



Communication Law & Ethics

RU COMS 400 Unit 9

Newsgathering, FOIA, Free press – fair trial



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Class web site:

revolutionsincommunication.com/law

On Track: Unit 9 News

- Read Unit 9 on web site
- Work on research / moot court brief
- Take quiz 9.
- Moot court
 - D2L Assignment MC I due April 13

Moot court

- Form teams & sign up
 - D2L links under Assignment MCI
- Consider cases or suggest others
 - <https://revolutionsincommunication.com/law/moot-court/>

On Track: Unit 9 News

This section:

- Access and gathering news
 - Crime & disaster scenes
 - Virtual spaces
 - Undercover investigations
- Free press – fair trial
 - Gag orders, recordings
- Shield laws protect sources
- FOIA and Sunshine laws
- Student press laws

Cases

- * Sheppard v Maxwell, 1966
- Tinker v Des Moines Schools, 1969
- Branzburg v Hayes, 1972
- Nebraska Press Association v. Stuart, 1976
- Zurcher v. Stanford Daily, 1976
- Gannett v. DePasquale 1979
- Richmond Newspapers v. Virginia, 1980
- Hazelwood v Kuhlmeier, 1988
- Cohen v Cowles Media, 1991
- Educational Media at Virginia Tech v. Insley, 2013

Laws & regulations (Federal & State)

- Freedom of Information Act – FOIA
 - Open records laws
- Sunshine (open meeting) laws
- Shield laws (source protection)
- Student press laws
- New Voices legislation

Access to news sources

Presidents and other officials have generally exercised the right to decide which news organizations to which they want to give one-on-one interviews and whom they want to call upon at press conferences.

But a controversy about the degree to which presidents can exclude a news organization from press events raised new questions in January 2025 when Donald Trump barred the Associated Press from press events and other access over its use of "Gulf of Mexico."



On Feb. 21, 2025, the Associated Press [filed a lawsuit](#) against three Trump administration officials over the termination of access, saying its claims were about an unconstitutional effort by the White House to control speech.

