A Framing Analysis of News Coverage Related to Litigation Connected to Online Student Speech That Originates Off-Campus

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by

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I. Introduction

With a few keystrokes and mouse clicks, anyone with an Internet connection can publish almost anything to a potentially worldwide audience. While the ability to more easily share information has significantly affected communication, business, education, and a host of other societal institutions, this ever-evolving communication realm has created a new set of questions and challenges for parents and educators as they seek to teach young people about responsible use of the Internet and the consequences of its misuse.

As teens and young people experiment with new ways to relate to their peers in a digital environment, some choose to use this communication platform to bully, tease, lambaste, or even threaten both their peers and adults in positions of authority. Such speech can create concerns for school administrators who are charged with maintaining an orderly and safe learning environment for all students entrusted to their care. David Hudson (2008) of the First Amendment Center noted the range of speech that could arouse the concern of school authorities is ever-growing. “It could be students posting false and damaging statements about a school official, an alienated student creating a list of students he would like to see harmed, or a student spewing vulgar and lewd content” (p. 2).

Because of the global reach of the Internet, the speech students create and post via their home computers or their cell phones could, indeed, negatively affect the school environment, especially when the speech makes threats against others or exposes individual students to bullying or harassment. However, pitted against the need to maintain an orderly learning environment are questions of whether school authorities possess the legal right to intervene and
impose discipline on speech and expression that were created away from school grounds and, if so, under what circumstances such intervention could occur.

Before the dawn of the Internet, courts generally held that speech and expression that occurred off school grounds were left to the purview of parents or law enforcement officials to control. However, the disappearing boundaries between home and school fostered by the digital world and the speed at which information travels online have opened new legal questions.

Answering these questions is important because public school officials act as government authorities. Use of their power to regulate or punish student speech raises First Amendment concerns. This is especially pertinent when considering whether giving administrators the power to regulate off-campus speech could enable them to use that power to protect their own interests, such as muting criticism of school policies or personnel.

Students’ use of an expressive medium like the Internet could enable them to formulate an understanding about the importance of free speech and expression through practice. As some advocates have cautioned, if the younger generation fails to appreciate the freedoms guaranteed by the Constitution, those freedoms risk erosion over time (Dautrich, Yalof, and Lopez, 2008).

During the past decade, some students who have been disciplined at school for the online postings they created at home have sued their school districts in order to seek counsel from the court system to define the proper role school authorities should play in controlling online speech that originates off school grounds. Courts have differed in their findings. Some judges granted more authority to school officials to intervene, especially when they deemed the speech threatening to others in the school. Other courts have held school authorities must meet the “material and substantial disruption” standard established in Tinker v. Des Moines Independent School District (1969), which allowed school administrators to discipline speech that provokes
some direct interference with normal school activities. However, most courts have found that crude speech or speech critical of school officials fails to meet that standard. Other courts have ruled that off-campus speech is always protected from interference by school authorities. The issue remains far from resolved.

Despite the implications this issue poses for teaching young people the value of free expression, most in the general public probably do not possess the background and specified knowledge required to evaluate claims about First Amendment law and its application to student online expression. Absent direct experience, much of the public’s exposure to the question of whether school administrators possess the right to control expression that originates off-campus would most likely begin with news coverage written about either the legal questions themselves or specific court cases in which students sued their school citing a violation of their First Amendment rights.

News can be a powerful social learning tool because it “provides perspective by telling people what is considered important and significant and what is not” (Hachten, 2001, p. xvii). Some scholars contend the news media set an agenda for public discussion by exercising a gatekeeping role that directs the public’s attention through a multitude of issues that might be of importance at any given time (McCombs and Shaw, 1972; Dearing and Rogers, 1996).

Beyond this, stories and other news packages are constructed in such a way as to highlight specific attributes of an issue while downplaying or ignoring others. Some scholars refer to this as framing (e.g. Entman, 1993). By emphasizing certain aspects about an event, person, or issue, the news media can steer and shape, even unwittingly, how the public might react to and interpret the information included in the stories they choose to cover. Tuchman (1978) described news framing through the analogy of a window:
“The view through a window depends upon whether the window is large or small, has many panes or few, whether the glass is opaque or clear, whether the window faces a street or a backyard. The unfolding scene also depends upon where one stands, far or near, craning one’s neck to the side, or gazing straight ahead, eyes parallel to the wall in which the window is encased” (p. 1).

