of the newspaper’s investigation — she had the Daily Illini staff get in touch with university administrators and members of the board of trustees for comment.

“That was the only chance we had to speak with the [university] president candidly during this whole process,” she said. “We
had to move quickly."

In the months that followed, the Daily Illini continued to publish stories — about two per week, Silverberg estimates — chronicling the ongoing developments.

Fast-forward to today, and the remnants of the investigation can still be felt on the school's campus, said Jill Disis, current editor in chief of the Daily Illini.

The Tribune reports led to the appointment of a state commission to investigate the university's admissions system. Soon after, the school's president and chancellor resigned, along with most of the trustees.

Stacey Kostell, director of undergraduate admissions at the university, said the series "portrayed a pretty accurate picture when it showed emails from the admissions staff saying 'here's my concern about this applicant,' but made it seem like there were hundreds and hundreds of cases [of preferential admissions], when in reality it was a very small number." Kostell added that the series has enabled the admissions staff to take "total control" over the fate of applicants, with no more interference from university administrators or state legislators.

However, she maintained that Illinois was probably not alone in its practices.

"To say that we are the only school in the country where this happened at, I think people know better," she said. "I think this is a standard practice at many places. In our case, the decisions had really left the admissions process, and that's what we did wrong."

Though Silverberg called the "Clout" stories "the biggest news of the year," Disis said the school's admissions process "is still a bit under wraps."

Kostell acknowledged that "it's certainly our goal to make the process itself more transparent. At the same time, what we do isn't formulaic. As universities have moved away from a formula and more in the direction of a holistic process, it's more difficult to be transparent in the sense that our audience might like us to be."

Today, the Tribune staff is waiting on a decision from the 7th U.S. Circuit Court of Appeals to determine whether the redaction of student names and academic performance from admissions logs and emails was permissible under FERPA.

"Until we can get that information, we're unable to tell the rest of the story here," Cohen said, adding that the Tribune's use of public records "can definitely be replicated by other student journalists looking to investigate college admissions."

Two years earlier, Robert Faturechi, then a student journalist with the UCLA Daily Bruin, did just that.

After he received a tip from an alumnus of the School of Dentistry, Faturechi spent six months investigating a system of preferential admissions within the school's orthodontics residency program.

In one of his stories, published Nov. 12, 2007, Faturechi wrote that "applicants related to donors giving six-figure gifts were automatically advanced over other students despite their lower test scores and grades."

While Faturechi said he could never have exposed the school's practices without the use of freedom of information requests — he received hundreds of pages of emails and internal documents under the state's open records laws — he relied largely on tips from program alumni.

Most alumni were quoted anonymously in Faturechi's reporting.

"I was stonewalled in several cases, but in general people were more than happy to talk," he said. "They were frustrated with what was going on internally. At a public university, it's not supposed to work that way. It's taxpayer money, and everyone should have an equal shot [at gaining admission]."

Though Faturechi has moved on from covering the admissions process — he now works as a reporter at the Los Angeles Times — he said the investigation provided valuable skills for his future in journalism.

"This definitely taught me the importance of not taking your sources' words at gospel, of doing the necessary work to verify with facts," he said.

Still, he added that he remains frustrated by the unwillingness of residency program administrators to admit any wrongdoing. He is equally disappointed by the redactions made to his freedom of information requests.

"It seems like my records requests may have been treated with more respect had they come from a major, professional newspaper," he said.

A need for transparency?

While both Faturechi and the Tribune experienced relative success at digging into the admissions process, their work may be the exception — and not the rule — when it comes to college admissions coverage.

Michele Hernandez, a former admissions officer at Dartmouth College and now a private admissions consultant, said she has rarely seen student journalists reach beyond basic day-to-day admissions coverage.

"It seems like most student reporters just take the admissions director's rubber-stamp responses at face value," said Hernandez, who wrote about the inner workings of the Ivy League admissions process in her book, "A is for Admission." "I've hardly ever seen a real penetrative admissions article. Students should be asking more penetrating questions, not just listening blindly."

She added that the admissions process is "definitely" in need of more transparency. Those inside the admissions office, however, may not agree.

Jeffrey Brenzel, dean of undergraduate admissions at Yale University, believes there is an overabundance of information available to the public today.

"With respect to transparency about admissions criteria, I think the public is actually awash with information, including high school counseling offices, guidebooks and Internet resources," he wrote in an email.

Emily Wanger, a rising junior at Yale who covered admissions for the Yale Daily News this year, said her experiences reporting on the process "showed that it was easy to fall into the trap of [the stories] being a cycle."

To broaden her coverage, Wanger complemented her day-to-day work with larger trend pieces on the admissions process. In one instance, she wrote a feature on the "craze" surrounding admissions numbers today.

Wanger added that she has never run into any issues with transparency in Yale's admissions office.

Steinberg, of the New York Times, said "admissions has probably never been more transparent than it is today. But it is always going to be a mysterious process because you can never know for sure why someone was admitted or rejected."
He added that it is in every college newspaper’s interest to maintain a steady presence in admissions coverage.

“Think of the revenue stream coming in from admissions,” he said. “If you’ve got 30,000 applications coming in at one school, at around $65 per application, you’ve got a huge amount of money to follow there. A good college newspaper editor will see tremendous potential in the admissions beat year-round.”

Rob Killion, executive director of the Common Application, Inc. — which provides the undergraduate application platform for more than 400 colleges and universities — agreed.

He added, however, that the bulk of the college admissions coverage he has read has been focused on upper-tier institutions. “These articles get written that make it seem like this frenzy is occurring as a national phenomenon,” he said. “In reality, that’s probably not the case.”

Access: accepted, denied

In some cases, the experiences of student journalists reinforce what Killion has observed.

Emily Cole, editor in chief of the Captain’s Log — the student newspaper at Christopher Newport University in Newport News, Va. — said admissions is not normally a major coverage area for the school’s weekly publication.

However, when CNU’s admissions office mistakenly sent 2,000 acceptance emails earlier this year to students they did not intend to admit, the Captain’s Log was on the story.

Cole speculated that the staff’s coverage of the admissions snafu rubbed school officials the wrong way and was part of the driving force behind a proposal to strip funding for the print edition of the newspaper. The proposal has since been taken off the table.

Like Cole, Greg Doyle, co-editor in chief of the Villanovan, Villanova University’s student newspaper, said admissions stories are generally not prominent in the weekly publication.

At least that was the case until this year.

In February, Villanova’s School of Law announced that an internal investigation revealed several school officials who had been reporting inflated admission data to the American Bar Association for the past few years.

While Doyle covered the story right after it broke — relying almost solely on official university statements — he said he was largely stonewalled after trying to gain access for follow-up reporting.
“Students deserved to know what was happening in our community, and I felt that they were preventing that from happening,” Doyle said, adding that “this had the potential to be one of the biggest stories this year.”

At a private university like Villanova, it is admittedly far more difficult for a student journalist to investigate the admissions process if sources are unwilling to cooperate. Unlike a public institution, reporters cannot rely on freedom of information laws to gain access to the admissions office at a private college.

But in many cases, student journalists at private schools are still finding ways to unearth new admissions practices.

When he was a reporter covering admissions for the Harvard Crimson in 2002, Dan Rosenheck, a 2004 Harvard alumnus and current editor with the Economist, took it upon himself to make investigative journalism a priority.

Rosenheck learned through an investigation that the school’s so-called “z-list” — which refers to students who are admitted to the university with the understanding that they will take a year off before matriculating — was, in reality, being used as a way to accept more students with familial ties to Harvard.

Though Harvard’s admissions office denied that its z-list also operated as a “legacy list,” Rosenheck reached out to undergraduates who had experienced the process personally.

He found that about 72 percent of the “z-listed” students were also legacies. At the time, the normal makeup of legacies for an incoming class at Harvard was 12 to 14 percent.

Along with a separate investigation into the school’s early admission program, Rosenheck said his investigative work “was met with a quite conspicuous radio silence from the admissions office. They were as transparent as possible when they felt like it, and they weren’t when they didn’t feel like it.”

Still, though, Rosenheck said his experiences reporting on the admissions process at the nation’s most selective institution helped him shed light on “American meritocracy as a whole.”

“In a way, college admissions trends help point to the broader ways in which society is picking its winners and losers,” he said. “For a college journalist, there’s endless opportunity.”
Guiding an award-winning newspaper is not always enough to protect an adviser’s job – something T.R. Hanrahan at Missouri Southern State University learned the hard way.

“In April, I picked up the schedule book for … fall of 2011, and all of my classes were listed as being taught by ‘staff,’” Hanrahan recalled. “It was almost a month after that before they actually told me. No reason was given, it was just, ‘We wanted to make a change.’”

In the five years Hanrahan advised The Chart, the paper has placed in the top 10 newspapers nationally at the Associated College Press’s Best of Show awards three times. Last year’s editor in chief, Brennan Stebbins, won the Missouri Journalist of the Year award. Hanrahan himself was the Missouri College Media Association’s 2010 Adviser of the Year. But none of these awards and accolades could protect his job.

