

STUDENT PRESS LAW CENTER
REPORT
FALL 2013 VOL. XXXIV, NO. 3

**Meet
your
new
president**

*Journalists
fight back
against secret
presidential
searches*



INSIDE: ADVISERS AND STUDENTS SAY SCHOOL INTERNET FILTERS COMPLICATE SOCIAL JOURNALISM

REPORT

FALL 2013 VOL. XXXIV, NO. 3

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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A MESSAGE FROM EXECUTIVE DIRECTOR FRANK D. LoMONTE

‘Tinker Tour’ a chance for honest talk about state of student rights

As this magazine goes to press, with it is going the Fourth Edition of the Student Press Law Center’s signature reference book, *Law of the Student Press*, compiling 40 years of the SPLC’s legal research into a single volume.

As part of reissuing *Law of the Student Press*, our attorneys reread hundreds of court rulings that comprise the history of student rights in America. Those rulings are relatively recent — the “granddaddy” of college press cases, *Dickey v. Alabama State Board of Education*, is only 46 years old — and yet their tone and emphasis has drastically changed in just a few short years.

It’s striking to remember how fiercely protective our courts were, until very recent times, of the rights of students to say or write just about anything. Consider cases such as *Healy v. James*, in which the Supreme Court told Central Connecticut State University that a radical activist organization was entitled to receive the benefits of recognition as an official student group regardless of whether the group advocated “violence and disruption.”

“The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent,” the Court said in 1972.

Fast-forward to the present. Colleges that once were forbidden from withholding support even from “abhorrent” groups are now routinely being allowed to kick students out of school just because they say disagreeable things. Students like Amanda Tatro, who was disciplined by the University of Minnesota for “disrespectful” Facebook jokes about a corpse she was assigned to dissect.

A federal district court in Michigan decided in July 2013 that a college student’s writings in response to a class assignment are entitled to zero First Amendment protection — none whatsoever — so that a student may be suspended (not just assigned a poor grade, but actually removed from campus) on the basis of views expressed in a research paper.

That’s why it’s so essential to have a sober conversation about educational institutions’ hair-trigger response to unwelcome speech. Because the federal courts have abandoned their duty to protect vulnerable citizens against overreaching by powerful government institutions, young people must demand better. They must summon the courage of 13-year-old Mary Beth Tinker, who in 1965 defied an unlawful school order to remove her antiwar armband, thus propelling into motion the case, *Tinker v. Des Moines Independent Community School District*, from which today’s courts are backpedaling so precipitously.

Beating America’s education establishment in front of the U.S. Supreme Court made Mary Beth a believer in the ability of determined dreamers to accomplish improbable things. Fueled by that belief, she and longtime SPLC staff attorney Mike Hiestand successfully raised \$50,000 from 225 donors, big and small, to underwrite the “Tinker Tour” that launched Sept. 17 from the National Constitution Center in Philadelphia.

With stops in 19 states and the District of Columbia, the tour has the chance to be a game-changer. An opportunity to actually talk about students expressing themselves without the words “cyberbullying” or “sexting” in the headline. You can join the dialogue at www.tinkertourusa.org, on Twitter at @tinkertour, or on Facebook at <https://www.facebook.com/TinkerTour>.

A handwritten signature in black ink, appearing to read "Frank LoMonte".

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FLORIDA — A student editor at Florida Atlantic University has been disciplined for what school officials say was his refusal to follow police orders to leave a crime scene. Dylan Bouscher, the editor, said he was reporting on a public space, but agreed to accept two of four student disciplinary charges because he feared he would face criminal charges if he did not.

WASHINGTON, D.C. — After a lengthy debate about the definition of "journalist," the Senate Judiciary Committee has approved legislation that would establish a reporter's privilege not to disclose confidential sources. There's no timeline for when the bill, which protects college journalists, will go before the full Senate.

CALIFORNIA — A California school district replaced its controversial social media monitoring policy after students and parents complained. The policy went into effect this year and allowed the school district to punish students for online posts the school deemed "inappropriate." Students were required to sign the policy as a condition of participating in extracurricular activities. The Lodi Unified School District replaced the contract with guidelines for responsible social media use.

OREGON — Editors at the University of Oregon's conservative-leaning *Oregon Commentator* say they were told they could not use the money from the magazine's budget to pay for public records requests because the paper receives student fee money. The school said it will look into the issue further.

NEW JERSEY — A longtime adviser at Hunterdon Central Regional High School in New Jersey resigned last spring to protest the school district's decision to require prior review of student publications. Editors at *The Lamp* have protested the school board's decision with an editorial and have also spoken at board meetings about the impact of prior review on their newspaper.

FERPA Fact

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

A parent in California was told earlier this year that the official meet results from public school swim meets could not be released. The district first said releasing the results could put the team at a disadvantage before asserting that the records were protected by FERPA.

SPLC Executive Director Frank

LoMonte: Let's be real. Since high school sports were invented, coaches and athletic directors have been sharing stat sheets with the media. How do you think newspapers in rural Texas with three sportswriters are able to carry the results of 50 different games? If it's an invasion of privacy and a violation of federal law to let the hometown weekly paper know that Johnny Quarterback threw for 250 yards and two touchdowns, then every school in America that competes in athletics is a FERPA violator.

If a record genuinely is a confidential FERPA record, that means that it can be viewed only by (a) the student's parents or (b) a school employee with a business need to know. The coach would be forbidden from, e.g., reading the results to other colleagues in the athletic department, to boosters of the swim team, to her husband, to the kid on the swimming team who stayed home sick... you get the idea.

If Bret Harte Union High School District wants to classify swim-meet scores as FERPA records, then it had best be prepared to show that it affords students' athletic statistics the same level of confidentiality as students' grades. Perhaps issuing paper bags, without the eye-holes, to every sports fan would be a start?

We rate this: Three Arne Duncans

THE ARNE METER @ FERPAFACT.TUMBLR.COM



At the University of Southern California, several students have come forward recently to say they felt victimized a second time by a disciplinary system that imposes little-to-no penalty on student rapists. The university, reports ABC News, won't say how rapists are being punished: "USC officials said students accused of rape had been expelled from the college in the past, but would not confirm the number of expulsions, citing privacy concerns."

LoMonte: The quote attributed to USC by ABC News doesn't refer to FERPA by name; it just says "privacy." But whether the college is relying on the federal educational privacy statute or the common law of privacy that exists under state law, the answer is the same: Nope.

Statistics simply are not confidential, either as a matter of

the Family Educational Rights and Privacy Act or as a matter of state privacy law. The statement that "ten students were expelled in 2012" contains absolutely nothing traceable to an individual student that would compromise privacy.

We rate this: Three Arne Duncans

In an interview explaining the Aurora, Ohio, school district's bus safety procedures, Superintendent Russ Bennett told the Aurora Advocate that each school bus is outfitted with security cameras. The recordings can't be viewed by members of the public because they are protected by FERPA, he said.

LoMonte: Take a good look at a school bus. What do you see? Windows, right? Lots and lots of transparent panes of glass. We know that school bus videos aren't FERPA records for several reasons:

1) Because it's stupid. If a document is a FERPA record, that triggers a set of affirmative legal rights, including the right to have an administrative hearing to challenge the accuracy of the record and to insert corrective information into the record so it isn't misleading or incomplete. Are schools prepared to let parents splice clips of home movies into their surveillance videos?

2) Because the Department of Education has told us that what kids look like isn't a secret.

3) Because the courts have told us so. In a common-sense application of both FERPA and state privacy law, a state appellate court in *Louisiana v. Mart* ordered the release of a newsworthy recording of a school-bus brawl.

We rate this: Three Arne Duncans

Yearbook staffs and advisers guard against the potential for hoaxes

The May arrest of one student on felony charges following a yearbook prank was unusual, but dozens of other similar pranks occur yearly — to the chagrin of the yearbook staffs who try to prevent them.

BY ALLISON RUSSELL

For many students, the day they receive their yearbook is spent pouring over the glossy pages, trying to find photos of themselves and their friends as they remember the past year. Some, though, are shocked to discover pranks in the yearbook — intentional or not, these incidents happen every year and can have unexpected consequences.

This year, local news reports shared stories about yearbook incidents from New York to California. At Hoosic Valley High School in New York, individuals pictured in a track team photo were identified as “Isolation kid” and “Creepy smile kid.” A similar misnomer appeared in Georgia’s South Paulding High School’s yearbook — a student’s last name was changed to “Freak” — and in Texas’s Irving High School’s yearbook, where a cheerleader was identified as “Ugly Hoe.”

The misprints are not limited to misnomers. At University City High School in California, sexually explicit quotes appeared beneath the yearbook photos of three seniors, and at Irving Middle School in Nebraska, the letters “WTF” were Photoshopped onto a student’s class portrait.

Perhaps the most widely publicized recent incident, took place in May at Hickman High School in Columbia, Mo., when Kaitlyn Booth, a junior on the yearbook staff, was arrested for felony property damage after it was discovered that she was responsible for changing a student’s last name from “Mastain” to “Masturbate” in the yearbook.

The property damage was initially estimated to be \$41,000 — the cost for reprinting all of the yearbooks — but the school ultimately chose to correct the last name with strong adhesive stickers, which cost around \$120. Booth wasn’t formally charged with the felony, but instead was charged with the misdemeanor of tampering with computer data.

Natalie Hull, the public attorney working to defend Booth, said she finds it interesting that this case was taken to the criminal court and that it represents “new territory”

for everyone involved.

“It’s an extreme action to take, and I’m not sure why it went to the criminal court system,” Hull said. “It might be due to pressure from the school or the community because it’s been given so much attention.

Hull noted that she hasn’t heard of a case similar to this because disciplinary action is usually kept within the school or the civil court system.

“The case was exciting to me, and it’s worth watching, because of its potential to set a precedent for students who do something similar,” she said. “It has the power to set the path for the rest of a student’s life.”

Booth is pleading not guilty to the charge, and a court date had not been set at time of publication.

Even though most yearbook hoaxes don’t end in criminal charges, yearbook advisers and staff take pains to prevent mistakes that could potentially hurt students’ feelings or their publication’s reputation.

Veteran advisers say it’s crucial to have a system in place that sets out who has access to pages, as well as a good system for proof-reading.

Brenda Slatton, the adviser for the yearbook at Lee High School in San Antonio, Texas, said she understands the importance of checking over the pages, and although she trusts her staff of nearly 50 students, she double-checks every page before it is sent.

“What my students are allowed to do versus what I am allowed to do is different,” Slatton said. “Students have the freedom of speech, but I have a job and an employer to answer to. I know that’s not pretty, but that’s how it is.”

Slatton said she thinks the recent popularity of online, proofless yearbooks is something that contributes to the misprinting problems yearbook staffs face. To add an additional step to the editing process, she said she prints

UNDER THE DOME

NORTH CAROLINA — Legislation that makes police records on private college campuses in the state more accessible was signed into law in June. Under the new law, private schools with police agencies will be required to disclose narrative descriptions surrounding arrests, as well as 911 calls. The legislation was introduced at the request of private colleges following oral arguments before the state's Supreme Court in a case involving police records at Elon University. In that case, a student journalist requested information about an arrest on campus and was given only limited information. He sued, arguing that a state statute names the state's attorney general as the custodian of all campus police records, which would have made the records he sought public.

WISCONSIN — Journalists with the Wisconsin Center for Investigative Journalism, which publishes Wisconsin Watch, successfully fought back a budget provision added by state lawmakers that would have expelled the Center from its offices at the University of Wisconsin at Madison and ban faculty from working with the Center as part of their faculty duties. The Center publishes investigative news stories that are published throughout the state by other news organizations. It also provides internships for students at the university. Journalism groups were concerned that if the provision was passed, legislators in other states might try and enact similar restrictions. The provision was vetoed by Wisconsin Gov. Scott Walker.

