

STUDENT PRESS LAW CENTER

REPORT

SUMMER 2010 VOL. XXXI, NO. 3

INSIDE: Police ride-alongs offer great access, but present legal and ethical questions



Cutting back



Loss of funding presents college and high school media with challenges — and plenty of questions



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The Student Press Law Center Report (ISSN 0160-3825), published three times each year by the Student Press Law Center, summarizes current cases and controversies involving the rights of the student press. The *SPLC Report* is researched, written and produced by journalism interns and SPLC staff.

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The Daily 49er at California State University Long Beach and university police agreed to nullify a court order for information about commenters on the paper's website. Police had asked for the e-mail and IP addresses of comment authors.

A U.S. District Court in Wisconsin ruled state entities can sell the exclusive rights to webcast high school athletic events. A group of newspapers had argued the arrangement violated the First and Fourteenth Amendments.

Administrators at Albemarle High School in Virginia confiscated and destroyed copies of a student newspaper containing an editorial critical of the school's physical education program.

A new law in Florida prevents school districts from restricting students' and employees' First Amendment rights without their consent. It is unclear how the law might affect student journalists.

Florida Atlantic University fired the long-time adviser of its student newspaper, but editors will still be allowed to consult with him. The university said it wanted to move student media in a new direction.

A Wyoming judge dissolved a restraining order prohibiting two newspapers from publishing a leaked report about a college president. The judge held a federal student privacy law did not justify prior restraint against the press.

California expanded its student free expression law to include charter schools. Existing law gave protection to both public and private school students, but Orange County High School of the Arts stopped publication of its student newspaper, claiming it was exempt from the law.

And be sure to catch the latest news from the SPLC online:
www.splc.org
[facebook.com/StudentPress](https://www.facebook.com/StudentPress)

SPLC proudly debuts new and improved website

Regular visitors to the Student Press Law Center's website, www.splc.org, may understandably feel that they've stepped into an unscheduled episode of "Extreme Makeover."

The SPLC turned 35 this past year and, like many 35-year-olds, we started thinking more seriously about what we want to be when we grow up. We took note of those 35-year-old jiggles that needed tightening, and we resolved to show the world a more vibrant and youthful exterior that matches what's inside.

We hope that, when you take a look through the revamped splc.org site, you'll agree that the redesign – the first overhaul of the site in more than nine years – makes the website a more appealing place to linger and a more useful place to learn.

We've downplayed the formerly "cartoony" look of the old site to present a more sophisticated public face that welcomes lawyers and researchers as well as kids. Instead of cartoons, we want to show the world real faces of the many real people who benefit from the SPLC's services and value its existence.

The change is much more than cosmetic. The redesign was guided by lessons learned during the SPLC's 2009 strategic planning process, which included input from hundreds of stakeholders from across the country.

What we heard is that the SPLC needed to broaden its programming – and its image – beyond the core service that defines our identity: immediate attention to individual problems through our telephone and e-mail hotline.

The redesigned splc.org site responds directly to your input. The redesign is part of a larger effort to create a broader-based SPLC that we hope people will view not just as an emergency responder but as an integral part of learning and teaching journalistic skills and values. Some of the most engaging new features on the site include:

- Video Q-and-A's with the SPLC's Adam Goldstein addressing student journalists' most commonly asked questions, hosted on SPLC's new Vimeo channel.

- An interactive map that shows existing and proposed press-freedom laws across the United States – along with tutorials about how to get student press-rights legislation passed in your state.

- A new "get involved" section that includes public-service ads promoting the

SPLC, handout materials and "talking points" for surrogate speakers, a website badge, and other ways SPLC's supporters can spread the word about our work.

- "Learning from the Headlines" lesson plans that will be regularly updated with classroom talking points keyed to news developments that raise larger issues about the law of gathering and publishing news.

- A series of updated educational guides, available for classroom use in PDF form through scribd.com.

- Reader-friendly, subject-indexed guides addressing the most common questions posed on the SPLC attorney hotline.

- New reader comment functionality encouraging feedback on SPLC *Report* magazine stories.

The redesign was made possible by a generous grant from our friends at the Philip L. Graham Fund, <http://plgrahamfund.org/>, and by an amazing creative team – Anjan Shah, Yaser Amed, Lori Porcher, Brockett Horne, Erika Anderson, Kenya Sullivan, Keith Strigaro and Pritti Bhavsar – organized by The Taproot Foundation, <http://www.taprootfoundation.org/>. We sincerely thank all of the participants for a terrific product that will strengthen the SPLC's ability to spread its message and reach new audiences.

We hope that you will make www.splc.org not just an occasional check-in when you have a legal problem, but a "required reading" destination that you will bookmark, frequent and share.

The fact that you are holding this magazine in your hands indicates that you understand the importance of a robust college and high-school press free from unnecessary censorship, and of continued access to the public records and meetings necessary to hold educational institutions accountable. Elevating those concerns on the public agenda requires bringing new readers and listeners into the conversation, and that is the overriding goal of the SPLC website redesign.

You can help us realize that objective by spreading the word when you like something you find useful or informative on the site – and, importantly, by letting us know at splc@splc.org if you are not readily finding what you need.

-By Frank LoMonte



PHOTO COURTESY OF BRIAN WOODHAM

Spill-bound students

College journalists at the Gulf fight for access to the front lines of the spill

BY KELSEY RYAN

When Zachary Goldstein, contributing writer for the *Florida State View*, traveled to Dauphin Island on the Gulf Coast to cover the oil spill for his first big assignment, he knew it wouldn't be easy. But he ran into more roadblocks than he thought.

Goldstein, a junior at Florida State University, drove to the island and passed the first guarded checkpoint without a problem, but he was later denied access when he tried to photograph another part of the beach. A security officer led him to the BP official who was in charge of the clean-up efforts on the island. Initially, the BP official agreed to let Goldstein have access to the restricted part of the island, but after Goldstein interviewed him about cleanup efforts, he changed his mind.

"After I had the interview, it was like a switch and flip," Goldstein said. "[The BP official] said 'Well, I'll have somebody escort you around the compound up here, but unless you want to take a ride in a sheriff's car, you can't go down to the west end of the island and get access to it.'"

The official told him it was a liability issue, but Goldstein

thinks otherwise.

"It just seemed like a big excuse... It seemed almost Big Brother-ish to a point," Goldstein said. But he wasn't willing to push the issue. "Being a student and having my whole future career in front of me, I didn't want to [go to jail] at this point."

Fighting for access

On April 20, the Deepwater Horizon oil rig exploded, killing 11 rig workers and setting off a gusher of oil from the underground well in the Gulf of Mexico. Journalists flocked to the Gulf Coast to report on the damage. Thousands of gallons of oil leaked into the water and washed up onto the coast every day, directly affecting coastal cities and the wildlife of the area in possibly the worst environmental disaster in U.S. history.

It's important for student journalists to cover events and issues that affect their community, said Jock Lauterer, Director of the Carolina Community Media Project at the University of North Carolina at Chapel Hill.

"Local media who are dug into the local power structure usually have better access than anybody else

because they're so local," Lauterer said. "That's one of the advantages of being a community journalist in a hard breaking news situation... It's equally important, if not more important, for student journalists to have access to news sites. After all, they're the journalists of tomorrow."

Student journalists across the Gulf Coast experienced varying degrees of access – some were completely turned away from officials and beaches, while others were able to get most of the access they needed.

"Local journalists – including student newspapers, of course – are the people who are most concerned about local issues," said Neil Ralston, Vice President for Campus Chapter Affairs at the Society of Professional Journalists. "They're the ones who do the most reporting on the issues that matter most to people in the area."

When Don Aime, editor-in-chief of *The Lion's Roar* at Southeastern Louisiana University, went to his first – and only – press conference at the Robert Command Center, the command point of oil spill response in Louisiana, the security was "unbelievable."

"You had to get checked in at the gate and you had to be escorted back to the compound, or the facility, and when you get out of your vehicles they tell you to keep all of your equipment pointed toward the ground or the sky... it was very much a controlled situation," Aime said.

The press conference was the only one *The Lion's Roar* staff was allowed to attend before the conferences became restricted to larger media organizations.

Although the cleanup is a coordinated effort by the U.S. Coast Guard and BP, Aime said BP is "the one actually running the show." When the newspaper called BP officials, Aime said they were given the runaround and kept being directed to a company website, which is now the only source they can use for up-to-date information and photos of the affected areas.

Aime said although the website was helpful, the lack of direct access was frustrating and directly affected their coverage of the spill.

"This is what we do, is to expose the news and get it out there for the public and when companies hold the door keys, they can quickly shut you down and deny you that access," Aime said. "It makes our job a lot more difficult because we basically have to report on the fact that we have nothing. I guess that's just par for the course."

Communication only through press conferences can be a form of media control for some journalists.

"The mechanism of a press conference is ideal in a fast moving emergency situation when you're trying to get urgent information out to a lot of people at once," said Frank LoMonte, executive director of the Student Press Law Center. "But what it's not ideal for is giving any depth of understanding or any opportunity for people to develop their own individualized stories. Having occasional group press conferences is not a substitute for making yourself available for more in-depth interviews. In a typical press conference setting, you're lucky if you get to ask two questions and then you're done. If you're a journalist who's trying to develop an enterprise story or an investigative piece, that's just not enough access for you."

Claire Regan, an ethics fellow for the Poynter Institute and associate managing editor for the *Staten Island Advance*, said that it's unjustified if BP is restricting access.

"That's not a good way to handle what is essentially a public



Opposite page: Tar balls litter the beaches of Alabama's Gulf State Park in early July. Above, workers attempt to clear oil from the shores of Navarre Beach in Florida. Below, boom is placed in an attempt to protect vulnerable portions of Florida's Pensacola Bay.

PHOTOS COURTESY OF ZACHARY GOLDSTEIN.





relations crisis,” Regan said. “Student journalists should not be deterred. They should forge ahead and demand the same access.”

Students at *The Oracle*, the student newspaper of University of South Florida at Tampa, said most of their oil spill coverage revolved around USF researchers who were studying its effects. The students were able to get some interviews and stories, but lately, researchers have been less eager to disclose what they’re finding unless they hold a press conference.

“Whenever we’ve gone out we’ve asked what they’ve found so far and what the preliminary results of their research are, the answers have been the same every time: ‘We’re not ready to discuss that yet,’ and basically it’s because they can’t,” said Brittany Cerny, staff writer for *The Oracle*.

Cerny said she wasn’t sure if the researchers can’t discuss it because they were told not to by BP or other officials, or if they just don’t want to announce misinformation.

Trying new approaches

Students covering the spill in less affected areas, like Alabama, were able to gain greater access to beaches and cleanup areas.

Before the establishment of the safety zone by the Coast Guard, Brian Woodham, associate copy editor for *The Auburn*

Plainsman at Auburn University in Alabama, had little trouble gaining access to areas impacted by the spill. He said the public beaches he went to were open and that BP cleanup crews didn’t harass him when he took pictures of them working.

Woodham’s coverage focused on the affected areas in Alabama, but he traveled further west along the Gulf Coast in July. While there, he tried to gain access to one of the Vessels of Opportunity, boats operated by local fisherman to help with wildlife rescue, response activities and deploying containment and sorbent boom, a tube with filling that helps absorb oil.

Woodham would be required to take a four-hour Hazmat training class before he’s allowed onboard, but he had concerns it wouldn’t happen because the captain might be worried about possible repercussions from BP.

Woodham also tried to embed with the Coast Guard, but he said it would be difficult with major media organizations getting priority. At press time, Woodham was still waiting to hear back from the Coast Guard.

Disproportionately impacted

When the Coast Guard announced in late June that it was enforcing a new “20-meter safety zone,” journalists lost even

Preparing for the reporting environment of an environmental disaster

Covering an environmental disaster can be difficult for student journalists – not only do they have to work on nailing a really great story, but they have to consider everything from personal safety to dealing with emotionally traumatized sources.

Journalists should not forget the basics when they are in a stressful scenario, said Meg Spratt, director of Dart Center for Journalism and Trauma’s West Academic Program in Seattle.

“In times of trauma, some of the basic reporting things that we learn but can forget in stress situations are crucial,” Spratt said. “Like being very clear about who you are and who you’re reporting for and how the information will be used so people can be in control if they want their interview used.”

Ann Peters, director of Development and Outreach for the Pulitzer Center on Crisis Reporting in Washington, D.C., suggests having a set of guidelines for dealing with disasters and for individual journalists to take time to think about how they would cover a disaster. She said that a key focus at the Pulitzer Center is showing respect for individual human dignity and minimizing harm.

Journalists need to think carefully in terms of the boundaries between journalistic pursuit and individual rights to privacy, and stressed the importance of being flexible in methodology, Peters said.

“Depending on the situation, you might plan it one way, but once you get there you think, ‘Hmm, it’s not going to work that way’... So be open-minded about understanding or trying to understand what is going on and it might not play out the way you had envisioned,” Peters said.

Spratt said one aspect of covering a disaster focus-

es on how a reporter handles seeing difficult things and knowing his or her own reaction. Another focuses on the physical safety of a reporter, such as the need for protective gear.

“I think it’s really fairly common to go into a physically hazardous area and not be prepared because we’re trained as reporters to just go in and not think about it ahead of time,” Spratt said. “But you’re going to be a better reporter if you take care of yourself better and be able to get the story.”

Peters said to compare what officials are saying on different levels as a way to crosscheck stories between the local, state and national levels, and that student journalists should not be afraid to ask tough questions.

“As a younger journalist, a person might be less confident, so I think it’s not about being cocky but being sure and getting your facts and information beforehand as much as possible,” Peters said. “Or if you’re unclear about what they’re telling you, just ask them again. Don’t be afraid as well to push, to push them to answer or to clarify.”

Spratt and Peters both encourage journalists to do as much research as possible before going into the field and to really listen to sources.

“Listen carefully and do not go in with preconceived ideas about what your story is going to be or what people are going to say,” Spratt said. “Let people talk, respect their wishes if they don’t want to talk to you but give them an opening to reach you later if they decide they want to talk. Really handing some control over to the sources so that they feel as comfortable and safe as possible telling things to you.”

Resources: www.dartcenter.org & www.pulitzercenter.org



Attempting to keep the beaches clear, students at Florida State University and community volunteers clear oil-soaked sand from the beaches of Pensacola, Florida. PHOTOS COURTESY OF ZACHARY GOLDSTEIN.



more access to certain affected areas. Photos could no longer be taken of the damage up-close and many clean-up workers declined to talk for fear of losing their jobs. Violation of the safety zone could result in a \$40,000 civil penalty and class D felony.

The Coast Guard later revised the policy to say that credentialed media could have access as long as there were no safety concerns in the area.

The Coast Guard and BP's media relations did not return multiple calls for comment for this story.

It's harder for student media and small community papers to deal with restrictions and fees because they don't have as many financial resources as large media corporations, Lauterer said.

"Just the threat of a lawsuit or libel suit is enough to scare some small publishers just because there's not the sort of fall-back, deep pockets financially," Lauterer said. "That's very troubling, that would really bother me. Such fines would put a chilling effect on my coverage if I were a news manager of a student paper."

Lauterer said fewer restrictions on media access would be a better option in the Gulf Coast.

"The public's right to know is not served by overzealous regulation and student journalists are actually getting the wrong message when they're being told 'you can't cover this story' or 'you have to work extra hard,'" Lauterer said. "That would tend to make me pretty cynical if I were a student journalist denied access to a news site. So I think that's something that ought to be contested and sounds like a very real issue to me."

However, Regan said that restrictions on access are sometimes justified.

"If it's a safety issue, then it's justified," Regan said. "Sometimes journalists are held back [from crime scenes] for good reason because they could be in danger if they get too close. If that's the reason, then it's fine. If there's another reason, like to restrict or control information, then that's not always a justified reason."

There are multiple reasons why student jour-

nalists sometimes don't have the same amount of access as professional journalists from officials, said Tom Rosenstiel, Director of the Pew Research Center's Project for Excellence in Journalism.

"I would hope that [officials] wouldn't go out of their way to freeze out students, but realistically [they] do make choices. It's happened for two reasons, one is that officials have decided that the press is something that they want to control rather than something that they want accommodate."

Rosenstiel said that another reason is because there's a higher volume of media asking for information and officials are prioritizing media based on the number of people that media can reach and how influential audiences are.

"For better or for worse, younger audiences are less influential," Rosenstiel said. "Student journalists are reaching students. Students don't vote. Students are not decision makers in households, so I think there's an element of a practical decision. I think it's sad a little bit because we all owe an obligation to educate the next generation [of journalists]."

However, Rosenstiel said that in the history of journalism, ingenuity usually trumps resources.

"There are ways, if you're sharp, to imagine different ways to get at stories," Rosenstiel said. "But it's also true that resources usually buy you time, resources buy you experience, resources can get you to places that are otherwise hard to get to. I've seen scores of instances where someone climbed below the radar, who's clever, and can get to stories that the establishment guys would never think of."

