

STUDENT PRESS LAW CENTER

REPORT

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Comedy on Campus
College comedy papers have recently come under fire for offensive jokes.

PAGE 20: High school dress codes have become a First Amendment issue in courts.

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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.

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‘Civics in action’: High school journalists have a stronger link to civic participation, study finds

The typical high school student engages with government as a remote abstraction in a civics book. Students journalists engage with it up to their elbows, at times not just monitoring government but helping make it run better.

Now there’s documentation that students who are given a meaningful chance to talk about contemporary issues in school-sponsored media don’t just become better journalists — they become better citizens, too.

That’s the takeaway from newly published research based on interviews with 900 high school journalists conducted by University of Kansas journalism professor Peter Bobkowski, a winner of the National Scholastic Press Association’s Pioneer Award for his service to student media.

Bobkowski and a team of KU graduate students surveyed student journalists from Kansas and Missouri about their experiences working in varying school environments, some respectful and supportive of student voices and others not. Among the most significant conclusions is that student journalists report higher levels of confidence in their ability to use media for civic

change if they work in schools that support press freedom and supervise student media with a light touch.

“[J]ournalism helps you know who your representative is or where to go vote and things like that — but more than that, journalism is about civics in action,” Bobkowski told the Student Press Law Center in a podcast discussion. “It’s about, how do you make things happen? How do you take issues and address them in your communities? How do you make people care about issues? How do you make them see that these are issues they should care about?”

The KU research, sponsored by the Spencer Foundation and viewable at www.civicsandjournalists.org, comes at an especially opportune time as advocates in 20 states are building grassroots campaigns to enact reforms protecting the independence of college and high-school journalists against censorship. The freedom to discuss matters of public concern has always been recognized as beneficial to effective teaching of journalistic skills, but it’s increasingly apparent that journalism can be “participatory civics” as well.

SPLC mourns student media advocate Nick Ferentinos



Student media lost one of its most devoted advocates Jan. 25 when Nick Ferentinos, a former national high school journalism teacher of the year, died after battling lung cancer. He was 73.

Ferentinos, who served on the board of directors of the SPLC from 1990 to 1994, will always be remembered for courageously standing behind his students’ editorial freedom at a time of immense crisis in 1988.

Just hours after the U.S. Supreme Court decided *Hazelwood School District v. Kuhlmeier*, stripping students of their constitutional rights in school-sponsored media, the principal of Cupertino’s Homestead High School tried to take advantage of the ruling to threaten Homestead students into withholding a candid article about a student’s struggle with HIV.

Ferentinos stepped in to educate the school about the legal protections of the California Education Code, which predated and survived *Hazelwood*, entitling students to publish the lawful editorial content of their choice. The principal backed down, and the story ran.

He was so beloved by generations of former students that, upon learning of his diagnosis, more than 100 of them collaborated on a memory book demonstrating how many



Ferentinos (far left) stands with Dina Ferentinos, John Bowen and Candace Perkins Bowen at the SPLC’s 40th anniversary in 2014. (Photo by Jay Mallin)

lives Ferentinos had touched during 35 years of teaching. He is survived by his equally dedicated wife and partner of 50 years, Dina.

A handwritten signature in black ink that reads "Frank D. Lomonte".

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.

University of Kansas officials have placed two fraternities on probation for hazing in the last academic year, but won't disclose what the hazing entailed.

Delta Tau Delta is accused of engaging in hazing in the fall; Phi Beta Sigma, in the spring. Documents given to reporters disclose the punishments (including being barred from candidate intake and loss of participation in events), but not the hazing itself. In a written statement, KU officials said they redacted the details of the hazing "to account for the privacy interests of the individual students who are members of these organizations," citing FERPA.

SPLC Attorney Advocate Adam Goldstein:

KU is claiming that a federal statute that protects personally identifiable education records prevents disclosure of a description of actions. That's not true, the actions just need to be redacted to remove names and other specifically identifiable information.

Let's say that Santa's reindeer were accused of hazing one of their new members. The report from the Elf investigation includes: The other reindeer laughed and called Rudolph names, like Pinnochio. The other reindeer never let Rudolph join in any reindeer games, like Monopoly.

Can this record be disclosed? Yes, if properly redacted to obscure Rudolph's identity:

THE ARNE METER @ FERPAFACT.TUMBLR.COM



A pretty legitimate use of FERPA



A questionable use of FERPA



Not protected by FERPA at all

The other reindeer laughed and called [redacted] names, like [redacted]. The other reindeer never let [redacted] join in any reindeer games, like Monopoly.

See what I did there? I took out Rudolph's name, and I took out the name that the other reindeer called him, because that could identify him. But I left in the basic allegations and the game Monopoly, because all reindeer enjoy the game Monopoly equally.

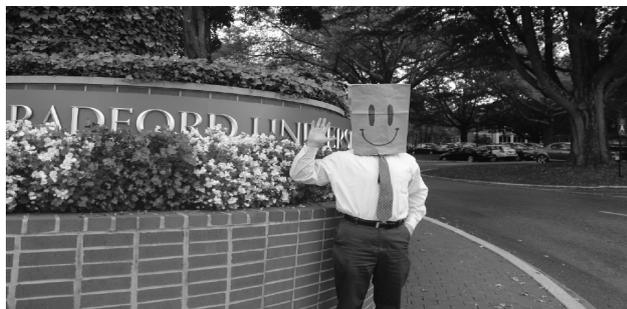
(While people who have firsthand knowledge of the situation may know which reindeer was excluded, this record would not disclose that identity, because they already know it. According to the DOE's rules, the question is whether a reasonable member of the campus community would know who was excluded.)

So KU's claim that the entire list of offenses needs to be redacted because of FERPA is just plain false. And if FERPA worked the way KU suggests it does (that is, that knowing a Greek organization's

name makes it impossible to make student records anonymous if they refer to the organization) it would also prohibit KU from disclosing the list of punishments imposed on the organizations. So KU would be violating FERPA anyway.

We rate this: Three Arne Duncans

Sack Secrecy



UNVEIL BAG MAN @ SACKSECRECY.TUMBLR.COM

Hiring a college president shouldn't be like running a drug ring, but sometimes it's hard to tell the difference. Sack Secrecy is an SPLC project to highlight secretive searches.

SPLC Executive Director Frank LoMonte:

Brian Hemphill might turn out to be a great catch for Virginia's Radford University; he'd recently gotten a favorable evaluation and a contract extension at West Virginia State. But we'll never know, because Radford conducted the search entirely behind closed doors, to the dissatisfaction of some concerned faculty members.

(It's not clear how much a public university in Virginia must disclose, because the state's porous open-records act excludes "personnel records containing information concerning identifiable individuals.")

But it's also not clear that anyone asked to see records of the applicants, which Radford's Board of Visitors pegged at 76. In a Dec. 16 announcement, the university said Hemphill "will be introduced to the Radford community and media during a future opportunity" in January. Because, yeah, that's definitely how you should be "introduced" to the place you're about to be president of, a month after accepting the job. ♦

Can you spot the difference?



Graphic by Danielle Dieterich

Blurred lines

Some universities have tried to blend traditional student journalism with public relations, prompting ethics questions and some raised eyebrows.

BY COREY CONNER

This past fall, Florida Agricultural and Mechanical University's Board of Trustees twice voted to remove University President Elmira Mangum from her position.

Both Oct. 20 votes — one for cause, the other a vote of no confidence — failed, with the vote of no confidence falling one vote short of a majority. Over the next nine days, a board member resigned and the chairman stepped down from his post.

FAMU Forward, found online at FAMUnews.com and branded as the university's official news source, did not report any of the board's actions or the subsequent campus-wide controversy.

Instead, those interested in the votes, the resignations and student protest surrounding the events could turn to *The Famuan*, the student-run newspaper at the university.

FAMUnews.com is an administration-operated news outlet. Its relaunch in September caused controversy among the student journalists of the *Famuan* after Mangum said it will be a "real newspaper." Mangum later walked back that comment and said the relaunch was a way to better provide

updates for the university's official communications, "especially in light of various blogs and other social media pages that misreport information about the university."

"I respect the role of an independent student-run newspaper, and this site is separate and distinct from *The Famuan*," she wrote. "In fact, many universities have an official administration news site and an official student-run news site."

While many universities do have an official news site run by their public relations teams, some media onlookers have expressed concern that some colleges, like Florida A&M, have blurred the lines between journalism and public relations.

"There are a lot of different things that can be news, and a public relations person can make news. Anyone can make news, it doesn't necessarily make it an act of journalism," said Andrew Seaman, chair of the Society of Professional Journalists' Ethics Committee. But disclosure is a must, he said.

"If there is something there that may somehow affect how you are reporting it, hopefully that would make that into the story somehow or be added as a footnote," Seaman said.

"If there is something coming from a university press office or marketing office, somewhere on their publication should be a disclaimer saying this is a piece of marketing or this is coming from a press office."

The FAMU Forward has a notice that it is "powered by" the university communications office, and the website is trademarked to Florida A&M. But those disclosures are in small print at the bottom of the website, underneath a stream of stories about campus news and paid advertisements, causing some of the *Famuan* student journalists to remain uneasy about the distinction between the FAMU Forward and traditional news sites.

Famuan editor-in-chief Reggie Mizell, who did not respond to requests for comment, wrote an editorial criticizing the relaunch of FAMU Forward.

He was especially concerned about the financial imbalance, he wrote. While the FAMU Forward has sponsors and advertisers, the *Famuan* is in the midst of a budget struggle and is only able to support one publication a semester.

"In our efforts to raise money for the publications, the president and administrators seem to have found support for their new publication," Mizell wrote. "They have managed to get money from organizations to support a publication that has not proven it can succeed."

Florida A&M alumna Clarece Polke, who worked at the *Famuan* when she was in college, said she's concerned that FAMU Forward will work to squeeze out objective, potentially critical, voices in the media — which, she said, is especially troublesome because it has institutional advantages over the student newspaper.

"The role of the public relations department is to manage the reputation of the university — not produce the news, not produce a newspaper," said Polke, who is now a *Pittsburgh Post-Gazette* reporter. "The role of PR and the student newspaper are completely different and you need that critical voice."

Varying levels of disclosure

The level of disclosure among universities' public relations departments vary. Some are clear and obvious, like hosting the news website on the university's domain address. Others are a little more suspect, like proclaiming the university publication to be the "official" news source.

The University of Missouri-Saint Louis also publishes a news website, the UMSL Daily, which styles itself as an online newspaper of sorts. Unlike the news website at FAMU, the site is hosted on the university's .edu domain.

"Because of the volume of university news items and stories written by our small (but prolific) team of writers, we're able to update the website daily during the school week, thus the name," said Ryan Heinz, UMSL Daily editor and university communications manager, in an email.

But Heinz said UMSL Daily does not see itself as competing

with the weekly student newspaper, the *Current*.

"Our content is more comparable to what you would find on other university and college websites," he said.

Heinz was once a student editor himself at *The Western Courier* at Western Illinois University.

"We also provide the student journalists with information for their stories, and we always make ourselves available when staff members of the *Current* seek career advice," he said. "After all, we were once in their shoes."

Unlike FAMU Forward, USML Daily does not seek advertisements. Instead, they direct advertisers that contact the publication to the student newspaper, Heinz said.

"The role of the public relations department is to manage the reputation of the university — not produce the news."

Clarece Polke, reporter and Florida A&M alumna on the university's "official newspaper"

At the University of North Carolina at Chapel Hill, the communications department launched a blog, On the Record, this past fall to address "negative" aspects of press coverage. The university has been plagued by scandals in recent years, including academic fraud that disproportionately benefited athletes.

The first post on the blog was a letter to the campus newspaper, *The Daily Tar Heel*. Joel Curran, vice chancellor of communications and public affairs, criticized the student newspaper's editorial board for failing to speak with Chancellor Carol Folt, who — according to the blog post — was willing to be interviewed and whose input would have benefitted multiple editorials.

"Seems like the editorial board is already swinging, and in this case, missing," Curran wrote.

A later blog post claimed that a statement in the *Daily Tar Heel* attributed to a campus administrator was not "a complete representation" of what he said.

Daily Tar Heel editor-in-chief Paige Ladisic said while she would prefer that administrators make their points in the pages of the student newspaper, she isn't offended by the university blog. "I want the administration to respond when they feel that they have been misquoted or inaccurately represented or when they're just angry at us, because there are a lot of days that they are just angry at us even when we're right," she said.

But Ladisic said she doesn't feel that the blog is a good use of university resources or the best way to respond to the DTH's articles. "I think that ... writing a letter to the editor is

a far smarter way to do that, but they've chosen to do it in their own way as the university tends to do," she said.

UNC already had a public relations publication, the University Gazette, which, like UMSL Daily, is presented as a news website but lives on the UNC domain, along with On the Record.

Rooting for the home team

At Indiana University, a controversial partnership for students in the sports media program has caused some to worry that the division between journalism and university public relations has been blurred out of existence.

On September 22, the university announced a partnership between the Media School and Indiana's athletic department that "will significantly enhance coverage of IU sports while providing students with access to unique sports media facilities."

The move comes on the heels of a consolidation of the School of Journalism, Department of Communications and Culture and the Department of Telecommunications into the Media School, which took place at the start of the 2014-15 school year.

The partnership will allow students studying at the Media School opportunities to work with the university's athletics department to gain experience in broadcasting and production, including making "marketing and promotional videos" and running IU Athletics' social media accounts. Students also have the opportunity to create "fan-focused content," which could include writing, audio and video, graphic design and media relations.

But critics say the partnership puts journalism students in a precarious situation. In an editorial published by the *Indiana Daily Student*, the partnership was cast as "a misguided merger."

"True journalistic integrity does not seem to be the focus of this partnership," the editorial read. "And the Editorial Board believes this relationship has broken the healthy and necessary separation between independent news organizations and the athletics department. How can audiences know with certainty the truth is being told? How do we know that IU Athletics won't keep information from its reporters? In this case, we cannot. Trust is lost when interests conflict."

Sports editor Taylor Lehman at the IDS declined to comment for this article, saying he and the paper's staff were uncomfortable sharing their perspective since they covered the issue and wanted to retain their journalistic integrity.

In an interview, Media School Dean James Shanahan said the partnership will not affect the integrity of the independent student media at the university.

"I think some good points were raised [with some of the recent criticism]. I just want to stress that there was never and nor has there ever been any real institutional change that would threaten the independence of any of our student media," he said. "More to the contrary, I used the opportunity to tell them, by all means — if you wish to write articles that are critical of this

partnership or of me or of the school or whatever, please do so because it makes the point that we really don't control them."