WASHINGTON, D.C. — Both the House and Senate are considering bills that would create a federal shield law that would allow journalists to refuse to testify about or give unpublished information in connection with legal proceedings. The two proposed bills differ chiefly in who the law would protect. The Senate version defines "journalist" as anyone who gathers information with a primary purpose of distributing it to the public, while the House version defines "journalist" as someone who gathers and distributes news "for financial gain or livelihood." The House version would exclude student journalists, who don't produce news full-time. At a Senate hearing in August, Sen. Dianne Feinstein (D-Calif.), proposed similar language to the Senate bill, saying that she believed it should be applied only to "real reporters."

out her own copies of the proofs to check over the pages.

Holly Soboroff, the yearbook adviser at Washington High School in Iowa, said she shares stories of yearbook vandalism with her staff to "show them that this is not okay."

"They're always pretty horrified when they hear the stories," Soboroff said. "When I hear of other yearbook's situations it's always a 'There but for the grace of God go I' kind of moment."

Soboroff also said that she trusts her student editors and thinks making unintentional mistakes is inherent to student publications.

"I'm all about student freedom, I really believe in that, but they also need advice," Soboroff said. "It's one thing to look foolish, but it's another thing to hurt people's feelings."

She said the yearbook company her book uses (Herff Jones) provides software that has three levels of access to pages, which is helpful in securing the editing process

"At the very least, with our settings, I don't think anyone can physically send pages without me," said Soboroff, who has the highest level of access. "I am the last person to look at them."

A good system isn't always enough, though. Kim Acopolis, Hickman High School's yearbook adviser, said she changed the editing process at the beginning of last year to limit students' access because she didn't feel she could trust the staff as much as she had in past years.

Acopolis said she was called into the principal's office in April, when the staff was making final edits to the yearbook, after a student complained about Acopolis' decision to restrict editorial access. Administrators asked her to give students more access to the pages.

Access logs showed that it was after this conversation that Mastain's name was changed on a page that had already been edited, Acopolis said.

"There's a real lack of understanding of how publishing works — the idea that every kid gets everything the same is what bit me in the butt in the end," Acopolis said. "I should have just stuck with what I know, but I also should have invited the principal in and shared what we were doing."

Acopolis said it was hard to deal with the attention the hoax received, for her and for the students involved.

"The most frustrating part for an adviser in this situation were the comments that were made, saying things like no one edited the pages, and the cruelty, because people were taking mean jabs at the kids," she said. "You just want to tell people that these are kids, and you don't know the whole story."

Lori Oglesbee, who has been a yearbook adviser for 30 years and currently advises the staff at McKinney High School in Texas, said the legacy of the yearbook is what motivates her students.

"I tell my kids that yearbooks make you eternal," Oglesbee said. "One hundred years from now, when we're all dead, yearbooks will still be here, and that's what makes them so important." ♦

Student journalists work around Internet filters to reach audiences

Learning to use social media is a crucial skill for student journalists in the digital age, advisers say. At many schools though, school district-imposed Internet filters block most or all of the websites students need.

BY SARA TIRRITO

Though social media and the Internet in general have become inseparable from modern journalism, student journalists are not always allowed to use them.

School Internet filters can block numerous content categories, from pornography to games to social media. And while schools that desire government funding for telecommunications services and Internet access must block certain categories on websites, they also have the freedom to block more – a freedom many use.

It often leads to frustration for high school journalists and their advisers, who try to teach students the skills of modern journalists – how to promote their newspaper on Facebook, break news on Twitter, and experiment with other new social media sites and Internet tools.

With many school districts continuing to block social media websites, some student journalists must turn to their 3G Internet access or wait until they can access the Internet outside of school to promote their newspaper on social media.

Foothill Technology High School journalism adviser Melissa Wantz's students publish online only, supplementing their newspaper's main website with Facebook, Pinterest, Instagram, Twitter and Tumblr accounts. Those sites, however, are off-limits when using the school's Internet, and students must update them from home.

"From a journalistic standpoint, the social media is critical to be able to publicize our content and to draw in readers," Wantz said. "There's a big difference between a digital publication and a print publication. In a digital publication, you're trying to lure them by some kind of little tidbit of information that crosses through their social media pathway."

Because social media has become a necessity in getting the attention of readers who believe if the news is "important enough, it will find them," Wantz said it's

frustrating to have those sites blocked.

Carmel High School student newsmagazine adviser Jim Streisel agreed that simply having a website isn't sufficient for journalism organizations these days.

"You have got to be where your readers are, and where are your readers? They're on social media," Streisel said.

But for some student journalists, even putting their paper online is out of reach.

"It's pretty much understood that it's just not going to happen," said Caroline Stewart, who was editor-in-chief of Chapman High School's student newspaper last year.

Stewart said she's asked about using social media to support the paper, but hasn't been allowed to do so. Her school's computers are heavily filtered, and school officials have expressed concern about how the student journalists' posts might reflect on the school, Stewart said.

With a black-and-white, print-only newspaper, Stewart said she feels like *The Prowl* is stuck in the past.

"I feel like we can't move forward until we get where modern technology is," Stewart said. "We're not up-to-date at all, and I feel like students are bored by that ... They'd rather go online and do something interactive and do polls and see videos."

Not being able to go online with their newspaper also keeps *Prowl* staffers at a disadvantage, Stewart said.

"When we go into the field, or even just into college, everyone's going to have these experiences that we're not going to have," Stewart said. "We're not going to be as prepared, I feel."

Chapman High School's assistant principal, Ricky Pace, said he hopes student journalists at the school will have access to social media in the future. However, the school wants to ensure it maintains the ability to review any content the students publish.

“Students don’t have free reign to just go out there and post something about anything at any time without first being approved by the teacher in charge of the class,” Pace said. “We would not want students to create an article and just post it onto the Internet.”

Stringent Internet filtering policies are in part a product of the Children’s Internet Protection Act, signed into law in 2000. CIPA stipulates Internet safety measures school districts must abide by to receive E-rate funding from the government. Schools use the money to pay for telecommunications services and Internet access.

Under CIPA, schools must have an Internet safety policy that says minors will be monitored online and that requires schools to “block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors (for computers that are accessed by minors),” according to the Federal Communications Commission website.

Under the Protecting Children in the 21st Century Act, an amendment to CIPA, schools must also teach “minors about appropriate online behavior,” the FCC website states. Minors are children younger than 17.

But free speech advocates say it can be a problem when schools filter more than the CIPA guidelines mandate.

Hillary Davis, a policy associate with the American Civil Liberties Union of Rhode Island, published a report in February examining Internet filtering in all 39 of Rhode Island’s cities and towns.

Hillary Davis said she discovered through the study, called, “Access Denied: How Internet Filtering in Schools Harms Public Education,” that “all districts are filtering tremendously more information than what is required by law and more than what is appropriate for schools to be filtering out.”

Over-filtered Internet access keeps students from information they have a right to view, makes learning on the Web difficult and puts some groups of students at a disadvantage, Davis said.

“Students whose only Internet access is at school are essentially denied equal access to information,” she said.

And many districts use CIPA as a scapegoat, she said.

“What they’ve done is they’ve taken the opportunity to say ‘great we have these filters, now we can control the children’s behavior in the classroom,’” Davis said.

She said the ACLU is calling for districts to change their filtering parameters to give students the Internet freedom they need.

“One of the things we recommend time and time again, that these schools return to using the bare minimum categories that they need to,” Davis said. “There are options to block out things like the pornography...but when you’re talking about school districts that block something like 40 or 50 categories, they’re clearly going above and beyond.”

Staff at the Federal Communications Commission said

schools do not have to block social media sites to be CIPA-compliant. A spokesman provided the following statement in an email:

“Although schools and libraries are free to block social media websites such as Facebook, the FCC does not require schools and libraries to block these websites in order to receive E-rate funds. Whether content other than the visual depictions specifically mentioned in CIPA – obscenity, pornography or those that are harmful to minors – is inappropriate for and should not be accessible to minors is a decision left to local school and library authorities.”

In a report and order released in 2011, the FCC wrote that Facebook and MySpace are not “per se ‘harmful to minors’ ... Indeed, the U.S. Department of Education recently found that social networking websites have the potential to support student learning.”

Dana Moore says she’s started seeing more districts want to open up access to social media sites over the last year.

Moore is the director of Community and Government Relations for Education Networks of America, which offers CIPA-compliant filtering services to 555 school districts in nine states, according to its website.

“It’s all over the map right now,” Moore said. “But you can really feel the trend toward allowing more use of social media. The time has come.”

Kecia Ray, the executive director for learning technology and library services for Metropolitan Nashville Public Schools system, said parents don’t seem to mind the filters used in her school district, but they do want their children to know how to use social media responsibly.

“As a district leader in Nashville, I’ve never had a parent come to me and say ‘I really wish you wouldn’t filter the Internet,’” Ray said. “I have had them say, ‘Can you make sure they are familiar with the tools of social media and that they know the responsible ways to post?’”

Districts use various methods to teach students to be safe online, from providing training to having students earn a “digital driver’s license,” said Ray, who is also president of the International Society for Technology in Education.

In her own district, social media use is incorporated into the curriculum, Ray said, and some students also help manage their schools’ Facebook and Twitter accounts.

“They work with our communications department and our communications department trains them on this is how you post and this is what you post,” Ray said.

Though Ray said she believes “there are mechanisms in place that make social media a very usable tool in most school districts,” such as cyberbullying policies and filter overrides, she said it is also “a school district by school district decision.”

Wantz said she understands the concerns of allowing young students to access the “the unprotected wilderness

of the Internet” and had some of her own concerns about having her students’ work open to comments.

“My concern was that people, basically that the students who read this or even people from our community, that they were going to act like the people that I see commenting in our local newspaper or the [Los Angeles Times] newspaper, which is racist, mean-spirited, nasty,” Wantz said.

But very few comments have been problematic so far, Wantz said. And those that are questionable provide a learning experience for the paper’s editorial review board, which is made up of 12 students.

Streisel acknowledged that the Internet can be scary, but said kids need to be taught to use it responsibly.

“You either block everything ... or you look at it, you explore it, you embrace it, you learn from it and then you grow from it,” Streisel said. “I think the kids come out much better for it as well.”

Streisel said he provides a model for his students through his own social networking, including his public Twitter account, and tells them cautionary tales of the mistakes others have made. He doesn’t expect his students’ social media use to be flawless, either.

“We have to be willing to accept some of those mistakes along the way in favor of the learning environment that’s happening,” he said.

Streisel said he tries to build a “sense of responsibility and ownership” within his students, which discourages them from being irresponsible online. The peer pressure of knowing they’re representing a product that’s valued by their whole staff makes them want to be careful, he said.

Social media also allows students to develop a “voice of authority,” a personal brand and a readership that can follow them into a job, Streisel said.

“They’re going to leave your high school,” Streisel said. “If they’ve developed a great brand, they can take that with them ... and that does nothing but make them more marketable.”

For student news organizations that haven’t gotten started using social media, Streisel recommends polling or surveying readers to determine which is the most popular site to use.

“Figure out what your community is and just explore that one option for awhile and see if you can build some traction with that,” Streisel said. Then, try adding something else new.

Hillcrest High School broadcast journalism adviser Dave Davis said he “can’t imagine” trying to send passionate students into great collegiate journalism programs without having taught them about social media.

His lessons about Twitter and Facebook are discussion-based because his students can’t access those sites on school computers. Like Wantz’s students, though, Dave Davis’

WHAT THE LAWS SAY: *The Children’s Internet Protection Act and Protecting Children in the 21st Century Act*

Who do the laws apply to? Elementary and secondary schools as well as libraries that receive discounts on telecommunications services from the federal government.

What do schools have to do?

- Block and filter certain visual depictions for both minors and adults;
- Have a policy that addresses: access to inappropriate material online; safety when using email, chat rooms and other forms of direct electronic communication, unauthorized access (including hacking and other unlawful activity), unauthorized disclosure of personal information about minors, and measures to restrict access to content that is harmful to minors.¹

Are there specific sites schools must filter? No. Twitter, Facebook, YouTube and other websites are not expressly forbidden under CIPA and its amendments. The filtering requirements only direct schools to block specific types of content, not websites.