The way news coverage frames both the issue of student First Amendment rights relating to online expression and the actions of those involved in the cases—school authorities and students—could affect the public’s understanding and appreciation of the role of free expression for young people, especially as it relates to the key question of whether school officials possess the jurisdiction to regulate online speech that originates off school grounds.

It is essential for the public to understand the process of how news stories are selected and constructed because the information they contain could shape one’s view of the world (Gaunt, 1990). To that end, this study examined newspaper stories relating to four federal court cases that arose after students were disciplined at school for material they posted online while at home: Layshock v. Hermitage School District, J. S. v. Blue Mountain School District, Doninger v. Niehoff, and Kowalski v. Berkeley County Schools.

II.

Significance of the Study

The academic research and literature about news media framing of student expression rights is scant. The most notable to address this issue was by Fromm (2010). The researcher analyzed news coverage related to eight seminal Supreme Court cases that dealt with high school and college student press freedom. Fromm cited earlier studies and reports by the Knight Foundation, the First Amendment Center, and other organizations that painted a bleak picture of
the apathy many young people expressed about the First Amendment (p. 19). Fromm saw a gap in the research left by those earlier studies and reports because they merely described the apathy that existed; they failed to explore its origins. Nor did they link the apathy’s causes with major societal institutions like the press or educational institutions (p. 19).

Fromm stated that the study “is situated precisely within this gap, but it cannot fill it entirely. Instead, the findings of this study aim to uncover a missing link in the contextualization of why these mindsets—specifically those related to student freedoms—are so prevalent” (p. 20). As a point of inquiry, Fromm’s research focused on coverage of cases in which high school and college students have sought counsel from the courts regarding their First Amendment rights.

By performing a textual analysis of coverage in U.S. newspapers about legal conflicts related to those eight seminal cases, Fromm reached the following conclusions: The articles in the sample framed students as aggressors for initiating a lawsuit to contest the administrator’s act of censorship. The word “censorship” was not used to describe school administrators’ actions either to prevent publication of specific pieces of work or to punish students after something was published. Conflicting frames emerged that described students as either wards of the state (administrators needed to be able to control speech to keep order) or citizens in training (students needed to practice their First Amendment rights in order to be able to use them throughout life). The sample of articles inadequately explored key details of the court actions, such as dissenting opinions that were favorable to students. The legal context found within the sample was superficial and failed to explain the significance of prior legal precedents (p. 175).

The researcher found that the overall impression created by the frames found in U.S. newspapers led to coverage that minimized “the students’ claims and their significance, thereby
limiting the public’s ability to understand the repercussions and the larger place of student First Amendment rights in society” (pp. 175-176).

It appears no studies exist to date about framing in news coverage related to off-campus online student speech. This study aimed to fill a small section of the wide gap in the literature about student expression and the way society and courts understand and protect it. By examining frames that journalists and news professionals create when covering off-campus online speech, it is possible to better understand one of the main conduits of information that average members of society use to learn about and evaluate the legal issues surrounding student online speech that originates off-campus. The findings could be a powerful teaching tool to help journalists and others who shape messages about this branch of law better understand the ramifications of what they choose to include or exclude in their messages.

III.

Case Histories

In each of the four cases used for this study, a student was disciplined at school for the online speech he or she created while at home. A brief history of each case follows.

Layshock v. Hermitage School District—Justin Layshock, a 17-year-old senior at Hickory High School in Hermitage, PA, created a fake MySpace profile that impersonated his principal, Eric Trosch, while using a computer at his grandmother’s home in December 2005. The profile’s template included a list of survey questions that the creator of the profile was to answer. Layshock answered most of the questions with some reference to the word “big” as an apparent way to poke fun at his principal’s physical stature. For instance, the survey asked, “Do you sing?” Layshock wrote “big song.” While some of the responses might have seemed nonsensical, others insinuated that Trosch drank alcohol while working and potentially used
illegal drugs: Question—“Are you a health freak?” Answer—“big steroid freak”; Question—“Ever been drunk?” Answer—“big number of times”; Question—“In the past month have you drank [sic] alcohol?” Answer—“big keg behind my desk”; Question—“Birthday” Answer—“too drunk to remember.” Layshock included Trosch’s picture from the school’s website and set the identifier on the profile as “thetrosch.”