For now, the frustration of limited access has made some student journalists more passionate about getting answers and spreading information about the oil spill.

"Future generations need to have as much access to as much media as possible for the 2010 oil spill," Goldstein said. "The Gulf Coast is never going to be the same and it's going to be years, from an ecological standpoint, until things start restoring themselves. It's very disheartening, it's sickening, but at the same time, it's something that has produced a very strong conviction in me to do this." ■



“People need to know that the power of **good, honest reporting** and a little digging, as **uncomfortable** as the digging might be, can really just **turn up** a lot of good things.”

Nicole Leonhardt
Columbia College journalism graduate

Seeking sunlight for scholarships

Journalists fight FERPA as they try to access information on award distribution

BY KELSEY RYAN

College isn't cheap, and tuition rates just keep increasing.

According to the Project on Student Debt, an initiative by the Institute for College Access & Success, college graduates in 2008 had an average of \$23,200 in student loan debt, and that amount is only expected to rise with levels of unemployment for 2009 graduates at 10.6 percent.

With such a significant price tag, scholarship money is more important than ever, and journalists from the college and professional ranks are investigating whether this money is going to the right people and why.

Some journalists have found that when it comes to scholarships, it's not a matter of financial need or academic qualifications, but of who you know. But getting at that information has required surmounting some freedom-of-information roadblocks.

Colleges that won't release names of scholarship recipients may both breaking open-records laws and concealing wrongdoing in their distribution of student aid, said David Cuillier, Freedom of Information chairman for the Society of Professional Journalists and assistant professor at the University of Arizona's school of journalism. Schools that have recently faced this issue include University of Central Arkansas and Northwestern Oklahoma State University.

“There's a good chance they're just hiding cronyism,” Cuillier said. “It's not fair to the other students who didn't get the money when they deserved it, and some slacker rich dude's kid gets the money. Some big donor, some friend of the president gets it instead... That's why students should care: because it's just not fair.”

Students at Columbia College in Chicago were successful in their search for the names of students who received tuition waivers from members of the Illinois legislature after submitting a series of requests under Illinois Open Records law and making phone calls to Illinois state legislators. The students did their work as part of a journalism class with Suzanne McBride, associate chair of the journalism department at Columbia College.

McBride had been told about the tuition waiver from another reporter, but few people knew about the program, let alone how to be awarded the waiver, she said.

The students worked throughout the fall 2009 semester and used a publicly available database from the Illinois State Board of Education to find the names of the scholarship recipients. Then they contacted all 177 Illinois lawmakers and questioned them about the scholarships and how they were distributed. Student recipients were also contacted and asked about their experience.

“We did hundreds of interviews to get the most accurate information that

we could,” said Nicole Leonhardt, now a graduate of Columbia College.

Students said what they found seemed suspicious.

Leonhardt said they discovered through interviews and public documents that students whose family members had donated to lawmakers' political campaigns had received scholarships, while other students who were awarded the scholarships were asked to volunteer in lawmakers' offices or march in parades as campaign personnel.

“You would get all of these suspicious, little red flags, like a student shared the same last name as a lawmaker in a different area and you'd notice some kind of relation,” Leonhardt said. “The campaign donations were a big one. There was one student where the mother gave \$15,000 to a lawmaker and then this girl gets a four-year ride to school. Kind of suspicious.”

The lawmakers gave out approximately \$12.5 million in tuition waivers in 2007-2008 and \$13.5 million in 2008-2009, Leonhardt said. The students found through documents and databases that the combination of state budget cuts and tuition waivers forced the schools to increase the cost of tuition for other students.

Leonhardt said that record requests were helpful when some lawmakers refused to talk, which increased the amount of information they were able to gather.

Although the tuition waivers still exist, fewer lawmakers are participating.



From left to right: Columbia College students Shawna Lent, Stacey Alletto and Karlie Baker prepare for their next round of investigative interviews; students walk on the green in front of UCA's Main Campus; Columbia College teacher Suzanne McBride instructs her journalism class; the city of Alva, Oklahoma's taxes fund the NWOSU discretionary scholarship.

PHOTOS COURTESY OF SUZANNE MCBRIDE, UNIVERSITY OF CENTRAL ARKANSAS AND BECKY MCCRAW.

"A lot of [lawmakers] are just saying that until [Illinois is] in a better financial state and until other lawmakers are more honest about it, they can no longer continue," Leonhardt said.

Leonhardt said that the articles the students wrote helped publicize the fact that the tuition waivers existed.

"People need to know that the power of good, honest reporting and a little digging, as uncomfortable as the digging might be, can really just turn up a lot of good things," Leonhardt said.

The Illinois students who received tuition benefits signed FERPA waivers, and in doing that, allowed access to their information. But not all journalists are able to do this type of investigative work into scholarship distribution because of the barriers set up by the Family Educational Rights and Privacy Act, a federal student privacy law.

For Helen Barrett, a journalist at *The Alva Review-Courier*, access to scholarship recipient names became an issue after Northwestern Oklahoma State University refused to release the names, citing FERPA.

The scholarships, which are funded through an Alva city sales tax, total nearly \$214,000, and are an incentive to bring students to the area. The university made an agreement with the city in 1999 to disclose the names of recipients, how much each recipient was given and why they were chosen to receive the scholarship.

Barrett said she believes the secrecy began after she wrote about the discrepancies among financial awards given to students, primarily incoming valedictorians and athletes, in articles published in January 2010.

Roger Hardaway, an Alva city councilman and professor of history at NWOSU, protested the new lack of disclosure at a city council meeting in June 2010.

When he requested to view the scholarship list from the university, his request was granted. However, when he requested a hard copy, he was told that providing him with it would be a violation of FERPA.

Hardaway said that City Attorney Rich Cunningham, husband of NWOSU President Janet Cunningham, told him that he could be cited for violating the federal privacy law if he shared the information with someone other than a council member.

The Student Press Law Center sent an open records request to the University Relations Department at NWOSU on June 22 for the names of "recipients of the Alva city tax scholarships for the years 2009 and 2010." Associate Vice President for University Relations Steven Valencia responded, saying the records are student education records and protected under FERPA and that the confidentiality of student records is also supported by the Oklahoma Open Records Act. NWOSU officials did not return multiple calls for comment.

Joey Senat, associate professor of journalism at Oklahoma State University and member of the Board of Directors for FOI Oklahoma, an organization that supports individuals and organizations working toward greater access and open records, said that the university's sudden refusal to disclose the names looks like it's trying to hide something.

"Universities certainly use FERPA as a smokescreen and it seems more often that when someone asks for a record from a university they say 'no, we can't, it's under FERPA.' It's being used far more broadly

than the law was intended," Senat said.

He added that since there are no requirements or criteria to receive the scholarship, there are questions of preferential treatment.

"If it's strictly a discretionary fund, it really opens the door for favoritism and some questionable distribution of the money," Senat said. "That just seems counterintuitive to the way government should operate."

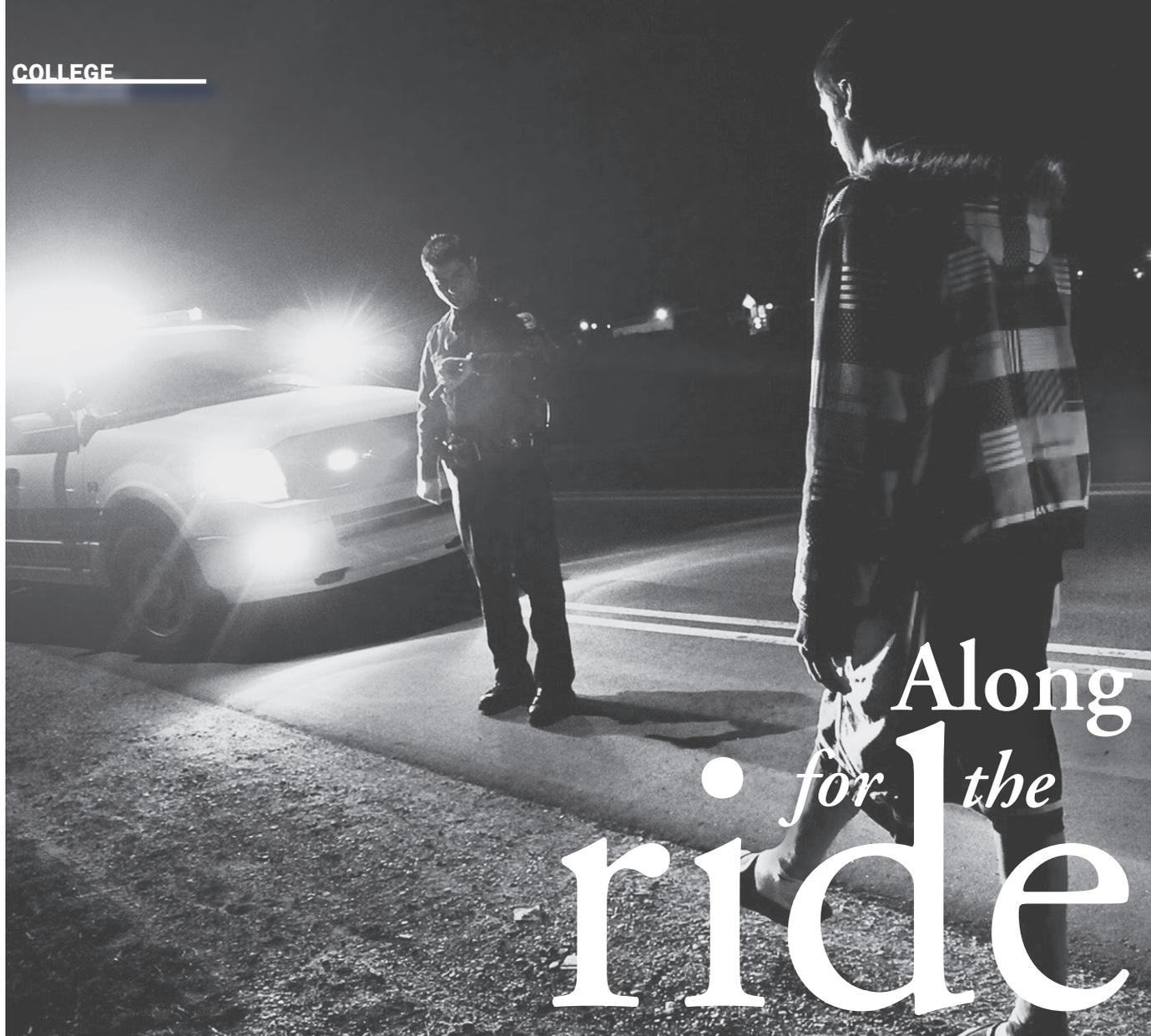
In July, Hardaway said that the president of NWOSU submitted a request to the Department of Education for an opinion on whether to release the names of the scholarship recipients and the college is still waiting for an answer.

SPJ's Cuillier said that the Department of Education doesn't help when journalists are denied access because of FERPA.

"The Department of Education is all screwed up," Cuillier said. "FERPA needs overhaul, it needs to be redone and the Department of Education needs to be taken out of the mix. They're pro-privacy to the point of being absurd, to the point of saying scholarships need to be kept secret."

The Department of Education has also recently been involved in an open-records dispute in Arkansas, where the University of Central Arkansas declined to release the names of recipients of the presidential discretionary scholarship, a program which Debra Hale-Shelton, a reporter for the *Arkansas Democrat-Gazette*, said may total in the millions.

The newspaper was seeking the names of the recipients because some of the scholarships were suspected political favors, Shelton said, but they can't get a confir-



Ride-alongs present complex legal, ethical challenges for student reporters

BY SOMMER INGRAM

Dressed in grubby tatters of clothing with an unshaven face and disheveled hair, Bobby Longoria stood inconspicuously about 10 feet away from an undercover police officer in North Austin, Texas.

Longoria observed as a man approached the officer, who was waving a white towel and posing as a drug dealer, and handed him a wad of cash in exchange for rocks of crack cocaine. Within seconds, the tactical operations unit of the Austin Police Department emerged from the undercover vans stationed just out of sight to make the arrest.

Most student journalists who cover the police beat for campus media don't witness these kind of undercover operations with a front row seat, but Longoria, a reporter for the University of Texas' *Daily Texan*, said that was the key to getting an exceptional article out of the experience.

"I didn't just want to sit in a police car," he said. "The crack

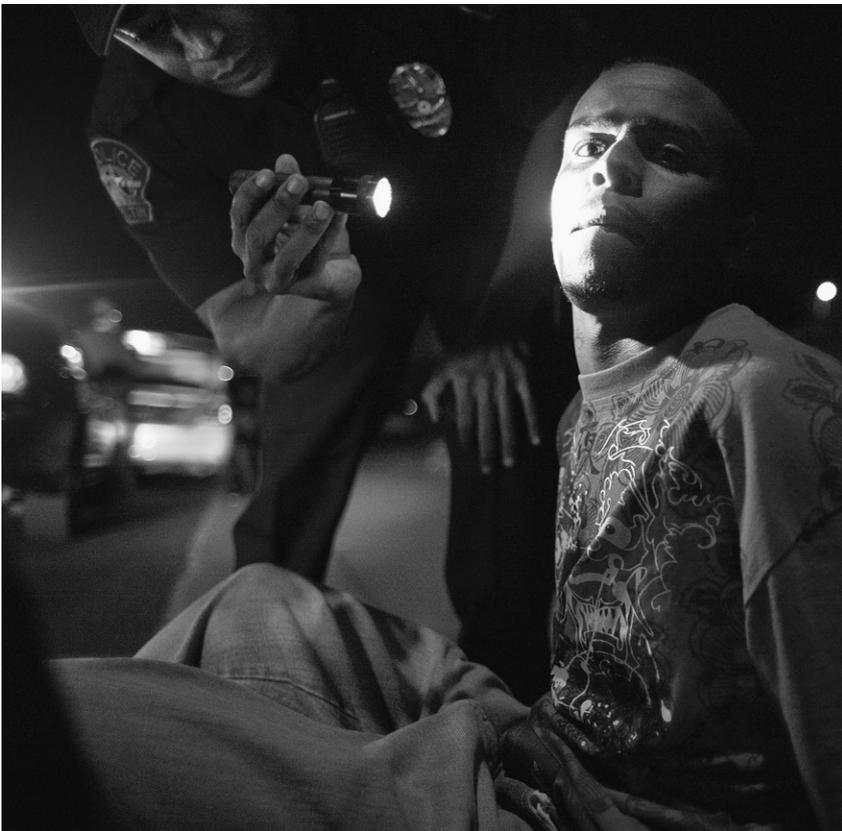
sting operation was very personal and gritty and dirty. It showed some of the dirtiness of Austin that not a lot of people knew."

When Longoria first requested a police ride-along with the APD, he was told that he would be accompanying an officer on his nightly rounds.

After requesting a more engaging opportunity, the department gave Longoria the option to tag along with Metro Tactical Operations, a specific unit within the APD that does reverse sting busts, operations where the officers pose as drug dealers instead of buyers.

"I was extremely surprised [at] how much access they gave me. In order to get the access to what I got, you really have to be persistent with them and get the most interesting ride-along," Longoria said. "You get to understand the system much more, and it can definitely provide you with one of your most powerful articles."

The undercover operation Longoria witnessed led to what he described as being an even more thorough and engaging investi-



Ride-alongs give student reporters and photojournalists a chance to document the day-to-day workings of a campus police department. This page: University of Texas student and Daily Texan reporter Bobby Longoria joined the Metro Tactical Operations unit of the Austin Police Department on a “reverse sting bust,” where officers posed as drug dealers in North Austin. Longoria’s experience resulted in not only extensive coverage of the bust, but an investigative follow-up article. Opposite page: Photojournalist Jeffrey Smith rode along with Central Michigan University police department on St. Patrick’s Day 2010. Smith documented Officer David Coffman performing a field sobriety test on a CMU student.

PHOTOS COURTESY OF PEYTON MCGEE AND JEFFREY SMITH.

gative follow-up piece to his initial article.

After probing an officer, Longoria discovered that the APD has its own chemistry lab that it used more than a decade ago to synthesize its own crack cocaine to use in sting operations. It was then that Longoria began to explore the ethics of police departments breaking the law to be able to enforce the law.

"It was a very powerful article," he said.

Despite the fact that Longoria did not go with the APD on any other sting operations after his article was published, he still urges student journalists to do police ride-alongs as a means of gaining a better understanding of police officers in a human capacity. But he stresses the importance of finding a creative angle.

"Definitely pursue a ride-along, but definitely try your best not to simply ride in a car," he said. "Riding in a car can be very boring."

Gaining Insight

Even for journalists who do a traditional ride-along in a squad car, securing an insider's view of the police department and its operations is still essential in developing more thorough stories.

"Anytime you immerse yourself in a profession or a culture that you're going to be covering, I think it's always good because you get to see at least a snapshot," said Ruben Rosario, a member of Criminal Justice Journalists. "I don't think you can adequately cover anything unless you make yourself familiar with how people do their jobs."

