Censorship battles play out in student theater productions
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. LO MONTE

SPLC marks four decades of unleashing captive voices

Forty years ago, Pulitzer Prize-winning journalist and author Jack Nelson inspired a still-growing movement with these words: “Censorship is the fundamental cause of the triviality, innocuousness and uniformity that characterize the high school press.”

Nelson’s 1974 book, Captive Voices, vividly captured the frustration and disempowerment of being a young journalist forbidden from writing about “sensitive” issues at a time of violent social upheaval in which teens had a profound personal stake. His words led directly, in the fall of 1974, to the founding of the Student Press Law Center, which is entering its fifth decade as the strong right arm of the student media in all of its evolving forms.

There is a direct line between the now-middle-aged journalists Nelson met across America in 1973 and today’s newspaper staffers at Neshaminy High School in Pennsylvania, who are facing persecution for a principled stand against the use of “Redskins” as the school symbol. As this magazine goes to press, student editors at The Playwickian are facing a witch-hunt disciplinary probe – and even murmurs of felony charges – for the “crime” of publishing a newspaper without printing a concocted letter-to-the-editor planted by their school board to bait them into removing the incendiary mascot name.

These young crusaders are carrying on the tradition of truth-telling journalism about difficult civil-rights issues that Jack Nelson himself exemplified in a 60-year career that began at The Biloxi Daily Herald while he was still in high school. When Nelson died in 2009, he was eulogized by a colleague who remembered him as a hard-nosed journalist blessed with “by far the greatest sense of right and wrong of any reporter I’ve ever seen, and the greatest sense of outrage.” The capacity to recognize, and call out, outrages is peculiarly the province of the young. What is clearly heard, sharply observed and deeply felt becomes fuzzy and indistinct with age, for all but the rare Jack Nelsons among us.

On October 16, 2014, supporters of a free and courageous student press from around the country will gather at the National Press Club to mark the SPLC’s 40 years of service to our shared priorities. Fittingly, the keynote speaker will be Barton Gellman of The Washington Post, best known for his Pulitzer-winning reporting on government surveillance practices based on documents leaked by Edward Snowden – but also notable as the editor-in-chief of The Town Crier at Philadelphia’s Washington High School, who took his school to court over the confiscation of an October 1974 issue that featured stories about birth control and teen pregnancy. There is no more appropriate torch-bearer for the flame that Jack Nelson ignited.

Sponsors of the event include: WilmerHale LLP; Education Week; Hearst Corporation; Levine Sullivan Koch & Schulz, LLP; Davis Wright Tremaine LLP; and the McCormick Foundation. There’s still time to become a sponsor at levels starting at $2,500 by contacting admin@splc.org.

Financially, the event will help build a “war chest” for the Student Press Law Center to better respond when press freedoms are threatened and access to government information is squelched. As importantly, the event will help focus the nation’s attention on the urgency of building more inclusive and transparent schools where every voice is valued and respected. To be part of the celebration – and of finishing the assignment Jack Nelson entrusted us with – get your ticket at: https://www.splc.org/store.asp.
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Nationally, student theater productions are frequent targets of censorship, as student directors of “Rent” and “Sweeney Todd” recently learned. In both cases, students appealed to the community to defend their right to perform, and ultimately were successful.
By Casey McDermott

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IN BRIEF

PENNSYLVANIA — Neshaminy High School administrators confiscated copies of the student newspaper’s final issue of the school year after student editors printed the paper without the principal’s approval. Editors banned the word “Redskins” (the school’s mascot) last fall, but the school says they must use the word. At issue in the final edition was a letter to the editor that used the word, which students wanted to redact but which the principal said must be printed in full. Ultimately, editors removed the letter to the editor entirely.

NEW JERSEY — After a three-month censorship battle, a student journalist’s article about grievances filed by teachers against the school district’s superintendent was published. When the story was first censored, the student journalist appealed the decision to the school board. She received an okay to publish just in time to meet the newspaper’s final deadline for the year.

GEORGIA — Student deejays at Georgia State University’s WRAS Album 88.5 were shocked to learn that the university signed a deal to give the station’s daytime programming to Georgia Public Broadcasting. The start date was ultimately pushed back in response to protests.

WISCONSIN — A prior review policy that was imposed after Wisconsin student journalists published a story about sexual assault has resulted in censorship, editors say. Most recently, students were told to edit or remove parts of stories about teenage pregnancy, students’ reaction to the censorship debate and homosexuality.

GEORGIA — The state attorney general’s office asked a judge to order a student journalist to remove public records from his blog. After outcry from the Society of Professional Journalists, which asked its members to post the public records in question on their own websites, the motion was withdrawn.
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.

After The Williams Record published a woman’s account of the way the university handled a 2012 report that she had been sexually assaulted by a fellow student, students and alumni have responded by petitioning the liberal arts college to adopt new policies when it comes to investigating reports, The Boston Globe reported. Williams College has said it cannot comment on the case because of privacy laws.

SPLC Attorney Advocate Adam Goldstein: Mmmm, no. I mean, sure, there are lots of things the school couldn’t say under FERPA. But there’s a whole lot it can talk about that isn’t covered by FERPA, too. And since what they said was they “can’t comment,” that’s entirely wrong.

To put it another way, an administrator saying he can’t comment on this situation because of FERPA is like a guy saying he can’t eat at McDonalds because the screws on the playground hurt his teeth. You can’t hide behind the short list of things you can’t say as an excuse to sweep the things you won’t say under the rug.

First, since the player was found responsible, the school can release the sanction and the findings of the panel that found him responsible.

Second, anything that isn’t from a record is something the school can discuss. And third, anything that isn’t specifically about a particular student, the school can discuss.

We rate this: Three Arne Duncans

In a visually arresting multi-part series, The Boston Globe looks at the hazardous conditions in off-campus student housing, where cash-strapped students cram into firetraps never meant to hold eight, 10 or 12 occupants. Overcrowding has been faulted for at least one recent fatal fire and several near-misses, despite a city ordinance that limits occupancy to no more than four unrelated people per home.

A spokesman for Boston College expressed dismay when told how many students are packed into the neighborhood’s aging homes, but said BC can’t do anything about it. Even though the college has a database showing where its students are living, BC claims it can’t share that information with the city because of federal student privacy laws.

SPLC Executive Director Frank LoMonte: Let’s go ahead and assume for laughs that Boston College is correct — and (spoiler alert!) they’re not — that releasing college students’ home addresses is a violation of FERPA, which (if you get caught) carries the worst-case downside of a nasty warning letter from the U.S. Department of Education. If you thought it would spare one of your students from a horrible fiery end, wouldn’t you maybe suck it up and take that risk?

Because, since the Department of Education has never penalized anybody for violating FERPA, would they reeeally want to start after 40 years of inaction by making an example out of the school that’s trying to save kids from burning to death?

In point of fact, nothing in the Family Educational Rights and Privacy Act prohibits Boston College from giving the City of Boston access to its database of student addresses. The FERPA statute says colleges can designate basic identifying facts, including name and mailing address, as “directory information.” Once something is directory information, then by definition it’s not confidential under FERPA and (except for the rare student who signs an opt-out form), can freely be disclosed.

The college’s own privacy policy says that mailing addresses are “directory information,” as they are at basically every college in America. Nobody thinks your home address is a piece of confidential educational information.

Boston College might’ve had any number of legitimate responses when the Globe asked why BC doesn’t rat out its students to the city housing department. FERPA isn’t one of them.

We rate this: Three Arne Duncans
Marijuana still sensitive topic at many schools even as states move to legalize

Prompted by the legalization of recreational marijuana use in two states, students are more interested than ever in writing about the subject. Many, though, still encounter hurdles when reporting on the drug.

BY REX SANTUS

Abbey Laine is used to hearing “no” when she tries to write about marijuana.

The Florida high school student, a reporter for Lakeland High School’s Bagpipe, has taken her idea to a teacher, student editors and the school principal. The lot of them say the topic is indecent and unfit for print in a student magazine, she said.

Laine disagrees. Florida is currently considering a constitutional amendment that would make room for some medicinal uses of marijuana. And on a personal level, Laine’s experience with cancer as a 2-year-old, and the lingering effects of chemotherapy, have made her passionate about promoting education about medical marijuana.

“If high school is basically about readying students for the world,” Laine said, “then why is the world being censored and kept from them in our school paper?”

As more states consider marijuana legalization — two states, Washington and Colorado, have already decriminalized the drug — the topic is only growing as a legitimate public policy debate of interest to student journalists, experts and advisers say.

“The fact is that with especially the decriminalization going on in some states, there is more interest in writing about marijuana generally,” said Frank LoMonte, executive director of the Student Press Law Center.

In Colorado and Washington, the process leading to legalization has been heavily documented and scrutinized by regional media heavyweights like The Denver Post and The Seattle Times, which each have blogs and reporters devoted to coverage to the issue, as well as big-time national outlets like CNN and The New York Times.

In both states, recreational marijuana use functions much like alcohol consumption — you have to be 21 years old and you can’t smoke out in the open. Because of that, the impact of legalization on teens is often indirect.

At the same time, even though these laws say teenagers can’t smoke recreationally, that doesn’t mean they aren’t — and it also hasn’t stopped some young people from reporting on the hot-button topic. That coverage poses a whole host of questions and issues for young journalists, reporters and educators say.

Experiences covering marijuana vary

At many high schools in Washington and Colorado, student newspapers have written about the impact of the new legalization laws. Coverage ranges from basic facts about cannabis amendments to more-in-depth explorations of how the laws are affecting students.

Some newspaper advisers say extra care is taken with stories about marijuana use because it’s a sensitive subject.

“It’s kind of interesting because on a certain level it’s a little abstract for teenagers, because it doesn’t mean that they’re going to turn 18 and suddenly be able to get marijuana,” said Bonnie Katzive, who advises the Howler at Monarch High School in Louisville, Colo., whose students have covered the issue in the past.

Katzive said her students were interested in the potential health effects of marijuana. Two students penned the article “Cannabis Control,” which was published in January. The most controversial element was an illustration of a joint included with the article, but students enjoy a lot of leeway with administrators, Katzive said. (A state student free expression law also gives students in Colorado considerable leeway to publish most content as long as it is not obscene, libelous or creates a “material and substantial” disruption.)

“This is my third year as adviser of the newspaper, and I have never had anyone try to intervene at all,” Katzive said. “They’re generally pretty comfortable with the idea that if a story creates a controversy or fuss, it’s not something the administrators are handling.”
Reader interest in the subject is clear: A 2012 article about Colorado’s marijuana amendment is the most popular article in the Howler website’s history, Katzive said. Monarch students will likely continue cover the issue in the future, she added.

In a separate case at Dakota Ridge High School in Littleton, Colo., administrators used heavier hands when dealing with student journalists covering recreational use. Because stories in The Ridge Review have generated unwanted controversy in the past, the principal asks to review potentially controversial before they go to press, adviser Linda Chang said. That meant a review of the newspaper’s marijuana story earlier this year titled “High Schoolers Getting Higher?”

“That was like a month in the making, and it doesn’t usually take that long to write one story,” Chang said. “It had undergo four or five revisions. It’s a sensitive issue, and we have to walk a fine line.”

Mariah Bakken, the student reporter who wrote the story, said the school’s principal asked her to “add some facts” to the article, specifically how marijuana can affect health. Bakken said the story’s message was an important one, so she didn’t mind these suggestions.

“I think it’s just a lot more common now that it’s legalized,” Bakken said. “It’s easier to get. It definitely can affect the students. It’s a highly controversial topic, but our principal here is very easygoing as long as we get all the facts right.”

Editor-in-chief Alliee Hindman agreed.

“It deserves to be covered because it’s big in schools,” she said. “We do have students here who are users of marijuana.”

In Washington, The Growl of Sequim High School has published a handful of stories about the state’s marijuana law. Nicoe Williams, a reporter for the newspaper, penned an article about how Sequim was adapting to the law. Williams said that marijuana use is common at Washington high schools, too.

“Obviously, there are high schoolers that use marijuana,” Williams said. “There is a little bit more access now.”

Williams said there hasn’t been an administrative pushback to his story, and he doesn’t expect any.

Joseph Landoni, The Growl’s editor-in-chief, said he thinks publishing these stories is an important way for students to learn about the law and the drug itself.

Young people are in a unique position when reporting on marijuana use and how it affects minors, Landoni said.

“The obvious aspect is that you’re with a group of peers,” Landoni said. “I know pot smokers. They’ll be very upfront. We’ve built a rapport. Those people aren’t going to talk to a (professional) reporter.”

As a result, The Growl’s article detailed very candid opinions about the drug, he said.