How can I find out more about my school’s filters?

Schools are required to submit annual compliance reports to the FCC, which you can request by filing a public records request through your school. Sometimes, you can even find out specific words that are blocked by your school’s filter.

¹ 20 U.S.C. SEC. 9101 et seq.; 47 U.S.C. Sec. 254

students still use social media in their work.

“I just think I’m being irresponsible as a journalism teacher if we don’t use those tools,” he said.

His students have had some complications with blogging and posting videos though, having to switch from Tumblr and Vimeo to alternate blogging and video sites when the two services were filtered by the district.

“We’re always trying to hit a moving target, it feels like,” he said.

Still, he and his students are moving forward. In the spring, they produced a trailer to a half-hour documentary that reached more than 28,000 people – mostly the result of vigorous promotion on social media.

“The power of social media – you can’t deny it,” he said. “You better learn how to use it or you’re going to get left behind.”

Q&A

“Skyway is ghetto” is the provocative headline on the May cover of Renton High School’s student newspaper. The issue explores stereotypes about the neighborhood surrounding the school. In an email interview with an SPLC reporter earlier this year, *Arrow* Editor-in-Chief Vanessa Abenojar shared how the issue came to be.

Sara Tirrito: How did your staff come up with the idea for this issue? How did you decide which aspects of Skyway to cover?

Vanessa Abenojar: We thought of “Skyway ain’t so bad” around the beginning of the year because last year we did an issue about the zip code 98118’s area and thought, why not do an issue about a closer neighborhood? The thing that was significant about Skyway, as you can tell in the issue – people would say it’s ghetto and it kind of is, but it’s really not so bad.

We actually tried to cover every part of Skyway we knew about; there would have been more to this issue but not all would fit, of course.

Tirrito: Skyway is your hometown and you are very open about that throughout the issue. How did that connection play into the way you approached this issue?

Abenojar: I made the issue personal. I’ve actually had arguments with people about the area in the past so this was very fun for me. Some of our staff members also live in Skyway as well and I believe they had the same approach.

Tirrito: Your staff explored Skyway, sometimes going to places reputed to be dangerous or scary. How did your staff members make sure they stayed safe?

Abenojar: I don’t think that they went into their adventures thinking it was dangerous or scary because even though Skyway isn’t where everyone at Renton High lives, there’s always someone you know that lives in the area.

The most [staff did] to “stay safe” was telling us when they were going and where. Skyway was not an



The *Arrow*'s May issue took a look at the stereotypes surrounding its community.

unfamiliar place to any of us, so that was a safe enough bet for the students.

Tirrito: The use of “Post-it” notes throughout the issue was very interesting. Sometimes you even placed them on otherwise blank pages. Where did the idea come from and what was their purpose?

Abenojar: The Post-it notes told the story. It’s the narrator, and in the beginning it told the readers to “stay with me” to help the reader understand where they’re going.

Tirrito: You were liberal with white space and large images. Were you able to afford that luxury by making this an online-only issue, or did it come out in print as well?

Abenojar: It came out in print as well, 1,900 copies, which totaled up to about \$1,000, I think. We fundraise our own money. All of our issues are printed.

Tirrito: Was your staff concerned about the way this issue might be

received? What kinds of feedback have you gotten?

Abenojar: We were concerned about not making Skyway look bad enough because we had so much good things to say about the place.

Some people have even asked me what it’s about, “Why did you say Skyway is ghetto?” or “Skyway IS ghetto, what do they mean?” But that’s when they just see the cover.

Some people look in and when they see Alajawon, they got a little emotional. [*Editor’s note: Alajawon Brown was a 12-year-old boy shot in Skyway in 2010.*]

We got some good feedback about our writing and the way we structured the whole publication.

We knew it would get our school’s attention because Skyway is one of the school’s main neighborhoods. This was most talked about issue I’ve ever been apart of; it’s kind of overwhelming. My parents were even confused; when they saw the print publication, they said, “You wrote a piece about the house? What the...?”

Tirrito: What advice do you have for other student journalists who might want to produce a similar issue?

Abenojar: I would say that if you have something to say and you have evidence to back it up, then blow it up, don’t hold back, don’t overlook the little things and be sure to feed your staff because 40 pages will make someone crazy without food. Give your story voices people would want to listen to, because when I read the articles in the Skyway edition, I can hear all my staff members and that’s what I love most about the publication.

D.C. middle and high school students collaborate to create newspaper

In a city with few student newspapers, a group of high school journalists have helped middle schoolers buck the trend and create their own newspaper to cover issues that concern them.

BY ALLISON RUSSELL

D.C. high school student journalist Claire Parker was shocked when she learned last fall that her school was one of the few in the area with a student newspaper.

At a school presentation last year about student press rights by Mary Beth Tinker, the plaintiff in the 1969 Supreme Court case *Tinker v. Des Moines Independent Community School District*, Parker learned that no more than six of the 51 traditional schools and no more than seven of the 37 charter schools in D.C. had student newspapers.

“I assumed that other schools must have papers, but they don’t,” said Parker, who is the managing editor of Wilson High School’s student newspaper, *The Beacon*.

Within a few weeks of Tinker’s presentation, she’d hatched the idea to cultivate new student newspapers in local schools, starting with middle schools.

“Middle school is such a pivotal age for students,” Parker said. “It’s a time of development, for students to have and use their voice, for them to have a voice in their community.”

She called her idea The Paper Project and started work in October 2012, when she was a sophomore. At first, it was hard to find a school that wanted to work with her to create a student paper. Parker said she spent months calling D.C.-area middle schools, only to find that “traditional middle schools didn’t want anything to do with us.”

“They said they didn’t have the time to commit to starting a paper and made it difficult to communicate within the school,” Parker said. “It was really frustrating for a few months.”

Parker eventually found success after contacting Chavez Prep, the middle school run by Cesar Chavez Public Charter Schools for Public Policy, and she and a team of four other Wilson students and *Beacon* staff — Maria Brescia-Weiler, Lauren ReVeal, Annie Rosenthal and Sarah Torresen — worked to assemble a team of students at Chavez.

The girls were aided by January Morrison, a U.S. History

teacher at Chavez, in their search for a group to staff the new paper. Morrison said Chavez is a good place to foster a student newspaper due to its conducive administrative environment and student interest.

“Chavez is great because we don’t have to worry about being censored,” Morrison said. “They want us to be provocative. Real change can be uncomfortable, but it’s just part of the process.”

“It is a high-poverty, high-needs school, but it is also high-performing,” Morrison added. “There are lots of very motivated students. I want these students to self-advocate, to be forces of community change.”

Parker said there were about 20 middle school students who came to the initial interest meeting, but the core group of staffers narrowed down to six when the paper’s production began in March, with Morrison as its adviser.

The high school mentors decided to focus on teaching writing and photography for the first issue of *The Eagle*. They helped the students to brainstorm ideas for stories they wanted to write, and made digital cameras available for the students to take pictures, Parker said.

Morrison, who also recruited work from students who were not on the paper’s staff, said she encouraged the students to self-advocate about community issues through their pieces.

“We want to build critical thinkers, not just a regurgitation of what I’m teaching,” she said. “They need to get below the sources of things, to find out why something is the way it is. These are the skills they will need forever.”

The mentors worked with Chavez students on Mondays, and occasional Thursdays, in the afternoon. The first issue took months to complete, Parker said.

“For the first issue we ended up with four pages,” she said. “They wrote about events like going on to high school, movie reviews, and even an opinion piece about cyberbullying.”



Paper Project director Claire Parker, left, and *Eagle* adviser January Morrison explain the paper's goals for the upcoming school year to an audience of middle school students at Chavez Prep. Parker hopes the paper will expand to five issues this year. SAMANTHA SUNNE/STUDENT PRESS LAW CENTER

The issue also includes summer horoscopes, scans of student drawings and a photographic year in review.

Jasmiahya Young, who wrote a movie review for the paper's inaugural issue, said the experience helped her learn how to write and how to get people's attention. She said she's thinking about writing an opinion piece this year about whether students should be required to wear black and white shoes in addition to their uniforms.

Morrison said she has been especially impressed by the subjects students want to address through the paper. The first issue, which was published in early June, features a poem titled "Fatherless" written by a seventh grader. The poem begins, "Why father, why bother make me, / if you weren't going to stay to raise me."

"These issues in the community, they are important to share," she said. "It's good for students to see their work in print so they know that their thoughts and ideas are important."

Morrison said it is beneficial for the middle school students to work with their high school mentors.

"[The mentors] are so adult — it's great for the middle schoolers to see the Wilson girls," Morrison said. "They are kind and self-motivated, and it's good for the students to spend time with students outside of their own community without being afraid. The girls are great role models."

Serving as mentors to *The Eagle* in addition to keeping up with their own classes and work at *The Beacon* is something that Parker says can be difficult.

"I end up donating lots of lunch periods to my school's paper," she said. "I use the weekends for administrative stuff for the Paper Project. It just takes a lot of prioritizing and coming up with creative ways to get things done."

Lauren ReVeal, who teaches students about feature stories and is also an editor of *The Beacon*, says her involvement with *The Eagle* is more of a hobby than a career path, but she is motivated by her desire to involve younger students in journalism.

"I want to support journalism and newspapers as much as I can, since some people see it as a dying field," ReVeal said in an email. "Because of this, I want to continue to help out with the Paper Project so that kids can learn how to be journalists and continue to keep the trade alive."

Many of the Chavez students who were part of the first issue have gone on to high school, but a few plan to continue working for the paper this fall, Parker said.

As the staff gets more comfortable with their jobs, Parker says she wants to continue to push students to cover more issues, including controversial topics.

"We didn't have any sports articles this time, which is

probably because the staff is all girls,” Parker said. “So next year we have a few goals, which include recruiting more boys and writing more sports stories.”

Parker said she wants to produce five 8-page issues at Chavez over the next year, and hopes the students will be able to run the paper on their own by the end of her time as director.

“By the time I graduate, I want to have worked with one or two other schools,” Parker said. “I also want to train a team at Wilson to take over our positions. Sustainability is important, and I want to expand on the idea, to make a model of how we did it at Chavez, so it can be a blueprint for the next team.”

Around two dozen students came to *The Eagle’s* interest meeting in September to learn more about joining the staff in its second year. Parker said she was pleased and excited that many in the audience were sixth-graders, which means they can carry on the paper after she’s gone.

Morrison said she hoped some of Chavez’s 9th graders could be copy editors. She said she and other teachers planned to read newspapers, like *The New York Times’* kids edition, in enrichment classes at the school.

“Displaying original thought with a smile is important,” Morrison said. “The work they’re doing at the paper is important because it’s socializing them, and it’s encouraging them to think outside of their own contexts.”

Funding will also be an important factor in maintaining production of *The Eagle*. In order to fund its first issue and the supplies needed to produce it, the Paper Project employed a Kickstarter campaign with the help of the Future Project. The Future Project, a nonprofit that supports creative ideas in high schools, helped raise awareness about the project.

“Kickstarter is how we’ve funded everything,” Parker said. “The \$700 we raised covered the printing costs and the supplies, but we’re still working on a budget for next year.”

Morrison intends to seek advertising revenue from the business community around Chavez to help fund the paper.

“I’m going to look into advertisements with Columbia Heights businesses with the help of a student next year,” Morrison said. “Promoting local, sustainable businesses will help build more community partnerships. We want them to be a part of this community newspaper.”

Although Parker said the project is not widely known about at Wilson High School, she says people have reacted well to it when they learn about it. Morrison said the same about the paper’s reception at Chavez, but says the student staffers’ peers are “incredibly supportive.”

“There was just silence when we gave out the preview of the first issue,” she said. “They were reading for pleasure, reading about themselves. They were lifting each other up instead of putting each other down.” ♦

Samantha Sunne contributed reporting.