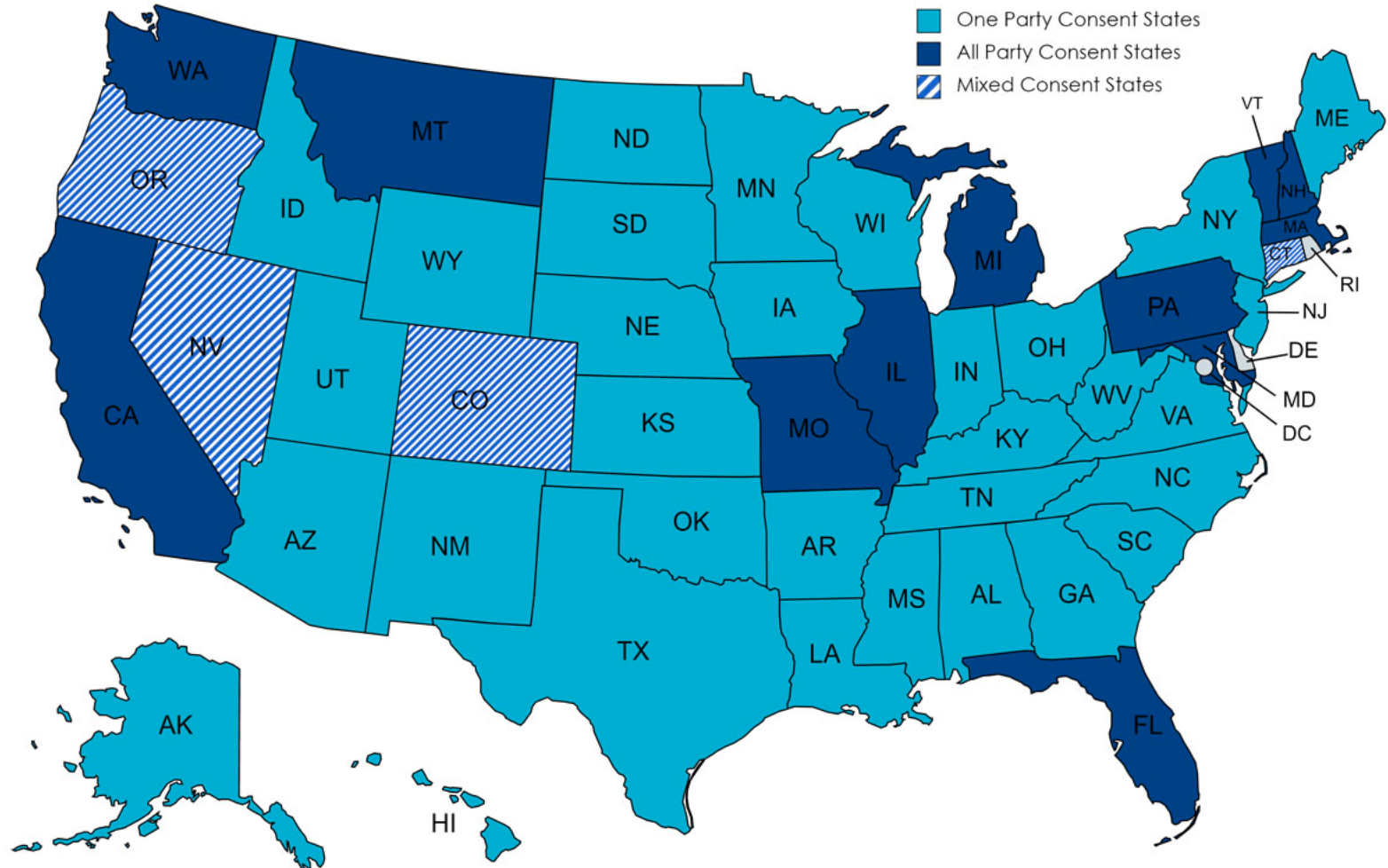
Crime & disaster sites

- Usually state police and legislatures issue credentials to bona fide reporters
- Not all freelancers are included, but many have been and can be
- Other countries license news reporters, but that would be contrary to the US First Amendment.
- Access is usually governed by a rule of reason

Virtual spaces

- Social media is considered to be public
- What is said or represented can be reported
- Video and photos may be copyrighted
- Consider the possibility of fake postings, and confirm if the material is highly controversial
- One-party vs two-party recording states

One & two-party consent



Know your rights

- Journalists can't do anything illegal
- It's not illegal to take photos and video from public places



Trespassing & newsgathering

- Trespassing violation arises from the act of unauthorized entry, not from the publication of information obtained there.
- Those who gather and disseminate information to the public do not have a privilege to trespass.
- The Supreme Court has consistently ruled that the First Amendment does not protect journalists from laws of “general applicability” that don’t specifically target the press, including trespass laws.

Trespassing & newsgathering

- Courts side with the media right to take video from public property
- Trespassing case involving Liberty University charge against NY Times reporter
 - As a semi-public institution, Liberty probably can't ban all newsgathering (but we will see...)
- Can a drone trespass?
- Best sources for more info:
 - Reporters Committee for Freedom of Press
 - Society of Professional Journalists
 - Student Press Law Center

NY police confiscate drone April 2020



- "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 reopen campus in the midst of the pandemic." Eileen Murphy, NY Times.

WARRANT OF ARREST—MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va. Code § 19.2-71, 72

Lynchburg ☒ General District Court ☒ Criminal ☐ Traffic
CITY OR COUNTY ☐ Juvenile and Domestic Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about **03/25/2020** did unlawfully in violation of Section _____

18.2-119 Code of Virginia
go upon or remain upon specified land, a building, or premises after having been forbidden to do so by a sign posted by an authorized individual.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of _____

Detective/Sgt. **Whitlock, A. B.** 204 LUPD *Complainant*
Execution by summons ☒ permitted at officer's discretion ☐ not permitted.