“It’s definitely an interesting time,” Landoni said.
Following the legalization of recreational marijuana use in Colorado and Washington states, student journalists have expressed an increased interest in writing about the subject, advisers say.

NATE BRUZZINSKI/CU INDEPENDENT

Potential for censorship

With a hot-topic issue like marijuana, the potential for young reporters to be censored is increased, experts say.

The Supreme Court’s decision in Hazelwood School District v. Kuhlmeier set a precedent that districts could censor school-sponsored student newspapers if there’s an educational justification and if the paper isn’t established as a “public forum.” Many school districts have cited the ruling as a reason to censor content about marijuana.

“I believe that Hazelwood is still good law and leaves school and school districts with a certain degree of editorial control,” said Wes Bridges, the attorney for Florida’s Polk School District.

Abbey Laine, the Florida journalist, attended high school within this district. Laine ultimately self-published her story about medical marijuana on her own blog, Bridges said that Hazelwood would leave plenty of leeway for the school to step in if she had submitted it to the newspaper.

“It’s certainly appropriate for it to be reviewed,” Bridges said.

Carrie Faust, a regional director of the Journalism Education Association for the Colorado area, said that students in that state, especially, should not encounter any problems like censorship because of the state’s anti-Hazelwood law, established in 1990 in the wake of the ruling.

Anti-Hazelwood laws are scant, though. Washington, the country’s other marijuana hotspot, has no protections against the censorship-friendly precedent. And students who wish to report on marijuana policy in states where it still is illegal could face even more roadblocks.

“Obviously, in many states, (marijuana) is becoming a legitimate public policy debate,” said Dan Kozlowski, a professor at St. Louis University with a secondary appointment at the university’s law school. “The danger is that Hazelwood knows no limits.”

Many schools may believe that issues concerning drug use are inappropriate for young students, or districts might want to remain neutral on the topic, Kozlowski said.

“If it’s a school-sponsored publication, students rarely win when Hazelwood is invoked,” Kozlowski said.

There could also be censorship when visuals or illustrations of marijuana are used, Kozlowski said. Under Hazelwood, if the visuals attract “more controversy” or are “outrageous,” the school might have grounds for action against the student publication.

Kozlowski also cited the infamous “Bong Hits 4 Jesus” case out of Juneau, Ala., where a student held up a banner with the aforementioned message on a sidewalk across from the school building during a U.S. Olympic Torch Relay and was then suspended by the school. The Supreme Court ultimately determined that administrators may censor speech that can be perceived as advocating drug use.

“That was obviously an obtuse phrase,” Kozlowski said. “It’s OK for schools to not encourage illegal drug use.”

Even though newspaper stories typically aren’t sending a message of “do drugs,” it’s an argument he could see administrators trying to make, Kozlowski said.
For publications that aren’t sponsored directly by the school, though, the more expansive standard under *Tinker v. Des Moines Independent Community School District* applies, Kozlowski said, and students would have much more leeway in covering marijuana use.

**Tips for students**

Bob Young, *The Seattle Times*’ marijuana beat reporter, believes the issue is one that affects young people greatly — and those effects on youth impact everyone else, too.

“It seems like an extremely important issue for young journalists to report on,” Young said. “Here in the state of Washington, the issue of youth access to and use and abuse of legal marijuana — it’s just hard to overstate the importance of it.”

On a state and national level, Washington and Colorado are essentially acting as test subjects for how states at large can handle marijuana legalization, he said.

“The relative success of this new law will be judged in good part by whether the legal marijuana can be kept from the hands of minors,” Young said.

At some schools, there has been a panic over how easily students can now obtain marijuana, Young said. Parents are worried, and some want to utilize drug-sniffing dogs in schools, Young said. What should be emphasized more, though, is education — and many people are uninformed about both the new law and how drastically it could contribute to drug use among minors, he said.

“I think stories about intelligent or responsible use can also be of use,” Young said.

LoMonte said he often fields calls from student journalists who want to write about marijuana use, with the most-typical question being how to illustrate the issue.

“Because of the heightened interest in discussing marijuana as a policy issue, people are looking for something to illustrate that story that’s safe to use,” LoMonte said. “We literally have had students say that they have friends with access to marijuana that will let them photograph their pot or even photograph them smoking pot.”

The nightmare scenario in this case is a student being “dragged into the principal’s office” to reveal where he or she saw the marijuana, LoMonte said.

“That always raises a red flag concern in particular at the high-school level because of the uncertainty of what will happen if an administrator demands to know whose pot that is,” he said. “From a legal perspective, that’s the main concern we have.”

There aren’t many cases testing reporter’s privilege at a high school level, so it’s unclear how much power school officials could hold over students when enacting discipline. LoMonte’s always tried to suggest some legal alternative, like visiting a police station or FBI office to see if they’ll allow you to snap some photos from the evidence room. Recently, though, a more-convenient option has become available.

“We recently came up with the idea of reaching out to Colorado journalists for photos of people legally buying and using marijuana and they provided a nice library of stock photographs for people to use online free of charge,” he said.

*The CU Independent*, a student newspaper at the University of Colorado Boulder, provided stock images of marijuana for student-journalists to publish, so long as the photographer is properly credited.

Young, with *The Seattle Times*, said it’s important that young journalists continue pursuing this topic. As an adult, it’s harder for him to gain unabridged access to — and the trust of — minors who are using the drug. For students though, who almost certainly have peers who smoke marijuana, there are many stories there for the taking, Young said.

“I would imagine student journalists would have a much better access to minors to talk to them about marijuana: how they’re getting it, where they’re getting it, whether they think it’s less risky,” Young said. “I think it’s really important for journalists to provide those insights. This is a very hot topic.” •
In interest of appearing united, some school boards limit members’ speech

When policies ask school board members to refer all questions to a sole member, it can make it difficult to find out information about the decisions the board is making, reporters say.

By Lydia Coutré

When a Norfolk, Va., School Board member used a “racially, emotionally charged” term in a discussion about a school reorganization plan, Cherise Newsome believed it was her duty as a reporter to ask him to expand on his remarks.

But when she approached Rodney Jordan to ask him why he used the term “separate, but equal,” he directed her to the board chairman, as is board policy. That made it more difficult for the public to understand what Jordan meant in the first place, said Newsome, an education reporter for The Virginian-Pilot who has been covering schools for about a year and the Norfolk district since February.

The Norfolk School Board’s policy states, “The Chair (or designee) will speak as the official voice of the board.” The policy is a constant obstacle in Newsome’s ability to understand board members’ concerns and opinions, she said.

While policies like the one in Norfolk are not ubiquitous, the practice is not unheard of, said Emily Richmond, public editor for the Education Writers Association. Journalists across the country have reported similar policies or guidance in various school boards, but how and if they’re enforced varies widely from district to district, she said.

Proponents say the policies enable boards to maintain a singular, positive image. Those opposed to the policies, which include journalists, First Amendment advocates and often, board members themselves, say the policies gag members’ speech and limit the public’s ability to access information about boards’ decision-making processes.

The fact that these policies exist — regardless of whether they’re enforced — is “absolutely” a concern for journalists and the public, Richmond said, especially in districts where board members are elected rather than appointed.

“The voices that they’re supposed to be speaking for are their constituents, not their fellow board members,” Richmond said.

Jane Blystone, an elected school board member and former journalism teacher from Pennsylvania, said school boards that create a policy that designates one speaker for the board put themselves in a “very precarious position.”

“This is a dangerous policy to me because it flies in the face of the First Amendment,” she said.

Individual board members have a right — and a responsibility — to speak up about what they disagree with, to defend their votes and to publicly speak on issues, she said.

Sharon Noguchi, an education reporter for The San Jose Mercury News, has been on the beat since 2006, but her job has included some school coverage for more than two decades. Among the 50 to 60 school boards she is responsible for covering, Noguchi said there’s been an increase over the years in the number of times she’s been told to ask to chairman of the school board for comment. The result is that people “don’t get the true picture,” she said.

“Folks don’t know what their elected representatives know, think (or) believe in, and folks are getting just less information about how one of their basic democratic institutions work,” Noguchi said.

‘We wanted to look better’

Kirk Houston, the Norfolk board’s chairman, told Newsome the policy is a best practice, but the board is the only one of the region’s five school boards that has such a policy.

He said the term “best practice” could be argued, but he considers it the best way for the school board to communicate a message. It’s important that they’re “not monolithic,” but that they act as “one board” once decisions are made, and that is the primary intention of the board norm dictating the practice, Houston said.

Appearing united is also cornerstone of the San Jose Unified School District, one of the districts Noguchi covers.
San Jose’s policy designates the superintendent or designee as the board spokesperson. Individual board members who do speak to the media are careful to say that it is their own view or thought and that they aren’t speaking for the board.

Once something is voted on, that is the position of the board, said board president Richard Garcia. Having one voice — all questions about the board are to be referred to him — enables “constituents to feel like your board is all on the same page,” he said.

“You win some and you lose some,” Garcia said. “Even though you may not be happy with it, it does no good to continue to argue the point.”

When the Caddo Parish School Board in Louisiana adopted a similar policy this spring, they too sought to look more unified, board president Carl Pierson said.

“We wanted to look better while taking care of the business of the people that hired us,” Pierson said.

The policy, adopted in March in the interest of “One Board, One Voice,” designates the board president and/or designee as the official spokesperson regarding board actions and states that actions of the board are official and shouldn’t be “attacked” by individual board members, regardless of how they voted.

Once the board decides on an issue, members should move onto the next issue and not belabor the point, Pierson said. He stressed that they’re not trying to censor anybody, but asks that board members don’t speak about decisions — especially those where the debate gets heated — right after the meeting and instead “calm down and really get yourself under control” before talking to anybody.

“If a media person is there, then they hear all the arguments during the course of the debate,” Pierson said. “They just want soundbite after soundbite.”

The policy is controversial among board members. Member Charlotte Crawley voted against the policy, called it a “wasted” action and said she has no intention of following it.

“I’m totally ignoring that it’s there,” Crawley said. “It’s aggravating that they passed it, but no, I’m not going to follow it at all.”

Board member Curtis Hooks also has no intention of following the policy, stating that no one can speak for his district but him.

“They are not going to silence my voice, not whatsoever, not as long as I’m on this school board and I’m representing this district over here, district five,” Hooks said.

If the board is going to make a policy, they better be sure they can enforce it, Crawley said, pointing out that there are no consequences for members who go against the policy.

After the One Voice policy was imposed, the board revised the policy further in response to some of the criticism, Pierson said. A new section clarifies that the policy “is not intended to prohibit board members from making individual comments regarding matters of interest to the public; however, individual board member comments are not to be considered comments of the board.”

The revision was intended to “soften it up a little bit because people were thinking that we were trying to censor them,” Pierson said.

It didn’t solve the issue for Crawley, who called it “double speak.” She believes the policy will limit the amount of information available to the public, she said, questioning the ability of the board president to field the calls that all board members receive from the public — Crawley herself receives about four or five per week, she said.

In New Hampshire, board members on the Timberlane School Board questioned similar policies — which would have limited members’ ability to speak out against board actions and to speak to the press — when they were proposed earlier this year.

During the March 20 meeting, two board members raised concerns about the rules. Peter Bealo said though he hasn’t spoken to the press in three years, he should have the ability to do so if he chooses. Donna Green said though she understands the need for solidarity, members didn’t give up their right to free speech when they were elected.

Robert Collins, the member who drafted the rules, defended them, saying that because the board chairwoman is usually the most up-to-date on information, the rules prevent yesterday’s information from reaching the public when it could have turned 180 degrees in 24 hours.

Board chairwoman Nancy Steenson also defended the policy, saying their image as a unified group would be in jeopardy if they allowed board members to speak to the press.

“We’re not suppressing anyone’s free speech by asking board members not to speak to the press whenever they choose,” Steenson said in the meeting. Despite repeated requests for comment, Steenson couldn’t be reached.

In the days that followed, the board received public
pushback. At the following school board meeting, Steenson said she had been accused of having a “petty scheme to aggregate power to myself,” and had been compared to Stalin.

The New Hampshire Civil Liberties Union sent a letter detailing the ways the rules infringed members’ First Amendment rights. Gilles Bissonnette, staff attorney for the NHCLU, said board rules that limit members’ ability to speak to the press actually stifle public debate, which is just as important and valuable when it plays out in the media as it is when it occurs in a board meeting.

“I think we contend — and I think this really can’t be disputed — that commenting to the press is a quintessential activity of an elected official,” Bissonnette said.

In April, the school board amended the rules in partnership with NHCLU attorneys. At the meeting, Steenson said it was never her intent to stifle anyone’s First Amendment rights.