ON THE DOCKET

PENNSYLVANIA, INDIANA — In an August en banc opinion issued by the Third Circuit U.S. Court of Appeals, a 9-5 majority found that students in a Pennsylvania middle school who wore “I [heart] boobies! (KEEP A BREAST)” bracelets had a constitutional right to do so. The court said that schools cannot censor student speech about political or social issues just because it “has the potential to offend.” A few weeks after the Third Circuit’s opinion, an Indiana federal judge ruled against high school students who were not allowed to wear similar bracelets. In the Indiana case, the judge said the school had a “reasonable belief” that the bracelets were “lewd, vulgar, obscene or plainly offensive.”

SOUTH CAROLINA — The state’s Supreme Court reversed a lower court’s decision to dismiss a public records lawsuit filed by a radio host who sought records detailing correspondence between the state’s governor and the South Carolina Association of School Administrators. The group fought the release of the records on the grounds that as a nonprofit corporation, it is exempt from the state’s public records laws.

GEORGIA — A Georgia college journalist filed suit against the Board of Regents of the University System of Georgia in June seeking records related to the school’s \$25 million budget shortfall. The lawsuit was filed nearly a year after David Schick made his first request for the records, only some of which have been provided.

MICHIGAN — A recent high school graduate has sued his former school district for its decision to withhold the names of expelled from school board meeting minutes. The school district denied Zach Olson’s request, writing that the names of students would violate FERPA, the Family Educational Rights and Privacy Act, which makes student educational records confidential.

PENNSYLVANIA — A appeals court ruled in July that documents in the custody of the state’s secretary of education in his role as a Pennsylvania State University trustee are public records. The state’s department of education denied the request, citing the state’s public records law, which exempts Penn State and three other “state-related” institutions.

TINKER TOUR

This fall, Mary Beth Tinker, one of the plaintiffs in the landmark student civil rights case, *Tinker v. Des Moines*, and SPLC attorney Mike Hiestand are on the road, traveling to 19 states to talk with students about the First Amendment and civic education. The Tinker Tour launched in Philadelphia at the National Constitution Center.



Mary Beth Tinker talks with Constitution High School senior Madeline Clapier, who attended Tinker's Constitution Day talk at the National Constitution Center. Clapier has protested budget cuts in the Philadelphia school system and talked with Tinker about her efforts.



SARA GREGORY/STUDENT PRESS LAW CENTER

John Tinker said that their protest was carefully thought out. "We were not trying to test the limits. . . . We were trying to be respectful," he said.

"We weren't really ones to break the rules. But we thought we should have rights, too."

MARY BETH TINKER, ON THE DECISION SHE MADE, WITH HER BROTHER AND FRIEND, TO WEAR BLACK ARMBANDS TO PROTEST THE WAR IN VIETNAM EVEN AFTER HER SCHOOL DISTRICT PROHIBITED THEM.

MORE INFORMATION:

www.tinkertourusa.org

www.twitter.com/tinkertour

www.facebook.com/tinkertour



ON THE ROAD WITH MARY BETH & MIKE

Oct. 25-26: College Media Association/Associated Collegiate Press convention (New Orleans, La.)

Nov. 6: U.S. Supreme Court Historical Society, Leon Silverman Lecture Series, U.S. Supreme Court (Washington, DC)

Nov. 14-16: Journalism Education Association/ National Scholastic Press Association, National Convention (Boston, Mass.)

Nov. 19: North High School and Harding Middle School (the schools that John and Mary Beth Tinker were suspended from in December 1965) (Des Moines, Iowa)

Nov. 21-24: National Council for the Social Studies, National Convention (St. Louis, Mo.)

For a full schedule, visit tinkertourusa.org.



TOUR DONORS

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No really, trust us — this new guy is great

Even in states where public records and open meetings laws make college president searches public, schools have found ways to keep the search secret, much to the chagrin of open government advocates.

BY SARA TIRRITO

The selection of a new college president is one of the most important decisions a school makes, with huge implications for students, faculty, alumni and the community as a whole.

Such decisions ideally are the result of months of careful consideration by university search committees. Nominees are solicited, committees convened and candidates are vetted with the intention of finding the perfect fit.

Sometimes, finalists are brought to campus and presented for members of the public to question. But often, the first introduction a campus has to its new president comes in the form of a hiring announcement. Students and faculty may never learn who else was considered.

The battle over transparency in executive searches begins almost as soon as a presidential vacancy is announced. On one side are the universities who argue that closed searches, in which candidates are promised confidentiality either until they are named a finalist or unless they are selected, encourage the best candidates to apply. On the other hand are journalists and other open government advocates who argue that the public's interest is best served by a process in which all candidates can be vetted openly.

Despite the different philosophies, both sides have the same goal, said Michael McLendon, a professor of higher education policy and leadership at Southern Methodist University.

"Everybody's arguing for the public interest," he said.

The closer a search comes to announcing a finalist, the more intense the debate becomes. Increasingly, it's a debate often only resolved through lawsuits and legislative action.

Among schools that have recently concluded searches, few have tried as hard to impose secrecy over the process as the Louisiana State University system. The university system began searching in November for someone to fill its top job, a newly created position that has replaced the president of the LSU system and the chancellor of the Baton Rouge campus.

From the beginning, the search was handled by the LSU Foundation, a private nonprofit that raises money for the university. In a deposition, the search committee's chairman said the school's attorney urged him and other members of the committee to avoid talking about the search by email or other written communication that would be subject to release under the state's public records law, *The Daily Reveille* reported.

As the group narrowed down the candidates, reporters from the *Reveille*, *The (Baton Rouge) Advocate* and NOLA Media Group, which publishes New Orleans' *Times-Picayune*, asked to see records that would identify finalists.

Louisiana state law says that applications for "public positions of authority" are public records, but LSU declined the requests, saying that the university didn't have copies of the records because it didn't conduct the search.

Shortly after the university named F. King Alexander the sole finalist, the media filed suit. The professional papers' lawsuits were combined, and within a span of a few days, their suit and the one filed by Andrea Gallo, then the *Reveille's* editor-in-chief, went before two separate district court judges.

Gallo lost her suit seeking the applicants' names. The judge ruled LSU didn't have custody of the records and that candidates recruited by a search firm were not technically applicants whose records were subject to public records law.

Bill Funk, whose firm was hired by the LSU Foundation to conduct the search, said that distinction is important because recruited candidates often have to be granted confidentiality or they won't apply at all.

"From a recruiter's point of view ... [the] best candidates are those candidates who are not looking for a job," Funk said. "What your search consultant is supposed to do is to go out and try to entice very successful and successful people to give this job consideration."

The Advocate and NOLA Media Group won their suit, with Judge Janice Clark ordering the school's board of supervisors to release the records.

That was in April. LSU immediately announced its plans to appeal, given the differing rulings by the district judges and their own desire to preserve the confidentiality of the search.

LSU sought a stay of Clark's order from both an appeals court and the state's Supreme Court, but each declined to intervene. In the meantime, the paper's attorney asked Clark to find the school in contempt for continuing to refuse to release the records, which she did — imposing a \$500 fine for each day the records continued to be withheld.

Clark has threatened jail and issued a subpoena ordering sheriff's deputies to seize the records, but LSU told deputies it did not have any records to release. In September, the two sides agreed to a compromise, in which the university gave Clark, but not the media organizations, copies of the records while it appeals her ruling. LSU officials declined to comment on the compromise, or its earlier statements that it did not have the records.

Gallo said she is hopeful the names will be released.

"It's a question of looking kind of at the ethics of the search and who was included in this candidate pool and why did F. King Alexander emerge victorious from everybody else," she said. "I want to know what kind of people want be president of my university, and I want to be able to vet those people a little bit."

Similar ethical questions emerged after Purdue University's presidential search last year, said Kirsten Gibson, who was then the editor of *The Purdue Exponent*.

In that search, which was also led by Funk's firm, Indiana's governor, Mitch Daniels, was named president. At issue for many was that he had appointment many of the trustees who hired him, the *Exponent* reported. More than 1,300 signed a petition asking the trustees to withdraw the offer.

The Inspector General's Office looked into Daniels' appointment and found no ethics violations, the *Exponent* reported. The IGO said there was no conflict of interest because Daniels had to appoint the trustees as part of his duty as governor, according to the *Exponent*.

Though she wishes the search could have been open, Gibson said she feels "the quality of candidates most likely would have been lower" and understood the university's desire for a closed search.

Candidates often reluctant to go public, consultants say

Today, outside trends may be adding more pressure for schools, McLendon said. In recent years, many presidents have been retiring, creating a need for strong successors. And where provosts used to seek presidential positions, their interest has slumped as the job has become more focused on fundraising and philanthropy, McLendon said.

"Universities are attempting to hire presidents with a smaller applicant pool than before and with even greater pressure on them [than] before to find a top candidate for the position," he said. "What they would argue is that laws that do anything to scare off top talent are making it very difficult."

A variety of state laws govern the search processes at public colleges. While some states, like Florida, are known for openness, others, like Maryland, enable confidential searches. At least five states specifically exempt records related to executive searches; about 20 others have laws that could potentially exempt records.

In some states, only finalists — and not all applicants — are required to be made public. States like Colorado, New Mexico and South Carolina require a certain number of finalists to be named. In other states, any number of finalists is accepted, a practice that can sometimes result in a "finalist of one" situation, said Funk, founder and president of search firm R. William Funk & Associates.

In the last 30 years, Funk said he has been involved in roughly 375 searches for presidents and chancellors. In a July proposal to Florida Atlantic University, Funk boasted of recruiting presidents for two-thirds of public colleges in the Association of American Universities, whose invitation-only membership is composed of top research universities.

"Here in Texas, for a public university, the ruling is that finalists have to be announced, but 'finalists' kind of is in the eye of the search committee," Funk said. "If you have just one finalist, then you only announce one."

Laws like New Mexico's, which states that five finalists must be announced, can be frustrating if the search committee doesn't have that many candidates that they actually want to keep considering, Funk said.

Most open searches are kept closed until the searchers decide on about two to four final candidates, said Jamie Ferrare, managing principal of AGB Search and the Association of Governing Boards' senior vice president.

Even searches conducted in states with broad open meeting and records laws can be tinged with secrecy, Funk said.

Sometimes a candidate who is unwilling to take the chance of entering a public search, but who is wanted by members of the school's board, will be promised the position, Funk said.

"Deals are still cut in the back room," Funk said. "Because they know unless they make that promise, that guy's not coming in or that gal's not coming into the pool."

Aside from state laws, traditions can factor into the types of searches institutions pursue, Funk said.

Schools in the Association of American Universities, like Purdue University, typically perform closed searches, while schools in the American Association of State Colleges and Universities have "a pretty strong tradition of bringing in three finalists to the campus," Funk said.

When considering how difficult it will be to find candidates, the type of search does matter, Ferrare said.

If the institution really wants candidates who are currently presidents at other institutions, an open search might not work, Ferrare said. A president might be afraid of endangering fundraising efforts at his home campus, Ferrare said.

“People who are not sitting presidents tend to stand for an open search more easily than a sitting president,” Ferrare said. “Generally speaking, if it’s a president, the answer’s no, they just will not come in.”

Even some provosts are “increasingly reluctant” to be part of an open search, Funk said. For some, there’s a fear that losing too many potential positions could hurt their upward mobility, he said. “You get to a point where another institution might say, ‘Gee, why would we want to hire someone who’s been a candidate at four other places who didn’t choose them?’” Funk said.

Tradition can influence individuals’ decisions on whether to participate in an open search as well.

“Deals are still cut in the back room. Because they know unless they make that promise, that guy’s not coming in or that gal’s not coming into the pool.”

BILL FUNK, HIGHER ED SEARCH CONSULTANT

“Since they’re used to that culture, sometimes the presidents and provosts of other AASCU schools are more willing, if you will, to come into an open search,” Funk said.

Though open searches can pull “an excellent pool,” the better recruiting opportunities associated with closed searches make them more appealing for his firm, he said.

“We always like to be able to recruit widely and capture as many good candidates as we can,” Funk said. “It’s not that we don’t do [open searches] or can’t do them, it’s just that we recognize going in that there’ll be people who don’t want to be candidates.”

Though getting candidates may be tougher, Ferrare said he still prefers to conduct open searches.