04/06/2020 04:06 PM *[Signature]*
DATE AND TIME ISSUED CLERK DEPUTY CLERK ☐ ADR

SEMMONS (If authorized above and by serving officer)
You are hereby commanded to appear before this court located at _____
905 Court St., Safety Bldg. Lynchburg, VA 24504

on _____ at _____ A.M./P.M.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

CCRE/Fingerprinting Required **ADJ-1003**

WARNING TO ACCUSED: You may be tried and convicted in your absence if you fail to appear in accordance to this Summons. Willful failure to appear is a separate offense.

SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

CASE NO.

ACCUSED
MacGillia, Stefan Alexander

[REDACTED] LAST NAME FIRST MIDDLE INITIAL

ADDRESS AND CITY
Baltimore, MD 21210

You're completed upon service at Summons

Mailing address ☐ Same as above

☐

MA-1F [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

BEL [REDACTED] MD 2120

☐ Commercial Driver's License

CLASS 1 MISDEMEANOR

☒ EXECUTED by entering the Accused named above on this day;

☐ EXECUTED by summoning the Accused named above on this day;

☐ For legal reasons after the Accused, or his/her parent to Vn. Code § 18-76.

DATE AND TIME OF SERVICE _____, ADDRESS OFFENSE _____

SIGNATURE, ADDRESS AND JURISDICTION

for _____ JUDICIAL

Attorney for the Accused:

Short Offense Description (not a legal definition)
TRESPASSING-AGAIN POSTED BY AUTHORIZED PERSON

Offense Tracking Number:
680CMB200004967

JUR ADMINISTRATIVE USE ONLY
Virginia Crime Code
TRS-5709-M1

WARRANT OF ARREST - MISDEMEANOR (STATE)
COMMONWEALTH OF VIRGINIA Va Code § 18.2-51, -72

Lynchburg ☒ General District Court ☒ Criminal ☐ Traffic
☐ Juvenile and Domestic Relations District Court

CITY OR COUNTY

TO ANY AUTHORIZED OFFICER:

You are hereby commissioned in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about 03/27/2020 did unlawfully in violation of Section _____.

DUTY

18.2-119 Code of Virginia

go upon or remain upon specified land, a building, or premises after having been forbidden to do so by a sign posted by an authorized individual.

LUPD ec# 30-00948

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of _____.

Detective/Sgt. Wilkins, A. B. 206 LUPD , Complainant

Enaction by summons ☒ permitted at officer's discretion. ☐ not permitted.

Kang H Jo

04/06/2020 12:15 PM ☐ CLERK ☐ MAGISTRATE ☐ JUDGE

DATE AND TIME ISSUED *Kang H Jo*

SUMMONS (If authorized above and by serving officer)

You are hereby commissioned to appear before this court located at 905 Court St., Safety Bldg. Lynchburg, VA 24504

on _____ at _____ AM/PM.

I promise to appear in accordance with this Summons and certify that my mailing address as shown at right is correct.

CCRE/Fingerprinting Required ACCUSED

WARNING TO ACCUSED: You may be tried and convicted in your absence if you fail to appear in response to this Summons. Willful failure to appear is a separate offense.

SIGNING THIS NOTICE DOES NOT CONSTITUTE AN ADMISSION OF GUILT.

CASE NO. _____

ACCUSED: Rendleman, Julia Marie
[REDACTED] LAST NAME, FIRST NAME, MIDDLE NAME

RESIDENCE:
Richmond, VA 23220

To be completed upon service on Summons
Mailing address ☐ Same as above ☐

RACE **SEX** **DOB** **HT** **WT** **EYES** **HAIR**
W F [REDACTED] 5' 2" 140 [REDACTED]

SELF **ELDER**
☐ Commercial Driver's License

CLASS 1 MISDEMEANOR

☐ EXCITED BY arresting the Accused named above on this day:
☐ EXCITED BY summoning the Accused named above on this day:
☐ For legal reasons other than individuals, service pursuant to Va. Code § 19-2-76.