“Our goal as a board has always been to ensure consistency and accuracy of information to the press,” Steenson said.

“Having one spokesperson helps us to achieve that goal.”

The new rules encourage members to direct questions to the board chairwoman, but clearly lay out that they are not prohibited from voicing their opinions to the press and public.

Bealo was the only present board member to dissent, calling the amended versions “w wishy-washy” and “ambiguous” rules that at the end of the day don’t do a lot.

Bissonnette said once the NHCLU raised the consequences and legal issues with the rules, the board quickly understood the problems with them.

“We were very pleased with the school board’s response,” Bissonnette said. “They took immediate action. They were very thoughtful in their approach.”

Image control and unintended messages

Richmond said there is more attention being paid to education right now than there has been in many years, and it can make school boards “understandably anxious and even defensive” about their decisions.

“So that desire to present a united front, that desire to appear as a professional unit is understandable, but it shouldn’t be the culture of schools that an elected board member or an appointed board member has been told not to use their voice to the fullest extent, and that includes talking to the media,” Richmond said.

While the intent of these policies is to appear united on board actions, the practice can send different messages to the public. At times, such policies can create an idea that there isn’t as much “individual” or “careful” thought about the decisions a board makes, Richmond said.

“If things are all from one voice, it give the perception — rightly or wrongly — that decisions are being made with a rubber stamp and that that rubber stamp is held by one person,” Richmond said.

COVERING YOUR OWN SCHOOL BOARD

One of the best training grounds for young journalists is covering a school board meeting, where the decisions made will directly affect students, said Emily Richmond, public editor for the Education Writers Association.

“They’re going to be making the decisions about curriculum instruction, staffing, budgeting, school start times, and as a student, you can really explain to the reader how that’s being carried out and impacting schools,” Richmond said.

She recommends the following tips for students covering their school boards:

Research before you go: Look over the agenda ahead of time. Check the back for documents or contracts that could be approved. If there are a lot of votes scheduled, come with a pre-made scorecard to quickly write down the voting breakdown for each agenda item.

Pay attention: Don’t check emails or play with your phone.

Be polite: Be on time to board meetings. Be respectful of board members and the hours they keep, but don’t hesitate to contact them at reasonable times.

To view more tips from Richmond and education reporters Kavitha Cardoza and Christina Samuels about ways to better cover your school board, visit the Student Press Law Center’s YouTube channel at http://j.mp/EDreportingTips. The Education Writers Association, at ewa.org, also offers tipsheets.

It’s dishonest and a disservice to the public to say that the board is unified if it isn’t, said Hooks, the Caddo Parish board member.

“This board will never be unified, and they want to fool people like it’s unified,” he said. “It is not unified.”

Ultimately, it’s up to reporters to be diligent about letting the public know what is happening as a result of this practice, Richmond said. Writing about it, as Newsome did, can shed light on the situation, so that the public is aware of how the board operates.

“As an education reporter, transparency is really important, so I believe that public officials should verify, validate, explain any claims that they make, especially in a public setting like meetings,” Newsome said.

She received phone calls, texts and emails about the column from members of the public who weren’t aware of the policy. Ultimately, a lot of people were upset when they learned of it, she said.

“They felt like public officials should be held accountable, and when they don’t speak, it’s hard to do that,” she said.
On the Road: Tinker Tour

This spring, Mary Beth Tinker and Mike Hiestand continued traveling across the country to speak with students about their First Amendment rights. In total, the tour traveled to three countries, 15 states and 32 schools during the Tinker Tour’s spring West Coast tour.

Tinker talks with adviser Tracy Anne Sena (far right) and student editors of The Broadview at Convent of the Sacred Heart High School in San Francisco.

Tinker signs a Monta Vista High School student's T-shirt. At the Cupertino, Calif. high school, Tinker spoke with students about her experience standing up for her right to wear a black armband. Tinker was joined in a panel discussion by Cristina Curcelli and Sabrina Chen, two high school student journalists who successfully challenged a subpoena in 2013, Nick Ferentinos, a longtime journalism adviser, and Frank LoMonte, the Student Press Law Center’s executive director.

All photos: Frank LoMonte
Tinker shows Sacred Heart students a postcard that says “HATE” that she received while she was challenging her school district’s ban on students wearing black armbands in opposition to the Vietnam War.

In May in a celebration at the Newseum in Washington, D.C., Tinker and Hiestand were awarded the Hugh M. Hefner First Amendment for Education for their role organizing and launching the Tinker Tour.

Tinker talks with student editors of The Harker Aquila, the student newspaper at Harker High School in California, and looks at a copy of a recent issue published by the newspaper.
Censorship takes the stage: Topical plays draw criticism from officials

After administrators put student productions of “Rent,” “Sweeney Todd” on the chopping block due to sensitive subjects, students and dramatists push back, defending the importance of theater.

BY CASEY McDERMOTT

At first, sure, the students of Trumbull High School were disappointed when their principal told them they couldn’t perform “Rent: School Edition,” an adaptation of the popular show by Jonathan Larson, which addresses issues related to sexuality, drug use and HIV/AIDS.

But they didn’t waste much time wallowing. Instead, they worked together to address Principal Mark Guarino’s concerns about the community’s reception to the show’s content. They circulated a petition, created a survey and otherwise tried to engage in respectful, well-reasoned dialogue with school officials (who were open to listening). The students wanted to be able to gather data about their community, said Thespian Society President Larissa Mark, so that they could show their administrators that Trumbull was ready to embrace the themes of the performance.

Their efforts earned them national recognition — Mark has since been honored with an inaugural “DLDF Defender Award” from the Dramatists Legal Defense Fund — but more importantly, they earned back their show. The performance went on as scheduled at the end of March.

For the students involved, protesting the potential cancellation was about more than protecting their ability to perform a popular musical.

“You can’t really censor something that happens,” lead actress Emily Ruchalski said, explaining that her peers at Trumbull grapple with some of the themes that were deemed controversial (sexuality, drug use and so on) at school every day. “And what better way to format a discussion about it than putting it on stage and expressing yourself through that?”

Ruchalski and Casey Walsh (who played Maureen and Joanne, respectively) said the show provided a vehicle through which to address real-world issues.

“You can’t brush the truth under the rug, you can’t always just do the musical because there’s a happy ending because tragedy does happen — things go wrong, and that’s what ‘Rent’ shows,” Walsh said. “It shows that you can take the negatives and make it a positive, and it just really is a sort of healing show in a way that it shows you can overcome even the most depressing of times.”

That goes for Mark, too, who said the lessons she’s learned through her school’s theater program transcend the stage. Her role in the Thespian Society and related activities taught her to take responsibility for something larger than herself and showed her how to be “an active citizen.”

“While I might be active in this community here, eventually I’m going to want to be active in a larger one, as well,” Mark said. “While our change might just be producing an art that can create social commentary and create a message for an audience, I think that is an idea of expression in general and of our First Amendment rights: We’re given the ability to produce material that can create change and be a part of our society.”

Those who watched the campaign at Trumbull unfold said students embodied the meaning of civic engagement. The students put into practice the very lessons their educators had been teaching them all along, Director Jessica Spillane said.

“I think it would have been very easy for anyone to fall into a place of saying, ‘We want this ... Why can’t we have it?’” Spillane said. “They were wise in looking at: What are the objections, what do we need to address in order to allay fears?”

Spillane, who’s taught at Trumbull High School for 17 years and directed musicals for 16, said she actually tends to be somewhat conservative in her show choices. From the beginning, she and others weighing the options approached “Rent: School Edition” with the question: Can we do this?

“We certainly read the script as people who have taught
in the community for very long time, who have lived in community and lived in the town as well,” Spillane said. “There was no question of the community here being supportive of putting on the production.”

Public reception aside, she said, “Rent” still seemed like an ideal choice: “It’s one that speaks to me, and one that I’ve taken hundreds of students to see on field trips.” And from the beginning, even before concerns about its content were raised, she had plans to incorporate added educational supplements — specifically, a project that would allow students to research the history and context of the musical for a “teaching facility” to be staged in the lobby on the nights of the show.

With that, she decided to proceed as she always had: without running it by administrators first. This year, though, Guarino was coming in as a new principal and reached out to her with questions about the show before issuing the initial cancellation, she said. Leading up to that decision, Spillane said she passed along thorough documentation of her vision for the show and educational supplements — before eventually being told that the show would have to be put on hold. (Guarino did not respond requests for comment.)

The students took the lead from there — eventually, with the help of some outside supporters. Ralph Sevush, the executive director of the Dramatists Guild (overseeing business and legal affairs), reached out in a December letter to Guarino. He said he doesn’t pretend to believe that his organization’s outreach was responsible for the administration’s change of heart — but he said it was important for the national group to show its support for the students working hard to defend their rights.

“What we were most grateful for was that there was a woman like Larissa Mark who took the initiative to fight this fight on the ground and to do so in an effective, mature way that actually achieves her goal,” Sevush said.

“Ultimately, it has nothing to do with art,” Sevush said. In mounting their defense of the show, he said, students learned how to resolve conflicts and how to gather the courage to stand up for their beliefs — skills that are “invaluable in any circumstance, in any profession, in any walk of life,” he said.

“That’s about being a citizen,” he said. “It’s not about being an artist or singer or dancer or actor, it’s about being a citizen in democracy.”

**Censorship, even invisible, dampens plans elsewhere**

Trumbull was a success story. Elsewhere, the show doesn’t...
always go on.

Svetlana Mincheva, the director of programs for the National Coalition Against Censorship, keeps close watch on censorship in the arts and says she hears of about three student shows, on average, per year that are threatened because of content. That estimate is hardly representative, she notes.

“I would dare to think that there’s probably more going on,” she said.

In some cases, “the theater teacher going to the principal suggesting the play gets the idea nipped in the bud before rehearsals and before it’s put on the schedule,” she explained.

“This type of self-censorship does not become visible,” Mincheva said.

Howard Sherman, an arts administrator and self-described “theater pundit” with an extensive background in the field, keeps close watch on student censorship issues — among other arts-related topics — on his blog. In 2011, he spoke out against a school’s hesitance to allow production of an August Wilson play for fear of racial epithets used in its text. He later did the same in cases involving censorship of productions of “Legally Blonde,” “The Laramie Project” and others.

His background as a press agent is particularly valuable, he thinks, in showing those who might be facing adversity within their theater program how they fit into a larger picture.

“When these events occur, too often the people who are most affected feel they have no agency, they don’t know what to do and they think it’s an isolated incident,” Sherman said. “Making it larger than the specifics of just their town, helping them to understand that this is unfortunately something that goes on through country and they can learn from others’ experiences, is very helpful.”

In doing so, Sherman has established himself as an important ally for students in such situations. His posts about the situation at Trumbull High School helped the issue to garner national attention, which put additional pressure on administrators to allow the show to go on as scheduled. (He also has pointed out, repeatedly, the dangers of “solving” a censorship threat by altering a text to, for example, appease community standards — which could in some cases violate copyright.)

In a post defending students in the case involving the August Wilson show, he wrote: “I do not advocate this type of work because of its potentially problematic language or content, but because of its larger ideas which belong in the classroom, at our dinner tables, and in our daily lives. We cannot allow the simplistic, sound-bite, lowest common denominator offerings that pass for entertainment become the standard, lest idiocracy become first prescient, then prevalent. Let’s keep firing metaphoric fastballs at students and let them struggle to hit them back, because it is in that struggle in which they learn the most.”

Often, Sherman said, he hears from students or teachers involved in the theater program who are worried about the fate of a given show. But he said he’d be just as “delighted” to hear from administrators or school board officials who might have concerns about a proposed show.

He’s also hopeful that the library of cases he’s helped to call attention to might serve as a kind of network of resources and other potential allies to students facing future threats to their shows.

Learning about the successes of other students who’ve tackled tough subject matter with grace, he said, might empower others to try to talk about trying subject material they might otherwise have avoided.

“If there can be a network of knowledge and people who understand going forward that people can help, you can always make the case and know that you did your best,” Sherman said.

Another cancellation, another call to action

The same week the students of “Rent” were about to take the stage, another group of students — just a few hours north, at Timberlane Regional High School — were grappling with news of a pending show cancellation of their own.

There, students had been told that they could not perform “Sweeney Todd” the following year because of concerns about
FREQUENTLY BANNED AND CHALLENGED STUDENT THEATER PRODUCTIONS

The Educational Theatre Association keeps a running list of plays and musicals that have faced censorship or threats of censorship at the middle and high school level. Here’s some of the plays that have been challenged, as reported by the organization:

The Laramie Project: This play, by Moises Kaufman and the Tectonic Theatre Project, focuses on the 1998 murder of Matthew Shepard, a gay student at the University of Wyoming.