Layshock’s was one of three fictitious profiles of Trosch students created about this same time. The others included pornographic material and allegations of sexual misconduct. Several students viewed Layshock’s parody profile on school computers. When school officials discovered that Layshock created one of the profiles, they met with him, and he apologized for his actions. However, school administrators suspended Layshock in January 2006 citing what they deemed the disruptive nature of the profile. To justify their claim of disruption, officials cited both their actions to shut down Internet access to prevent students from viewing the MySpace pages and the profile’s language, which they deemed vulgar.

Following his suspension, Layshock was assigned to an alternative education program and was not permitted to participate in graduation or to tutor middle school students in foreign languages. His family initially sought an injunction to allow him to return to his normal classes. The court denied that motion in January 2006, but the school reintegrated him into his regular classes in mid February. Trosch also filed a civil defamation suit against Layshock and the three other students who created the fictitious profiles.

Layshock’s parents pursued a lawsuit against the district claiming both that his First Amendment rights had been violated because the school lacked the authority to discipline his out-of-school actions and that their parental rights had also been violated because the school was interfering with their ability to discipline their son for actions that took place outside of school.
Regarding the First Amendment claims, the Court for the Western District of Pennsylvania ruled in favor of the Layshocks in 2007 and found that no substantial disruption took place at school. However, the court ruled against the claim that the school violated parental authority. The Third Circuit Court of Appeals in February 2010 affirmed that ruling as well as rejected a new argument offered by the school that Layshock’s act of downloading Trosch’s photo from the school district’s website transformed his speech to on-campus behavior, which could be subject to greater oversight by school authorities.

The Third Circuit’s decision was later vacated in April 2010 because of an opposing ruling that court reached in *J. S. vs. Blue Mountain School District*. The facts were similar in both cases. Both cases were heard en banc before the Third Circuit in June 2010. The court again ruled in Layshock’s favor. The Supreme Court declined to hear the case in January 2012.

*J. S. v. Blue Mountain School District*—Jennifer Snyder, an eighth-grade student at Blue Mountain Middle School in Orwigsburg, PA, created a fake MySpace profile impersonating her school principal, James McGonigle, while at she was at home in March 2007. The profile, which did not identify McGonigle by name, claimed he was a pedophile and a sex addict by stating he enjoyed “hitting on students and their parents,” having sex in his office, and watching the Playboy Channel. A section of the profile that allows the creator to issue a personal statement insinuated that McGonigle joined MySpace hoping to meet more students for sexual encounters. The profile’s MySpace identifier included the phrase “kids rock my bed.” The site's content also asserted that McGonigle’s daughter looked like a gorilla and his wife looked like a man. Snyder used a photo of McGonigle from the school district’s website but claimed he was from Alabama.

After school officials learned of the profile, they suspended her, citing violation of two school policies—one that forbade students from making false accusations against faculty
members and another that forbade students from misappropriating copyrighted material. They argued her use of McGonigle’s photo from the school’s website satisfied the second claim. The Court for the Middle District of Pennsylvania upheld the suspension in 2008 by citing the vulgar nature of the profile. The court found that the school could discipline her speech even though it occurred off school grounds. The Third Circuit Court of Appeals upheld that ruling in February 2010. That decision was vacated in April 2010 because of an opposing ruling the court reached in *Layshock v. Hermitage School District*. The facts were similar in both cases. Both cases were heard en banc before the Third Circuit in June 2010. The court ruled in Snyder’s favor that time. The Supreme Court declined to hear the case in January 2012.

*Doninger v. Niehoff*—Avery Doninger, a junior at Lewis S. Mills High School in Burlington, CT, was barred from participation in a student government election in May 2007 after school officials discovered a blog post she authored from home in which she expressed her anger about the possible cancelation of a battle-of-the-bands event to be held at the school. Doninger claimed in her post that the event was already canceled, which school officials claimed was not true, and that those angry about the decision should contact the principal and superintendent. She referred to school administrators as the “douchebags [sic] in central office” and encouraged students upset with the decision about canceling the band show to call the superintendent in order to “piss her off more.” Administrators argued Doninger’s actions were disruptive both because of her post’s false statement about the show’s supposed cancelation and the high volume of calls they received from students. Students who were upset with the administration’s decision to bar Doninger from running for senior class secretary tried to wear t-shirts bearing the phrases “Team Avery” and “RIP Democracy” to the school assembly in which those running for student government gave campaign speeches before the student body. Fellow
students wrote Doninger’s name on the ballot as a write-in candidate. She received enough votes to win the election, but the administration did not allow her to take office.

