Under the dome
In some state capitols, student journalists run the show

PAGE 18: Records show Texas universities often delay the release of public documents
The Student Press Law Center Report (ISSN 0160-3825), published three times each year by the SPLC, summarizes current cases and controversies involving the rights of the student press. The Report is researched, written and produced by journalism interns and SPLC staff.


EXECUTIVE DIRECTOR: Frank LoMonte 
ATTORNEY ADVOCATE: Adam Goldstein 
PUBLICATIONS FELLOW: Mark Keierleber 
JOURNALISM INTERNS: Michael Bragg, Anna Schiffbauer

Cover photograph by Frank LoMonte

CORPORATE BOARD OF DIRECTORS
Organizations for identification purposes only

Mark Stencel  
Author | Washington, D.C. (chairman) 

Kevin Corcoran  
Lumina Foundation | Indianapolis, Ind. 

Jane Eisner  
Editor, The Forward | New York, N.Y. 

Susan Enfield  
Highline Public Schools | Burien, Wash. 

Marie Groark  
Get Schooled, Inc. | Seattle, Wash. 

Sommer Ingram  
Georgetown University Law Center | Washington, D.C. 

Andrew Lih  
American University | Los Angeles, Calif. 

Ted McConnell  
Campaign for the Civic Mission of Schools | Washington, D.C. 

Laura Lee Prather  
Haynes and Boone LLP | Austin, Texas 

Geanne Rosenberg  
CUNY—Baruch College | New York, N.Y. 

Ernest Sotomayor  
Columbia University | New York, N.Y. 

Mary Stapp  
Educator | Washington, D.C. 

Matthew Pakula  
Tyson Foods, Inc. | Chicago, Ill. 

Nabiha Syed  
Levine Sullivan Koch & Schulz, LLP | New York, N.Y. 

Sherrese Smith  
Paul Hastings LLP | Washington, D.C.
As a high-school journalist, Barton Gellman got two educations in the First Amendment.

There was the education he received by studying federal court interpretations, starting with the Supreme Court’s guidepost, the 1969 Tinker case. Justice Abe Fortas’ declaration, that students are “persons under our Constitution” possessing fundamental rights their schools cannot take away, was uplifting: “We were liberated. We felt powerful.”

Then there was the education he received in Principal Carol Wacker’s office at Philadelphia’s George Washington High School. When the October 1977 edition of Gellman’s newspaper, The Town Crier, hit the hallways with a prominent article discussing abortion (“Pregnant Teens Face Painful Choices”), Principal Wacker wasn’t thinking big thoughts about the ideals of a democratic society. She was thinking, as she later explained, “I didn’t want the hassle.” Knowing (as told Gellman many years later) that she was about to violate the First Amendment, Wacker took away the editors’ newsroom keys and fired them, confiscated the newspapers and had them incinerated in the school furnace.

The furnace in which a 17-year-old muckraker’s resolve was hardened into steel.

Three Pulitzer Prizes and a best-selling biography later, Bart Gellman shared his formative brush with censorship as a featured speaker, alongside NPR radio host Audie Cornish, at the Student Press Law Center’s 40th anniversary banquet at the National Press Club. And although Gellman’s odyssey through the courts did not end with the flourish his teenage imagination envisioned – a judge belatedly found that the editors’ rights had been violated, but that it was too late to give them any redress – the experience did not dishearten him.

“I learned that it was a fight worth fighting, regardless of outcome. And in fact that even an outcome like this could fuel a whole career,” Gellman told the SPLC’s 220 guests.

“We don’t actually have to win every fight. We have to rise to them whenever the time comes. And we have to offer any light we can for our fellow citizens.”

Turning 40 is a time of introspection, a milepost at which people take stock and contemplate what they’ve accomplished and where they’re heading. Bart Gellman’s charge – to keep rising to the fight, even the ones you can’t win – is close to a religious conviction for the SPLC, “the little nonprofit that could.”

Coinciding with that milestone birthday, the SPLC returned to its roots in relocating our office to downtown Washington, D.C., after a decade in the Virginia suburbs. The move prompted a different type of introspection, as we reexamined decades worth of artifacts — can we interest you in a neon-orange 1980s-vintage desk chair? – and rediscovered a few buried treasures.

Among the most precious was a slender but powerful paperback, “Freedom of the High School Press,” authored by another future Pulitzer winner, Nicholas D. Kristof, newly graduated from Harvard in 1983. After surveying 385 public high schools across the country, Kristof reached a conclusion that, while three decades old, could easily have been written yesterday:

“Censorship is an institution in public high schools. This institution exists not just in the sense of principal excising articles and reprimanding editors, but also in the sense of the climate of intimidation and conformism that stifles creativity and critical analysis in high school newspapers.”

To illustrate just how far our education system has regressed toward treating student journalists and their readers as helpless infants, Kristof was advocating the position that Tinker is insufficiently protective of student press rights because it enables school authorities to censor speech that threatens to provoke disruption: “Freedom of expression would be pallid indeed,” he wrote, “if it applied only to ideas that are generally accepted, ideas that do not jar the listener.” Today, Tinker is recognized as the best protection for which student journalists can hope, one recognized only in a minority of jurisdictions that have forsaken reliance on Hazelwood School District v. Kuhlmeier.

As long as schools regard constitutional rights as a hassle to be dispensed with in the furnace, there will be a need for a strong and responsive SPLC, to fight the fights we all recognize are worth fighting.
FERPA Fact

FERPA Fact is an SPLC project to fact check the use of FERPA — the Family Educational Rights and Privacy Act — when denying access to public records. Sometimes, the records are legitimately protected by FERPA. Sometimes the records are protected by other privacy laws. And sometimes, schools just don’t want to release the records.

Four fraternity members at the University of Alabama were criminally charged after being accused of beating another student in the courtyard of a dormitory. And while university officials confirmed the identities of the accused students, they declined to release their fraternity affiliation.

The four accused students, who have all denied guilt in the attack, are members of a campus fraternity. The university is claiming that the name of the fraternity is protected under FERPA.

SPLC Executive Director Frank LoMonte:

It’s Sigma Alpha Epsilon, by the way. Just so’s not to bury the lede.

We know that because Sig Ep said so. Not because this TOP SECRET piece of CONFIDENTIAL information was shared by the crackerjack security team at the University of Alabama.

I mean, come on, it’s not like fraternities on the University of Alabama campus hang out huge banners publicly identifying themselves.

And come on, it’s not like the University posts photographs on official UA websites of dozens of identifiable people running around campus brazenly wearing their confidential Greek affiliation on their clothing!

And it’s not like the University of Alabama’s official FERPA directory information policy explicitly includes as non-confidential information that can lawfully be released to the public:

“Participation or membership in officially recognized activities, social or Greek organizations, and sports (or in intercollegiate athletic teams)”

Because if those things were true, why, the University of Alabama’s media-relations office would not just be lying about FERPA, but lying in an insultingly, transparently stupid way.

So whew, it’s a good thing those things aren’t true.

We rate this: Three Arne Duncans

Two expelled University of Houston students are suing the school and two administrators, claiming they were denied their right to due process during the institution’s 2012 investigation into the students in an alleged sexual assault case.

According to the lawsuit, the UH assistant vice chancellor and vice president did not inform one of the students that he was the target of the investigation, attempted to exclude the other student’s attorney from the interview and withheld evidence from the students’ attorneys. The students were expelled from UH in September 2012.

Although university officials said in a statement the administration is “committed to the enforcement of Title IX, the protections of due process and other legal rights of the parties involved,” they declined to comment further on the lawsuit, citing FERPA.

Attorney Advocate Adam Goldstein:

I go back and forth on whether I think this kind of excuse is only somewhat false or entirely false. Refusing to comment on a lawsuit because you might disclose the contents of education records is a bit like refusing to go to the bank because you might rob it: ordinary good judgment and self-control ought to be enough to avoid the outcome in question.

To put it another way, the existence of a law that can be violated only through a volitional act would not, in most cases, deter people of normal intelligence from engaging in lawful activities only tangentially related to the wrongdoing in question.

You have to wonder what other refusals these college administrators find reasonable . . .

“I’m not going to buy home insurance because arson is illegal.”

“I’m not going to drive a car because drag racing is illegal.”

Are these outcomes possible? Absolutely. Does the existence of these outcomes create a legal risk to the precedent activities? No. So . . .

We rate this: Three Arne Duncans
Despite increased interest in the technology, state public records laws could shield footage from the public.

BY MICHAEL BRAGG

The shooting death of an unarmed, black 18-year-old in Ferguson, Mo., last summer has brought national attention to police tactics, transparency and safety.

After former police officer Darren Wilson fatally shot Michael Brown in August 2014, differing eyewitness accounts accompanied with autopsy reports gave a muddied account of what happened in the St. Louis suburb. Even the grand jury decision in November, which did not indict Wilson for any charges in Brown’s death, failed to provide a precise account.

Multiple police shootings since Brown’s death helped prompt interest in arming officers with body-mounted cameras — technology some open government activists and President Obama argue could provide clarity in future incidents, protecting both the officers and the people they encounter.
Despite some resistance from police agencies, departments have increasingly embraced the technology in the wake of Brown’s death, including on college campuses like California State University, Fullerton, and the University of Kansas.

In its decision to mount surveillance cameras on university police officers, James Anguiano, captain of KU’s Public Safety Office, said officials “felt that body-mounted cameras would assist not only the officers, but would help the public in seeking incidents firsthand.”

“The feedback we do get on the street is positive feedback,” he said. “The students are glad to see officers wear the body cameras.”

In December, President Obama announced an initiative to invest $75 million over three years to purchase 50,000 body cameras for law enforcement officers, providing a 50-percent match to states and localities that purchase body cameras and storage.

Despite a promise of increased transparency in police activities, however, state public records laws may shield the footage from the public. Footage likely won’t be released if it is part of an ongoing investigation or if certain details, such as the identities of victims in sensitive situations, cannot be redacted.

How does it work?

TASER, a company that makes body-mounted cameras, has supplied cameras to more than 1,200 law enforcement agencies since 2009, said spokesman Steve Tuttle. These cameras have increased in popularity in the last few months, he said, but they have been used by police in the U.S. for a few years. They even peaked in sales before Brown was killed.

TASER cameras, Tuttle said, are always on in buffer mode, which constantly captures video without audio, deleting itself every 30 seconds. If the officers on duty were to respond to an incident, they would turn the cameras on — capturing the prior 30 seconds of recording and enabling audio.

All footage is uploaded to cloud-based website Evidence.com. Only administrators in each department have access to the footage, and access for certain people within the department is handled on a department-by-department basis.

A BrickHouse Security survey shows about 72 percent of people believe police officers should be required to wear body cameras.

In a 2014 report for the Department of Justice, Michael White, a professor of criminology at Arizona State University, reviewed evidence on body cameras and the experiences of police departments around the world. White found some major benefits to the devices, but he also outlined a few lingering unanswered questions and concerns.