The Vagina Monologues: Written by Eve Ensler, The Vagina Monologues features a series of monologues by women discussing sex, menstruation, rape and love.

Godspell: The musical, by Stephen Schwartz, is based on stories from the gospel of Matthew and takes place in New York.


The show, a widely acclaimed adaptation by Stephen Sondheim, has a reputation for violence: Its main character is a barber who murders his clients and then passes their bodies along to be made into meat pies.

Almost immediately, students took their dissent online — creating a Facebook page to discuss their reaction to the decision and their plans to respond. But the page was swiftly shut down at the request of school administrators because of a single post that administrators found objectionable.

The students found an ally in Randall Mikkelsen, a community member and the parent of a former Timberlane student, who had been following the developments surrounding the show. News that the students’ Facebook page was shut down “got [his] First Amendment blood roiling,” so he stepped in to set up a replacement page to serve as a new space for discussion. A page that’s organized by an adult in the community, he reasoned, would be harder for the administration to shut down altogether.

Within days, the Facebook forum ballooned in size and reach. Surveys were passed around, students and community members compiled a list of grievances regarding the show’s cancellation, support poured in from all over — even Trumbull.

Spillane, in a note to the school superintendent Earl Metzler and principal Don Woodworth that she also shared on the Facebook page, urged administrators to support the show and offered to discuss the supplementary projects she oversaw in connection with Trumbull’s musical.

“The aim of art has always been to create discomfort and unrest so that we not become complacent or deluded or jaded. Have faith that your young people, like ours here in Trumbull, can usher the community into a place it did not think it could go,” she wrote. “This is what we want as educators and as citizens who will one day depend on them to lead us.”

At one point, Meryl Streep — yes, that Meryl Streep — was even asked to weigh in on the show cancellation. When asked about the issue during a visit to a Massachusetts-area university, Streep confessed that she hadn’t heard of the controversy, according to a report in The Eagle-Tribune. Still, she said, “Let the kids do the play.”

Sherman, as ever, was quick to get involved with the campaign to address the cancellation. For better or worse, he was becoming quite the veteran censorship crisis communicator — and in this case, he was an integral part of the effort toward reinstatement.

He drove four hours to attend a school forum organized in response to the outcry, arriving in time for a separate meeting with the superintendent and spent time meeting with students to provide advice on how best to present their message to school officials at the meeting.

In April, about 250 people gathered at the school to discuss the issue. Sherman, students and others spoke out in favor of the performance — no one spoke up against it, Mikkelsen said.

One of the students who spoke at the meeting, a senior named Laura Lingar, told the room that she wasn’t planning to pursue theater — instead, she was a paramedic, training to be a firefighter. As part of her EMT training, she recently had her first experience working in the field — a difficult night, she said, but one she credits her theater experience.

The moments when she and her peers were forced to step back and analyze the lines in a show, paying close attention to the characters’ needs and feelings and motivations, equipped her to better connect with patients dealing with adversity.

“If we’d just done little plays that everyone understands, where we sing and we dance and we make people happy, I would have only seen happy people and I would only understand happy things. And the field I’m going into isn’t always happy,” Lingar told the forum in her speech, a video of which was shared with the Facebook group. In the speech, she praised theater director Eric Constantineau.

“And I cannot thank Mr. C and the Timberlane players enough for being the reason every time I save a life the rest of my life, they’re going to be the ones behind me.”

The following week, the students were told that they could proceed with the show. In a video message, Metzler thanked a handful of school officials and Mikkelsen for their roles in the process.

But he also made a point to note the “overwhelming display of support for the arts” and the respectful, professional conviction evidenced by the students who spoke out at the forum.

And here, as with Trumbull, the Timberlane students didn’t have to step on stage to realize the power of their voice.
For education reporters, PR staff increasingly limit access to sources

Student and professional journalists alike report increasing difficulty when it comes to accessing sources. In response, college newspaper editors say they now teach their staff to have the ‘confidence’ to push back.

BY CASEY McDERMOTT

Last year, Emma Nelson was working on a story investigating a clinical drug trial that took place at the University of Minnesota about a decade ago. She wanted to talk to a school official about some allegations surrounding the handling of the trial, so she set up an in-person interview.

During the conversation, the official veered off-topic in response to one of the questions, Nelson said. She tried to pull him back in, but a communications representative (who was also present) stepped in to attempt to “explain” the dynamics of the case. It was hard to get the conversation back on track: The communications representative kept trying to interject when Nelson really wanted to hear firsthand from the other official, and she walked away feeling like she didn’t get substantial answers to her questions.

The repeated interruptions were “jarring,” she said, and at that point she wasn’t used to that kind of outside supervision during an interview.

Since then, though, Nelson and others — at The Minnesota Daily and campus news outlets across the country — have found themselves growing increasingly accustomed to such reporting constraints. They’re getting canned statements, losing access to top officials, being shut out of interview opportunities or, if they can get an interview, being asked to do so under highly controlled conditions.

Some of the obstacles facing student media are par for the course in any reporting job: Delayed responses, tough-to-reach sources, officials who want to protect an institution’s reputation — the list goes on.

At colleges and universities, though, public information offices and restrictive media relations practices can make it especially difficult for students who lack the years of reporting experiences that might teach them how to navigate around public relations barriers. Student reporters can also be more cautious by virtue of attending the same institution they’re trying to hold accountable.

To student and professional media alike, universities’ attempts to stifle reporters’ questions are even more troublesome when you consider the setting.

“Colleges should be a place where students are encouraged to question, and universities should be open, transparent environments of thought, thinking and discussion,” said David Cuillier, president of the Society of Professional Journalists. “Of all institutions in this country, universities should be completely open to all sorts of criticism and debate … So it is ironic when universities end up being some of the most secretive, closed and controlling institutions in the nation.”

Reporting with more restrictions

In her role as the managing editor of The Minnesota Daily last year, Nelson found herself trying to coach reporters to work around ever-tightening restrictions on communications with campus officials.

“Our access has become increasingly limited in a short amount of time, and is constantly getting worse,” Nelson wrote in a response to an informal Student Press Law Center survey. “It’s disturbing to all of us, and is something we’re teaching reporters to work around.”

The Daily has policies against sending specific interview questions in advance or conducting email-only interviews, Nelson said, and editors stress those rules to new reporters. What Nelson really worries about, though, are more tightly controlled reporting conditions that her peers might — knowingly or unknowingly — be accepting as the norm.

A few administrators will talk to the Daily directly, she said — but even in those cases, a public relations representative is always present. Some reporters have noted that even “long-time sources” throughout the university have recently started redirecting their interview requests to
the University News Service for approval, Nelson said.

Some student reporters, especially those who are just starting out at the Daily, “don’t necessarily have the confidence to push back against that or realize they can, or don’t fully realize their access is being cut off in some way,” Nelson said.

When Nelson started out, lining up unsupervised interviews without prior approval from a central office wasn’t an issue. In the last year or so, though, she said it’s become increasingly common for employees across the university — admissions officers, clerical workers, custodians, the general counsel — to have someone sit in on the conversation. (It’s less of an issue with professors, she said.)

Nelson asked the communications office about the practice recently, and she was told that no specific instructions had been given to require departments to supervise interviews.

Sometimes communications officials will mediate plans for an interview in advance, asking for specific information about the questions to be asked or other details about the potential story. Other times, Nelson said she’s shown up to an interview with a source and has been surprised to see someone from university relations there without any advance warning.

Still, the Daily’s relationship with the university’s communications office is generally diplomatic — student journalists have a fine line to walk if they want to preserve the access they do have, Nelson explained.

“We try and stay friendly with them — a lot of times they’re our only option,” she said. “If we want to talk to the administration, we typically don’t have any choice but to go through them.”

At George Washington University, the staff of The GW Hatchet encounters similar constraints. For every interview with a university administrator, student reporters must send specific questions to a media relations representative several days in advance, said former managing editor Sarah Ferris. They can also expect someone from the media relations office to sit in on the interview — which sometimes results in scheduling delays, if the PR representative has a conflict.

Brianna Gurciullo, former news editor and now editor-in-chief, said it’s especially difficult to veer off-script when someone from media relations is present.

“In cases where we do bring up [other] questions, this person will jump in and say, ‘It’s not fair, you didn’t give this person time to prepare,’” she said.

That’s happened in response to questions about residence hall renovations, campus police patrols and other topics — even in conversations with officials whose job it is to oversee such issues — Ferris and Gurciullo said.

Hatchet reporters are actively discouraged from trying to talk to school officials after university events, outside of more formal interview settings, Ferris said. They’re also relegated to a far side of the room at Board of Trustees meetings, she said, where they must ask to speak to the officials present and must wait for officials to be escorted to the press table by media relations representatives.

In-person and otherwise, the university’s tendency to decline comment has been so prevalent that the Hatchet started devoting a space in each print edition to pointing out “What the University Won’t Talk About This Week.” (It’s appeared at the top of the opinions page in each issue since February 2013, and 2013-14 editor Cory Weinberg said the Hatchet had no trouble finding things “to call GW out on.”)

Ferris and Gurciullo stressed that there are exceptions to the culture of “micromanaging the message” — there are sources within the university who are genuinely responsive and who understand the Hatchet’s goals toward informing the campus.

But officials’ attempts to stifle questions at upper levels of the university have trickled down to other departments within the university, even to some student groups. Beyond creating a rift between student reporters and top officials, Ferris said such restrictions make it “very difficult to talk to any of the middlemen in office — anyone who’s actually shaping policy or

### BY THE NUMBERS

The Society of Professional Journalists and the Education Writers Association recently surveyed education reporters about their experience accessing public information. The study was conducted by Carolyn Carlson, a professor at Kennesaw State University.

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<td>24.3</td>
<td>Percentage of education reporters surveyed who said PR staff monitor their interviews with officials most or all of the time</td>
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<td>37.2</td>
<td>Percentage who said interview requests are referred to PR staff all or most of the time</td>
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<td>76.1</td>
<td>Percentage of reporters who agreed ‘strongly’ or ‘somewhat’ that the public isn’t getting information it needs because of barriers set up by government agencies</td>
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studying problems or dealing with students.”

The Hatchet reporters understand that GWU is a complex institution, Gurciullo said, and that’s why they want to understand the nuances of the issues facing their university — so that they can communicate those accurately to their readers.

“There’s definitely cases where students are not getting information to be able to understand really kind of murky processes — like the campus judicial system, campus police processes, the way financial aid works and the way the administration works,” Gurciullo said. “There’s a lot of missing context in stories that we’re finding in other ways.”

**Students and pros share similar struggles**

If nothing else, students can rest assured that they’re not the only ones experiencing tight controls from public information officials. In 2013, the Education Writers Association and the Society of Professional Journalists teamed up to examine the relationship between journalists and public information offices at schools of all levels.

While a majority of the 190 respondents “said they had a positive working relationship with the [public information officers] on their beat,” those surveyed still indicated frequent attempts from school officials to control interview conditions or otherwise restrict media access.

Eighteen percent said officials (public information officers or administrators) monitor their interviews most of the time or all of the time, according to the survey. Many also reported that interview requests are re-routed through public information officers: 15.1 percent said it happens “all the time,” 22.1 percent said it happens “most of the time” and 39.5 percent said it happens at least “some of the time.”

The impact of these barriers were also apparent to many surveyed. About 76 percent agreed (“strongly” or “somewhat”) that “the public is not getting all the information it needs because of barriers schools, institutions or departments are imposing on journalists’ reporting practices.” Meanwhile, 63.4 percent also said they considered the controls they faced to be “a form of government censorship.”

The survey also included stories from reporters, all anonymous, about the reporting roadblocks they’ve encountered. One reporter, for example, said employees at one school district “are prohibited from talking to the media without approval from the PR department.” In another response, a reporter said “there is a very high level of discussion about my newsgathering activities almost every time I make a phone call” — something that became apparent thanks to public records requests for email communication.

Several shared stories of being cut off from certain departments or officials altogether because of their reporting.

“I was banned from speaking to the head of University Police after I had exposed that the previous chief was a convicted felon,” one reporter wrote.

Overall, the takeaways were mixed: Despite the challenges facing some reporters, others were eager to point out that they’ve had positive experiences with PR offices.

To Gurciullo of SPJ, the survey results nonetheless painted a bleak picture for professional journalists — but he said he suspects conditions are even worse for students. Cuillier, also the director of the University of Arizona School of Journalism, said the inherent power imbalance between students and administrators can make it all too easy for students to feel hesitant to push back against campus media restrictions.