“I didn’t all of the sudden in 12 months start to suck at my job, so it kind of stinks,” he said. “So I’m not a bad teacher, I’m not a bad adviser, and I think my students’ performance indicates that.”

College newspapers rely on advisers for guidance and support, but sometimes those advisers are in need of advice themselves. As university employees charged with ensuring students produce the highest quality work, advisers are often caught between a rock and a hard place when the threat of a sensitive story pushes them to choose sides. With a rash of adviser firings and “removals” sweeping through colleges around the country, advisers are treading carefully.

Sally Renaud, national president of College Media Advisers, said in August her organization has investigated 12 adviser removals so far this year.

“I know that anecdotally, we are overwhelmed with so many cases right now and we are always devastated because we know these people, they are our friends,” she said.

Missouri Southern
A.J. Anglin, vice president of academic affairs at Missouri Southern, said he could not comment on Hanrahan’s removal, but that there would be no major changes to the way the newspaper or the communication department is run.

“There’s limits to what I can say basically placed upon me by my administration, so I can only say so much, and that’s the rules,” said Jay Moorman, department head of communications. “It was painful to have all the stuff happen, and I’m ready to move forward.”

Although Hanrahan was not officially let go until April, he said he knew something wasn’t right and he believes the decision to fire him was made months earlier.

“I felt pressure,” he said. “I’d been called into the academic vice president’s office to discuss our policies – not content, but of course every policy he brought up was attached to a specific story. I think that the administration thought at some point that by putting a little pressure on me, I would go back to the newsroom and put pressure on [students] to back off.”

When word got out that Hanrahan was being fired, the campus reacted immediately. Students organized a Facebook group and held a cross-campus march in solidarity. The faculty senate presented him with an official proclamation of thanks. Much of the support came from students outside the staff of The Chart, which Hanrahan said may surprise others but not him.

“It was a news story, and [the staff] had to remain outside of it, so they didn’t take part in the formal demonstration,” Hanrahan said. “Instead, they had to cover it as news. But that support is coming from people who aren’t journalists by trade, but respect the First Amendment and know we tried to do the right thing. And it was very touching and gratifying.”

Despite the outpouring of support, Hanrahan was not rehired. At the moment, The Chart does not have an adviser and Hanrahan is seeking employment. He hopes to advise another student publication.

UT-Tyler
At about the same time, about 400 miles to the south, University of Texas at Tyler adviser Vanessa Curry was getting her own walking papers.

“More than anything, I think they [school administrators] were just waiting for an opportunity to get rid of me, and that op-
portunity came up this year,” Curry said. “They played like they were supporting the newspaper, but they don’t.”

According to Curry, she was fired after a former co-worker left the university and complained about Curry’s treatment of students during an exit interview. The new communications department chairman, Dennis Cali, conducted an investigation, but Curry felt it was incomplete.

“He got some complaints and he followed those complaints, and only interviewed [people] who had complaints against the newspaper or about me as a teacher,” Curry said. “He never spoke to the [current] students or former students that would have had something good to say about their experience at the university or at the Patriot Talon or in my classes.”

Kamren Thompson, editor in chief of the Patriot Talon newspaper last year, found that many of the attributes listed as “complaints” in Cali’s investigation were what made her a good journalism adviser and teacher.

“Ms. Curry was a hard teacher. She expected a lot of her students. She forced us to think critically and seriously examine situations to come to our own conclusions,” Thompson said. “She was there to help us learn and grow when we needed her, and she stepped back when she knew we could handle a situation. What more could you ask for in an adviser?”

But according to Donna Dickerson, interim provost and vice president for academic affairs, Curry was removed not only because of her performance as an adviser, but also because of her performance in her faculty teaching position in the communications department.

“She’s contracts as lecturer and as student newspaper adviser were not renewed because of poor teaching evaluations and inappropriate behavior in the Patriot Talon newsroom and classrooms,” said Dickerson. “We also had a declining enrollment in journalism classes and needed fresh and dynamic leadership in that area.”

This is not the first time the school has tried to remove Curry from the newspaper. Curry said that in 2002, administrators tried to remove her from her adviser position, but did not attempt to remove her from her faculty teaching position in the communications department.

“They still don’t understand what student journalism is about. It’s not public relations for the university,” she explained. “It’s about teaching these students how to react in the real world, how to ask questions, how to be persistent about getting the answers and truth, accuracy and fairness.”

Although Curry was fired in the middle of the semester, the Patriot Talon still does not have a permanent adviser, although Dickerson said there is a temporary adviser in place and a “national search” for a new adviser, who Dickerson hopes will start in time for the fall or spring semester.

**College of DuPage**

Many advisers carry teaching duties on top of their role as advisers, something Cathy Stablein had done for 24 years at the College of DuPage in Glen Ellyn, Ill., as half of the two-person journalism and mass communication faculty. She said she never had trouble balancing her commitment to the student newspaper, the Courier, with her teaching duties – but school administrators thought otherwise.

“As of May 26, I was told that I would have to work on critical program review for the journalism program and that I would not have time to work on that as well as advise the newspaper,” Stablein said. “I was not asked, I was just told that you will not be able to [continue advising] and you have to be out in about five days.”

The department has seen a decrease in enrollment to the point that not all classes have the College of DuPage’s minimum number of students, although Stablein said the college has the ability to change those requirements by department and has done so in the past. Because of the decrease in enrollment, the program is being placed under critical review.

“When a school makes decisions like this, it’s a strategic plan that something has value and something doesn’t have value, so what they are doing is saying that this does not have the value that they want,” Stablein said.

Sue Martin, dean of student services, pulled Stablein from her advising duties in order to focus on refocusing the department, but Stablein was not consulted about these changes, nor were any other options presented.

“Technically there are two of us in the program, and I would...
think that some of those duties should be split. Perhaps the other person might have stepped up and said, ‘Sure, I’ll take more of a load because this is important to our journalism program,’” Stablein said. “But I didn’t hear those discussions, and I was not asked. I couldn’t negotiate – they’d already in effect what I call ‘hobbled’ me.”

From Stablein’s point of view, pulling her away from her advising duties and putting the department under critical review is sounding the death knell for the program.

“It is a step [toward eliminating the program]. I don’t even have to think that – it is a step,” Stablein said. “They will decide February 1 whether they think the program is viable or not. So at that point, February 1, I’m fighting to keep my job.”

The school has assigned a temporary adviser to the Courier, and has placed an advertisement for a part-time adviser to work 10 hours per week, with some work being performed over the phone or by email, a system Stablein says simply will not work.

“It’s not the hours a week, it’s how that time’s divided. The 10 hours doesn’t get divided up into 9 to 11 [every day], it’s minutes here, minutes there, something like that,” she said, adding that student editors were concerned that not having an adviser in the office would detract from their learning experience. “It will weaken the paper, it will weaken the [adviser-student] relationship, and it’s definitely not good for teaching.”

“Backdoor” censorship?

Adviser removals are more frequent occurrences than students, advisers and journalists would like, but this year brought an unusual spike over past years.

Some of these removals have been fairly “traditional.” Others, such as Johnson County Community College’s move to shift Anne Christiansen-Bullers from advising the newspaper to writing for the school’s P.R. department, are murkier: Marcus Klim, a member of Christiansen-Buller’s staff last semester, claims she was removed to hurt the paper, but administrators and the paper’s current editor-in-chief say it was an attempt to change the department while still providing Bullers with a job.

At North Carolina State University, longtime adviser Bradley Wilson was fired in August just weeks after a controversy involving an orientation publication he oversaw. Wilson’s colleagues and some student editors, however, said they don’t believe the move was in retaliation for content.

“We'd like to think in the world of academia we are a bit more protected, but in fact we are not, especially if you’re not in a faculty position,” Renaud said. “If you're in a student affairs kind of position, you're really susceptible to this kind of thing. You really don’t have protection.”

While the First Amendment protects against government punishment of speech, it’s not clear that a fired adviser has a viable First Amendment claim, even if the connection between the firing and students’ journalistic decisions is blatant. The Supreme Court has said that government employees cannot bring First Amendment claims for speech made in the course of their employment, because as employees, they are considered to be speaking on behalf of the government, not as individuals.

At a public university, it's possible for students to challenge

**Judge says school went too far in punishing over slumber party pics**

**INdiana** -- An Indiana district court ruled that a principal violated two students’ First Amendment rights when he removed them from the cheerleading team for posting photos of penis-shaped lollipops on their Facebook pages.

A judge ruled that Churubusco High School inappropriately punished the students because the off-campus photos did not interfere with the school environment.

In his written opinion, the judge found that *Bethel v. Fraser*, a 1986 case that upheld punishment of an innuendo-laden student speech, does not apply to off-campus expression.

The judge also found part of the school’s conduct code prohibiting behavior that “brings discredit or dishonor upon yourself or your school,” unconstitutional.

**Seattle school not liable for student paper’s story about local landlords**

**Washington** -- Student newspapers won a significant victory as a state court judge ruled that schools cannot be held liable for the content of student-controlled publications.

