FREEDOM OF THE PRESS ON CAMPUS

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Executive Summary

Freedom of the press is under fire on college campuses, threatened by a wide range of restrictions. This report includes a study of the general media policies at the top 25 universities in America (as ranked by U.S. News & World Report), finding that many elite colleges impose a ban on journalists on campus unless the administration gives permission to them. These prohibitions are unnecessary to protect students and faculty (and several private universities have no such restrictions). Colleges seeking to protect their "brand" identity try to control the media, and often require "minders" to accompany the press on campus.

Colleges also limit freedom of student media by exercising direct censorship control, punishing media advisors, failing to protect publications from theft, and cutting funding for student media. As the importance of social media as a tool for citizen journalists increases, attempts by colleges to restrict or punish students for the use of social media also endangers freedom of the press.

At a time when Donald Trump denounces reporters as "fake news" (and is joined by other authoritarian-minded leaders around the world), universities ought to be standing for the principle of a free press. When colleges require permission for reporting on campus and restrict student media, they violate the rights of their students and employees and send a chilling message against freedom of expression.

This report includes nine policy recommendations for colleges to help protect freedom of the press:

POLICY RECOMMENDATIONS:

1. Colleges should reject restrictive media policies requiring permission for the press to be on campus, Colleges should use Washington University's policy as a model for protecting freedom of the press.
2. Colleges should explicitly state that they do not use escorts or minders, unless the media specifically request such assistance.
3. Colleges should adopt the exact language of the Student Press Law Center as their formal statement of intent for a campus student media policy.
4. Colleges should voluntarily adopt the New Voices language as media policies for their institution.
5. Colleges should have explicit policies prohibiting prior review or restraint of student publications, and protecting media advisors against retaliatory acts.

6. Colleges should adopt policies to ensure adequate funding for student publications and to prevent retaliation against student journalists. When student media are part of the formal curriculum, colleges should make sure student journalists control the publication.
7. Colleges should inform students and staff that stealing "free" newspapers is a crime and also punishable under campus discipline.
8. Colleges should not regulate defamation in campus conduct codes, and should help students and student publications when they are subjected to defamation lawsuits for reporting misconduct or reporting the news.
9. College social media policies should defend free expression and prohibit censorship by stating that social media is evaluated the same as all other forms of expression, rejecting the need for disclaimers on personal social media, and protecting the rights of all students, faculty, and staff to use social media.

Introduction

The monumental, life-and-death events of 2020, from a global pandemic to massive worldwide protests against police brutality, may make an issue such as freedom of the press seem trivial by comparison. But these global convulsions actually reveal just how important media freedom is. The rapid spread of Covid-19 was due in part to the repressive policies of China's government restricting media coverage of the looming crisis and punishing whistleblowers who tried to sound the alarm. The millions of protesters for racial justice and dramatic changes in public opinion would have never happened without 17-year-old Darnella Frazier recording a video of police murdering George Floyd and posting it on social media.

Freedom of the press is a core First Amendment value, but it is particularly important to protect it on college campuses. Universities must have a unique moral commitment to freedom of expression that is essential for the open exchange of ideas that higher education stands for.

This study examined the media policies of the top 25 National Universities (as ranked by US News & World Report) to provide a glimpse into how college campuses deal with the professional media. Perhaps no area of campus policies has wider variation across campuses than the media policy. (For a complete list of these policies and letter grades rating them, see the Appendix at the end.) Some colleges have no campus media policy and no formal restrictions on the press. Other colleges have absolute bans on the media stepping foot on campus without permission.

Although there are sometimes many nuances, college media policies generally fall into three different categories:

1. A total ban on all media anywhere on campus without the explicit permission of the administration, often imposing strict limits and escorts for those media outlets allowed on campus.
2. Sharp restrictions on filming and photography, but few limits on reporting or interviews.

3. No media policy at all, or simply a voluntary approach that requests for the press to contact the media office without compelling it.

The worst kind of media policies on campus are those that simply declare a university to be private property and require anyone in the media to get advance permission to step foot on campus, without any recognition of the unique commitment a university must have to freedom of expression and the special concern for freedom of the press that all universities should protect.

One example is Harvard University. Harvard's media policy declares, "Reporting, photographing, and videotaping are prohibited on campus without prior permission." Why is Harvard's media policy so problematic? The demand to grant permission always implies the right to deny it. It sends a signal to reporters that negative media coverage might result in future difficulties.

Like all private universities with restrictive media policies. Harvard invites the public to its campus: "Every year Harvard University welcomes thousands of visitors from around the globe to our campus." Harvard freely allows people to take pictures and video in public areas with only a few reasonable restrictions: "Visitors are expected to respect the privacy of students in residential buildings and in classroom settings. We specifically ask that visitors not hold cameras up to dorm rooms or classroom windows." As is the case at virtually every American college, everyone is welcome to walk in Harvard's public areas and take video and photos — except for the media, who are the only group expressly forbidden by Harvard unless they are granted permission.

Even if Harvard never enforces these restrictions (Harvard's media office did not respond to questions asked about its policy or how it is applied), the existence of them sends a terrible signal about freedom of the press.

Harvard President Lawrence Bacow in 2019 wrote after protesters tried to shout him down at an event that "the freedom to exchange ideas" is one of the values "essential to the nature of our enterprise." Bacow added, "We should strive to model the behavior we would hope to see in the rest of the world. Now is the time to ask ourselves: What kind of community do we want to be? The choice is ours."

That's a good question to ask about Harvard's media policy. What kind of community does Harvard want to be? A community that embraces freedom of the press, or a community that says the media is banned without permission? At a time when authoritarian governments around the world are trying to silence and control the press, does Harvard want to be a model to the rest of the world for freedom of the press, or a model for repressive rulers?

Washington Post executive editor Martin Baron gave the 2020 Commencement Address at Harvard, noting that Harvard and journalists share a common goal of "pursuit of truth" and warning that "efforts in this country to demonize, delegitimize, and dehumanize the press give license to other governments to do the same — and to do far worse." If demonizing the media is a dangerous step, banning the media unless they have permission to do reporting is a far greater threat.

Harvard is not alone in having a very restrictive campus media policy. Among the Top 25 American universities, Brown, Columbia, Cornell, Duke, Emory, Northwestern, Notre Dame, Princeton, Stanford, and Yale all require permission from a news office before journalists are allowed on campus. Some of the restrictions are rather extreme. Stanford's policy, for example, bans members of the media not only from campus but also from "the

surrounding faculty neighborhoods without prior permission from University Communications." It might surprise some Stanford faculty to find out that they're not allowed to invite journalists to their homes without permission from the administration.

The second category of campus media policies involves restrictions on video and photography. These colleges require "Permission to film or photograph" (Dartmouth), "Permission to film any exterior or interior spaces on university property" including "reporters with cameras" (Georgetown), and "a location agreement must be signed" (MIT). While not as extreme as requiring all journalists to have permission to step foot on campus, limits on photos and videos are still a severe and unnecessary limitation on the media.

One particularly alarming provision in many college media policies requires permission from students before filming. For example, Harvard requires that "Permission must be secured in advance from students who appear in wide shots on campus." This extreme version of protecting the privacy of students has many disturbing implications. For example, if there is a large protest on campus, it would be impossible for anyone to get permission in advance from a crowd before taking a picture or video of the scene. This effectively bans anyone from filming or photographing any crowds at Harvard. Considering that video and photos of crowds of protesters have been crucial to the effectiveness of political demonstrations, Harvard's attempt to protect students actually violates their right to take photos of student protests.

Most public universities have no restrictive media policies because they are obligated to follow the First Amendment and allow the press on campus without permission. Still, the universities in this study did have some troubling exceptions to this in their policies. The University of California at Berkeley policy refers to "required permission to conduct documentary, educational, and long-form news productions on campus." It is highly questionable whether public universities are allowed to ban "long-form news" on campus, since the First Amendment makes no mention of protecting only the "short-form" press.

The third type of media policy is the best one, which offers no mandatory restrictions on the press and instead makes media contacts with a news office voluntary for public events or outdoor activities. The media resources page for Johns Hopkins University offers no formal policy restricting the media, but simply a kind invitation to the press: "Johns Hopkins is a big place. Let us make your job a little easier by connecting you with the right media representative." At the University of Chicago, the policy also appears to be voluntary: "Journalists who wish to visit or film on the UChicago campus should notify the News Office with details of their request." The University of Pennsylvania and Vanderbilt University both limit filming for "non-news purposes" but put no restrictions on the press. Rice University has no policy restricting the media (although a worrisome line in its social media guidelines for staff says, "If a member of the news media contacts you through social media for comments or interviews, direct all inquiries to the News and Media Relations team," indicating a troubling expectation that all media inquiries should go through the PR team). CalTech's policy states, "News media covering an active or breaking news story do not require a permit." In the most extreme case, the University of Southern California lists no policy at all on its media page.

However, the absence of policy is not ideal, because it can easily be replaced with restrictions and may not reflect actual practice. In 2018, University of North Alabama's communications staff asserted an unwritten

"protocol" that "requires all media inquiries be sent through" the office of communications and marketing, in order to ensure that statements to the media have "been vetted by administrators."