The report found what seems to be a success in Rialto, Calif. Since 2012, all Rialto officers have worn body cameras. In the first year of the program, use of force by officers dropped 60 percent, and citizen complaints declined by 88 percent.

But if a reporter wanted access to the footage, they would have to submit a public records request to the law enforcement agency. Tuttle said the press would not be given access to Evidence.com.

Records may be exempt

In many states, law enforcement agencies are not required to release
“investigatory records” — records that may contain active leads or other information that could jeopardize an ongoing police investigation were it to become publicly known. Under Kansas’ public records law, records about ongoing criminal investigations or “confidential investigative techniques or procedures,” would not be released to the public, similar to the law in Washington, D.C.

Tuttle said footage could also be exempt from a records request because it has not cleared the department for a “myriad of reasons,” including privacy issues for victims captured in the footage, especially victims of sexual assault or domestic violence.

“Some of those things are a lot more sensitive and require different sets of rulings,” he said. “Now, there is a feature that allows redaction, but again that’s up to the agencies of whether they do that or not.”

At KU, all records requests go through the general counsel’s police department, Anguiano said. If the footage was part of an ongoing criminal investigation, release of the footage “would have to wait until that investigation was adjudicated.”

Anguiano said the police department has yet to receive a records requests for video footage from journalists since the practice at KU began in August 2014. They have received requests from lawyers for “prosecution or for defense purposes.”

In some instances, law enforcement agencies are given discretion on what body camera footage they release, with or without a records request, such as in Greensboro, N.C., where police released footage of a juvenile who held a knife to her chin and then threw the knife at one of the responding officers. Another incident in Laurel, Md., showed the events that led up to an officer tazing a woman, who ran from her car after driving drunk — away from the police — and then crashing it into a pole.

“They can do it once it’s been cleared by that department,” Tuttle said. “Some agencies have different protocols of how they release the videos.”

However, Jay Stanley, a senior policy analyst for the American Civil Liberties Union, wrote that police departments should establish retention rates, “measured in weeks not years,” to delete any footage that is not flagged in order to protect the privacy of citizens.

“Unredacted, unflagged recordings should not be publicly disclosed without consent of the subject,” Stanley wrote. “These are recordings where there is no indication of police misconduct or evidence of a crime, so the public oversight value is low.”

KU’s police department has a retention rate of 90 days for its records of video footage, Anguiano said. Footage involving criminal cases or traffic offenses an officer considers important could be held past the 90-day retention rate.

But even with the ACLU’s concerns over the privacy of subjects in video footage, body-mounted cameras have the potential to “serve as a check against the abuse of power by police officers,” Stanley wrote.

“Historically, there was no documentary evidence of most encounters between police officers and the public, and due to the volatile nature of those encounters, this often resulted in radically divergent accounts of incidents,” Stanley wrote.

“Cameras have the potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse.”

**Redacting records**

Washington, D.C.’s Metropolitan Police Department began a six-month trial period of the body cameras on Oct. 1. The half-year, $1 million program equipped more than 150 police officers with cameras attached to either shirts, collars or eyeglass frames.

The Reporters Committee for Freedom of the Press requested records for footage from the first two days of the program, which amounted to 128 videos total, said Katie Townsend, litigation director for the organization. Instead, the police department denied RCFP’s FOIA request for the footage.

“The denial we received for the MPD indicated that because they were unable to make redactions that they believed they needed to make to obscure or otherwise edit out exempt material, they were going to withhold all of the videos in their entirety,” Townsend said.

In an effort to cooperate with the with police, Townsend said RCFP asked for footage that didn’t include active investigations or arrests on a “rolling basis when it was no longer pertinent to the investigation or prosecution.”

“We tried to be cooperative, so we were certainly disappointed that we ended up being shut out entirely,” she said.

The RCFP has filed an administrative appeal with the police department in hopes that the mayor’s office will address their concerns with the denial.

“As we pointed out in our appeal, the purpose of using body cams is for transparency and accountability,” she said, “and so really honoring and abiding by your obligations under the D.C. FOIA and making these videos public furthers the entire purpose of the body cam program.”

---

**The feedback we do get on the street is positive feedback. The students are glad to see officers wear body cameras.**

James Anguiano, Captain of the Public Safety Office at the University of Kansas
When Jessica Boehm interviewed a state senator for Arizona State University’s Cronkite News for the first time, she worried about saying the wrong thing or asking a question she shouldn’t ask.

Researching bills and interviewing lawmakers weren’t tough tasks, she said, but “knowing you were talking to someone that wielded a lot of power and probably didn’t want to talk to you, that was really intimidating.”

Boehm reported on the state’s spending transparency, bills on a texting-and-driving ban and off-highway vehicle enforcement during Arizona’s 2013 legislative session for Cronkite News, a student-produced news organization with a wire service that serves about 30 print, broadcast and web outlets and a 30-minute nightly news broadcast for the local PBS station.

Boehm spent eight months co-writing a story for News21,
a special projects arm of the Cronkite School of Journalism, that compared Arizona and Connecticut’s gun legislation after shootings in both states — the 2011 Tucson, Az., shooting that killed six people and injured Arizona representative Gabrielle Giffords, and the 2012 Newtown, Conn., shooting at Sandy Hook Elementary School that killed 20 students and six teachers.

The Washington Post published the story in August 2014. She said it took most of the semester at the statehouse to get comfortable interviewing lawmakers, but after the experience she is now able to “ask what I need to ask and not need to sugarcoat anything.”

As the number of professional reporters in statehouses plummets, Boehm and hundreds of other student journalists across the country provide coverage of state legislatures and agencies to readers, listeners and viewers. In four states, student journalists outnumber journalists from professional outlets assigned to the statehouse full-time, where they ensure citizens have access to information about how the state spends their tax dollars and decisions on education, criminal justice and safety regulations.

Steve Elliott, director of digital news at Cronkite News, said citizens need to understand how elected officials spend public money so they can elect someone else the next election or contact the legislator to share their concerns about spending or about legislation.

“I do think it helps keep the lawmakers honest to know that somebody is watching on behalf of the public,” Elliott said.

In some states, students outnumber pros

A 2014 Pew Research Center study, “America’s Shifting Statehouse Press,” found that one in seven statehouse reporters are students. Media outlets employ 223 students – mostly temporary or part-time – and 97 students work for newspapers, television, radio or a wire service. The other 126 students work for nonprofits, student newspapers or other organizations.

The report showed a 35 percent decrease across the nation’s statehouse reporters between 2003 and 2014. Amy Mitchell, director of journalism research at Pew Research Center, said smaller budgets and staffs caused most of that drop.

In statehouses in Missouri, Nevada, Kansas and Arizona, student journalists outnumber full-time reporters.

“Students now make up a significant portion of the reporting pool — 14 percent of the total and 26 percent of part time,” Mitchell said.

Pew Research found 51 students covered Missouri’s capitol in Jefferson City, 36 more than full-time reporters, and in Carson City, Nev., 12 students covered the statehouse compared to the six full-time reporters. Sixteen students reported from the Arizona statehouse, three more than full-time reporters at the Phoenix capitol. Eleven students worked at the statehouse in Topeka, Kan., three more than full-time reporters.

The study used the American Journalism Review’s studies of statehouse reporters and compared the results to the 2014 data gathered through questionnaires and interviews with outlets that previously covered the capitol, press secretaries and legislative staff. Mitchell said the AJR studies did not track students covering statehouses, so 2014 is the first year for which data on students is available.

Students who cover state government for their school’s student media are not counted in the Pew Research Center study, but college newspapers cover state politics and elections for the campus. During election years, Arizona State University’s student paper The State Press has more state government coverage than in non-election years with stories on candidate debates, politicians’ campaign visits to campus and candidate information on state representative and senator candidates, said Shelby Slade, the paper’s news editor.

The State Press reports on more than elections, but Slade said they cover the issues most relevant to students, such as bills about state funding for higher education, immigration reform, marijuana legalization. They also reported former governor Jan Brewer’s 2014 state of the state address when she asked the Arizona Board of Regents to stabilize tuition at state universities. When politicians talk about or take action that will affect the cost of attending college, Slade said the news staff covers the topic because it affects students’ finances.

Doug Anstaett, executive director of the Kansas Press Association, said there is a “glaring need” for neutral journalism that covers all sides of an issue without a slant favoring one side.

“They said it wasn’t, but it was because of our story. They changed the rules because of our story.”

Steve Elliott, Director of Digital News, Cronkite News

“...”

“The more reporters we have over there with pens and notebooks, the better off we are,” Anstaett said. “If we don’t have independent journalists covering these events, covering the hearings and the controversies that arise, citizens aren’t prepared to participate in their government.”

Learning curve

Because of the increased student presence, Mitchell said there is a “loss in institutional knowledge that exists among those that are doing statehouse reporting now.”
At Cronkite News, Elliott said he spends much of his time helping the student reporters understand the context behind bills, lawmakers and politicians.

Cronkite News has four to eight students covering the statehouse each day during the semester. At the beginning of the semester, Elliott shows them how to read a bill and goes over old bills related to their story. Elliott said he suggests stories in the beginning of the semester and guides students toward bills Cronkite News has covered so there is archived background, or toward lawmakers who have been sources for past stories.

Founded in 1972, the Missouri Digital News statehouse reporting program at the University of Missouri journalism school sends students to cover the legislative session. Phill Brooks, director of MDN and a journalism professor at the university, said about 24 students work twice a week at the Capitol each semester and provide content to the state press association newspapers, local CBS radio affiliate and public radio stations.

Steven Anthony, a senior broadcast journalism major who has worked three semesters at MDN, covered taxes, ethics reform, right-to-work and abortion legislation. When he filled in for an education reporter during a House of Representatives debate on a bill that would have restricted students from leaving unaccredited school districts, he said he relied on Brooks for context on the issue and to understand the differences between the Senate and House bills.

Anthony said the “nature of the issue and the complexities of the issue” made the story difficult because he wanted to cover the amendments and their significance.

When Brooks isn't available to answer questions about background, Anthony said he asks professional reporters at the capitol.

“They’re very helpful, so I’m very appreciative of that because there are some issues that I have no clue what I’m doing,” Brooks said.

Brooks, who began covering the Missouri statehouse in 1972, said it’s more difficult to get information out of agencies and politicians than in the past, and it bothers him that future statehouse reporters won’t understand what open government should look like.

Tim Carpenter, statehouse bureau chief for the *Topeka Capitol-Journal*, who has covered the Kansas legislature full time for the last decade, said KU Wire students he's worked
with have to produce at a faster pace than they do at a college paper.

Students have trouble “absorbing the information, consolidating and writing quickly” when they come to the statehouse and they’re covering different topics. He helps fill in the gaps for students, easing them out of the “learning laboratory” of the student newspaper and into a higher-visibility reporting job.

Lesley Wiedenbener, executive editor of Franklin College’s TheStatehouseFile.com in Indiana, said her students work with the professional reporters from print and broadcast outlets at the statehouse. Students at TheStatehouseFile.com produce stories for about 12 newspapers, news websites and television and radio stations in a month-long January term class, a requirement for all journalism students starting in spring 2015, Weidenbener said.