Still, media professionals have been skeptical of the unusual arrangement. When media blogger Jim Romenesko posted about the partnership on Facebook, criticism flowed in.

"Dean James Shanahan's nuanced explanations do not wipe away the fundamental ethical problems he tries to blur," wrote David Cay Johnston, an investigative reporter and Pulitzer Prize winner at Al-Jazeera America. "This is a bright line test unless you believe students in the partnership will never be journalists, just flacks and functionaries for the sports industry."

Seaman said it isn't necessary for journalism students to avoid elective courses that instruct in public relations, but the overall journalism curriculum should remain free from unnecessary entanglements.

"If they're a journalism student, universities should stick with teaching them journalism to be sort of traditional journalists, and that means unbiased, free of [any] conflicts of interest to produce [unbiased] content," Seaman said. "Otherwise they should probably just give kids their money back and stop pretending to be a journalism school."

Despite the critiques, Shanahan said he thinks the formal partnership allows the school to best serve the needs and wants of students across disciplines in the Media School.

"Our school — not just in the area of sports, but in all areas — tries to be as broad as possible and focusing on any of the communication careers that people can have," he said. "It's obviously not just journalism. It includes public relations, advertising, the studying of media from a social scientific perspective, the study of media from a humanistic perspective."

Journalism at a crossroads

Since the 1980s, the number of public relations professionals has grown substantially, while the number and salary of journalists has largely stagnated.

According to the Bureau of Labor Statistics, between 2004 and 2013, the number of public relations professionals grew by more than 36,000, while the number of reporters and correspondents shrunk by 8,920. During the same period, the median income for reporters and correspondents decreased by about \$3,000 in 2014 dollars, while public relations professionals saw a \$900 increase in purchasing power at the median.

In the book "The Death and Life of American Journalism: The Media Revolution That Will Begin the World Again," authors Robert McChesney and John Nichols warn that with newsrooms collapsing and journalists switching careers to public relations, "the waters of editorial integrity" are muddying.

"As editorial staffs shrink, there is less ability for news media to interrogate and counter the claims in press releases," they wrote. "And powerful interest will be better positioned than ever to produce self-promotional 'information' — better described as 'propaganda' — that can masquerade as 'news.'" ♦

Covering campus protests

At the University of Missouri in November, student photojournalists Tim Tai and Mark Schierbecker tried to document a protest on campus — and ended up becoming the center of a national story. Demonstrators demanded that they stop recording in a public location on the campus quad, and university employees supporting the protesters escalated the confrontation nearly to the point of violence.



All images via Mark Schierbecker's video of the clash between student journalists and the protesters.

Knowing the law — and how to assert it diplomatically — can help photojournalists and videographers stay out of trouble with law enforcement and minimize the harm if a confrontation does occur. Student Press Law Center Executive Director Frank LoMonte compiled a list of tips and advice for covering protests. Here are a few:

1. If you are on public ground, you can take pictures.

If you are standing on a sidewalk, in a park or any public property open to foot traffic, you can photograph and videotape anything you can see from that vantage point. You cannot be charged with an offense as long as you are not unduly obstructing other pedestrians. (You still can't jaywalk, trespass on private property, block automobile traffic or otherwise violate laws that apply to everyone else.)

2. There is no right to not be photographed in public.

If someone is in a space visible to public foot traffic, even in the event of a medical emergency, they can be photographed. That includes minors. And if an “invasion of privacy” does occur, that's not a crime enforced by police that can result in arrest; it is a civil claim that can be brought by a lawsuit.

3. Police cannot destroy images or order a photojournalist to do so.

If police believe that images were taken in a place where the journalist should not have been standing, the lawful response is to issue a citation for trespassing, not to destroy the pictures. Still, journalists should upload photos regularly if their camera is wireless-enabled.

4. Private property doesn't always mean photography is banned.

For example, the lobby of a convention hotel is a privately owned space, but there is no “reasonable expectation of privacy” there, and a person photographed against his will has no claim for invasion of privacy. A photographer who is asked to stop shooting, or to leave the premises, by an employee of the business should comply, but a customer cannot “order” a journalist to stop recording.

For more tips on covering protests and demonstrations, visit bit.ly/splcprotests.

When campus discipline doesn't add up

Many large public universities report zero or nearly zero liquor law violations and drug abuse offenses — a side effect of the wide variations allowed in reporting campus crimes under the federal Clery Act.

BY TARA JEFFRIES

Temple University reports about 70 disciplinary cases against students for drug offenses in a typical year. Iowa State University, a comparably sized public institution, reports zero.

Anomalies of this kind are peppered throughout the federal database of reports that colleges must file each year to document how they're dealing with crimes. How these anomalies happen — how one school can report close to 100 disciplinary cases for drugs or alcohol year after year while another school continuously reports zero — isn't always clear. And the wide variation in these statistics raises questions about how useful they are to the public, or why federal law requires collecting them at all.

Between 2011 and 2014, several schools — many of them large state universities — reported zero or nearly zero liquor law violations and drug abuse offenses, the Student Press Law Center found through public records requests and annual campus safety reports. The SPLC focused on about 15 large public universities, chosen at random.

Statistics from the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act provide an incomplete picture of the realities of campus crime by presenting a limited slice of data with little to no context, said Dennis Gregory, a veteran higher-education administrator, campus safety expert and professor at Old Dominion University who has researched the Clery Act extensively and helped amend it in 2013.

"I have always been a critic of the Clery Act in the sense that I don't believe that it does provide a very accurate or

true reflection of the safety on a campus," Gregory said. "I think it's improving, but it's still not there."

But some campus safety advocates say the Clery Act — signed into law in 1990 after the on-campus rape and murder of its namesake, a Lehigh University student, ignited a nationwide debate on college safety and transparency — isn't meant to capture the whole picture of a university's crime record.

"The Clery statistics represented reported crime stats, so

they will not capture everything that has happened as not all crimes are reported," said Alison Kiss, executive director of the Clery Center for Security on Campus. "The other part of the law requires disclosures about policies — or a summary of campus policies from alcohol and drugs, sexual assault, [domestic violence] and stalking, entry into building, et cetera. These summary

policies provide current and prospective students and employees with information on safety so as to be proactive."

Clery Act reports divide alcohol and drug offenses into several categories depending on where the crime occurred: on-campus areas, on-campus housing including residence halls, public property — "including thoroughfares, streets, sidewalks, and parking facilities that are within the campus, or immediately adjacent to and accessible from the campus" — and non-campus buildings or properties "owned or controlled by a student organization that is officially recognized by the institution; or ... owned or controlled by an institution that is used in direct support of, or in relation to

"I don't believe that [the Clery Act] does provide a very accurate or true reflection of the safety on a campus."

Dennis Gregory, *professor and campus safety expert who has studied the Clery Act extensively*



These statistics paint a confusing picture — why are the Clery Act numbers so much lower than the arrest numbers? An SPLC investigation found that the federal campus crime law allows for these discrepancies. The Clery Act does not require universities to report crimes like public drunkenness, which at Mississippi, makes up the vast majority of alcohol arrests, or DUI charges. Critics say this skews parents' and students' understanding of campus crime.

University police numbers for 2014

113 alcohol arrests

35 Driving under the influence arrests

the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.”

Low numbers can indicate that crime is concentrated in off-campus areas rather than on campus, Kiss said, though she added that the reasons for low numbers are difficult to generalize. In the annual reports, campus crime statistics are also split between “referrals” and “arrests.” The former category indicates incidents referred to student discipline offices.

And high numbers — perhaps counterintuitively — are often a positive sign for campus safety, particularly when it comes to sexual assault, which is generally vastly underreported both on and off campus.

Higher numbers, Kiss said, are a signal that students are coming forward to report crimes and get assistance.

Still, campus sexual assault statistics have come under scrutiny in the past few years as universities have faced federal probes into their Title IX policies and students have protested their schools' handling of sexual assault cases. A 2014 investigative report by the Student Press Law Center and the *Columbus Dispatch*, “Campus Insecurity,” found that many universities serially underreported sexual assault offenses on their campuses. A review of 12 years of Clery crime reports discovered that one-fourth of institutions with on-campus housing, where violent crime is most likely to occur, claim never to have had a sexual assault.

A narrow glimpse at campus safety

While the SPLC did not find evidence that universities have misreported drug and alcohol violation numbers, low numbers in Clery campus safety reports can provide an incomplete picture of the reality of drugs and alcohol on campus. Clery reports only include violations of liquor laws, defined as “the violation of state or local laws or ordinances

Clery Act numbers for 2014

21 liquor law violation arrests

0 disciplinary referrals for liquor law violations

Source: University of Mississippi's 2015 annual security report and public records.

prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages.”

Incidents of driving under the influence and public drunkenness are not included in Clery statistics. And with alcohol and drug charges culled differently by each university police department — some, for example, defined DUIs based on the substance involved in the incident; others lumped drug DUIs in with the more common alcohol charges — and muddled by differences in state laws on what constitutes DUIs and other charges, side-by-side comparisons were impossible to make.

In its Clery statistics, the University of Mississippi, which enrolls more than 20,000 students, reported 62 liquor law violation arrests in 2011 — more than the 30 in 2012, 60 in 2013 and 21 in 2014.

The Clery report, meanwhile, lists just one disciplinary referral for liquor law violations in 2011 and zero from 2012-14.

But because of the Clery Act's narrow reporting requirements, the actual number of alcohol-related incidents on campus is higher when including charges of public drunkenness and DUI. (This exception is noted prominently in the 2014 numbers.)

In public records obtained by the SPLC, Mississippi listed 174 alcohol arrests in calendar year 2012, 170 in 2013 and 113 in 2014. It also listed 120 DUI arrests in 2012, 118 in 2013 and 35 for 2014.

A university police representative said the apparent discrepancy — many more arrests for alcohol-related crimes in the university's own police records as opposed to the small numbers reported to the Department of Education under Clery — is merely a result of the Clery Act's narrower definition of what constitutes a reportable alcohol offense.

Public drunkenness charges (which do not require reporting under Clery) accounted for the vast majority of alcohol arrests at Mississippi between 2012-14: 87 percent of alcohol arrests

in 2012, 81 percent in 2013 and 83 percent in 2014. These percentages do not include DUIs, because such charges can relate either to alcohol or other substances. DUIs also made up significant chunks of alcohol and drug incidents.

University police arrested 108 students for drug violations in 2011, 83 in 2012, 105 in 2013 and 43 in 2014. Meanwhile, the Clery report of disciplinary violations listed just one drug referral in 2011, two in 2012, four in 2013 and three in 2014.

While this number too may seem anomalous – that far more students are arrested for drugs than are disciplined for drugs – the explanation may again be attributable to what the Clery Act defines as reportable. If a student is both arrested and also referred for disciplinary action, federal Clery guidelines instruct universities to count the infraction only once, as an arrest. This leads to disciplinary figures that can appear implausibly small for institutions of Mississippi's size.

Public drunkenness and DUI statistics should be included in annual safety reports, Gregory said, in order to offer a more accurate glimpse at drinking on campus.

Tougher on drugs?

Unpacking the crime statistics in annual safety reports can also reveal nuances in how different campuses handle alcohol and drug violations. A low number of discipline referrals is not necessarily cause for alarm, said Sara Kellogg, assistant dean and director of the Office of Student Conduct at Iowa State University, which reported zero drug abuse referrals for years 2011-14 in its 2014 and 2015 Clery reports.

"We don't double-report," Kellogg said.

Reporting zero referrals indicates that all drug cases were reported to campus police rather than relegated to the student conduct office, Kellogg said, showing that the school takes drug violations seriously and treats them as crimes.

"Our office has not received any drug cases without a police report, thus, they (the police) make the Clery report (under arrests)," she said in an email.

Iowa State, which enrolls more than 34,000 students, reported 89 total drug arrests in 2011, which has gradually increased to 141 arrests in 2014. On the other hand, similar-sized Temple University, which reported 106 disciplinary referrals for drugs in 2014, only reported seven drug arrests that same year.

"If a campus is reporting higher referral numbers versus arrest for such violations, it may mean that the institution intends to adjudicate these violations through campus-based disciplinary actions as opposed to arrest/citation and summons via law enforcement," said a spokesperson at the U.S. Department of Education, which monitors Clery statistics through its Clery Compliance Division by conducting "in-depth campus crime program reviews to identify any violations of the statute and/or the Department's regulations."

Compliance reviews can be sparked by complaints from crime victims, victim advocates or officials from the university

itself. Some institutions lack a designated Clery compliance coordinator, Gregory said, which can lead to lapses in reporting procedures. And at some campuses with a designated coordinator, the job is a part-time gig and therefore might not be considered a top priority to the person performing it, he said.

In contrast to its drug numbers, in the Clery report, Iowa State reported 378 alcohol referrals in 2014, less than the previous few years, including 605 referrals in 2011. Alcohol arrests totaled 243 in 2014 and 377 in 2011.

Iowa State also provided to the SPLC the numbers of drug and alcohol student conduct charges for years 2011-14, although the violations were not divided based on the specific substance or charge. The school tallied 282 total drug and alcohol charges in school year 2011-12, which increased to 366 in 2014-15.

Those cases were likely referred to the student conduct office by the campus or community police, Kellogg said, adding that not everything the office charges is Clery reportable, like many off-campus issues or violations.

According to Clery reports, Florida State University, which enrolls more than 41,000 students, arrested 323 students for liquor law violations in 2011, but police records obtained by the SPLC show only 303 alcohol incidents that year. Some of these incidents may have resulted in multiple arrests, said Jim Russell, deputy chief of the university police.

"For instance, an officer receives a report of a party in a dorm room," Russell said. "That will be recorded as one incident under one case number, but the case might end up with two, three, four, etc., arrests under that one case."

Clery statistics and raw incident-report data fall under two different data sets, Russell said, and are expected to be different. "Incidents" refers to any reported activity that results in a police record, even if it doesn't result in an arrest or disciplinary action. For example, if a student is suspected of smoking marijuana based on an odor coming from his dorm room, but the police find no evidence of drugs and do not proceed with an arrest, this is still listed as an incident in university police records. The student wouldn't be sent to campus disciplinary proceedings, letting his case – at least as far as statistics go – dissolve.

"Variances between the number of violations reported/case numbers and actual arrest numbers, especially under Clery reporting guidelines, is expected and normal," he said. "Had our arrests been equal to the number of case numbers generated, I would be alarmed, because that would mean that the persons responsible for capturing the data were not digging deep enough into the reports by reading each one, and identifying, properly, the reportable data."

At most of the schools the SPLC focused on, raw numbers of reported alcohol and drug incidents were higher than the referral or arrest numbers shown in Clery reports, due to many factors. Not only are some charges, such as public drunkenness and DUI, notably excluded from Clery reporting requirements, but some reported violations also did not result in arrests.