Carnegie-Mellon's policy has no mandatory limits on the press, but an email to the news office about the subject led to this response: "We don't have a published policy about media coming to campus. However, b/c we are private, they can't just come on campus and roam without us knowing. So we encourage media to contact our office to coordinate." This kind of uncertainty in policies can create confusion. Where campus policies fall short, students can sometimes step up. In 2005, the Carnegie-Mellon Student Senate passed a campus events media policy that was one of the first of its kind in the country. The policy "grants student media unrestricted and open access to all publicly promoted, student-funded campus events."

It's better for colleges to adopt an explicit affirmative policy protecting freedom of the press on campus, rather than leaving the subject blank. One good model of an affirmative campus policy protecting freedom of the press is at Washington University. The policy explicitly gives media access to public spaces and events on campus: "News media are welcome in all public areas of the Danforth Campus and may attend all non-ticketed events open to the public without prior permission." Advance contact is not required, only recommended: "we suggest checking with the Office of Public Affairs in advance." The policy explicitly protects the ideal of free expression by students, faculty, and staff: "Washington University supports the free and open expression of ideas and opinions by our faculty, students and other members of the university community." The policy explicitly protects the right of people to contact the press: "Faculty, staff and students have the right to speak with news media without the presence or permission of university officials." Even when permission must be required for media to enter classrooms, labs, or other restricted spaces not normally open to the public, Washington University creates an expectation that the media should have access: "Such permission generally will be granted…."

Although Washington University has a dubious policy (discussed later in this report) about escorts for the media on campus, even that section is far better than any other campus policy about minders for the media. Overall, Washington University provides a model for colleges to protect freedom of the press.

POLICY RECOMMENDATION #1:
Colleges should reject restrictive media policies requiring permission for the press to be on campus, Colleges should use Washington University's policy as a model for protecting freedom of the press.

The Battle Over Campus Media Policies

Donald Trump has infamously called the media who dare to report critical news about him "the enemy of the people" and dreamed of repressive measures to silence the press. But if you want to find a place where freedom of the press is increasingly restricted by official policies, you need look no further than America's leading universities. As colleges have become increasingly worried about PR, some have concluded that the easiest way to stop negative media coverage is to ban the media from campus unless the administration gives its approval.

Campus policies restricting media access are a growing threat to freedom of the press on college campuses, and a dangerous step at a time when we need more transparency in higher education. In an era when scandals afflicting higher education have made national headlines — from illicit admissions schemes at USC and other elite universities to sexual assaults committed by a doctor at Michigan State and a coach at Penn State — the free flow of information at universities is more important than ever. Instead, the corporatization of higher education has led colleges to adopt the bureaucratic practices of private companies that carefully manage and manipulate news in order to control their brand identity and prevent whistleblowers from revealing the truth about their college.

One recent example of repressive campus media policies reported on by the Student Press Law Center is at the College of Saint Rose. Since 2017, *The Saint Rose Chronicle* reported, many employees have stopped speaking to the campus newspaper. In 2019, a new media policy was enacted, and now requests for comment by reporters are rejected with these words: "All media requests should be directed to the marketing department."

The College of Saint Rose explained its media policy by noting that it "is similar to the policies of numerous colleges and universities." And, sadly, they are absolutely correct. Many private colleges have adopted incredibly restrictive policies on freedom of the press. In fact, many elite universities have media policies worse than the College of Saint Rose, with the media banned from campus without permission and minders required to follow reporters on campus. Still, few colleges have been so successful as the College of Saint Rose in pressuring their employees to be fearful of talking to the press.

That reflects the ongoing threat to academic freedom there. The administration of the College of Saint Rose was censured by the American Association of University Professors (AAUP) in 2016 in response to the 2015 termination of 23 tenure-line faculty jobs despite setting records for new student applications and enrollment that fall. The College of Saint Rose had also imposed a new and much more restrictive mass email policy in 2015 that faculty objected to. The repressive media policies there reflect a general lack of respect for free expression.

A group of Saint Rose alumni wrote a letter calling on alums to withhold donations to the college until the restrictive "media blockade" is rescinded. In some cases, the advocates of press freedom have been successful in fighting against repressive media policies. The AAUP chapter at Nassau Community College led the way in forcing the reversal of a media policy in 2018.

Media Policies at Public Colleges

Private colleges have the legal power to silence the press, even if it violates the ethical foundations of what a free university must stand for. But public colleges increasingly also think they can target the media for suppression, in spite of their legal obligations under the First Amendment

One example is Nassau Community College (NCC) in New York, which in 2017 suddenly adopted a News Media Relations Policy that violated the First Amendment (for both news media and employees), endangered academic freedom, and undermined the basic ethical obligations of openness at a college. The policy included a requirement that employees "must" first contact the media relations office before contacting the media about a "College program, event or achievement," and an enforcement section detailing that any violations of this policy may be subject to disciplinary action.

Another part of the NCC media policy included the requirement for minders: "While on College property or upon entering College facilities, all news media representatives must be accompanied by a staff member designated by the Office of Governmental Affairs and Media Relations."

The policy also declared: "If a College event attracts news media interest, all press releases and statements to the news media must be routed through, approved and disseminated by the Office of Governmental Affairs and Media Relations." Prior restraint of speech by the government is a clear First Amendment violation. This rule allows the administration to not only control the content of certain communications with the media, but even to ban any "statements" to the press about an event. The College is free to encourage people to work with a particular office and offer its assistance, but not to ban contact with the media about events. The policy does not define what a "College event" is, and it could include even an event criticizing the News Media Policy.

The original NCC policy also banned discussion of certain topics: "Under no circumstances should information pertaining to a case that is in litigation be discussed publicly without the prior approval of the Office of General Counsel." Under this rule, if an employee is the victim of discrimination or sexual abuse, that employee can be fired for discussing this wrongdoing publicly with anybody. In fact, if anyone sued Nassau Community College over an unconstitutional media policy, any professor could be fired for saying anything to the media about how the media policy should be changed, presenting research about the media policy, or even organizing an event to discuss freedom of the press and the media policy, unless the administration gave permission for such freedom of speech.

Fortunately, the Nassau Community College Board of Trustees unanimously approved a new News Media Relations policy on Nov. 13, 2018 that is a tremendous victory for freedom of the press, reflecting the struggle of the AAUP and other groups fighting for campus liberty. At the Board meeting, President W. Hubert Keen declared, "We've gone through two rounds of revision of the policy. I think that we are finally to the point where it now assures First Amendment rights as well as addressing the College's role in communicating its image to the public."

In nearly every way, the repressive aspects of the old media policy were revised and improved to conform with the First Amendment. By removing the mandatory rules and replacing them with voluntary language, NCC fixed a terrible policy while still communicating its desire to have employees work with public relations staff in

dealing with the media. While not everything is perfect about the new policy (it's dubious that a college should be urging news media to have a staff minder follow them everywhere on campus), it is a great model for other colleges to follow at a time when bad campus media policies are proliferating across the country. Perhaps other colleges will learn the lesson of shared governance, too: If NCC had simply sought the advice of faculty before imposing a new media policy, they could have avoided this entire embarrassing debacle. In February 2017, the Academic Senate Executive Committee submitted comments noting that "Policy 3100 forbids our contact with the press, thereby silencing our voices as professionals," and the Academic Senate passed a resolution asking for the policy to be changed. FIRE wrote letters to the NCC administration demanding changes as did the AAUP.

Because of this national and campus pressure, NCC administrators scuttled a plan to have the Board pass minor revisions to the media policy without addressing its most serious problems. Instead, the administration was forced to back down completely and adopt the new policy in light of the critiques.

There's an important lesson here: Colleges such as NCC are creating repressive media policies because they are obsessed with public relations and brand management. The only way to get them to change these terrible policies is by imposing a public relations cost and tarnishing their brand as censorship.

Defeating the Media Policy at Loyola

Students have also shown that they can force changes in restrictive media policies, even at private institutions that have no obligation to follow the First Amendment. In 2019, student journalists at Loyola University of Chicago persuaded the administration to overturn a restrictive policy that caused a top administrator to demand that student reporters stop contacting employees directly for comment on stories. In February 2019, the Loyola Phoenix, the student newspaper of Loyola University Chicago, published a remarkable editorial about the repressive media policy on campus.

Loyola's communications spokesperson, Evangeline Politis, had written to the student newspaper, angry that student journalists had dared to ask questions directly to faculty and staff at Loyola: "This is disrespectful and unacceptable. As I indicated in my email this morning (attached), I am the first point of contact for the Phoenix for University-related requests. I can get in touch with administration and faculty to answer your questions."

Politis was simply following Loyola's official policy at the time, which declared that every single question from the news media (including the student newspaper) must be channeled through the University Media Communications (UMC) office, who will then decide if faculty or staff will be allowed to answer. (In another editorial, the Loyola Phoenix published a long list of questions they actually had given to the communications office but never received an answer.)

These college students at Loyola began to reminisce about the good old days, two years earlier, when they were free to ask questions like journalists are supposed to do: "It didn't used to be like this. Even just a couple of years ago, when many of the people on this Editorial Board were just starting at Loyola, Phoenix reporters were more than allowed to reach out to professors, administrators, department heads, Campus Safety personnel, heads of

facilities and student activities coordinators." According to the Loyola Phoenix, "dealing with Rooney's administration is no better than a White House press briefing led by Sarah Huckabee Sanders."