Students in the University of Kansas’ statehouse reporting program, called the KU Wire, produce stories for more than 230 papers in the Kansas Press Association that will have access to the wire’s content in the 2015 session, said Scott Reinardy, associate professor of journalism and director of the KU Wire.

Reinardy said he helps students — about 10 each semester — on their first story. He attends a committee with them and explains where they should pick up documents, describes the key lawmakers for the bill and suggests lawmakers who would be the best sources. He encourages students to choose a beat for the semester so they can focus on one issue, like education or taxes, and become familiar with the legislators and committees on that topic. Students working at the statehouse learn how to navigate ideologies and bureaucracy in addition to researching bills, he said.

“If you can cover a statehouse, you can cover anything,” Reinardy said. “It carries gravitas and weight with anybody looking to recruit young people out of college.”

Serving as government watchdogs

Despite the number of Franklin College students working at the statehouse
during the class, they don’t have protections that reporters with professional outlets have. Indiana and six other states — Delaware, Florida, Louisiana, Nevada, New York and Texas — exclude unpaid student journalists from protection against a subpoena to reveal a source under its reporter’s privilege law.

Mark Goodman, journalism professor at Kent State University and Knight Chair in Scholastic Journalism and former SPLC executive director, said if students need to rely on an anonymous source to report on wrongdoing in the statehouse, a lack of protection for the student journalist could result in the source being unwilling to talk.

“If they couldn’t assure their source that ‘yes, I will and I’m legally entitled to protect your identity,’ chances are that source won’t give them that information,” Goodman said.

Overcoming any setbacks that student journalists often face when reporting on state government, their work has proven to prompt meaningful change, often diving into issues larger outlets, like The Associated Press, don’t touch.

“It’s important to have a fleet of reporters there covering the nitty-gritty and the big picture stuff,” Elliott, of Cronkite News, said. “There’s certain bills we’ve covered that, because we’ve covered them, they’ve got more of an airing than they would have otherwise.”

In 2012 Arizona lawmakers passed a bill requiring children ages 5 to 8 and shorter than 4 feet 9 inches to use a booster seat. Previously, Arizona was the only state that didn’t follow the National Transportation Safety Board’s recommendations on booster seat laws — even though similar legislation had been introduced for several years.

“One of the reasons that got through was every single session Cronkite News would go in and cover it,” Elliott said.

In 2010 the news service published an article about political candidates using public campaign money to buy iPads and computers. Candidates were allowed to keep fixed assets like computers and printers that cost more than $800, but in 2011 Arizona’s Clean Elections Commission, which governs the taxpayer-funded finance program for candidates, changed the regulation to require candidates to buy assets worth more than $200 at 50 percent of the original cost.

“They said it wasn’t, but it was because of our story,” Elliott said. “They changed the rules because of our story.”

When reporters don’t watch state government, Elliott said, legislators can pass “sweetheart deals,” bills that favor one group over another, or unconstitutional laws, like a North Carolina law that attaches jail time and fines to students who post negative comments about school employees online.

AJ Vicens, who is now a reporter at Mother Jones in San Francisco, covered voter registration, early voting and immigration for Cronkite News in 2012 and 2013, where he learned to do clear, clean reporting on “real stories that have real impact,” adding that he learned more working in the field at Cronkite than in the classroom.

“You definitely need to be doing,” Vicens said. “You need to make mistakes. You’d rather take your lumps in school than when you get out into the real world.”

**Law of the Student Press, the essential reference tool for any classroom, newsroom or studio where journalists are being trained.**

Now available on Kindle for $9.99 at Amazon.com or at splc.org/page/store.

In layman’s language, it explains how to use the law to safely gather and share information, how to defend against threats to press freedom, and how to stay on the right side of copyright, libel and privacy law.
Women run the show at student media outlets nationwide. A Student Press Law Center initiative strives to promote their success.

BY ANNA SCHIFFBAUER

When Gillian McGoldrick and other student editors at The Playwickian banned the publication of a word they found offensive — their school’s mascot — she didn’t think she’d be suspended.

Tanvi Kumar observed students in her Wisconsin high school often joked casually about rape. When she wrote about the issue — from the perspective of sexual assault victims — she, too, was punished. Her principal instituted a new prior review policy for the student publications at the school because, he said, her story made the school look bad.

Madeline Halpert and Eva Rosenfeld — co-editors-in-chief of their Community High School newspaper The Communicator — wanted to tell stories of students who had mental illness and addiction, but the school’s dean told them they weren’t allowed to publish the stories of Community students.

Instead of giving up, Halpert and Rosenfeld wrote an op-ed for The New York Times that talked about their own experiences with depression and the school’s unwillingness to print the stories. Halpert and Rosenfeld’s stories about mental illness — both their own depression and other Community students’ stories — appear in The Times, NPR’s Weekend Edition and The Huffington Post.

McGoldrick and Kumar didn’t give up, either.

On Oct. 16 the Student Press Law Center celebrated its 40th anniversary at the National Press Club in Washington, D.C. Since Pulitzer Prize-winning journalist Jack Nelson published Captive Voices in 1974, the SPLC has fought censorship in student publications and violations of students’ free speech rights.

And in that time, SPLC Executive Director Frank LoMonte said the non-profit organization has noticed a trend: girls most often stand up and report on serious issues within their schools and communities. They’re also the first to be shut down.

Nabiha Syed, a media attorney for Levine Sullivan Koch & Schulz, LLP, and a member of SPLC’s Board of Directors, introduced Active Voice, an SPLC project that aims to help young women who face challenges in speaking out. Along with providing content on cyberbullying and online speech, Syed said she hopes the project will empower women in journalism to act as mentors and to share their stories of censorship and self-censorship.

Syed said the project will feature a summit of advocates, students and academics to identify specific problems and develop a strategy to address them, research issues the summit identifies and develop a web outreach program for resources and mentorship.

“There’s something happening here on a social level that we want to examine and we also want to be positioned to equip young women to deal with everything that happens that comes with speaking out,” Syed said, “whether it is backlash online or censorship from your principals or other authority figures.”

**Women in student media**

During the 2013-14 Tinker Tour, a nationwide tour featuring
First Amendment advocate Mary Beth Tinker, young women frequently thanked her for fighting for student free speech rights, often sharing their own stories of censorship and retaliation from authorities.

Tinker was suspended when she wore a black armband to school in protest of the war in Vietnam and took her case to the Supreme Court in the 1969 case *Tinker v. Des Moines Independent Community School District*, which defined students’ Constitutional rights to free speech in U.S. public schools.

Student experiences on the Tinker Tour, the backlash women, such as Anita Sarkeesian in the GamerGate controversy, often experience for speaking out online and the ouster of Jill Abramson as *The New York Times* executive editor prompted the Active Voice project, Syed said.

When Abramson was dismissed as executive editor in May, three of the largest 25 newspapers in the U.S. by circulation had a woman as top editor, compared to seven in 2004, according to a Nieman Reports masthead survey.

Although data on how many young women lead their high school and college media organizations isn’t available, LoMonte said young women “dominate high school journalism, particularly in the highest levels of management.” Girls made up 75 percent of the crowds at Tinker Tour speeches at high schools around the country, LoMonte said, and there were sometimes when all editors — sometimes up to 10 on 12 on the paper — were girls.

The American Society of News Editors’ 2014 census of newspaper employees reported women make up 35.4 percent of newspaper supervisors, up from 33.8 percent in 1999. Women made up 20.4 percent of television general managers and 18.1 percent of radio general managers in 2013, according to the Radio Television Digital News Association’s 2014 survey of the industry’s workforce.

Women hold more of the journalism and mass communication degrees but fewer of the supervisor positions. A study from the University of Georgia Grady School of Journalism and Mass Communication found women have earned at least 59.2 percent of journalism and mass communication each year since 1988. The study reported women received 63.6 percent of bachelor’s
degrees granted, 69.3 percent of masters degrees and 58.7 percent of doctorates in 2013.

**Reporting on ‘sensitive social issues’**

Schools often censor stories about mental illness, racism, contraception and rape culture. Stories about homosexuality are “probably the single greatest magnet for censorship” in student media, LoMonte said.

“I think there’s no doubt that young women are bearing the disproportionate brunt of censorship because they are the ones that want to write about sensitive social issues,” he said.

LoMonte described one instance when administrators at an Arkansas high school pulled a yearbook profile of a gay student who came out the prior year, citing concerns students would bully him. Hannah Bruner, who was assistant editor of the Yellowjacket yearbook at Sheridan High School, wrote the profile for the 2013-2014 yearbook, and the student profiled wasn’t worried about repercussions because his classmates already knew.

“Girls are more likely to identify with the underdog and with the marginalized minority, and they want to give those students a voice,” LoMonte said. “Oftentimes the schools are on the side of marginalization.”

At SPLC’s anniversary dinner, Audie Cornish, co-host of NPR’s All Things Considered, had a panel discussion with McGoldrick, *The Playwickian* editor, and Kumar, the Wisconsin student punished for writing about rape jokes.

McGoldrick, co-editor-in-chief of Neshaminy High School’s student newspaper *The Playwickian* in Pennsylvania, described the school’s opposition to a 14-7 *Playwickian* editorial board vote in October 2013 to ban the word “Redskins,” their school mascot, from the paper.

“We didn’t ask for the name to be changed,” McGoldrick told Cornish. “We just said we’re not going to publish it.” Students who ripped up and threatened to burn copies of *The Playwickian* didn’t realize “we have the right to do this and we’re allowed to oppose the term,” she said.

Neshaminy High School Principal Rob McGee told *The Playwickian* adviser Tara Huber the staff must print the word in letters to the editor and accept advertisements with the word. In June 2014 the staff decided to pull a letter to the editor that used the word after McGee said they had to print the word in full or the paper wouldn’t go to press.

In response, the Neshaminy Board of School Directors implemented a 10-day prior review policy.

In September 2014, Huber was suspended for two days without pay. McGoldrick was suspended for a month as an editor at the paper. More than $1,000 was deducted from the paper’s budget to cover printing costs for the unapproved issue.

McGoldrick said she understands the importance of “having a social conscience to be able to ask questions about what’s going on around me” after more than a year of fighting with the school district.

“I’ve learned that I not only have a voice, but all of the other students can have a voice, which is amazing and something that’s not being taken advantage of,” McGoldrick said.

Kumar, now a freshman at George Washington University in Washington, D.C., spoke about the story she wrote on rape culture at Fond du Lac High School for the February 2014 issue of Cardinal Columns.

For the story, Kumar conducted a survey that found 80 percent of students had heard a joke about rape in the last month and 30 percent believed a woman was somewhat responsible for being sexually assaulted if she had been drinking or wore revealing clothing.

Although the article prompted classroom discussion — and a teacher even talked about her own sexual assault with Kumar — former Fond du Lac High School Principal Jon Wiltzius instituted a prior review policy in March because he said “The Rape Joke” and another article on students’ rights to remain seated during the Pledge of Allegiance were explicit and inappropriate for high school students. Kumar said Wiltzius told the journalism class that her article on rape culture made the school look bad in the community.