The Seattle School District had argued it could not be held liable because the school was not responsible for the student newspaper, and that even if it was, the school did not have the right to censor the paper. The judge agreed.

The ruling is the first of its kind at the high school level. It allows schools protection so long as advisers make recommendations rather than control content.

The suit stemmed from a high school newspaper story discussing Hugh and Drake Sisley’s apartment rental practice. The Sisleys claimed the article calling them “slum lords” was defamatory.
an adviser’s dismissal as a violation of their own First Amendment rights, on the grounds that the firing is meant to intimidate or handicap them in the exercise of their own free speech. This legal theory has been attempted only a few times, and the history of success is mixed. Students at New Jersey’s Ocean County College succeeded in a First Amendment challenge to the firing of their adviser, Karen Bosley, but students at Kansas State University were not as successful in bringing the same claim when their adviser, Ron Johnson, was removed.

Even in states where labor laws and tenure make adviser removals difficult, advisers say some schools are finding new ways to push them out of the way.

“I think school administrators are getting smarter about how to go after an adviser,” Hanrahan said. “It used to be just, ‘Let’s get rid of ‘em,’ and they’d leave a trail and it would lead back to an obvious content issue or something that could be established. Now they are very careful. They’ll look at little things, like does your distribution happen on time – things that your adviser may not even control.”

Although each adviser removal happens under different circumstances, Stablein said removing an experienced adviser is often a “backdoor” way to censor student newspapers.

“It is a form of censorship by saying we’re going to take away one of the important tools that you need,” Stablein said. “Long-term advisers have a lot of knowledge of the institution. Once you take somebody away from that, a new person doesn’t know that much at [that] point, so they would have to learn,” leaving the paper in a bind until the new adviser learns the ropes.

That’s exactly what Thompson suspects is happening at UT-Tyler.

“It was ingenious, really. They didn’t take the paper away, but there is no doubt in my mind they plan to hire an adviser who is less interested in freedom of the press and more interested in university propaganda,” she said. “I would imagine such a small program without a supportive adviser will essentially dissolve.”

And that can take a while, given that Missouri Southern, UT-Tyler and the College of DuPage have not yet found permanent replacement advisers.

“I have to have someone in place before school starts. It might be right before school starts, it might be that week, but there will be someone in place,” Moorman said. “The Chart has a long, long historical tradition of excellence and freedom of speech, and I expect that tradition to continue. I want it to continue.”

Although Golden had similar reassurances about the future of the Patriots Talon, Curry said she has doubts about administrator support for the student press at UT-Tyler and elsewhere. She said the experience left a bad taste in her mouth about teaching and journalism.

“I’m concerned, and maybe I’m just gun-shy right now, that there isn’t a place that would hire someone with my background knowing that I’m a strong believer in student press,” she said. “Some of these students that were editors and stuff are not coming back. One of them is seriously so despondent over this that she’s rethinking her whole career… and I’m not so sure I shouldn’t talk her out of journalism.” ■

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

**Appeals court extends Tinker to a college student’s online comments**

**MINNESOTA** -- The Minnesota Court of Appeals upheld the University of Minnesota’s punishment of a college student’s online, off-campus speech.

A student was disciplined for making statements on her Facebook page that the school found threatening, including references to the donor body she used in her mortuary science program.

The school concluded that she had violated the student conduct code. She was given a failing grade for the course and placed on academic probation, among other punishments. Her First Amendment lawsuit followed.

The court relied heavily on the *Tinker v. Des Moines* high school speech standard to find in favor of the university. The student will appeal to the state supreme court.

**2003 seizure of college editor’s computer ruled unconstitutional**

**COLORADO** -- A former college student’s Fourth Amendment rights were violated when police seized the computer he used to produce a satirical newsletter, a federal district court ruled in June.

In 2003, University of Northern Colorado professor J. Niels Peake told police student Thomas Mink defamed him in violation of criminal libel law. Deputy District Attorney Susan Knox signed a search warrant allowing police to seize the computer, though Mink was never charged. Mink sued, claiming his First and Fourth Amendment rights had been violated.

After eight years and multiple rounds of appeal, the court held that Knox should have known *The Howling Pig* was constitutionally protected speech, and thus should not have authorized the search.

Knox has filed an appeal of the decision.
When Avery Doninger, then a junior at Lewis S. Mills High School in Connecticut, thought her school was unfairly canceling a Battle of the Bands-style concert called Jamfest, she did what any 21st-century teenager would do: she spoke out, online.

“Jamfest is cancelled due to douchebags in the central office,” Doninger fumed in an April 24, 2007 post on LiveJournal.com. She encouraged readers who shared her outrage to “write something or call her [Superintendent Paula Schwartz] to piss her off more.”

Doninger was surprised by the reaction her post generated. “I just kind of vented,” she explained in a 2007 interview with the SPLC.

But her “venting” led to a high-profile freedom of expression ruling – one of a string of federal court decisions during the spring and summer of 2011 that have reshaped the legal landscape for students’ ability to publish online free from school control.

At least four federal appeals courts issued rulings during the first seven months of 2011 addressing the reach of school authority over students’ online speech.

In each of these cases, students published what they believed to be protected speech from an off-campus location. Every time, the students were punished by their school’s administration, arguing that the students’ speech substantially interfered with the educational process. A central issue in each case: Whether the Supreme Court’s 1969 Tinker ruling, which permitted schools to punish on-campus speech if it crosses the line of causing “substantial” disruption, can be applied to off-campus speech as well.

The battle being fought through these cases, and others like them, will set the standard for student expression rights in the digital age.

**Doninger v. Niehoff**

At a meeting on April 25, 2007, the day after Doninger wrote her LiveJournal post, principal Karissa Niehoff, Doninger and several other student council members negotiated a new date for the Jamfest concert. The students agreed to send a clarifying email to members of the public they’d contacted seeking to drum up calls and letters to the principal.
Doninger thought that would be the end of it. However, when she went to accept her nomination for class secretary (a post she had held for the previous three years), Niehoff confronted her with the blog post and asked her to withdraw from the race for senior class secretary. Doninger refused, and Niehoff took her name off the ballot.

At a school assembly designed to allow students to make student government campaign speeches, which Doninger was not permitted to speak at, several of her friends wore shirts emblazoned with “Team Avery.” Niehoff demanded the students remove the shirts while attending the assembly, and that Doninger (who had a similar shirt in her backpack but was not wearing it) refrain from putting the shirt on.

In the end, Doninger won the election anyway through write-in ballots, but Niehoff did not permit her to take the office, instead awarding the position to the candidate with the next highest number of votes.

Lauren Doninger, Avery Doninger’s mother, filed a lawsuit against the school district on her daughter’s behalf, arguing that punishing Avery for what she wrote online away from campus infringed on her daughter’s First Amendment rights. She also alleged that preventing students from wearing the “Team Avery” shirts violated the students’ First Amendment rights because the shirts were not disruptive.

“Because she'd done this at home on a home computer, it was just so outside the school's jurisdiction,” Lauren Doninger told the SPLC in 2007. “They should not be in the business of policing the Internet. That's not their job. They have a big enough job already.”

In an April 2011 ruling, however, the 2nd U.S. Circuit Court of Appeals found that the school district had been “objectively reasonable” in believing the blog post and shirts might cause a disturbance, granting administrators immunity from any damages. The court refused to decide what legal standard should apply to off-campus speech.

“We do not reach the question whether school officials violated Doninger’s First Amendment rights by preventing her from running for Senior Class Secretary. We see no need to decide this question,” the decision read, adding that any First Amendment protection had not been “clearly established” at the time of the punishment.

Perhaps most significantly for future cases, the court added: “it was reasonably foreseeable that Doninger’s post would reach school property and have disruptive consequences there.”

Layshock and J.S.

Doninger’s case tested online student expression within the confines of her own blog, but two Pennsylvania cases extended the online expression challenge to include social networking sites. Justin Layshock, then 17, created a fake MySpace profile ridiculing his school principal, Eric Trosch. Similarly, “J.S.,” then a 14-year-old middle school student, also created a mock profile for her principal, James McGonigle. Both were punished, and both sued their schools.

Layshock’s profile, created on his home computer in December 2005, ridiculed Trosch and included statements about sexual
habits and drug use. When Trosch’s daughter, then a student at the high school, brought the profile to his attention, he conducted an investigation of the profile and three similar profiles that had been created by other students.

When Trosch found out that Layshock had created one of the profiles, he called Layshock and his parents into a meeting. Layshock immediately went to Trosch and apologized, which Trosch later testified he found “respectful and sincere.” He went home, where he faced his disappointed parents and accepted his punishment of grounding and no computer use.

Less than a month later, Layshock discovered that the school district intended to punish him for a string of rule violations including disruption of school, harassment, “gross misbehavior,” and unauthorized use of a photo from the school website. He was sent to alternative school and told he would not be permitted to attend his high school graduation; the placement was later rescinded and replaced with a long suspension. Previously, Layshock had been an honors student, French tutor and a participant in the interscholastic Academic Games, according to court records.