DATE AND TIME OF ARREST: _____, **ARRESTING OFFICER:** _____

BAKOR NO., AGENCY AND SUBSECTION
for _____

Attorney for the Accused: _____

Short Offense Description (not a legal definition):
TRESPASS ENTRY-SUB POSTED BY AUTHORIZED PERSON

Offense Tracking Number:
680GM2000004943

FOR ADMINISTRATIVE USE ONLY
Virginia Crime Code:
TRS-5709-M1

A line between journalism and spying

- United Fruit Co. notoriously corrupt operation in Central America
- One investigation by National Enquirer reporter, 1997.
 - Reporter got access to 2,000 voice mails and printed a story, but the Enquirer retracted and apologized and fired the reporter.

A line between journalism and spying

- ABC Food Lion case -- 1992, two ABC News producers got jobs at Food Lion grocery stores with falsified resumes, then reported on questionable practices in meat dept. Food Lion sued. The court said laws regarding employee loyalty and trespass were laws of general application, from which the press could not be exempt
- application of laws to the media merely “an ‘incidental effect’ on newsgathering,”



Project Veritas

- Far-right newsgathering organization
- Secret recordings, deceptively edited videos, entrapment
- Targets: Biden, Planned Parenthood, Washington Post, NPR, CNN, a small town postmaster
- Lost libel suits brought by Democracy Partners, others
- Banned on Twitter

PV: Ashley Biden's purse


- “Journalists” from Project Veritas wanted to trick Ashley Biden into confirming that a diary they held was hers.
- Federal prosecutors say the group stole her diary
 - And since they used deceptive tactics, they should not be treated as journalists with First Amendment protection
 - And they say there is no First Amendment protection for the theft and interstate transport of stolen property.
 - “Put simply, even members of the news media ‘may not with impunity break and enter an office or dwelling to gather news,’” prosecutors said.

PV: Ashley Biden's purse

- In August, 2022, two Florida residents admitted they took part in a conspiracy to transport stolen materials from Florida, where Ms. Biden had been living, to New York, where Project Veritas has its headquarters. Sentencing is scheduled for December, 2022.

Florida Pair Pleads Guilty in Theft of Biden's Daughter's Diary

Aimee Harris and Robert Kurlander admitted to participating in a conspiracy in which Ashley Biden's diary ended up in the hands of the conservative group Project Veritas near the end of the 2020 campaign.

 Give this article



Robert Kurlander, left, with his lawyer, Jonathan Kaplan, on Thursday. In court papers filed in connection with Mr. Kurlander's plea, prosecutors directly tied Project Veritas to the theft of Ashley Biden's items. Jefferson Siegel for The New York Times

Aug 22,
2022

Spying for Rupert Murdoch

- Early 2000s, reporters for British “red top” News of the World engaged in phone hacking, spying and bribery
- Main target was British royalty
 - Also photos of murder victims, British soldiers
- Parliament – Levison inquiry
- Top editors jailed, News of the World shut down

Trespassing & newsgathering

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 - Society of Professional Journalists
 - Student Press Law Center

Free press / Fair trial

- 1st and 6th Amendments



Free Press & Fair Trial



Dr Sam Sheppard spent ten years in jail wrongfully convicted of murder.

Media prejudice played a large role in the conviction.

The US Supreme Court case, *Sheppard v Maxwell*, 1966, still defines the roles of press and courts.



Sheppard v Maxwell, 1966

Sam Sheppard was convicted of murder in 1954 after his wife was found stabbed to death in their home. The case became famous.