Criminal Justice Journalists is a national organization dedicated to helping primarily entry-level criminal justice beat reporters improve the quality, accuracy and depth of their news reporting on crime and law enforcement. Founded in 1997, the organization is composed of professionals who have covered the crime field for numerous years.

Lexie Krell, editor-in-chief of *The Daily* at University of

Washington, said that participating in police ride-alongs can help in breaking down barriers when it comes to officer-student relationships.

"I think some of the best stories come from it because that's where people start talking about the issues that really affect them, and that's where you start finding that common ground that makes for the stories that are really important to be told," Krell said.

As a former crime beat reporter, Krell said she established a relationship with the police department through other stories she'd written, and that they approached her about the possibility of participating in their ride-along program.

For Krell, the most useful insights did not necessarily come from the events that took place during the ride-along.

"What really helps the most in gaining that understanding of what they do, for me, has been the conversations," she said. "They [the officers] are still a resource for me to talk to today. Now they're a little more comfortable talking with me because they know I've taken that extra time to complete ride-alongs."

Along with providing insight for the journalist, ride-along programs can be beneficial for the participating police department as well because they give officers the opportunity to bring attention to issues the student body should be aware of.

"We are part of the university, and being a part of this community, we are obligated to provide to our constituents those services," said Commander Jerome Solomon of the University of Washington police department.

"With a police ride-along, a person can kind of get the full spectrum of what the police department does. There is always potential risk involved, but we see it as a service to the community."

Veneza Aguinaga, a senior officer at the Austin Police Department, said the insight provided into the daily efforts of even a

Officer David Coffman of the Central Michigan University police checks a driver's license using his in-car computer on March 17, 2010. Photographer Jeffrey Smith, a CMU student, participated in a ride along to document the university police's work during Saint Patrick's Day. PHOTO COURTESY OF JEFFREY SMITH.





Longoria was surprised by the amount of access he was afforded as a reporter on a ride-along. However, with access comes increased responsibility. Student journalists must be aware of citizens' right to privacy -- in 1999 the Supreme Court ruled that reporters can be held liable for violating the Fourth Amendment.

PHOTO COURTESY OF PEYTON SMITH.

single police officer is beneficial not only to the newspaper, but the college and community at large.

"It keeps students, staff and everyone else informed as to what's occurring, what some of the dangers are, what possible solutions are, as well as makes them more aware of specific issues," she said. "[The community] needs to be aware of the things that are happening within the university community at all times. I think, in general, everybody should pursue a police ride-along."

However, since ride-alongs typically have to be requested weeks — sometimes months — in advance, police departments have time to prepare their most professional police officers and use the ride-along as an opportunity to put the best face possible on the police department.

David Krajicek, a longtime crime journalist and co-founder of Criminal Justice Journalists, said this can be a handicap to the accompanying reporter, and cautions student journalists to view ride-alongs as simply an introductory snapshot of the police profession.

"You typically get a fairly rarefied look at cops selected by their bosses because they are personable," Krajicek said. "It is impossible to find a great deal of depth in these ride-along programs. They are purely anecdotal for your stories."

Krell stresses that journalists must act and report responsibly when reporting from a ride-along, but such an obligation to the police department should not outweigh a student's responsibility as a journalist.

"There is a balance between respecting that and understanding your duty as a journalist," Krell said. "Just because maybe they don't want you to report on something that happened during the ride-along, doesn't mean you won't. You still have a duty, but espe-

cially with a crime story, that line can be difficult to find."

Legal Boundaries

Maintaining a citizen's right to privacy can become an issue that blurs the legal line for college journalists on ride-alongs — and one journalists should be keenly aware of.

The Supreme Court ruled in the 1999 case *Wilson v. Layne* that news organizations and reporters can be held liable for violating the Fourth Amendment's ban on unreasonable searches and seizures if they accompany law enforcement officers into a private home or onto private property, regardless of whether the officers give their permission.

Writing for the unanimous court, Chief Justice William Rehnquist said that the Fourth Amendment "embodies centuries-old principles of respect for the privacy of the home." The court held that allowing news media into such a private space without consent is unconstitutional, effectively expanding upon a previously underdeveloped section of the law.

"Ride-alongs are problematic in many ways, because once you leave the public streets and follow the police onto private property, there's always a possibility that the journalist can be held responsible for anything that happens," said Hugh Stevens, a lawyer specializing in First Amendment and media issues at Everett, Gaskins, Hancock & Stevens LLP in North Carolina. "Basically, what the Court ruled in this case is that police don't have the authority to waive the constitutional rights of the people's homes or businesses they're entering into."

Because citizens often don't distinguish between who is a police officer and who isn't, Stevens said the best way for journalists to protect themselves is by staying out of private places during a



Daily Texan reporter Longoria and staff photographer Peyton McGee had the rare opportunity to follow the tactical operations unit of the Austin Police Department. Longoria said participating in a ride-along allowed him to view the police officers in a human capacity, and enhanced his police coverage. PHOTO COURTESY OF PEYTON MCGEE.

ride-along. The police officers may have a search warrant or the legal right to enter private property, but such rights are not automatically conferred upon the accompanying journalist, according to the Supreme Court.

“The fact that the police give [their] permission does not clothe the journalist with any kind of immunity,” Stevens said. “The law basically says that if the person or persons actually in charge of the premises consents, then you are probably OK. But in many circumstances, determining who has the authority is extremely problematic.”

Mike Hiestand, an attorney for the Student Press Law Center, said that beyond the Supreme Court’s ruling in *Layne*, journalists should understand that privacy boundaries must be respected.

Additionally, Hiestand said it is imperative for student journalists to commit themselves to the best ethical practices while participating in a ride-along, especially regarding on-and off-the-record commentary.

One of the best ways to avoid controversial ethical calls is to establish a clear understanding with the police about what will and will not be on the record prior to the ride-along. Talking to the officer before the ride-along and expressing the desire to go on the record as much as possible will lessen the likelihood of confusion, Hiestand said.

“It is important to make sure boundaries aren’t crossed in terms of if the police want to talk with you off the record about certain things,” he said.

“Once they see you as a confident, credible reporter who is looking to convey important and newsworthy information accurately, you will get the benefits of such an extended opportunity to get to know one another.”

Reporting the Truth

When Shannon McDonald, then a student journalist at Temple University, went on a ride-along with Philadelphia’s 22nd police district in January 2009, she quickly found that her ethical struggle would come not from whether to report on secret op-

erations or citizens’ privacy, but from the behavior of the officers themselves.

McDonald, who was in a class called Multimedia Urban Reporting Lab that assigns students to neighborhoods around Philadelphia, said she went into the ride-along with hopes of gathering statistics about the neighborhood and viewing it through the eyes of the police officer.

While McDonald did gain insight about how the officer sees the neighborhood he patrols, it wasn’t quite the insight she expected.

The ride-along took a different turn rather quickly, she said, as the officer began using derogatory language in reference to the residents—including racial slurs.

“He, quite frankly, didn’t have a lot of nice things to say about the neighborhood and the people who lived there,” McDonald said.

“But I spent a few hours in one car with one cop in one district. So it was a portrayal of what he sees, but certainly not what happens in Philadelphia every day.”

After her article was published on the MURL website, McDonald endured vicious backlash from the community and police department, especially after the officer who was the subject of her article was temporarily fired.

“For me, this was a crash course in everything that could potentially go wrong,” McDonald said. “My goal was just to put out there that this is the experience I had on this ride-along. It wasn’t a cop chasing down a criminal, it was just a very average, honest view of what this officer does on a daily basis.”

Despite the ensuing hostility, McDonald never doubted that she made the right choice as a journalist and still feels that ride-alongs are a valuable experience for every student journalist.

“If I had made the decision to leave out those comments and to leave out his attitude, it would have been an almost fictitious story,” she said.

“In my situation, to have not reported that wouldn’t have been journalism.” ■

Winning the battle, losing the war

Three years later, former *Viking News* staff voices frustration with settlement

Although it has been three years since Ocean County College settled a First Amendment lawsuit brought by three student journalists, former staff members claim most of the settlement terms were never met.

After Karen Bosley was fired from her position as adviser to the student newspaper, *The Viking News*, in December 2005, students Alberto Morales, Scott Coppola and Douglas Rush filed a lawsuit against the university claiming their First Amendment rights had been violated and calling for the college to reinstate Bosley as adviser.

The settlement terms laid out several requirements, most notably Bosley's reinstatement as adviser and the creation of a Student Media Advisory Board composed of leaders of student media on

However, the settlement called for Bosley to be a member of the media board, and she was not notified of or invited to any meetings up to her second dismissal at the end of the 2009 school year.

Bosley recently made a public records request for the minutes or agendas documenting any board meetings held since the time of her dismissal, but the college has produced no documents.

Bosley believes the newspaper staff's investigative journalism—primarily directed at OCC President Jon Larson and his administration—is what got the *Viking News* in trouble in the first place and is also the motivation behind the administration's termination of her contract.

Attempts to contact the college were directed to Tara Kelly, vice president of college advancement at OCC, who did

was there, a lot of us sacrificed our time, our jobs, our families, sometimes even classes, in order to make sure we fulfilled the ultimate goal of telling people what's going on in this college. Everything that used to be right at *The Viking News* is wrong now."

However, spring 2010 news editor Bil Facciponte wrote in an editorial that the paper has received great reviews from students and faculty, and that it continues to be written "by the students, for the students."

He also criticized the former staff members for continuing to inject themselves in the paper's business.

"Why they feel compelled to make any judgment or even be concerned with the current state of the newspaper is beyond me," Facciponte wrote.

“All of this began because we wrote *stories*. We were doing **hard, investigative work**, and I was doing it because I saw there was a problem that needs to be solved.

Alberto Morales
former *Viking News* editor-in-chief

campus, faculty advisers, other student body representatives, and a member of the local professional media.

The board's sole function would be to approve budgets, select editors-in-chief of the student publications and act as a resource to student journalists, according to the settlement. Since 2007, when the agreement was reached, Bosley has been fired again and the advisory board has been created in name only, she said.

"The settlement established a broad framework for who's to serve and how they're appointed, etc.," Bosley said. "It didn't establish the day-to-day rules for the board. The president says to people that we have a media board, but they've never had a meeting; they've never picked an editor."

When Morales obtained legal representation to attempt to enforce the settlement agreement, a college attorney insisted that a board exists and has been performing its intended functions.

not return multiple calls for comment.

Morales, a former Student Press Law Center intern who served as editor-in-chief at the time of the controversy, said he and his staff worked to expose the corruption they saw happening at OCC.

"All of this began because we wrote stories," he said. "We were doing hard, investigative work, and I was doing it because I saw that there was a problem that needs to be solved. Ultimately, none of that got solved."

Since a new adviser to *The Viking News* was appointed and new editorial leadership has been established, Morales has seen a drastic change in the newspaper. *The Viking News*, a newspaper whose content once relied heavily upon investigative reporting and hard-hitting news, has now become what Morales calls a PR sheet for the administration.

"It's not a student paper anymore. Ultimately the lawsuit was trying to prevent the death of *The Viking News*. But it's dead," Morales said. "When I

Bosley is still pursuing a separate lawsuit she filed against the college on the basis of age discrimination and retaliation.

"[Other advisers] need to fight censorship wherever and whenever it happens, and they need to be more vigilant than we were because we didn't know we had to be in seeing to it that court orders are obeyed," Bosley said. "But I think we fought as hard as we could."

The newspaper's current adviser, Garry Shaffer, did not respond to a request for comment.

Although the students won the court case, Morales feels that they lost the larger battle.

"We had an amazing case," he said. "When you look at the facts, look at the case, we won. But none of those things [in the settlement] were imposed, so in the end we really lost. It was never about money—it was about protecting student media and the rights of any journalist."

-By Sommer Ingram



Editors at Virginia Tech fought to keep funding after controversial comments

BY KELSEY RYAN

Journalists are trained to value and defend freedom of speech for everyone, even those with extreme views whose opinions may offend listeners. But when speakers use the student media to mock or criticize minority groups, student journalists have faced backlash from their campuses that can put college financial support at risk.

The dilemma facing student editors played out most recently at Virginia Tech's student newspaper, the *Collegiate Times*, which faced a threat to its university funding because of online reader comments that were deemed offensive.

After months of discussion about the *Times*' anonymous online commenting system, a school governance commission recommended that student media have its contract with the university discontinued, which could have resulted in the loss of office space and \$70,000 in funds.

In a letter dated Feb. 8, Michelle McLeese, chairperson for the Commission on Student Affairs (CSA), wrote that the commission enacted a verbal resolution asking the university to non-renew the financial contract with Educational Media Company at Virginia Tech (EMCVT), a non-profit organization that oversees student media.

According to documents provided by the *Collegiate Times*, the

CSA also discussed cutting off all university-subsidized advertising in the *Times* by student organizations until the reader commenting policy changed.

"It would have been pretty devastating," said Kelly Furnas, who was editorial adviser for EMCVT during the controversy. "That \$70,000 directly subsidizes student media divisions that can't support themselves through traditional models."

Furnas said the literary magazine and the radio station would have been hit hardest by the cuts.

"Ironically, the newspaper is the one organization that helps subsidize the other media organizations, as well as the professional staff," Furnas said.

McLeese said the CSA was concerned that the newspaper's commenting system was not holding anyone accountable, and that some comments in the past had been "impersonating, libelous, hate speech and putting down other racial or ethnic groups." She said that once the commission found out that the resolution might breach the contract between EMCVT and the university, the CSA decided not to pursue it.

Defining "hate speech"

Hate speech can be very damaging to an individual, but if you suppress all speech in reaction to hate speech, you lose the oppor-

tunity for people to look more closely at issues and discuss them as a community, said Dennis Tarker, director of the Racial Justice Program for the American Civil Liberties Union.

“They always say that one of the best ways to sanitize something is to expose it to sunlight, and I think you could make an argument that one of the best ways to deal with something that is as harmful and hurtful as hate speech is to drag it out in the open and expose it to discussion and debate and serious consideration,” Tarker said.

Tarker said although there is no perfect answer to how student journalists should handle hate speech issues on their campus or on their websites, he encourages them to promote dialogue. He is uncomfortable with the idea of completely cutting off commentary from online users in reaction to hate speech.

“That’s one of the most useful ways that technology has changed information – by making it interactive – and from a purely educational and communications point of view, that’s... one of the great things about blogs and comments and things like that is that, is that it gives people the chance to react,” Tarker said.

While it may sound appealing to ban “hate speech,” that term has no precise legal definition, and even hateful comments fall within the First Amendment, said Adam Goldstein, attorney advocate for the Student Press Law Center.

“Unless speech is a threat or is otherwise constitutionally unprotected, we don’t draw the line at all,” Goldstein said.

Surviving campus backlash

The *Collegiate Times* is not the only student media outlet that has faced a financial threat due to edgy content that offended audience members. In February, the student government president at the University of California-San Diego froze funding to all student media outlets, demanding that each of them agree to abide by civil-speech standards.

The controversy – which eventually died down, with full funding restored to the organizations – originated when a campus television station aired a comedy program in which staffers of a raunchy UCSD student humor magazine, *The Koala*, joked about a fraternity party that had a racially offensive theme.

At Virginia Tech, the funding controversy attracted the attention and support of free-speech organizations around the country, including the Society of Professional Journalists, which weighed in with a letter of support for the *Times*.

The bulk of the complaints began after several comments were posted anonymously, including some about Asian students, on a *Collegiate Times* online article about an annual Diversity Summit focusing on the Asian and Asian American community, said Peter Velz, editor-in-chief of the *Times*.

The comments for the *Collegiate Times*’ website can be flagged by readers and moderated by the public editor. The editor can choose to bury the comment so that people have to click on it to read it.

The comments that may be buried include anything “degrading or obscene with the intention to intimidate or harass, contain spam, lack any sort of structure, or have any sort of advertisement, not contain a questionable link to another website, contain profanity or variations of profanity.”

“The idea is that it shapes the discussion to the point, where if you just take a quick glance at it, there’s nothing obscene, or intimidating, or tries to harass anyone,” Velz said. “The only time

we remove a comment is if the comment itself makes an illegal claim or something that makes a libelous claim against a person or the university.”

Velz said he didn’t personally think that the comments were a form of hate speech.

“In general, the comments weren’t (hate speech) because, within the context of the articles, they were just immature writing,” Velz said. “Outside of the newspaper, as an Internet user, those are comments that I would just disregard immediately. I don’t think they were trying to be taken seriously, they were just trying to provoke.”

However, if someone posted an online comment that contained hate speech, Velz said that comment would probably just be buried instead of removed.

“In a way, since that’s shown on the website, you might be able to argue that it’s protected, but I don’t think a lot of users on the website look at those comments and think that they reflect poorly on the newspaper or poorly on Virginia Tech,” Velz said. “What it reflects poorly on is this random person in their basement typing away these stupid comments.”