“Of course it does,” Kumar told Cornish. “That’s kind of the point.”

In August the Fond du Lac Board of Education reversed the prior review policy.

Kumar said the experience “reiterated the fact that there definitely needs to be a divide between those in charge and the press” because journalism isn’t about “propaganda, it’s about telling the truth.”

During a Journalism Educators Association conference panel discussion in November, Syed moderated McGoldrick, Kumar, Tinker, Madeline Halpert and Eva Rosenfeld as they discussed experiences with censorship.

Halpert and Rosenfeld, co-editors-in-chief of their Community High School newspaper *The Communicator*, spoke about their experience writing an op-ed for *The New York Times* after the school’s dean said they could not publish stories about students with mental illness, addiction and homelessness. Halpert and Rosenfeld, then managing editors, said they wanted to produce a mental health-themed issue to reduce the stigma associated with mental illness.

“We wanted people to know it was okay to have a mental illness, and it’s okay to talk about it,” Halpert said.

*The Communicator* staff interviewed students, who agreed to let the paper use their names and whose parents signed consent forms, but the Community High School’s dean said they could not publish the students’ stories and suggested a profile of a University of Michigan football player who had talked about his depression. The managing editors said publishing a college student’s story instead of the Community High students’ stories would reinforce the message that there is shame in
In the February 2014 issue of the Cardinal Columns, Tanvi Kumar, who was the editor-in-chief at the time, wrote a story about three female students who were sexually assaulted — and changed the students’ names to protect their confidentiality. As a result, a prior review policy was implemented. Cardinal Columns

talking about mental illness.

Halpert and Rosenfeld wrote an editorial and submitted it to The New York Times, Yahoo! News and Slate, and The Times published “Depressed, but Not Ashamed” in May 2014.

“It ultimately got a lot more people talking about this issue than just publishing it in our school newspaper would have, so it was a really effective way to get the message out,” Rosenfeld said.

Halpert said students can cover issues deeper than football games and homecoming if they get the chance.

“Before, just writing for my school newspaper, I never really understood that what I write can affect people and situations,” Halpert said. “I never really understood that I have a lot of power as a journalist, and all journalists have a lot of power with the words they write.”

Incubation of ideas

The SPLC isn’t the only organization that recognizes the need for personal and professional resources for girls and women in media.

Although possibilities for partnerships do exist, Syed said Active Voice fills a need for young female journalists that other organizations, such as Amy Poehler’s “Smart Girls at the Party “and the Online News Association-Poynter Institute’s Leadership Academy for Women in Digital Media, don’t address.

Smart Girls aims to build girls’ self confidence and curiosity through community service and online projects, but isn’t focused on journalism. The Leadership Academy, a four-day conference to increase support for women and increase women in leadership positions in media, doesn’t address the needs of young women who do not yet work full-time in the industry.

Syed said Active Voice is in an “active incubation” phase of preparing to identify problems young women face in journalism before researching the issues and developing tools to help.

“The worst thing would be to create solutions to questions and problems that people don’t have,” Syed said. “We want to make sure it’s actually responsive.”

Syed said Active Voice’s goal is to provide young women with resources to handle retaliation or online threats and help others to speak out for what they believe like McGoldrick, Kumar, Halpert and Rosenfeld.

“The job of a journalist is to speak truth to power,” McGoldrick said, “and I’m so lucky to now be able to do that and have found my voice to speak the truth.”

At the Student Press Law Center’s 40th Anniversary Event, Neshaminy High School student Gillian McGoldrick talks about her experiences with administrative censorship. Photo courtesy of Jay Mallin
On Oct. 16, the Student Press Law Center celebrated its 40th anniversary at the National Press Club in Washington, D.C., commemorating 40 years of free legal aid to high school journalists, college journalists and educators everywhere.

The event could not have been possible without the following sponsors:

- Wilmer Cutler Pickering Hale and Dorr LLP
- *The Washington Post*
- Yellow Chair Foundation
- Davis Wright Tremaine LLP
- *Education Week*
- Hearst Corporation
- Hunton & Williams LLP
- Levine Sullivan Koch & Schulz, LLP
- Lumina Foundation
- Robert R. McCormick Foundation
- POLITICO
- Sutherland
- Viacom
- Western Association of University Publishing Managers
- Zester Media

Visit splc.org for additional pictures and videos from the event.
Yang Wang knew a delay could jeopardize her story. So when she sent a public records request to the University of Houston, she used a strategy she learned from her mentors.

“I want to stress that I’m not seeking any records that are prohibited from release either by statute or previous rulings by the Texas Attorney General or the courts,” Wang, a reporter and data specialist at The Houston Chronicle, wrote in her request to the university. “Please let me know if clarifying the request might speed the release of the data, reduce any programming time and, most important, avoid a referral to the Attorney General.”

If the university forwarded her request to the Texas Attorney General’s Office, she knew she wouldn’t see the requested documents for at least a few months.

Access delayed

Despite process to ensure government transparency, records show state’s public records law allows universities to hold up the process.

BY MARK KEIERLEBER
Lydia Coutré contributed to this report
The public information law in Texas requires state agencies—like public universities—to seek an opinion from the attorney general before withholding requested information. A Student Press Law Center investigation found these universities often use this provision in the law to delay the release of information the public should be allowed to see.

Texas law starts with the assumption that a requestor is owed records within 10 days. But asking the attorney general for an opinion stops the clock and can push the agency’s response time back by a month-and-a-half—which makes the process vulnerable to manipulation by an agency seeking to run out the clock on a deadline-sensitive request.

In an industry where “time is everything,” Wang said delays could be used as a “weapon.”

One in three

In 2013, Texas A&M University, the state’s largest public university by enrollment, sought to withhold information in 125 separate records requests, according to documents the SPLC obtained from the Texas Attorney General’s Office through a public records request. For this investigation, the SPLC also obtained documents from the state’s eight largest public universities, based on total enrollment.

In 73 of Texas A&M’s 125 requests to withhold information, officials in the Attorney General’s Office agreed: the requested documents did contain information state law says may be withheld from the public. Information exempt from disclosure ranged from police reports in active criminal investigations to a third parties’ proprietary information to administrators’ emails.

The office of then-Texas Attorney General Greg Abbott ordered university officials to release all requested information in 10 instances. But in 39, or 31 percent, of requests, Abbott’s staff never got a chance to reach a decision before university officials withdrew the requests.

On average, Texas A&M officials withdrew their requests with the attorney general 20 business days after the requestor asked for documents. In four instances, a request for an attorney general ruling was withdrawn because the requestor was no longer interested in the documents.

“There tends to be too much leaning toward secrecy at universities and university systems.”

Kelley Shannon, Executive Director, Freedom of Information Foundation of Texas

A spreadsheet from Texas A&M shows the university received 888 information requests in 2013.

Though they received fewer records requests and sought fewer attorney general opinions, withdrawal rates at the University of Texas Arlington were similar to Texas A&M. University officials changed their minds in 27 percent of their requests for state review. Of the 18 letters UT-Arlington sent the attorney general seeking to withhold information, five were later withdrawn. According to the letters the institution sent the attorney general, university officials—and not the requestor—stopped the attorney general from making a ruling.

“The university no longer objects to the release of the requested information and will provide the responsive information it maintains to the requestor,” UT Arlington officials wrote to the attorney general in one withdrawal—28 business days after the request was made. In one instance, records officials determined UT Arlington didn’t even maintain documents pursuant to a request.

Similar withdrawal rates were observed at the University of Texas at Austin and the University of Texas at San Antonio.

A spreadsheet from UT Arlington outlined 166 requests. However, it did not detail 15 records requests for information the institution sought to withhold. Each of these requests to the attorney general were later withdrawn. UT San Antonio received 239 requests, records show.

Opening the gate

In the 1970s Sharpstown stock fraud scandal, state officials were charged for making quick-turnover bank-financed stock purchases in exchange for legislation. Houston businessman Frank Sharp requested, ending the political careers of the governor, lieutenant governor and the state’s speaker of the house.

The controversy prompted several reforms including passage of the Texas Public Information Act, establishing that “government is the servant and not the master of the people.”

Upon receipt of a request for information, a state agency is generally required within 10 business days to provide access to the documents under the state’s public records law. If the agency believes all or part of the information should be withheld, they must request a ruling from the attorney general. Exemptions
to the law include information on personnel records, pending litigation, trade secrets, legal matters involving attorney-client privilege and records that could hinder an active criminal investigation or prosecution — exemptions that exist in most state open records laws and the federal Freedom of Information Act.

If asked, the attorney general has 45 days to respond on whether the information should be released or withheld, either in part or in full. While the attorney general does issue formal opinions that can be cited as precedent in future records requests, most rulings are informal. In 2013, the attorney general’s office issued more than 22,000 informal rulings in open records cases.

Lauren Bean, a spokeswoman for the Texas Attorney General’s Office, said the agency does not keep statistics on how often universities or other government agencies withdraw requests for an open records letter ruling. She said the law does not address what happens when a government agency withdraws its request for an open records letter ruling, adding only that agencies are required to respond “promptly.”

Even when requests to withhold information are not withdrawn, receiving a formal or informal opinion from the attorney general takes time. In 2013 the attorney general ordered the eight universities to release all of the requested information 29 times. Of those, the attorney general issued a ruling, on average, 45 days after the requestor asked the universities for documents.

If a requestor believes a government agency has not complied with the law, they can file a complaint with the attorney general. Complaints can also be filed against governmental bodies that fail to comply with an attorney general ruling.

Although he said he understands why some people might be tempted to stall the release of public information, UT Arlington attorney Shelby Boseman said government employees who fail to comply with the public records law could face personal criminal liabilities, “so if an individual chooses to do that, they face a severe penalty.”

Currently, requestors can bypass a ruling from the attorney general’s office through litigation, but that could change pending a ruling from the state Supreme Court.

In 2008, Randall Kallinen requested information about a commissioned study on traffic light cameras in Houston. While the city released some of the documents, it sought from the attorney general a ruling to withhold some of the information. Before the attorney general’s office made a ruling, Kallinen filed suit in district court to access the documents and requested the attorney general wait to make a ruling because the issue was part of ongoing litigation.

The trial court said dual tracks to access information was acceptable — requestors could either wait for the attorney general to issue an opinion or in court, unlike administrative hearings. The appeals court, however, reversed the lower court’s opinion, ruling that requestors must first exhaust their administrative remedies.

“It’s never been considered to be an administrative proceeding,” said Laura Prather, a media lawyer at Haynes and Boone, LLP, and a member of SPLC’s Board of Directors. “It’s not one in which both sides put on evidence and all of that,” adding that the Attorney General’s Office has indicated in its rulings that they should not be considered part of an administrative proceeding.