“Overall, I would say it’s always best to do an open search,” Ferrare said. “It provides greater exposure, and I think that’s always the cleanest and the best way to do it.”

Funk said he has personal reservations about open searches.

“I guess it comes down, on a very personal, human level, why do you want people to be embarrassed publicly of

being unsuccessful?” Funk said. “We do them [searches] both ways and we’re proud of our process. I think we have great outcomes in both cases, but ... I think there are advantages to both if you take everything into consideration, and disadvantages to both.”

While McLendon calls for finding a balance that allows for both openness and confidentiality, such as announcing only the finalists in a presidential search, he said all of the factors playing into modern searches could make that difficult.

“I think this may be a challenge of a magnitude that we’ve never before faced in higher education,” he said.

Journalists push back against secrecy

The media and faculty members are the most likely groups to call for openness, Funk said. Student journalists, who are sometimes the only media covering a search on a day-to-day basis, often find their efforts stymied by closed-door processes.

At Northern Illinois University, then-Editor Kelly Bauer, led her staff in a call for openness in the university’s most recent search, which concluded earlier this year.

The university conducted a “closed, hybrid search,” said Paul Palian, NIU’s director of media and public relations. A 28-member search committee gave the Board of Trustees four candidates to consider. Those four interviewed with the board and met with stakeholder groups. The board then selected the university’s next president, offered him the job and confirmed the decision at a public meeting, Palian said.

Public meetings were announced and updates were posted to the search committee’s website, but the public never got names of any candidates except the single finalist, Palian said. All participants signed a confidentiality agreement.

“It was a closed search at the beginning to protect the identity of those candidates that were applying for the job, especially during the process of the search,” Palian said. “There were candidates that may have been up for other jobs, et cetera, so you didn’t want that information out there. It allowed us to attract a strong pool of candidates.”

Bauer and her staff at *The Northern Star*, however, felt that the process should have been open and were bothered by the lack of student input in the search. Two students were on the committee, but that was the extent of their input, Bauer said.

“We just felt like if something that important is going to be private at a public university, it’s just ridiculous, it’s unacceptable,” Bauer said. In protest, the staff published a front-page editorial imploring the candidates to come forward.

“This is a crucial moment for the community, and its members must know who will be President John Peters’ successor,” the editorial board wrote.

A small banner was published on the front page of each subsequent issue, counting the days the university community had “been in the dark.”

“We just decided that it was such a huge issue and related so much to our core readership that we needed to put it on the front page to show people how serious we were,” Bauer said. The candidates remained confidential, however, and the search ended April 2 with the hiring of Doug Baker, who was then provost at the University of Idaho.

Baker was hired by NIU just a little over a month after being passed over by the University of Wyoming for its top post. In that search too, members of the media fought for access to search records. *The Wyoming Tribune-Eagle*, *The Casper Star-Tribune* and the Associated Press sued the university in November 2012 when the university refused to release documents that would identify the finalists.

The media won in district court in January, but faced a second battle when just after that ruling, legislation was passed to allow such documents to be withheld. The university withdrew its motion for an amended ruling, however, and released four finalists’ names in February. Within days, the university named its next president. (Oklahoma State University’s provost was hired.)

Chad Baldwin, the university’s director of institutional communications, said the board of trustees felt they “would get a better, deeper pool of candidates” by hosting a confidential search, and that some candidates did pull out of the process when the school announced it would release finalists’ names.

“I think the board’s feeling is that the confidential process is the reason we attracted such a big pool and it’s just very fortunate that we had an outstanding candidate who was willing to have his name go public,” Baldwin said.

The fact that the university is funded by taxes and is Wyoming’s only state university made it important for the public to have some knowledge of the finalists, *Casper Star-Tribune* Editor Darrell Ehrlick said.

“I think not to understand that they are legitimate stakeholders is a slap in the face to Wyoming residents,” Ehrlick said. “I’m sure that there are plenty of examples where private searches have gotten great presidents, but I don’t think the two things are mutually exclusive.”

Ehrlick said in two past public searches, the open nature “did not harm and in fact in some ways enhanced the search.”

Baldwin said the board’s “strong fiduciary responsibility to find the very best person they possibly could find to run this important state institution,” was part of the reason they chose a confidential process.

Though the university released names this time, the next search could be confidential because of the legislation passed in January — directly in response to the ruling. Now, documents identifying presidential candidates are specifically exempt from the public records law.

“We may have won the battle but lost the war,” Ehrlick said. “The language in the law says they could keep it confidential and we’d have very little recourse.” ♦

ANATOMY OF A SEARCH

In proposals prepared in July for Florida Atlantic University, three search firms — Parker Executive Search, R. William Funk & Associates and Witt/Kieffer — explained how they would conduct the search for the school’s next president (the school has since hired Parker Executive Search):

RESEARCH: Determine what the school is “looking for in their new president,” post advertisements in trade publications.

IDENTIFY PROSPECTS: In the proposal, Funk said he generates a list of prospects by talking with search committee members, taking nominations for candidates, and reviewing the firm’s own “proprietary files.” Witt/Kieffer said that “as FAU’s agent, we can conduct preliminary conversations with potential candidates before they become formal applicants.”

CREATE WEBSITE: For each search, Parker Executive Search creates a website where members of the search committee can “gain unlimited access” to information about candidates who have applied as well as candidates recommended by the firm. Funk’s firm also sets up a “password protected website maintained by our firm.” Members of the search committee can visit the website “24/7” to review the resumes of “every ‘active candidate’s’ resume.” Witt/Kieffer’s proposal did not reference a website to maintain documents.

NARROW LIST: With the search committee, narrow the list of candidates to approximately 10 to 15 people. Funk’s firm helps arrange interviews “off-site.” Parker Executive Search’s proposal says initial interviews will take place at an airport hotel. After those initial interviews, the firms will help the search committee narrow the list of candidates to the final few who will interview again.

REFERENCE CHECKS: For final candidates the three firms obtain credit and litigation checks, in addition to reviewing news stories for “potentially controversial areas of concern,” Parker Executive Search said.

COST: Each firm typically charges a fee equal to one-third the cost of the new president’s first year’s salary. Witt/Kieffer set a minimum fee of \$55,000; both Parker and Funk’s proposals offered to do the search for a reduced and set fee of \$90,000. Each firm charges for expenses, not to exceed 10 percent of the fee.

GUARANTEE: Each firm offered to conduct a search for no charge (except fees) if the new president leaves within one year. Funk’s firm guaranteed the placement for up to two years.

Source: Florida Atlantic University Board of Trustees meeting agenda (August 19, 2013)

States make moves to protect students' rights to online privacy

Nine states have passed privacy laws, with dozens more considering similar legislation. Now that the laws are going into effect, some schools are having to change policies, particularly with regard to athletes.

BY MARGARET BAUM & SAMANTHA VICENT

In 2010, then-University of North Carolina defensive tackle Marvin Austin spent an evening partying at a Miami Beach club. While at the club, Austin tweeted a lyric from rapper Rick Ross, posting, "I live in club LIV so I get the tenant rate ... bottles comin (sic) like it's a giveaway."

Soon after Austin's tweet, the National Collegiate Athletic Association launched an investigation into UNC, which revealed Austin received money and trips to Miami from agents, both of which are against NCAA rules, according to a 2012 article from TIME Magazine's Sean Gregory. Other players also received improper benefits, the NCAA discovered.

UNC's NCAA debacle, which resulted in a one-year postseason ban and scholarship cuts, spurred the university and others around the United States to increasingly monitor their athletes' social media accounts. While barring officials from requesting passwords, UNC's social networking policy says the school reserves the right to have athletic department staff access, monitor or receive reports about student-athletes' accounts either on its own or through a third party.

Growing numbers of state lawmakers have identified the proliferation of such policies as a troubling trend, and in the past couple of years, eight states — Arkansas, California, Delaware, Michigan, New Jersey, New Mexico, Oregon and Utah — have enacted laws prohibiting postsecondary institutions from seeking social media usernames or passwords from current and prospective students. (Illinois' law takes effect Jan. 1, 2014 and, like Michigan's, covers K-12 schools as well as colleges). As of July, privacy legislation has been either introduced or pending in a total of at least 36 states, according to information from the National Conference of State Legislatures.

All nine states' laws protect personal social networking

accounts and prohibit administrators from retaliating against those who refuse to provide their account information on applications or otherwise. They generally do not prevent officials from viewing accounts that are publicly viewable, but Michigan and Utah have clauses barring schools from assigning someone to search or monitor personal Internet account activity. Arkansas, California, Delaware and Oregon's statutes also protect personal email accounts. New Jersey's law, which took effect last year, even prohibits public and private institutions to ask whether students or applicants have social networking accounts at all.

Michigan State Sen. Aric Nesbitt said he first considered sponsoring a social media privacy bill about 18 months ago after reading an article about student-athletes who were asked for their social networking passwords. Nesbitt's bill passed in December and took effect just before Jan. 1.

"I thought it was out of bounds," Nesbitt said. "We looked at it and thought it was a common sense idea ... just because the information is electronic and not physical ... it still needs protection."

Nesbitt said he was happy to see both sides of the political aisle work together to protect personal accounts.

"I think we have a model legislation here in Michigan. We were able to get the support of Republicans and the ACLU," he said. "(It) recognized certain aspects of what we consider certain basic privacy rights."

Social media law attorney Bradley Shear practices in Bethesda, Md., and helped write Delaware's law, which was the first of its kind in the nation upon its passage in July 2012. The law in Delaware and the other states also covers students' contracts for financial packages such as merit or athletic scholarships, Shear said.

"A school cannot put in a scholarship agreement or any other type of agreement ... [a requirement] to hand over

that information, at least for public institutions,” he said, noting that the law is murkier for private schools.

Contracts requiring student-athletes to provide account information to administrators are unnecessarily invasive, said Kevin DeShazo, founder of Oklahoma City-based social media monitoring company Fieldhouse Media, which according to its website has worked with more than 40 universities, including the University of Miami and the University of New Mexico, to help schools monitor athletes’ social media use. The company created a web-based platform called FieldTrack, which scans public accounts for keywords determined by universities using the service, DeShazo said.

“There’s no reason to ever have to give your password to anything or anybody,” he said. “It’s common sense.”

While DeShazo described schools’ desire to monitor accounts as “usually well-intentioned,” he said he was happy to see more states protect student-athletes’ rights to privacy.

“I don’t think schools are being malicious,” he said. “They’re protecting themselves, but if someone says (accounts are) private then you have to respect that.”

Shear said schools in states with privacy protections violate them when using social media monitoring services to track students’ activities online. He cited schools’ desires to gather student-athletes’ account usernames as most concerning.

“If the school verifies the student’s social media username or digital account information, somebody has to authenticate it,” he said. “Schools do not have a legal duty to monitor their students’ personal accounts. There’s no reason to create a new liability and new legal duties.”

Colleges react to new privacy laws

The new laws are forcing some colleges to change their practices with regards to student-athletes.

In the past, players at Utah State had to sign an agreement stating they will grant full permission for the university and other third party monitors to gain access to ‘friends only,’ private and other similarly designated areas of social media accounts. Last year, officials told the Student Press Law Center that refusal to sign the contract could be grounds for dismissal from sports teams.

Utah State’s 2013-14 student-athlete handbook was recently updated to reflect the new law, which took effect in May. The social networking policy says student-athletes must understand reviews the department conducts, whether by themselves or with the help of a third party, are “intended to educate” players about reputation risks.

“Utah State Athletics does not actively monitor student-athlete social media accounts as a department or through a third party,” said Amber Childers, Utah State’s academic and life skills coordinator, in an emailed statement. “We, as a department, do not require student-athletes to friend/unfriend or like/unlike any specific social media accounts

of the department, teams or staff. We do not maintain a log of social media accounts held by student-athletes.”

Northwestern University is another school that is revising its policy in response to the new law. Northwestern’s current social networking policy for student-athletes, which is posted on the school’s athletics website, states players must provide “full access” to coaching staff and others at NU’s athletics department for “any and all personal online networking pages.”