In a memorandum dated March 30, the management staff of the *Collegiate Times* decided to clarify the paper’s online comment policy. They also announced that they would meet with individual members of CSA, but not the commission as a whole.

“We didn’t want to have a situation where there were 20 people talking at us,” Velz said. “We sort of wanted to turn the tables around and say ‘You’re going to let us speak and you’re going to listen and if you have questions you can ask us.’ We wanted to be as clear as possible that this is our policy.”

The EMCVT recommended the *Collegiate Times*’ staff put all communication in writing, not just because of potential legal problems and threats to students’ First Amendment rights, but because of miscommunication. Furnas said there was miscommunication on both sides about the issue.

“The most challenging aspect was what we called the ‘game of telephone’ we were facing with all the parties,” Furnas said.

McLeese said that the CSA sought professional mediation with the EMCVT but was refused.

“We recognize that they have the legal rights to continue with a non-registration system and it’s safe to say that the commission appreciates all of the effort that was put into that document,” McLeese said.

Velz and the former editor-in-chief met with McLeese at the end of the year and discussed the commenting system and the paper in general. Overall, Velz said he is satisfied with how things ended last semester.

“I think the groundwork is there for the *Collegiate Times* to act independently and for the CSA to understand what our relationship is with the university,” Velz said.

In February, the Virginia Tech administration rejected the recommendations by the CSA to cut funding to EMCVT. Larry Hincker, associate vice president for university relations, said the contract between the university and EMCVT will not change.

“When this first started, I think you had a group of people who had given some passing thought to the value of anonymous comments,” Furnas said. “When the issue came to a head, they really began to investigate and delve into why they thought that way. And now I think they’ve done so much research on the issue that I really believe they’ve come to a very deeply held conviction.” ■

Disciplined

Students are forced to defend their journalistic work before student conduct boards and judicial hearings

College journalists are accustomed to facing angry letters, nasty e-mails and dirty looks from the campus officials they cover. But lately, some have been faced with a much more intimidating response to their newsgathering: disciplinary charges before student conduct boards.

Student conduct codes, judicial hearings and harassment charges are usually punishments reserved for individual students based on academic dishonesty, disorderly conduct or illegal behavior. But journalists at four student newspapers this year faced discipline by these means either for content published in the newspaper or newsgathering efforts by staff members.

- At Fairfield University in Connecticut, sexual harassment charges were filed against the student-run newspaper in response to a column.

- Nine seniors at the University of Utah had their diplomas and records held after a traditional farewell prank using subtly spelled out vulgar words was published in the paper's last issue.

- The editor-in-chief at Central Oregon Community College was put through a disciplinary hearing after writing an editorial critical of the student government

- And at James Madison University, reporters were brought up on trespassing charges and tried in front of an academic judicial committee.

The student disciplinary system is not intended to be used to target student journalists for their coverage or news reporting, said Frank LoMonte, executive director of the Student Press Law Center.

"Your conduct as a journalist is like your conduct at any other workplace setting, and if you act inappropriately there are workplace remedies for that," LoMonte said. "You wouldn't think of using the student conduct code to punish somebody who does their job badly at the campus coffee shop, and you shouldn't use it that way in the newsroom either."

Sexual harassment

At Fairfield University in Connecticut, sexual harassment charges were brought against *The Mirror* in response to a controversial column published discussing "the walk of shame."

The column, part of the newspaper's "He Said" column series, was meant to be a satire on "the walk of shame" from the male perspective. The controversy stemmed from the columnists' tone and use of words like "slut" and "hood rat" to describe women.

Amid student protests against the column, four students filed sexual harassment charges first against the columnist, and then against the newspaper itself—something staff members and the adviser felt was an extreme response.

"The larger question is, can a newspaper even be charged with sexual harassment?" said Dr. James Simon, adviser for *The Mirror*. "This is the first time the policy was ever invoked in this manner; the people who developed the original policy never dreamed of applying it this way."

One of the main questions that arose during the controversy was how far the independent status of *The Mirror* could be carried in defending these charges. Simon said that this is an unresolved issue not only at Fairfield, but at student newspapers across the country—especially at private universities where students do not have the benefit of First Amendment rights.

"We publish with the approval of the university president, and I think students always have to remind themselves of that," Simon said. "I think the administration is struggling, just like the students, with just how independent the paper should be."

LoMonte said that students working at an independent student publication should be looked upon the same way as students working at an organization completely unaffiliated with the university.

Peter Caty, editor-in-chief of *The Mirror*, said although the opposition was merely a small fraction of both students and faculty, the backlash was fairly severe.

Even though Caty said publishing the column was "uncalled for," he sees the harassment charges as an illegitimate attempt to control the newspaper.

"There is a very fine line between freedom of speech and ethics," Caty said. "We knew we were wrong, but ultimately we realized that freedom of speech is definitely important in the student newspaper. You need to have that or else it won't work."

Disruption and obstruction

When the senior staff members of *The Daily Utah Chronicle* used drop cap letters to spell

out sexual terms in their senior columns, administrators were less than amused—despite the fact that spelling out words with drop caps in seniors' farewell columns had been done for the past 10 years.

The university concluded that the students had violated the Code of Student Rights and Responsibilities for “intentional disruption or obstruction of teaching, research, administration, disciplinary proceedings or university activities,” and “unauthorized or improper use of any university property, equipment, facilities or resources” and required the students to meet with the associate dean of students in order to receive their diplomas and other records.

Adam Kissel, director for the Individual Rights Defense Program at the Foundation for Individual Rights in Education, said that punishing student journalists through university disciplinary action can be a dangerous obstruction to free student speech.

“The university is signaling that certain speech is so unacceptable that it could lead to withholding of your degree, and that could have a definite chilling effect on campus,” Kissel said.

Alyssa Whitney, production manager for *The Chronicle*, knew from the beginning that the university did not have the right to punish the staff members through the student conduct code.

“*The Chronicle* is an independent paper, and even though we serve the university community, the actual university administration didn't really have power over us,” she said. “It's sad they thought they could punish us as individuals, as students, for something we did at our job. I thought it was pretty ridiculous of them.”

While Whitney admits that the university has legitimate reason to be concerned with what is published and distributed on campus, Whitney said the senior tradition did not cause a large disturbance on campus.

As student journalists, Editor-in-Chief Rachel Hanson said the nine seniors should have been dealt with in terms of their jobs at the newspaper instead of punished as students through academic means.

“For them to withhold something that we'd earned separately from the paper is definitely destroying that free speech right we have,” Hanson said. “If I had gotten a reprimand through my position, that would have been a business decision. To have my diploma withheld is a totally different matter because it is a separate punishment.”

Defamation

Tension between the student newspaper, *The Broadside*, at Central Oregon Community College and the student government had been brewing for some time. But when Editor-in-Chief Don Iler

Discipline, page 33

Students speak out on disciplinary proceedings:



“We knew we were wrong, but ultimately we realized that freedom of speech is definitely important in the student newspaper.”

Peter Caty
former *Mirror* editor-in-chief

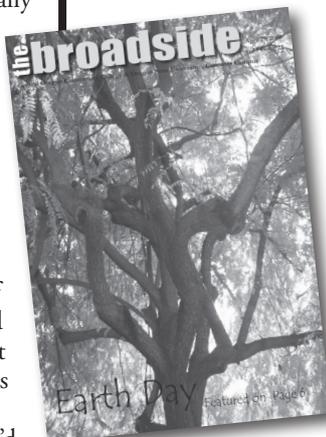
“It's sad they thought they could punish us as individuals, as students, for something we did at our job.”

Alyssa Whitney
production manager, *Daily Utah Chronicle*



“I feel that our college just needs to understand the role of the student newspaper and the role of the press in general.”

Don Iler
former *Broadside* editor-in-chief



“What we were doing was newsgathering in a place where we had been let into by a resident. So as far as we knew, that was our First Amendment right.”

Tim Chapman
former *Breeze* editor-in-chief



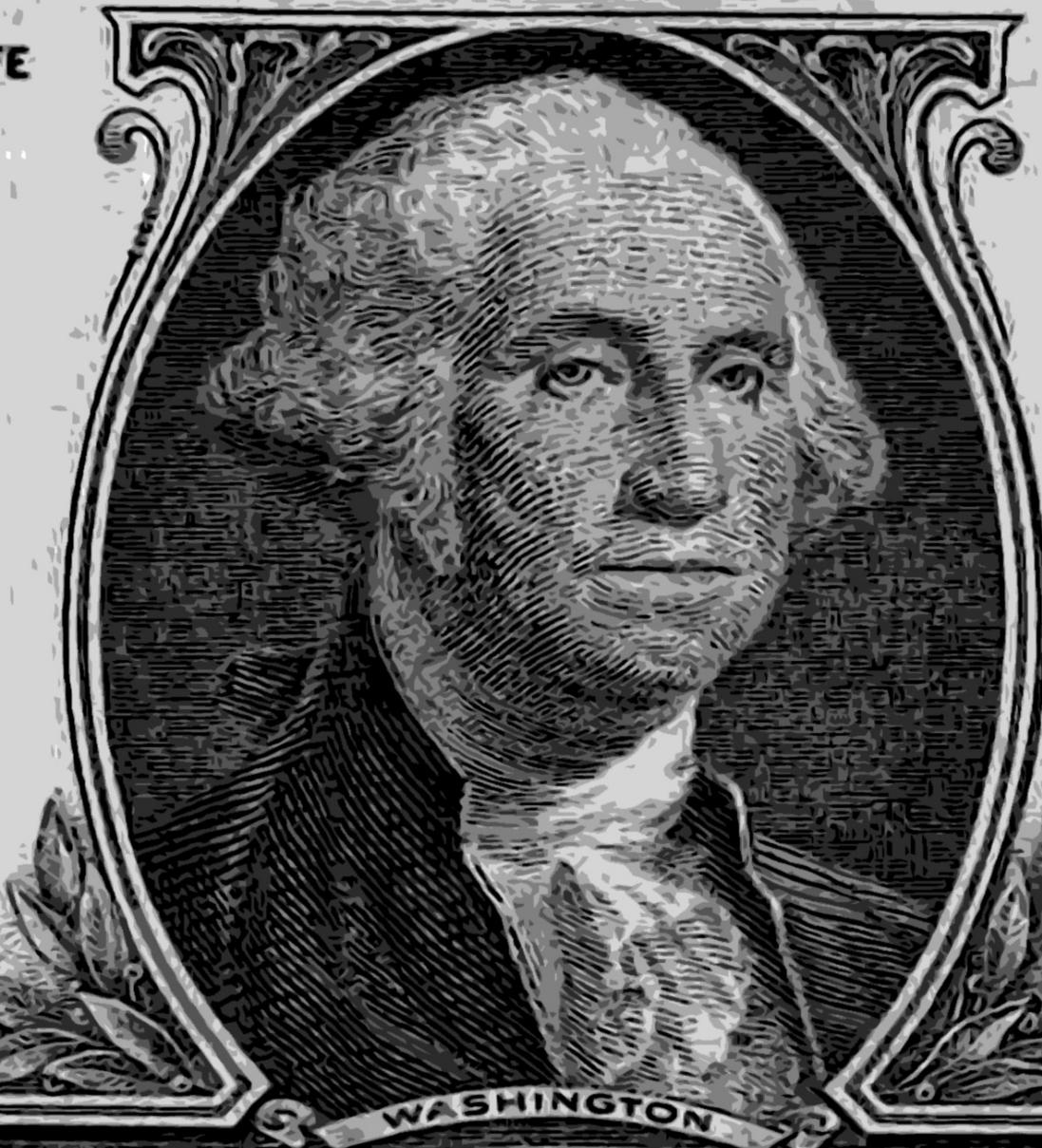
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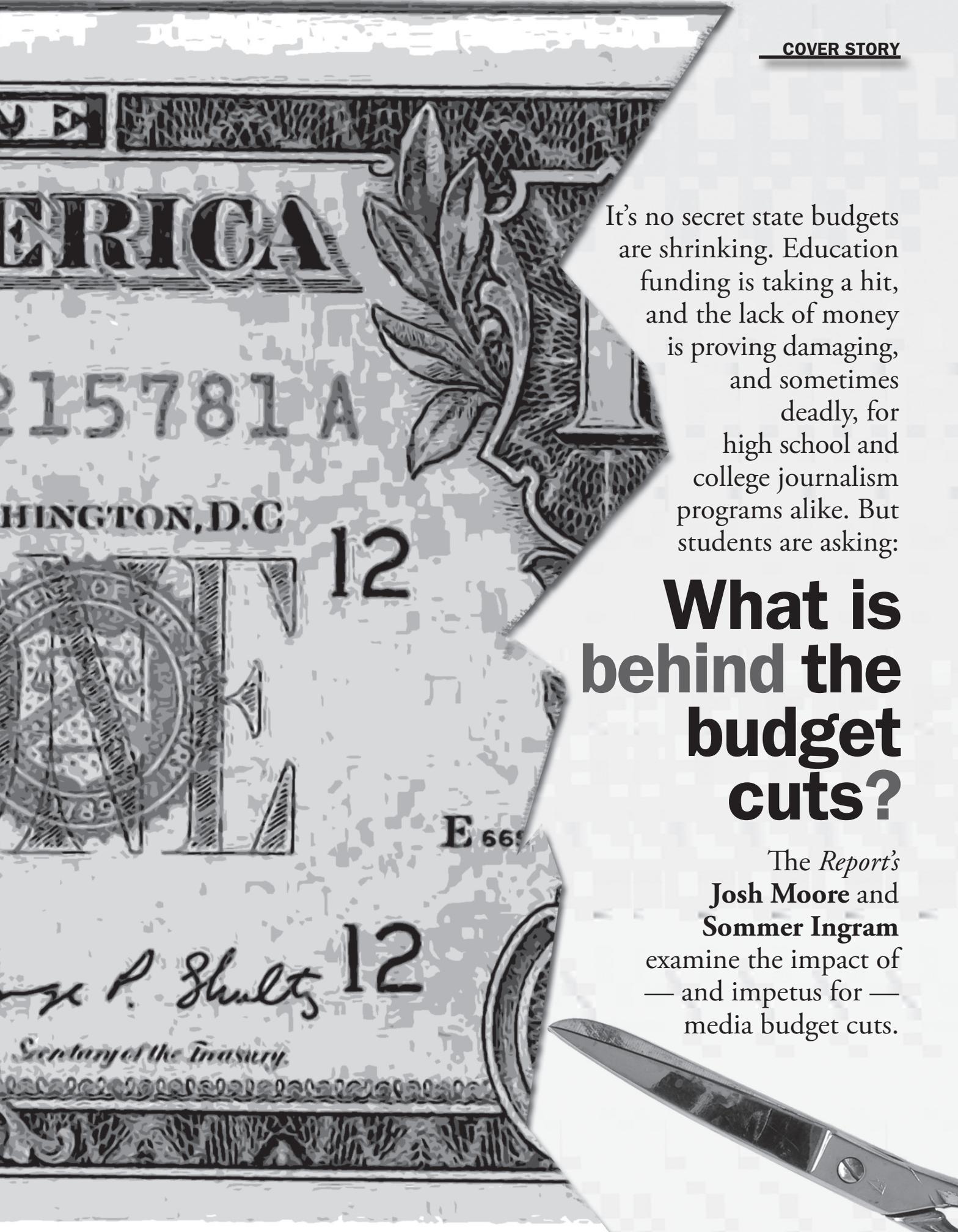


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It's no secret state budgets are shrinking. Education funding is taking a hit, and the lack of money is proving damaging, and sometimes deadly, for high school and college journalism programs alike. But students are asking:

What is behind the budget cuts?

The Report's **Josh Moore** and **Sommer Ingram** examine the impact of — and impetus for — media budget cuts.

Divining retaliation from a shrinking budget: High school programs fight cuts

BY JOSH MOORE

With duct taped mouths and signs sporting slogans such as “No Newspaper, No Voice,” students at Fremont High School protested the school’s decision to cancel the journalism class for the 2010-2011 school year.

Administrators at the Sunnyvale, Calif., school said they could not justify offering the class that produces the *Phoenix* during a budget crunch, but Editor Vered Hazanchuk and other students suspect there might be other reasons the school cut the class.

The students at Fremont High are not alone; a number of schools across the country have chosen to cancel journalism classes, blaming the massive state budget shortfalls of the last few years.

But journalism education advocates such as Mike Hiestand, an attorney for the Student Press Law Center, fear that some administrators might use a shrinking budget as an opportunity to cut a program they never liked in the first place.

“The budget is what it is. You can’t get water out of a stone,” Hiestand said. “We saw a number of schools where that was the expressed reason given. But it seemed to happen a lot more at schools where there had been some tension between student media and administration than it did at other schools.”

Hiestand said it is often difficult to tell whether administrators are cutting a program truly for budgetary reasons or if funding cuts may be a subtle form of retaliation.