Layshock’s parents filed suit for him against Hermitage School District and its administrators, claiming that the district violated Layshock’s First Amendment rights and that the district violated the parents’ Fourteenth Amendment rights by preventing them from disciplining their son as they saw fit.

The case of “J.S.” – who is referred to in court filings only by her initials because of her age – followed a similar pattern. In her mock profile, the “McGonigle” character bragged about being a pedophile and other deviant behavior. After the profile was brought to McGonigle’s attention, he called a meeting with J.S., her parents and the school guidance counselor, where she admitted to creating the profile with a friend.

McGonigle determined the girls had violated a school district policy prohibiting “false accusations against school staff members,” as well as the district’s computer use policy. J.S. was suspended for 10 days.

Her parents filed a suit, claiming that the school had unlawfully punished the middle-schooler based on non-disruptive, out-of-school conduct. They also claimed the school had infringed upon their right of parental autonomy, protected by the Fourteenth Amendment.

Both cases were eventually appealed to the 3rd U.S. Circuit Court of Appeals. Because of the similarities between the cases, the Third Circuit court was widely expected to rule the same way on both, though the cases were assigned to differing three-judge panels.

Instead, in February 2010, the two panels issued conflicting opinions. Due to the conflicting messages, the Third Circuit agreed to vacate those rulings and rehear the cases en banc, with all 14 judges taking part.

In June 2011, the full court sided with the students.

“[I]t would be an unseemly and dangerous precedent to allow the state, in the guise of school authorities, to reach into a child’s home and control his/her actions there to the same extent that it can control that child when he/she participates in school-sponsored activities,” wrote Chief Judge Theodore McKee in the unanimous Layshock decision, a sentiment echoed by the 8-6 majority in J.S.

However, the court also skirted the issue of whether or not Tinker should be the reigning standard for online, off-campus speech. Instead, the majority said that even if that standard applied, J.S. and Layshock’s speech was not disruptive to the school environment and could not be punished.

Five of the judges went further, arguing that Tinker should not apply to off-campus speech.

The court also appeared to be in broad agreement that the Supreme Court’s 1986 Bethel School District v. Fraser decision, which allows schools to punish “lewd” or “plainly offensive” speech on campus, should not apply to online speech.

Cyberbullying

A new breed of case is trickling in as well: suits by students punished for cyberbullying. The relevance of these cases may not be apparent at first glance, but student journalists could soon find themselves profoundly influenced by them.

The 4th U.S. Circuit Court of Appeals recently decided one such case, Kowalski v. Berkeley County Schools. Kara Kowalski, then a high school student, created a MySpace group called S.A.S.H., which she claims stood for “Students Against Slut’s Herpes.” However, the page quickly devolved into a group attacking one student, “Shay N.,” including an allegation that the group’s acronym stood for “Students Against Shay’s Herpes.”

Shay N.’s father brought the page to the school principal the next day and demanded that the school take action. The school determined that the MySpace page was a “hate website,” even though Kowalski had taken steps to remove the page the night before and maintained that it had been created as a forum to discuss STDs, not to attack anyone in particular. Kowalski was suspended for 10 days (a punishment later reduced to five), but she was barred from participating in extracurricular activities – including the cheerleading squad – for the rest of the year.

When the case went to court, the Fourth Circuit sided with the school, holding that Tinker applies to off-campus speech and that Kowalski’s page was disruptive enough for the school to punish her for it.

However, the court used language broader than any of the other circuits, indicating that Fraser and other, more-restrictive precedents could also extend off campus in future cases.

“To be sure, a court could determine that speech originating outside of the schoolhouse gate but directed at persons in school and received by and acted on by them was in fact in-school speech,” and punishable under the Supreme Court’s other student speech cases, wrote Judge Paul Niemeyer in the panel’s unanimous opinion.

Off-campus threats

Shortly after the Fourth Circuit decision came down in July, the 8th U.S. Court of Appeals issued a similarly restrictive ruling citing Tinker.

In D.J.M. v. Hannibal Public School District, a high school
student made statements to a classmate via instant message implying that he was thinking about shooting students at their school and then committing suicide. The messages were eventually forwarded to school officials, who determined the student’s actions constituted a threat and called the police. Following the arrest and psychiatric evaluation of “D.J.M.,” the school suspended him for ten days, and then extended the suspension to the remainder of the year. D.J.M sued, arguing that his off-campus speech did not disrupt school activities until the school called the police and his comments became public. The Eighth Circuit found that the statements were not only “true threats,” and thus not entitled to any First Amendment protection, but that the school would have been justified even if they did not meet that standard. Tinker applies to off-campus speech, the court held, and the threatening comments posed enough risk of disruption to be punishable at school.

What now?

These cases highlight the law’s struggle to stay caught up with evolving forms of media and the blurring lines between on- and off-campus.

“Generally, the law tries to apply bricks-and-mortar standards to the Internet,” explained David Hudson, a legal scholar and author at the First Amendment Center. “Sometimes it works, and arguably sometimes there are differences that may call for a modulation.”

The digital domain reaches farther and is more public than any other forum for communication in history, creating thorny questions about who is intended to see what, and when online events affect on-campus life.

“Before this new technology, I’m sure at some point in my life I got on the telephone and said some very unflattering things about a teacher. Now kids are posting it online, and some of them are getting in trouble,” Hudson said. “What’s at stake is the level of free speech rights they have on the Internet and how far school jurisdiction extends, and whether critical speech of school officials – if those students have the right to engage in that.”

Despite its potentially broader reach, Internet speech is no different than any other off-campus speech, said Vic Walczak, an attorney with the ACLU of Pennsylvania involved in the Layshock and J.S. cases.

“Legally there is no difference between on- and off-line speech,” he said. “I mean, practically, online speech can reach further than your more conventional modes of expression, but legally the protections are the same.”

However, it is proving more difficult for courts to discern where online speech “occurs” than it is with speech on paper. Hudson explained that although the number of cases is growing, courts have not yet developed a definitive standard for online student speech.

Most courts have used the Tinker standard to determine whether the online speech could cause a disruption at school, Hudson said. However, some courts have applied other precedents, such as the Fraser “lewdness” case – a potentially dangerous development, Hudson said.

“If the Fraser standard is applied more broadly, as some other courts have applied it, then anytime you get online and curse then arguably school officials have the ability to regulate that under the Fraser standard,” Hudson said.

Although the current state of online student expression is unclear, Walczak said he thinks emerging cases are helping to form a clear line between what kind of speech is punishable by schools.

“I think what the two Third Circuit cases stand for is that school officials have to have a very strong reason to justify any type of censorship over off-campus speech, and that simply being offended is not sufficient reason,” he said.

The stakes are high as the nation’s highest court is being asked to weigh in. The Supreme Court will decide in the coming months whether to hear one of these cases. Lawyers for both Avery Doninger and the Blue Mountain School District have asked the Court to take their respective cases.

Jon Schoenhorn, who represents Doninger, said that he petitioned for Supreme Court review because the Second Circuit’s ruling conflicts with the Third Circuit’s rulings in the Layshock and J.S. cases, setting up a split in the circuits. He believes the Supreme Court is more likely to take up the case because of potential confusion within the appeals courts.

“I just think the buzz has reached the level where I think it would be certainly possible for the Supreme Court to take the case, and then we’d have the ultimate guidance,” said Hudson. “In simple language, these are extremely important cases, arguably the most important student online speech cases that have been decided to date.”

2011 INTERNET SPEECH CASES

important new precedents to know

Layshock v. Hermitage Sch. Dist. (3rd Cir.)
J.S. v. Blue Mountain Sch. Dist. (3rd Cir.)

Schools could not punish students for fake profiles mocking their principals.

Doninger v. Niehoff (2nd Cir.)

Right to criticize school officials on a blog not ‘clearly established’ in 2007.

Kowalski v. Berkeley County Schools (4th Cir.)

School could punish student for MySpace group because Tinker applies off-campus.

D.J.M. v. Hannibal Pub. Sch. Dist. (8th Cir.)

Student’s off-campus instant messages a ‘true threat,’ punishable under Tinker.

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Journalists are quickly realizing that social media can end careers just as fast as it can break news. News anchors and print reporters alike have lost jobs for expressing political views and opinions on the Internet, and major news outlets have responded with new usage guidelines. The Associated Press established social media guidelines in June 2009, The Washington Post in September 2009 and NPR in October 2009. The regulations mimic each other on everything from requiring employees to identify themselves as members of their news organization to banning the sharing of internal business matters.

With tools allowing journalists and editors to favor the unconfirmed scoop over verified fact, organizations also had to set ethical boundaries. New policies instruct employees on how to conduct themselves on both personal and business accounts. Some of these social media policies came on the heels of employee missteps. For instance, the Post instituted its social media policy one day after editor Raju Narisetti tweeted commentary on news topics — like federal spending and a senator falling ill — despite his involvement with the paper’s news coverage.

Falling prey to the ubiquity of social media isn’t specific to journalists. The direct-message slip-up of Rep. Anthony Weiner exposed a slew of online flirtations that forced him to leave Congress after lying on national television.