- Sheppard claimed someone else committed the crime, but the police did not believe him.
- Before the trial, newspaper headlines read: “Why isn’t Sam Sheppard in Jail?”
- Names of jurors were published in the newspapers.
- During the trial, the court room became a “media circus.”
- The Supreme Court reversed the conviction in 1966, saying that Sheppard did not get a fair trial.

[illegible]



Sheppard v Maxwell, 1966 (2)

In 1966, the US Supreme Court said that judges were responsible for the conduct of trials, and that they should:

- Set rules for in-court conduct by journalists;
- Grant continuance for a later trial or
- Grant a change of venue to keep prospective jury unbiased;
- Admonish jury to ignore publicity, or
- Sequester the jury to insulate them from publicity;
- Issue protective order (gag order) for out of court statements by trial participants (police, lawyers, court officials).

Free press – fair trial (1st & 6th)

- **6th Amendment** – *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

Free press – fair trial (1st & 6th)

- **Pre-trial news coverage**
 - Publicity may prejudice possible jurors
 - Police may claim they have solid evidence or confessions that will not be admitted into evidence
 - Ethically, witnesses or victims of crimes should not be exposed to publicity
 - Judges can't “gag” the press (except as a last resort) but can control release of documents and discussions by police and attorneys before a trial begins

Free press – fair trial (1st & 6th)

- **News coverage during trials**
 - *Pre-trial decisions may come out at this time*
 - *Names and addresses of jurors should not be publicized (ethical issue)*
 - *Cameras in courtrooms may turn proceedings into entertainment, but “public” trials are still required*

Nebraska Press Assn v. Stuart, 1976

- This case involved a media gag order following murder trial testimony.
- The press was ordered not to mention the existence of a confession.
- The Supreme Court struck the order down as unconstitutional. Prior restraint, Chief Justice Warren Burger said, “are the most serious and least tolerable infringements on First Amendment rights.”

Pre-trial publicity

- **Gannett v. DePasquale 1979** — The Supreme Court allowed pretrial hearings to be closed, but soon many full trials were also closed.
- **Richmond Newspapers v. Virginia, 1980** — This was a quick reversal of the Gannett decision, and that “the right to attend criminal trials” was implicit in the guarantees of the First Amendment. Trials could be closed only under extraordinary circumstances.
- “Without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated,” the court said.
- In other words, the right to a public trial was a public right and NOT solely a defendant’s right, as the court said in Gannett v. DePasquale.

Consequences of pre-trial publicity

- In January, 2000, Radford, Va. resident Tara Rose Munsey was murdered by Jeffrey A. Thomas.
- He was charged with first degree “capital” murder (possible death sentence).
- The first trial was highly publicized with 111 newspaper articles and 188 television reports
- Some reported incorrectly on forensic evidence



Tara Rose Munsey

Consequences of pre-trial publicity

- Thomas' attorneys filed a pretrial motion seeking to change venue, arguing that the “barrage” of publicity made it impossible for him to receive a fair trial.
- Virginia state Supreme Court overturned the conviction based on pre-trial publicity
- Instead of execution, Thomas received a life sentence
 - He did not escape justice, even though courts found issues with behavior of law enforcement and prosecutors
 - Munsey's mother was opposed to the death penalty and supported the life sentence for religious and practical reasons

Ethical issues in Pre-trial publicity

- Va Bar and Va Press associations say these **should** be made available after an arrest:
 - Accused person's name, age, residence, employment, family status and other factual background information.
 - Substance or text of the charge, such as complaint, indictment, or information and, where appropriate, the identity of the complainant and/or victim.
 - Identity of the investigating and arresting agency or officer and the length of the investigation.
 - Circumstances of arrest, including time and place of arrest, resistance, pursuit, possession and use of weapons and description of items seized.
 - If appropriate, fact that the accused denies the charge