“I have seen universities and administrators bully students and intimidate them, try to get them to hold off stories or even saddle them with threats of retaliation,” he said. “Even if they don’t do anything, just the fact that they can is a chilling force.”

At GWU, the Hatchet staffers said they’ve frequently heard lectures from media relations officials on what is and isn’t newsworthy. At the University of Minnesota, Nelson also said the tightened public relations controls have been “couched in language about helping student reporters learn their beats.”

“Many of our interactions … center on the fact that we’re students who need help learning to report,” she said.

Teresa Valerio Parrot, a former media relations staffer at the University of Colorado who now provides consulting on the issue to colleges and universities, said it’s important to keep in mind that some of actions from media relations personnel aren’t inherently malicious.

For example, she said she finds it helpful to have a staff member sit in on an interview to coordinate any necessary follow-up — like locating certain data points that might have been referenced by the main subject. The same goes for routing interviews through a central communications office, she said: That could be a way to make sure a journalist’s questions are answered promptly and thoroughly, not a way to delay.

When using these or other tactics, Valerio Parrot said PR staff need to be mindful of their role: “They’re not there as a roadblock, they’re there as a gateway to information.”

Universities need to keep in mind the critical role that student journalists play, Valerio Parrot said: They deliver news to the school’s “most important audience,” its students.

“Student media, specifically, can ask a different type of question because of who they are and what experiences they bring to the table and can help admin to share that news across their campus as well,” Valerio Parrot said.

To allow student journalists to fulfill their responsibility, she said, “we have a responsibility to give them the information they need to tell their story.”

“When administrators have difficulty separating the student’s role as a journalist and role as a student, that’s where I see issues,” she said. “Interviews are not a time for a teachable moment, they’re not a time for a paternalistic role. They’re a time to recognize their role as journalists, to treat them accordingly and to give them what they need to meet their job requirements.”
Dylan Bouscher, a student journalist at Florida Atlantic University wanted to research the 2011 crime statistics his university reported to the federal government: one forcible sexual offense, one robbery.

The numbers seemed low, he thought. The Clery Act requires universities to keep records on and disclose information about campus crimes, among other things. So in late 2012, Bouscher decided to investigate. By reviewing police reports, he could begin to fact-check those numbers, so he submitted a request for three years' worth of crime reports.

After Scott Silversten, FAU's assistant vice president for communications and marketing, got the request, he asked to meet with Bouscher. It was going to be expensive because attorneys would need to review each and every document, Bouscher was told. Silversten estimated costs would be around $17,000, Bouscher said.

After months of negotiations, FAU lowered that estimate to $10,000 and eventually to just under $1,000, Bouscher said. Ten months after Bouscher made his request, the newspaper paid $900 — “which is still absurd,” he said — for the documents. (In an email, Joshua Glanzer, an FAU spokesman, disputed Bouscher’s account of the original estimate, pointing to the $10,000 figure as the original figure.)

The back-and-forth between Bouscher and the university has become increasingly tense and frequent as time goes on, said Bouscher, who, recently finished up a stint as editor of the University Press, the school’s student newspaper.

Bouscher eventually got the police records he was looking for, but says this this is just one example of an ongoing and worsening problem. The university habitually puts up barriers to prevent meaningful reporting, Bouscher said. Though administrators claim to be trying to update their procedures, there is no evidence to indicate any changes, he said.

Current and former UP editors and professional media alike all agree the university could be more responsive. Some, like Michael Koretzky, who advises UP as a volunteer, go further. Koretzky, who was fired from the university in 2010, calls FAU the “worst university for public records in the nation.”

Officials at FAU sometimes ignore public records requests or charge astronomical fees to process information, thereby making it impossible to access those records, Koretzky said.

“FAU is the worst at public records, not because they do the worst things but that they do bad things more often and with more regularity and passion than other schools,” Koretzky said.

Increasing tension

There has always been friction between UP student journalists and the administration, Bouscher said, but these problems worsened for him after former FAU President Mary Jane Saunders was accused of hitting a student with her car and fleeing the scene.

Saunders was caught in the middle of another controversy when the incident happened. In February 2013, the Board of Trustees voted to name the football stadium after the GEO Group, a Boca Raton-based company that operates prisons worldwide, after the organization donated a hefty $6 million to the university.

Students didn’t take the news well. In March of that year, protesters surrounded Saunders’ car, and in her haste to escape, she clipped a student with her vehicle’s right-side mirror. Saunders drove away without stopping.

Bouscher was quick to jump on the story. At a board of trustees meeting, The Sun-Sentinel reported that Bouscher posed this question to Saunders: “If you were the victim of a car accident would you want the driver to drive away?”

Over time, officials have begun brushing him off, Bouscher said.
“They just started flat-out ignoring me,” Bouscher said. “It’s really only gotten worse.”

When he’s had to submit records requests for stories — like when he wanted to see the police reports — Bouscher said he’s been charged fees that seem “unreasonably high.”

“It is because of a personal bias against me,” Bouscher said. “I really do just want records, and I want to tell stories.”

Other University Press staffers have noticed a deterioration in media relations at FAU too, and national outlets have also met obstacles at the Boca Raton university. The Student Press Law Center obtained all invoices issued for public records requests dating back to January 2013.

The documents show that FAU frequently charges for legal review, as well as “technical” and “clerical” fees, among other charges. In layman’s terms, the university incurs costs for time spent to search for, gather and review materials. Each fee doesn’t occur on every invoice.

Brendan Porath, a reporter with SB Nation, was charged $8,825 and $3,000 for two separate records requests — all or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both.”

But Barbara Petersen, president of Florida’s First Amendment Foundation, said it’s a mistake for FAU to operate under the governor’s policy. Florida government allows agencies to charge reasonable fees for “extensive use of agency resources” when fulfilling requests for public information, Petersen said. In other words, what is extensive work for one government body might be altogether different undertaking for another.

Therefore, each agency has to define what “extensive” means specifically for them, because it’s not defined in statute. So for FAU to simply adopt the governor’s policy, while it has its unique operating procedures and working capabilities, is legally risky, because the term “extensive” is “wishy-washy,” she said.

High fees incurred by cost-recovery policies, unfortunately, are sometimes used to make people “go away,” Petersen said.

She said requesters need to word public records requests as “narrowly as you possibly can.”

“Sometimes those fees are legitimate because you asked for a lot of those records,” Petersen said. At other times, though, “it’s just a way of bumping up the cost.”

Bouscher, for example, is often charged for legal review for documents. Petersen said agencies sometimes funnel more documents through an attorney’s office than needed.

“I do see some government agencies saying every public records request has to go through the agency’s attorney office, and I say baloney,” Petersen said. “If you’re worried about it, fine, but there’s no justification for charging me for a legal review of a commonly requested, easily redacted record.”

The three responsible in recent years for managing media and public record requests at FAU are Joshua Glanzer, Lisa Metcalf and Scott Silversten. The trio did not return numerous phone calls but Glanzer responded to questions in an email.

He denied purposefully ignoring emails or public records requests, writing that “we have always responded to a request.”

The university receives approximately 150 public records requests per year, Glanzer said.

“They vary greatly in terms of complexity and time needed to fulfill the request,” he wrote. “Two staff members, including myself, are responsible for processing the requests as part of our jobs.”

The costs are determined entirely by the time it takes to fulfill the requests, he said.

“We have a small staff that are responsible for all the media relations activities of FAU: a major, urban university with 30,000 students, thousands of faculty, four campuses, two research facilities located in the middle of one of the largest media markets in the country,” Glanzer wrote. “We are working to expand our capacity but that takes some time.”

The difficulty the University Press faces now predates Bouscher, said Gideon Grudo, who was editor in 2011 and who

“The UP’s had a long history of hard news, investigative news. Being a college paper, sometimes that means taking a look at the university.”

KARLA BOWSHER, FORMER UNIVERSITY PRESS EDITOR
is now the special projects manager for Air Force Magazine.

“They made us just jump through hoops,” he said.

Without a doubt, the most-hostile era was in the wake of Koretzky’s firing, Grudo said. The vacancy Koretzky left wouldn’t be officially filled for “months and months and months,” Bowsher said, but the adviser stayed on at the paper in a volunteer capacity.

Bowsher, now a reporter with The Chronicle-Tribune in Indiana, echoed Grudo in that there wasn’t one catalyst that led to the feud between the newspaper and the university.

“The UP’s had a long history of hard news, investigative news,” Bowsher said. “Being a college paper, sometimes that means taking a look at the university.”

Tensions reached a head when administrators tried to keep Bowsher from seeing Koretzky, she said.

“As soon as they saw that Koretzky had volunteered and that their plan had not worked to fire him, they tried a series of things,” Bowsher said. “I was taken into the student media director’s office and I was told ‘You and you collectively, the UP, are not to meet with Koretzky on or off campus.’ That was explicitly said.”

In effect, the university defined Bowsher as their employee, and she was told that she would be breaking university policy if she continued to acknowledge Koretzky as an adviser to the paper, she said. Public backlash — from top-tier journalism organizations like the Society of Professional Journalists and the College Media Association and elsewhere — seemed to provoke a change of heart in the university, which eventually backed off and allowed Koretzky to continue advising the student newspaper.

He has no plans on leaving “until the students tell me to go,” Koretzky said.

“It’s just mind-boggling — everything they try,” Bowsher said. “It’s stupid to begin with, it doesn’t work, and, in the end, it brings them so much bad publicity.”

She said that public records request and access to officials was far from perfect during her time at FAU, but it’s “nothing like Dylan has seen.”

“I don’t know if there’s been further deterioration or there’s something about Dylan,” she said.

The paper’s current editor-in-chief and Bouscher’s successor, Lulu Ramadan, believes the university treats Bouscher more harshly than other reporters.

“Dylan’s the type of reporter who’s not afraid,” she said. “I do think that they discriminate against him. I do believe they give him more trouble than they’ve ever given me.”

Ramadan is hopeful the university is taking steps to mend the relationship between the two sides. She and then-adviser Dan Sweeney have met with Glanzer to discuss their concerns. Ramadan said she thinks it could be a new beginning.

The university has “been quicker about getting our records,” Ramadan said. Sweeney said public records invoices have been lower, too.

Bouscher isn’t convinced. He shared with SPLC an email exchange with Glanzer about a rollout of new records management operations. Bouscher was told changes would come in March of this year, but Glanzer wrote: “Not sure if we’ll have it all in place by the end of March, but we still anticipate having some improvements this spring.”

“Their inaction kind of speaks for itself,” Bouscher said.
If its disciplinary statistics are to be believed, something curious happened at Arizona State University a few years back. Arizona State, among the largest schools in the nation, told the federal government that no students were referred for discipline for breaking alcohol laws on its Tempe campus in 2008 or 2009. (ASU, like many institutions of its size, has several campuses — Tempe is the largest and its primary campus for crime reporting purposes.)

The university took a much tougher stance against violators in the years after. According to the statistics ASU reported to the Department of Education, more recent years were marked by a surge in discipline for alcohol-related crime. ASU reportedly saw 989 disciplinary referrals for on-campus liquor law violations in 2010, 1066 in 2011 and 884 in 2012.

Perhaps the university could have cracked down on its enforcement or changed the way it counts such crimes — or maybe there was a massive, on-campus event that accounted for such a giant leap in such incidents from one year to the next. There are a number of factors that could contribute to changes in the figures from year-to-year at the same institution, or between figures at institutions of similar sizes.

But the fluctuating statistics, in this case, were a surprise even to those responsible for compiling and reporting them. After the Student Press Law Center contacted ASU with questions about the alcohol violation inconsistencies — several years with zero reported referrals, followed by a spike to almost 1,000 — Police Commander Michele Rourke reviewed the data and determined a previously undetected “administrative error” was to blame for the uncharacteristically low data.

“As to the administrative error, ASU had a staffing and assignment change in 2009 with the gathering of the Clery statistical data at which point my office took over gathering and reporting all of the data,” Rourke said in an email. “With this transition my office thought the data had been compiled. Quite obviously this did not happen. Until you brought this to our attention we had not been aware of the error.”

In other words, ASU had in fact referred students for disciplinary action for on-campus alcohol-related liquor law violations in 2008 and 2009 — but despite the unusually low numbers, neither the institution nor the federal government had taken a close look at the figure.

ASU has since tried to remedy these errors, Rourke said. Officials have reached out to the Department of Education in an attempt to correct the statistics in its online database but were advised that it would not be possible to change statistics older than those that appear in its most current Annual Security Report. The university is reviewing its data to try to come up with accurate figures for the years in question and will post updated figures on its website when that process is complete, Rourke said.