The crippling effects of social media abuse also challenge student media outlets, and staffs across the country are slowly confronting the pitfalls of unprofessional social media use – with the added issue of student speech rights on campus.

Experts are discovering that the collegiate media has been fast to sign up and utilize social media, but rather slow to self-police. Many college newsrooms across the nation have set up social media accounts on Twitter, Facebook or both. However, Dan Reimold, professor at the University of Tampa and adviser to the student newspaper The Minaret, said much of the collegiate media hasn’t gone past the initial setup phase.

Reimold maintains the “College Media Matters” blog, where he spends time researching and mapping the national collegiate press. Reimold’s work allows him to track the pulse of America’s college papers and identify student press trends. When it comes to social media, he’s observed that some papers wholly embrace it while others maintain accounts on a more sporadic basis.

“

The student press has always been reactionary. The social media guidelines will come en masse when a lot of crazy stuff starts happening.”

LIVING SOCIAL

College newsrooms revisiting ethics policies for the Twitter generation

BY NICK DEAN
“The student press is still fully ensconced in social media 1.0 with very few exceptions,” he said. “A majority of college news outlets are simply establishing their social media presence or working on building up that presence beyond a few followers and fans and defining what they want their social media outlook to be.”

But as the impact of social media continues to grow, editors may need to put more focus on their own internal practices.

“However, I do think it is the time to start thinking about this because we are at the point now that you are seeing student media on Facebook or Twitter and it is not Spartan pages or low follower counts you are seeing,” Reimold said. “The next step is establishing guidelines for these types of things.”

**Getting out of hand**

Reimold said the college media is “reactionary” and a lack of clear usage guidelines means those guidelines are developed only after a major upheaval.

“The student press has always been reactionary. The social media guidelines will come en masse when a lot of crazy stuff starts happening,” he said.

The University of Northern Alabama campus paper *The Flor-Ala* worked through the summer to develop social media guidelines after a rocky year.

Rebecca Walker, coordinator of student publications at the university, worked with executive editor Lucy Berry to create new guidelines to encourage professionalism on social networks.

“We saw that students had a little bit of trouble separating their online identity from how we expect them to behave publicly. They shared opinions on things they were covering, used [foul] language and presented themselves unprofessionally online,” Walker said.

She said one student journalist used a mug shot taken for use in the paper for his Twitter account on which he conducted himself “poorly.”

Walker and Berry turned to professional news organizations for a starting point in writing guidelines tailored for the *Flor-Ala*.

The paper’s final guidelines will be student produced, student approved and instituted at the start of the academic year, Walker said.

“We are not just dropping the hammer on them. They are in conversations and we have been discussing representing yourself professionally and how employers will look at this and how [misuse] could hurt them,” Walker said.

**Maintaining freedom**

Walker said she has heard students express praise and disdain for social media regulation. She thinks students are wary of changes because use has been unrestricted for so long.

“Students have gotten so used to the environment online that they have not thought so much about an employer and it being regulated elsewhere,” Walker said. “We are actually trying to ask the students to be just as participatory in this as we are in writing a media policy that hopefully they would want to embrace.”

She said the paper’s policy will include a three-strikes system that will require staff members who violate the new guidelines to meet with the student publications board after three offenses.

“We are not going to just kick someone off, but continuous actions are going to have to be discussed,” Walker said.

Adam Goldstein, attorney advocate at the Student Press Law Center, said regulations that come from within student newspaper staffs are the best avenues to protect both students’ rights and the integrity of the paper.

“If the reporter that is covering student government is hanging out every weekend and partying with the executive board, the editorial board ought to be worried about that,” Goldstein said. “I think that it would be possible to create ethical standards that the editorial board adheres to and those could include how you use social media ethically.”

Policies that are enforced by state actors like journalism advisers or administrators, however, could infringe on students’ First Amendment rights at a public school.

**Clearly marked: Who’s who?**

When Jim Killam, adviser to *The Northern Star* at the University of Northern Illinois, and then-editor Lauren Stott began creating a social media policy for their staff, they had one group in mind: readers.

“There were a lot of questions coming up and Facebook is so pervasive that people were not drawing lines between work and personal information,” Killam said.

“There were people posting and saying anything on behalf of the newspaper and that was becoming a mess. We had to decide who had that power.”

There was aversion to the policy initially, though Stott said it was widely followed by staffers in its inaugural year.

“It is hard because we can’t tell someone that ‘you can’t do this or else you are fired.’ I think overall it creates a better environment and everyone should be conscious of those guidelines,” Stott said.

“No matter how honest we are, we have to also appear honest. That goes a long way.”

The paper adopted a social media policy in 2010 for its student journalists that details how personal accounts and the newspaper’s accounts are to be handled.

*The Northern Star*’s guidelines advise staff members to:

- Use the highest level of privacy allowed to keep unwanted visitors out of your page
- Do not behave online any differently than you would in another public forum.
- Do not express your support for political or other “polarizing issues.” This includes joining online groups in support of a cause or signifying a political affiliation in an Internet profile.

A disclaimer at the beginning advises students that while the policy is not mandatory, following the guidelines is strongly suggested.

*The Northern Star* cannot dictate how its employees use social media websites on their personal time. You have a First Amendment right to free expression,” the policy reads. “However, as an employee of a news media organization, you have some unique challenges. Like it or not, you represent the Northern Star at all times.”

Killam said three or four top editors have login information for the paper’s social media accounts. The protocol for sharing information is to always have content copyedited and fact checked prior to electronic publication.

Stott said any information surrounding campus crime or emergencies is double-checked with campus or local police prior
Mastering the tools

In 2004, then-Harvard student Mark Zuckerberg established Facebook. Valued at more than $2 billion in 2010, the site is a flagship of the Digital Age. The microblogging site Twitter was established soon after, in 2006, and now generates more than 200 million tweets a day, according to the company.

Media outlets have followed readers to these other social networks, and social media now toes the line between marketing and actual content production, creating a hybrid.

Many news outlets actively encourage their journalists to promote content on both personal and professional social media accounts. In April 2010, Facebook launched its Facebook for Journalists initiative to help professional journalists capitalize on the site’s potential.

From content-rich posts to personalized surveys, the new program allows users to set up “journalist pages.” Readers can “like” the page to stay up to date with a journalist’s work.

According to the Pew Research Center’s Internet & American Life project, 92 percent of Americans use multiple platforms to get their daily news — with the Internet surpassing print media as a primary source as of 2008 and trailing only television.

The center also found that 37 percent of Internet users have contributed to the creation of news, commented about it or disseminated it via postings on social media sites.

A reader is able to view, share and comment on a news organization or journalist’s content on social networks. These new capabilities have posed several dilemmas for news organizations as they try to engage with their audiences. Should a journalist comment back to an angry reader? Should a paper delete some comments that are offensive or crude?

“We are trying to figure out how to best interact with people on that level without overstepping our boundaries,” Stott said. “I think there is definitely potential. The phones can now go online and there is marketing potential there, and I am hopeful we can unlock that potential.”

Social media is a two-way street, extending the ability to engage with a news organization in the same way it allows journalists to reach out to readers.

Killam said The Northern Star uses the reach of its social media accounts to inform readers about pertinent information from multiple sources, not just its own site.

“It is thinking like a reader not like a loyal newspaper employee and it is a ‘Hey, this might affect you or impact you’ way to engage,” Killam said. “You should look at [sharing capabilities] more as a reader than a journalist sometimes. It is a friend-to-friend type of approach.”

The ability to share numerous chunks of content from multiple news sources is a blessing for student media in particular, Reimold said.

“I think the most interesting thing of all that is that the student media might be the most immune from that audience feeling overwhelmed in that if they do their job right they can be the principal media outlet for their readership base,” Stott said.

From Twitter’s retweets and embedded links to Facebook’s share button, social networking has an interconnectivity capability not seen in traditional print media.

“[Student journalists] think promotion has to be all wink-wink in-house ads. They don’t realize that the point of social media is share, share, share and to bring people in,” Reimold said. “Be a source where people can turn to for all the news they could want and they are going to keep turning to you.”

Problems across the country are emerging as public figures like politicians and news anchors are ousted for what they choose to make public using social media. Though the competition is heating up between news organizations to offer readers the most reader-friendly, cutting edge content possible, etiquette, ethics and propriety are not solidly defined.

As student news organizations confront ethical dilemmas, safety nets in the form of well-established guidelines that maintain students’ speech rights will be developed. Much like The Northern Star and The Flor-Ala, the student press is gradually creating guidelines to shore up ethical standards.

“I think that truly social media should be outlined as between the lines. It should not be looked at as a definitive reporting tool and I don’t think it should necessarily be looked at as only an add-on to the website,” Reimold said. “The lesson that we are all learning from how it is being used is that you can have 99 awesome tweets and it is the one tweet that is too vulgar that gets you in trouble.”
Even though money is tight on college campuses, that hasn’t stopped schools from continuing their “arms race” of building swanky dorms, athletic facilities and student centers to make themselves more appealing. According to construction industry estimates, U.S. colleges spent $14 billion putting up new buildings between 2004 and 2008. With that kind of money floating around, the temptation to cheat is powerful. It’s your job to sniff out wasteful construction spending and expose it.