UNDER THE DOME

Missouri – A Republican state legislator filed a bill in December that would require any student graduating from a public college or university in Missouri to take a three-credit-hour course on the First Amendment. The legislator introduced the bill after seeing the viral video of protests on the University of Missouri campus where student and university employees blocked student journalists from covering a public protest.

North Carolina – In the midst of a secretive search for the University of North Carolina's new president, the state legislature passed a bipartisan bill to add some transparency to the process. The bill originally would have required the public disclosure of the names and credentials of at least three presidential candidates and an open meeting to discuss the finalists. The ultimate bill, however, instead requires that the search committee present at least three names to the board in closed session. Previously, the rules only required the search committee to present one name to the board before a vote. The bill became law without the governor's signature.

Virginia – Exemptions in Virginia's Freedom of Information Act allow the president of the University of Virginia, the governor, the attorney general and state legislators to shield their correspondence and working papers from the public. A pair of bills in the state legislature aimed at removing the university president exemption were introduced in 2015 after the controversy with UVA and the discredited *Rolling Stone* article on sexual assault, but both bills are effectively dead.

Tennessee – A bill to add a fee to inspect records was introduced in Tennessee. It was later pulled and referred to the Office of Open Records Counsel, which was asked to produce a report of possible solutions on dealing with large records requests, which includes charging for inspection of records. The measure has gotten push-back from public access advocates. The Open Records Counsel submitted its report to the legislature in January.

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Officers might not have had probable cause to make an arrest in some cases, for example.

Florida State reported 177 drug incidents in 2011, but police arrested 123 students for drug violations that same year. The discrepancy evened out over the next few years, and in 2014, there were 148 reported drug violations and 177 drug arrests.

Drug arrest numbers are much higher in Florida State's Clery reports than disciplinary referrals; Clery reports show only five drug referrals in 2011 and seven in 2014. Referral and arrest numbers for alcohol hover around equal figures, suggesting that typical outcomes in alcohol cases are less serious than in drug cases.

Piecing the puzzle together

When the parents of a prospective college student read a university's annual safety report and sees low numbers of drug and alcohol violations, they might feel relieved. But Clery reports don't always provide a genuine glimpse into the culture of alcohol and drugs on campus.

Campus police representatives maintain that low numbers aren't necessarily a glaring sign of underreporting – they're merely squeezed by a framework of narrow reporting requirements that reveal only a limited window into campus misbehavior. Parents and concerned parties willing to delve deeper into the issue can piece together a more meaningful picture of campus safety using resources such as the Department of Education's Campus Safety and Security Data Analysis Cutting Tool, the FBI's Uniform Crime Report and daily crime logs published by campus police departments, another component of the Clery Act.

But alcohol abuse prevention groups, such as Mothers Against Drunk Driving, say colleges aren't doing enough to remain transparent about all types of alcohol violations.

Becky Iannotta, spokeswoman for the organization, said MADD recommends "campuses create a centralized system-wide reporting mechanism for recording alcohol violations and alcohol involvement in campus rule or law violations."

MADD has also urged campuses to form coalitions with local off-campus police departments and other law enforcement agencies to ensure the strict enforcement of drinking laws in college environments.

Gregory said schools should include contextual information in Clery statistics, such as the size of the school and whether it is in an urban, rural or suburban setting. "For instance, if there are two aggravated assaults at, say, the University of Minnesota Twin Cities campus, that has a much smaller impact on the safety of the campus than it does if those same two occurred at a small, private, church-affiliated school in rural Pennsylvania," he said. "Clery should report the statistics in the way that the FBI reports general crime statistics, which is crimes per so many people."

And institutions need to ensure that they're presenting the statistics in a clear way that parents and outside parties can engage with, Gregory said, adding that more people probably read the annual reports now, due to increased national discussions of sexual assault on campus.

"If the data are not being used for the purposes that the Clery Act was intended to deal with, then it's not really important which data you report, because nobody's paying attention to it, nor do they trust it, nor do they think it's accurate or complete," he said. ♦



Protecting student journalists, state by state

The story of North Dakota's unanimous, bipartisan passage of the John Wall New Voices Act — which protects college and high school student journalists from administrative censorship and faculty advisers from retaliation — has inspired the country. There are about 20 states so far with grassroots campaigns to introduce student press freedom legislation. Eight states have bills introduced: Illinois, Maryland, New Jersey, Nebraska, Washington State, Rhode Island, Minnesota and Missouri. Here is a snapshot of some of the progress:

Missouri is the home state of the 1988 *Hazelwood School District v. Kuhlmeier* U.S. Supreme Court decision that suppressed student journalists' rights by allowing school officials to censor school-sponsored newspapers as long as there's a "reasonable educational justification." But in January, state Rep. Elijah Haahr introduced the Walter Cronkite New Voices Act to protect high school and college journalists' freedom of speech and of the press. The bill has since unanimously passed both the House Emerging Issues Committee and the Rules Committee and has moved onto the House floor.

"My hope is that we can reestablish Missouri as a place that supports the freedom of the press, and protects the rights of high school and college student journalists," Haahr said in a statement.



Cathy Kuhlmeier Frey, the lead plaintiff in the 1988 *Hazelwood* case, testifies in support of the New Voices Act. (Photo by Beatriz Costa-Lima)



Student editor Kylie Charney-Harrington testifies in support of the Washington New Voices legislation. (Photo by Dan Hiestand)

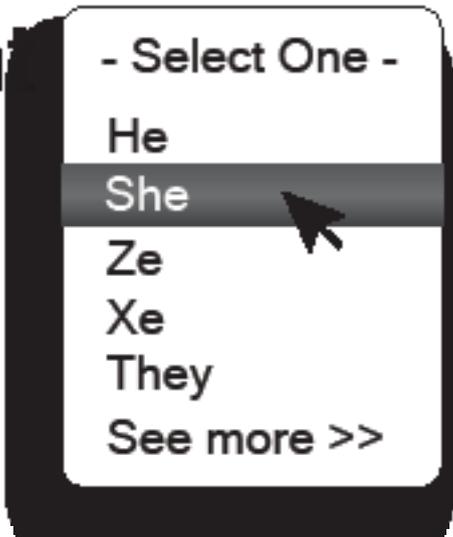
In January, **Washington State** Sen. Joe Fain, the Senate Majority Floor Leader, introduced student free expression legislation. Seven other state senators of both parties immediately signed on to co-sponsor the legislation. The bill passed the Senate Committee on Early Learning & K-12 Education by a 6-2-1 vote, but stalled in the Rules Committee.

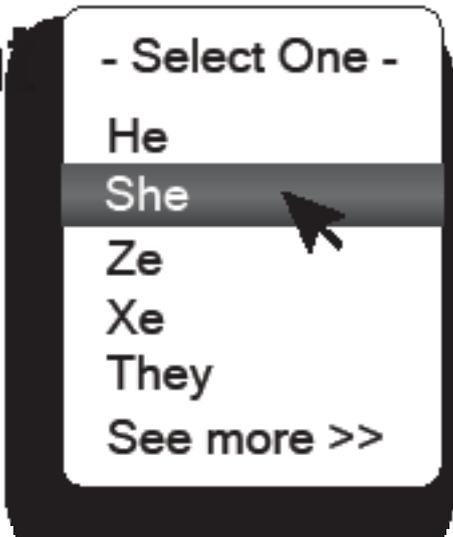
The bill will not undergo any more action in the legislature's short session which ends in March, but Fain plans to reintroduce the bill in January and advocates plan to drum up more support to pass it in the next session.

Thomas Custodio-Kaup, an adviser at a low-income high school who testified in support of the bill, said the legislation empowers students.

"The only thing many of our students have is their voice," he said. "They don't have much — some of them don't even have homes — but they have their voices."

For more information, visit www.newvoicesus.com.

That's what  said.



Graphic by Danielle Dieterich

Language in transition

Student journalists are working to balance clarity and sensitivity when covering transgender issues at school.

BY TARA JEFFRIES

Nick Wilkins had achieved a high honor — becoming a semifinalist for the National Merit Scholarship. But when the student newspaper published an article about the accomplishment, Wilkins noticed a detail that wasn't quite right. Wilkins prefers to use the pronouns “they/them,” but the newspaper used “he.”

Wilkins, a senior at Ooltewah High School in Ooltewah, Tennessee, identifies as gender non-binary, a category that is not exclusively male or female. Some gender non-binary people prefer to use gender-neutral pronouns, such as “they/them” or “ze.”

Student reporters are increasingly covering their transgender and non-binary peers, but sometimes they stumble. With other issues of language, reporters can turn to a style guide for quick answers — capitalize this noun, abbreviate this term — but with more complex and dynamic terminology surrounding gender and sexuality, they sometimes find more room for misunderstanding. Non-binary and transgender students — those whose gender does not match their sex assigned at birth — can face challenges being covered in student media, even with concepts as simple as their names.

Wilkins said they didn't correct the student newspaper on their pronouns because they thought the reporters wouldn't understand.

“I knew there wouldn't be a good reaction,” said Wilkins, who founded their school's chapter of the Gay-Straight Alliance. “When it comes to sexuality, there's a lot of

hostility. It isn't something people understand.”

Wilkins said both advisers and student journalists should be trained to ask all sources which pronouns they prefer, and teachers should receive training on transgender issues.

“Every time they're interviewing someone, it should be common practice to ask for name and pronouns,” Wilkins said.

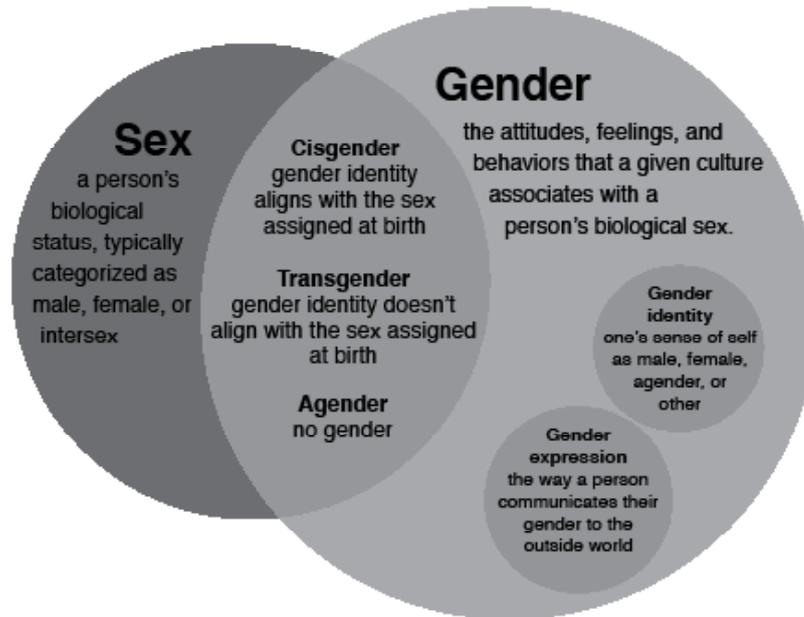
Gabriela Rossner, a senior and editor of the Perspectives section of Palo Alto High School's *Verde* magazine in Palo Alto, California, said she had to pay close attention to the language she used when telling the stories of non-binary students.

The AP Stylebook doesn't include alternative pronouns like “ze,” but in the case of transgender people, it advises reporters to use the pronoun that the source is comfortable using, and, if unsure of that, to use the one that corresponds to how the person presents themselves publicly. Still, the use of the singular “they” has been controversial, with copy editors debating during the 2015 American Copy Editors Society conference whether that pronoun is acceptable to use in newsprint (according to Poynter, about half of the ACES board members have no objection to it). In December, the *Washington Post* announced it would use “they” to refer to people who identify as neither male nor female.

In the last few years, trans issues have moved to the national forefront. Trans celebrities — like “Orange is the New Black” star Laverne Cox and Caitlyn Jenner, whose “coming out” story was highly publicized and is now the basis of a reality TV show — have become the faces of the

Vocab guide

Journalists struggle to cover stories relating to transgender people in part because of the complex and careful language required for accurate and ethical reporting. Reporters don't want to disengage readers by using language they won't understand, but don't want to do their sources the disservice of misrepresenting them. One way of potentially solving this issue would be to create a graphic like this for readers to use as reference.



Source: American Psychological Association/ Graphic by Daniella Dieterich

movement towards equality and acceptance. In November, the U.S. House of Representatives launched a task force focused on transgender issues.

And stories about the issues transgender teens face have also become more prevalent, as according to The Trevor Project — a lesbian, gay, bisexual and transgender suicide prevention non-profit group — nearly half of transgender youth have seriously considered suicide and one-quarter have made an attempt. The suicide of 17-year-old transgender girl Leelah Alcorn made national headlines in December 2014, igniting a national conversation about the needs of transgender young people.

Statistics say there are about 700,000 transgender people in the United States, although most experts say the true number is probably higher. The increased publicity has caused high school journalists across the country to consider tackling the stories of trans students at their schools, which has led to more coverage of trans issues, said Stan Zoller, the diversity chair of the Journalism Education Association.

Zoller said the association doesn't have a specific policy regarding coverage of transgender issues, but he would encourage student publications to cover them — and encourage advisers, despite potential controversies, not to hold back on that coverage.

“You, as an adviser, have to decide how you're going to cover something — not if you're going to cover something, but how you're going to cover something,” he said. “I talked to one student who was coming under some scrutiny ... Teachers were told not to talk about it, which was wrong.”

He said that students are taught not to shy away from other sensitive stories, such as the protests of police brutality

in Ferguson, Missouri and the November terrorist attacks in Paris, and shouldn't shy away from covering transgender student issues, either.

“Don't put a gag order on a news story,” Zoller said. “We strive for responsible journalism.”

Telling 'a story that hadn't been told'

Rossner, who co-wrote the story on non-binary students with student reporter Brigid Godfrey, began the writing process with some background knowledge of the LGBT community and its issues, but the story taught her even more about the challenges faced by non-gender-binary students. Many of her sources wanted to remain anonymous for privacy reasons, which presented some issues; journalists tend to avoid anonymous sources except as a last resort. Still, despite the sensitive topic, Rossner had no shortage of sources — many students were eager to talk about their experiences.

The main challenge in writing the story, she said, was balancing clarity and readability with sensitivity to her sources' preferences in pronouns and language.

“The editors and adviser found the story unreadable because of the vague pronouns,” Rossner said. Her role as a journalist expanded to the function of an educator, as she explained each unfamiliar term in detail so that readers would understand easily.