Loyola's media relations policy gave total control over media to the PR office: "UMC is responsible for initiating and/or responding to news media requests and managing those interactions." That threatens the academic freedom of faculty, staff, and students to contact the media, and to respond to questions from the press.

Loyola's restrictive media policy also affected the rights of students and faculty to promote their own events: "If an event attracts news media interest, press releases and statements to the news media will be routed through, approved, and disseminated by the appropriate UMC team member." What if the administration decides it doesn't want to publicize an event that criticizes its policies? Under this rule, it was a violation of university policy if anyone outside the PR office tells a journalist about an event happening on campus.

Loyola's media policy also included a requirement for minders to follow news media: "While on Loyola University Chicago property or upon entering residence halls and other University facilities, news media representatives must be accompanied by a UMC staff member or a University employee designated by UMC."

But the policy also said that "'news media' refers to newspapers (including the Loyola Phoenix), magazines, newsletters, online publications, and broadcast outlets such as radio, television, and podcasts." So this meant, literally, that Loyola student reporters must be accompanied by minders from the administration anywhere on campus they go to report a story. In fact, the way this policy was written, administrators aren't even allowed to exercise any discretion; they "must" assign a minder to every journalist working on campus.

And if the student journalists refuse to obey? According to Loyola's speech code, "The University reserves the right to investigate and adjudicate any case in which a student is alleged to violate any policy published by the University …" So a student journalist could even be punished for refusing to help the administration put them under surveillance.

Some might think that universities have restrictive media policies because of experiences with negative and unfair media coverage. But Loyola had the most positive media coverage of any college in the country, thanks to a Cinderella Final Four run in the men's basketball tournament and the blessings of Sister Jean, a nun with her own bobblehead who was the most tweeted-about person at the most profitable event in higher education. If repressive media policies can happen at Loyola, they can happen anywhere.

As the Loyola Phoenix noted, "Loyola is more than a brand. It's a university." Universities have an obligation to transparency and openness as a part of being free institutions. Brand management is always going to be a part of the modern university. But when branding is enforced by restrictive policies, it indicates that free expression isn't part of that university's identity anymore. Universities with repressive media policies are declaring that freedom is no longer part of their brand.

In response to the criticism from the student newspaper, Loyola dramatically changed its media policy in 2019. The new policy states that faculty and staff are "encouraged" to contact the media office, but they are no longer required to do so. Escorts are no longer required in all cases. And the press no longer must receive permission to visit campus: "Members of the news media are welcome to visit our lakeside campuses. However, in order to

ensure the privacy of our students, faculty, staff, and guests, we request that all external news media contact a member of the communication team prior to visiting."

Repressive campus media policies are spreading rapidly across higher education. Restrictive campus media policies are not the only threat to freedom of the press on campus, and often not the biggest danger. But they are a growing phenomenon, and one that is easily solved by adopting better policies that recognize how important openness and freedom of the press is to higher education.

Ironically, these restrictive media policies are growing at precisely the moment when they have the least utility. Cellphones and social media make it possible for anyone to become the media, and to post news, photos, and video that's readily available to the public and easy for the media to use. The media often no longer need to appear on campus because a student with a phone will record video of an event or a controversy.

At the same time, massive budget cuts threaten the viability of news media. According to a 2020 Pew Research Center study, US newspapers shed 51% of their newsroom employees between 2008 and 2019. The Covid-19 budget crisis has only accelerated this decline. It was rare in the past for news media to cover colleges, but now higher education reporters are even harder to find.

While the professional media covering higher education have largely disappeared, the staff of campus media relations offices has increased substantially in recent decades, as with other administrative positions in higher education. Media policies that sharply limit media access reflect the fact that media relations offices have the staff to monitor the press and to produce positive news that can be fed to media outlets directly.

Minding the Minders

The Nassau Community College media policy (like Loyola's) included a requirement for minders: "While on College property or upon entering College facilities, all news media representatives must be accompanied by a staff member designated by the Office of Governmental Affairs and Media Relations."

The use of minders, even if well intentioned, can suppress the free speech of staff and students by having a staffer overhear anything they might say to the media, much like similar "minders" are used in North Korea and totalitarian countries to control press access and discourage honest response. This provision could also be used to ban the media from campus if a staffer is unavailable to serve as a minder.

Several colleges use the term "escort" in their media policies. Brown University requires "an escort of an appropriate representative of the University" for all reporting on campus. Yale University notes that it "may require that media members be escorted or display a Yale-issued media credential. No media members may enter a Yale building or gated courtyard without OPAC's permission and escort." Columbia University requires that all media contact its office "for permission, guidance, and escort assignments." Cornell University warns that it "may escort members of the media at all times while on university property."

Washington University offers an interesting model for colleges that assign minders on campus: "Video and sound crews on Danforth Campus property usually are accompanied by a member of the Office of Public Affairs or the office's designee. When requests are made to conduct on-camera intercept interviews with

students, faculty or any other members of the university community, the accompanying Office of Public Affairs staff member will ask the proposed interviewee for her or his permission to proceed. The staff member will identify the reporter, describe the request for an on-camera interview and explain that the university sees the decision to be interviewed as each individual's choice. When the requested source makes a decision to be interviewed, she or he may ask that an Office of Public Affairs representative remain throughout that interview. Otherwise, the Office of Public Affairs representative will absent himself or herself from Danforth Campus interviews. (Because of federal laws protecting patient privacy, all Medical Campus interviews will be conducted with a member of the Office of Medical Public Affairs present.)"

It is noteworthy that Washington University does not require minders to be used by media engaged in recording; it only says they are "usually" used. And these minders are given a specific expectation that they should not be present at interviews unless specifically requested to stay. However, the whole use of minders needs to be challenged. Minders can have an intimidating effect on some interviewees, even with the careful restrictions given in this policy. Individuals who might wish to speak off-the-record to reporters could easily be intimidated by having representatives from the administration aware that they have been interviewed. Likewise, it's simply not true that federal privacy laws require minders to be present for any media interviews with patients or others on a medical campus.

While Washington University has the best policy for its campus minders, it is still better for a college not to have minders at all except at the specific request of the media. Any people on campus asked to do ""intercept interviews" surely are already aware that they have the choice to do an interview, and they hardly need staff members to inform them of the fact that they can decide for themselves to speak to a reporter. Few colleges have a policy requiring minders, and there is no good reason for a college to have a minder.

POLICY RECOMMENDATION #2:
Colleges should explicitly state that they do not use escorts or minders, unless the media specifically request such assistance.

Stifling Press Liberty at Liberty

The most repressive college in America toward the media is Liberty University, which under the leadership of president Jerry Falwell, Jr., is notorious for its censorship, despite the absence of a restrictive media policy. Bad practices can matter more than policies.

No university reveals the efforts of college administrators to suppress freedom of the press more than Liberty University. Liberty University has a long history of repression, including suppressing freedom of the press on campus by censoring its student newspaper. WIll Young, a recent editor of Liberty University's student newspaper, *The Champion*, recounted in the *Washington Post* how the faculty advisor ordered him to apologize to the campus police chief for asking for crime information. The faculty advisor also prohibited publication of articles that made Liberty or the friends of Jerry Falwell Jr. look bad. The administration even censored an

editorial about campus sexual assault nationwide because it failed to say that Liberty was different. Young reported that Liberty officials imposed an "'oversight' system — read: a censorship regime — that required us to send every story to Falwell's assistant for review. Any administrator or professor who appeared in an article had editing authority over any part of the article; they added and deleted whatever they wanted."

In 2018, Young quit, and Liberty turned the student newspaper into a faculty-run newspaper where student journalists must sign a nondisclosure agreement that forbids them from talking publicly about "editorial or managerial direction, oversight decisions or information designated as privileged or confidential." The form also states that the students understand they are "privileged" to receive "thoughts, opinions, and other statements" from university administrators.

Panyard, the deposed editor, launched a new independent newspaper, the Lynchburg Torch, with the help of other refugees from the campus weekly. Meanwhile, Dean of Communications Bruce Kirk said to new journalists on the *Champion*, "Your job is to keep the LU reputation and the image as it is."

But Liberty reached a new low for liberty in 2020 when president Jerry Falwell Jr. announced that the university has issued arrest warrants against two journalists for the crime of writing critical news about Falwell and Liberty for the New York Times and ProPublica. Liberty's demand to arrest reporters reflects a disturbing trend on college campuses to try to control media coverage.

Liberty University had attracted media attention because Falwell made numerous public comments stating his skepticism about the pandemic problem and declaring that he wouldn't shut down the campus, even though he did eventually move all classes online after the state banned large gatherings. On March 10, 2020, Falwell appeared on "Fox & Friends to say, "It's just strange to me how many are overreacting" to the pandemic, adding, "maybe now this is their next attempt to get Trump."

Liberty University complained that they received excessive scrutiny for an approach similar to those made by other universities who wanted to provide housing for some students. But criticism is part of living in a free society. Liberty is perfectly free to criticize news reports if it thinks they are wrong. However, real universities don't threaten their critics or arrest reporters for doing their jobs.