Doninger’s mother filed for a preliminary injunction asking for another student government election to be held in which her daughter could participate. The court denied that motion in August 2007.

The case continued to trial on grounds that the school violated Doninger’s First Amendment rights. The District Court of Connecticut ruled in favor of the school by holding that no one has a First Amendment right to participate in student government and that Doninger’s actions undermined the values student government was designed to promote. The case was appealed to the Second Circuit, which also ruled in the school’s favor in 2008. The case moved back and forth through the court system on procedural grounds, and, in April 2011, the Second Circuit affirmed the district court’s granting of qualified immunity to the principal and superintendent because the judges stipulated that the law governing administrative control of off-campus speech was far from resolved and a reasonable public school official might be confused about the proper course of action. The Supreme Court declined to hear the case in October 2011.

**Kowalski v. Berkeley County Schools**—Kara Kowalski, a senior at Musselman High School in West Virginia, was suspended in 2005 because of a MySpace group she created while at home and invited nearly 100 friends to join. Someone placed an altered photo of another student on the page and claimed the student in the photo had herpes. The photo depicted red dots on the student’s face and included a sign pointing to her pelvic region that read “Warning: Enter at your own risk.” Others Kowalski invited to join the group commented on the photo. Kowalski named the group with the acronym S. A. S. H. Kowalski later said the letters stood for “Students
Against Slut’s Herpes.” However, another student told school officials it stood for “Students Against Shay’s Herpes.” Shay was the name of the student pictured in the altered photo.

The student pictured brought the site to school officials’ attention once she heard about it, and they suspended Kowalski for five days citing her violation of the school’s anti-harassment policy because she created what they deemed a “hate group.” In addition, she was prevented from attending school functions in which she was not a direct participant for 90 days and was barred from the cheerleading squad for the remainder of the school year. She was also prevented from crowning that year’s “Queen of Charm,” a designation she was awarded the previous school year. Kowalski claimed the suspension caused her to develop depression and to feel stigmatized by her peers. She sued the school district alleging a violation of her First Amendment right to free speech. The Court for the Northern District of West Virginia ruled in the school’s favor in 2008, citing the potential in-school disruption the speech could cause. The Fourth Circuit Court of Appeals reaffirmed that decision in 2011, noting it was satisfied that a sufficient nexus existed between Kowalski’s off-campus behavior and its on-campus effects. The Supreme Court declined to hear the case in January 2012.

IV.

Review of Literature

This study examined news stories about court cases related to school-imposed discipline of students for the online speech they created at home in order to discern how news production processes influence the frames the coverage contains. That focus necessitates a review of relevant literature about the Internet’s influence as a communication tool among young people, judicial precedents governing school regulation of student speech, the tenets of framing theory, and the news production processes that influence a frame’s creation and maintenance.
The Internet as an Expressive and Communication Tool

As the Internet’s use has diffused through society, digital technologies have altered communication. With a few clicks of a mouse, people of all ages and backgrounds can transmit words, messages, photos, videos, and other materials across geographic boundaries (Kramer and Winter, 2008). These technologies can enable an individual to communicate with a small group of people or, in theory, with a mass audience across the globe simply by posting information on a portal that is accessible to anyone with an Internet connection.

This transformation of the fundamental methods of communication in society has created a blending of the physical and digital worlds. “Watching the development of mixed reality—both the virtual and physical worlds are seamlessly mixed into a hybrid human environment called “interreality”—we can be sure that the current ideas and rules about virtual reality will have to be changed, step by step” (Van Kokswijk, 2007, p. 9). Pavlik (1998) supported this claim by arguing that new communication technologies alter almost every social institution and that technology would continue to become more interactive with time. “Regardless of the prevailing definition of interactivity, the new media age will present media consumers with opportunities to become more active participants in the world of mediated communications” (p. 137).