Start by requesting every contract the college has with construction contractors and subcontractors on the building you’re examining. These will be voluminous and full of legal-ese that’s not usually helpful, but at least you’ll have the dollar amount, the completion deadline, and the company’s contact information. Colleges often will hire inspection companies to check the quality and timeliness of the work. That’s one more set of contracts to check.

On an ongoing construction project, ask to see the “change orders.” These are agreed-upon revisions to the original construction plan – and they often can add millions to the cost. Related to change orders are “repair directives” – you should ask for documentation not just on what repairs are being requested, but that the repairs actually get made. You’ll also want to ask for inspection reports and progress reports that document the quality and timeliness of the construction companies’ work. Some contractors even keep daily logs of unusual events.

When a building is finished, ask to see the “punch list” of last-minute fixes exchanged between the college and the builder. Punch lists can illuminate what work is behind schedule or was left undone, and how satisfied (or not) the college is with the builder’s progress.

Also remember that records may exist at the state Board of Regents (or Trustees) level, or even at a separate state agency that deals with government construction. Your state may have an executive-level construction management agency that oversees the upkeep of, and improvements to, state building – a source of expertise and documents.

In March 2011, The Los Angeles Times broke the story of how the L.A. Community College District (“LACCD”) squandered millions in construction money through incompetent management and insider deals. Using campaign disclosure reports, Times reporters documented heavy involvement by LACCD construction contractors in the campaigns of elected members of the District’s board of trustees. The series, “Billions to Spend,” prompted the resignation of at least one college administrator, and led to calls for greater oversight of LACCD’s spending, which is run by an elected board of local politicians.

Construction records can be a maze of jargon, both financial and architectural. If terms are confusing, don’t give up – get help. Top reporters often show their research to subject-matter experts (try a different college that’s unrelated to yours) to get an expert’s take. It’s also a great idea to have a sit-down in advance with the key administrators at your college who supervise construction. Get them to talk you through the customary way these projects work, what types of records they keep, and what names they use for the records.

Finally, be familiar with where the funding for the building is coming from. If it’s coming from a state legislative appropriation, then legislators will have an interest in seeing that the work is done on-budget and properly. If it’s funded wholly or partly by the federal government, then that’s another agency that may have documents, and another set of experts to interview.

Remember that at a public college, emails should be available as open records. Emails often will be more candid – and colorful – than official reports. At LACCD, Times investigators found an email from the district’s construction chief admitting that the quality of new campus buildings was “horrible.”
Open government advocates have their sights set on fundraising groups that have evaded public records laws for years despite being run by public employees and conducting the state’s business — university foundations.

These foundations, often called auxiliaries, raise funds for public universities through private donations. They are responsible for funneling millions of dollars into higher education for everything from scholarships to major campus renovations.

A common assumption is that because these foundations were established as private entities, their business is outside the scope of state public records law. However, as it became clear that these foundations take on large projects for universities and make decisions that directly affect publicly funded colleges, citizens and journalists began investigating the foundations’ operations and flexing their public information rights.

In California, these investigations revealed rampant corruption. At Sonoma State University, reporters from the Santa Rosa Press-Democrat used public records and inside sources to document a series of unusual personal loans that the Sonoma State University Academic Foundation made to one of its former board members and to clients of his finance company — loans that the borrowers were unable to fully repay when the economy hit the skids. The disclosures led to an investigation by the state attorney general.

That was only the start of California’s problems as investigations uncovered questionable handling of donor funds.

According to a California Attorney General audit, the president of Sacramento State University, Alexander Gonzales, spent more than $27,000 of the school’s foundation funds in 2007 to remodel his kitchen. The audit found that Gonzales also received more than $80,000 for housing expenses and a loan of more than $230,000 from the foundation.

California State Sen. Leland Yee has fought for three years to pass a bill that would specifically require university foundations to be held to public records law requirements.

Adam Keigwin, a spokesman for Yee, cited multiple cases of corruption within California’s auxiliaries as part of Yee’s motivation for the bill.

“First and foremost, almost all of these foundations and auxiliary organizations are fully administered by public employees and it is taxpayer dollars that are being used to facilitate these organizations and that means that we have a right to know how those funds are being spent,” Keigwin said. “They are there to serve the public universities. They are there for scholarships and other services. If they are being misappropriated that means there is less money for students.”

Yee authored two bills in years previous that passed the state Senate and Assembly but were vetoed by former Gov. Arnold Schwarzenegger.

In May, Yee struck a compromise with administrators of the state’s public higher education system, once major opponents of the bill.

Under the compromise, the legislation was amended to protect the anonymity of foundation donors except those donors or volunteers who receive “something from the university valued at over $2,500” or “a sole source (no-bid) contract within five years of the donation,” according to a press release from Yee.

“We have pretty much guaranteed ourselves a signature [from the governor],” Keigwin said. “For us, it was worth making that compromise.”

Pennsylvania courts weigh in

While California’s open government advocates found a savior in the legislature, transparency supporters elsewhere are taking other avenues to spark change.

Those in Pennsylvania used the courtroom.

David Loomis, a journalism professor at Indiana University of Pennsylvania, teaches news reporting courses after spending more than 25 years as a professional journalist. He gives his students the opportunity to publish stories on The HawkEye, an online site he created and edits.

Loomis said his intention for the HawkEye is to highlight investigative journalism centering on issues directly affecting IUP students.

When a former president announced major campus renovation plans, including a $280 million residential update and an $80 million meeting center, students involved with the HawkEye honed in on funding sources for the projects.

One of Loomis’ students expressed interest in how the university’s foundation, one of the major financial players in the campus overhaul, decided to take on such large plans.

On June 7, 2010, Loomis requested pledge amounts and minutes of meetings regarding the construction from the university’s auxiliary foundation.
What the university released, however, was little more than black bars stretched across pages and pages of foundation records. Loomis and one of his students went to inspect the released documents before deciding not to pay the $118 duplication fee associated with the documents because they felt information was wrongfully redacted.

“It was like a CIA document,” Loomis said. “We thought that would be a waste of money. The amount of money is not exorbitant and we can afford it. It just didn’t make sense to pay money for no information.”

Loomis and his pro bono attorney, Gayle Sproul, appealed to the state’s Office of Open Records arguing that Pennsylvania’s Right to Know Law required the release of more information than the foundation offered.

After investigating his claim, the OOR ruled in Loomis’ favor and ordered the university to release everything in the original request, except information that would reveal donor identities.

In response, the university appealed the decision to the state appeals court arguing that Loomis was not allowed to challenge the redactions because he failed to pay the $118 duplication fee.

The appeals court sided with the university, reversing the OOR decision and ruling that because Loomis never paid the duplication fee he had no right to the requested information.

In July 2011, Loomis requested the documents in an electronic format, hoping to reduce the reproduction cost. The university refused to release an electronic version of the documents and Loomis eventually paid the $118.

He is now discussing further legal action with his attorney.

In the same court that the Loomis case ended, a regional paper in Pennsylvania, The Pocono Record, won a two-year legal battle over records from East Stroudsburg University and its foundation. Sproul was the newspaper’s attorney in that case as well.

In February 2009 the paper filed a public records request for funding information from the East Stroudsburg University Foundation in connection with the paper’s investigation of an ESU official suspected of sexual and financial impropriety.

The foundation denied the Record’s request, arguing that the private foundation was exempt from the Right to Know Law. However, on May 24, 2010 a state appeals court sided with the Record, finding the foundation performed a “governmental function” and ordering it to release donor information and pledge amounts made to the ESU Science and Technology Center.

The court mandated the release of ESU Foundation board meeting minutes regarding fundraising and fund management, and donor files and contributions from five specific donors and one corporate donor.

The university then released a 187-page document that — in Sproul’s opinion — redacted too much information and was a “flagrant violation” of the law.

Unhappy with the information the paper received, Sproul wrote to ESU Public Information Officer Richard Staneski threatening legal action if more information was not released in compliance with the court’s order.

In May 2011, the university filed a motion for clarification, seeking to “determine what, if any error,” was made by ESU.

The university argued that the release of information about the six specific donors was impossible without actually identifying the donors.

On June 6 a state court judge ruled in favor of the newspaper, granting Sproul’s motion for the court to enforce the original ruling. All information that would reveal donors’ identities was withheld from release.

**Restraint without secrecy**

Frank LoMonte, executive director of the Student Press Law Center, said these foundations, though established as private entities, are still under the scope of public records laws because they perform “indispensable government functions.”

“We don’t want government agencies hiding functions from scrutiny by privatizing them,” LoMonte said. “If the foundation didn’t exist, the university would clearly have to use public resources to raise its own money.”

LoMonte said foundations can be transparent without revealing personal donor information.