The *New York Times* declared in a statement, "Our freelance photographer was engaged in the most routine form of news gathering: taking a picture of a person who was interviewed for a news story. We are disappointed that Liberty University would decide to make that into a criminal case and go after a freelance journalist because its officials were unhappy with press coverage of the university's decision to convene classes in the midst of the pandemic." In-house counsel David McCraw has said that the Times freelance photographer, Julia Rendleman, was invited to campus by the student who was photographed.

Katie Townsend, legal director for the Reporters Committee for Freedom of the Press, noted: "These arrest warrants appear to be intended to harass journalists who were simply, and rightly, doing their jobs — reporting on the impact of Liberty University's decision to partially reopen during a pandemic — and to intimidate other reporters from doing the same type of reporting. People across the country are relying on the news media for accurate information about the coronavirus and how institutions are responding to it. Journalists should not face retaliation or threats of criminal penalties for fulfilling that responsibility."

The *Washington Post* editorialized, "it is more than a little jarring to see this tactic of criminalizing journalism being employed in the United States — and by a university whose name celebrates American freedom."

Professional journalists are not the only ones threatened by Liberty's long record of suppressing free speech; those at Liberty are also silenced by attacks on the media. One student wrote to the New York Times, "I'm not allowed to talk to you because I'm an employee here." Another student, Calum Best, wrote a Facebook post criticizing Falwell's declaration that "I don't see us doing the same thing that other schools have done" in shutting down the campus. Liberty's head of PR, Scott Lamb, quickly called Best that evening and put Best's boss for his on-campus job on the call, for no apparent reason other than to make an implicit threat to his employment.

Liberty University's attempt to persecute journalists for the crime of questioning Jerry Falwell Jr. is morally indefensible. It's also legally incoherent. Falwell claimed that the journalists were guilty of violating anti-trespassing signs on campus. But in fact there was no legal case against the reporters.

Liberty University does not appear to have any policy that restricts reporters (Liberty did not respond to my request for more information), and its newsroom page fails to prominently provide any media policy required for the press (and a short, inadequate mention in its media kit about checking in is not adequate notice).

Without a media policy, journalists are treated like anybody else. Liberty may try to say that it has no trespassing signs around campus, but those don't apply if Liberty openly invites people on to its campus. And Liberty did exactly that: In the section of its website on "visiting opportunities," Liberty explicitly said, "Be Our Guest." and added, "we can't wait to welcome you to campus — no matter how you choose to visit!" A section on daily campus tours says, "Anyone is welcome to join."

So finding out more about Liberty was one of the clear examples of what Liberty itself considers "official university business." Perhaps Liberty will one day adopt and publicize a media policy that allows it to ban reporters (although even then a trespassing charge would be difficult to sustain under these circumstances). But Liberty's attempt to arrest journalists, and the widespread negative reaction to it, should make universities question whether repressive media policies have any place at institutions committed to freedom of expression.

If seeing a university try to arrest journalists shocks the conscience, and it does, then shouldn't we also be appalled that hundreds of private universities have adopted policies that ban the media from campus without permission? Liberty University's attack on the media exposes the kind of censorship demanded by Jerry Falwell, Jr. But it should also cause us to worry about the tactics of media manipulation and control that have become increasingly common in higher education.

Protests and Freedom of the Press

The right to report on protests is under serious threat on college campuses. Ironically, one threat to the press comes from protesters themselves, who distrust the media and seek to control reporting about them. A Knight Foundation survey of college students in 2019 found that 48% think it is "always" or "sometimes" acceptable for students to deny the news media access to cover campus protests or rallies, up dramatically from 39% in 2017.

One example of the conflict between protesters and the press came in 2015 at the University of Missouri. In response to racist incidents on campus, a student group called Concerned Student 1950 organized a protest encampment on the quad. Protesters chanted "Hey hey, ho ho. Reporters have got to go," and some supporters tried to block student journalists from the area, including a professor, Melissa Click, who jostled a student's camera while keeping him out.

The next day, protesters reconsidered their position and put out a new flyer: "The media is important to tell our story and experiences at Mizzou to the world. Let's welcome and thank them." The protesters at Mizzou deserve a lot of credit for immediately recognizing this fact, reversing their policy, and welcoming the media in. And Click herself has acknowledged she was wrong, publicly apologizing for her actions.

That was not enough to save Click's job, and under political pressure she was quickly suspended and fired in a violation of due process that was censured by the AAUP. While there are some principled defenders of free speech and freedom of the press who called for taking a hard line against Click, that does not really describe the 117 Republican legislators who demanded her firing and threatened to cut the university's budget, the trustees who ordered her suspension, or the prosecutor who pressed charges against her. Instead, what is happening to Click is retaliation for her political views. These people dislike the protesters, but since the protest is protected speech, they instead target a high-profile sympathizer who made a mistake in her zealous support of the protesters.

The MIzzou Board responded to the AAUP report, "Dr. Click assaulted one of our students and encouraged others to physically intimidate him; she excluded people from a public space where they had a right to be present; and she interfered with freedom of the press at the university." While freedom of the press is an essential value, plenty of campus administrators have interfered with it and never suffered any consequences, let alone a dismissal.

The University of Missouri case provides an effective lesson to protesters for why they should defend freedom of the press rather than seeking to silence the media. The press may not always depict protesters in a sympathetic manner. But communicating with the media is the best way for protesters to get their voices and their priorities heard.

Freedom of Student Publications

The core principles of freedom of the press on campus have been explained in detail by leading national advocacy organizations. The Student Press Law Center declares that public colleges cannot "censor or confiscate a publication, withdraw or reduce its funding, withhold student activities fees, prohibit lawful advertising, fire an editor or adviser, 'stack' a student media board, discipline staff members or take any other action that is motivated by an attempt to control, manipulate or punish past or future content." PEN America's free speech guide states: "For student press, universities may regulate only non-content based aspects of a student publication; they cannot censor, reduce funding, or engage in any other disciplinary action in an effort to control the published content. Student government officials must also adhere to these guidelines when considering action against student news groups."

The 1967 Joint Statement on Rights and Freedoms of Students by the AAUP and other organizations noted: "Student publications and the student press are valuable aids in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large."

POLICY RECOMMENDATION #3:
Colleges should adopt the exact language of the Student Press Law Center as their formal statement of intent for a campus student media policy.

The Legal Basis for Freedom of the Press on Campus

A 2016 report by the AAUP and other organizations noted, "Student journalists and their faculty advisers work in a gray zone of legal uncertainty." The failure of courts to protect freedom of the press on campus makes it even more important for colleges to adopt clear policies that protect the media against censorship.

In *Papish v. University of Missouri*, 410 U.S. 667 (1973), the US Supreme Court ruled against the University of Missouri for expelling graduate journalism student Barbara Papish over a self-published newsmagazine, *Free Press Underground*, that contained political cartoons the university claimed were "indecent." The *Papish* decision is one of the landmark cases protecting freedom for students, as well as freedom of the press on campus.

In *Schiff v. Williams*, 519 F.2d 257 (5th Cir. 1975), the 5th Circuit Court of Appeals overruled the president of Florida Atlantic University who dismissed the editors of the student newspaper and had administrators publish it instead. This case established the independence of student newspapers even if they are officially published by a public university. In *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), the US Supreme Court struck down a campus ban on funding for Wide Awake student religious magazine. And In *Kincaid v. Gibson*, 412 F.3d 731 (6th Cir. 2001), the 6th Circuit Court of Appeals ruled that student-produced media in college is a "public forum" entitled to the highest degree of protection against content-based censorship.

But what the courts have given to freedom of the student press, the courts have also taken away. The worst case was *Hazelwood School District v. Kuhlmeier* (1988), when the US Supreme Court upheld censorship of a high school newspaper produced as part of a class if it is done for "legitimate pedagogical reasons." Unfortunately, that narrow ruling has been greatly expanded by some courts to apply to higher education and give administrators enormous authority to censor. In *Hosty v. Carter,* 412 F.3d 731 (7th Cir. 2005), the 7th Circuit Court of Appeals ruled that *Hazelwood* is the "starting point" for analyzing college papers after administrators at Governors State University demanded prior review of the campus newspaper.

In reaction to the Hosty ruling, the Student Press Law Center launched a lobbying effort that continues to this day to pass "New Voices Legislation" to give college journalists their fundamental rights that courts took away.

Illinois enacted the College Campus Press Act (2007) which stated: "All campus media produced primarily by students at a State-sponsored institution of higher learning is a public forum for expression by the student journalists and editors at the particular institution. Campus media, whether campus-sponsored or noncampus-sponsored, is not subject to prior review by public officials of a State-sponsored institution of higher learning." The law added, "A collegiate media adviser must not be terminated, transferred, removed, otherwise disciplined, or retaliated against for refusing to suppress protected free expression rights of collegiate student journalists."

The New Voices laws have been passed in 14 states in an ongoing campaign led by the SPLC, and bills were introduced in 11 states in 2019. In California, the state amended its Leonard Law, which requires private colleges to protect the free speech rights of students by prohibiting discipline for their viewpoints. The 2006 amendment requires private colleges in California to ban "prior restraint" of the student press.

But a legislative solution has some flaws. Not every state will want to protect student journalism. And it's potentially dangerous to encourage legislators to intervene in the decisions made by public universities, since many of these interventions may tend to limit freedom on campus rather than supporting it. And outside of California, none of these laws apply to private colleges, which typically present the greatest threats to freedom of the campus press. A better approach is to demand that colleges improve their campus policies to ensure protections for freedom of the press.