Rossner, who has also covered gender issues in other stories, said the language surrounding LGBT issues is not always clear to the typical reader at her school. Without meticulous editing, the meaning of the story can get lost in translation.

“We had to define every term we used several times,” Rossner said. “Like cisgender, transgender, non-binary, agender. That kind of made the story very wordy, and even throughout the story, the editors would be like, ‘I forgot what this word means; I’m still confused by the pronouns.’ It was an issue of introducing a whole new vocabulary set.”

The story, published in December 2014, met with positive reception, Rossner said. “I was grateful to tell a story that hadn’t been told,” she said.

Rossner, who passed out surveys in class, wrote that 4 percent of Palo Alto students identified themselves as being “outside the gender binary” or are “questioning their gender.” About 1.9 percent of surveyed Palo Alto students identified with a gender other than male or female — 33 out of 1,727. Rossner estimated that the actual number is probably even higher.

Verde also published a story in 2013 on transgender students. The story, entitled “I’m a He, Not a Question Mark” and written by Jack Brook and Alyssa Takahashi, is preceded by an editor’s note that explains the mid-story switch from female to male pronouns.

But across the country, the issue of how to balance clarity with sensitivity in language has presented challenges in student coverage of LGBT issues. Some critics nationwide have decried the practice of using alternative pronouns as too politically correct, sacrificing meaning and conciseness in the name of oversensitivity.

GLAAD (formerly the Gay and Lesbian Alliance Against Defamation), a nonprofit organization advocating for the LGBT community, attempts to address the issue with its Media Reference Guide, which outlines best practices for writing about LGBT issues.

A section on transgender terminology explains the difference between sex and gender and advises reporters to ask, whenever possible, which pronouns a transgender or non-binary person prefers. It also includes a list of offensive terms, such as “sex change,” “transgendered” and “transvestite.”

Rossner said she feels it’s important not to sensationalize stories about the transgender experience. Some profile pieces centered around transgender individuals tend to mark them as outsiders, she said.

“These stories try to shock the reader with the premise of ‘being transgender’ as a hook,” she said, adding that reporters should focus on the issues facing the LGBT community, not merely the existence of LGBT people.

Lessons in vocabulary

The question of whether to grant anonymity to sources can also present challenges to student reporters, especially when those sources are minors. Marie Miller, adviser of *The Falconer* at Fauquier High School in Warrenton, Virginia, said the issue of anonymity was the biggest roadblock her students faced when they published a story about transgender students this

“We’re trying to make a place for the evolution of communities that have always existed but have sometimes been invisible.”

Shane Windmeyer, executive director of the LGBT college advocacy group *Campus Pride*

past school year. One of the sources for the story was granted anonymity upon request, “which was fine,” Miller said — but although another source felt comfortable being identified, the source’s mother did not want her child to be named.

“We have a requirement here that if the story is potentially controversial, I have an obligation to notify the principal,” Miller said. “My concern was telling the students that they couldn’t own their own story, and I know that that argument did not carry weight with the principal. So when we went back and talked to the source, the source said, ‘Fine, I don’t care if you identify me in the story [or not],’ and so the issue went away.”

Miller said she was uncomfortable with shielding that source’s identity when the person felt comfortable identifying publicly as transgender, but she also had concerns about the potential consequences of the source “coming out” at such a young age.

She said using gender-neutral pronouns also presented an issue in the coverage. “The pronoun thing is a very sensitive issue, and we tried to be sensitive to the student sources,” she said. “It confuses the reader to use the pronoun ‘they.’ As an English teacher, I have an issue with that.”

Shane Windmeyer, executive director of the LGBT college advocacy group *Campus Pride*, said student reporters should receive more training on how to report effectively on LGBT issues and individuals. Reporters should ask transgender or non-binary sources what pronouns and name they prefer to use, he said.

He decried the lack of representation of transgender and non-binary reporters in student newsrooms, but said that cisgender people — those who identify with the sex they were assigned at birth — can effectively tell the stories of transgender and non-binary sources if they allow their voices to guide their narrative.

“A good reporter will allow the voice of a trans or gender non-binary person to come through in their story, but sometimes they don’t know the right questions to ask,” he said.

Windmeyer praised GLAAD’s media guide, but said it should be updated more often to reflect the constantly evolving language of gender minorities.

“Our language is changing, our definitions are evolving,” Windmeyer said. “We’re trying to make a place for the evolution of communities that have always existed but have sometimes been invisible.” ♦

No laughing matter

College comedy publications have had to redefine the line between offensiveness and humor to appeal to a new generation.

BY ALLISON KOWALSKI

Emmy Ballard knew it was time for an apology. It was 2010, and the comedy paper she was an assistant editor of, *The Fish Rap Live!*, had been accused by the student population at University of California, Santa Cruz of publishing racist content and some groups had even called for defunding the paper.

The accusation had come in light of recent actions taken at a sister school's comedy paper. *The Koala*, the comedy paper and TV station from nearby University of California, San Diego, had come out in support of a fraternity's "Compton Cookout," intended to mock Black History Month, where students were instructed to wear "ghetto-themed" clothing.

The event garnered national press attention as students, including the Black Student Union, spoke out against the event. *The Koala's* response was to mock the protesters using a racial slur. Now, back at Santa Cruz, students there had taken a closer look at *The Fish Rap Live!*—and some of its more controversial content.

In the midst of a national debate on college campuses about offensiveness, inclusion and political correctness, several campus comedy papers across the country have described their recent reluctance to be offensive as a necessary step to remain both funny and relevant. Flagrantly offensive humor, they argue, is no longer what students crave or consider to have comedic value.

The Fish Rap Live! staff had met the staff of *The Koala* before the incident at a conference, and found their taste for the offensive off-putting. *The Koala* made shock-value jokes

and published a "Top 5 Black People at UCSD" list, whereas *The Fish Rap Live!* went through phases where they used poop jokes, Ballard said.

Then they looked deeper into their own paper and realized: they had race issues as well. There was the comic that showed "Obama's Victory Garden" with items associated with African-American stereotypes such as collard greens, and the fact that people of color on staff had started speaking up and saying their voices had not been heard.

The editors created an apology issue, with a crying fish on the cover, that contained four pages of individual letters of apologies from editors and a list of how they planned to change their content to reflect new values. They cut their staff size in half to make it more manageable, added an interview process in lieu of an open acceptance

policy and required sensitivity training for the staff.

"It has quickly become clear that the current criticisms of our publication are not mere overreactions or a case of political correctness," Ballard wrote in her letter. "If we cannot be funny without lazy humor and racial jokes, we are not worthy of our readership, our resources or the energy and talent of our staff."

Where to draw the line

In the past several years, college comedy outlets have tended to shy away from anything that could be marked sexist or racist, and when student writers do cover topics

"Comedy is an art, and I don't think people should tell any artist what their art can or cannot be."

Chris Gilman, an editorial apprentice at *The Onion* who once wrote for his college comedy paper

that could raise hairs, certain conversations about the direction of the comedy happen in the editorial room.

Editors want to know: are we “punching down,” or piling on the underdog? Are we critiquing and adding value to the conversation or perpetuating a stereotype? Comedy editors and writers now want to know that they can defend the substance of their comedy and its inherent worth and contribution to a conversation at large from any complaints.

Though student editors’ approaches to how they determine offensiveness and where they draw the line differs by staff, almost all college humor publications look to the same model – The Onion. The country’s most prominent satirical news website first started out as a college paper at the University of Wisconsin, and many editors at comedy papers across the country adhere to its comedic stylings, sometimes continuing on to work at the site itself.

Chris Gilman has followed the college comedy paper-to-Onion path. After spending time as an undergraduate writing for the University of Texas at Austin’s *Texas Travesty*, the largest college humor publication in the country, he now has an editorial apprenticeship at The Onion. He writes headlines and jokes across sections for the website and can observe and learn from senior staffers.

He sees their comedic philosophy as straightforward: if there’s no truth to it, then it doesn’t work. During his time as an undergraduate on the *Travesty*, there was backlash from a few articles that mocked real sorority names or referenced Nazis.

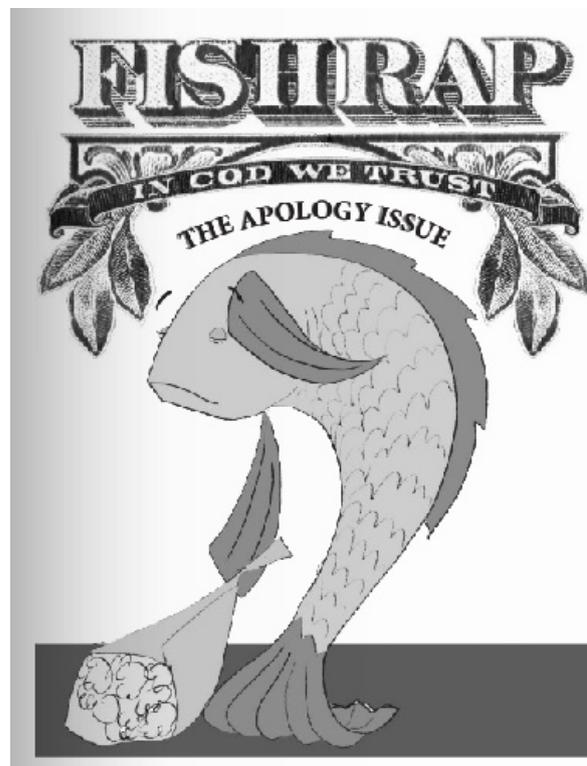
But Gilman considered those jokes to be fleshed out and hold comedic value and stood by them. In his first few months at the Onion, he’s seen all the editors do the same.

There’s a difference, Gilman said, between humor created with the sole purpose to offend and humor crafted about a sensitive subject to point to a larger truth.

“Comedy is an art, and I don’t think people should tell any artist what their art can or cannot be,” he said.

In the past year, at least two college humor publications – *The Koala* and Michigan Technological University’s *The Daily Bull* – have faced disciplinary action for published articles from the college itself. At UCSD in November, the student government defunded all 13 student publications, with representatives saying that they had to make an across-the-board cut since they couldn’t discriminate against the *Koala* specifically. The cut was in response to a *Koala* article that mocked students’ requests for safe spaces on campus and contained racial slurs – the article spurred UCSD administrators into publicly denouncing the *Koala*.

At MTU, a *Daily Bull* article in November called “Sexually Harassed Man Pretty Okay with Situation” (and an accompanying list of “Signs that she wants the D” that included items like, “she only screams a little”) prompted university administrators to place the *Bull* on probation for



UC-Santa Cruz’s comedy paper published an apology issue after criticism.

two years. The student government voted to withdraw some of the *Bull*’s funding and to withhold more until staffers had attended Title IX training.

When college campuses – typically cited as hotspots and exemplary advocates of free speech rights – start pushing back against offensive speech, some have argued that there is a chilling effect on free speech. It’s something some professional comics have picked up on.

In 2015, Jerry Seinfeld told reporters he no longer performs at colleges because he believes students “just want to use these words: ‘That’s racist.’ ‘That’s sexist.’ ‘That’s prejudiced.’” Seinfeld said these terms are thrown about “without knowing what they are talking about.” Chris Rock has also spoken publicly about avoiding campuses in the past, saying colleges were far too eager “not to offend anybody.”

Editors of many of the comedy papers disagree, saying they are not giving up their right to say whatever they want, just harnessing it. The staffs that err on the side of less-inflammatory language said they work to find comedy and comment on topics that will be received well, instead of dismissed as insensitive or offensive.

Where politically correct meets comedy

Sam Heft-Luthy, editor-in-chief of Brown University’s satirical paper *The Brown Noser*, said conversations about political correctness have been ongoing in his newsroom since he joined the paper in 2012.

The Brown Noser’s policy is to adhere to a standard of

publishing content “that is engaging rather than shutting things down for no specific reason,” Heft-Luthy said. For its staff, this is not self-policing, it’s self-consideration.

“The idea that comedy is a different form of speech than any other is something I find dangerous. It’s a different context because you’re coming at something in a surprising way,” Heft-Luthy said. “Not to consider the social consequences of what you’re saying devalues the people you’re hurting in that speech.”

Heft-Luthy said *The Brown Noser* has what he considers to be a positive relationship with the campus, and since his tenure on paper, he cannot think of any articles that particularly inflamed the student community.

Since the apology issue at UC-Santa Cruz, *The Fish Rap Live!* has adopted a philosophy to not perpetuate negative stereotypes. Current co-editor-in-chief Billy Butler said he considers UCSC to be an active liberal campus filled with students who are sensitive and concerned about the tone of humor articles.

“I don’t think it’s a bad thing to be accountable to your humor and comedy. Your comedy should be able to stand up to scrutiny,” Butler said.

Foundation for Individual Rights in Education President Greg Lukianoff tends to disagree with how these papers are pushing their newfound comedy philosophy.

This past fall, FIRE released a documentary called “Can We Take a Joke?” that featured comedians including Gilbert Gottfried, Jim Norton, Lisa Lampanelli and Heather McDonald that dissected the relationship between comedy and free speech.

“The culture of outrage is encouraged by the current campus environment. It becomes very easy to silence people you disagree with,” Lukianoff said. “Sometimes it’s so obvious that someone was kidding, there’s just a desire to be outraged. Part of the fear is a bit of outrage theater.”

When free speech offends

As most of these papers adopt political correctness as a baseline for their comedy, *The Koala* stands out. Known for its shocking comedy, *The Koala* has drawn national media attention for a couple of particularly outrageous stories. One of the first was in 2005, when its TV station, Koala TV, broadcast a *Koala* editor performing sexual acts with a pornography actress.

The student editor said the 15-minute pornography film, broadcast across the university’s student station and later saved online, was in response to a student government ban on nudity and obscene sexual activity across all student networks. He was subsequently interviewed on shows such as “The O’Reilly Factor,” whose host questioned the value of “state-funded pornography.” The editors at the time stood behind the First Amendment and their right to provoke.

Adam Goldstein, attorney advocate for the Student Press

Law Center, said though *The Koala’s* content is usually protected as parody or satire, distributing pornography on a campus station could land student journalists in hot water because some student viewers are likely minors.

In 2010, Koala TV had its funding frozen by student government after it supported the “Compton Cookout” party that encouraged attendees to dress in black stereotypes. When student government suspended funding as a response to what was termed “hate speech,” the station then replayed the controversial pornography video with the image of a female student government leader superimposed over the porn actress’s face.

When initially contacted for an interview, *The Koala’s* editor-in-chief Gabe Cohen declined to comment unless his staff was provided with beer. Later, after UCSD student government froze the *Koala’s* funding once again, Cohen agreed to an interview with the understanding that no alcohol would be provided for his staff.