Illinois bill sponsor LaShawn Ford, D-Springfield, said that without the bill, colleges and universities such as Northwestern could believe they have the right to request social media usernames and passwords from their students. He also said it violates Facebook’s terms of service to provide social media passwords to others besides the account holder.

“Students have a right to privacy just like everyone else,” Ford said. “It doesn’t just protect the student’s privacy. It protects the school.”

When a reporter from the Student Press Law Center read the policy to Ford, he said it would be illegal for the university to continue to enforce it once the law takes effect Jan. 1.

“Any school sets themselves up for a lawsuit when they violate the right to privacy, and (Northwestern’s policy) would clearly violate the right to privacy,” he said. “I think that this bill will prevent that.”

Doug Meffley, director of digital and social communications at Northwestern, said the law’s passage has sparked the university to take a second look at its rules.

“It was a heavy topic of discussion around our office because it could have forced kids to give up passwords,” he said. “We’ve never done that here. It’s all been just friending and following and making sure we can see the content that they’re putting on.”

The current rules allow officials to view, friend and follow student-athletes’ private and public accounts, Meffley said. As of September, the department is working on rewriting its policy, which he said is not directly related to the state’s new law.

“The policy itself is just outdated, especially the version we have in our student-athlete handbook,” Meffley said. “There are still references to MySpace and things like that.”

Several schools in states with the new laws say their policies won’t need to be changed. Arkansas passed its own bill in April of this year, which applies to educational institutions such as the University of Arkansas.

“We never did ask for passwords, from students or employees, current or prospective,” Arkansas media relations spokesman Steve Voorhies said in an email. “It is, of course, easy to monitor social media accounts — no password is needed — and if we become aware of a student or employee posting something objectionable disciplinary

action could be taken.”

University of Oregon assistant athletic director of athletic communications Andy McNamara echoed Arkansas officials, saying Oregon’s law, which Gov. John Kitzhaber signed June 13 of this year, is a “non-issue” and that Oregon’s athletics department “has never required student-athletes to turn over their social media passwords.”

Oregon Sen. Ginny Burdick, D-Portland, who wrote her state’s bill, said after its passage that it resolves issues that arose with the increasing popularity of social media in colleges and universities.

“If a student chooses to keep his or her personal social networking page private, it is not acceptable for a college or university to demand access as a condition of admission,” she said in a statement. “(The bill) strikes a good balance between student privacy and the legitimate information needs of colleges and universities.”

Monitoring common in states without laws

In states without legislation, social media monitoring of athletes is increasingly the norm, with larger schools often outsourcing the monitoring to third-party companies.

In August, *The Lantern* at Ohio State University revealed the university had signed a \$360,000 contract with JumpForward to monitor athletes and coaches. Ohio State’s actions also came after NCAA violations were uncovered.

According to the contract, Ohio State will provide JumpForward with a list of athletes to be tracked, as well as keywords to be tracked. So they can monitor athletes, Ohio State will give JumpForward a list of students’ usernames and passwords.

Similar monitoring occurs elsewhere, as well: At the University of Oklahoma, the student-athlete handbook states the athletic department “is currently and will continue to monitor all online social networking sites,” adding that student-athletes must give the department their usernames and accept department members as friends or followers. Also, Florida Gulf Coast University’s handbook says all teams must choose at least one coach or administrator who is responsible for “having access to and regularly monitoring the content of team members’ social networking sites and postings.”

Jason Leonard, associate athletic director for compliance at the University of Oklahoma, said the school uses a social media monitoring company to track about 250 of its student-athletes’ public accounts, as well as employs someone full-time to watch social media activities. The university created its social networking policy in September 2008, with the most recent update being released in May, Leonard said.

“All of our individuals have public accounts, and we are seeing the same information that everybody in the world

is allowed to see,” Leonard said. “We saw a need because of the fact that most students of the younger generation tend to express themselves through social networking sites ... we felt a need to make sure that we monitor our student-athletes to not only protect them but to protect us as well.”

The university has been keeping a close eye on other states’ social media privacy laws, but Oklahoma has not had issues with student-athletes’ compliance regarding its policy, Leonard said. He said the university recognized the importance of respecting students’ First Amendment rights.

“It’s been a scenario where they understand we are trying to help them. There are things that you could put out there that are negative toward your brand, your image,” he said. “There’s always the freedom of speech argument ... I’m sure there’s good arguments on both sides. Luckily we haven’t had to deal with that in the state of Oklahoma.”

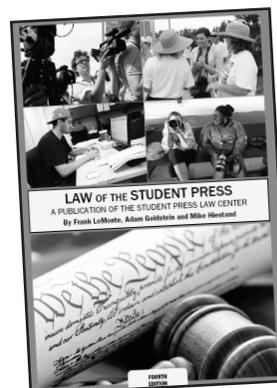
If Oklahoma passes privacy legislation in the future, the university would make policy changes accordingly, he said.

“In terms of one side or the other, tell us what parameters we can work in and we’ll work within those,” he said. “Our job is to protect the kids that are athletes that are here at the University of Oklahoma.” ♦

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TIPS FROM THE PROS

SPLC reporter Allison Russell sat down with Kavitha Cardoza, an education reporter with NPR affiliate WAMU in Washington, D.C. Cardoza covers K-12 education and shared advice she has for student journalists, particularly how to convince reluctant sources to talk. For more of Cardoza's advice, visit www.youtube.com/studentpresslawctr.

KAVITHA CARDOZA IS AN EDUCATION REPORTER WITH WAMU IN WASHINGTON, D.C.



YOU WANT TO COVER A RANGE OF STORIES, SO THAT WHEN PEOPLE SAY TO YOU, AS THEY INVARIABLY DO...

'OH, I DON'T WANT TO TALK TO YOU, THE MEDIA ALWAYS DISTORTS THAT!'



I SAY TO THEM, I CAN'T TALK FOR THE MEDIA...I CAN TALK ABOUT MY STORIES, SO TELL ME WHICH OF MY STORIES HAVE YOU THOUGHT WERE UNFAIR OR INACCURATE?



AND THEY SAY, 'OH, WE'RE NOT TALKING ABOUT YOU,' SO I SAY, 'TALK TO ME.'

I'VE GOT A LOT OF INTERVIEWS THAT WAY!



Tip sheet

Using campus crime records

what's out there...

At a public university, the police department in most states must turn over “incident reports” that detail what an officer observed when responding to a crime. This includes the names of all participants – including victims – unless a specific state privacy-law exemption applies. But don't take FERPA — the Family Educational Rights and Privacy Act — for an answer: Police reports are never federally protected “education records,” and student confidentiality is never a legally valid reason to remove names from incident reports.

The federal Clery Act requires all colleges (private and public alike) to make a timely and complete “crime log” available for inspection by the public. Clery also requires a public accounting by Oct. 1 of the number of serious crimes over the preceding three years. The annual report is supposed to contain an accurate count of all crimes reported to anyone who is a “campus security authority,” meaning anyone with even a small degree of safety responsibility – not just the campus police – and including crimes reported to city or county police that happen on college property.

Campus discipline normally is difficult to write about, but Clery Act annual reports also contain statistics about fire safety, about hate crimes, and about disciplinary actions for alcohol, drug and weapons crimes. Note that, despite what many colleges believe, the outcome of disciplinary cases involving crimes of violence (including sexual assaults) is not confidential under FERPA. Public colleges must (and private colleges can) release the outcome of these disciplinary proceedings, including student perpetrator names.

In addition to the Clery Act, other federal disclosure laws may come into play. Since 2002, the federal Campus Sex Crimes Prevention Act has required all colleges to keep track of registered sex offenders working at, or enrolled in, their institutions. Colleges are required to let the public know how they can get access to the database of registered sex offenders – a requirement that journalists should make sure is being honored.

...and how you can use it

Don't forget that campus police are only one link in the chain. When campus police stonewall, consider contacting the local jail, city police or the district attorney's office, which may be more forthcoming. At a public university, use public records requests to find out how often people complain about brutality or excessive force, and how those complaints are disposed of. In a few states, including Florida, even the personnel files of police are open for inspection.

Clery Act reports are a useful starting point – but only a starting point – for informing the campus about trends in crime. Clery reports are notoriously unreliable; it's not uncommon for a large university with 20,000+ students to report two, one or even zero rapes per year. Ask to see documents about how Campus Security Authorities are trained (if they are at all), and ask for verification that campus police are actually checking with city and county police about additional crimes that belong on the annual report. And get statistics about how many students are disciplined for sexual assault – if the number disciplined greatly exceeds the number of cases on the annual Clery report, then the college is understating the count.

Clery disciplinary stats provide a window into otherwise-opaque campus disciplinary systems. For example, Florida State University told the Department of Education that, between 2009 and 2011, it imposed only seven disciplinary sanctions for drug offenses. During that same period, a comparable-sized sister institution, the University of South Florida, reported 156 cases. There's a story there somewhere: Does FSU simply not punish drug offenses? Or is it sloppy about record-keeping? Remember that disciplinary statistics, unlike individual named cases, are never secret FERPA records, and public institutions should honor requests for records about how the disciplinary process works.

Look into how the campus disciplinary system penalizes sexual assaults and other violent crimes. Crimes that would result in decades in prison outside of a college campus are routinely punished (if at all) by a brief suspension, an apologetic essay, and/or a small fine (at the University of Colorado, one student found responsible for rape paid a \$75 fine, less than half the fine for parking in a handicapped space).

the news peg

The U.S. Department of Education issued new marching orders to colleges in an April 2011 “Dear Colleague” letter, putting them on notice that failing to diligently investigate sexual assault claims could be considered sex discrimination that violates the Title IX anti-discrimination statute. Since then, student activists (including some who feel their own rape cases were dismissively handled by campus authorities) have launched a nationwide awareness campaign that has spotlighted deficiencies in the campus justice system at the University of North Carolina-Chapel Hill, Yale, Dartmouth and schools across the country.

The U.S. Department of Education has the power to “audit” schools' Clery Act compliance, either randomly or in response to a complaint. Check the ed.gov website for “Program Reviews” for your college – and if you think your school's Clery reports are deceptive, let the regional U.S. DOE office know.

Adam Goldstein is
THE MAN IN BLACK



BY SARA TIRRITO

Headphones in, baseball cap and all-black uniform on, energy drinks in tow. He looks tough, ready for a tough job.

And his job is tough. Not physically, but mentally, strategically.

Student Press Law Center Attorney Advocate Adam Goldstein has taken more than 13,000 calls to help student journalists fight for their work.

And he's still not tired of it.

“I get to get up everyday and fight for justice and sleep with a clean conscience,” Goldstein said. “That counts for something. It’s a really cool job for anybody lucky enough to do it.”

Hired for three consecutive SPLC fellowships before becoming a permanent SPLC attorney, Goldstein has worked for the organization for 10 years this September.

Former SPLC Executive Director Mark Goodman said hiring him was one of the “best things I ever did at the SPLC.”

“Even though he was really just out of law school, Adam did a great job from the start,” Goodman said. “His telephone advice, I think, was one area where it was clear so quickly that his ability to concisely explain complicated legal principles was just mind-boggling.”

Telephone advice is a big part of the job, too, with students and advisers calling for help from across the United States. They might need help with a censorship issue, a newspaper theft, a public records request or copyright law, among other problems.

“Lots of times when students and particularly when teachers call, they’re calling, you know, in a bit of a panic,” said Mike Hiestand, a former SPLC staff attorney. “So I know that having someone on the end of the line like Adam who can just tell them, kind of reassure them, that ‘hey the law is on your side or these are things we can do,’ I know that’s comforting.”

Goldstein said his passion for student journalists’ rights stems from his memories of having incompetent administrators in high school.

“I didn’t have any major run-ins with them, but I just had the sense of I’m actually surrounded by morons,” he said.

Goldstein said his feelings about administrators haven’t changed much since then, when he had “this sense that the people in charge don’t have any idea what they’re doing here.”