Like all other colleges and universities that receive federal funds, ASU is obligated to report these statistics in an annual campus security report as part of its requirements under the Clery Act. The Clery Act — initially passed in 1990 and named for a Lehigh University student, Jeanne Clery, who was raped and murdered in her dorm room — was conceived as an effort to get colleges to be more transparent about crime on and around their campuses.

Failure to comply fully with the law can be costly: Each violation carries a potential fine of $35,000.

Under the Clery Act, schools are supposed to keep track of certain types of crimes (sexual assault, burglaries and so on) and classify the incidents according to their proximity to campus. As part of Clery-mandated annual security reports, schools are also expected to compile information about “the number of persons referred for disciplinary action” for weapons, drug and liquor law violations — but this data has, traditionally, received far less attention.

According to the Department of Education’s Clery Act handbook, these figures are supposed to reflect the number of people who violated the law and were referred “to any official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.”

A closer look at the statistics kept by the Department of Education reveals inconsistencies in the figures reported by colleges of similar sizes, or even in the way a single school reports figures across different years. At ASU, for example, a campus of more than 70,000 students reported not a single on-campus weapons referral from 2009 to 2012; its alcohol referrals, as noted previously, jump from zero in 2008 and 2009 to almost 1,000 in the following years.

So how might you start to find out what’s behind that data? If you’re at a public university, you could start by seeking out public records that reflect disciplinary data.

In filing your request, you’ll want to be as specific as possible.
Colleges generally spell out their policies and rules in student handbooks and codes of conduct. If possible, also ask your school to provide any necessary definitions or student conduct codes to cross-reference the types of violations included in the figures provided — that way, you could sort out which disciplinary cases constituted potential violations of the law and which were only violations of university policy. In making your request, also be clear that you're seeking data broken down in accordance with the calendar year—not academic or fiscal year — because that's the timetable used in the compilation of Clery statistics.

Whether you’re able to retrieve the records related to discipline that could be compared to the figures your school is reporting as part of its Clery Act duties, you’ll want to try to talk to those who are responsible for overseeing the disciplinary system or otherwise involved in keeping track of referrals and outcomes. Depending on the structure of these processes at your school, this could mean talking to officials who deal with student conduct, the police department, residence life staff or someone from another office — or all of the above.

Along the way, the following questions are important to keep in mind: What counts as a “disciplinary referral” at your institution? (Does this line up with federal requirements, as outlined in the Department of Education’s Handbook for Campus Safety and Security Reporting?); From which officials/offices does your school gather disciplinary referral data? Has your school changed its process in recent years? (If so, how? And why?); Who oversees the collection of that data? Who oversees judicial process? Do they overlap?; How do your college’s disciplinary statistics stack up to peer institutions?; Who oversees the collection of that data? Who oversees judicial process? Do they overlap?; How do your college’s disciplinary statistics stack up to peer institutions?; Are there any years with “0” referrals reported?; And how clearly does your school publicize these statistics in its annual crime reports?

Taking a closer look at campus discipline could be valuable on several fronts, even beyond the scope of the Clery figures. In many cases, the campus disciplinary process is not fully open to the public, and while high-profile cases might receive campus media attention, it’s also valuable to take a step back to examine the larger picture of cases and their outcomes. Analyzing those trends and seeking out more information about the campus disciplinary system could serve an important purpose of educating readers about a process that has implications for both individual students and the campus at large.

— Casey McDermott, staff writer.

**WHAT DISCIPLINARY ACTION DOES YOUR SCHOOL REPORT?**

The Department of Education maintains an online database where students and others can view the annual crime statistics reported by each college and university. To view the database, visit ope.ed.gov/security.

**STEP ONE:** On the Department of Education webpage, click “Get data for one institution/campus.” Type the name of your school and then search.

**STEP TWO:** On each school’s page, a series of statistics are reported: criminal offenses, hate crimes, arrests, disciplinary actions and fire statistics. Skip to the disciplinary actions. On this page, you can view the number of persons referred for disciplinary action following liquor, drug and weapon law violations either on-campus, in on-campus student housing, or in non-campus or public property areas.

**STEP THREE:** Evaluate the statistics that your school has reported. How frequently does the college refer students for discipline for violating either liquor, drug or weapon laws? Where are students committing those violations? Are there any years with “0” referrals reported? And how clearly does your school publicize these statistics in its annual crime reports?

**STEP FOUR:** Repeat the search process to look up peer colleges and universities. How do they compare with your school? Are other schools of roughly the same student population referring more or less students for disciplinary action?

**STEP FIVE:** Talk to administrators about the numbers. Can an increase in referrals be explained by a new program initiated by the college? Or is a decrease because violations are being handled through the criminal justice system? Only interviews with students and administrators will fully explain the numbers and the disciplinary process as a whole.
FROM THE STUDENT PRESS LAW CENTER:

Student journalists aren’t just “trainees” – each day, tens of thousands of them deliver news and commentary on which their entire communities (students and non-students alike) rely to stay fully informed. Law of the Student Press is an essential reference tool for any classroom, newsroom or studio where journalists are being trained. In layman’s language, it explains how to use the law to safely gather and share information, how to defend against threats to press freedom, and how to stay on the right side of copyright, libel and privacy law. This book represents 40 years of research and hands-on experience by the attorney staff of the Student Press Law Center, the leading provider of legal training and research in support of student journalists everywhere.

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Uncertainty prevails as college newsrooms navigate health care law

The Affordable Care Act says employers must offer health insurance to employees who work more than 30 hours per week, prompting many universities to reconsider how student journalists are paid.

BY LYDIA COUTrÉ

Student journalists typically don’t punch a time clock. They report, write, edit, design, proof, publish and promote their work on weekends, nights that stretch into mornings and in between classes.

Now, many are being asked to account for their hours. The changes are coming as employers begin implementing the Affordable Care Act and have the potential to upend the way newsrooms operate and how student journalists approach running out the door to cover end-of-the-week breaking news.

The new law says employers with more than 50 full-time workers or equivalents must offer health insurance for their full-time employees (averaging 30 hours per week) or pay a fine starting in 2016.

Already, some human resources and student employment offices at universities are enforcing policies that limit how many hours students employees can work per week, ensuring they don’t pass the 30-hour threshold that would make them full-time employees.

What this means for student journalists is yet to play out, but some worry that students will be asked to track — and ultimately limit — their hours. Student media advisers and general managers hope it won’t come to that.

“It’s hard to tell students to stop reporting on what they’re reporting, to stop editing a story if there’s news happening,” said Rachele Kanigel, president of the College Media Association, a group that is watching the implementation of the new law closely. “Students want to cover it, and they’re not looking at the clock.”

‘Uncharted Territory’

How student journalists fall under university policies and the health care law is unclear.

“There’s just a lot of gray out there,” said Laura Widmer, general manager of The Iowa State Daily. “And I don’t know that there’s anything definitive that we can embrace as gospel.”

Rachel Arnedt, an attorney with Wiggin and Dana LLP who specializes in health and benefit plans, agreed: There aren’t clear answers at this point because the law is so new.

“I really think this just is going to shake out over the next couple of years,” Arnedt said. “The IRS does say that it’s continuing to think about these situations and will continue to come out with new guidance as it thinks is necessary.”

Student journalists are part of a niche category of employees: workers often paid by stipend who don’t track their sporadic hours and whose jobs aligns closely with their education. Some won’t reach that 30-hour threshold, but upper-level editors and top reporters may far surpass it. The journalists who hold multiple jobs on campus may very easily cross that line as well.

Department of Labor standards say that if an activity is related to a student’s educational program, those hours aren’t treated as employment hours, said Steven Bloom, director of federal relations for the American Council on Education. The Fair Labor Standards Act is what allows publications not to pay student journalists the federal minimum wage.

The Internal Revenue Service issued final regulations in February regarding the employer responsibility provisions of ACA. Though they were asked to consider creating a special category for student employees, they didn’t, leaving the final ACA regulations without a general exception for student employees.

“All hours of service for which a student employee of an educational organization (or of an outside employer) is paid or entitled to payment in a capacity other than through the federal work study program” are required to be counted
toward employers’ requirement for shared responsibility of health coverage, according to the regulations.

The regulations did create an exemption for work-study programs. For students working under a federal or state work-study program, those hours for which they are compensated wouldn’t count toward the 30-hour threshold, Bloom said.

Paid student journalists aren’t generally classified as part of a work-study program, Arnedt said, but they also aren’t categorized as volunteers, unpaid interns or seasonal workers.

“So I think what it comes down to is you’re entitled to be credited with hours of service,” she said. “How are you counting those?”

Bloom agreed, saying that for non-work study students, “the way that the regulations were set up, (it) seems to me that the employer — whether it’s a university or college or the student newspaper if it’s a separate entity — they’re going to have to determine whether their journalists are working anywhere toward the 30 hours.”

Tracking those hours may become difficult. And whether universities offer students health care options, limit their work hours or come up with another solution will vary depending on the institution.

“In large measure, this is really uncharted territory,” Arnedt said.

Widmer said that she’s talked with a lot of lawyers specializing in student media and health care insurance and that she doesn’t get the same story as to what she should be doing to comply with ACA. There’s no clear answer that she has any comfort level with, but the Daily’s come up with its own solution and is being cautious.

The newspaper is a nonprofit that’s independent from the university, and its paid employees don’t reach that 50 full-time worker threshold — but they’re close. There’s a risk of being pushed past the threshold, which would mean possibly imposing hour caps on students. Widmer said this would take away from the educational value

“It’s hard to say, ‘OK, you can only work 29 hours a week and oh my gosh if there’s a breaking story and you’re on hour 29, walk away,”’ Widmer said. “It’s impossible for our business of being breaking news and deadlines and special sections and everything else to truly say that one week looks like the next.”

Widmer said she as advised to have students who work more than 29 hours sign a waiver saying they are under their parents’ health insurance or otherwise don’t need it.

“We are doing that to protect ourselves,” she said. “Whether that has any legality or not, I have no idea. It was suggested by a lawyer so I’m hoping that it does.”

Universities easily pass that 50 full-time employee threshold. Clemson University began limiting students to 28 hours of work per week last fall, said Jackie Alexander, the associate director of student media at Clemson.

Students receive a flat stipend, but because of the HR system, the student media office, which is part of the university, has to enter a certain amount of hours that students are working. In the past, they’ve always stuck with a flat eight-hour rate, though students are easily working more than that, Alexander said.

Now, if students’ other jobs on campus begin edging them toward the 28-hour limit, Alexander said they have to adjust that number down to four or six. The student works less on paper, but not in reality.

“It’s business as usual for students,” she said. “It’s a little bit different for us on the back end, but nothing drastic compared to what I’m seeing from other advisers at other universities.”

Students working at media outlets at East Carolina University are paid in various ways — by the hour, by stipend, as freelancers. John Harvey, director of student media and adviser to The East Carolinian, said most students don’t work more than 15 hours per week in the newsroom, but those who have other jobs on campus create a dilemma.

Though the university hasn’t established an hour cap for student employees, Harvey said he believes that could actually solve the problem.

“I think you can argue that it’s a good idea that students not work outside a classroom more than 30 hours, because it’s hard being a student,” Harvey said, adding that those who need to work more for financial reasons could always pick up extra hours off campus.

But that doesn’t mean that hour caps would be without their problems. Harvey said the concern remains of students who have a “burning issue” they want to write about, but can’t get their message to the public through the newspaper if they’ve already worked 30 hours.

Exceptions for student journalists

At Indiana State University, the school limits students to 20 hours per week and has done so for years. Students are able to request to work more hours, up to 28. They used to be able to work as many as 37 ½ hours in a week with that request form, but the Affordable Care Act accelerated a decision to lower that number to make sure students focused on their education, said Tradara McLaurine, the assistant director of the university’s career center.

Every year during the budget cycle, there are conversations about whether students should be paid hourly and how to align them with the rest of the university. The compromise they’ve reached in the past has
been to make student journalists stipend-based employees. As ACA comes into play, the conversation has shifted more toward making sure they are paid fairly as they track their hours, said Rachel W edding McClelland, director of student publications at Indiana State.

“And many times I think administrators … go away saying, ‘that’s a really different scenario, so we’re going to make exceptions for them,’” McClelland said. “And that’s how we’ve kind of worked around it for a number of years, but this Affordable Care issue kind of pushes for the compliance to be in place, so I think everybody wants to try to comply with Affordable Care, so we’re re-examining.”

McClelland said she tells students all the time she wishes she could pay them what they’re worth, but like many student news operations, she simply can’t afford it.