POLICY RECOMMENDATION #4:
Colleges should voluntarily adopt the New Voices language as media policies for their institution.

Attacks on Campus Media Advisors

In *Coppola v. Lawson*, 2006 WL 2129471 (D.N.J. July 26, 2006), a court overturned the firing of the media advisor at Ocean County Community College (NJ). In Moore v. Watson, 838 F.Supp.2d 735 (2012), a court ruled that Chicago State University fired the campus media advisor in retaliation for the content of the student newspaper. However, at private universities there are few existing protections. In McKown v. Butler University, No. 1:17-cv-04659-JRS-MJD (2019), the court made a summary judgment dismissing the case. McKown was removed as advisor of the Butler Collegian and ordered to have no further contact with its staff after sharing an email about impending institutional budget cuts with the student editors. After she filed a grievance for this, she was fired as an adjunct faculty member.

A 2016 survey of media advisors by the College Media Association found that more than 20 media advisers reported suffering administrative pressure to control, edit, or censor student journalistic content. None of these cases had been publicly reported, and only the survey had uncovered this censorship under the surface.

Many other cases of universities retaliating against college media advisors have been publicly reported on. At Fairmont State University (WV), journalism adviser Michael Kelley was removed in 2015, after the newspaper

reported on mold in a campus dorm. At Diablo Valley College (CA), administrators dismissed Fernando Gallo, adviser to the student newspaper The Inquirer, 11 days before the fall 2019 term.

The University of North Alabama was censured by the College Media Association in 2018 after the student newspaper, the Flor-Ala, was denied access to personnel records for a professor banned from campus during a Title IX investigation. Advisor Scott Morris was removed by having his job description rewritten to require a doctorate.

At Mount Saint Mary's University (MD), newspaper adviser Ed Egan was fired in 2016 for "disloyalty" after students published an article about the university president telling faculty to fail underperforming first-year students which quoted the president saying: "You just have to drown the bunnies . . . Put a Glock to their heads." After protests, Egan was rehired and the president resigned, showing that fighting against censorship of the campus press can work.

POLICY RECOMMENDATION #5:
Colleges should have explicit policies prohibiting prior review or restraint of student publications, and protecting media advisors against retaliatory acts.

De-Funding of Student Publications

One of the looming threats to freedom of the campus press is the trend toward budget cuts. Professional newspapers have faced massive reductions in advertising revenue and many smaller newspapers have folded in recent years, leaving campus newspapers in some communities among the few remaining news outlets. But student newspapers have faced a similar threat to their advertising, which means that many student newspapers are more dependent than ever on student fee funding.

Courts have frequently ruled that universities (including student governments) cannot withhold funding from student newspapers as a punishment for their views or their reporting. In *Joyner v. Whiting*, 477 F.2d 456 (4th Cir., 1973), the 4th Circuit Court of Appeals overturned the decision of the president of a historically black public university, North Carolina Central University, banning funding of the Campus Echo because it criticized the growing number of non-white students and promised not to run "white" advertisements.

Offensive humor has been a common excuse for censorship. In *Stanley v. Magrath*, 719 F.2d 279 (8th Cir. 1983), the 8th Circuit Court of Appeals overturned a University of Minnesota board of regents policy allowing students to request a refund of student activity fee for the Minnesota Daily in response to a controversial humor issue.

In *The Koala v. Khosla*, No. 17-55380 (9th Cir. 2019), the 9th Circuit Court of Appeals ruled that the University of California at San Diego violated the First Amendment when the student government cut all funding for student publications in an effort to defund the *Koala* humor magazine because of various racial slurs.

Funding cuts are one of the biggest current threats to the future of student newspapers. Lindenwood University shut down The *Legacy*, an award-winning student-run magazine, due to funding cuts and made it online only. Southern Methodist University's *Daily Campus*, was an independent nonprofit newspaper until 2018, when financial issues left it bankrupt, and it became an online-only publication under the control of the journalism department. This event prompted student journalists around the country to launch the Save Student Newsrooms campaign to help protect student media. But the closures continue: In December 2019, the University of Colorado decided to stop funding an independent student news website and instead create a faculty-led "student multimedia enterprise." Faculty-supervised student media are a worrisome development, particularly because it may be easier for administrators to justify censorship under Hazelwood's curricular doctrine, and also because they can be used at some institutions (such as Liberty University) as a tool for silencing student expression.

POLICY RECOMMENDATION #6:
Colleges should adopt policies to ensure adequate funding for student publications and to prevent retaliation against student journalists. When student media are part of the formal curriculum, colleges should make sure student journalists control the publication.

Trashing Newspapers

One of the ongoing threats to freedom of the press is the mass theft of student newspapers. Incidents of newspaper theft have declined dramatically in recent years, as student papers are published less often and the internet provides an easy alternative that makes theft a less effective tool for censorship. But the threat still exists. During the 2019-20 school year, several cases occurred. At Capital University (OH), a campus police officer was fired for stealing copies of an issue of *The Chimes* that reported on the DUI arrest of another officer. At Radford University, the administration refused to name a staff employee it determined had stolen the student newspaper, and suggested prior review of the student paper by the faculty advisor. At Florida Atlantic University, an issue of the student paper was trashed which featured a cover story about an allegation of rape against the quarterback.

One longer-term danger is that many colleges design new buildings to prohibit the distribution of newspapers by providing no place for them (in the same way that new buildings are often designed without bulletin boards to prevent any flyers from being posted). By prohibiting newspapers in buildings, administrators can effectively limit their distribution without legal difficulties. But this approach has First Amendment implications. In *OSU Students Alliance v. Ray*, 699 F.3d 1053 (9th Cir. 2012), the 9th Circuit Court of Appeals ruled that Oregon State violated First Amendment by throwing out newspaper racks and papers of a conservative student group to "beautify" the campus.

POLICY RECOMMENDATION #7:
Colleges should inform students and staff that stealing "free" newspapers is a crime and also punishable under campus discipline.

The Danger of Defamation Law

One growing danger to freedom of the press comes from defamation law. In the past, defamation law rarely posed a major threat to student publications because their lack of money did not make them attractive targets for lawsuits, and courts have traditionally granted universities exemptions from libel suits over student publications. In *Mazart v. New York, 441 N.Y.S.2d. 600 (1981)*, a New York court ruled that SUNY-Binghamton could not be sued for a letter in the student newspaper because it lacked control over the content. In *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466 (Minn. App. 2005), the court held that a university not liable for defamation in the student newspaper because system policy prohibited school officials from exercising any control over student-funded publications. At private colleges,

Gallo v. Princeton University, 656 A.2d. 1267 (N.J. Super. A.D. 1995) established that a private university was protected from liability for material published by a student newspaper because it did not control or censor the paper.

However, the doctrine that universities are not responsible for defamation committed by their students has come under fire in the 2019 case (currently under appeal) of *Gibson's Bakery v. Oberlin College* (2019), where a $31.5 million judgment against Oberlin College was imposed after students accused a local bakery of being racist.

The story began on November 9, 2016, when an Oberlin College student went into Gibson's Bakery, tried unsuccessfully to buy wine with a fake ID, and then shoplifted it. When Allyn Gibson physically stopped him and put him in a choke hold, the student (and two other Oberlin students with him) began punching Gibson, and the three students (all African-American) were arrested. Some Oberlin students claimed Gibson's bakery was racist, held a protest of 200 people at the store for two days, and called for a boycott, which the Student Senate endorsed in a resolution. Gibson's Bakery never sued any of the students who called them racist, preferring instead to go after the deep pockets of Oberlin College on the questionable grounds that they supported the accusations of racism.

Gibson's Bakery sued Oberlin on the theory that it was aiding and abetting defamation. Lee Plakas, the lawyer for the bakery, actually admitted that Oberlin didn't commit the defamation, but "aided and abetted defamation, the same as one would in a crime." Plakas told the jury, "If you're an aider and abettor, whether it's a crime or a civil wrong, then you have the same type of responsibility." This is incorrect. There is no concept established in the law of "aiding and abetting defamation." There is only defamation, which Oberlin clearly did not commit.

Allowing aiding and abetting defamation as a legal standard would be an incredibly repressive expansion of libel law (for example, bookstores could be sued if they help distribute a libelous book). Under aiding and abetting defamation, someone alleging libel by a newspaper could sue not only the article author and the publisher, but also any retail outlet that sold a few copies of the paper. Allowing "aiding and abetting defamation" would be enormously destructive to freedom of the press in America.

The basis for that "aiding and abetting defamation" charge was incredibly weak. As Legal Insurrection reported, "There was testimony during the trial that Raimondo handed out at least one of the flyers and that the college facilitated the posting of the student resolution on campus." An administrator handing out a flyer to a reporter who asks what the protest is about is not aiding and abetting anything. And allowing a student senate resolution to be posted on campus is perfectly normal for any college. As Gertsmann noted, "The student senate is not controlled by the college and allowing the senate to post its resolution on college property is not tantamount to an official endorsement of that resolution. To hold otherwise would force colleges to proactively censor student governments."