“I feel the same way now – that there’s this just disgusting cult acceptance of the idea that teenagers don’t have anything useful to say so it’s okay to burden their speech and it’s okay to make them miserable because they’re not real people,” Goldstein said.

Being able to tell students that they aren’t to blame in a censorship situation and that their administrator is actually at fault is Goldstein’s favorite part of his job. It’s important to him that students know their rights matter.

“If students get censored and they don’t realize that they’re right and the system is wrong at least, then they start doubting like the basic guarantees of civil rights and the Constitution,” Goldstein said.

Though he says censorship will never be eradicated, Goldstein does have hope for student journalists.

“I think each individual student who goes out there and learns to stand for themselves and speak their ideas is like a lottery ticket and some of those numbers are going to hit,” he said. “I feel like it’s never going to be done, but every day

our odds get better.”

Since he started working at the SPLC in 2003, Goldstein has helped thousands of students and advisers who call with legal questions. He frequently goes “above and beyond,” in his work, Executive Director Frank LoMonte said, recalling a situation in which Goldstein helped a student fight budget cuts to programs at her school. Goldstein spent hours helping her read financial records and giving her advice.

“There are so many controversies that he has been able to resolve just by being really, really persistent and putting in the nights and the weekends to coach the students,” LoMonte said.

Jaclyn Gutierrez and Lori Schafer were students at Overland High School in Aurora, Colorado, when they reached out to Goldstein. Their newspaper was put under prior review and then shut down. It was a stressful situation, Gutierrez said, but Goldstein was able to help put them at ease with his jokes and reassurance.

“Having two girls call you crying and handling that is a pretty good thing,” Gutierrez said. “Most people don’t do that very well.”

With Goldstein’s help, the paper was brought back without prior review.

“Adam really helped us a lot and helped the next students too, where they don’t have to deal with that,” Gutierrez said.

Madi Alexander, a student at Oklahoma City University, remembers Goldstein as being friendly, helpful and accessible when she was having problems getting public records from her campus police department.

She said she remembers emailing Goldstein about the situation, and him responding that he “actually had to drop everything to reply” because he found it so ridiculous.

He offered her clear advice she could trust, she said. With Goldstein’s help, Alexander went on to write a series of articles showing how her school had failed to comply with the Jeanne Clery Act.

Goodman said he applauds Goldstein’s work with student journalists.

“The thing I always recognized about Adam is that, I mean he’s a brilliant lawyer and there’s so many other things he could have chosen to do with his life,” Goodman said. “The fact that he’s chosen to commit his professional career thus far to student journalism, I think we all owe him a great debt of gratitude. ... He’s working to make the world a better place in a very real and concrete way. I applaud him for that and I hope many others do too.”

Dori Goldstein, Adam’s sister, said she describes Adam as having “an overdeveloped sense of justice and an underdeveloped sense of proportion.”

“I mean that he will do what it takes to make sure that there is justice, to the point where it would destroy him,” Dori Goldstein said. “He doesn’t do cost-benefit analysis.”

Adam Goldstein, however, said he takes that criticism as a compliment and calls it the “best definition of me ever.” He just wants justice.

“You’ll end up with a lot of people who are really sweet individuals except for the fact they’re censoring someone,” he said. “If someone’s censoring and out of the course of that fight they lose their job, that doesn’t bother me in the slightest.”

Along with his dedication, Goldstein’s brilliance always shows through, LoMonte said, calling him an “encyclopedia of knowledge.”

“He’s not content to just have a superficial knowledge of anything,” LoMonte said.

Former SPLC Publications Fellow Brian Schraum said Goldstein is like “the SPLC’s First Amendment theologian.”

“He’s the guy who is a hard core First Amendment guy,” Schraum said. “If you need a gut check about whether or not something is a First Amendment issue or not, I think he’s the guy you go to.”

Goldstein said he feels that many people in the

“He will do what it takes to make sure that there is justice, to the point where it would destroy him. He doesn’t do cost-benefit analysis.”

DORI GOLDSTEIN, ADAM GOLDSTEIN’S SISTER

journalism community have difficulty acknowledging the true relationship between their craft and the First Amendment.

“A lot of people get into this community because of a love of journalism, and I love journalism too, but we need to remember that journalism exists to serve the First Amendment and not the other way around,” Adam Goldstein said. “Journalism exists to serve freedom. Freedom doesn’t exist to serve journalism.”

After the First Amendment, Goldstein’s other great passion is cooking, a skill that current and former colleagues say they’ve benefitted from. For years, the SPLC and the Reporter’s Committee for Freedom of the Press have hosted a summer bake-off competition. Entries are expected to fit a theme, and Goldstein’s always did in a “really funny and pointed” way, Goodman said.

“Once Adam entered it, there really wasn’t much hope for the rest of us,” Goodman said, remembering Goldstein’s entries as “delicious at a level you would pay nice money at

a big restaurant for.”

Today, Goldstein runs a website called Yesterdish. He buys old recipe cards from estate sales, researches their history, and publishes his findings along with the original cards.

He treats others to his love of food too, often showing up at the office with interesting snacks in tow, or bringing along baked goods when he speaks to his friend’s class.

“He never comes empty handed,” Cori Zarek said. “[There’s] nothing like your guest speaker showing up with a coffee cake.”

Zarek is an adjunct professor as well as an attorney adviser for the Office of Government Information Services. She met Goldstein while working for the Reporter’s Committee for Freedom of the Press, which is housed in the same office space.

“He’s definitely very intelligent and I’ve always appreciated discussing press freedom issues with him,” Zarek said. “He’s fun and funny and I really appreciate his dry, sarcastic sense of humor, sometimes bordering on sadistic. And deep down he’s just such a kind, caring person.”

His thoughtfulness sticks with people. Zarek remembers Goldstein baking her pumpkin biscotti after mentioning her love of pumpkin; Dori Goldstein remembers him delivering just what she needed at 3 a.m. when she was sick with the flu.

He’s the “kindest person you could ever imagine,” Goodman said, and yet “he takes great pleasure in being known as a curmudgeon.”

From his rants about Washington D.C.’s transportation system, WMATA, to his rants about school administrators, to his overall tough persona, Goldstein does succeed in seeming like a curmudgeon at times.

But when a student calls extension 122 for help, it’s a passionate ally they’re speaking with.

“He brings a unique perspective and combined with that he has passion,” Hiestand said. “He believes in what he does, he believes in the SPLC mission and I think that when people call they get that pretty early on...he’s on their side, he is their advocate.”

Goldstein said he is still trying to follow advice he never would have expected, from his anti-trust professor in law school. The professor told the class that when they have the chance to do good for a large group of people, he hoped they would take it, Goldstein said.

“Every time I wake up and there’s a new opportunity to do good, I don’t see any reason to ever stop taking it,” Goldstein said.

And he hopes to keep doing good for student journalists indefinitely.

“I’d be more than happy to die here. I don’t want to retire. Retire from what? Retire from being good? That just sounds terrible,” Goldstein said. “As long as they’ll have me and we can keep the lights on, I don’t have anywhere else I’d rather be.” ♦

Legal Analysis

Protecting your yearbook: How to register the copyright to prevent piracy

Registering the copyright to your yearbook takes only a few hours of your time and protects the book for 95 years. Plus, it could even help your staff make some money.

BY ADAM GOLDSTEIN

Yearbooks are massive undertakings — I’m sure I don’t need to tell any of the yearbook editors, advisors, or publishing companies that. A completed yearbook represents thousands of hours of work, including reporting, writing, photography, design, layout, printing, and sales. Given the magnitude of that investment, you would think that the editors of the book would have an automatic right to protect their work.

You’re right, morally speaking. But to protect the yearbook legally, you need to do a little bit more.

While the contributors to the yearbook do own the book, the natural state of that ownership is so fractured that it would be very difficult to assert it in a court of law. And you might need to.

In the last few years, companies have been buying old yearbooks, scanning the contents, and posting them online, then selling access to the scanned books. Generally speaking, these books are ones that have fallen into the public domain, usually for not complying with the formalities that used to be required to create a copyright. (Since 1989, a copyright vests in the work the moment it’s created.)

But some schools have been contacted by people looking to post modern books on their websites. That’s an opportunity for your book, but to really license it effectively, you need to ensure that the license actually means something—that it prevents third parties from using it against your licensee.

So let’s look at what happens if you *don’t* enter into an agreement to secure the copyright. That should help clarify why this agreement is a good idea.

What happens without an agreement

It’s the first meeting of the yearbook staff. The editor-in-chief gets up and says, “This year, two or more of us are going to prepare works with the intent that they should be merged into inseparable or interdependent parts of a unitary whole!” (Okay, my memories of high school are a little bit fuzzy. I was on a lot of allergy medicine.) Or maybe the editor says something more like, “We’re going to have a great year and put out a great book together!”

Either way, the editor is expressing the intent to create a *joint work*.¹ While some parts of a yearbook, like the senior portraits, have copyrights that can be separated out from the book, the book as a whole is a work created by all the authors who contributed to it.

The problem with joint work status is that a joint author is entitled to enjoy 100 percent of the rights of an author.

For example, let’s say you have 20 people on the staff who contributed to the book. Any one of those twenty people has the right to license the book to a third party or to authorize its distribution online, provided they do it as the book was originally laid out.² If that person licenses the book for money, they have a *duty to account* financially to the other authors, but they can authorize non-exclusive licenses—without discussing them with the other editors.

Or he or she could post the whole book on social media. That person can do anything an owner can do, except grant exclusive licenses.

This also means that the editor-in-chief can’t grant an exclusive license to anyone without getting the other 19 authors to consent in writing. If someone approaches you the year you make your book, that’s not so tough. But if they approach you five years later, you might not know where 19 people moved after college. And that could sour the whole licensing deal.

And all of this assumes someone even bothers to *ask* to take the book. If someone illegally takes the book, you couldn’t sue until the work was registered. You’d need the authors to register with you, and they’d probably all have to be parties to the case. And then, if just one person changed their mind and permitted the use, you’d lose.

So who should control the book?

There aren’t that many options, really. You don’t want the school or the adviser (a school employee) to own or control the yearbook’s content, because that might give them a far greater ability to censor the book by finding ways to limit its distribution.³ That means the power should be in the hands

of one editor or a group of editors or staff members.

The natural first step is to limit control of the book's copyright as a collective work to the editors. That is, staff members will continue to own their individual contributions, but the editors who decide what appears in print would have the right to decide where else that content appears.

Using our hypothetical staff again, let's say five of the 20 staff members are editors. That makes it easier to collaborate, to be sure, but we still end up with the post-graduation problem of not keeping in touch five years after graduation.

And, really, do you even want people calling you five years after graduation to ask you for permission to put the book online? You might not even be in the state anymore. Aren't the people actually attending the school today in a better position to decide what's in the best interests of the publication? When you contributed work to the yearbook, were you intending to benefit the school community, or were you waiting for the opportunity to split a modest licensing fee five years after college?

My thought is that the current yearbook editors in any given year ought to have the authority to make decisions about reprinting prior years' books. That's essentially what happens at most publications, after all; if I want to reprint a copy of a 1974 edition of *The Washington Post*, I call current owner Jeff Bezos, not the 1974 owners the Graham family.

Why not just transfer the copyright?

Because it's harder, believe it or not, and it's unnecessary to achieve the goals we're trying to achieve.

This is the objection I hear most often: "Your license is really complicated, and I don't think students need to own their work anyway, so why not just transfer the ownership of the individual works to the editors altogether?"

There are both legal and ethical reasons why I think licensing is better than transfers of ownership here. The ethical one is easiest to explain: I think requiring students to give up their work as a condition of participation on an extracurricular activity is unfair. In fact, at a public school, it might raise legal problems of its own.⁴

I don't care that you think the "outside world" works that way; the "outside world" compensates students with a paycheck. If you want to *buy* content from students, I think that's great, but demanding they surrender it to engage in a school activity is shady and obnoxious.

The legal reasons are a little more nuanced. The Copyright Act tells us that the ownership of a work vests in its author or authors in every case except two.⁵ One is an employment relationship (which volunteering will almost never create) and the other is when a signed work for hire agreement exists. So that requires, in essence, a formal contract.