“Censorship can be much more subtle than pulling papers from the rack,” he said. It could also be eliminating an adviser’s position or cutting the budget in a significant way that prevents the publication from covering the news.

Sarah Nichols, the Journalism Education Association state di-

rector for northern California, said students and advisers who are fighting cuts because of retaliation should use people who have been through similar situations as a resource. Organizations like JEA can help make those connections quickly, she said.

“If a program cut seems intentional, students need to spring into action,” Nichols said.

Hiestand said the staff should demonstrate the unfairness of the cuts to the journalism program to administrators, school board members and the public.

When Fremont High administrators cited the budget and low class enrollment numbers, Hazanchuk was suspicious and requested the enrollment figures for the school’s other classes.

“The main reason we’ve been told the class has been canceled is enrollment numbers, so we wanted to know where the other classes stood,” she said.

The journalism class originally had 17 students signed up for the 2010-2011 school year, Hazanchuk said. They found that other electives, such as Advanced Placement music theory with 17 students and a ceramics class with 12 students, also suffered low enrollment but were kept on the schedule.

An article in the June issue of the *Phoenix* included those numbers and an interview with a student who said he was not allowed to sign up for the class before it had been officially canceled. Another student told the newspaper he had been discouraged from taking the class the previous year.

Polly Bove, superintendent of the Fremont Union High School District, said the school district has been supportive of the newspaper but the class has struggled with low enrollment for four years. She said she hopes temporarily offering the newspaper as an after-school club will bring renewed interest from students.

“We kept trying to build the program this way and obviously





Arcata High School students work in the *Pepperbox* newsroom. The *Pepperbox* class was cut for the 2010-2011 school year.

PHOTO COURTESY OF CEDAR LAY.

this approach isn't working, so we're going to try a different approach," Bove said. "We're determined to have a great journalism program and a great newspaper."

Students at Arcata High School in California went to their school board to protest cuts to their journalism program.

Arcata High's *Pepperbox* staff, too, was told budget cuts meant the school could not afford to offer their class with its low enrollment, Editor-in-Chief Cedar Lay said. The class had 9 students signed up for the 2010-2011 school year — the same as the previous year — and another 10 agreed to take the class after it was canceled, he said.

Hiestand said appealing to school board members can be particularly effective because they are usually elected officials and might be more easily swayed.

But Lay said that when students took their case to the school board of the Northern Humboldt Union High School District, administrators told the board that a decision to cut the class had not been made. That is not what students had been told, he said.

"My co-editor-in-chief, among four or five other people, had already been called into the counselors' office and been told to pick another course because it had been dropped," he said.

Lay said the *Pepperbox* had printed some stories about the high turnover in administrative positions and other issues last year that did not reflect well on the school.

"We had been writing a lot of stuff lately that they weren't so happy with, but you know, it's kind of the harsh truth," Lay said. "So I think the administration had gotten almost a little afraid of it."

Arcata High Principal Lisa Gray did not return calls for comment.

Hiestand said public attention can also change the minds of administrators.

"Public pressure is typically one of the more effective things — just showing that this isn't fair," he said.

At Fremont High, more than 80 students, parents and *Phoenix* alumni participated in the silent protest of the school's decision to cancel the journalism class, Hazanchuk said. The protestors marched to the principal's office to deliver a letter in support of reinstating the class. That protest was featured on KGO-TV in San Francisco.

At Arcata High, Lay and other *Pepperbox* staffers wrote letters

to the local newspapers to gain public support for the journalism program. Students who were not involved in the newspaper also offered their support, he said.

"We had one girl who's never taken the class before, but she came up to us and offered to come to the board meeting and speak with us just because it's been so beneficial to her," Lay said.

Hiestand said that when a program has been cut for retaliation, students' final tool is the law, especially in states such as California with student free expression laws. In addition to demonstrating the unfairness of the cuts to the journalism program, evidence such as e-mails where administrators have complained about a story or instances when the principal has come into the newsroom to criticize the staff would help build a case for a lawsuit against retaliation, he said.

But sometimes, the funding cuts can only be attributed to shrinking school budgets and declining enrollment.

The number of high school journalism classes offered in California has been on a steady decline over the past decade, according to the California Department of Education. In the 2008-2009 school year, there were 171 fewer schools offering journalism courses than a decade earlier, a drop of 14.8 percent. The number of students taking journalism classes dropped 20.9 percent from 37,041 to 29,301 in that time period.

Nichols said cutting programs has become even more common recently, as the state tries to cope with the budget shortfall.

"In the past, administrators could protect smaller classes if they wanted to, but from their point of view, it's just not realistic now to allow a class with smaller enrollment," Nichols said. "In so many cases, it's not that fewer students are interested, it's that there are so many competing factors."

Students are often forced to choose between journalism and Advanced Placement classes, which counselors and parents push because they can help save time and money in college, she said.

Nichols is an adviser at Whitney High School in Rocklin, Calif., where she also is facing cuts to the journalism program. She said students and advisers who find their program in jeopardy need to be flexible and creative.

"To be proactive, I've gone to the principal and counselors to offer creative scheduling solutions, and I've offered multiple concessions in order to make the journalism classes possible," she said. "We're willing to do whatever it takes to keep the classes going."

Hiestand said if the school must cut funding to student media, students have a lot more options than they used to.

“All you need is a computer with an Internet connection and you’re able to turn out a pretty darn good looking piece of work, if you invest some time into it,” he said. “If there was a time to have budget cuts, I guess now is better than 15 or 20 years ago.”

Online publishing has provided a glimmer of hope for the staff of *The Caledonian* at North Eugene High School in Oregon.

The staff has struggled as an after-school club after budget cuts brought the end of journalism classes at the school three years ago. The staff — once numbering between 20 and 30 — dwindled to two students and managed to produce just three issues of the newspaper two years ago.

Adviser Aaron Thomas pushed the staff last year to go online and hopefully, in the process, get more students excited about journalism.

The staff ended the school year with seven students — more than a three-fold increase over the previous year.

“It’s not 20 or 30 by any means, but it was a heck of an improvement from last year,” Thomas said.

While he is excited about the opportunities of *The Caledonian* going online, Thomas calls the after-school program a “mixed bag.”

It has brought more students with a variety of interests, including one Thomas calls a “techy student,” who built their website.

“[Publishing online] opens up whole new avenues,” he said. “Video interviews, audio commentary, interactive polls.”

The students at *The Caledonian* have to think a lot more about how to reach their audience, because there is much more competition for an audience’s attention online, he said.

But the after-school program does not come without challenges. Thomas said not having a class means he does not have as much time to teach the “craft of writing an article” or have a lesson about libel until something potentially libelous comes up.

“If I’m going to teach journalism, I want to be able to teach journalism,” he said. The two hours a week the staff spends together is not enough time for that.

Thomas said administrators from other schools have called to ask about how the journalism program is working as an after-school activity.

“I absolutely wouldn’t advise it unless it was thrust upon them,” he said.

Students at Fremont High and Arcata High hope to keep their newspapers alive through after-school clubs until they can convince their schools to bring back the journalism classes.

“Everybody is going, ‘Well, OK, we have to make this club.’ None of us really want to see it end,” said Hazanchuk, the Fremont High *Phoenix* editor.

But Hazanchuk said she is worried that the newspaper cannot survive as an after-school club. She and her fellow staff members,

who are also usually involved in other activities, often already work late into the night to finish production of the newspaper, so it would be difficult for them to devote more time after school, she said.

Nichols said the after-school option provides students with an opportunity to learn journalism and report important stories, but pushing publications to after-school clubs sends the signal that the school does not value journalism as part of the learning process.

Principals should reconsider making student media one of the first victims of budget cuts, Hiestand said.

“I think a healthy, active student press is part of creating a healthy, active, vibrant school community,” he said. “I think that not having that and not having a place where the life of the school is recorded and shared, it’s something that does have a real impact.”

Phoenix adviser David Ramos-Beban said the newspaper is important for a school as diverse as Fremont High, with nearly 41 percent of its student

body identified as Hispanic/Latino, to maintain a student voice on campus.

Hazanchuk agreed that the *Phoenix* helps connect the school.

“I think the newspaper is the student body’s way of being a part of the school and being a part of the leadership,” she said.

Ramos-Beban said that he is proud that his students have taken such an active role in defending their class and their newspaper, even if they were not successful this time around.

— how to think critically, how to exercise your voice,” he said.

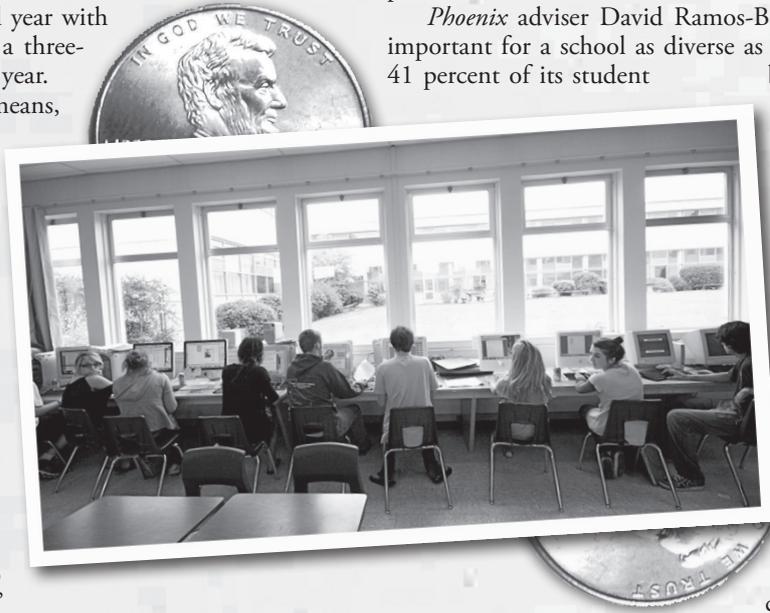
Lay graduated from Arcata High in June and will study journalism at the University of California, Santa Barbara this fall. He attributes his and his fellow students’ love of journalism to their time at the *Pepperbox*.

Hiestand said the decrease in high school journalism programs might not have an immediate impact on the country, but will be felt in 10 or 15 years with the loss of a generation of journalists.

“I think that not having some of that training early on in high school, we’re going to see some detrimental impact from that,” he said.

Other journalism students go on to professions beyond journalism, but Nichols said the skills they learn in journalism classes will go with them.

“The experiences with observation, information gathering, fact checking, writing for an audience, collaboration, teamwork, time management and problem solving provide life skills that make them better equipped to make meaningful contributions in their larger communities,” she said. “No other class offers all of these skills in a rigorous and authentic environment combined with the opportunity to use technology and impact others.” ■





Committees, controversies and cuts: College media programs lose funds

BY SOMMER INGRAM

At The College of San Mateo, a small community college in the suburbs of San Francisco, campus-wide budget problems are being blamed for an on-again, off-again threat to the survival of the student newspaper.

Student journalists who work at *The San Matean* are facing uncertainty about the future of their newspaper. Although the paper is scheduled to continue its bi-weekly production in the fall, the terms of its operation and structuring are unclear, leaving student editors to wonder if production will commence as usual.

Budget problems like San Mateo's are hitting college newspapers hard, and the motives behind them are sometimes ambiguous, with money woes used as a smokescreen for penalizing editorial content, said Frank LoMonte, executive director of the Student Press Law Center.

"Educators need to understand that journalism is a bargain in which you get a lot of educational benefit," LoMonte said. "It is short-sighted to make that the brunt of your [budget] cuts."

At a time of statewide budget cuts, *The San Matean* is undergoing a restructuring as a part of recommendations given by a Program Improvement and Viability (PIV) committee.

Executive Editor of *The San Matean*, Margaret Baum, said college has tied the restructuring of the journalism program to low enrollment, which further hurts the college budget. If courses have less than 20 students enrolled, the university does not receive

the money from the state that actually keeps the course running, she said.

Ed Remitz, adviser for *The San Matean*, said that in his 20 years as a professor he has never had 20 students in his news writing class. The committee, made up of faculty members, labeled the journalism program "at risk" due to these low enrollment numbers.

In December 2008, the PIV committee determined that journalism programs like broadcasting, multimedia and graphics should be consolidated into one program called Digital Media. The committee produced a document that suggested the newspaper be reconstructed into a capstone class project that would create a newspaper "similar to *The San Matean*."

But in the months since, confusion has resulted in inactivity rather than movement on the committee's recommendations.

"The problem is that the PIV document does exist, but it doesn't really clearly define things," Baum said. "These last two years, the faculty [members] in different disciplines have been meeting and trying to follow the recommendations, which are really complicated."

For Baum, the past year and half has been filled with questions often left unanswered, as she has attempted to probe the administration for a more concrete idea about the future of the newspaper.

"They haven't necessarily been forthcoming with information when I try to get it," she said. "Whereas other schools might have



Student journalists at the College of San Mateo's *San Matean* are staying involved in the decision making process about the fate of their newspaper. PHOTO COURTESY OF PAUL CARLSON.



budget problems and say ‘OK, we’re killing your paper,’ it’s not so cut and dried here. We really have no idea what’s going on.”

Baum said there is a very real possibility that in the fall students will get to school, find that there are fewer than 20 students enrolled, and the class will be canceled.

It is this uncertainty that prompted Baum to request all PIV documents and correspondence relating to the committee’s review process of the journalism program. A document she obtained contains anonymous comments from members of the committee, including complaints about the quality and content of *The San Matean*.

“There are all of these complaints compiled into this document, yet they are saying those events have nothing to do with [the restructuring], and it’s only about the budget,” she said.

LoMonte said that in facing such ambiguity, the students at San Mateo are doing precisely what they should be—staying involved in decision-making processes on campus instead of automatically turning to battle in a court.

“A school is never going to give a signed confession [of retaliation]; you have to consider the circumstantial evidence,” LoMonte said. “If you don’t have clear proof of unlawful motive, it may be better working the political channels on campus than pursuing litigation.”

Retaliation can be subtle and hard to detect—but not always. Students believe they were sent a clear message at Los Angeles City College, when the student newspaper faced a 40 percent budget cut last year in what some say is retaliation to investigative work *The Collegian* had been pursuing.

“The environment for student journalists at LACC is hostile, and all they have done to deserve it is exercise their civil rights of freedom and press,” said Frank Elaridi, former editor-in-chief of *The Collegian*. “In order to progress as journalists, the staff should be able to report freely, and under the current administration, that freedom is periodically threatened.”

Rhonda Guess, adviser for *The Collegian*, said there was a college-wide agreement to cut 15 percent of the budget from each department, but *The Collegian’s* printing budget was slashed from \$25,000 to \$15,000—a 40 percent cut.

Dr. Lawrence Bradford, vice president of student services at LACC, said he could not comment on why *The Collegian* was scheduled to receive a disproportionate budget cut compared to other departments.

“I can’t speak on why one program may have been scheduled to receive a larger cut,” Bradford said. “A lot of times when you’re looking around within your budget, you have to pull from one area to balance out another. The bottom line is, on this campus we are hurting financially to stay afloat.”

When the student media is singled out for disproportionately large budget cuts compared to other departments, LoMonte said this is a “red flag” for a clear sign of retaliatory motives.

“It may be necessary to educate the leaders of an institution that de-funding student media can be a First Amendment violation,” he said. “Colleges seem to understand that they can’t censor directly, but what they need to know is that it is equally unlawful to censor indirectly by retaliation against the publication.”

Before its budget was slashed, tensions had been steadily rising between *The Collegian* and LACC administration after the newspaper published several articles about university athletic teams falsifying player information.

Following this, there were several First Amendment confrontations between student journalists and the administration, including when LACC President Jamillah Moore demanded a student journalist sign a “waiver” in order to get permission to cover an open, public meeting in July 2009.

News of the budget cut came soon after student reporters demanded an apology from Moore for violating the student journalist’s rights at the meeting, Elaridi said.

"Your rights are never taken away overnight," he said. "They are chipped at slowly until there is nothing left, and we were determined to stop that from happening."

Although the administration quickly claimed that the 40 percent cut was a "misunderstanding," *The Collegian* was given a copy of the document that showed the scheduled 40 percent budget cut to the newspaper and bore Moore's signature.

"I believe this was the president retaliating against student journalists for complaining to Senator [Leland] Yee about the way they have been limiting student press rights at our college for more than 18 months now," Guess said. "This is not the obvious type of censorship like 'you can't print this,' but things like mysterious budget cuts or moves to restructure the department and the way the newspaper is funded—these are the things that come up instead."

Yee, who is the author of the California state law that protects student and employee speech rights, talked with the students, Guess, and the administration and ultimately determined that the students were being treated unfairly, said Yee's Chief of Staff, Adam Keigwin.

"There was an unfortunate history at LA City College that precipitated what we thought was most egregious—slashing their budget in a disproportionate manner," Keigwin said. "If administrators can control the budgets and retaliate because they don't like coverage, it's going to inevitably squelch the speech. That's precisely the type of behavior that our law seeks to prevent."