In a friend-of-the-court brief submitted in May 2014 to the Texas Supreme Court, the Human Rights Defense Center, National Police Accountability Project and Communities United Against Police Brutality argued requestors should not have to seek an attorney general opinion before taking the issue to court. Such a “loophole,” the brief said, would give a government body a chance to avoid having to supply public records.

“If a governmental body can delay supplying public information,” according to the brief, “this allows the temporary suppression of mistakes or irregularities that should be immediately open to the scrutiny of the press and the general public.”

**Reason to withhold**

Government agencies often have a “knee-jerk” reaction to withhold information that should be public, said Kelley Shannon, executive director of the Freedom of Information Foundation of Texas.

“There tends to be too much leaning toward secrecy at universities and university systems,” Shannon said. Institutions, she said, often get “caught up” by student education records, which are exempt from disclosure under the Family Educational Rights and Privacy Act, the federal student privacy law.

“It’s either just being afraid of releasing it for some reason or it’s a stalling tactic thinking that, if they wait a while to release it, then maybe it loses its news value,” said Shannon, who was previously a reporter for The Associated Press and The Dallas Morning News.

UT Austin spokesman Gary Susswein said the institution does not have a central storage area for all university emails, documents and records, which are instead held at the collegial, departmental or individual level.

While he said the system requires open records officials to be thorough and precise when gathering recordings responsive to a request, sometimes open records officials at the university “may not have received all responsive documents from our UT departments by the 10th day so we file the request to maintain our rights under the law,” Susswein said. If a government agency does not timely request an attorney general decision or does not notify the requestor it is seeking an attorney general decision, the information is generally presumed to be open to
Withdrawals

When a public agency in Texas receives a public records request for information it believes it can withhold, the agency must first seek a ruling from the Texas Attorney General’s Office. The chart below shows the state’s eight largest public universities, by enrollment. Based on public records requests the Student Press Law Center filed with each institution and the attorney general, it was able to determine institutions often request from the attorney general the ability to withhold information, but later withdraw that request. Numbers are from the 2013 calendar year.

The public.

“Once we do receive these documents, we may see that nothing, in fact, can or should be withheld,” Susswein said, “so we withdraw our requests.”

Before seeking an opinion from the attorney general, Eric Bentley, an attorney for the University of Houston System, said the university often asks the requestor to modify their requests to exclude certain information they believe should be redacted. But if university officials don’t hear back from the requestor within 10 business days, the university may request an opinion from the attorney general “only to later hear from the requestor that the information may be redacted.”

When records involve third parties, Bentley said, it often makes more sense to send the attorney general a request to withhold the information rather than to notify the third party informally.

“For example, it may be difficult to correspond with large companies (e.g. Microsoft) and receive a determination from the company before the 10 business days when the University is required to send the official third party notice under the Texas Public Information Act,” he said.

Like the Attorney General’s Office, the University of
Houston does not track their withdraws, Bentley said, because “it is not a useful statistic.”

Boseman, the UT Arlington attorney, said he wasn’t shocked by the number of withdrawals at his institution. Frequently, he said, information requests are for police reports for cases being actively investigated. Because law allows the university to withhold investigatory records, the university will write a letter to the attorney general requesting to withhold the documents, but “a week later if that investigation is closed, at that point we can turn the information over.”

Unlike at the University of Houston, Boseman said UT Arlington’s public information officer does not notify requestors they are seeking an opinion from the attorney general ahead of time because it would look like they are “trying to dictate what information they’re requesting.”

“We’d rather let them do it on their own rather than us trying to dictate to them how they should make their own request,” he said.

When the requestor is notified the university has sought an attorney general opinion, Boseman said they generally modify their request so an attorney general opinion isn’t needed.

Texas A&M officials did not respond to telephone calls or emails requesting comment for this story.

In an article for The Center for Public Integrity, a non-profit investigative journalism organization based in Washington, D.C., Shannon reported how some city governments frequently use the attorney general to keep government information secret.

In her reporting she found some municipalities’ requests to withhold information were often denied. For example, the attorney general approved only 49 percent of the City of San Antonio’s requests to withhold information.

“By what we saw with cities, you could probably figure that’s going on with other governmental bodies too,” Shannon said.

However, SPLC’s public records examination didn’t garner similar results at the state’s largest public universities. Only three requests at UT Austin were ordered to be released. All of them involved a third party that either didn’t respond to a letter from the Attorney General’s Office or didn’t object to the records’ release.

Of the 12 records requests the Attorney General’s Office told Texas A&M should be released without any redactions, the attorney general ordered the release of one because the institution did not submit before the deadline an argument explaining why information should be withheld.

“We have no choice but to order you to release the requested information,” the Attorney General’s Office wrote in a letter to the university.

In nine of those requests, however, the attorney general determined release of the information would not compromise the proprietary information of a third party or it did not receive a letter arguing otherwise.

Shannon’s research did not explore withdrawals at city governments. She said she has heard of agencies withdrawing their requests for a ruling but was unaware of any trends.

“What would they have made the request to begin with?” Shannon said. “If there is a really solid reason to try and withhold it, why would they have to go back on over one-third of their requests and say ‘oh wait, we can actually release this information.’ It makes it sound like maybe that initial request to withhold information was not so well thought out.”

Delay affects student journalists

Although delayed access can be a hindrance for all journalists, the issue is especially true for those who work at a student newspaper because their employment is generally short-lived.

When UT Austin senior Bobby Blanchard sent records requests to his institution as a reporter for The Daily Texan, the student newspaper, he noticed a trend. It didn’t matter the complexity of his requests, it would take UT Austin about 10 days to respond — the maximum time law allows. Other state agencies, including other public universities, seemed to respond more quickly.

“I noticed that UT Austin always takes 10 days, pretty much across the board, which isn’t necessarily the law in Texas, Blanchard said. “The law in Texas is that you have to respond promptly and you have to have a response within 10 days.”

To determine how much longer it took UT Austin to respond to his requests than at other Texas colleges, he sent identical requests to several universities seeking copies of email correspondence between the universities’ presidents and their college deans or associate deans.

As university officials responded to his request, Blanchard, who now interns for the nonprofit investigative news site Texas Tribune, soon realized his project would fall short. The broad records request used to determine response times, he said, “wasn’t the best test example.”

However his investigation did reveal how institutions can respond differently to the same records request. The University of Texas Arlington sent his request to the Texas Attorney General’s Office, which determined — after 50 days — the university could withhold at least some of the information.

Texas A&M University also sought from the attorney general permission to withhold at least some of the requested information.

Six business days later, though, the university reversed.

“Upon subsequent review,” university officials wrote in a letter to the attorney general, “we determined that the records provided by the university contain no information requiring a decision from your office.”
Nudes you can use

Most college news organizations aren’t afraid to show a little skin. What happens when they choose to bare it all?

BY MICHAEL BRAGG

Coverage of a college football game rarely leads to newspaper thefts, criticism of editorial judgement and the removal of an adviser. Then again, newspapers rarely publish a front-page photograph of a naked man sprinting across the field.

When a streaker dashed across the field at a Pirates football game at East Carolina University in 2011, student editors at the East Carolinian took advantage of the opportunity. The student newspaper chose to run a front-page, uncensored photograph of the incident, prompting outcry from readers, who stole several hundred copies of the print edition and denounced the staff’s editorial judgment online.

Over this one image, the newspaper’s adviser, Paul Isom, lost his job.

Each school year, student newspaper staffs publish nude images. While some argue the images accurately convey a newsworthy event, others are published to be edgy, like at the University of Buffalo, where the student newspaper’s annual sex issue features articles about sexual health and related topics. Often accompanying the articles are sexually explicit images some people argue are unsettling to see in a newspaper.

Beyond reader reactions, newspaper associations and free speech activists argue new state laws to combat revenge pornography could criminalize the distribution and publication of nude images that convey a newsworthy event.

When nude is good

News organizations, both collegiate and professional, generally run into editorial policies before they face legal concerns when they publish nude images that critics claim are obscene, attorney Robert Corn-Revere said.

“The standard for obscenity requires more than just the depiction of nudity or even a depiction of sex,” he said.

For an image to be considered obscene, it must pass a few tests the Supreme Court set in the 1973 case Miller v. California: it must be offensive by contemporary standards, depict sexual conduct in an offensive way as applicable to state laws and it must lack any serious, literary, artistic, political or scientific value.

“A still image of even someone engaged in sex is unlikely to be considered obscene.”

Robert Corn-Revere, First Amendment Attorney

“Any work to be considered obscene has to meet all of those aspects to the test,” Corn-Revere said.

Even though it would be difficult to argue an image published in a newspaper meets the requirements of the obscenity test, Corn-Revere said it would likely “raise more of a controversy” if a newspaper published nude images “for no particular reason, if it were not connected to some actual newsworthy event.”

Along with considering the news value of the image
and the audience, reporters and editors should balance the benefit and harm of sharing the image, said Andrew Seaman, chair of the Ethics Committee for the Society of Professional Journalists.

“Does that have to make a point if there’s going to be people that are offended?” he said. “Could there be any harm that comes of that? Will children see the picture? Things like that.”

In 1972, Nick Ut captured the Pulitzer Prize-winning “Napalm Girl” photograph from the Vietnam War, which showed a young Vietnamese girl running from a napalm attack that “melted off” her clothing. The image, Seaman said, was published because of its news value that tried to “bring home the realities of what’s happening in a place that people on the receiving end probably can’t fathom.”

“The benefit of informing the public about what is going on in this far away place would outweigh any sort of damage than actually showing that image would,” he said.

Isom, the fired newspaper adviser who now works at North Carolina State University as a journalism professor, said the audience must be considered before publishing nude images.

“I've had students who used bad language, the F-word in stories, not just for the fun of it but because they felt like it was important to express the severity of the statement that was made in the context that it was made,” he said. “And again, it’s a college newspaper. Because of your audience, you can do that just like you could do that in the Rolling Stone because your audience is different.”

But in the end, student journalists should be able to defend their decision to publish any kind of image, not just ones that could cause controversy. Seaman said it helps to take a moment to stop and think if it’s worth running.

“That's probably the best thing that you can do,” he said, “so don’t be afraid to actually sort of take a breath before you hit publish or send the PDFs off to someone or broadcast it.”

### Threat of revenge porn and self censorship

In 2004, New Jersey became the first state to pass a law to combat revenge porn, which criminalizes the distribution of nude or sexually explicit images of a person without their consent. Thirteen states passed similar revenge porn legislation in 2013.

Revenge porn laws are meant to punish people like Noe Iniguez, a Los Angeles man who in December was the first person to be convicted under California’s revenge porn laws for publishing topless photos of his ex-girlfriend, Mashable reported.

But the broad language that accompanies many of the laws could have unintended consequences to free speech, said Lee Rowland, a staff attorney at the American Civil Liberties Union, which has been tracking this legislation since 2013.

“The laws were drafted very broadly without really narrowly focusing in on the malicious and harmful conduct that is commonly understood as revenge porn, and the consequence of that broad language was that many of these laws, whether intentionally or otherwise, criminalize the sharing of protected speech,” Rowland said. “So they didn’t focus in on malicious invasions of privacy, but rather placed broad restraints on the sharing of nudity, and that’s fully protected by the First Amendment.”