Ethical issues in Pre-trial publicity

- Va Bar and Va Press associations say these **should not** be made available after an arrest:
 - Statements about the character or reputation of an accused person or possible witness.
 - Admissions, confessions or the contents of a statement or alibis, or refusal to make a statement, except denial of a charge.
 - The performance or results of examinations or tests or the refusal or failure to take them
 - Statements concerning the credibility of witnesses.
 - The possibility of a plea of guilty to a lesser offense
 - Opinions concerning evidence or arguments
 - Prior criminal charges and convictions

Ethical issues (continued)

- Evidence not admitted should not be reported until after the trial (or at least until after it begins)
- Witnesses and victims may be identified in court but often should not be identified by the media until after the trial, if at all
- The rights of free press and fair trial are co-equal rights; one is not superior to the other



FOIA & Sunshine laws

Freedom of Information Act

- FOIA laws passed in late 60s
 - federal and most states
- FOIAs ensure that gov't info is available to the public.
- State & Fed laws have exemptions
 - Fed: Nat'l security, personal (eg tax & medical), personnel (hiring & firing), banking & investigations
 - State: Personnel, property negotiations, criminal investigations
- FOIA requests are easy to make but should be precise (let's not waste time) and include request from press for waiver of fees



Virginia FOIA

- Chapter 37 of Title 2.2
- *“The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government... The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed...”*

Sunshine laws (open meetings)

- All state and municipal governance meetings have to be announced in advance and open to public
- Virginia state exemptions for closed meetings include personnel, property, and legal issues
- All members of city and county councils have to certify that only exempt topics were discussed. Decisions must still be made in open meetings.
- Social distancing during the coronavirus still requires that electronic meetings be accessible to the public, according to a March 2020 Virginia attorney general's opinion.
- However, public bodies should “defer any and all decisions that can be deferred until it is once again possible to meet in person.”

Newsroom searches by police

- Court orders subpoenas are more appropriate than ex-parte (single sided) search warrants
- In *Zurcher v Stanford Daily*, 1976, newsroom search was OK according to the courts
- Privacy Protection Act, passed by Congress 1980, overruled the *Zurcher* decision. Search warrants can only be issued:
 - when the person with information is suspected of a crime and
 - when there is reason to believe the materials must be seized immediately to prevent death or injury and
 - when there is reason to believe that giving notice would result in materials being changed or hidden or destroyed and
 - the materials were not produced as a result of a court order.
- In April, 2010, a newsroom search in Harrisonburg, Va, on the campus of James Madison University, was greeted with outrage by media media watchdogs and the press. The DA apologized and returned the confiscated materials.

Shield laws to protect sources

- Do reporters have the right, or the ethical duty, to keep sources confidential? Is there a privilege to protect sources and refuse to reveal them in court cases?
- Branzburg v Hayes, 1972 – Marijuana and black panther cases where reporters refused on principle to reveal sources. Court was evenly split 4-4 with one vote saying reporter privilege was appropriate in some circumstances.
 - *“Without some protection for seeking out the news, freedom of the press could be eviscerated.”*
- Valery Plame affair, 2004 – Judith Miller, reporter, jailed 85 days.



Student Press law

Student press law

- **Tinker v Des Moines, 1969**

- A school could not punish students for wearing armbands that protested the war. “It can hardly be argued that either students or teachers shed their constitutional rights at the schoolhouse gate.”



- **Hazelwood School District et al. v. Kuhlmeier et al., 1988**, high school student publications can be censored by the school administration. This did not include college publications.
- **New Voices legislation** passed in 14 states, guarantees that high school students will operate under the “Tinker standard” rather than the “Hazelwood standard.”
 - In many areas of law, states may allow more First Amendment freedom but not less than a national standard set by the US Supreme Court.

Student press law

- RU Speechless dot com
- 2013 RU class questioning uneven application of speech laws to Radford campus
- Even before student newspaper thefts of 2019, serious problems with expression at RU and other universities





Thank you