Bradford said that regardless of the budget reductions, neither the content nor control of *The Collegian* would have changed. Instead, he suggested the newspaper staff focus more on taking proactive steps to preserve their work, possibly with more of a focus on building an online presence.

"The paper is not being compromised; the content is not being compromised," he said. "What is being compromised is the budget to distribute the paper. I believe in the press being able to get its product out, and I believe if they can't get it out based on budget constraints in the volume they'd like, I think they need to come up with other means."

The hostility between student journalists and the administration at LACC is still pervasive, Elaridi said, and will probably remain as long as the current administration does.

"It is the job of a journalist to be a watchdog of government, in this case, student government and the administration, and to report the truth to its readers," he said. "Unfortunately, this is something the LACC administration, including President Jamillah Moore, fail to understand or accept."

Sally Renaud, president of College Media Advisers, said it is important for student newspapers to have control over their revenues and spending, independent of the administration or even student government.

"It's always a strange relationship because you are covering the people who are giving you money," Renaud said. "To have student government dole out money on a year-to-year basis is not a good model."

The Student Senate at the University of Kansas threatened to cut funding to the student newspaper in March 2009 because it felt there was an inappropriate relationship established when a media outlet that covers the government receives money allocated by that government.

"If you have a group

of people and they set up a government and then they set up a single paper to keep that government accountable, the function of that paper is severely impaired if the paper is receiving thousands and thousands of dollars from the government that it's supposed to be reporting on," Matt Shaw, Student Senate Communications Director, told the Student Press Law Center in March.

Renaud said it is dangerous for student First Amendment rights when this sort of power comes into play.

"Where someone is holding finances over someone else's head, that can certainly be seen as a threat and a power play," she said. "It certainly can be seen as a way to dictate content or dictate leadership."

In some situations, however, student newspapers suffer from budget issues that are genuinely unconnected with attempts to exert control over the publication, and are tied to only a university's shrinking bottom line.

Auburn University at Montgomery's student newspaper, the AUMnibus, made the transition from print to online two years ago as a result of budget problems. Taylor Manning, AUMnibus editor-in-chief, said the change was a byproduct of university budget cuts only and was not retaliatory.

The move to online, what Manning calls a "catch-22," has produced a mixed reaction from the student body. Publishing online has given the AUMnibus the opportunity to broaden coverage to include more community and nationwide issues. But at the same time, Manning said it is hard to replace a print product with online coverage.

"On the one hand, we can offer them so much more online since space is not an issue like it would be in an actual paper," Manning said. "But a lot of students have said they really like the print more. The ideal would be to have both."

LoMonte said the record is mixed in terms of student newspapers going online only. There have been successes, but it can be hard to create a standout publication on the Internet, where there is already a sense of crowding, and students may struggle with gaining a strong readership base.

"When you have those distribution racks on campus, they are hard not to notice," LoMonte said. "People get into their habits of picking it up every day, but online habits are not as consistent."

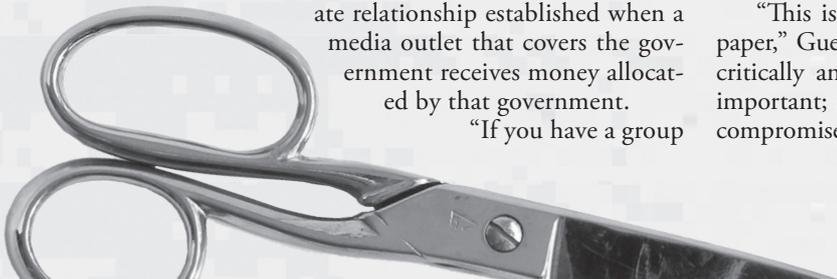
Despite these challenges, building an online presence will cultivate useful skills for future journalists.

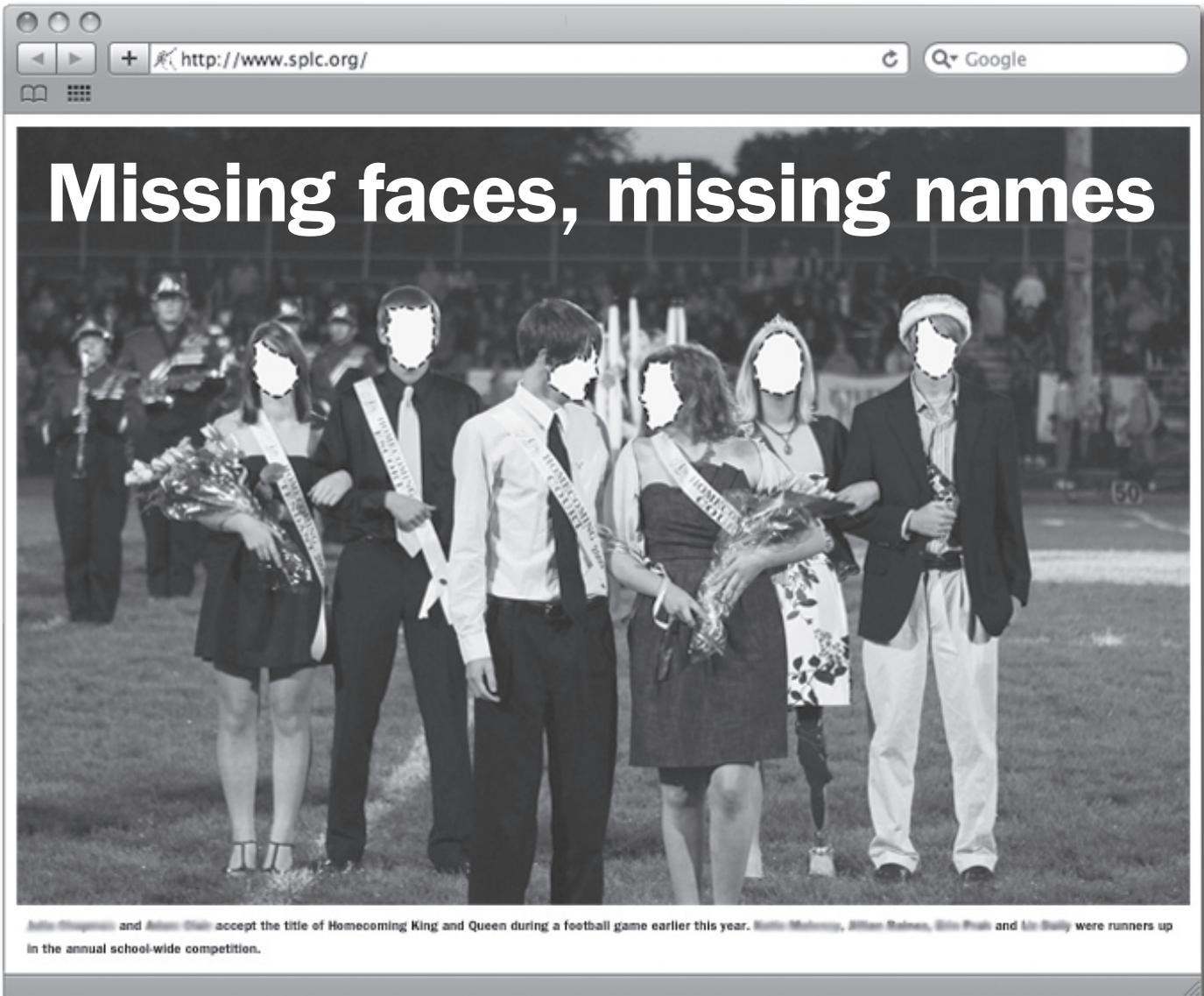
"The AUMnibus is a training tool, and really good for students who want to go into the online media form of writing," Manning said. "It's this jumble of skills you need to know when you go into the field—graphics, and editing and uploading. The AUMnibus really encourages backpack journalism."

Like the AUMnibus staff, students still maintain an obligation as journalists to continue producing a publication, even if the budget forces it to be solely online.

Even in the face of declining budgets and retaliatory administrations, advisers stand by the importance of a well-rounded, investigative student newspaper—whether print or online—and stress the necessity of students being able to keep their publications operating without the threat of retaliatory actions from the administration.

"This is a sort of engagement, working on a student newspaper," Guess, the adviser from LACC, said. "Learning to think critically and ask questions—hard questions sometimes—is so important; so valuable. I just hate that that experience is being compromised or limited." ■





Schools' restrictions on posting photos and other identifying information online can leave a hole in high school student journalists' reporting. By the *Report's* **Josh Moore.**

With the increasing move toward online journalism, high schools across the country are struggling to find a balance between teaching journalism for the Web while also responding to parents' safety concerns.

When the staff of *The Eye* at Palm Harbor University High School in Florida posts news to its website, it does so without pictures — in fear of violating the Pinellas County School District's policy on posting students' information online.

The district's Web page guidelines prevent a student's name and picture from being displayed together and only allow a student's name to be published on a district website if a parent or guardian signs a media release form.

The policy has caused some concern about the impact on teaching journalism among advisers, including Judy Cannaday

at Palm Harbor High.

"If we teach them not to put pictures on the Internet, or to put pictures with just a first name, or 'a group of students attend a field trip to the zoo,' we're not teaching them to be responsible journalists who get all the information and get it all accurately," Cannaday said.

Frank LoMonte, executive director of the Student Press Law Center, said the issue is a growing problem as more schools try to teach students online journalism.

"We're certainly hearing dozens and dozens of complaints from all over the country that schools are requiring that online newspapers be filled with anonymous stories and faceless photographs," he said.

The district's policy is more out of safe-



_____ and _____ share the stage during the final act of Council Rock High School Drama Club's performance of Beauty In the Beast on Saturday.

*“If we teach them **not to put pictures on the Internet, or to put pictures with just a first name, or ‘a group of students attend a field trip to the zoo,’** we’re not teaching them to be **responsible journalists** who get all the information and get it all accurately.*

Judy Cannaday
journalism adviser, Palm Harbor High



The Southeast High School All-Star team took first place at the district championship tournament this weekend, edging out North High School 5-2. First baseman _____ led the team with four hits, and _____ and _____ each brought in two RBIs.

Fighting, writing and Changing minds



PHOTO: WASHINGTON STATE CAPITOL

BY JOSH MOORE

When four students sued the Puyallup School District in 2008 claiming the *JagWire* student newspaper violated their privacy, no one really expected anything good to come out of the lawsuit for student journalists.

Certainly, no one expected the Puyallup school board to propose legislation that would give Washington state high school students greater control over student media.

Nor did anyone expect that one of a similar bill's top critics would change his mind about high school journalists.

But both have happened, and Mike Hiestand, an attorney for the Student Press Law Center who is based in Washington state, said the students themselves had a lot to do with getting positive outcomes from a potentially negative situation.

"There were a number of people involved in this case whose minds were changed by the individual students involved," he said. "What I've always felt, when people meet student journalists, and when they see the sort of work that good student journalism produces, they will be converts."

Four former Emerald Ridge High School students claimed in the lawsuit that a 2008 article in the *JagWire* newspaper about students' sexual histories violated their privacy. They argued that they did not give permission for the newspaper to print their names and details about their experiences with oral sex.

A jury found in April that the *JagWire* had not violated the students' privacy and had their permission to print the information. The four students have filed a notice of appeal.

The lawsuit threatened to add a blemish to the fact that a school district has never been held liable for the content of its student media, Hiestand said.

"Despite the millions of pages that have been produced without liability, [school districts would] now focus on these three pages that had created some liability, and that's all they'd ever see," Hiestand said.

The plaintiffs also argued that the district was negligent for not properly supervising and educating the students, because they had given the student editors too much freedom.

Hiestand said that if they were successful in that argument, it would have been "devastating" for student journalists, as school districts across the country would undoubtedly rethink their student media policies.

The lawsuit has not had a noticeable ripple effect yet, but it did have effects in the Puyallup school district. At the beginning of the lawsuit in 2008, the district revoked its student newspapers' open forum status — under which students, not administrators, make the content decisions — and instituted a policy of prior review, which student editors say has been discouraging.

Former *JagWire* Editor Amanda Wyma, who graduated in June, said that since the introduction of the new policy, she saw her fellow reporters shy away from covering more difficult topics, because they feared censorship.

Wyma and three other student editors from the district's three high schools formed a group called "Fight for the Right to Write" to work with district administrators to return to a policy without prior review or prior restraint.

"An open forum would give [students]

the chance to cover the things that really matter," Wyma said.

Giving students an opportunity to make mistakes is the only way for students to learn, said Allie Rickard, the new *JagWire* editor-in-chief and another member of the group.

"I think that journalism in high school is a wonderful experience, because we actually have the opportunity not just to learn about journalism, but we have the opportunity to actually be practicing responsible journalism," she said.

The group's efforts to overturn the policy, including a public meeting, a website, T-shirts and addressing the school board, have impressed members of the Puyallup School District Board of Directors.

Board President Diana Seeley said the students have been "very professional" throughout the lawsuit and ongoing discussions about the district's policy.

"It's been a very good process," Seeley said. "Working with the students has been very good. These are very intelligent, well-versed, well-educated students. And they've made us proud. It's a good scenario under maybe some difficult circumstances."

The board was so impressed with the students' efforts that it composed a proposal for student free expression legislation and asked the Washington State School Directors' Association to endorse it.

The proposal would allow school districts to give student editors control over the content of student media, in exchange for legal recognition from the state that the school is not liable for that content.

That recognition is something the district wants before they return to an open forum policy, Seeley said.

Washington students have proven to former foes the need for press freedom

"I think certainly [the lawsuit] helped our district bring this to the forefront, but we've had an opportunity to speak with the students that are involved, not only at Emerald Ridge, but at the other schools in our district," she said. "And we understand their concerns. We want to support them. But in order for us to support them, this legislation has to happen."

WSSDA board members, who opposed a similar bill in 2007, turned down the idea of supporting the proposal of the Puyallup school district. But Seeley said that is not the end of the proposal.

The school board voted unanimously to take it to the WSSDA legislative assembly in Vancouver, Wash., where district representatives vote in September on the association's legislative priorities for the next year.

"It is something that we're hoping people will take advantage of, this potential, because it's not just our district that needs to be looking at this but other districts

across our state," she said.

Hiestand said this is the first time a school board has proposed this kind of legislation, and it could have a broad impact.

"This is really something that we haven't seen before — a school district actually coming out with a proposal that, I think, might have some legs here," he said. "This is something I could really see a lot of other school districts, and other states even, getting on board with."

The original student free expression bill filed in 2007 passed the state's House of Representatives with protections for high school and college journalists, but the Senate Judiciary Committee removed the protections for high school students, and the bill did not come up for a vote on the Senate floor. Similar bills in 2008 and 2009 died in committee.

Student free expression laws exist in seven states — Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon. They are in large part a reaction

to the 1988 Supreme Court decision in *Hazelwood School District v. Kuhlmeier*, which said public high school newspapers are subject to reduced First Amendment protections unless they are established as public forums.

Attorney Don Austin was one of the loudest voices to speak out against the 2007 bill.

Austin, who represents several Washington school districts, was one of three who testified against the bill in a hearing of the Washington State Senate Judiciary Committee in March 2007 — in a room full of high school students looking on in disapproval.

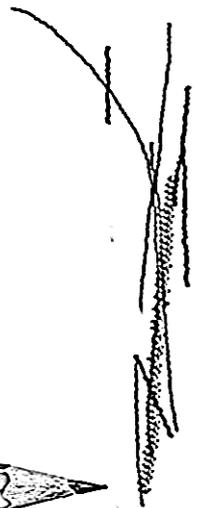
"I felt like the Grinch that stole Christmas when I went in there," he said. "There were 100 kids there, and I'm sitting there thinking, 'Holy cow.'"

Austin said he and others were caught off guard with the bill and were concerned

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What I've always felt, when people **meet student journalists**, and when they see the *sort of work* that **good student journalism** produces, they will be *converts*.

Mike Hiestand
attorney, Student Press Law Center



mation because of lack of disclosure under FERPA. The newspaper tried three times to get a decision from the Department of Education that FERPA does not apply, because other scholarships routinely are made public under a FERPA exception for “awards” or “honors.” But the department has declined to rule that FERPA is inapplicable.

The height of the presidential discretionary scholarship program was between 2002-2008, under then-UCA President Lu Hardin, and was funded through the general university operating budget, which is made up of money from the state of Arkansas and student tuition, said UCA Chief of Staff and Vice President Jack Gillean.

Although the program was abolished in fall 2008, Gillean said that another scholarship program was put into its place, with a limited budget of \$50,000 per spring and fall semester and with established criteria, including financial need and academic excellence.

When the presidential discretionary scholarship was in place, Gillean said it wouldn’t have been unusual for upwards of \$200,000 to be awarded in any given fall or spring semester at the height of the program. He said 510 students received the scholarship and that it had no qualifying criteria like academics or skills.

FERPA’s ambiguous language has made it difficult to know how to implement the law at UCA, Gillean said.