Kent State University students are limited to a total of 28 hours for all campus jobs. Ami Hollis, associate director of the university’s Career Services Center, said they had been considering for a while changing the requirement from the previous limit of 32 hours per campus job. The Affordable Care Act seemed like a good time to make that transition and reduce the number of hours students work to make sure their focus stays on academics.

In benchmarking against other universities, Kent State found that it was the most liberal in allowing students to be paid non-hourly, Hollis said.

They took that as an opportunity to go through the process of requiring approval for non-hourly positions. Now, if a department wants to pay students non-hourly, it must substantiate the need to do so. This cut down on the number of non-hourly positions that exist.

Those that remained non-hourly employees, such as resident assistants and student journalists, are now told to track their hours anyway, and supervisors are to keep a record of how many hours students work to make sure their focus stays on academics.

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“That way if we get into a situation where we are audited … we can go back to the department and ask for the time cards or whatever their time-keeping method is,” Hollis said.

But Hollis said they haven’t decided if they will monitor whatever tracking system the supervisors create and maintain.

Lori Cantor, Kent State’s student media manager, notes that tracking student journalists’ hours is difficult given the nature of their job. Students don’t work in shifts and may work off site or in between classes.

“If student journalists go out to lunch together and they’re discussing a story, do you put that on a time clock?” Cantor said. “You’re consulting a professor in the hallway about a lede you want to write, do you put that on a time clock?”

ON THE DOCKET

PENNSYLVANIA — The U.S. Supreme Court decided it would not take up a school district’s appeal in a case against students wearing “I <3 boobies! (KEEP A BREAST)” bracelets in school. This ended the nearly three-year-long case after both the district and federal circuit courts ruled in favor of the students. The circuit court upheld the decision that schools cannot censor student speech about political or social issues simply because it “has the potential to offend.”

CALIFORNIA — A federal appeals court ruled in March that high school officials did not violate students’ First Amendment rights by asking them to turn their American flag T-shirts inside-out during a school-sponsored Cinco de Mayo event. The school had a history of racial tensions and faced threats of race-related violence. The students petitioned for an en banc hearing by the Ninth Circuit, in which the case would be reheard before a larger pool of the judges in the circuit. If it fails, they will appeal to the U.S. Supreme Court.

NEVADA — A public school’s uniform policy was deemed a violation of student First Amendment rights by a federal circuit court. Reversing the district courts decisions, the Ninth U.S. Circuit Court of Appeals ruled that the policy “compels speech because it mandates the written motto, ‘Tomorrow’s Leaders,’ on the uniform shirts.”

Another part of the controversial policy allowed students to wear uniforms of “nationally recognized youth organizations such as Boy Scouts or Girl Scouts on regular meeting days.” The court found that the exemption was content-based and subject to strict-scrutiny review.

MICHIGAN — Names of expelled students are protected by federal student privacy laws, a district court judge ruled in January. A student requested his high school provide him with a list of all students expelled from the district since 2009. The school denied his request and he then sued the school citing it violated the state’s open meetings and public records laws. After the court ruled in favor of the school, a recent graduate of the school then contested the decision, but the judge upheld the previous decision in April.
Arnedt said if she were a student journalist, she’d track her own hours and come up with a consistent, reasonable framework for monitoring how many hours she worked. If those consistently add up to more than 30 hours per week, she recommends stating the case to the university.

“I think that if it shakes out that most people are working at least 30 hours a week, then I think there’s an argument,” that the university should be obligated to provide a health insurance option, Arnedt said.

But universities have some leeway in how they count hours. For example, to determine who is full-time in 2016, they would look at the 12 months of 2015 and average the hours worked — including how much or little students work over the summer. Students might not even reach that threshold of 30 hours per week, Arnedt said, but “they can’t just ignore you because they know you’re only going to be there for a few months.”

“You would like a definitive answer instead of hoping that no one finds you if you’re doing it wrong, but I don’t know that that’s out there yet.”

LAURA WIDMER, GENERAL MANAGER, THE IOWA STATE DAILY

Arnedt called it “premature” to come up with any sort of strategy at this point beyond self-tracking hours.

Bloom also said universities or student media offices will likely have to come up with a way to measure whether the journalists are working past the threshold.

He noted that many students already have health insurance, either through family plans or other options, and the act merely requires an employer offer insurance to full-time employees. Covered student journalists may decide to opt out even if it’s an option.

“What’s the likelihood that they’re going to decide to give that up and take the employer plan, I don’t know, but I think that’s sort of a question out there,” Bloom said.

Student journalists don’t get in the business looking for health care, Harvey said. “I don’t think it really occurs to anybody.”

Kanigel said if students were paid for every hour they’re working and if they were considered employees of the university, she believes they would likely fall under ACA requirements.

“But that’s not really the appropriate way of compensating the students,” or categorizing them, she said.

Categorizing student journalists as employees of their university raises a number of red flags. The question remains: Are student newsrooms independent news organizations or entities of the university? When they operate in rent-free university spaces, that line may be unclear, leaving their pay system unclear as well.

“And when that line is blurry, then I think questions like this become blurry as well,” McClelland said.

From an editorial standpoint, it’s much safer for student journalists to be considered employees of the student publication unit, McClelland said. Doing so would help maintain editorial distance.

As university employees, student journalists run the risk of facing questions about their ability to be unbiased if their wages are “at risk when they write a story the administration doesn’t like,” McClelland said.

Kanigel argues that it would be better to classify student journalists as independent contractors or freelancers.

“Publishing a student newspaper isn’t a core business function of a school — it’s a student activity,” Kanigel said. “It’s done primarily for the benefit of the students, not for the university.”

Student media wouldn’t exist without students, Harvey said, adding that this creates a unique situation for student journalists. The concern has existed far before ACA came into play.

“That’s the debate as to … are they considered university employees?” Harvey said. “Because we’re a public university as well, so that could create all sorts of things to be concerned about in terms of what First Amendment rights do university employees have?”

Harvey said the student media office is continuing to operate as it always has and — like many organizations — “we’re kind of just trying to figure out what’s going on.”

With anything new, there’s a period of time where everyone is figuring out how things will work, Harvey said, but the uncertainty is “frustrating.”

Harvey said he had hoped someone would have stepped in by now to clear things up.

For now, student journalists who are classified as university employees remain in a gray area. Widmer said the uncertainty makes her uneasy.

“You don’t know if anyone understands what a specialty niche we have here and that again, it varies from week to week, from day to day and definitely no two staffs are alike,” Widmer said. “You would like a definitive answer instead of hoping that no one finds you if you’re doing it wrong, but I don’t know that that’s out there yet.”
Legal Analysis

When it comes to social media, some old-school legal rules may not apply

In general, legal principles created with print publications in mind are also applicable to social media publishing — with some notable exceptions.

BY FRANK D. LOMONTE

The distinction between “social media” and just “media” has been narrowing for years, to the point where today it barely exists at all. It’s common for major news organizations to use platforms like Twitter to provide real-time updates of everything from police chases to the National Football League draft. More than half of all professional U.S. journalists now report “regularly” using Twitter and other “micro-blogging” platforms in their work.

Although social media seems like a routine presence in Americans’ lives, it is still a very new technology. The “granddaddy” of social-networking sites, MySpace, has been around only since August 2003. As a result, the law of online rights and responsibilities is still evolving. (A search of U.S. Supreme Court cases as of June 2014 finds zero opinions — none — using the word “Facebook.”)

Even though forums like Facebook feel very different from books, magazines or newspapers, writing on a Facebook page is still “publishing.” That means, for the most part, the same legal principles created for paper-and-ink publishing should still hold true on a smartphone screen.

This article will focus on a few novelties and twists about publishing on social networking sites — ways that old-school legal rules might not completely translate to Web 2.0 interactive digital media.

A kiss is not a contract. But a click might be.

Remember that line of really small print at the bottom of the social-media home page that said, “By clicking Sign Up, you agree to our Terms and Conditions” — the one you never bothered reading? That’s a contract. Even if you don’t read it, clicking “agree” when you create your social-media account — or just going ahead and using the service after being warned of the terms you’re accepting — can create a legally binding agreement.

The “terms and conditions” that accompany a social-media site are the ground rules for your relationship with that site. They address who can use the site, what shouldn’t be posted, and what uses of the site are permitted. (For example, many sites ban accounts under false names, or tell users they can’t operate multiple accounts.) Violating the site’s terms can result in having material yanked down from the site or even closure of the account.

In the early days of the Web, reading a website was just like reading a newspaper, and there was no question who owned the material on the site — the publisher. But in the Web 2.0 era, sites became interactive platforms for users to share their own material. Suddenly, it was no longer quite so clear who “owned” a comment written on a Facebook wall or a video shared on YouTube. That’s where terms of service become especially important.

There’s a widespread myth that Facebook, Pinterest or Instagram “own” your photos when you submit them. That’s an oversimplification.

“Ownership” means exclusive ownership. If Facebook truly “owned” the photos of its users, then Facebook could stop the original owners from sharing those pictures without Facebook’s permission (for instance, creating your own photo portfolio site). What Facebook and other social-media sites have is not “ownership.” They have a “license” that allows the site to reuse whatever you post.

A kiss is not a contract. But a click might be.

For example, Facebook’s Statements of Rights and Responsibilities states in part: “[Y]ou grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any … content that you post on or in connection with Facebook.” In plain English, that means Facebook does not have to pay to use its account-holders’ posts or photos (“royalty-free”), and can sell access to its users’ content to anyone else (“transferable”).

In the opinion of some privacy advocates, these licenses can go too far — especially when material is shared for purposes of targeted advertising.

Normally, a person’s name and photo may not be used without permission to imply endorsement of a product or service. But agreeing to the terms of a social-media site might be “permission” enough. The licenses claimed by...
social-media sites can be broad enough to cover commercial re-use of photos shared on the sites.

Facebook, the largest and most successful social-media site with more than 1.2 billion worldwide account holders as of the start of 2014, has become a target for privacy lawsuits.

In 2011, attorneys for Facebook users filed a class-action lawsuit in California accusing the social-media giant of misusing users’ faces in “sponsored stories” on the site without permission. The lawsuit ended with a negotiated settlement, with Facebook agreeing to pay $20 million in damages and adopting clearer privacy policies. It is risky to assume that even a “friends-only” photo will be considered “private” if the user has a list of friends in the hundreds. Once something is shared with 100 people — some of whom will probably be only distant acquaintances — any privacy claim has probably been waived. (However, it’s possible that other legal claims might apply — for example, if the school district had used fraud or computer hacking to gain unauthorized access to Chaney’s account.)

**Free to look, costly to copy**

Copyright law gives the makers of original works of creativity the exclusive right to reproduce, adapt and profit from their work — including work that is shared online. Journalists who want to republish material they find on social media need to consider whether they can get the owner’s consent, or if not, whether re-using the material would be a legally defensible “fair use.”

The SPLC.org website has an extensive Guide to Fair Use that explains the law in detail, but to summarize it briefly: Fair use is a defense to copyright infringement if copyright-protected material is republished in a way that (a) comments on the material, using no more than is necessary for purposes of the commentary, and/or (b) transforms the material into a brand-new piece of creative work (e.g., by parodying it).

To illustrate: For a sports story about an NCAA investigation of a college football program, it would be a fair use to republish a photo from a football player’s Facebook page that shows the athlete partying with sports agents. That the player is engaging in suspicious behavior potentially violating NCAA rules is newsworthy, and the photo is evidence of the behavior. However, if the story has nothing to do with the photo — let’s say it’s just a preview of an upcoming game — then it would not be a defensible fair use to simply pull a photo of the player from Facebook instead of shooting an original photo.

A website’s terms of service also come into play. Some social-media sites require users to accept limits on the off-site use of material from the site.

Sites such as Twitter actually encourage — within their own guidelines — reproducing material on external websites such as blogs. Twitter provides an “embed” feature that makes it possible to cause a tweet to display on a blog or

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**Is there such a thing as ‘private-ish’?**

When the director of technology for a school district in Georgia was asked to make a presentation about Internet safety, he did what he thought seemed logical: Browse the Facebook pages belonging to students in the district. He found what seemed like the perfect photo to illustrate his point about the potential for embarrassment and reputational harm in posting photos on social media: A picture of 17-year-old high school senior Chelsea Chaney in a bikini, posing next to a cardboard cutout of rapper Curtis “Snoop Lion” Broadus during a beach vacation. Audience members at a school-district assembly found the photo amusing. Chaney didn’t.

She filed suit in U.S. district court in Georgia, claiming that the technology director violated her privacy by using her photo at his seminar in a way that implied Chaney was involved in drugs, drinking or other illicit activities. A federal judge disagreed and, in September 2013, threw out Chaney’s case.