This interactivity is most evident with the rise of social media or social networking sites, which allow users to post user-generated content, take polls, and interact with one another through chat features, comment functions, and shareable files. Thus, the average person can be both a social media creator and consumer. A user can create material to share with others while also consuming the material created and posted by other users. Studies have shown an increased use of social media by teens. The Pew Research Center found that 73 percent of teens who had access to the Internet used social networking or social media sites (2010).
Because of this prevalence of technology in their daily lives, Palfrey and Gasser (2008) referred to young people today as “digital natives” in their work *Born Digital*:

“They study, work, write, and interact with each other in ways that are very different from the ways that you did growing up…major aspects of their lives—social interactions, friendships, civic activities—are mediated by digital technologies. And they’ve never known any other way of life” (p. 2).

The authors noted that young people are using the Internet and other digital technologies to share more of their personal information than before. This has changed younger people’s understanding of privacy as they become more willing to share information about themselves online. The full repercussions of which have yet to be realized because no “digital natives” have lived fully through their adult life yet (p. 62). Some young people do not appreciate the longevity of the information they post, or they believe what they post is semi-private because they intend only for their friends to see it, even though it is available for all to see (p. 30). However, the authors cautioned that preventing young people from using these technologies could cause more harm than good by denying them an opportunity to learn and grow (p. 9).

Thus, the pervasiveness of the Internet has altered interpersonal relations among young people by transforming the most basic means they use to communicate, interact, and identify with their peers.

**Online Legal Environment and the First Amendment**

**Cyber bullying on the Internet.**

The Internet presents its own set of challenges for regulation and oversight because of its global nature. What a person posts on one computer in one location is generally visible to anyone with a connection anywhere in the world. This trait of digital communication might be useful,
but it can also be used to easily spread lies, innuendo, hate, or personal attacks.

The practice of willfully and intentionally inflicting harm on others through digital means is commonly referred to as “cyber bullying.” Edgington (2011) described some of the practices that comprise cyber bullying: making direct attacks on another online user, stealing another’s passwords to a social networking site, distributing altered photos or videos of a user, impersonating the user online, or spreading rumors about the user online.

Hinduja and Patchin (2009) identified in their book *Bullying Beyond the Schoolyard* characteristics that distinguish cyber bullying from traditional in-person bullying: the aggressor’s ability to either remain anonymous or use a pseudonym, disinhibition because of a lack of immediate feedback from the victim, a lack of supervision because a computer might be located in a private area, the viral nature of information online, and seemingly limitless victimization risk because aggressors can attack through multiple forms of technology or continue the attacks in person at a later time (pp. 20-25).

Aggressors often rationalize their behavior with a belief it is possible to escape detection, that their actions are not hurtful, that inflicting pain on others is a common or accepted practice, and that the victim deserved the treatment (Willard, 2007).

Smith, et al. (2008) found cyber bullying to be less frequent than in-person bullying, but its presence was appreciable and was often reported more to authority figures outside of school than to school officials. Other researchers have discovered negative effects on school performance and mental health from cyber bullying and have argued that schools should take the issue seriously by educating students about its consequences (Schneider, et al, 2012).

However, beyond educating students about cyber bullying, school officials are confronted with choosing whether to intervene or stand aside in cases in which students choose to verbally
attack or threaten fellow students or school personnel through digital means while off school grounds. According to the National Conference of State Legislatures, 34 states have enacted some form of legislation to address cyber bullying. Some First Amendment scholars and advocacy groups worry that such laws are a knee-jerk reaction that unconstitutionally restricts speech. Moshirnia (2010) of the Electronic Frontier Foundation stated, “While these laws are backed by good intentions, the noble motives of a legislature cannot cure the fatal vagueness that will accompany a statute outlawing mean speech.” However, school administrators often wish for clearer guidance from courts in this matter, especially when it is unclear whether cyber bullies have violated school rules (Davis, 2011).

Beyond school-related discipline, Hayward (2011) argued for more parental responsibility as a means to teach their children about responsible Internet use and the consequences of using the Internet to inflict harm on others. The author also chastised the news media for exploiting the harm that accompanies cyber bullying rather than emphasizing the need for more personal responsibility online.

The speech in three of the four cases examined in this study dealt with some form of cyber bullying, so consideration of cyber bullying’s effects is relevant. In one case, the speech was directed at a fellow student, and, in the other two, a student created a fake online profile that included false accusations about his or her principal. Cyber bullying’s prevalence poses questions for school administrators about the proper role they should serve in curbing its spread. Such action gets at the heart of this study.