“We as an institution try to apply the FERPA law, which we believe governs this thing, as best we can,” Gillean said. “I guess we’re to the point that unless the Department of Education or some court somewhere gives us specific guidance that directs us to release these names, we feel like [we can’t].”

Gillean said that the university has invited the newspaper to take the issue to a court to help resolve the matter.

Frank LoMonte, executive director of the Student Press Law Center, said that risks for getting an adverse precedent in court for a FERPA case would be minimal because the courts have con-

sistently interpreted the law in a limited, common-sense manner, not the overly literal interpretation being applied at UCA.

“There’s not anyone who believes that this is a clearly written and effectively working statute, and it’s long overdue for Congress to fix it,” LoMonte said. “When you see colleges in the same state under the same open records law giving two different interpretations, which happens all the time, then you know this statute is confusing.”

Most scholarship programs at UCA have students sign waivers, but students with the presidential discretionary scholarship were not asked to, Gillean said. Only two names of scholarship recipients for the presidential discretionary scholarship were released when the university’s general counsel, who had served as an interim president, announced with the permission of his sons that they had received assistance from the scholarship.

The concerns over scholarships having political ties developed after an FOI request by the *Arkansas Democrat-Gazette* sought emails and memos related to the scholarships. The names of people connected to the recipients were carbon copied on the memos, while the recipient names had been redacted, Gillean said.

“They tended to be more prominent people in the statewide community – legislators, some other people who are politically connected and some with connections to the UCA Board of Trustee members, that sort of thing,” Gillean said.

Those political connections were what Cuillier was certain would remain secret if scholarship recipients’ names were kept secret by the university.

“That information needs to be public to make sure there’s no shenanigans going on,” Cuillier said. “It’s not because [journalists] want to put names in the paper with scholarships because that’s not really that interesting, frankly, and we have better stuff to write about, but we need to do it to make sure that the big donors’ kids aren’t getting these scholarships as bribes... If it’s being kept secret, they’re going to be tempted to fudge the line and give people preferential treatment if they have the money to do it.” ■

about the potential of a “backdoor for lawsuits.”

But this time around he is willing to help create a bill that would include better language — one that he and other former opponents could support, Austin said.

What changed?

“In the lawsuit I was involved in, I saw some very competent kids and very competent adults,” Austin said.

While helping represent the Puyallup School District in the 2008 lawsuit involving the *JagWire*, he talked to students about how they ran the newspaper.

Austin, who taught high school English for 16 years, also spoke with *JagWire* adviser Kevin Smyth about what he taught in his journalism class and how students learn in an open-forum classroom.

“The approach to instruction done in an open-forum classroom, I think, is different than the instruction done in a non-open-forum classroom,” he said.

After consulting with journalism education experts who agreed that an open forum, such as the one *JagWire* operated under, was

the best model for students to learn, Austin was convinced.

“I guess really researching the process in this case really led me to conclude that open forum is a process that can work,” he said.

Three of the four original students of “Fight for the Write or Right” have graduated, but others have stepped up to take their place, said Rickard, currently a senior and the only one of the original group yet to graduate.

Now the group is opening its ranks to students across Washington state to push for legislation that will allow students to publish without prior review and prior restraint.

Rickard said the group is contacting other student editors via e-mail and through the state’s journalism workshops in the summer and fall to make the movement a statewide effort.

“What we’re hoping to do is give them the tools and compile an informational how-to packet to give them to start their own movement in their school districts,” she said.

The group will encourage students to talk to their fellow student journalists, principals, school boards and senators and representatives to get support, Rickard said.

“We really believe that this needs to be a movement for students, by students,” she said. ■

wrote an editorial criticizing a member of student government for questionable hiring practices, the student demanded that all newspapers be removed from the stands and filed a disciplinary complaint charging defamation against Iler.

Iler went through a disciplinary hearing and was ultimately acquitted of the charges of defamation, but said that it was wrong for the school to go forward with the hearing.

“It’s just showing complete disregard for the U.S. Constitution, for the Oregon State Constitution—just stepping all over freedom of speech,” Iler said. “As a student publication we have the right to print things, especially when they fall completely within the bounds of what the law says that we’re allowed to write.”

Iler said that regardless of whether the editorial painted the student government in a favorable light, it was not libelous or slanderous and the school had no right to continue with the disciplinary hearing.

“*When you’re talking about people with life-or-death authority over your college career, it becomes a different story. It’s one thing to threaten to yank a story, it’s much more intimidating when the threat goes to your very ability to complete your education.*

Frank LoMonte
executive director, Student Press Law Center

“I feel that our college just needs to understand the role of the student newspaper and the role of the press in general,” Iler said. “I still had to sit there and go through this disciplinary hearing when obviously I was just exercising my First Amendment right and hadn’t broken any of the rules of the school at all.”

Trespassing

Student journalists at JMU’s student newspaper, *The Breeze*, found themselves faced with disciplinary action for newsgathering methods rather than for the content of the newspaper.

When *The Breeze* sent a reporter to cover a break-in that took place in a dorm where someone allegedly opened shower curtains to watch girls showering, an angry resident adviser demanded that the reporter leave.

Tim Chapman, who was editor-in-chief at the time, arrived at the scene in response to a call from the reporter and was asked to leave as well.

A few days later, Chapman and the reporter, Katie Hibson, were notified that judicial charges had been brought against them for trespassing, non-compliance with an official request and disorderly conduct.

The two then had to go through disciplinary hearings to address their charges.

“I thought this was handled pretty poorly,” Chapman said. “What we were doing was newsgathering in a place where we had been let into the building by a resident. So as far as we knew, that was our First Amendment right.”

Disciplinary boards convened by school officials may not

be held to the same constitutional standards as a court of law, including the burden of proof—something LoMonte said puts students at a disadvantage. Furthermore, students should have the freedom to work without fear of punishment when fulfilling their roles as journalists.

“It’s especially inappropriate to punish newsgathering in front of a disciplinary board because the constitutional standards for a court of law may not translate to a board of college administrators,” LoMonte said.

“A journalist shouldn’t go out into the field having to fear that they might be yanked in front of a disciplinary board because they step into a building someone has declared off limits.”

Student journalists need to be free to engage in newsgathering that will lend itself to the investigative stories that need to be told on campus, Chapman said, and not just think of themselves as student newspapers, but as any other member of the press.

Chapman, who was found not guilty at his hearing, calls the entire ordeal a ridiculous distraction for his staff and for

himself.

“What it came down to was an overzealous resident adviser and hall director who wanted to make sure that what happened in their dorm didn’t get out, and clearly they didn’t understand the First Amendment,” Chapman said. “It’s a shame that the focus was put on myself and Katie when it really should have been on what was going on with dorm security.”

Fighting back

Direct censorship is, in ways, easier to fight than these indirect methods of censorship since more people can recognize it and mobilize against it, Hanson said.

Though student journalists cannot prevent these kinds of judicial punishments, they can combat the charges by becoming well-informed about what the codes say and exactly what infraction they have been charged with.

“Many times we see rules used loosely or sloppily to punish conduct that doesn’t really fall within those rules,” LoMonte said. “There can be fundamental procedural fairness issues. If at all possible, try to get legal counsel or at least a parent or trusted adult in the hearing to provide advice and serve as a witness.”

LoMonte said that when administrations use student conduct codes or judicial charges as a means of censorship, it can be more threatening to student speech than outright censorship.

“When you’re talking about people with life-or-death authority over your college career, it becomes a different story,” he said. “It’s one thing to threaten to yank a story, it’s much more intimidating when the threat goes to your very ability to complete your education.” ■

ty concerns than any legal obligation, said Allen Mortimer, director of planning and policy for Pinellas County Schools.

“We probably legally could just put students’ names on the website,” he said. “But when it comes to the Internet, we want to be as cautious as we can.”

The guidelines state that, “No web page content should allow people accessing the page to contact any student directly.”

LoMonte said the fact that students’ names and pictures regularly appear in professional newspapers demonstrates the myth behind the safety risks.

“Open the website of the typical community newspaper and you will see people playing high school sports, performing in school concerts and otherwise doing identifiable things,” he said. “If predators were swooping down and grabbing up kids be-

post online.

The school relaunched its journalism program last year as part of the Journeys in Journalism program with the *St. Petersburg Times*, and adviser Kathleen Tobin said they knew they wanted a big online presence, which would be a first for Lakewood High.

“And we knew that this would be a difficulty,” she said, referring to the Web page guidelines. “Basically what they told us is we would need to have media release forms signed for every person we mentioned or took a picture of.”

So before the staff posts a story online or sends an issue of the newspaper to be printed, they highlight every name and check it with their database, Tobin said. If they don’t have a release form for a student, they rush them a form and ask them to return it as soon as possible.

Mortimer acknowledged that the pol-

Cannaday said she has followed a discussion on the Journalism Education Association listserv among advisers across the nation on whether schools require the opt-in permission forms or an opt-out form, where names and photos can be published unless a parent or guardian asks for them not to be.

“This problem is all across the country,” she said. “From what I’ve read, many places have the opt-in form. They have to get a permission form from the students’ parents in order to put the picture online, which is the policy that my district has. And it’s very challenging to get all this paperwork in.”

Tobin said she thinks the opt-out policy would be easier for student journalists while still allowing parents to make the decision about the safety of their child.

The staff at Lakewood High has gotten roughly half of the school’s 1,400 stu-

“You can’t do journalism if you can’t write about students, take pictures of students, or show students’ faces.”

Wendy Wallace

director, Poynter Institute’s high school journalism program

cause they appeared on news websites, we would know that by now.”

Cannaday said student journalists should be able to report on their schools’ activities too.

“I have mixed feelings about it, because I certainly don’t want to be the person who puts a student in trouble,” she said.

But Cannaday called the policy “paranoid” — its language even prohibits file names of documents or photos uploaded to the website from including a student’s name, in case someone could trace it. She said it is unclear whether it even applies to websites run by student journalists instead of the district.

Her staff at *The Eye* puts their stories online — with students’ names — but does not post pictures. The school’s administration told Cannaday that would require getting permission from parents.

The lack of clarity has left the policy up to interpretation by administrators at different schools within the district.

At Lakewood High School, another school in the Pinellas County School District, journalism students have to get permission for every name or picture they

icity is unclear and difficult to enforce in a consistent way.

“There’s so many opportunities for students’ names for the awards, athletics and so on, that I’m not sure that we actually avoid putting any students’ names online,” he said. “And I think in general, even though the policy is probably blanket K-12, I think we’re more concerned about younger grades than high school grades.”

Wendy Wallace, director of the Poynter Institute’s high school journalism program, said she hopes to bring the district and the advisers together to come up with a solution that is clear and works for both sides.

“It’s just a situation that just can’t be right. There has to be another solution than what we’re currently doing,” she said. “You can’t do journalism if you can’t write about students, take pictures of students or show students’ faces.”

The current policy is impractical with the need for timeliness on the Web, Cannaday said.

“It could take a week to get a kid to take a form home and get his mom or dad to sign it saying it’s OK for us to run a picture, and by then it’s old news,” she said.

dents to return a form, she said. Of those, only about six parents have asked for their child’s information not to be put online.

An opt-out system is the system specified in the federal Family Educational Rights and Privacy Act. FERPA enables parents to prevent schools from publishing “directory information,” such as names and photos, about their children.

Cannaday said the process of collecting opt-in forms is discouraging for student journalists.

“It’s hard to teach the kids how to do the right thing, how to be responsible journalists,” she said. “They don’t really want to make the effort when they don’t think it’s going to get published. So they don’t try.”

It is a typical reaction for schools to shy away from something new when there are questions about students’ safety, Cannaday said.

“But we have to realize that that’s the way the world is now,” she said. “The world is changing; journalism and social networking are changing. As teachers we have to first of all figure out what the right thing to do is and then teach our students to do it correctly.” ■



foundation financial records

University foundations control hundreds of billions of dollars in donor assets – Harvard’s investment portfolio alone is valued at well over \$25 billion. At public colleges, foundations often resist complying with the same disclosure laws that apply to their affiliated universities, claiming to be nonprofit corporations and not government agencies. But there are ways to peek behind the curtain of secrecy and inform the public about how these monied and influential institutions operate.

what’s out there...

Courts in at least eight states – Florida, Iowa, Kentucky, Michigan, North Dakota, Ohio, Pennsylvania and South Carolina – have ruled that foundations at public universities must obey the same open-records laws as the universities themselves. (In Georgia, an attorney general’s advisory opinion says meetings and records must be open.)

Courts have said that foundations are so entangled with the operations of their universities that they are essentially an arm of the state, and must be treated as state agencies. That means memos, e-mails, recordings of meetings, and all other business records of the foundation are available to be inspected and copied on request. (A few states exempt the identities of donors from disclosure on privacy grounds, but you should still be able to get records with names blacked out.)

Even if there is no court precedent in your state, that does not mean the records are closed – it’s always worth asking. The burden is on the agency to provide a legal justification for refusing a request – not on the requester to justify disclosure. And many agencies will voluntarily disclose more than the law requires.

Any nonprofit corporation – which includes almost every foundation, even at a private university – must file an annual IRS Form 990 report. The Form 990 is a public document that must be made available on request. Many are posted online, or are available through a search on www.guidestar.org.

...and how you can use it

Examining the financial records of a foundation can provide insight into the true inner workings of the university. Foundations often are used to funnel extra pay to top university employees, including administrators, athletic directors and coaches. If you don’t have your foundation’s financial records, then you may have an incomplete picture of what your university is paying its superstars.

Foundations have also been used to pay for expenses that college officials might not be comfortable seeing widely publicized as part of the university’s budget. In 2003, the president of the University of Tennessee resigned under pressure following a newspaper investigation – based on the use of public records from the university foundation – suggesting that he used a university airplane for personal travel and charged personal expenses to a university credit card. A scandal at the University of Colorado, where recruiting expenses were concealed through the university’s foundation, led that state in 2005 to enact a law opening foundation records to the public. At other schools, foundation records have revealed the existence of “golden parachute” payouts to former presidents and coaches – and even a \$42,000 red Corvette as one president’s going-away present.

The IRS Form 990 should also disclose business ties between foundation executives and board members and the university. This can give you leads on “insider dealing” stories about where the college invests its money and what vendors the college contracts with. And the form will show how the foundation is investing donors’ money, and how those investments are performing – or not performing.

the news peg

In May 2010, a Pennsylvania court ruled in *East Stroudsburg University Foundation v. Office of Open Records* that foundations in Pennsylvania must disclose how much money they raised, and let the public review minutes of foundation board meetings where university fundraising was discussed. In California, state Sen. Leland Yee has been pushing a bill to clarify that public university foundations are subject to that state’s Public Records Act. Yee clashed with California State University-Stanislaus over its refusal to disclose how much its foundation paid former Alaska Gov. Sarah Palin to headline a university fundraiser. (Under pressure the foundation admitted it was \$75,000.)

Don’t forget about your school’s audit reports – many foundations will be audited as part of the university’s operations, either by an internal university auditor or, at a state institution, by your state auditor. At a state college, audit reports are public records, and often are available online.

Is this the end of free radio?

Performance Rights Act aims to end broadcast exemption from copyright royalties

BY SETH WILLIAMS

“Stop the radio tax. Keep radio free.”¹ If you’ve heard these slogans, you probably know at least a little about the Performance Rights Act that is working its way through Congress. The bill, H.R. 848 in the House and S. 379 in the Senate, would eliminate an exemption from copyright royalties for terrestrial radio. In other words, AM/FM broadcasters would have to start paying record labels and artists for songs played over the air. The bill would also add new recordkeeping requirements that could increase administrative costs for stations.

Although the fee would amount to no more than \$1,000 a year per station, that can be a difference-making amount for campus broadcasters scraping by on shoestring budgets. But the issue of what is fair compensation for the owners of sound recordings is a complex one. While broadcasters may be tempted to cry “First Amendment” and fire off angry letters to Congress, the copyright interests of recording artists, too, are rooted in the Constitution.²

At its core, this is an economic fight featuring two heavyweights, with commercial radio and the music industry advocating fiercely for their interests and presenting starkly different pictures of the issue. The music industry, still struggling to develop a successful digital music business model, claims the old system of generating income through recorded music distribution and concerts cannot compete as music downloading takes a significant bite out of recorded music sales. In this new economy, the industry says it no longer makes sense to view radio as a means of free advertising powerful enough to justify an exemption from sound recording copyright laws.³

Commercial radio is in better financial shape than the music industry, but it is struggling to find and keep advertisers in this economy.⁴ Advocates for commercial radio argue that it still provides tremendous exposure for the music industry.⁵ They also point to terrestrial radio’s long history of paying copyright fees to songwriters or publishers but not artists and record labels. Finally, some commentators argue that the music industry misplaces its effort by continuing to focus on an old

technology for financial deliverance instead of focusing on how best to generate revenue online.⁶

What follows is an introduction to the copyright issues facing student broadcasters in a technologically diverse and evolving environment. Along with a brief history of recording copyright, this article examines both the House and Senate versions of the Performance Rights Act and provides some basic advice on how to best advocate as student broadcasters. Finally, it concludes by putting the debate surrounding radio copyright fees in the broader context of an industry transitioning toward a digital future.