The other option is to *transfer* copyrights in works that have already been created; that, too, requires a signed

writing.⁶ So every possible method of rearranging the rights here—whether you want to transfer ownership or not—requires some kind of documentation.

As it turns out, not everyone who works on a yearbook is 18. And this takes us to an important distinction between contracts and consent: while minors can void most *contracts* until their 18th birthday, the *consent* given in a contract is not as easily voidable.⁷ Counterintuitive though it may be, the most durable agreement is not necessarily the one with the strongest language.

The unincorporated association

While it makes sense to have the current editors of the yearbook in charge of licensing old versions of the yearbook, the law needs a little bit more structure to make it happen in the eyes of the law. We need some way to describe who those editors are to make clear that it's a finite group of people with some kind of structure.

The problem of not having a structure is best illustrated by conflicts within family-owned businesses. For example, let's say a brother, a sister, and their cousin co-own a business selling lemonade from a secret family recipe.

The sister buys the sugar and lemons and builds the stand and paints the sign; the brother rides his bike from playground to playground, telling people to come buy the lemonade. The cousin carries water from the house.

Now imagine that the lemonade is so good, the ice cream stand in town wants to buy the recipe. Who has the right to sell it? Or imagine that the family has a falling out. Who gets to keep the name of the business? Or imagine that the brother and sister go off to college and the cousin wants to continue the business with other cousins. Does the cousin need permission? If the brother uses money from the lemonade stand to fix his bike, can the sister use the bike to go to the store without his permission?

These are messy questions without easy answers because the business lacks a *structure*. We don't know how to tell who makes decisions and where that authority stops, or how new people are brought into the decision-making group, or what the business actually owns or doesn't own.

The good news is that you're probably already better off than the lemonade stand; most high school yearbooks have some kind of policy manual or bylaws that define who the editors are, when those editors are selected, and some definition of the role of an editor. You might also have a mission statement or statement of purpose that talks about the goals of the yearbook activity. These are all the beginning elements of a structure that the law calls an *unincorporated association*.

While the actual definition and contours of unincorporated associations vary from state to state, speaking generally, an unincorporated association is a

group of people working together to accomplish a shared goal. That hopefully already describes your yearbook, but you still want to more clearly define this structure, because the effectiveness of this agreement rests primarily on the existence of this unincorporated association.

In the steps to actually copyright the book and execute the agreement, you'll have to pick a name for this unincorporated association of editors; once you do, it's probably a good idea to go back through your policy manual or bylaws and two do things. One, add this name to your manual, along with a clear statement of intent that the editors are working together to achieve the goals in your mission statement; two, make sure your manual has clear definitions of how someone becomes an editor and what happens at the end of their term. (And if you don't have a manual, well, back up and start there.)

Okay, I'm convinced. What now?

Now, we can start the process of registration. The basic steps for this process are outlined on the Copyright Office's website at <http://www.copyright.gov/eco/>, but read that together with these instructions, which will explain how to fill in some of the boxes.

The goal of this process is to register the yearbook as a compilation work owned by the unincorporated association of editors. A "compilation work" is a copyright registration that protects works brought together into one new work; in the case of a yearbook, the registration protects the book as an assembled work, while the individual contributors own their photographs, articles, etc.

A few quick steps up front:

1. **Pick a name for the unincorporated association of yearbook editors.** Something simple and memorable will be easiest. There are no points for originality here -- if your yearbook was named *The Annual*, "The Annual Editors" would be fine.
2. **Set up an e-mail address for the unincorporated association.** Big picture, you might want lots of other things, like a bank account, but at least start with a way people can talk to the organization. The Editor(s) in Chief should have that password; the adviser probably shouldn't. Each year, the editors should pass access down to the next set of editors.
3. **Decide if you're registering the book before publication or after publication.** If registering before publication, register the work as a *literary work*; you will need to upload a copy of the yearbook electronically. If registering after publication, register the work as a *single serial issue*; you will need to mail two copies of the physical book to the copyright office.
4. **Before filling out the forms, contact the SPLC to ask**

about laws specific to your state. Each state has its own law covering unincorporated associations. Give us a few days to look up the law in your state and make sure this process is right for you.

5. **Have a credit or debit card you can use to pay for the registration fee.** If all else fails, see if you're allowed to use yearbook funds to purchase a prepaid debit card, but in this day and age, presumably the publication has some way of paying electronically.

In following the Copyright Office's instructions, here's some additional information to know:

1. If registering as a *literary work*, the **series title** is the name of the yearbook, and the **title of the work** is the theme of that particular yearbook. For example, if the yearbook is named *The Annual*, then the series title is "The Annual" and the serial title is this year's theme, "Enchantment Under the Sea."
2. If registering as a *single serial issue*, the **title of the work** is the yearbook name, the publication frequency is "annually," and the issue date is the year the yearbook is actually distributed.
3. If registering after publication as a *single serial issue*, **date of first publication** is the date that the book was actually delivered into the hands of someone other than a yearbook staff member.
4. The **organization name** is the name of that unincorporated association you picked earlier; the name that represents the editorial board.
5. Under "authors," don't fill in the name of any staff members! Names you put here are *transferring ownership* of the work to the unincorporated association. The contract the SPLC provides doesn't do that—it only gives the association a **license**.
6. For **transfer statement**, you want the option: By written agreement(s) with individual contributors not named in the application/certificate.
7. For **material excluded**, check "text," "artwork," and "photographs." The editors aren't claiming to own these; they're just licensing them, so they should be excluded from the claim. For material included, check "editing," "compilation."
8. Under **rights and permissions information**, put the name of the unincorporated association and the association's e-mail address; use the street address and phone number of the school's yearbook office.
9. For **correspondent**, list the current editor in chief's personal information.
10. Don't get **special handling**. It's expensive and if you haven't published the book or just published it recently, you probably aren't in a hurry yet.

11. If registering as a *single serial issue*, don't forget to print out a mailing label.

What happens next?

Nothing interesting, for a while. Electronic registrations take between 12 and 16 weeks to process at present. But you can certainly start looking to license your book once the registration is filed; the registration is legally effective on the date the copyright office received all the required elements, even if they haven't been processed yet.⁸

Once your registration comes through, you'll get a registration number, and you'll want to keep that number handy. If someone is posting copies of your book online without permission, you want that number so you can include it in a copyright infringement notice to the site hosting the content.⁹

Once the registration is pending, you could even start contacting companies that offer yearbooks online and see what they'll offer your unincorporated association for the right to put your book online. I wish I could tell you what a suitable licensing fee is, but this area is so new that I have no idea what is being offered on the market. Please call me to let me know what you hear, though, and I'll tell you what I've heard when you call.

Another option is to put the content online yourself on a password-protected website and offer access as a bonus for purchase of the physical book. You can tell students that no one else online will have the book—and you have the registration to make sure you can keep that promise by stopping infringers. All of the marking in the world from sites that post yearbooks won't cut your sales if you can tell people that these sites won't have *their* yearbook.

Whatever you decide to do, you should feel good about the fact that you took steps to protect the yearbook's content. We don't know what value these books will have in future years and we don't know what delivery students will expect in the future, but at least now, when future yearbook editors are facing those questions, they'll have your book—at least until the copyright expires in 95 years.

Adam Goldstein is attorney advocate at the Student Press Law Center.

Endnotes

1. 17 U.S.C. § 101.
2. They couldn't separate out the parts because the segregable parts have individual copyrights separate from the copyright in the overall work. See, e.g., *Greenberg v. National Geographic Soc'y*, 488 F.3d 1331 (11th Cir. 2007).
3. Note that this wouldn't give a school any greater *right* to censor the book, and it would still be unconstitutional if they couldn't meet the applicable legal standard for censoring your type of publication in your state; but proving the motivation for the censorship can be hard, and as content owners, the school would not have to explain decisions

to deny licenses. Neither do yearbook editors, by the way. Usually the best response to a request for licensing that you don't ever want to grant is just, "no thank you, we are not interested." If different terms would appeal to you, you can negotiate the terms, but if you'd never grant the license, you aren't obligated to explain why.

4. Requiring someone to surrender ownership of their work as a precondition of receiving a prepaid government benefit is hard to distinguish, legally, from a bully demanding a student's dessert before he enters the lunchroom.
5. 17 U.S.C. § 201.
6. 17 U.S.C. § 204(a).
7. This is really complicated and I'm not sure how simple I can make this, so feel free to ignore this footnote and take my word for it. That said, here's an example to attempt to illustrate why voiding a transfer as a minor is easier than cancelling a license as a minor. Let's say the Hypothetical High Harbinger editors enter a work-for-hire contract with 16-year-old J. Janet Studentson for Janet to contribute works to the 2013-14 Harbinger. The editors then start to negotiate with a website to print the book online. In 2014, before the web deal is complete, 17-year-old Janet finds out that the yearbook editor was totally talking to her ex-boyfriend at the Spring Fling and like right in front of everybody touched his arm and who does THAT SKANK think she is because everybody knows he's just going through a tough time right now because he didn't make his weight class in wrestling and once he works through that he's going to totally get back together with Janet?! So naturally, Janet does the first thing that comes to mind and confronts the editor in class, saying, "I'm voiding the work-for-hire contract, and I want my stuff back!" Well, the printed book is done, and the consent to the contract before it was voided wouldn't prevent that work from existing. But it's less clear that new copies of the work could be made with Janet's work in it, particularly since the contract might not have been valid in the first place. (Quick education in basic contracts: a contract requires offer, acceptance, and consideration. Consideration means the transfer of something of value, which is what distinguishes a contract from a gratuitous gift. Unless Janet was getting something, here, this might never have been a contract at all.) See Restatement (Second) of Contracts §§ 2(1) (promises) and 3 (bargains) (1981). On the other hand, let's say Janet still owns the work, but grants a license to the editorial board to use it as they see fit, then agrees not to use it herself for a limited time. Assume everything else stays the same: that editor still touches her boyfriend's arm (because geez, Janet, take a hint, he's not with you because he doesn't want to be with you because you are totally a jealous stalker and probably have a shrine to him in your closet and he wanted to end it before you *Swimfan'd* him) and Janet still tries to revoke the contract. Ordinarily, you would say that a license is more likely to be gratuitous when it isn't in a contract, but when a minor can void the contract, the revocability of the license would hinge on the amount of rights granted (more rights means less revocability), the duration of the license (longer means less revocability), and the reasonable reliance of the grantee on the consent. While it's not a slam-dunk, one more fact makes this preferable: courts are supposed to disfavor transfers and be more lenient with licenses. For more on the distinction between assignments and licenses, read the fun and brief opinion *Effects Associates, Inc. v. Cohen*, 908 F.2d 555 (9th Cir. 1990) (low-budget horror producer who paid for effects footage but did not get a written transfer can't be sued for copyright infringement because while lack of writing precluded ownership, transaction of events alone created non-exclusive license sufficient to defend infringement lawsuit).
8. See Frequently Asked Questions, <http://www.copyright.gov/fls/sl09.pdf> (last viewed Sept. 20, 2013).
9. For more on this process, see "For Web editors: all about OCILLA," by Mike Hiestand, available at <http://studentpressblogs.org/acp/for-web-editors-all-about-ocilla/>.

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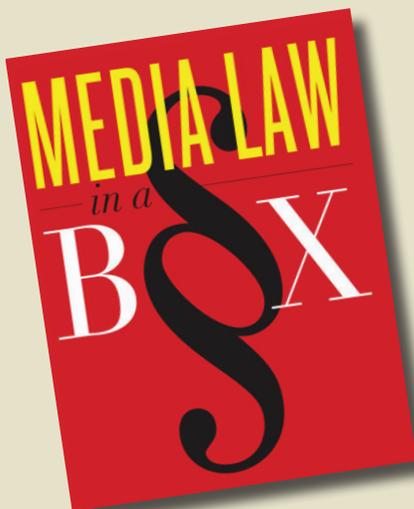
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