Legal Insurrection summarized the bakery's legal argument this way: "The school did not initially 'publish' the material in question, but did help students distribute the defamatory material in various ways at and after the protest: punishing the business for not dropping the shoplifting charges against the three who plead guilty eventually, helping the students find 'quiet space' during the protests and feeding them and buying them mittens, caving in to students who threatened to "stomp" on Gibson's bakery items if they were still served in the cafeteria, and never putting out any statement that Gibson's is not racist." None of these things have anything to do with defamation, but they were used to smear Oberlin and create sympathy with the jury for Gibson's Bakery. The notion that providing mittens and "quiet space" to students is a form of defamation is incredible.

The danger of this ruling is that colleges will face legal liability for the opinions of their students and faculty, unless they decide to censor them. That's why the Oberlin College defamation ruling is so threatening to free speech and academic freedom. The right to protest and freedom of the press are deeply intertwined in American history. *New York Times v. Sullivan* (1964) is a landmark case in First Amendment law protecting freedom of the press against defamation charges. But the case also was crucial to protect the right to protest. In the *Sullivan* case, segregationist politicians sued not only the New York Times but also civil rights leaders over an ad criticizing government repression of human rights. The civil rights movement could have been bankrupted by defamation lawsuits brought before segregated juries in the South if not for this essential ruling in defense of the First Amendment.

The ruling against Oberlin endangers freedom of the press on campus because student publications are a common source of controversial news and viewpoints that could lead to threats of a defamation suit. And most student publications receive assistance from a college, whether it's in the form of student fee funding, office space and equipment, or access to campus. Under the ruling against Oberlin College, any form of aid to a student newspaper could prompt a defamation lawsuit against a university.

Ironically, one lesson for colleges from the Oberlin ruling is that they need to eliminate all controls over student publications and other student groups, as well as regulations on defamation in their campus codes of conduct.

One of the factors used against Oberlin in this trial was its campus policy. The bakery's complaint declared, "Oberlin College provided the Student Senate with assistance and encouragement even though the Student Senate's actions violated the Student Code of Conduct, which prohibits defamation, libel, and slander and which classifies said conduct as constituting harassment." The bakery's lawyer argued that because Oberlin banned defamation, it was obligated to take action against the student protesters to stop them from defaming the bakery. Oberlin's student code of conduct does indeed list "Defamation, libel, or slander" as examples of harassment. Colleges need to remove defamation from student codes of conduct or risk greater liability.

Unfortunately, some colleges appear to be moving in the opposite direction.

Middlebury College in 2019 adopted a new policy declaring, "there are legal limits on the range of expression permitted. Speech that incites or threatens physical violence, speech that is defamatory, and forms of expression that violate our Anti-Harassment/Discrimination policy, are inconsistent with our educational mission and our shared community values."

The highly influential 2014 University of Chicago Principles on free expression may help spur more restrictive defamation policies. Its report noted: "The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University." The idea that a university can punish students and staff for defamation (and associating it with illegal acts, threats, and harassment) is a dangerous step that endangers free expression. More than 60 colleges have adopted the Chicago Principles, which magnifies the impact of this one small flaw in its report.

Why shouldn't colleges regulate defamation by their students? Fundamentally, defamation is a civil violation that should be addressed by individuals in civil court. Universities don't normally punish students for civil harms they cause against others (for example, by failing to pay rent to their landlord). But regulating defamation poses a special danger at a university, because defamation litigation is often used to try to silence freedom of the press and free expression. Adjudicating defamation complaints is also a tricky endeavor for a university. Many libel suits are overturned on appeal, and few are successful. Understanding the nuances of defamation law is a difficult undertaking for most student conduct hearing bodies, which rarely have any experience with the topic.

Defamation rules also raise questions about the hypocrisy of free speech regulations. If universities cannot regulate hate speech that espouses false, harmful ideas against targeted minorities, why should they be able to regulate defamatory speech that espouses false, harmful ideas against individuals?

Instead of seeking to punish students for defamation, universities ought to consider trying to help students who face defamation lawsuits in retaliation for their speech or filing of complaints. A 2020 investigation by Mother Jones found that at least 100 defamation lawsuits have been filed in America since 2014 against victims of sexual assault, with about half of them coming from male college students and faculty. These litigants use defamation suits to try to gain leverage for their lawsuits against universities. By suing their accusers for defamation, these men hope to pressure a settlement where the accusers agree to withdraw their accusations

in exchange for dropping the suit. With the accuser no longer standing behind these claims, those accused of sexual assault find it easier to win lawsuits or settlements against the universities that disciplined them.

While universities will usually help defend faculty and staff who are accused of defamation in the performance of their official duties, students who face defamation suits are often unprotected, even when the lawsuit is the result of filing a formal complaint with the university about misconduct.

Student publications are also highly vulnerable to defamation lawsuits, even though they rarely have the deep pockets to make such suits profitable. Some litigants use the cost of libel suits as a tool to demand censorship.

The Michigan Daily was sued for $1 million in 2012 by the Kitchener Rangers (a minor-league hockey team in Canada) over a story about a recruited athlete. They settled the lawsuit by removing the article, since most campus newspapers lack the resources to fight a libel suit. The defamation lawsuit has become the more effective form of trashing newspapers for the 21st century.

Merely reporting on campus news can bring student newspapers into defamation lawsuits aimed at their universities. In 2019, Elmhurst College professor Timothy Hays sued the Elmhurst College *Leader*, the student journalist, its faculty advisor, and the school president after he was investigated for his seating chart that included physical descriptions of students such as "black," "Hispanic," and "cute."

In Jon Butcher vs. University of Massachusetts, the Massachusetts Supreme Judicial Court ruled in 2019 that a student journalist at the University of Massachusetts at Boston could not be sued for defamation for printing information from a police blotter about a suspicious man taking photos.

POLICY RECOMMENDATION #8:
Colleges should not regulate defamation in campus conduct codes, and should help students and student publications when they are subjected to defamation lawsuits for reporting misconduct or reporting the news.

Defending the Right to Social Media

In 2013, David Guth, a University of Kansas professor, tweeted, "Next time, let it be YOUR sons and daughters" about the National Rifle Association in the wake of one of those mass shootings in America (a couple thousand mass shootings ago). Chancellor Bernadette Gray-Little placed Guth on indefinite administrative leave. Eventually, Guth's job was spared, but the Kansas Board of Regents enacted an extraordinary policy restricting social media by all employees. The Board declared in a press release, "Because of the proliferation of social media use for communication purposes, and its particular susceptibility to misuse and damage to our universities, the Board believes that a provision outlining improper uses of social media will be beneficial to all parties…."

This belief that there's something uniquely evil about social media that requires special regulations is part of a growing trend toward censorship on campus. That Kansas policy, which is still in effect today, states the social

media can be punished if it "impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker's official duties, interferes with the regular operation of the employer, or otherwise adversely affects the employer's ability to efficiently provide services."

In response to criticism, the Kansas regents did add a statement of their devotion to free speech. But the policy says, "the interest of the employer in promoting the efficiency of the public services it performs through its employees must be balanced against the employee's right as a citizen to speak on matters of public concern." So in Kansas, campus employees don't have a clear right to extramural utterances, they only have a balancing test: Efficiency vs. free speech.

What's particularly flawed about the Kansas Regents policy is the double standard, that it demands censorship only of social media. Professors at Kansas are still free to publish their opinions in the *New York Times* without penalty, but if they post the exact same words on their Twitter account, even if they don't have any followers, they can be punished under this separate social media policy.

The Kansas case also was part of a disturbing trend where politicians, almost always Republican lawmakers, demand the firing of controversial professors for their social media utterances. In 2020, another trend developed to punish students and faculty for their social media statements deemed racist or offensive about the George Floyd murder. And a 2020 survey of over 200 public colleges by the Foundation for Individual Rights in Education found that most colleges filter or block content and users on their official Facebook and Twitter, potentially in violation of the First Amendment.

Frank LoMonte of the Brechner Center for Freedom of Information at the University of Florida argues that regulatory authorities "are policing speech on social networking sites as if social media constituted a 'First Amendment-free zone' to which traditional free-speech principles no longer apply. The phenomenon is perhaps most pronounced in public schools and colleges, where students' speech on social media is being subjected to greater scrutiny and control than any other form of expression." At colleges, censorship of student athletes is particularly intense, with a 2020 Brechner Center study finding that 50 of 58 public universities categorically prohibit athletes from speaking to the press without first getting approval.

One reason why colleges suppress social media is because they have policies that explicitly endorse censorship. Although a comprehensive analysis of all social media policies was beyond the scope of this study, many colleges have terrible social media policies that are usually a mix of prohibitions and recommendations for self-censorship, rather than protections for free expression.

Brown University, for example, has an extensive social media policy giving advice such as "Remember that what you post on your personal page could haunt you professionally" and "If you discuss higher education on your own social media site, include a sentence similar to this: The views expressed on this [blog, Website] are mine alone and do not necessarily reflect the views of Brown University."

Stanford University's policy warns, "When engaging on social media on Stanford's behalf, do not express political opinions or engage in political activities. Your political opinions can only be expressed in your individual capacity on your own social media accounts and, even then, avoid the appearance that you are speaking or acting for the university in political matters."

These guidelines for required disclaimers are dangerous to intellectual freedom because they create a culture of aversion to controversial ideas. And this is peculiar to social media. No university has ever enacted a policy that says if you go to a conference, you must write on your nametag, "My views are my own," yet it's becoming very common for academics to do that on their Twitter account or blog at the insistence of university policy.