As the leader of the notorious paper, Cohen has had to face widespread criticism that *The Koala* is not of any value. Their article mocking safe spaces on campus — which included the lines “Too long has the no-blacks rule been removed from our campus. Too long have students not been free to offend their hypersensitive peers.” — led to the defunding of all student media as university administrators called the *Koala* “profoundly repugnant, repulsive, attacking and cruel.”

Editors from the other student media that also lost funding as a result of the cut responded with an open letter, citing the need to offer a space to all student publications, while simultaneously saying they considered *The Koala* to be hateful and did not vouch for its offensive content.

“Our goal is not to be blatantly hateful,” Cohen said.

The paper’s comedic philosophy, Cohen said, is “no holds barred.” They’ll print the n-word nine times in a story just because other comedy papers would find that inappropriate, he said, or dedicate pages of their print edition to graphic nude images of people having sex.

“We’re not here to fight some social justice war,” he said.

What *The Koala* is fighting for, he said, is the right to free speech. Cohen said he considers the legal implications of every piece, and one of the only lines he believes not worth crossing is a piece that would imply a threat to harm a non-public figure by name. *The Koala* has retracted pieces in the past after its editors considered the content going too far, though Cohen declined to describe the nature of that content.

The Koala’s controversies are a bit of an outlier among campus comedy papers from the cases Goldstein typically sees. He most often hears from comedy writers nervous about the backlash from offended students, he said.

“There’s no such thing as ‘hate speech’ in U.S. law, so that is protected. There’s no basis for any of those assertions,” Goldstein said. “Usually it’s just that they are offended.” ♦

Turning free speech rights inside out

Schools and courts have been divided while navigating school dress codes and students' First Amendment rights.

BY TARA JEFFRIES

Dress codes at public schools across the country are rising to the forefront of a national debate as they pit students' First Amendment rights against school authority.

The *Tinker v. Des Moines Independent Community School District* precedent set the standard for free speech in schools, preventing schools from restricting free speech unless it “materially and substantially” disrupts educational activities. But many schools are stretching the bounds of the *Tinker* standard — and eroding students' free speech rights in the process.

At Harmony School for Advancement in Houston on Sept. 4, the halls were lined with blue as students wore blue shirts in a tribute to slain police officer Darren Goforth. But to administrators, four blue shirts stood out among the rest. Senior Fatimah Bouderdaben, along with three classmates, wore a blue T-shirt emblazoned with the phrase “#BlackLivesMatter”

on the front and the names of police brutality victims on the back, in reference to the movement centered on police killings of unarmed African-Americans.

Bouderdaben said Dean of Students Meredith Millspaugh told her and her classmates to remove the shirts or turn them inside out. Only Bouderdaben refused.

“I wasn't doing anything wrong,” Bouderdaben said. “If everyone in the school could wear blue to showcase their political statement, then I should be able to do the same.”

The dean then “verbally attacked” her until she began crying, Bouderdaben said. Timothy Lankford, a school spokesman, said there was no personal attack and that

administrators tried to defuse the situation.

“The safety and well-being of our students comes first,” Lankford said in a statement.

“Administrators felt that while the front of the shirts, which read #blacklivesmatter, was reasonable, a listing of those allegedly killed at the hands of police (which was on the back) was intended to be controversial and inciting and did not meet our published dress code.”

Bouderdaben, however, said administrators told her that the front of the shirt was the problem, not the back.

Students who were family members of police officers complained about the shirts, Lankford said in the statement. Bouderdaben said that no one seemed to notice her shirt until Millspaugh did.

Her school's dress code, like many others across the country, forbids

clothing with “pictures, emblems or writing ... that is lewd, offensive, vulgar, or obscene” and “inappropriate language, logos, messages or advertising.” The school maintains it did not punish Bouderdaben for wearing the shirt, but she missed classes after being sent home, which she said left her unprepared for future assignments.

More than half of American public secondary schools enforced a dress code in 2011-12, according to the National Center for Education Statistics. In the same year, 12 percent of public secondary schools reported that they required school uniforms. Uniform requirements were more prevalent in low-income public schools.

“What’s causing people to have arguments on Facebook ... that’s trickling into the schools, and the schools might try to censor it.”

Tom Castelli, *legal director of Tennessee’s American Civil Liberties Union chapter*

Free speech on a T-shirt

The 1969 *Tinker* case was the first major U.S. Supreme Court case involving school dress as a freedom of expression issue – Mary Beth Tinker and a group of other students were suspended from school for wearing black armbands to protest the Vietnam War. The Supreme Court ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

In the almost 50 years after that case, free speech and school dress codes have continued to stoke legal debates. In the 2011 *Frudden v. Pilling* case, a federal appeals court ruled that mandatory school uniforms bearing the slogan “Tomorrow’s Leaders” violated students’ free expression rights.

Parents Jon and Mary Frudden of Reno, Nevada, sued Roy Gomm Elementary School after the school removed their children from class for wearing soccer uniforms, which administrators said violated the school’s mandatory uniform policy. Attorneys for the Frudden family argued that the required uniform, which bears the slogan “Tomorrow’s Leaders,” unlawfully compelled the students to display a school-enforced message.

In an amicus curiae brief on behalf of the Fruddens, the Student Press Law Center emphasized the right of students to use their clothes as vehicles for free expression.

“The canvas upon which students in America’s public schools may safely express their views has been shrunk in recent years almost to the point of nonexistence,” the brief said. “In this case, the School District seeks to deprive students of those final few uncensored inches. If the ruling below is allowed to stand, then the area within the school where *Tinker* applies will be essentially an empty set.”

The U.S. District Court for the District of Nevada ruled in favor of Pilling, arguing that “Tomorrow’s Leaders” was viewpoint neutral. But in 2014, a panel of the U.S. Court of Appeals for the Ninth Circuit reversed the district court’s ruling, finding, among other things, that the mandatory display of the school motto was compelled speech.

An exception to the uniform policy specifically allowed Boy Scout and Girl Scout uniforms in place of school shirts, which violated the requirement that dress code rules remain “content-neutral,” said Louis Bubala, a volunteer attorney in the Student Press Law Center network who worked on the Ninth Circuit appeal.

He said the Fruddens demonstrated that the school motto on the uniform was compelled speech under the First Amendment, departing from the typical narrative of free-speech issues in dress codes, where the issue is usually students being silenced rather than students being forced to say something.

“There are two sides to the First Amendment: one, you have the right to say what you want to say with certain restrictions and limitations,” said Bubala, who is with the Reno law firm Kaempfer Crowell. “This case goes to the other side: ‘the



Mary Beth Tinker at the 1965 Des Moines school board meeting. (Photo by Dave Penny for the *Des Moines Register*, provided by Mary Beth Tinker.)

government can’t make me say something I don’t want to say.”

‘Censorship is not going to fly’

In recent years, many students have faced punishment for wearing shirts with slogans supporting lesbian, gay, bisexual and transgender rights. Briana Popour, a student at Chesnee High School in Chesnee, South Carolina, was suspended for wearing a shirt that read, “Nobody Knows I’m a Lesbian.” But the school later reversed its action.

“That particular disciplinary decision was overturned later when administration realized that although the shirt was offensive and distracting to some adults in the building, the students were paying it little attention,” said district spokeswoman Rhonda Henderson in an email.

But in other districts, the battle over pro-LGBT rights clothing has gone to court. In December, a federal district judge in Tennessee ruled that a student had a constitutionally protected right to wear a shirt to school that read, “Some People Are Gay, Get Over It.”

The American Civil Liberties Union of Tennessee had filed the lawsuit against Richland High School in Lynnville, Tennessee, for censoring senior Rebecca Young.

Young said she was reprimanded in a crowded cafeteria by principal Micah Landers, who told her she could not wear the shirt or any other clothing referring to LGBT rights, claiming he was protecting her from harassment – but Young had not received any hostile reactions from other students. The school forbids clothing that disrupts the education process, but Young has maintained that her shirt did not cause any disruption.

Young, who is openly gay, said she wants to ensure that other LGBT students feel safe expressing their identities at school.

“My ultimate goal with this [lawsuit] is not to satisfy myself, but to make it so that future LGBT students here at the school

are able to express themselves and not have to fight with the school about it,” Young said in an interview before the judge’s decision. “In the end, it’s going to be about the future students here being able to feel they can express themselves without somebody that’s supposed to keep them safe bullying them.”

Young said she didn’t believe Landers was trying to protect her from harassment, but rather, “shut me down so I couldn’t express myself,” she said.

The district’s superintendent, Phillip Wright, supported Landers’ decision, saying that pro-LGBT rights clothing violated the dress code’s ban on sexual content.

“Wright stated that pro-LGBT messages are sexual in nature and, therefore, prohibited by the dress code,” the lawsuit said.

School officials did not respond to the Student Press Law Center’s requests for comment, and the school board never submitted a defense to court.

Judge Kevin H. Sharp ruled that the only disruption in the incident stemmed from the principal reprimanding Young in the cafeteria. Also, he wrote in his opinion, the school only prohibited pro-LGBT rights messages, which is viewpoint discrimination and unconstitutional.

Tom Castelli, legal director of Tennessee’s ACLU chapter, said that while LGBT rights are a particularly controversial issue in his state, he’s seen school dress codes violate the First Amendment on both sides of the political spectrum.

“When anything’s a hot issue, you start seeing a crackdown from school administrators, who may have concerns that ‘I don’t want a fight,’” Castelli said. “You see both sides of it sometimes. A school might say, ‘You can’t wear that pro-life shirt, because we don’t want to have an argument.’”



Student Rebecca Young in the prohibited shirt. Image via Facebook.

Clothing displaying the Confederate flag has also ignited public debates about dress codes and free speech, particularly in Southern states like Tennessee, Castelli said.

The Virginia chapter of the ACLU sent a letter to Christiansburg High School in Christiansburg, Virginia, after officials suspended 17 students in September for wearing clothing displaying the Confederate flag. The October letter asked the school to explain

its reasons for banning the flag on students’ clothing and on car bumper stickers in the parking lot. “Although the Confederate flag is unquestionably associated with racism, slavery, and violence against African-Americans, it is also a form of speech protected by the First Amendment,” the letter said.

The school contended that banning the flag was necessary to ensure a peaceful learning environment.

“We value our students’ First Amendment rights, but we must maintain an orderly and safe environment for all students,” said school spokeswoman Brenda Drake in a statement. “We are not issuing a judgment on the flag, but know that not allowing it at CHS supports a peaceful educational environment in the building. Continued racial friction suggests that lifting the ban of this particular symbol would cause significant disruption at the school.”

The ACLU letter cited previous cases where courts ruled depending on the record of racial tensions at the specific schools. Confederate flag bans, like other school dress code controversies, still stand on shifting legal ground.

Jaegur Goode, a junior at Seagoville High School in Dallas, was sent to in-school suspension in September for wearing an American flag T-shirt. His school’s dress code requires solid-color shirts except those supporting the military and bearing college or school logos. After hearing widespread outcry about the incident, principal Michael Jones quickly clarified that the administrator in question had misinterpreted the dress code.

“Please be assured that t-shirts with the American flag always [have been] and continue to be an appropriate symbol to wear at our school,” Jones said in a statement. “We apologize for any misunderstanding this may have caused.”

American flag clothing was also the center of controversy in the 2014 case *Dariano v. Morgan Hill Unified School District*, when the U.S. Court of Appeals for the Ninth Circuit ruled that school administrators who ordered a group of students to remove American flag T-shirts during a Cinco de Mayo celebration in 2010 did not violate the students’ First Amendment rights. The administrators cited safety concerns due to a verbal spat that happened the year prior, when students waved an American flag and chanted “U-S-A!” at the Cinco de Mayo festivities.

In March 2015, the U.S. Supreme Court declined to hear the case, leaving the Ninth Circuit ruling as a binding precedent for the nine states covered by the California-based circuit.

Since *Tinker*, the keystone case in student dress codes and free speech, dress codes have clashed with free speech in the context of the contentious social issues of the day, Castelli said. But, he said, administrators’ fear of controversy doesn’t justify silencing students’ speech.

“What’s causing people to have arguments on Facebook and around the Thanksgiving dinner table – that’s trickling into the schools, and the schools might try to censor it,” he said. “Whether a popular or unpopular cause, censorship is not going to fly.” ♦

Erasing the narrative

High school and college newspapers have been grappling with requests for content removal from former sources and contributors.

BY COREY CONNER

When the *Daily Illini* was faced with the threat of a lawsuit, the staff had to decide whether to succumb to a pragmatic fear and comply with a request — more so, a demand to bend their rules and sense of journalistic ethics — to remove an old letter to the editor condemning gay marriage.

“It wasn’t worth it,” said *Daily Illini* newspaper publisher Lilyan Levant. “It wasn’t worth the potential — not that we didn’t have a strong legal case to keep it up, necessarily — but it really wasn’t worth it and the content that this person wrote really didn’t add to the dialogue in the first place, so we did take it down.”

An alumnus of the University of Illinois at Urbana-Champaign had insisted that the student paper remove the letter to the editor from its online archives. Levant declined to detail the content of the letter or discuss its author, saying she didn’t want to potentially upset the “litigious” individual.

Still, she said she wasn’t happy that the content was removed. “To me, the website should replicate the newspaper and if it was content that was in the newspaper and searchable, then it should be searchable online and identified,” she said.

But at the time the letter was submitted, Levant said, there was no explicit policy in place notifying readers that submitted letters may be used at the newspaper’s discretion indefinitely.

The student editors are updating the *Illini*’s policies to clarify their right to use letters to the editor and to ensure they will not need to remove such content in the future.

In recent years, the everlasting nature of online content has posed new challenges for student journalists as they begin to receive requests for content removal from those wanting to control their own online narrative.

Making the decision

In the fall, a college junior contacted his former high school’s student newspaper asking that a profile about his

musical aspirations and talents on the flute be removed.

“Although I continue to pursue music as a career, to me, the article feels outdated and stands as a misrepresentation of myself,” he wrote in an email to the paper at Niles West High School. “If it is at all possible to have the article removed from the *Niles West News* website, that would be greatly appreciated.”

Niles West News adviser Evelyn Lauer said she receives a couple of these requests every year, often from students near the end of their college careers.

“This particular one made no sense to me,” she said. “I can’t see why if some company, some college, found an article about him when he was in high school [and] was a musician ... why anyone would want that taken down.”

Lauer told the alumnus she would not remove the content. He did not respond, she said.

For Lauer, each request is considered on a case-by-case basis — the publication does not have any hard-and-fast rules.

When a transgender student asked that an article about her transition be removed from the paper’s website, Lauer didn’t know the answer, but the request pulled at her heartstrings.