Arizona’s revenge porn legislation, for instance, was so broadly written that it criminalizes sharing or publishing any image with nudity in it without consent of the subject, Rowland said.

Publishing newsworthy images — in a newspaper, book or in any other form of distribution — such as the “Napalm Girl,” the naked prisoners at Abu Ghraib and even former U.S. Rep. Anthony Weiner’s indecent photos of himself that he sent to women, could be in violation of Arizona’s law because those subjects have not explicitly given their consent for the image to be published, Rowland said.

The ACLU, other First Amendment organizations, news publishing companies and bookstores filed suit against the State of Arizona in September 2014 because of the potential harm the law could cause. In November 2014, a federal judge put a temporary block on the law to give legislators time to work on changes to the law.

Mary Anne Frank, an associate law professor at the University of Miami, works with legislators across the nation to develop revenge porn legislation that tackles the issue with specific, narrower and less broad language.

“The challenge for legislators, and I’ve been helping legislators draft some of their legislation, is to try to think

---

**How to tell if an image is obscene, and therefore not protected by the First Amendment:**

Obscenity is one of nine categories the Supreme Court has determined the First Amendment does not protect.

1. **Would “the average person, applying contemporary community standards” believe the photograph appeals to “prurient interest?”**

2. **Does the work depict or describe, in a patently offensive way, sexual conduct defined by state law?**

3. **Does the work lack serious literary, artistic, political or scientific value?**

Source: Legal Information Institute, Cornell University Law School
Revenge porn laws

Sixteen states have laws that criminalize revenge pornography — posting online nude photographs of someone without their consent. However, First Amendment advocates worry the laws’ broad language could criminalize protected speech.

States with laws prohibiting revenge porn include Alaska, Arizona, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Maryland, New Jersey, New York, Pennsylvania, Texas, Utah, Virginia and Wisconsin.

Source: National Conference of State Legislators

of as many scenarios as possible so that we can write well-crafted, narrow laws to avoid as many of those unintended consequences as possible,” she said, and added that there’s “always going to be some room for review.”

And while some of these laws in their current state could pose a threat to the rights of the press, Rowland said no such incident has occurred to her knowledge. But, she said, the threat alone could prompt self censorship.

“No one should have to wonder whether or not they’re going to receive a felony record,” Rowland said.

For student media, the risk of prosecution under a statute intended to criminalize revenge porn would be greatest in a situation such as the East Carolina streaking case, where a person’s public nudity becomes part of a newsworthy story. These laws should have no application to a typical sex-themed issue of a campus newspaper in which models have given consent to be shown unclothed.

Hannah Cleveland, editor-in-chief of Clemson University’s student newspaper, The Tiger, said she often worries about whether she should publish a newsworthy image although the subject is controversial. In October, The Tiger’s staff released its first sex issue since 2008, which covered a variety of content on sexual health, diversity and entertainment.

“I feel like we did a good job of making it tasteful while still being attractive for people to pick up, but some people disagreed,” said Cleveland, who was the associate editor at the time the sex issue hit stands. “They felt like we were maybe pushing the line a little bit too much having essentially fully nude people on our front cover, but in the end it turned out great.”

As long as she and her colleagues can justify their decision to run with an image, then it’s worth it.

For Cleveland, it’s important as a team of college journalists to “be bold” when publishing content.

“Just push the limits and stretch yourself, and do try to approach these kinds of issues that may make some people uncomfortable, because what is a newspaper that’s not a vehicle for conversation?” she said. “We’re supposed to be the people who can lead these discussions and get people to talk about things, so just do what you have to do to make that happen.”
Covering campus crime

Campus judicial systems, operating in secret, often impose light sanctions for serious infractions: sexual assaults, physical assaults resulting in serious injuries, robberies and other violent crimes. Some of the punishment amounts to little more than writing a paper.

That’s the key finding of a months-long investigation by the Student Press Law Center and reporters at The Columbus Dispatch. The report found that:

- Crime statistics that colleges file annually with the U.S. Department of Education give students and parents an inaccurate and misleading representation of campus safety. The colleges’ self-reported crime statistics are infrequently audited by the Education Department, which is entrusted with enforcing the Clery Act.

- At many colleges, serious offenses like sexual assault and physical assault, are punished lightly and in secret, despite a provision in the federal student privacy law that allows colleges to disclose when a student has been found responsible for a crime of violence.

- The secrecy of the disciplinary process allows student offenders to easily become repeat offenders, either at the same college or by transferring to another college. Frequently, information about a student’s disciplinary history is not part of a student’s permanent transcript.

- A rush to judgment by judicial boards means some students accused of violent acts are wrongly punished.

The full series can be read online at www.dispatch.com/campuscrime

LOCALIZE THIS STORY

The issue of sexual assault and college crime is important for college newspapers. Here are three steps your newspaper can take:

1. Check your college’s annual Clery statistics (included in the college’s annual security report and also available online at ope.ed.gov/security). How many sexual assaults does the college report? How many other crimes? How have the numbers changed over time?

2. Clery statistics are required to reflect crimes reported to campus security authorities. Ask your college: Who is a designated campus security authority? Are residence advisers? Extracurricular club advisers? Also ask: How does the college gather reports from CSAs?

3. Make a verbal request or file a public records request for the names of students found responsible for a crime of violence. Under FERPA, the college may disclose the name of the student, the college rule that was violated and the sanction given to the student. (Some states may permit a public college to withhold these records, and private colleges are not obligated to disclose them.) If you run into resistance, contact the SPLC at (202) 785-5450.

The SPLC and The Dispatch surveyed 110 colleges and asked them to disclose the names of students found responsible for crimes of violence. FERPA, the Family Educational Rights and Privacy Act, includes an exemption for these records.
Universities frequently use the federal student privacy law to hide athletic scandals. Is there another way to access the information?

BY MICHAEL BRAGG

FERPA defense play

Universities frequently use the federal student privacy law to hide athletic scandals. Is there another way to access the information?

BY MICHAEL BRAGG

When football players at Ohio State University swapped championship rings, jerseys and other memorabilia for tattoos and their coach tried to cover up the violation, the institution wasn’t required to release documents related to the incident because they were protected by the federal student privacy law.

In 2012, the Ohio Supreme Court sided with the university over ESPN, which asked for records looking into the NCAA’s investigation of Ohio’s above mentioned actions. In the end, the records were protected by the Family Educational Rights and Privacy Act.

FERPA, which was passed in 1974 as a way to protect students’ privacy when it comes to education records, prohibits universities from releasing that information to the press or public at the risk of losing federal funding. Ohio isn’t the only university to withhold information about college athletic scandals, such as sexual assault, under a law aimed at education record privacy, and it is definitely not the most recent.

At the University of Oregon, Vanderbilt University and the University of Montana, FERPA was cited to withhold records and information related to sexual assault allegations. FERPA was even cited at Florida State University to withhold records about Heisman-winning quarterback Jameis Winston, who has been accused of sexual assault in December 2012.

Universities often cite FERPA when an athlete has been removed from the team “for some kind of disciplinary or legal reason,” or when the behavior of a coach or athletic department employee has come into question, said Frank LoMonte, executive director of the Student Press Law Center.

However, all college athletes must sign a waiver agreeing to disclose their education records to the NCAA in any case the non-profit association needs to publish or distribute the information. Unlike universities that receive federal money, the NCAA is not bound by FERPA.

Sign to play

Before an aspiring student-athlete can dress out with the team, they need to sign all of the necessary paperwork, including the Student-Athlete Statement, which is used to “assist in certifying eligibility,” according to the waiver.

One section of this form is called the Buckley Amendment Consent, where students agree to disclose their educational records, including the results of drug tests, school transcripts and pre-college test score.

The waiver promises the student-athletes that they will not be identified by name “in any such published or distributed information.”

However, the waiver also allows the NCAA to disclose “information regarding any infractions matter in which you may be involved” to third parties as required by NCAA policies, bylaws or procedures.

Although all NCAA athletes must sign the waiver, the agreement’s language differs between divisions. While the Division I form does not specify to which third parties information may be released, the Division II and III agreements specify third parties may include the media “as necessary to correct inaccurate statements reported by the media or related to a student-athlete reinstatement case, infractions case or waiver request or to recognize your selection for an academic award.”

“"The NCAA wants to be able to protect itself if there winds up being a controversy over the eligibility of particular players and wants the ability to disclose that information so that it can defend itself against any kinds of accusations,” said Jeff Hermes, deputy director of the Media Law Resource Center. “Is that necessarily aligned with the players’ interest? It’s difficult to say in the abstract.”

And while the NCAA may release information to third
ON THE DOCKET

Georgia — The U.S. Court of Appeals for the Eleventh Circuit reinstated in January a former Valdosta State University student’s claim that he was expelled in 2007 in retaliation for a Facebook post that criticized the institution’s president.

Mississippi — An appeals court reversed a district court’s 2012 decision that found a school district could suspend a student who uploaded to the internet a profanity-filled rap song alleging two staff members had inappropriate contact with students.

Washington, D.C. — The Supreme Court addressed online speech for the first time in December when it heard a case to determine how far First Amendment protections extend on Social media sites like Facebook. In the case Elonis v. United States, the Court will determine if a conviction for threatening another person on social media requires proof of the speaker’s subjective intent to threaten.

North Carolina — The student newspaper at the University of North Carolina at Chapel Hill and nine other local news organizations filed suit in November against the university to access the names of faculty and staff who were punished for their involvement in an academic fraud scandal.

Oklahoma — Officials at the University of Oklahoma agreed to release parking ticket records to a student journalist after OU administrators and lawyers maintained for more than a year the citations were exempt from disclosure under the federal student privacy law. The decision followed an announcement from the student newspaper to join a student editor’s public records lawsuit against the university.

The next day, officials at Oklahoma State University announced they would also release the names of students who receive parking tickets on campus.

New York — A federal judge in November dismissed a suit that aimed to declare the Ithaca City School District’s 2005 publications policy unconstitutional and to prevent the district from reimplementing it in the future.

Schools crying FERPA

Jill Riepenhoff, a reporter at The Columbus Dispatch, spent six months in 2010 investigating how universities use FERPA to withhold information about athletics that are categorized as education records, possibly incorrectly.

“They all censor information in the name of student privacy, invoking a 35-year-old federal law whose author says it has been twisted and misused by the universities,” Riepenhoff wrote.

Aside from problems she had with universities declining to release information about athletics while citing FERPA, Riepenhoff said the problem is with FERPA. The law, created by former U.S. Senator James Buckley, was intended to protect students’ privacy when it came to academic records.

“FERPA is an ill-defined law and it gives schools a lot of wiggle room to throw a blanket over whatever they want and because of all of the inconsistencies in court rulings it’s really, really difficult to challenge anything about FERPA,” she said.