U.S. District Judge Timothy C. Batten ruled that, because Chaney had knowingly set her Facebook privacy settings to the most “open” setting possible — allowing “friends of friends” to see everything she posted — the photo was not “private.” Chaney gave up any claim for invasion of privacy when she willingly shared the photo in a way that made it accessible to potentially thousands of people, Batten decided.

Chaney’s experience is an embarrassing lesson for the rest of us. Once material is posted on a social-networking page, the law no longer will consider it “private.”

It’s unclear how the judge might have ruled if Chaney had used tighter privacy settings. It’s risky to assume that even a “friends-only” photo will be considered “private” if the user has a list of friends in the hundreds. Once something is shared with 100 people — some of whom will probably be only distant acquaintances — any privacy claim has probably been waived. (However, it’s possible that other legal claims might apply — for example, if the school district had used fraud or computer hacking to gain unauthorized access to Chaney’s account.)
website in a format similar to its appearance on Twitter itself. However, Twitter requires that those republishing tweets adhere to a set of standards such as faithfully reproducing Twitter logos without alteration.10

For news purposes, there should be no problem in republishing snippets from social-media postings that are newsworthy, or even the entirety of short posts such as 140-character tweets. For instance, when singer Whitney Houston was found dead in a Las Vegas hotel room in February 2012, reporters instantly turned to Twitter to capture how the music industry was reacting to the tragic news.11

Republishing a one-sentence Twitter tribute as part of a news story about fan reaction to the death would not be copyright infringement, for several reasons. First, a phrase of six or seven words probably lacks the required degree of creativity and originality to be protected by copyright in the first place. And second, quoting a tweet to demonstrate how people are reacting to a news event “re-purposes” the statement in a new context, which qualifies for the defense of fair use.

Likewise, there should be no copyright issues when linking to material on another site. Copyright law restricts treating the creator’s content as if it is your own – e.g., republishing a story on your site as if it came from one of your own writers. But when you link to a site, you are simply directing readers to the original article, not “republishing” it. Simply linking to other creators’ work should not be confused with copyright infringement.12

Don’t fall into the trap, however, of assuming that the creator of a photo or article “waives” copyright protection by sharing the material on social media. Just as articles on CNN.com are the cable network’s copyright-protected property, so are photos, artwork, blog posts and other works of creativity shared on social media. The practical risks of “borrowing” material from a Facebook wall may be less than “borrowing” it from CNN.com, since Facebook wall postings rarely have monetary value to be worth suing over. But that doesn’t mean social-media postings are always free to reuse.

It is a still-unsettled legal question whether one website can be held responsible for linking to libelous material on an unrelated website. Because there is no certain legal answer to this question, editors should always read the stories they link to, and try to direct readers only to reputable websites.

**Discipline goes digital**

A high school sophomore in Hannibal, Mo., was chatting online with friends about his anger over a recent breakup. The chat turned to violence. The student talked about having a “hit list” of people at school that he would “have to get rid of” if he could borrow a .357 Magnum, naming five specific people he’d target.

One of the friends on the chat was worried that the messages might be serious and told an adult, who emailed a transcript of the chat messages to the principal at Hannibal High School. The student — referred to in court papers only by his initials, “D.J.M.” — was taken into custody by juvenile authorities and hospitalized for a month in a psychiatric institution.

D.J.M.’s parents sued the school district, claiming that punishment for off-campus messages on social media — ones that D.J.M. testified were meant as a joke — violated the First Amendment. But a federal district judge dismissed the case, and the Eighth Circuit U.S. Court of Appeals agreed.13

The take-away from D.J.M.’s case and similar cases across the country14 is that jokes about violence don’t “translate” on social media. If students talk online about harming people at the school, especially if they threaten specific people and appear to have access to weapons, the courts will not step in to protect that speech even if it turns out to be a misunderstood joke.

Federal courts are struggling to figure out how much jurisdiction schools should have over what students publish when they’re using personal devices on their own time. Until recently, social media sites were inaccessible on school grounds during the school day. But once smartphones became widely available, students could “bring the Internet to school” in a pocket — and the clear line between off-campus and on-campus speech no longer seemed so clear.

While the Supreme Court has yet to address the issue, some principles are emerging from lower-court rulings. First, courts will be more protective of students’ ability to criticize school official than to attack fellow students.15 Second, off-campus speech does not lose its First Amendment protection just because someone is offended and complains about it.16 And third, courts almost never will second-guess school discipline if a student’s speech could be interpreted as hinting at school violence.

It’s not just students who are at risk of punishment for what the say about their schools on social media. Schools and colleges are increasingly trying to regulate what their own employees post.

After a University of Kansas journalism professor touched off a fierce backlash with a remark on Twitter harshly criticizing the National Rifle Association, the Kansas Board of Regents responded with a crackdown on all employees’ social media use.17 Academic-freedom advocates denounced the resulting policy, and the Regents slightly narrowed it in May 2014, clarifying that the policy would apply only to “social” media sites and not to academic or
Following the following

When a salaried employee creates something—a book, a drawing, an invention—as part of his job duties, that creation belongs to the employer (unless a signed agreement says otherwise). When that same employee writes a book, draws a picture or invents a device on personal time on a Saturday, that creation remains the employee's personal property. But what happens when the “creation” is a social media account where the writer mixes professional and personal posts?

Mixing personal and professional activity on social media is common. It can be as simple as a reporter who promotes her own stories on her personal Facebook page, or as complicated as a Twitter account that intertwines the personal and the professional—for instance, a sportswriter whose Twitter account handle is @HeraldBaseball_Bob.

Because of the marketing value of a social-media following, a handful of companies have sued their former employees over ownership of Twitter, Facebook or LinkedIn accounts.

The best-known of these cases took place in San Francisco in 2011. It started when blogger Noah Kravitz went to work for PhoneDog, which provides consumers with research and comparative pricing on cellphone plans, and built up a 17,000-follower Twitter presence under the Twitter name @PhoneDog_Noah. When Kravitz left the company in October 2010, he changed the account name to @noahkravitz but kept the login—and his 17,000 followers—for his own use.

PhoneDog sued Kravitz, claiming that the loss of 17,000 Twitter followers cost the company $340,000 in lost opportunities. PhoneDog’s attorneys compared “stealing” a professional Twitter account to stealing a customer list. Kravitz responded that that Twitter audience was his personal following, not the company’s, and that he was entitled to take that following to his next job.

In 2011, a federal district judge decided that PhoneDog could pursue a claim that the Twitter login for Kravitz’s account was a “trade secret” belonging to the company. The case ended in 2012 with a confidential settlement, so there is no telling how it might ultimately have been resolved.

There are huge unanswered legal questions about what happens when an employee’s job assignments include posting material on social media even beyond work hours and outside the workplace. For example, could the newspaper be responsible for a libelous tweet on the @HeraldBaseball_Bob account that Bob creates when he’s at home watching TV? Would it make a difference whether the post is about baseball—for instance, falsely accusing a ballplayer of using steroids—or about the restaurant where Bob ate lunch Saturday?

The courts haven’t yet answered most of these questions. But as a matter of common sense, the greater the employer’s involvement with the account—and the more the employee’s Twitter or Facebook activity looks like a work assignment—the greater the risk that the employer will be legally liable.

Because of the uncertainties, it’s a good idea for any employer (including a media organization) to map out the relationship in advance. A simple written agreement can avoid disputes if the employee leaves and wants to take his social-media account with him.

Many media outlets, both student and professional, are turning to “social media policies” to govern the online behavior of their staff members. The primary focus of these policies is on social-media activity on accounts that belong to, or might be interpreted by readers as belonging to, the publication itself.

While some degree of policing probably makes sense on “official” accounts of the publication—e.g., journalists shouldn’t be using those sites to float unconfirmed rumors that they wouldn’t feel confident publishing in print—it is much more problematic when employers start trying to regulate their employees’ off-hours social lives. Extreme cases of professional misconduct on social media, such as leaking the confidential details of an upcoming investigative story, might legitimately be punishable in the workplace. But it can be a managerial headache—and in some cases, even illegal—to get into the business of regulating minor online missteps.

Conclusion

The legal principles created by courts and legislatures in the days when “publishing” meant “paper” still apply, for the most part, when information is posted on social media. All of the same legal risks—defamation, invasion of privacy, copyright infringement—can arise when sharing material on Instagram or Twitter.
Student media organizations may want to consider policies clarifying the ground rules for social-media accounts that are an official part of the publication or station, such as who owns the account if the original creator leaves. As with student newspapers and broadcast outlets themselves, it's always the better (and legally safer) practice for students to police their own online behavior. Letting schools and colleges regulate what students post online invites abuse, either because of purposeful image-motivated censorship or because of misunderstandings when attempts at humor don’t "translate" for the ears of campus regulators.

Attorney Frank D. LoMonte is executive director of the Student Press Law Center.

Endnotes
1. Lars Willnat & David H. Weaver, "The American Journalist in the Digital Age" (Indiana Univ. Sch. of Journalism 2014) at 21, available at http://news.indiana.edu/releases/2014/05/2013-american-journalist-key-findings.pdf (last viewed June 8, 2014).
2. A user can form a legally binding contractual relationship with a website either by actually clicking a button indicating agreement ("clickwrap") or simply by continuing to use the service after being warned that proceeding deeper into the website means accepting the site's terms ("browsewrap"). See Ian Rambarran & Robert Hunt, Are Browse-Wrap Agreements All They Are Wrapped Up To Be?, 9 TUL. J. TECH. & INTELL. PROP. 173, 174 (2007) ("A click-through agreement is usually conspicuously presented to an offeree and requires that person to click on an acceptance icon, which evidences a manifestation of assent to be bound to the terms of a contract."
3. For example, the terms of use of Ask.fm provide: "You are not allowed to register on Ask.fm or use the site unless you are 13 years old or over." Facebook's Statement of Rights and Responsibilities also requires users to affirm that they are 13 or older, and also prohibits use by convicted sex offenders.
4. For instance, the Acceptable Use Policy of Pinterest.com spells out 10 categories of material that the site prohibits, including content that "is gratuitously violent or gory" or that promotes "self-harm, eating disorders or hard drug abuse." Note that, because these websites are privately owned, they are not bound by the First Amendment and are free - just like any retail establishment is free - to restrict what messages are displayed in their "place of business." See, e.g., Downing v. Abercrombie & Fitch, 265 F. 3d 994 (9th Cir. 2001) (ruling that surfers whose photos appeared in fashion catalog without their consent could sue under California law for misappropriation of their likenesses).
11. For example, in a widely cited 2000 ruling, a federal district judge refused to grant an order preventing Tickets.com from linking to pages on rival Ticketmaster's website, which Ticketmaster claimed was copyright infringement. See Ticketmaster Corp. v. Tickets.com, Inc., No. 99CV7654, 2000 W.L. 1887522 (C.D. Cal. Aug. 10, 2000). In another oft-quoted case involving Google search results, a federal court decided that just displaying "thumbnail" sized images from another website while linking to the full-sized images was not copyright infringement. Perfect 10 v. Google, Inc., 416 F. Supp. 2d 828 (C.D. Cal. 2006).
12. See, e.g., Wynar v. Douglas County Sch. Dist., 728 F. 3d 1062 (9th Cir. 2013) (finding no First Amendment violation when school disciplined student over MySpace chat messages that discussed a "hit list" of students he planned to shoot in a massacre planned to simulate one at Colorado's Columbine High School.
14. See, e.g., T.V. v. Smith-Green Cmty Sch., 807 F. Supp.2d 767 (N.D. Ind. 2011) (ruling that Indiana school district violated two students' First Amendment rights by suspending them for sexual humor in photos they shot at a slumber party and shared on Facebook and Photobucket).
18. For example, a federal appeals court ruled in 2013 that Washington State University overreached in issuing a professor a disciplinary write-up and denying him a promotion in retaliation for distributing a pamphlet that criticized the structure of the college's journalism and communications programs. The court decided that academic employees' speech is entitled to heightened protection even when they are speaking about matters relating to their own employment. Demers v. Austin, 729 F. 3d 1011 (9th Cir. 2013).
21. The National Labor Relations Board, which regulates private non-governmental employers, has penalized businesses for disciplining workers for complaining on social media about working conditions, if the complaints are meant to engage co-workers in addressing the problem. See, e.g., Hispanics United of Buffalo, Inc., NLRB Case 03-CA-027872 (Dec. 14, 2012) (finding that an employer violated the National Labor Relations Act by firing five employees who complained in a Facebook wall discussion about unfair criticism by one of their coworkers).
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