The University of California at Davis has one of the best policies on social media that actually supports using it: "As a university committed to the highest standards of freedom of speech and expression, we encourage everyone to get involved and participate in social media." And UC-Davis guidelines explicitly do not apply to personal social media, but only for "participation on UC Davis-hosted social networks or online in your official capacity tied to the university." Yet even the UC-Davis policy urges the unnecessary disclaimer, "When referencing UC Davis online, make it clear that you're sharing your personal opinion and are not communicating on behalf of the university."

Colleges need to revise and improve their policies and social media to explicitly protect social media, and say that social media will be evaluated according to the same standards as other extramural utterances. A good social media policy should explicitly protect free expression and prohibit censorship. It should reject the need to use disclaimers on personal social media. And it should protect free expression even when the social media is owned by the university itself, such as when the University of Iowa in 2019 banned departmental Facebook pages from mentioning a local appearance by climate activist Greta Thunberg.

Social media represents the future of expression on campus, and the means by which citizen journalism operates and people can become the media themselves. Special regulations on social media threaten free expression on college campuses.

POLICY RECOMMENDATION #9:

College social media policies should defend free expression and prohibit censorship by stating that social media is evaluated the same as all other forms of expression, rejecting the need for disclaimers on personal social media, and protecting the rights of all students, faculty, and staff to use social media.

Conclusion

Private universities can, as private entities, legally ban the press from campus, just like a private corporation can ban the media from its premises. But private universities also have the legal authority to abolish freedom of speech for their students and to eliminate academic freedom. Universities choose not to make those restrictions because they understand that an atmosphere of liberty is essential for the goals of higher education. Colleges should have the same perspective toward student media and the professional press, and ensure that freedom of the press is fully protected on campus and the values of a free press are publicly affirmed.

Universities have an obligation to reform policies and practices that infringe upon freedom of the press, whether these are restrictions on professional news media seeking to cover stories on campus or limitations placed on student publications. But universities should go beyond merely refusing to censor freedom of the press. Higher education needs to take an affirmative stand to promote and aid the press in their work to expose wrongdoing reporting the news. When universities recognize that the media are not a threat to their brand identity, but a partner in the pursuit of truth, they can make changes to help rather than hinder than press. Freedom of the press on campus is an essential component supporting academic freedom, the right to protest, freedom of speech, and all the other liberties that are fundamental to the work of higher education.

Appendix:

Excerpts from Media Policies at the Top 25 American Universities (alphabetical order)

Explanation of grading standards by John K. Wilson: Colleges that place no formal restrictions on the media (or only restrictions on accessing classrooms, offices, dorms, labs, and other private spaces) were given an A grade. Colleges that require permission for any media on campus were given an F grade. Colleges that place partial restrictions on the media (such as limits on filming and photography) were given grades in between an A and an F, depending on the severity of regulations.



Brown University

https://www.brown.edu/university-communications/news/journalists/access

Grade: **F**

Non-Brown agencies and individuals – including the news media – require permission to come on campus at any time to capture still or video images, and require an escort of an appropriate representative of the University. All members of the news media interested in capturing images or conducting interviews on University property must consult with the Office of University Communications before entering campus.

Caltech

California Institute of Technology

https://filming.caltech.edu/guidelines

Grade: **A**

News media covering an active or breaking news story do not require a permit. Contact Caltech Media Relations to coordinate news media requests.

During your stay at Caltech, all persons involved with the filming will adhere to the Professional Filmmaker's Code of Conduct as outlined by the California Film Commission at http://www.film.ca.gov/CommunityFilmInfo_FilmmakersCode.htm.
Personnel in any way connected with the production can be ejected from the campus for displaying behavior that is deemed to be disruptive to the operation of the Institute, or for being offensive in language or behavior to students, faculty, staff, administrators, or Institute guests.

Carnegie Mellon University

Grade: A

Carnegie Mellon University

https://www.cmu.edu/news/media-resources/index.html

The Office of Media Relations offers assistance to print, broadcast and online media. Our staff connects reporters with faculty experts, assists news crews with campus visits, arranges video and radio feeds, and helps members of the media locate archived photos, news stories and press releases.

(Email from media relations: "We don't have a published policy about media coming to campus. However, b/c we are private, they can't just come on campus and roam without us knowing. So we encourage media to contact our office to coordinate.") However, CMU's website states, "We welcome you to our campus." https://www.cmu.edu/visit/index.html)

COLUMBIA UNIVERSITY

Grade: F

Columbia University

https://news.columbia.edu/press-room

Members of the working news media must contact the Office of Communications and Public Affairs at columbianewsrequests@columbia.edu or call 212-854-5573 for permission, guidance, and escort assignments. The rights of students not to be photographed, filmed, or interviewed must be respected. Advance written permission from each student is required.

Student groups who wish to allow external media access to campus events should first consult their group advisor or the dean of students of their school and participate in the advance event review process.

Media are not allowed inside classrooms, libraries, dormitories, or other interior spaces unless special permission is granted in advance by the Office of Communications and Public Affairs as well as the Office of Public Safety.

Media seeking to use any type of camera on campus must contact the Office of Communications and Public Affairs in advance at 212-854-5573.



Cornell University

Cornell University

https://news.cornell.edu/media-relations/work-with-us

Grade: **F**

Cornell University is private property. Members of the media planning to conduct interviews, capture images or record audio on campus must request permission from our Media Relations Office before arriving at the university. Journalists who have not obtained permission from the Media Relations Office to work on campus may be asked to leave university property.

Our goal is to ensure that faculty, students, staff and visitors on campus can carry out their activities with a reasonable expectation of privacy and normalcy. Members of the media may not interview, capture images or record audio of faculty, students, staff or visitors without specific permission of the individuals involved. Members of the news media are not permitted to enter buildings without permission of the Media Relations Office or the communications office of the relevant college or school, and may not enter classrooms without also securing advance permission from the instructor. Members of the media are not permitted to enter residential living areas at any time.

To protect the safety, privacy and proprietary work of faculty, students or staff, a representative from Media Relations may escort members of the media at all times while on university property. Permission to conduct interviews, capture images or record audio on university property may be revoked at any time by the Media Relations Office if those actions are deemed disruptive to faculty, students, staff or visitors.

The Media Relations Office may provide The Cornell Daily Sun with special access to information or events in recognition of its unique role as an independent student-run campus newspaper.

The university may grant members of the media general access to outdoor spaces on campus to photograph or video record environmental campus shots and building exteriors. Faculty, students, staff and visitors who appear in images of campus may not be easily identifiable without specific permission of the individuals involved.

Print and online journalists without special equipment may attend events designated as open to the public or open to the media, while separate broadcast permissions may have to be secured in advance for other media.

Rules regarding access to other campus spaces, interviewing faculty, students, staff and visitors, and capturing images or recording audio apply to public events as well.



Dartmouth College

https://communications.dartmouth.edu/media/filming-and-photography-dartmouth-campus

Grade: C

We are a private institution, and most of our facilities are not open to the public. Dartmouth's credentialing procedures for news media are intended to facilitate access to campus for those who wish to film or photograph on the campus and to support the free and open expression of ideas while ensuring that such filming or photography does not interfere with the educational, scholarly, or administrative functions of the institution. In order to maintain an environment that is conducive to teaching and learning, we ask all news media who would like access to campus for filming or photography to fill out a Campus Access Request Form and submit it to the Office of Communications to secure permission before visiting. Permission to film or photograph and related arrangements must be made through that office in advance.



Duke University

https://commskit.duke.edu/policies/dukes-news-policies/

Grade: F

Members of the media must obtain permission in advance to film, report or broadcast live from Duke property.

Media who wish to attend an event organized by students must contact University Communications in advance. Media must obtain permission from University Communications in advance to take exterior still photographs of Duke's campus for news purposes.



Emory University

https://news.emory.edu/press/media-information-and-guidelines.html

Grade: F

Members of the news media are welcome to the Emory University campus but must arrange all visits through the Office of University Media Relations, 404-727-6216.

Permission is required from the appropriate communications office for news media access to all university facilities including classrooms, medical facilities, laboratories and residence halls.

Broadcast crews must obtain prior permission from the Office of University Media Relations to videotape or broadcast live from campus since broadcast vehicles and equipment may interfere with traffic and/or

university activities. All media must park in designated areas.

Media access may be denied or limited, and pool cameras or reporting may be required, during an emergency or in situations when university communications officers determine that unrestricted media access may interfere with the routine operation of the university.



Georgetown University

https://www.georgetown.edu/media-resources/

Grade: **C**

News media are welcome to photograph or shoot video of university buildings and scenes using public ways. For permission to shoot on university property, please contact the Office of Strategic Communications at (202) 687-4328 or gucomm@georgetown.edu. Permission to film any exterior or interior spaces on university property must be approved by and coordinated with the Office of Strategic Communications.

This policy applies to any type of photography – stills, video and film – and to any reporters with cameras.



Harvard University

https://www.harvard.edu/media-relations/policies

Grade: **F**

Reporting, photographing, and videotaping are prohibited on campus without prior permission.