Universities can find several ways to use FERPA to deny records requests, LoMonte said. One way is if a student-athlete is charged with a disciplinary infraction that “doesn’t quite rise to the level of a violent crime.”

“It might be a minor drug possession or an academic dishonesty matter, and the person is removed from the team and the school cites FERPA,” LoMonte said. “That’s the grayest of the areas where there’s not a criminal record created, and the infraction is arguably academic or somehow related to the athlete’s performance as a student.”

Even with the troubles reporters can have and can encounter with school officials using FERPA while they’re trying to cover newsworthy events involving athletics, there are still ways to report on the story.

Riepenhoff said she encourages student journalists to remain persistent and to point out inconsistencies in refusals to provide records.

Wolverton said that student journalists facing a FERPA issue should remind their sources they “have a job to do.”

“Be up front about your intentions,” he said, “but be open to asking any questions that you want to know the answer to and not worry about any sort of stipulation from some FERPA form that might get in your way.”

parties, Brad Wolverton, a senior writer at The Chronicle of Higher Education, based in Washington, D.C., said he does not see the NCAA releasing any information about a student-athlete to the press.

“The only thing they’re going to do is what the school allows them to do, and then I guess the student has to agree to it in writing,” he said.

“And, usually it’s when there’s negative information that is incorrect and they may want to correct the record.”

But LoMonte still sees this particular provision in the waiver as “the most noteworthy.”

“So what that’s saying is that if the NCAA feels like they’re under attack that they’ll gladly compromise students’ privacy in order to save their own reputation,” he said.

The NCAA did not respond to email or telephone requests for comment.
As ‘nontraditional students’ become the majority in colleges nationwide, student newspapers grapple with the changing demographic.

BY ANNA SCHIFFBAUER

When Tammy Boyd was a professional writing graduate student at the University of Oklahoma, she wrote that she didn’t see her college experience reflected in the student newspaper.

In a September column in The Oklahoma Daily, Boyd said the top stories — marijuana legalization, athletic suspensions and flat-rate tuition — didn’t apply to her as an over-40 graduate student. Boyd, who was a life and arts reporter for The Daily until September, left a tenured faculty position to return to Norman, Okla., and take care of her aging grandparents.

“My life as a student revolves around completing my graduate project (my program’s version of a thesis), building my professional portfolio and juggling my substantial out-of-school responsibilities,” she wrote. “College life for me is about becoming an expert in my field, not embracing Sooner traditions.

“It just would be nice, every once in a while, to find something on campus that helps us non-traditional, graduate, international, insert-descriptor-of-choice-here students remember that we are a part of OU as well as a part of our academic disciplines.”

With added responsibilities and differing life experiences, nontraditional students — a growing population — often feel they are not well represented in their student newspaper. When nontraditional students join the newspaper staff, however, they are often able to broaden the organization’s news coverage.

Different perspectives

When Scott McKinnon lost his job with a truck rental company in 2009 because of the recession, he went back to college. Now the 33-year-old is the editor-in-chief of The Oracle, the student newspaper at Henderson State University in Arkadelphia, Ark.

Like McKinnon, about half of The Oracle’s staff is considered nontraditional — at an institution where 15 percent of the student population is 25 or older.

McKinnon and millions of nontraditional students — people who are older than 24, have children or attend college after time in the workforce — are an intrical part of campus communities across the country, and their presence on campus will likely increase in the next few years.

The National Center for Education Statistics’ 2012 Digest of Education Statistics, the most recent report, reported more than 18 million people enrolled in undergraduate programs in 2011. About 42 percent of college students were 25 or older, compared to 57 percent who were 18 to 24 years old — the “traditional” college age.

And between 2010 and 2021, NCES projects 20 percent more students 25 and older will enroll in college — double the projected increase for traditional-aged students.

If people read stories about students with similar experiences and perspectives, they’ll engage more with the student newspaper, McKinnon said. That’s why The Oracle staff tracks the majors and demographics of students they profile to ensure to get a cross-section of the university each...
The Washtenaw Voice Editor
Natalie Wright, Online Editor
Christina Fleming and
Managing Editor EJ Stout edit
proofs during a production night
in December.
Photo courtesy of Ben Ellsworth,
The Washtenaw Voice

The Washtenaw Voice

 semester. McKinnon’s goal is to feature more nontraditional students’ journeys to Henderson State.

The news editor during the fall semester, Moe Skinner, was also a nontraditional student. What she brought to the organization, said former Editor-in-Chief Stephanie Malcolm, was a sense of fearlessness — she wasn’t afraid to ask the the questions younger reporters often shied away from, especially while interviewing older sources.

“There’s that level playing field to where she can ask them all the hard questions and they’ll feel more comfortable talking to her,” Malcolm said. “I think it was a big plus having a nontraditional student as our news editor willing to cover the hard things.”

Mary Morris-Donaldson, a staff writer at The Washtenaw Voice at Washtenaw Community college in Michigan, applies to her reporting experiences from her full-time job at Michigan State University’s health outreach program in Washtenaw County.

She writes a regular column on health and nutrition called “Healthy Voice,” writing about edible holiday gifts and personal trainers. Morris-Donaldson, who has a bachelor’s degree in family and community services from Michigan State, said nontraditional students pick up on stories that a staff of less diverse students might not consider newsworthy because it doesn’t apply to them.

She reported on the increasing number of car accident deaths in Michigan in the November issue, and another student wrote a piece on car seats for kids to accompany it. She said it made sense to include because WCC has a daycare center and a large number of students who are parents.

Changing careers
When Beau Valdez graduated high school, he was “young and dumb” and didn’t want to go to college. That changed when he got married and had children.

Now Valdez works on North Idaho College’s student newspaper, The Sentinel, in Coeur d’Alene. In his five semesters at the paper, the 33-year-old father of two has spent two semesters as a staff photographer before he became the photo editor.

Valdez started the journalism program because he “didn’t like being stuck in one spot all the time, doing the same thing” and wanted to earn more money for his family. He hoped to become a writer until a required photography course changed his plans.

“I never even thought I’d be the photo guy for the paper,” he said.

When other photographers are unable to take photos of an event, he covers it in addition to his own assignments. And while a lot of campus events are in the evenings or on weekends, which cuts into time with his family, each assignment provides new opportunities, whether he’s shooting sports, a club’s performance or a concert off campus.

The experience, he said, is the opposite of working in a factory or warehouse.

Keith Gave, Washtenaw Voice adviser from 2008 to December 2014, worked in the Associated Press’ Chicago bureau and then as a sports reporter for the Detroit Free Press and The Dallas Morning News until he started teaching journalism in 2001. He said he connected with nontraditional students over the “joy of chasing news, thrill of working against a tight deadline”.

Gave said he noticed some traditional college-age students have problems with time management and “they treat their stories that they have to write like a term paper.”

Nontraditional students often struggle to finish their to-do lists, he said, but not because they waste time or underestimate the time required. Instead, they struggle to “fit in everything they have to do.” •
Accessing personnel records: A balancing act between privacy, public’s right to know

By Frank D. LoMonte

A high-school guidance counselor disappears from his job, placed on “administrative leave” for unexplained reasons. Rumors run wild through the school. As a school-district investigation drags on, the public wants to know: What’s going on?

Complaints accusing employees of wrongdoing are some of the most informative records that a journalist could want – and some of the most difficult to get. Two different confidentiality arguments – the sensitivity of personnel records and the secrecy of unfinished investigations – both are likely to be raised.

The guidance counselor’s case (Predisik v. Spokane School District) was argued in October 2014 before the Washington State Supreme Court, which will soon decide whether the public has a right of access to documents describing accusations against public employees. That ruling will add to a growing list of recent court cases addressing the conflict between employee privacy and the public’s right to keep government accountable.

This article looks at the frustrating obstacles journalists often face in trying to obtain access to personnel-related records from college and schools. While the law sometimes entitles these agencies to withhold highly embarrassing or confidential documents, it’s an oversimplification to say – as many agencies do – that “personnel” is a blanket excuse for denying a public-records request.

Personnel records: A touchy subject

Personnel files contain a mix of information that is of public interest and importance (such as how much a government employee is paid) and information that normally is none of the public’s business (such as the reason for an employee’s medical absences). Because of that mixture, access to personnel files rarely is all-or-nothing.

Even in the federal government, where the Privacy Act is especially protective of the personnel records of U.S. government employees, the public is entitled to certain information – such as the employee’s salary and positions held along with their location – even if the employee prefers that the information be kept private.

Occasionally, the information in a personnel record is categorically off-limits to disclosure as a matter of law. For instance, most state open-records laws now require removal of information that would promote identity theft, including bank-account numbers and Social Security numbers.

Aside from those few exemptions, access to records kept in a government employee’s personnel file is a case-by-case decision. Judges must balance the public’s right to know against the employee’s personal privacy interests. Because court interpretations are highly fact-specific, it’s difficult to predict whether a specific record will be deemed accessible or will be withheld as confidential.

Most state open-records laws give agencies discretion to withhold records that otherwise are accessible to the public if their contents would unnecessarily invade personal privacy. However, even highly embarrassing records can be released if disclosure is in the public interest and the records are newsworthy. (In one memorable example, a fired Wisconsin teacher lost his case attempting to block disclosure of the pornographic websites he viewed on a school computer.)

The more that a record involves the expenditure of taxpayer money or the honesty of government services, the less likely that a judge will order it withheld on the grounds of personal privacy. For instance, in one recent case, a Michigan community college was ordered to grant a journalist’s request to inspect forms signed by the college president to withhold money from his paycheck for a retirement fund. The court rejected the college’s “personal privacy” argument and agreed with the journalist that information on the form might raise issues of public concern, such as whether the president complied with IRS tax regulations.

Evaluation records: A special case

When the Los Angeles Times released a database
calculating the effectiveness of some 11,500 teachers in the Los Angeles Unified School District based on how much they raised their students’ standardized test scores above expectations, the story provoked protests from teachers. When one of the teachers publicly identified as “less effective” committed suicide, the outcry turned to outrage.4

Public access to teacher evaluations is an emotionally charged issue, in part because so many employees believe that the methods used to assign performance scores are unfair. (A counter-argument in favor of access is that the public cannot judge whether the evaluations are misleading without seeing them.)

Most government employees receive a written annual evaluation, which influences whether the employee is promoted, receives a raise, or might even lose her job. Evaluations can become highly newsworthy when the employee’s performance becomes a matter of public concern – for instance, when the employee is nominated for a position of authority, or is removed without explanation. State laws are mixed on how much access, if any, the public can get to information about employee evaluations.