The student had plans to move to a new school and did not want a feature about her transition available for her new classmates to see.

“In that kind of case, yes, I want her transition to go smoothly and I don’t want *Niles News* to be the hindrance,” Lauer said. “How can I compare that case to ‘I just want my article down about the fact that I played music?’ You can’t compare those two stories.”

Lauer planned to speak to the transgender student about the value of keeping the article online, but the student dropped the issue and remained at Niles West. The article is still online.

Because online content has the potential to be viewed indefinitely and high schoolers might not yet realize the

long-term consequences of their actions, Lauer said she has discouraged her staff from covering certain events entirely.

After a sophomore streaked across the football field, Lauer told her students that covering their uncovered friend might expose him to a streak of embarrassment and shrivel his future opportunities. The staff chose not to report on the story.

For Lauer, the choice to remove content is an ethical and moral one.

“We didn’t run it for ethical reasons because that story would have followed that kid beyond the walls of our school and it looks bad,” Lauer said. “Once you decide to be an online publication, you have [other considerations]. In the world of print, all of that information is there, it’s just easier to access online.”

But certain newsworthy stories are fair game, she said.

When senior Sam Breitberg was arrested in February 2013 on charges of making bomb threats directed toward the school, *Niles News* ran multiple news articles and included the student’s picture. Breitberg did not respond to interview requests from the Student Press Law Center.

The publication was both criticized and praised in its reader comment section for naming Breitberg in the article, with one comment saying, “The Niles West News has absolutely no respect for an Americans [sic] privacy.”

Since making the threats, Breitberg has graduated, completed wilderness therapy for addiction and works as a program facilitator at a treatment and living facility in Portland, Maine.

But the first result in a Google search for Breitberg is the article on the *Niles West News* website: “Breitberg Arrested for November’s Bomb Threats.”

Right to be forgotten

The question of online content’s longevity and requests for its removal has expanded far past student media. Since May 2014, Google has considered removing more than 1.2 million links from 354,542 requests from removal, according to the company’s December 8 transparency report.

In some cases, European courts have gotten involved. In 2014, the Court of Justice of the European Union ordered Google to remove links to an article about a Spanish national who failed to pay his debts. Currently, the search engine is fighting back against an order from France’s data protection organization, Commission Nationale de l’Informatique et des Libertés, arguing that Google has not gone far enough in removing search results. While Google removes results from specific country domains within the European Union, such as Google.fr, the results are still available through Google.com.

Google did not make a spokesperson available for an interview.

While the United States has never granted a “right to be forgotten,” an overwhelming majority of Americans would

Receiving takedown demands

It’s not unusual for student journalists at both the high school and college level to receive requests to remove content from the student publications’ websites. Here are a few tips on what to do when you receive takedown demands:

1. Know that content that is lawful when printed on paper does not become unlawful just because it is potentially accessible to more readers by being posted online. **Consider: Was there anything defective about the story from the start?**

2. A student publication could be liable to a subject of an article if the publication publicized private facts in a way “that would be highly offensive to a reasonable person and is not of legitimate concern to the public.” **Consider: Was the story newsworthy? Was the information public record?**

3. If a former student journalist or a former student who once wrote a letter-to-the-editor contacts you about removing their work from the website, you’ll need some understanding of copyright law. Copyright ownership belongs to the creator of the work, although if someone was paid for the work, that might give control to the publication. **Consider: Avoid future copyright conflicts by requiring all contributors to sign an agreement stating that the publication assumes ownership of the contributor’s copyright interest.**

For more tips, visit bitly.com/splctakedown.

support the move, according to a survey from Benenson Strategy Group and SKDKnickerbocker.

Overall, 88 percent of Americans would support requiring search engines to remove results on request, with 52 percent strongly supporting the measure. Only 3 percent of those surveyed would strongly oppose the move.

U.S. courts do recognize some degree of personal privacy that gives people a measure of control over how their names and likenesses are used commercially — as in the landmark 1931 California case of *Melvin v. Reid*. A California appeals court ruled in favor of a former prostitute, acquitted of murder, when a production company attempted to take her story to the silver screen.

But the judges emphasized that any privacy right “does not exist in the dissemination of news and news events.”

Still, when the Student Press Law Center distributed a survey to several college newspapers, of which 10 responded, seven student editors said they have removed online content for some reason.

Terrence Bynum, the editor-in-chief of *The Nevada Sagebrush* at the University of Nevada, Reno, said he removed an article about a student being stalked. The student, he said, told the paper that she no longer wanted to be associated on Google with an article identifying her as the victim of a crime.

Bynum said when the article was taken down, it was no longer relevant but being used against a victim of a crime, making the decision seem clearer.

Other student editors responded that they have removed content related to crimes – for example, in an instance where the charges were dropped.

For some editors, the choice to remove content wasn't driven by a specific request, but the quality of the content. Some papers have removed April Fool's jokes from their online archives for this reason.

But none of the editors indicated they removed content because of legal requirements.

Student editors might be legally required to remove content that is libelous, a copyright infringement or an invasion of privacy. But content that was legal to post initially does not lose its validity to the passage of time.

Seek truth but minimize harm

In a “choose your own adventure”-style ethics guide for the Online News Association, Louisiana State University Student Media Director Steve Buttry wrote that for a purist, the obvious answer is to leave content online.

“You might, however, want to consider a middle ground: Seldom remove archived content but consider changes or updates on some occasions,” he wrote.

In his guide, Buttry cited two of Poynter's Guiding Principles for Journalists: “Seek truth and report it as fully as possible” and “Seek publishing alternatives that minimize the harm that results from your actions and be compassionate and empathetic toward those affected by your work.”

For Bynum in Nevada, the truth had been sought and reported, but he felt that publishing the content in a way that was searchable – that could appear on the homepage of a person's Google results – was causing, not minimizing, harm.

Meanwhile in Europe, Google must keep URLs about serious crimes listed in search results for the name of the perpetrator but remove the same listing from a search for the victim's name.

The European Data Protection Supervisor, Peter Hustinx, has said he sees the unsolicited attention from search results and other uses of personal information, including the person's name, as an issue of consent.

“It should be real consent; not only free, informed and specific, but also explicit,” he said in an online discussion.

Still, the *Daily Illini's* Levant said she is conflicted when it comes to a right to be forgotten. She said she's empathetic to former students' need to move on from their past.

But, she said, “it's a tough situation because the internet and all our websites have become the publication's record now.” ♦

ON THE DOCKET

Kansas – A former high school student who was suspended for a two-word sarcastic tweet in 2014 received \$425,000 in a federal court settlement in December. The student, who had tweeted “Actually yeah” in response to an anonymous post that said he had made out with a female teacher, had filed a lawsuit against the school district and police chief arguing that his First and 14th Amendment rights were violated.

District of Columbia – The attorneys for Taylor Bell, a former high school rapper suspended for posting a profane rap video to YouTube in 2011, filed a petition to the U.S. Supreme Court in November, asking the justices to review the Fifth Circuit's decision to apply *Tinker* standards for school discipline to off-campus online speech. The high court declined to hear Bell's case.

Georgia – The former editor-in-chief of *The Collegian* at Georgia Perimeter College won his open-records appeal in November after a two-year suit against the University System of Georgia Board of Regents for mishandling his records request. The court struck down the university system's ‘law enforcement exemption,’ in which the board said it works with law enforcement, so it should be entitled to the same protections as law enforcement agencies.

Iowa – Student journalists from Muscatine Community College dropped their lawsuit against college administrators in October. A judge had denied the students a preliminary injunction, which would have kept administrators from implementing changes like the removal of their full-time adviser, a funding cut to the journalism program and a modified class schedule.

New Jersey – A former high school newspaper adviser sued his district's board of education in October for violating his civil rights by removing him as adviser. The adviser, Bill Gurden, was ousted in 2014 after the school's principal censored three articles in the student newspaper. Gurden is still employed at the school but can't teach any advanced classes or journalism.

Speech beyond the schoolhouse gate

School districts — and the courts — are trying to gauge how far administrators' reach goes when monitoring students' speech.

BY ALLISON KOWALSKI

In one case it was rap lyrics. In another, a two-word tweet. Both were crafted by students outside of school grounds, and in both cases, the schools suspended students for speech made off-campus.

At a time when social media has a hold on the majority of students who walk through a school's doors, districts across the country are trying to gauge their responsibility policing speech that did not occur on school grounds.

Policymakers and courts are struggling both with free-speech issues (how far a school's punitive authority extends over off-campus speech on social media) and with privacy issues (how far a school can intrude into the portions of a student's social-media life that are not publicly viewable).

Fourteen states have implemented social media privacy laws protecting students so far, with various asterisks. Most cover only college students, while Louisiana, Michigan, Oregon, Rhode Island and New Hampshire have protections all the way down to kindergarten.

In New York, Assemblyman Jeffrey Dinowitz, a Democrat, is trying to pass legislation that covers online privacy for both students and employees. He said after reading about a case where a student was required to hand over account login information to an administrator, he felt the need to take action.

"I don't think people's privacy rights go down just because we have new ways of people communicating with each other," he said.

The legislation is still in early stages, an aide in Dinowitz's office said.

Some state laws, like Louisiana's, are strict and bar access to any private profiles, including protections against administrators coercing a student to provide login information or access the account in front of them. Others, including in Illinois, leave more wiggle room for administrators to demand access during an investigation.

The discrepancies in these laws allude to the conflict administrators face when trying to straddle the line between anti-bullying efforts — which often involve cyberbullying through social media sites — and a student's right to privacy.

Chad Marlow, who works on advocacy and policy at the American Civil Liberties Union, is currently working with a team to create a cohesive

national guide for schools on how to make this compromise.

He said school officials often panic while trying to protect their students and wind up over-policing students' speech during a time when they should be learning to express themselves.

"Students should also be able to engage in the exploration of ideas without feeling like it has to be broadcast to everyone who may be a school or government official," Marlow said.

Oklahoma: A case study

The Student Press Law Center looked into policies for 10 randomly selected school districts across the state of

"School administrators are not censors of student speech at all times and at all places, particularly on Sundays at home."

Paul Dworak, attorney for a former high school student who was suspended for a tweet

Oklahoma, where constitutional questions have been raised about how far district policies purport to allow schools to regulate off-campus speech.

The Oklahoma State Department of Education doesn't require school districts to have a policy on students' online speech, and perhaps as a result, most schools surveyed had no formal written policies. Of the superintendents who were willing to speak with the SPLC, most erred on the side of implementing some level of school intervention when off-campus speech affects other students.

The schools without formal written policies tended to fall back on their anti-bullying policies, using those to gauge whether there was need for school interference. Mostly, the 10 districts had limited resources available to outline what they would consider offensive off-campus speech that would require administrative intervention.

In Coweta, Oklahoma, "any electronic or digital communication which can be considered inappropriate, harassing, intimidating, threatening or bullying to an employee or student of the district — regardless of whether the activity uses district equipment or occurs during school/work hours — is strictly forbidden." Students could face suspension for violating this rule.

At least two other school systems in Oklahoma, Broken Arrow and Hilldale, have published policies on their books essentially identical to Coweta's enabling schools to punish "inappropriate" speech even when it occurs off campus, without district equipment and unconnected with school functions.

District officials from those school systems did not return the SPLC's requests for comment.

"School policies that incorporate the terms 'inappropriate' or 'bullying' are most likely unconstitutional," said Clay Calvert, mass communication professor and director of the Marion B. Brechner First Amendment Project at the University of Florida. "Reasonable people would differ on the meaning of inappropriate. Would a reasonable student be able to know what speech is inappropriate? [Those terms are] unconstitutionally vague."

Calvert said those terms are highly subjective — some people might find a joke inappropriate while others might find it humorous and that it makes a good point. As for bullying, he said, some might find students making fun of each other ("Your shirt sucks!") to be bullying while others would say it goes further than that.

These policies would likely be struck down in court under the "void for vagueness" doctrine, Calvert said, which requires policies to state explicitly what conduct is punishable — so that reasonable people of ordinary intelligence would agree on the meaning.

Also, he said, vague policies can lead to arbitrary enforcement — a school official's like or dislike of a student could play into whether the student's online speech was

found to be "inappropriate."

"Vague policies give principals too much discretion in how they choose to enforce them," Calvert said. "There's too much discretion, too much wiggle room to enforce the laws unfairly."

Several Oklahoma school districts have yet to formally outline a policy for their online speech codes, instead handling instances on a case-by-case basis that often starts with bringing all parties involved in for a mediated conversation.

In the Red Oak district, Superintendent Bryan Deatherage has been in discussions with his school board about implementing an official policy, which they do not currently have on the books. He said he still struggles with defining what speech he should intervene in.

"I think we are entitled to free speech," he said. "At the same time, when it starts affecting the learning environment, then the school has the right to discipline or eliminate that type of speech."

In the Idabel district, Superintendent Doug Brown said there is an "Internet acceptable use" form that students have to sign in order to interact with social media on school property, but that there are no district-wide hard-and-fast policies for what to do when students post something that would be forbidden by the contract when they're not in school.

He has not handled any speech cases yet, but said he would intervene when multiple students are affected by the speech. Brown likened policing online speech to breaking up a fight on school grounds — that if bullying is involved, it is the school's job to intervene.

"Schools, because of the social setting, we have to help minimize any negative changes in the environment," he said.

Bret Rider, superintendent of the Turpin school district, has a district policy similar to Idabel: no official written statement, but a form of behavioral requirements that students and their parents must sign to use the Internet on school grounds. His philosophy on off-campus speech is to encourage the parents to be the disciplinarians. It isn't always necessary for schools to weigh in on what is posted at home, he said.

"So much is thrown back on schools," he said. "Sometimes it gets to the point that parents want us to do their work."

The Rock Creek district has a similar philosophy on school interference with online speech that occurs at home: let the parents take care of it.

"Ultimately, the parent(s) or guardian(s) of minors are responsible for setting and conveying the standards that their child(ren) should follow," the internet acceptable use form states.

Relocating the schoolhouse gate

School policymakers aren't the only ones struggling to find the proper boundaries of school authority over online speech. The courts are wrestling with the issue, too — and so far, without any help from the U.S. Supreme Court, which has dodged three opportunities to clarify the law of online speech

— most recently in February, when the justices declined to review a former high school rapper’s suspension from school for posting online a profane rap song.

Most courts have so far applied the same legal yardstick to schools’ authority over off-campus speech that they’ve applied for decades when students speak inside the school building: Can a school show that there was substantial disruption to school activities based on the speech?