Filming restrictions include the following:

- Commercial filming is not allowed anywhere on campus
- News media are not permitted inside classrooms, dining halls, or dormitories
- Permission must be secured in advance from students who appear in wide shots on campus.
- Tripods are prohibited in Harvard Yard.
- News media may also use public sidewalks to photograph or film campus.



Johns Hopkins University

https://hub.jhu.edu/media/

Grade: **A**

Johns Hopkins is a big place. Let us make your job a little easier by connecting you with the right media representative.



Massachusetts Institute of Technology

http://news.mit.edu/press/filming-guidelines

Grade: **C**

When the details of a given request have been agreed upon, a location agreement must be signed and returned to the MIT News Office prior to the crew's arrival. Once a location agreement is approved, video crews are welcome to film on campus property, as long as the reporting activities do not disrupt Institute activities, interfere with the privacy of students, faculty or staff, or jeopardize the safety of Institute personnel, visitors or facilities.

When filming students, we ask that the media respect the right of students not to be interviewed, if they so decline. Media may not take or use pictures of students or film students without first getting their permission to be filmed. Students must also be given complete details about what is being filmed and how their photograph might be used. All other locations/subjects must be approved prior to filming.



Northwestern University

https://news.northwestern.edu/for-journalists/on-site-reporting/

Grade: **F**

If you plan to conduct on-site reporting on Northwestern University's campus, our team is happy to help coordinate. Below you will find campus maps, parking information and answers to frequently asked questions about visiting campus. All filming and photography for non-personal use requires expressed permission from the University. Media wishing to shoot video or photos, or interview members of the university community on campus or inside campus buildings, should notify Northwestern media relations by calling (847) 491-5001 or emailing media@northwestern.edu.

https://news.northwestern.edu/for-journalists/filming-photography/ Expressed permission is required before any reporting, filming or photography can take place on Northwestern's private property.

Princeton University

https://communications.princeton.edu/media-public/campus-access
https://www.princeton.edu/news/media-inquiries

Grade: **F**

Journalists who want access to campus must contact the media relations team at mediarelations@princeton.edu or 609-258-5733 to secure credentials before coming to campus. The University's Campus Access Authorization Form (.pdf) is required for all filming and photography by journalists.

Princeton welcomes visitors to our beautiful central New Jersey campus. As a private higher-education institution, the University's primary responsibility is to its research and teaching missions and its students. This is a residential campus, and we seek to protect the privacy of our students in their living environment.

Rice University

https://publicaffairs.rice.edu/policies/filming-photo-policy

Grade: **A**

The photographic needs of the print, broadcast, and on-line media can be accommodated at no charge with the assistance of the Office of News and Media Relations.

To minimize the likelihood of interruptions by campus security, prior to shooting, photographers wishing to shoot images on the campus after dark should stop by the Rice University Police Department (just inside campus gate 8, University Boulevard at Stockton) to announce their intent, and, in the case of any kind of photography besides personal photography, to show written proof of permission and to have their photo IDs copied by the officers on duty.

We ask that all campus photographers:

- Respect the privacy of campus residences. With the exceptions of Cohen House, the Rice faculty club, and Huff House, the location of the Office of Alumni Affairs, these are any buildings on the CAMPUS MAP whose names include the words "house" or "college."
- Avoid disruption of classes or other university functions. In particular, we ask that you refrain from imaging the interiors of any buildings unless you have secured prior permission (using the form available under the Commercial Use heading below).
- Respect the rights of Rice students, employees and visitors not to be photographed without their knowledge and permission. Also, please note that use of any recognizable image of an NCAA athlete in conjunction with any commercial promotional purpose other than university self-promotion could jeopardize the scholarship eligibility of the student athlete(s) so depicted, and thus is prohibited.

https://publicaffairs.rice.edu/policies/social-media-guidelines
Press inquiry — If a member of the news media contacts you through social media for comments or interviews, direct all inquiries to the News and Media Relations team.



Stanford University

https://ucomm.stanford.edu/policies/
https://ucomm.stanford.edu/policies/film-photo-video-requests/

Grade: **F**

Stanford University Communications accommodates reasonable requests for journalistic, news-related, non-commercial shooting, but reserves the right to deny permission when the request runs contrary to university policies–especially those that protect student privacy.

The subject of all news-related filming or photography must be directly related to the university. Profiles of individuals using Stanford as a backdrop location are not allowed.
https://ucomm.stanford.edu/policies/film-photo-video-requests/news-photo-film/
Journalists must notify the Office of University Communications, or a school or institute media relations office, to obtain permission to come onto Stanford University property.
Journalists must adhere to the university's privacy policies. No one at Stanford can be filmed without his or her permission, except at public events to which the public and media have been invited.
https://ucomm.stanford.edu/policies/privacy/

In accordance with the university's policies, members of the media are prohibited from entering student residences or dining halls. Members of the media are prohibited in all residential areas of the university, including student residences and the surrounding faculty neighborhoods without prior permission from University Communications. Media are prohibited inside classrooms, libraries, laboratories and other academic buildings without prior permission from University Communications and instructors. Recognized student groups and official units of the university will be granted such permission so long as they do not violate the privacy or property interests of others.



University of California at Los Angeles

https://newsroom.ucla.edu/ucla-guide-for-journalists
Media camera crews may gather news in public areas of UCLA. Classrooms, residence areas, health facilities and research labs require approval to enter. Contact UCLA Media Relations for assistance. Permits are required for commercial filming.

Grade: **A**

University of California, Berkeley

https://news.berkeley.edu/broadcast-studios-and-services/

Grade: **B**

For assistance in arranging access to on-campus studios, campus video footage, expert faculty, and seeking required permission to conduct documentary, educational, and long-form news productions on campus...

University of Chicago

https://news.uchicago.edu/media-resources

Grade: **A**

Journalists who wish to visit or film on the UChicago campus should notify the News Office with details of their request.

University of Notre Dame

https://news.nd.edu/for-the-media/media-policies/

Grade: **F**

At the University's discretion, journalists may report from the campus on news of public interest. They are expected to obey Notre Dame parking and other regulations and to conduct themselves in accord with the code of ethics of the Society of Professional Journalists....Journalists must gain permission prior to coming onto the Notre Dame campus.....Entry to classrooms, offices and places of worship by journalists must be cleared in advance either with occupants of the respective offices, the professor in charge of a class, or Media Relations.

Students, faculty and staff may, without permission, shoot video and still photos on campus for academic purposes. The resulting videos and photographs may not be used or distributed for commercial, marketing or promotional purposes. Student, faculty and staff who record video or shoot photos should respect the privacy of others and gain permission to record or shoot. They also should abide by University policies and avoid disrupting normal campus operations.



University of Pennsylvania

https://penntoday.upenn.edu/node/154744
https://penntoday.upenn.edu/for-the-media

Grade: **A**

Anyone who wishes to film on campus for commercial, non-news purposes must submit in writing detailed information about the proposed project….



University of Southern California

https://pressroom.usc.edu/

Grade: **A**

[No policy mentioned.]



Vanderbilt University

https://news.vanderbilt.edu/resources/photography/

Grade: **A**

Anyone wishing to film, tape or photograph on Vanderbilt's campus for non-news purposes must submit a written request to the Division of Public Affairs.



Washington University

https://wustl.edu/about/compliance-policies/media-policies/media-visits-campus/

Grade: **A**

News media are welcome in all public areas of the Danforth Campus and may attend all non-ticketed events open to the public without prior permission. For members of the news media planning a campus visit, we suggest checking with the Office of Public Affairs in advance so that your trip here will be productive. We will work with news media to arrange interviews, provide access and parking, locate information and research helpful data.

Washington University supports the free and open expression of ideas and opinions by our faculty, students and other members of the university community, and we encourage members of our community to agree to interviews and to participate as expert resources in news stories. Faculty, staff and students have the right to speak with news media without the presence or permission of university officials.

News media are required to seek permission through the Office of Public Affairs if they want to enter classrooms, medical facilities, laboratories or similar facilities for the purpose of reporting on any of the university's campuses. Such permission generally will be granted, as long as those in charge of these areas agree and if the reporting activities do not disrupt university activities; do not interfere with the privacy of students, patients, faculty and staff; and do not pose any risk to the safety of members of the university community, visitors or facilities.

Video and sound crews on Danforth Campus property usually are accompanied by a member of the Office of Public Affairs or the office's designee. When requests are made to conduct on-camera intercept interviews with students, faculty or any other members of the university community, the accompanying Office of Public Affairs staff member will ask the proposed interviewee for her or his permission to proceed. The staff member will identify the reporter, describe the request for an on-camera interview and explain that the university sees the decision to be interviewed as each individual's choice. When the requested source makes a decision to be interviewed, she or he may ask that an Office of Public Affairs representative remain throughout that interview. Otherwise, the Office of Public Affairs representative will absent himself or herself from Danforth Campus interviews. (Because of federal laws protecting patient privacy, all Medical Campus interviews will be conducted with a member of the Office of Medical Public Affairs present.)

Yale

Grade: F

Yale University

https://communications.yale.edu/media

The Yale Office of Public Affairs & Communications (OPAC) requires all media outlets wishing to visit the Yale campus for any purpose to notify OPAC and receive permission. Depending on the purpose of the visit, OPAC may require that media members be escorted or display a Yale-issued media credential. No media members may enter a Yale building or gated courtyard without OPAC's permission and escort.