Some state statutes and court interpretations – including those in Colorado, New York, North Dakota, and Ohio – expressly give the public a right of access to faculty evaluation information under the state open-records law.5 Statutes or court interpretations Connecticut, Kansas, Louisiana, Massachusetts, Missouri and Rhode Island allow government officials to keep some of this information secret.6

In many other states, access depends on a case-by-case “balancing test” in which judges examine how urgently the public needs the information versus how embarrassing the information would be if disclosed.7

Complaints of employee wrongdoing

Accusations of wrongdoing by government employees are highly newsworthy. Legislators and judges are sensitive to the risk of unfair reputational harm if completely unfounded accusations become widespread public knowledge. But sometimes accusations dismissed as “unfounded” are still of public interest, because the agency may not have thoroughly investigated its own employees. Sometimes, the only way to know whether accusations are being taken seriously is to see the records.8

Where an employee has been cleared of wrongdoing, or the case is still in progress, public access is especially challenging. Courts usually hesitate to release records of disciplinary matters unless the cases have concluded with a finding of guilt – to protect employees against
frivolous accusations, or to avoid interfering with ongoing investigations.

For example, when The Seattle Times requested 10 years’ worth of records relating to sexual misconduct complaints against teachers from three Seattle-area school districts, 55 teachers named in the documents responded with a suit seeking to block release of the records on the grounds of personal privacy. Washington’s Public Disclosure Act exempts information from employees’ personnel files “to the extent that disclosure would violate their right to privacy.”

The Washington Supreme Court split the difference, granting the Times access to records describing the misconduct accusations but ordering the names of the accused employees removed to protect their privacy. However, if the accusations were investigated and resulted in a finding of wrongdoing, then the entire file – including the accused teacher’s name – was subject to disclosure.

Some states, such as Wisconsin, specifically exempt records of complaints against employees from their open-records statutes. But in a recent case involving teacher disciplinary records, a Wisconsin court took a narrow view of the exemption and ordered disclosure.

In Bartlett v. Appleton Area School District, a parent sought access to the disciplinary files of seven specially-taught teachers and administrators, having been informed of accusations of child abuse in the district in the past. The school district withheld the records, arguing that the teachers were low-level employees whose personnel files were not a matter of public interest, and that disclosure might interfere with future civil or criminal cases.

The Outagamie County Circuit Court found the school district’s arguments unpersuasive and ordered the records released. As school employees tasked with children’s safety, the employee’s conduct was of public interest, and there was no proof any legal proceedings were imminent or would be disrupted by public access to the records, the judge ruled. Significantly, the judge ruled that the public had an interest even in accusations of wrongdoing that were deemed unfounded, to verify whether the claims were thoroughly investigated.

As these cases illustrate, it’s possible for journalists to effectively investigate claims of wrongdoing by school employees even where schools object on the grounds of “personnel” or “personal privacy.”

When the ‘personnel’ is the boss
Louisiana law entitles the public to information about the “applicants” for college presidencies, but that didn’t stop the trustees of Louisiana State University from concealing the names of those considered for LSU’s presidency in 2013. The trustees simply insisted that they had no “applicants,” because the names were drawn from a private headhunting firm’s stockpile of candidates.

That interpretation only partially convinced the courts. In December 2014, a state appeals court ruled that the public was entitled to the names and backgrounds of four candidates who got as far as being offered interviews, a decision that satisfied neither LSU nor the news organizations suing for access.

The public’s interest in records about the hiring of senior college executives is undeniable. A college president often is the highest-paid public employee in the state, supervising thousands of employees, a police force, and a budget that can reach into the billions. But – especially at the largest state institutions – it’s becoming common for presidential searches to take place entirely outside the public’s view. While state statutes often entitle the public to (at least) a list of the finalists for the position, college governing boards have figured out how to “game” those laws by disclosing a “finalist list of one.”

Colleges typically argue that candidates with sensitive jobs, especially sitting presidents at other institutions, will be deterred from applying if they cannot be guaranteed confidentiality. Influenced by those arguments, legislators in Wyoming exempted presidential searches from their state open-records law in 2013. Legislators in Nebraska and Florida have tried to close off access to college presidential searches, but the bills have failed.

In the shadow of FERPA
In 15 years as head field hockey coach at the University of Iowa, Tracy Griesbaum led the Hawkeyes to three Big Ten tournament championships, six NCAA Tournament appearances and the 2008 NCAA Final Four. But in August 2014, the university fired her, saying only that the removal was “based on concerns about her treatment of student athletes.”

Reporters for the Iowa Press-Citizen tried to obtain records shedding light on the reasons behind the termination, but ran into a roadblock: the Family Educational Rights and Privacy Act, or FERPA. The newspaper filed a complaint with the Iowa Public Information Board, contending that the records were withheld improperly.

Whenever an educational institution is involved,
reporters must be prepared to hear “FERPA” in response to any request for public records, justified or not.

FERPA is a federal statute requiring educational institutions to enforce a policy of safeguarding the privacy of students’ education records.25 While the statute applies only to records about identified students that are kept in a central location,26 many college and school attorneys insist that the law entitles institutions to withhold records involving student complaints against employees.

Courts have been inconsistent, to say the least, in how they’ve applied FERPA to requests for employee records. In one especially extreme case, a divided Iowa Supreme Court ruled 4-3 that documents gathered by internal investigators, looking into whether the University of Iowa mishandled sexual assault accusations against two football players, were exempt from public disclosure because of FERPA.27

Other courts, however, have taken a more commonsense and limited view of FERPA, finding that records about employee wrongdoing are the employees’ records and not the students’ – even if students are tangentially mentioned – and therefore cannot be withheld as FERPA “education records.” For example, a Florida court ordered Florida State University to turn over correspondence with the NCAA about possible wrongdoing by tutors who were giving academic help to athletes. The court ruled that the documents, while tangentially mentioning student-athletes, were not those students’ own individual education records.28

Conclusion
Access to personnel records has enabled journalists to do many enlightening stories that would not have been possible without the documents. Using public-records requests, journalists have been able to obtain such personnel records as letters of termination29 and resignation agreements30 – documents that some might assume are off-limits because they’re about personnel issues.

Journalists often are pleasantly surprised at how much the law does entitle them to know about personnel matters. It’s always worth the attempt to file a formal public-records request and make the agency justify redacting or withholding documents.

Even where documents do contain sensitive personal information, it’s rarely permissible for an agency to withhold the entire record. State open-records statutes and court interpretations typically require that, if it’s possible to remove only the confidential personal information and disclose the rest, then the agency must try. Often, journalists find that records are useable for newsworthy stories – to show statistical trends, such as how many teachers have faced abuse charges and how they were disciplined – even with names removed.

Attorney Frank LoMonte is Executive Director of the Student Press Law Center.

Endnotes:
1. See 5 C.F.R. Part 293.311 (describing what information about federal employees will be disclosed under the Freedom of Information Act).
11. See, e.g., West v. Port of Olympia, 333 P.3d 488 (Wash. App. 2014) (finding that requester was entitled to complete records, including names, of accusations of financial wrongdoing by a state employee, because financial impropriety does not qualify as a “highly offensive” matter that can be withheld on the grounds of personal privacy).
12. R.C.W. § 42.56.230(3).
14. See Wis. Stat. § 19.36(10)(b) (exempting information “relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation”).
19. See, e.g., N.M. Stat. Ann. § 14-2-1B (public is entitled to the names of five presidential finalists at least 21 days before the selection is made).
20. See, e.g., Lee Shearer, “Morehead named finalist for UGA presidency,” Athens Banner-Herald, Jan. 28, 2013 (University of Georgia discloses one in-house “finalist,” who is then given the job less than two weeks later); Georgia law entitles the public to the names of “as many as three” finalists, O.C.G.A. § 50-18-72(b)(11), creating a loophole that the Georgia Board of Regents has taken advantage of.
24. Id.
25. 20 U.S.C. § 1232g(b)
27. Press-Citizen Co., Inc. v. Univ. of Iowa, 817 N.W.2d 480 (Iowa 2012).
28. NCAA v. Associated Press, 18 So.3d 1201 (Fla. Dist. Ct. App. 2009). The decision was made easier because the journalists agreed to accept the documents with student names blacked out. In a comparable case, a Wyoming judge imposed but then dissolved an order restraining a newspaper from publishing a report about a misconduct investigation of a college president, rejecting the college’s insistence that the report was covered by FERPA because it mentioned the mistreatment of a student. Laramie County Comm. College v. Cheyenne Newspapers Inc., No. 176-092 (Laramie Cty. Dist. Ct. May 25, 2010).

---

**SPLC news**

**New board members** – The SPLC Board of Directors voted unanimously to elect two new members for three-year terms, which began on Jan. 1.

New board member Sherrese Smith is a partner in the Telecommunications, Media, and Technology and Privacy and Data Securities practices at Paul Hastings LLP and is based in the Firm’s Washington, D.C., office.

Matthew Pakula, who also joined the board on Jan. 1, is senior manager for corporate social responsibility for Tyson Foods, Inc., based in Chicago.

**Amicus brief** – In a brief filed in November, the SPLC and a coalition of free-speech groups asked the Eighth Circuit Court of Appeals to overturn a ruling that upheld a Minnesota college’s decision to expel a nursing student for “unprofessional” comments he posted to his Facebook page while off campus.

The brief pointed out that college students’ speech, even when coarse and angry, has always been afforded the fullest protection of the First Amendment outside of the classroom setting.

**Amicus brief** – The SPLC and other open-government groups urged the Missouri Supreme Court in October to overturn a lower-court ruling that allowed the University of Missouri to withhold instructors’ course syllabi on the grounds that making copies of the documents violates copyright.

The brief pointed out that many documents on which journalists rely every day — including memos, studies, reports, databases, letters and even emails — arguably are protected by copyright, meaning that journalists and public watchdogs in Missouri could be limited to examining such records on-site without the ability to make copies.

**Amicus brief** – In a brief to the U.S. Supreme Court in a landmark First Amendment case, the SPLC urged the Court to set a high standard for criminally prosecuting speakers who reference violence on social media, warning of “false positive” prosecutions that may result from innocent misunderstandings.

The case, which the Court is expected to rule on by this summer, involves a Pennsylvania man convicted under a federal threat-speech statute for posts on Facebook in which he fantasized about killing his estranged wife and law-enforcement agents. It marks the first time the Supreme Court will consider the boundaries of free-speech protections on social networking sites.
## Student Press Law Center

**Student Press Law Center**
1608 Rhode Island Ave, Suite 211
Washington, D.C. 20036
Phone: (202) 785-5450
Website: www.splc.org

---

### ATTENTION: STUDENT MEDIA

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.

(Contributions from Sept. 1 through Jan. 1)

#### Freedom Fighters
($10,000 or more)
- Herb Block Foundation, WilmerHale LLP
- Society for Collegiate Journalists, Andrew Stark, Mark Stencil*, Mark Stodder, Sutherland, Asbill & Brennan LLP, Thomas Whitehead

#### Student Voice Champions
($10,000 or more)
- Journalism Education Association, Kent State University, Western Association of University Publications Managers, Yellow Chair Foundation

#### Free Press Protectors
($5,000 to $9,999)

#### Student Voice Advocates
($500 to $999)

#### First Amendment Friends
($100 to $499)

*Indicates monthly donor and reflects 2014 cumulative total

---

To support our work, visit [www.splc.org/donate](http://www.splc.org/donate)
The SPLC is a 501(c)(3) nonprofit charity.