In the landmark case for student speech in schools, *Tinker v. Des Moines Independent Community School District*, the Supreme Court ruled that schools can punish in-school speech only if it materially and substantially disrupted school activities. Students, the Court ruled, do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

When the case was decided in 1969, the schoolhouse gate was, literally, the door that led to the school. Now in the age of an online community, where students can post something on social media at home that can instantly spread to all their classmates, schools — and courts — are still trying to redefine where that gate is drawn.

In *J.S. v. Blue Mountain School District*, a Pennsylvania student was suspended 10 days for creating a parody profile of her principal. The 2011 Third Circuit ruling came down in favor of the student, since the district could not provide adequate proof that the profile disrupted school activities — but the judges couldn’t agree whether *Tinker* was or was not the proper level of school authority for speech on students’ personal off-hours.

Meanwhile, the Fourth Circuit came down in favor of limiting off-campus speech in the 2011 case of *Kowalski v. Berkeley County Schools*. A West Virginia student had created a MySpace chat group page titled “Students Against Sluts Herpes,” where students posted vulgar and offensive comments about another student. The court found no First Amendment violation in the school’s decision to punish the student who created the page, even though it was done off campus without using school resources.

In both cases, the Supreme Court declined the losing side’s petition for review. Some students’ rights advocates hoped that as lower courts continued to grapple with the issue of students’ social media speech, the justices would feel compelled to step in and clarify the law by hearing *Bell v. Itawamba County School Board*.

In Mississippi, former high school student Taylor Bell was suspended in 2011 for writing a rap song he posted to Facebook and YouTube that school officials say threatened two coaches. The song referenced complaints from female students who say they were sexually harassed by the coaches, with lyrics like “Looking down girls shirts / drool running down your mouth / you fucking with the wrong one / going to get a pistol down your mouth.” One of the coaches said he was concerned for his safety.

In August 2015, the entire Fifth Circuit court ruled in favor of the school district, holding that the *Tinker* standard can apply to off-campus speech because the song could be

“Students should be able to engage in the exploration of ideas without feeling like it has to be broadcast to everyone who may be a school ... official.”

Chad Marlow, advocacy and policy counsel at the American Civil Liberties Union

“reasonably forecast” to cause a disruption — it referenced the coaches by name, included events directly related to the school and was intended to reach the school’s community.

In a series of written dissents, four Fifth Circuit judges questioned whether *Tinker* should apply to off-campus speech.

“...Our Circuit should hesitate before carving out a new category of unprotected speech,” Judge Edward C. Prado wrote in a dissent, calling for the Supreme Court to weigh in.

In November, Bell’s attorneys petitioned the Supreme Court to hear the case. In late February, the justices declined to review the Fifth Circuit’s decision.

In another recent case, a Minnesota student brought suit after being suspended for a two-word tweet. This time, a student was also threatened with expulsion for tweeting “Actually, yeah” in response to an anonymous Twitter account claiming that he “made out” with a female teacher. He sent the tweet on a Sunday evening at his house.

Reid Sagehorn has since finished high school, and an investigation by the school district determined no inappropriate relationship between him and the teacher. Sagehorn sued both the district and the police chief, for saying publicly that Sagehorn could face felony charges, in June 2014. A federal judge later ruled that Sagehorn had a plausible argument that the district violated his free-speech and due-process rights and that he was defamed by the police chief.

In December 2015, Sagehorn received a \$425,000 court-approved settlement.

In its argument, the school district had cited the 1986 Supreme Court case *Bethel School District v. Fraser*, which allows schools to discipline on-campus speech that is vulgar, lewd or plainly offensive — but in an important clarification, a federal judge wrote that the case is “clearly limited to on-campus speech.”

“School administrators are not censors of student speech at all times and all places, particularly on Sundays at home, like in this case,” said Sagehorn’s attorney Paul Dworak in an interview with the SPLC after the settlement was awarded. ♦

SPLC staff writer Madeline Will contributed to this report.

Reading, and re-evaluating, the comments

As professional news outlets consider phasing out anonymous comments, college editors are considering their options.

BY COREY CONNER

The phrase “never read the comments” has cemented its place in the internet lexicon. The online comment section, readers say, often devolves into an echo chamber of partisan attacks, insults and unsubstantial bickering.

Over the past few years, several professional news outlets have revamped or removed entirely their comment sections in favor of an attempt at a more civilized discourse. The shift has left college student media reconsidering how to approach online comments – should they be anonymous? Attached to a reader’s Facebook profile or university email? Should there be a comment section at all?

“Ideally, college newspapers become a place where people can discuss [certain] issues, and in a digital realm, there can be a vibrant conversation – even more so than in print, where we have letters to the editor. I really value the opportunity commenting gives us to create that space for discussion,” said Rachele Kanigel, adviser to San Francisco State University’s student newspaper, *Golden Gate XPress*, and past president of the College Media Association. “It’s just too bad that sometimes these discussions get hijacked by people who aren’t part of the community and don’t have anything productive to say.”

Kanigel said at the *Golden Gate XPress*, there recently have been two opinion columns that went viral online and attracted hundreds of comments.

“On one hand, it was sort of exciting to feel like all these people are reading their work and reading the newspaper, but on the other hand, if you look at the comments sometimes, they’re really hurtful,” she said.

A November column titled “Man Caves Perpetuate the Patriarchy” garnered 386 comments. The post went viral after conservative outlet *National Review* mocked the column in a blog post. Many of the comments on the column, Kanigel said, became personal attacks on the writer.

“Note to boyfriend: Drop this girl before your life is ruined,” one comment said. Other commenters responded that they had looked up the author on Google Images, which

prompted a discussion about her attractiveness.

“Can you imagine if she sees this post? Here’s [sic] she is, whining about men and their wanting a little space, and all we do is rate her between 1 and 10,” a comment said. “LOL!! It doesn’t get any better than this.”

Kanigel said the newspaper staff did discuss moderating the comments, but they eventually decided against it. Another column published in December and titled “Scientology Tarnishes [Tom] Cruise’s Star Power,” resulted in 973 comments.

The comments on that column were more thoughtful and became a real discussion, Kanigel said – although while they didn’t delve into personal attacks on the columnist, some of the commenters eventually began attacking each other.

College media faces unique challenges when it comes to comment sections because student newspapers are often the voice of campus – a place for discussion among those in the community, Kanigel said.

“Having a space for comments can really create a community forum and a place for people to discuss these issues, which I think is great,” she said. “For that reason, I’d hate to see comments go by the wayside.”

Still, there are some steps college media staffers could consider to make the comment sections more refined. Moderating the comments would ensure that personal attacks don’t stay online – but as Kanigel pointed out, that takes a lot of time and effort for student editors and can also be a judgment call. Also, when articles and columns go viral and beyond the campus community, it becomes “hard to respond to that,” she said.

Not allowing commenters to remain anonymous might force them to be accountable to what they post, but several college newspaper editors have been reluctant to force that issue. In 2012, Princeton University’s then-president Shirley Tilghman wrote a letter to the editor asking for the *Princetonian* to remove anonymous comments.

“Anonymity invites candor, to be sure, but it also invites thoughtlessness, not to mention malice and spite,” she

wrote. “In an academic community like ours, anonymous comments strike me as entirely out of place. They are antithetical to our Honor Code, whose guiding principle is that ideas are the coin of the realm. The Honor Code demands that students ‘own their words’ in their academic work.”

The *Princetonian* editors examined their commenting policies, but ultimately decided to keep anonymity. The editors argued that because the *Princetonian*’s website allows anonymity, its “comment boards have earned the reputation as the most active compared with those of other Ivy League newspapers.” Also, they said, readers feel more comfortable expressing controversial or unpopular views if they are anonymous and not concerned with their Google footprint.

“While we acknowledge that some users hide behind anonymity to make mean-spirited or offensive comments, the benefits of anonymity far outweigh the perceived cost,” then-editor-in-chief Henry Rome wrote in a column. “On a small college campus, requiring names or log-ins that can be traced back to university accounts will stymie public dialogue.”

Maintaining civility

While several professional news outlets have shut off commenting altogether — among them, Reuters, Mic, Recode and *The Chicago Sun Times* — others have experimented with different ways to change the commenting experience for readers, but not entirely eliminate it.

A service called Genius, for instance, allows readers to annotate certain sections or phrases of an article and start a topical discussion. And in January, the *Chronicle of Higher Education* announced that it would start reviewing comments before posting them. A group of moderators will read submissions for select articles throughout the day and publish the “most valuable” ones received — “the ones that provide interesting insights, thoughtful questions, strong points, and cogent criticisms,” editors wrote.

Others have directed readers to other methods of engagement. In October, Vice’s subsite Motherboard published an announcement titled “We’re Replacing Comments with Something Better.” Editor-in-chief Derek Mead bemoaned the lack of valuable discourse: “What’s the point of writing out a detailed thought when it’s sandwiched by cursory garbage?”

Instead, he wrote, the site will accept letters to the editors and publish a digest of the most insightful letters received. Readers are also encouraged to interact with reporters on social media.

Last July, The Verge, a Vox Media company, announced a “chill summer” where comments would be disabled for just a few weeks.

“What we’ve found lately is that the tone of our comments (and some of our commenters) is getting a little too aggressive and negative,” editor-in-chief Nilay Patel wrote in the announcement. “It’s hard for us to do our best work in that environment, and it’s even harder for our staff to hang out with our audience and build the relationships that led to us having a great community in the first place.”

Legality of comment sections

College editors have to consider the benefits and ethics of maintaining robust comment sections, but there are also legal questions to consider in regards to libel, copyright and anonymity on the comment boards. The Student Press Law Center compiled some tips on cyberlaw rules.

Q. Can our publication get sued for libelous comments that people post on our stories?

A. If the comments are placed by outsiders and not your own staffers, the federal Communications Decency Act should shield you — even if you screen profane or libelous comments. Still, if you rewrite comments to “improve them,” you may become responsible as a co-creator under the law.

Q. What if a person criticized on a reader comment board wants the identity of an anonymous commenter?

A. You don’t have to give that information out without a court order — and the courts have been relatively protective of anonymous speakers. Consult a lawyer at once if you’re subpoenaed to disclose the origin of a comment.

For more tips, visit bitly.com/cyberlawspc.

Some college newspapers have found the culture of online harassment trickling down into their comment sections. In a Student Press Law Center survey distributed to college newspapers, out of 10 responses, four student editors said they know of someone who has been harassed through, or based on, comments on their website.

But all of those editors said their paper still has a comment section because they can see the benefits of having one.

“They allow engagement from readers — because of the comments section, we offer a voice to our readers,” one editor wrote. Another wrote that comments give students an opportunity to voice their opinions on campus issues.

Last March, staffers from the *Michigan Daily* filmed a video of them reading and reacting to mean reader comments, tweets and emails — comments like, “seriously man, fuck this dude. He has no idea how to write.”

The video’s creator Victoria Noble, who is a videographer and columnist for the *Daily*, said in an interview with the late college media blogger Dan Reimold that she wanted to promote serious audience interaction by showing how writers respond to readers’ reactions.

“This was meant to add humor to a situation that tends to get people really upset and strains the relationship between writers and readers,” she said.

In 2015, the *Columbia Spectator*, the student newspaper of Columbia University, announced it would close comments sections on all opinion pieces on sexual assault, going back to May 2014.

In a notice on the new policy, the paper's editors wrote that generally, they value readers' comments. Comments can further the conversation by adding insights and new perspectives to stories and are a way for readers to give feedback to the *Spectator*, they wrote.

"However, the comments on our opinion pieces related to sexual assault have not been used for these purposes," they wrote. "Instead, anonymous commenters and internet trolls have used this space to spread hate, vitriol, and ad hominem attacks on writers and members of our community rather than offering commentary on the content of the piece or on the complex issue of how to address sexual assault on our campus."

New forms of engagement

Hoping to insert a sense of civility into online comments, several media organizations are working to address online engagement and comments that could provide benefits to student publications.

The New York Times, *Washington Post* and the Mozilla Foundation partnered in June 2014 to create the Coral Project, funded by a two-year grant from the John S. and James L. Knight Foundation.

The group is studying the wants and needs of commenters and media organizations. Greg Barber, head of strategy and partnerships at the Coral Project and director of digital news projects at the *Washington Post*, said the project has two main goals.

"One is to create open-source software that will help publishers better connect with their users," Barber said. "Then on top of that, we want to provide analytics for publishers and for users."

A main component of the software is the ability for publishers to rank users by levels of trust, Barber said. Essentially, trusted users — for example, users with a history of commenting regularly — could publish comments prior to moderator approval.

These tools will be available for publications of all sizes to use and adapt to their specific needs. Theoretically for college media, a user tied to a university email could be approved to comment without moderation.

"I think that there's no substitute for human decision making when it comes to [maintaining comments]," Barber said. "I think that each news organization is going to need to decide for themselves how much resources they can devote to maintaining relationships with users, to ensuring loyalty, to all of those sorts of things."

For student publications, Barber said an immediate way to improve the quality of comments is for the reporters to participate in the comments section. The University of Texas at Austin's Engaging News Project found that comment sections with journalist involvement can improve discourse by as much as 15 percent.

"You will get better contributions, you get a better payoff for your engaged readership and you build a relationship with readers that can last far longer for your organization," Barber said. "As a college student, that could be the kind of thing that helps you gather an audience for your professional career. Engaged readers are great for a news organization, but they're also great for reporters and editors. If you make a fan in a comments section or in another engaged space ... it could be someone who follows you throughout your career." ♦

SPLC staff writer Madeline Will contributed to this report.

SPLC NEWS

Washington, D.C. — In December, the SPLC and the Foundation for Individual Rights in Education filed a friend-of-the-court brief urging the U.S. Supreme Court to hear the case of Taylor Bell, a former high school rapper punished for a profane song posted to YouTube. The SPLC argued that the Fifth Circuit appeals court erred in giving school the same authority over off-campus speech on social media that applies to speech during school time under the Supreme Court's 1969 *Tinker* ruling.

Orlando, Florida — In November, the SPLC announced that the Southern California high school journalists who have waged a high-profile fight against school censorship, despite the removal of their faculty adviser and the shutdown of their website, were the winners of the 2015 Courage in Student Journalism Award. The award was presented to the staff of *The Matador* of San Gabriel High School at the National High School Journalism Convention in Orlando. The award is sponsored by the Kent State University Center for Scholastic Journalism and is co-presented by the SPLC and the National Scholastic Press Association.

Austin, Texas — In November, the SPLC announced that student journalists from West Virginia's Fairmont State University — editor Jacob Buckland and the staff of *The Columns* — were the winners of the 2015 College Press Freedom Award for standing up against institutional censorship and retaliation, including the removal of their faculty adviser, after their reporting exposed health problems associated with mold in campus residence halls. The award is sponsored by Louisiana State University's Manship School of Mass Communication and the Associated College Press. It was presented at the National College Media Convention in Austin.