“I think as much as anything, the reason for having the external entity raise money is for donor confidentiality purposes,” LoMonte said. “But what you are seeing is that it is possible to keep donor information private and still have a good level of transparency. Now, at least the public could know, broadly, how the money is being spent.”

Across the nation, the applicability of public records law hinges on the way each state views university foundations and the relationship between the foundation and the university. If a foundation works closely with a public university, its records are more attainable.

The level of transparency also depends on the particulars of each state’s public records law.

For instance, university foundations in Nevada are simply subjected to the same public records requirements as other government agencies, while foundations in Colorado are able to restrict identifying donor information and donation amounts.

Like California’s potential law, the Georgia Legislature passed a bill in 2005 making donor names non-public, unless the donors have sold goods or services to the university worth more than $10,000 within three years of making a donation.

Loomis, the journalism professor at IUP, said he saw newsworthiness in what his employer’s foundation was doing because cuts in public education spending by state governments are causing public schools to find funds elsewhere.

“I can see why these organizations were created. The legislatures in their wisdom decided to slash public support for higher education and that imposes tremendous burdens on undergraduates and it forces administrators out of the public spigot in search of private funding,” Loomis said.

“That tends to leave the impression that there is some evasion of public scrutiny. They don’t want us to know anything about it, but I think those are answers my students and I want.”
Avoiding crime scene confrontations
A photojournalist’s guide to recording police officers

BY CAITLIN VOGUS

Michael Felleter was a Penn State student journalist, on assignment photographing a post-football-victory celebration that turned into a riot, when State College, Pa., Police officers arrested him and charged him with two criminal offenses.1

Although Felleter ultimately was able to avoid prosecution on the charges of failure to disperse and disorderly conduct, the case hung over him for nearly a year until a judge dismissed the charges in July 2009.2

Felleter is just one of an alarming number of journalists who have faced threats, intimidation or arrest for photographing or videotaping the police.3 In April 2010, Ohio State University police detained and charged a photographer for The Lantern, alleging he got too close to the scene of a runaway cow on campus; the charges soon were dropped.4 And in California, a student photographer at Chaffey College was charged with two misdemeanor offenses for photographing the scene of a medical emergency on campus after police ordered him to leave.5 Police did not pursue the charges.

Whether involving student journalists, professional journalists, or just citizen bystanders, prosecutions of those who record law enforcement activity appear to be on the rise. And even if charges ultimately are dismissed, the embarrassment of a criminal arrest record and the intimidating effect of a threat of prosecution can chill journalists into shying away from crime scenes and disasters.

Student journalists who report on police activity must be aware of the legality or potential illegality of their actions when they seek to capture images and sounds of police in action. This article addresses the possible legal ramifications of photographing and videotaping police officers in public places.

Photographing police in public

The Supreme Court has recognized some First Amendment protection for newsgathering,6 although the dimensions of that protection are not precisely defined. Some lower federal courts have recognized a First Amendment right to photograph law enforcement officials or other matters of public interest, especially when there is a “communicative purpose” to the photography.7

However, even if there is a First Amendment right to photograph and videotape law enforcement officers, this right is not absolute and is subject to reasonable time, place, and manner restrictions.8 As a result, photography that is judged to interfere with police operations may be prohibited under state law.

For example, in many states, police can close accident and disaster scenes to the public, including members of the press.9 Although two states, California and Ohio, recognize a special right of access to accident and disaster scenes by the press,10 in the absence of such a statute, the press has no First Amendment right of access to crime or disaster scenes beyond that of the general public.11 As a result, states can criminalize trespassing upon closed accident, disaster, or crime scenes, and an individual’s failure to obey such closures may result in criminal prosecution. States may also enforce traffic laws against photographers who violate such laws while photographing an accident or disaster scene.

Moreover, state laws prohibiting disorderly conduct, failure to obey a police order, disturbing the peace, and other similar statutes can be used to prosecute photographers who interfere with police operations. For example, in State v. Lashinsky,12 the New Jersey Supreme Court upheld the conviction of a press photographer for disorderly conduct when the photographer took pictures of an accident scene on a highway, ignored a police officer’s repeated requests to leave the scene, and argued with a police officer.

The key factor to consider in determining whether a photographer has violated statutes prohibiting disorderly conduct, failure to obey police orders, and other similar state laws appears to be whether a court considers the police officer’s request in an individual case “reasonable.” In Lashinsky, the court held that the officer’s order to leave the scene was reasonable in light of the danger that a fire might break out, the need to clear the way for an ambulance and other emergency vehicles, the presence of personal property and valuables strewn about the scene, and the officer’s need to control the large crowd that had gathered at the accident.

However, in a comparable case in New Hampshire,13 a federal judge held that a police officer had violated a photographer’s First Amendment rights by arresting him for disturbing the peace after he obeyed instructions to move away from an accident scene, but continued photographing it from the second-story window of a nearby house. In the court’s view, the photographer had complied with all reasonable police instructions, and further limits on his ability to photograph the accident were unreasonable.

In addition to state laws against disorderly conduct and interference with law enforcement, state statutes prohibiting harassment and stalking have also been used to prosecute photographers who take pictures of police officers.14 These cases illustrate that while photographers generally have the right to photograph on-duty police officers in public, state law nevertheless prohibits tactics that amount to stalking and harassment.

In sum, although some courts have recognized that the First Amendment is applicable to photographing police officers or other matters of public interest, there is no absolute right to photograph police. Actions that constitute disorderly conduct, refusal to follow lawful police directives, harassment, stalking, trespassing, or other similar crimes may result in criminal prosecution.

Videotaping on-duty police in public

In addition to photographing police officers, student journalists may want to videotape law enforcement officials as they work. If videotaping or other recording of a police officer includes audio recording, you should consider whether your state’s wiretapping law prohibits your actions.

Wiretapping statutes prohibit recording conversations or communications, depending on whether some or all of the parties to the conversation consent. These laws do not apply to the images made when you record video; as a result, if you are filming with-
out recording sound, wiretapping laws are not applicable. However, your state’s wiretapping law may cover any audio recording you make by videotaping law enforcement officers. In general, there are a few factors to consider in determining whether your recording falls under bans on wiretapping.

One-party v. two-party consent

Wiretapping laws are generally classified as either one-party consent laws or two-party consent laws.

In states with one-party consent laws, as long as one party to the conversation consents to the recording, it does not violate the wiretapping statute to record the conversation, even if the other party does not consent to the recording (or does not even know the recording is being made). Therefore, in states with one-party consent laws, as long as you are a party to the conversation with a police officer, you can record the conversation without the officer’s consent. Most states have one-party consent wiretapping laws, and the federal wiretapping statute is a one-party consent law.15

In contrast, in states with two-party consent laws, all parties to the conversation must consent to the recording for it to be legal to record the conversation. (Despite the phrase “two-party consent,” this means that if there are more than two parties to the conversation, all parties must consent before you can record.) California, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania, and Washington are all two-party consent states.16

There are exceptions to the statutes in many states that allow the recording of conversations where no party consents (in one-party consent states) or where only one party consents (in two-party consent states). More specifically, courts in some two-party consent states have held that the wiretapping laws in those states do not apply to recordings of on-duty police officers.

Recording without consent

Of course, in the typical newsgathering scenario, the journalist is simply an observer to an interaction between police and members of the public, meaning that the journalist is not a party to the conversation. Even so, some state statutes still expressly allow for the recording of conversations taking place in public, even if no party gives consent.

For example, in several states, wiretapping laws apply only to electronic conversations and not face-to-face ones.17 In other states, there is no violation if the recording is done openly and not concealed.18

In a half-dozen states, wiretapping acts apply only to those not present at a conversation; as a result, if you are present at the conversation, you can record it regardless of the consent of any party. A few states require that the person doing the recording be visibly present, but others do not make that distinction.19

Finally, in some states, courts have interpreted certain actions by parties to conversations as implied consent to the recording of those conversations.20 For example, the Illinois Supreme Court has interpreted Illinois’ wiretapping act not to apply when the party being recorded knows he is being recorded and nonetheless continues his conversation, as such behavior suggests implied consent to the recording.21 In Washington, the wiretapping act specifies that consent to recording “shall be considered obtained” when one party announces to all the other parties that the conversation is about to be recorded.22

Exceptions for recording police officers

Even if you are operating in a two-party consent state and none of the general exceptions discussed above apply, it may be legal to record communications without the consent of all parties involved if the communication is not one intended to be private or confidential. Some state courts have relied on the requirement that a communication be private or confidential to hold that the state’s wiretapping act does not apply to the recording of on-duty police officers.

The legality of recording on-duty police officers has been recognized by at least some courts in Maryland, Pennsylvania, and Washington.

The legality of recording on-duty police officers is most clear in Washington state. The Supreme Court of Washington has repeatedly held that there is no expectation of privacy in a police officer’s remarks to a person stopped for a violation.23 Therefore, recording the encounter does not violate state law against intercepting conversations.