Context and History

It might be helpful to start this review by thinking about what it is that copyright laws attempt to protect. Copyright law is intended to promote creative and artistic work by giving the creator of the work control over its reproduction. In the United States, there are two important categories of copyright protection for music. The first category involves the underlying musical work,⁷ and the second category protects the recording itself.⁸ Modern music highlights this distinction, because many artists do not write all of their own songs. When the act of composing the music and writing the lyrics for a song is separated from the work of developing an artist’s sound and style, it becomes easier to see why music demands more than one type of copyright protection.

Like literature, drama, and art, musical composition is a traditional example of copyright protection.⁹ Copyright protection for musical works includes the melody and lyrics of the work. The right to enforce the copyright belongs to the author or composer of the music. Authors and composers usually assign the rights for their musical works to a publisher, who typically licenses the work to an organization that represents a number of authors and composers, a performance rights organization (PRO).¹⁰ The American Society of Composers, Authors, and Publishers (ASCAP), which was established in 1914, is one of the oldest PROs in the United States.¹¹ The other two major PROs in the United States are Broadcast Music, Incorporated

(BMI) and the Society of European Stage Authors and Composers (SESAC).¹² These organizations issue blanket licenses to venues like restaurants and bars for permission to perform all the songs in the organizations’ catalog.¹³ Television and radio stations also make royalty payments to PROs for the right to air the songs by the organization’s members.¹⁴

Within the category of musical works, there are two types of licenses available, performance and mechanical. A performance license is required when a musical work is performed publicly.¹⁵ Both live performances and transmissions of musical works are considered performances.¹⁶ For example, concert venues, restaurants, and radio stations all pay for performance licenses. On the other hand, mechanical licenses are required for the reproduction and distribution of musical works recorded in a tangible medium, such as vinyl record, tape or CD.¹⁷

Unlike musical work copyrights, which can protect multiple versions of an author’s or composer’s lyrics or music, sound recording copyrights attach to specific versions of a song and protect the recording itself. The sound recording copyright typically belongs either to the artist or artists on the recording or, more often, to the record label.¹⁸ Sound recordings were given federal copyright protection for reproduction and distribution in 1971.¹⁹ A master recording license is required to reproduce and distribute a sound recording.²⁰ While the recording industry sought performance protection for sound recordings in the 1970s as well, broadcasters and PROs were able to prevent the addition of performance rights for sound recordings at the time.

However, the growth of digital technology in the 1990s reignited the music industry’s push for a performance right in sound recordings by the music industry. In 1995, the Digital Performance Right in Sound Recordings Act (DPRSRA) extended a performance right to the digital audio transmission of recordings on subscription-based services.²¹ The DPRSRA primarily affected subscription based internet music sites and satellite radio. Three years later, the Digital Millennium Copyright Act (DMCA) extended the performance right



PHOTO ILLUSTRATION BY BRIAN SCHRAUM

for sound recordings to all digital audio transmissions, which exposed webcasters to sound recording copyright fees.²² Many in the music industry now claim there is no reason traditional broadcasters should continue to avoid paying sound recording royalty fees when comparable services, like satellite and internet radio, do pay performance fees to sound recording copyright holders.

The Performance Rights Act may be causing you to experience *déjà vu* if your station also webcasts its programs. In 2007, small webcasters reached an agreement with the music industry for a discounted rate on digital music royalties.²³ The agreement was the culmination of nearly a decade of legislation, litigation and negotiations in the wake of the DMCA.²⁴ Removing the exemption from sound recording performance copyright fees for webcasters forced some online stations out of business. Some broadcast stations chose to stop webcasting their programs. The Performance Rights Act renews the question of whether broadcasters should continue

streaming their content online, and could push more stations to choose one means of transmission or the other.

Details of the Bills

Reading a bill like the Performance Rights Act can be like listening to one side of a conversation without hearing the other. The bill does not explicitly say that traditional radio stations must now pay performance copyright fees, but that would be its practical impact.

Section 2 of the Performance Rights Act illustrates how to read the bill in conjunction with the Copyright Act, which is found in Title 17 of the U.S. Code. For example, Section 106(6) of Title 17 now gives the copyright holder of a sound recording the right to control public performances through “digital audio transmission of the work.”²⁵ In both the House and Senate version of the bill, Section 2(a) of the Performance Rights Act amends Section 106(6) to include the performance of the copyrighted work “publicly by means of an audio transmission.”²⁶ The

effect of this change is to expand Section 106(6) from digital audio transmissions to audio transmission generally, including traditional broadcast transmissions. Similarly, Section 2(b) of the bill changes the language in Section 114 of Title 17 from “digital audio transmissions” to “an audio transmission.”²⁷ You probably do not need to read the bill side-by-side with the Code, but knowing that the bill is merely adding to or changing existing law is essential to understanding the bill.

Section 2 of the Performance Rights Act also removes “nonsubscription broadcast transmission”²⁸ -- traditional radio -- from a list of exemptions from sound recording performance copyright protection that now appears in Section 114(d) (1) of the Code. These changes accomplish the primary purpose of the bill by extending sound recording copyright protection for performances to cover traditional radio broadcasters. The remaining sections of the legislation refine the new copyright standard by providing some limits and guidelines for future royalty payments.



ONLINE @ WWW.SPLC.ORG:

Read *The First Amendment on the Air*, the SPLC's complete guide to broadcast press freedom for student journalists, including a discussion of FCC licensing, administrative control of content and the cases that have impacted broadcast freedom.

Section 3 provides the most significant limitation on royalty payments from a student broadcaster's perspective. It provides small commercial, noncommercial, educational and religious broadcasters with the option of paying a flat royalty payment. That flat fee would likely be less than the royalty payments the station would incur by paying royalties on a per-song basis. However, the House and Senate versions of Section 3 differ significantly.

Both versions of the bill allow small commercial stations, those with gross revenues of less than \$1.25 million, to pay a flat royalty fee of \$5,000. In the House bill, public broadcasting entities, including educational stations, can elect to pay a flat fee of \$1,000.²⁹ On the other hand, the Senate bill provides flat fees of \$100 and \$500 for public broadcasting entities with gross receipts of less than \$50,000 per year and less than \$100,000 but more than \$50,000 per year, respectively.³⁰ Like the House bill, public stations with gross receipts of more than \$100,000 per year could pay a flat fee of \$1,000 in the Senate version of the bill.³¹

On its face, the Senate version of the bill appears more beneficial to educational broadcasters. However, the language allowing royalty payments of less than \$1,000 in the Senate version of the bill is not sufficiently clear. The bill uses "gross receipts"³² for the year to determine the level of royalty payments for educational broadcasters, but it does not define the gross receipts to be considered. The problem for many educational stations is that the language proposed could consider the gross receipts of the license holder – the university, college, or school in many cases. Such an interpretation would almost always put the station over \$100,000 of gross receipts per year and subject the station to the highest level of royalty fees for public broadcasting entities.

It might seem obvious that the language in Section 3 of the Senate version of the Performance Rights Act refers only to the radio station's budget. After all, educational stations have access to only the

money in their budgets, not the budget of the entire school. However, the language in the bill does not define what entities receipts should be considered.

Clear legislation is in all parties' best interest. As mentioned earlier, the DMCA experienced significant delays in implementation due to ambiguities in the original bill. The flat fees included in Section 3 of the Senate version of the Performance Rights Act are clearly an attempt to avoid the lengthy process of negotiation and litigation that occurred between the music industry and small commercial and noncommercial internet broadcasters after passage of the DMCA. If the language in the Performance Rights Act is unclear, it will likely suffer the same start-up difficulties as the DMCA.

The final section of concern for student broadcasters is Section 6. Section 6 governs the distribution of royalty fees among the copyright holder, the featured recording artist, and any nonfeatured performers on the sound recording. To ensure the proper distribution of royalty payments, copyright holders must include reports of the identity of artist, the International Standard Recording Code of the sound recording, the title of the work, the number of times it was transmitted, and the total amount of receipts collected from each licensee.³³ As a result of this requirement, "copyright owners shall use reasonable good faith efforts to include in all relevant licenses a requirement to report" the identification information.³⁴ Section 6 will force educational broadcasters to maintain records of the identification information of each song played and provide those records to copyright holders at the time of royalty payments.

Understanding the PRA

For student broadcasters who believe their station will be harmed if Congress enacts the Performance Rights Act, it is still possible to have a voice in the outcome. Virtually every industry, profession, and labor group imaginable has an organization dedicated to advocating its inter-

ests. On the other hand, consumer oriented organizations are relatively few and far between. The lesson to take away from this disparity is that you are your own best friend in opposing legislative changes that negatively impact student broadcasting.

While letters from school administrators and petitions from listeners aren't bad tools, the most effective voice will be the students and staff working at and running the station. Industry groups outnumber consumer groups because people involved in a business work on it every day, develop an expertise in it, and have a greater financial stake in its success than individual consumers. In this case, the student broadcasters are the experts in the field. You know what your station does on a daily basis, what services you provide to the community, and what the impact of additional costs and recordkeeping requirements would be on your station.

If you have concerns about the PRA, write a letter outlining the impact of the proposed legislation on your station. Schedule a meeting with someone at the state or district offices of your U.S. senators or representatives, or – if visiting Washington – with a congressional staff member. While it may seem obvious, a professional presentation and a professional appearance do matter.

Before writing a letter or scheduling a meeting, you should research the issue. An excellent resource is College Broadcasters, Inc. (www.askcbi.org), which closely monitors legal and regulatory issues impacting student broadcasters. Make a plan or an outline of what you want to talk about if you will be meeting with someone from your representative's staff. Don't be surprised to do most of the talking, and be prepared to answer questions and explain your concerns. You are the expert on student radio and possibly on this entire piece of legislation.

The arguments against imposing performance fees on terrestrial broadcasters, and in particular small nonprofit broadcasters, are relatively obvious ones. Radio stations provide the exposure the record-

ing industry relies upon to distribute music and that the artists rely upon to sell out shows. Educational stations exemplify this benefit because they often play newer music instead of relying on older hits whose artists and labels already have an established brand.

The performance-rights debate can be viewed as an attempt to shift money from the still-profitable radio industry to the struggling recording industry. However, the radio industry is experiencing its own shift to digital technology. Some commentators predict that Internet radio will largely replace terrestrial radio in the next five to 10 years.³⁵ The emergence of wireless technology will change the face of radio. The recording industry already has sound recording performance rights for online radio stations and webcasters. Imposing fees on terrestrial radio will have the effect of pushing some broadcasters online sooner and perhaps pushing other broadcasters out of business. It does not provide a long-term solution to the recording industry's larger financial problems.

It is also important to help your representatives understand how recordkeeping requirements can uniquely impact campus broadcasters. Educational stations often experience significant turnover, which means constant training of new staff, and perhaps added risks of recordkeeping slip-ups that could prove costly. And it is important for legislators to appreciate what educational broadcasters provide to the community: airtime for new or local artists, hosting of free concerts and community gatherings, news coverage of campus events, a forum for campus groups to reach the student audience, exposure for sporting events undercovered by the professional media. Most importantly, remind your representative that educational stations serve as a laboratory where the staff learns everything from production and programming to sales and promotions.

For educators who advise student broadcasters, discussion of the Act can be a useful teaching vehicle to remind students of their obligation to pay for the music they use. Students raised in the file-sharing era sometimes have a casual attitude toward the use of copyright-protected material – or have been misinformed that there are formulaic “safe harbors” below which a PRO cannot claim infringement. While it is possible to make a fair use of copyright-protected material and thus avoid liability for infringement, fair use

is highly context-specific, and any blanket claim (e.g., “using less than 30 seconds of a song is always a fair use”) is a risky oversimplification. Numerical or percentage guidelines for the educational use of music in a classroom setting do not reliably apply once the instruction leaves the classroom and becomes publicly accessible on the airwaves or online. The music industry is among the most aggressive enforcers of copyright, and even a well-grounded claim of fair use may prove costly to defend.

Radio has proven itself an especially durable technology. In some ways, radio's ability to reach listeners at home, at work, in the car, or anywhere else made it a forerunner to today's wireless technology. Increasing access to wireless and digital technology will continue to push the radio industry to adapt, but an industry that has found its place among technological innovations from television to the Internet without becoming obsolete should be encouraged that it will find a place in digital society. The Performance Rights Act presents the possibility that stations could be charged a double performance fee for their terrestrial broadcast and their webcast as stations adjust to changing technology. It might also push some stations to move online sooner or risk going out of business. However, the Performance Rights Act will not destroy the radio format.

-Seth Williams is a third-year law student at the University of Indiana and a former college broadcaster, who wrote this article as a volunteer law clerk with the SPLC.

(Endnotes)

1 See, e.g., Free Radio Alliance, <http://freeradioalliance.org>; Freedom Speaks, www.freedomspeaks.com/letter/701665/keep-radio-free; Stephen Koff, *Recording artists and radio stations fight over royalties, air play and spin*, THE PLAIN DEALER, June 10, 2010, available at http://www.cleveland.com/open/index.ssf/2010/06/recording_artists_and_radio_st.html.

2 U.S. CONST. ART. I, §8, CL. 8. “[The Congress shall have power to] promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

3 See, e.g., Owen J. Sloane & Rachel M. Stilwell, Commentary, *The Case for the Per-*

forming Rights Act, 32 L.A. LAWYER 52 (May 2009).

4 Koff, *supra* note 1.

5 *Id.* “The best friend of the record labels and recording artists has traditionally been radio, because that's a three-minute commercial for a song.”

6 Brian Day, Note, *The Super Brawl: The History and Future of the Sound Recording Performance Right*, 16 MICH. TELECOMM. & TECH. L. REV. 179, 209-10 (2009).

7 17 U.S.C. § 102(a)(2) (2006).

8 17 U.S.C. § 102(a)(7) (2006).

9 For a general survey of principles of copyright law as they apply to the campus media, see the Student Press Law Center's “Student Media Guide to Copyright Law,” available at <http://www.splc.org/legalresearch.asp?id=32>.

10 Day, *supra* note 6, at 182.

11 *Id.* at 182-83.

12 *Id.* at 183.

13 *Id.*

14 *Id.*

15 *Id.* at 182 (citing 17 U.S.C. § 101 (2006)).

16 Shawn Murphy, *Music & Money: The Invisible World of Music Publishing*, Volunteer Lawyers and Accountants For the Arts, <http://www.vlaa.org/?view=Music-and-Money-Shawn-Murphy>.

17 *Id.*

18 Day, *supra* note 6, at 183.

19 *Id.* at 184.

20 Murphy, *supra* note 16.

21 Day, *supra* note 6, at 184-85.

22 *Id.* at 185.

23 Mark Hefflinger, *SoundExchange Offers Discounted Royalties to Small Webcasters*, Digital Media Wire, Aug. 22, 2007, <http://www.dmwmedia.com/news/2007/08/22/soundexchange-offers-discounted-music-royalties-to-small-webcasters>.

24 Day, *supra* note 6, at 187.

25 17 U.S.C. § 106(6) (2006).

26 H.R. 848, 111th Cong. § 2(a) (2009); S. 379, 111th Cong. § 2(a) (2009).

27 *Id.* at § 2(b).

28 *Id.* (amending 17 U.S.C. § 114(d) (1)(A)).

29 H.R. 848, 111th Cong. § 3(a)(1) (E).

30 S. 379, 111th Cong. § 3(a)(1)(E) (ii)(I-II).

31 *Id.* at § 3(a)(1)(E)(ii)(III).

32 *Id.* at § 3(a)(1)(E)(ii).

33 *Id.* at § 6(1)(B)(ii)(I-V).

34 *Id.* at § 6(1)(B)(iv).

35 Kara Swisher, *Why Online Won't Kill the Radio Star*, THE WALL STREET JOURNAL, June 7, 2010 at R2.

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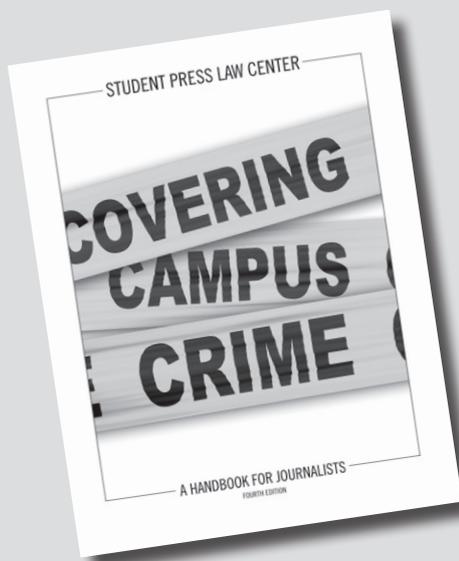
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