Austin, Texas — In September, the College Media Association named Frank LoMonte, SPLC's executive director, the 2015 recipient of the esteemed Louis E. Ingelhart First Amendment Award. The award is not given out annually, but rather when the CMA recognizes a career of exceptional achievement. LoMonte received the award in October during the 2015 National College Media Convention.

Legal Analysis

How far can schools go in limiting student speech online?

By Carolyn Schurr Levin

When Justice Fortas famously wrote in 1969 that “[s]tudents in school as well as out of school are ‘persons’ under our Constitution . . . possessed of fundamental rights which the State must respect,” and “students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate,”¹ he could not possibly have predicted that students would assert those “fundamental rights” while sitting in their bedrooms at night blogging about their classmates, tweeting about their teachers or posting about their schools on Facebook. Courts have thus been forced to grapple with just how far the landmark *Tinker* right to student expression extends when students post online, after school hours, and off school premises.

The results have been contradictory, with some courts upholding student speech rights online and some courts allowing school districts to punish students for such speech, even when it is done off campus. Recent cases have had conflicting resolutions, both in high school and college settings. Because the United States Supreme Court has yet to weigh in on the First Amendment implications of off campus student speech on social media and elsewhere on the internet, a definitive rule is hard, if not impossible, to enunciate.

High School Student Speech

Social media is wired into the daily routines of teens and young adults. The Pew Research Center reported in April 2015 that 92 percent of teens go online at least once a day - with 24 percent saying they are online “constantly” - with 71 percent of them using Facebook, 52 percent using Instagram and 41 percent using Snapchat.² Teens increasingly use digitally aided communications - whether text-messaging or apps such as Kik Messenger³ - to carry on conversations that once would have been conducted verbally over the phone; the use of these technologies leaves a trail (at times, a publicly viewable one) that may come to the attention of school disciplinary authorities in the way phone conversations never did before.

SPLC’s Executive Director Frank LoMonte analyzed

student speech in the context of school athletics in a 2014 article entitled “Fouling The First Amendment: Why Colleges Can’t, And Shouldn’t, Control Student Athletes’ Speech on Social Media,” in the *Journal of Business and Technology Law*. LoMonte wrote, “In the earliest generation of online-speech cases to reach the judiciary, courts readily concluded that off-campus speech—even when posted on widely viewable websites—was beyond the disciplinary authority of schools.”⁴ In those cases, courts regarded the location of the students’ speech (and the absence of proof that the speakers themselves ‘brought’ the speech onto the campus) as an important, if not decisive, consideration. But the Second Circuit’s 2007 decision in *Wisniewski v. Board of Education of the Weedsport Central School District* signaled a mentality shift in favor of school authority. Since *Wisniewski*, and since social-networking sites have achieved pervasive worldwide popularity so as to magnify the theoretical reach and durability of speech, courts have been significantly more inclined to indulge schools’ incursions into their students’ off-campus lives.”

LoMonte analyzed the glaring disparity among the federal circuit courts, stating that, “The Fourth and Eighth Circuits have expressly treated off-campus speech on social media as the functional equivalent of on-campus speech, equally subject to school authority within the bounds of *Tinker*.”⁵ Yet, he noted that “[t]he en banc Third Circuit has expressed doubt as to whether *Tinker* is adequately protective of speech taking place on the Internet outside of school time or school functions, while the Second Circuit has equivocated.”⁶

A sampling of recent cases illustrates the dire need for a definitive ruling from the Supreme Court so that both students and administrators have clear guidance as to what is and is not permissible. The cases make it clear that the question is even more fraught with difficulty when the speech at issue involves a potential threat of violence. As the Ninth Circuit U.S. Court of Appeals observed, “With the advent of the Internet and in the wake of school shootings

at Columbine, Santee, Newtown and many others, school administrators face the daunting task of evaluating potential threats of violence and keeping their students safe without impinging on their constitutional rights. It is a feat like tightrope balancing, where an error in judgment can lead to a tragic result.”⁷ When administrators are faced with speech, even off campus speech, that could pose a threat to students or others, the courts seem more inclined to let stand the determinations of school administrators that such speech has the potential to create a “substantial disruption” and thus is not protected by the First Amendment.⁸

A Sampling of the Cases

Landon Wynar, a sophomore at Douglas High School in Nevada, engaged in a string of increasingly violent and threatening instant messages sent from his home to his friends, bragging about his weapons, threatening to shoot specific classmates, and invoking the image of the Virginia Tech massacre. His alarmed friends notified school authorities, who suspended Wynar for ten days. Wynar had admitted that he wrote the messages, but stated that they were a joke. After his suspension, he and his father sued the school district, claiming that the suspension was a violation of his constitutional rights.

The lower court sided with the school administrators. The Ninth Circuit U.S. Court of Appeals, agreeing, acknowledged that “[t]he Supreme Court has not yet addressed the applicability of its student speech cases to speech originating off campus, such as Landon’s MySpace messages, which were written from home.”⁹ Yet, the court held that the school district was within its rights for temporarily expelling Wynar because “the messages, which threatened the safety of the school and its students, both interfered with the rights of other students and made it reasonable for school officials to forecast a substantial disruption of school activities.”¹⁰ The court determined that “when faced with an identifiable threat of school violence, schools may take disciplinary action in response to off-campus speech that meets the requirements of *Tinker* . . .” Because the administrators perceived the speech to pose a real risk, it was not protected.¹¹

Like Wynar, Taylor Bell, an 18-year-old senior at Itawamba Agricultural High School in Fulton, Mississippi, was punished by school administrators for off campus speech. Bell, an aspiring rapper, was suspended and transferred to an alternative school for his off-campus posting on YouTube and on his public Facebook page

of a rap song that he recorded at a professional studio unaffiliated with his school. The rap song criticized, with vulgar and violent lyrics, two named male athletic coaches for sexually harassing female students at Bell’s high school.

In finding that Bell’s speech was protected by the First Amendment and that the school district was in error for punishing him, the Fifth Circuit U.S. Court of Appeals noted that “he used his home computer to post it on the Internet during non-school hours; and that the School Board did not demonstrate that Bell’s song caused a substantial disruption of school work or discipline, or that school officials reasonably could have forecasted such a disruption.”¹² The court noted that even assuming that the *Tinker* “substantial disruption” test could be applied to a student’s off campus speech, there were no facts in this instance that Bell’s posting of his song on the internet created a “commotion, boisterous conduct, interruption of classes, or any lack of order, discipline and decorum at the school.”¹³

Although initially providing a victory for off campus student speech, the Fifth Circuit agreed to rehear the case en banc, and reversed itself on August 20, 2015, holding that the *Tinker* standard can apply to off-campus speech that could be reasonably forecast to cause a disruption. “The school board reasonably could have forecast a substantial disruption at school, based on the threatening, intimidating, and harassing language in Bell’s rap recording,” according to the majority Fifth Circuit opinion.¹⁴ On November 17, 2015 Bell’s attorneys filed a petition for a writ of certiorari, asking the Supreme Court to hear the case. On February 29, the Court declined to review Bell’s case.

College Student Speech

The cases are equally contradictory on the college level despite the fact that, as LoMonte pointed out, the Supreme Court “has spoken expansively of the importance of the free exchange even of challenging and unpopular ideas in the ‘marketplace’ of a college campus.”¹⁵ Two telling cases involving college students who were expelled for online, off campus speech have recently been decided.

Petroleum engineering major Navid Yeasin was expelled and banned from the University of Kansas after he tweeted a series of derogatory comments about his ex-girlfriend despite a no-contact order that had been entered against him at the ex-girlfriend’s request. Later justifying his posts as “venting,” Yeasin, who did not specifically mention his ex-girlfriend’s name and blocked her from seeing his private Twitter account, referred to her as a

“psycho,” using expletives and mocking her appearance.

Yeasin, who would have graduated in May 2015, filed a lawsuit against the university, challenging his expulsion. The university, in defense of the expulsion, cited its Student Conduct Code, which states that students can be punished for policy violations that occur “while on university premises or at university sponsored or supervised events.” Kansas state court judge Robert Fairchild disagreed, and ruled that the university did not have jurisdiction to expel Yeasin because there was no evidence that the incidents that led to his expulsion occurred on campus. The University appealed the ruling and the Kansas Court of Appeals affirmed the district court judge’s opinion on September 25, 2015. The appellate court held that while Yeasin’s tweets were indeed “puerile and sexually harassing,” the university did not have jurisdiction to discipline student conduct occurring off campus.¹⁶ (While the ruling vindicated Yeasin’s right to be free from punishment for his off-campus speech, it was based more on an interpretation of the college’s own rules than the First Amendment, so the case’s value as precedent for future constitutional challenges is uncertain.)

The Student Press Law Center filed a friend of the court brief in the appellate court in the Yeasin case.

Executive Director LoMonte stated, “This case provides an opportunity for the Kansas courts to recognize some rational stopping point where college punitive authority cannot follow students into their off-campus lives. While Mr. Yeasin’s speech addresses matters of purely private concern, a ruling that gives universities punitive authority over off-campus social media speech equivalent to their on-campus regulatory authority would be extraordinarily dangerous for whistleblowers and journalists. Social media increasingly is where news coverage is being delivered, and because colleges at times aggressively censor speech in the on-campus media outlets they subsidize, there must be some uncensored platform that is beyond the shadow of university punitive authority.”¹⁷

Like Yeasin, former nursing student Craig Keefe was expelled from college for online posts. While in Central Lakes College’s associate degree nursing program, Keefe made posts on his personal Facebook account, including belittling another student for receiving testing accommodations, asserting there was not enough whiskey to control the anger that arose out of a late change to a group project, professing his need for anger management, questioning whether anyone had heard of mechanical pencils and promising to give somebody a hemopneumothorax with an electric pencil sharpener, and calling a fellow student a “stupid bitch.” Two students separately reported the posts to an instructor after they were made uncomfortable by some of the language in them. The college determined that the posts were contradictory to the student handbook’s policy on professional behavior, although Keefe said that at least some of the statements were a joke. After the school removed him from the program, Keefe sued Beth Adams, the dean of the college, and other college officials who he said were responsible for the decision to expel him, for violating his First Amendment and due process rights.¹⁸

In August 2014, the U.S. District Court of Minnesota dismissed Keefe’s case, ruling that the college was entitled to discipline Keefe for the Facebook posts because they were enforcing academic standards of professionalism. The court thus upheld the college’s position that Keefe’s statements were unprofessional, and that Keefe lacked the necessary professionalism to continue in the program.¹⁹ Keefe’s appeal to the Eighth Circuit U.S. Court of Appeals is pending.

In both Yeasin and Keefe’s cases, the colleges justified the students’ punishment on their violations of the schools’

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handbooks or codes of conduct. The question of whether colleges may discipline students for speech because it is deemed to be “unprofessional,” or because it violates a school’s “academic conduct standards,” goes far beyond just speech on social media. Can and should such codes of conduct apply to speech that is all online and off campus? The appellate court in the Yeasin case decided that it could not.

Conclusion

Despite the proliferation of student speech on social media and elsewhere online, the federal circuits and state courts remain divided over the level of First Amendment protection that should be accorded to such speech, created by students in their personal time in their homes or elsewhere outside of school. Several courts, including those discussed herein, have given school administrators discretion and authority to punish such speech in the same way that speech on school premises may be punished under *Tinker’s* disruption standard, especially when administrators perceive a real threat by the speech. Other courts, though, have declined to extend the *Tinker* standard that far away from the school setting. School administrators are faced with great uncertainty in finding the appropriate legal standard to balance student speech rights with their responsibility to maintain order, discipline and most of all safety.

The United States Supreme Court has yet to provide guidance. Prior to declining the *Bell* cert petition, the Supreme Court declined, in March 2015, to hear another student speech case presented to it. That case, however, did not involve online speech. Rather, it concerned students at Live Oak High School in Morgan Hill, California, who were barred from wearing American flags on their T-shirts on Cinco de Mayo, a year after a confrontation between flag-waving Anglo and Mexican-American students.²⁰

Whether tweets, Facebook posts and blogs are fully protected by the First Amendment, or whether schools can punish students for such speech, when done off campus, is a question that the United State Supreme Court will ultimately have to settle. In the *Bell* cert petition, the petitioner states that “[c]ourts of appeals and state high courts are hopelessly splintered over whether, and if so when, *Tinker* applies to student speech outside of the school environment.” Now that the Court declined to hear the *Bell* case, it could be years until a comparable case is presented again. When that happens, the Court has the opportunity to determine that because of the current state

of uncertainty, the time has come to redefine the *Tinker* disruption standard in light of the way students are incorporating social media messaging into their everyday communication routines.

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Endnotes:

1. *Tinker, v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969)
2. Amanda Lenhart, Teens, *Social Media & Technology Overview 2015* (Pew Research Center April 2, 2015).
3. Released to the public in October 2015, Kik now claims to be used by 40 percent of American teens. <http://www.kik.com/about/>
4. Frank D. LoMonte, “Fouling the First Amendment: Why Colleges Can’t, and Shouldn’t, Control Student Athletes’ Speech on Social Media,” 9 J. Bus. & Tech. L. 1, 10 (2014).
5. *Id.* at 12.
6. *Id.* at 12-13.
7. *Wynar v. Douglas County School District*, 728 F.3d 1062 (2013).
8. The *Tinker* court held that “conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.” *Tinker*, 393 U.S. at 513.
9. cdn.ca9.uscourts.gov/datastore/.../11-17127%20web%20corrected.pdf.
10. *Id.*
11. *Id.*
12. *Bell v. Itawamba County Sch. Bd.*, 774 F.3d 280 (2014).
13. *Id.*
14. www.ca5.uscourts.gov/opinions%5Cpub%5C12/12-60264-CV2.pdf
15. Frank D. LoMonte, “Fouling the First Amendment: Why Colleges Can’t, and Shouldn’t, Control Student Athletes’ Speech on Social Media,” 9 J. Bus. & Tech. L. 1, 10 (2014).
16. *Yeasin v. University of Kansas*, 360 P.3d 423 (Kan. App. 2015).
17. <http://www.splc.org/article/2015/06/yeasin-kansas-twitter-punishment-splc-amicus>.
18. *Keefe v. Adams*, 44 F.Supp.2d 874, 883 (D. Minn. 2013).
19. *Id.* at 888.
20. In *Dariano vs. Morgan Hill Unified School District*, 767 F.3d 764 (9th Cir. 2014), cert. denied, 2015 WL 1400871, the Ninth Circuit affirmed the district court’s holding that the students’ shirts constituted a threat of substantial disturbance.

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