In Maryland, a court threw out criminal charges in September 2010 against a motorist who secretly recorded—a and then posted on YouTube both video and audio of a police officer’s conduct during a traffic stop. The judge decided that the Maryland wiretapping law did not apply, because the traffic stop took place “on a public highway in full view of the public,” and therefore “was not a private conversation as intended by the statute.”24

In Pennsylvania, a federal appeals court recently ruled that “secretly recording a police officer in the performance of his duties did not violate the [Pennsylvania] Wiretap Act.”25 This ruling appears to clarify the murky state of the law in Pennsylvania, which was muddied by a 1996 state-court ruling that motorists who secretly recorded a conversation with police during a traffic stop could be guilty of wiretapping.26

Unlike Maryland, Pennsylvania, and Washington, Massachusetts and Illinois have specified that their state wiretapping statutes prohibit recording on-duty police officers.

In Illinois, the state’s wiretapping statute prohibits the recording of a conversation without the consent of all parties, with conversation defined as “any oral communication between 2 or more persons regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation.”27 By defining “conversation” in this way, the Illinois legislature “extended the coverage of the eavesdropping statute to all conversations, regardless of whether they were intended to be private.”28 As a result, it is irrelevant if communications by on-duty police officers are not confidential or private; the Illinois wiretapping statute nevertheless prohibits the recording of such communications without the officer’s consent.

In Massachusetts, the wiretapping act provides no exception for recording on-duty police officers because of the non-confidential nature of their communications. In Commonwealth v. Hyde, the Supreme Judicial Court of Massachusetts upheld the conviction of a motorist who secretly recorded police officers during a routine traffic stop.29 In Hyde, a motorist secretly activated a hand-held tape recorder at the beginning of a traffic stop and recorded the entire encounter, which quickly turned hostile. When the motorist filed a complaint against the officers — using the recording as evidence — he was charged under the Massachusetts wiretapping statute for recording the officers without consent.

The Massachusetts Supreme Judicial Court upheld the wiretapping conviction, holding that the Massachusetts wiretapping statute “lists no exception for a private individual who secretly
records the oral communications of public officials.” Unlike other states, the Massachusetts wiretapping act contains no privacy or confidentiality requirement in its definition of “oral communication.” To the extent that these laws prohibit journalists from disclosing audio recordings regarding an issue of public significance that they have lawfully obtained (e.g., from a source in an investigation), they are probably unconstitutional. As this article illustrates, wiretapping laws and other state statutes can pose obstacles for student journalists who attempt to photograph or videotape police officers. While there is likely a First Amendment right to film and photograph on-duty law enforcement officials, this right can be limited by state laws on disorderly conduct, disturbing the peace, harassment, stalking, trespassing, wiretapping, and other criminal conduct. Knowledge of the precise contours of the law in your state equips you to assert your right to photograph and videotape police officers and thereby safeguard the public’s right to monitor law enforcement officials in their communities.

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Endnotes


7) See Smith v. Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000) (stating that plaintiffs “had a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct”); Iacobucci v. Boulter, 193 F.3d 14, 24 (1st Cir. 1999) (recognizing a constitutional right to videotape a public meeting); Fordyce v. Seattle, 55 F.3d 436, 439 (9th Cir. 1995) (recognizing a “First Amendment right to film matters of public interest”); Blackston v. Alabama, 30 F.3d 117, 120 (11th Cir. 1994) (recognizing a First Amendment interest in recording a public meeting); Ponvakacz v. Borough of W. Wildwood, 438 F. Supp. 2d 504, 513 n.14 (D.N.J. 2006) (holding that the First Amendment protects photographing a police officer in connection with a citizen’s political activism); Robinson v. Fetterman, 378 F. Supp. 2d 534, 541 (E.D. Pa. 2005) (stating that “there can be no doubt that the free speech clause of the Constitution protected [the plaintiff] as he videotaped the defendant[-police officer]”); Demarest v. Athol/Orange Comm. Television, Inc., 188 F. Supp. 2d 82, 94 (D. Mass. 2002) (stating that plaintiffs had a “constitutionally protected right to record matters of public interest”); see also Gilles v. Davis, 427 F.3d 197, 212, n.14 (3d Cir. 2005) (stating that “photography or videography that has a communicative or expressive purpose enjoys some First Amendment protection” and that “videotaping or photographing police in the performance of their duties on public property may be a protected activity”) (emphasis added); but see Kelly v. Borough of Carlisle, 622 F.3d 248, 262-63 (3d Cir. 2010) (finding that the right to videotape police officers was not clearly established in the context
of “inherently dangerous” traffic stops).

8) Smith, 212 F.3d at 1333.

9) See, e.g., N.Y. VEH. & TRAF. LAW § 1602 (Consol. 2011).


11) Branzburg, 408 U.S. at 684-85.


14) See, e.g., Gravolet v. Tassin, No. 08-3646, 2009 U.S. Dist. LEXIS 45876 (E.D. La. June 2, 2009) (throwing out photographer’s lawsuit against government officials challenging his arrest for stalking, because he appeared by following and filming a police officer to be attempting to intimidate the officer, who had previously arrested him on a drunk-driving charge); Robinson v. Fetterman, 378 F. Supp. 2d 534 (E.D. Pa. 2005) (describing harassment convictions – one of which was thrown out on appeal – of a photographer who repeatedly refused orders to stop filming officers who were conducting truck inspections along a highway).


18) See, e.g., Cal. Penal Code § 632(b) (Deering 2010) (defining “person” as covered by the act to “exclude an individual known by all parties to a confidential communication to be overheard or recording the communication”); Ga. Code Ann. § 16-11-62 (2011) (prohibiting “any person in a clandestine manner” from recording “the private conversation of another which shall originate in any private place”) (emphasis added); Mass. Gen. Laws ch 272, § 99 (2011) (defining “interception” as “to secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication . . .”) (emphasis added); Mont. Code. Ann. § 45-8-213(1)(c) (2010) (prohibiting recording “by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation”) (emphasis added); Nev. Rev. Stat. Ann. § 200.650 (LexisNexis 2011) (prohibiting “surreptitiously listening to, monitoring or recording, or attempting to listen to, monitor or record, by means of any mechanical, electronic or other listening device, any private conversation”) (emphasis added); Or. Rev. Stat. § 165.540(1)(c), (6)(a) (2009) (wiretapping law does not apply to persons who intercept oral communications with “an unenclosed recording device” at “public or semipublic meetings.”). However, student journalists in Georgia should note that a school may be considered a “private place” so that conversations recorded within a school building might fall within the statute. Atlanta Indep. Sch. Sys. v. S.F., No. 1-09-CV-2166-RWS, 2010 U.S. Dist. LEXIS 124152 at *10 (N.D. Ga. Nov. 23, 2010).

19) For examples of states requiring a visible presence, see COLO. REV. STAT. § 18-9-304(1) (2010); IOWA CODE § 727.8 (2011); see also State v. Reid, 394 N.W.2d 399, 405 (Iowa 1986). For examples of states that do not specify that the person doing the recording need be visible, see ARIZ. REV. STAT. § 13-3005(A)(2) (LexisNexis 2011); CONN. GEN. STAT. §§ 53a-187, -189 (2011); N.Y. PENAL LAW §§ 250.00, 250.05 (Consol. 2011); S.D. CODED. LAWS § 23A-35A-20 (2011). Similarly, the Maine wiretapping act applies only to those outside the range of normal unaided hearing to the conversation. Me. Rev. Stat. tit. 15, § 709 (2011).

20) But see State v. Selli, 582 So. 2d 1244, 1244 (Fl. Dist. App. 1991) (holding that mere suspicion or implied knowledge that one is being recorded does not automatically mean that the speaker has no reasonable expectation of privacy).


22) Wash. Rev. Code § 9.73.030(3) (2011). Note that the announcement must itself be recorded. Id.

23) Lewis v. Dept. of Licensing, 139 P.3d 1078, 1080 (Wash. 2006) (no reasonable expectation of privacy in a conversation with an undercover police officer when it “takes place at a meeting where one who attended could reveal what transpired to others”); State v. Bonilla, 598 P.2d 783 (Wash. App. 1979) (“It would strain reason for Bonilla to claim he expected his conversations with the police dispatcher to remain purely between the two of them.”); State v. Flora, 845 P.2d 1355, 1358 (Wash. App. 1992) (“Because the exchange [between a police officer and an arrestee during an arrest] was not private, its recording [by the arrestee] could not violate RCW 9.73.030 which applies to private conversations only”).


25) Commonwealth v. McIvor, 670 A.2d 697, 704, n.5 (Pa. Super. 1996). In McIvor, an appellate court of held that statements by motorists to a police officer during a traffic stop were “oral communications” covered by the Pennsylvania wiretapping act, as were statements from the police officer to the motorists. The reasoning in McIvor, however, was based on the expectation that the conversation would not be recorded, and not on the expectation that the conversation was “private.” This approach was discredited in Agnew v. Duper, 717 A.2d 519, 523 (Pa. 1998), and McIvor is likely no longer good law.


31) No. 10-1764


34) See Bartnicki v. Vopper, 532 U.S. 514 (2001); Jean v. Massachusetts State Police, 492 F.3d 24 (1st Cir. 2007).
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