**Legal regulations of student speech in general.**

As a foundation to this section, one must consider the standards courts use to assess regulations on student speech in general before understanding how they apply to online speech.
One landmark ruling courts often use as a baseline to assess student speech is *Tinker v. Des Moines Independent Community School District* (1969). Three students sued their school district following their suspension for wearing black armbands in protest of the Vietnam War. Their actions directly violated a school regulation administrators passed for fear the armbands would provoke disturbance because of the controversial nature of the war. The Supreme Court ruled in the students’ favor and declared, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The Court found the students’ actions did not materially disrupt normal school activities nor did their actions invade the rights of others.

Thus, the Court established a test that school administrators must meet before they can restrain or punish student speech that takes place on-campus. The speech has to be physically disruptive to the school environment in a way the prevents normal school activities from taking place—classes cannot be held as normal, physical violence breaks out, etc. The Court also ruled that administrators could make a reasonable forecast that disruption is likely to occur to prevent potentially disruptive speech before it occurs. However, the ruling mandated that administrators must use facts to form their assessment—evidence of past problems with a particular form of speech, for instance—and not merely “undifferentiated fear or apprehension of disturbance.”

While the *Tinker* standard still remains in effect today, the Court began to distinguish its holding in the case through three subsequent opinions that provided more deference to school administrators. The first of which was *Bethel School District No. 403 v. Fraser* (1986). The student, Matthew Fraser, was suspended from school following a speech he gave laced with sexual innuendo in front of a school assembly. The Court upheld his suspension and ruled that schools need not tolerate speech that is lewd or vulgar, even though such speech is afforded First
Amendment protection outside the school environment. The opinion stated “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” In forming its opinion, the Court also considered that Fraser gave the speech in front of what it deemed a “captive audience,” in which students who might be offended did not have the option to leave.

The next case was *Hazelwood School District v. Kuhlmeier* (1988), which explored the level of control school administrators could exert over student publications and speech connected with school-sponsored activities. Citing concerns about privacy and the maturity level of the audience, a principal from Hazelwood East High School near St. Louis, MO, censored a spread of articles that contained stories about divorce and teen pregnancy from the school-sponsored student newspaper. The Court ruled that administrators could exercise more control over such speech as long as their restrictions were “reasonably related to legitimate pedagogical concerns” and viewpoint neutral. The holding also noted that speech occurring in a designated public forum—one in which the school, by policy or practice, allows students to make content decisions—was still governed by the *Tinker* standard. The ruling distinguished the Court’s earlier holding in *Tinker* by providing one standard to assess speech not connected to the school curriculum and another standard to assess that which was (Law of the Student Press).

Finally, in *Morse v. Frederick* (2007) the Court declared that schools could regulate speech perceived to advocate illegal drug use even if the speech did not meet the substantial disruption test set forth in *Tinker*. The student litigant, Joseph Frederick, unfurled a banner bearing the phase “BONG HITS 4 JESUS” across the street from his high school while the Olympic torch relay passed by in 2002. Students were dismissed from class to watch the relay. The principal confiscated the banner and suspended Frederick for his actions. The Court found
that his speech could have been interpreted as promoting illegal drug use, even though Frederick claimed the phrase was nonsense.

These four cases all involved speech that took place during the normal school day on school grounds or, in the case of Morse, in close proximity to school grounds. Courts have generally ruled that regulation of speech that occurs off school grounds falls to parents or law enforcement officials. Two cases from federal courts in the 1970s prove illustrative. Both involved underground student newspapers produced off-campus and distributed to fellow students either during the normal school day or off school grounds entirely. In both cases, school officials tried to intervene to either stop distribution of the publications or punish the students involved. In both cases, courts ruled in favor of the students. In the first, Shanley v. Northeast Independent School District (1972), the Court declared that the school board’s “assumption of authority is an unconstitutional usurpation of the First Amendment.” In the second, Thomas v. Granville Central School District (1979), the ruling held that school officials’ power to constrain student speech off school grounds “must be cabined within the rigorous confines of the First Amendment, the ultimate safeguard of popular democracy.”

**The law’s application to online student expression.**

Paired against the important value of protecting young people from attack during the formative period in their lives is the equally important value of protecting, fostering, and promoting free speech. The notion to speak and publish freely has never been guaranteed as a right of all people everywhere, and some people debate the meaning of “free” (Copeland, 2006). However, as Yalof and Dautrich (2002) have expounded, “In a democracy, civil liberties are a precious commodity. Accordingly, we often worry that those liberties have become fragile or increasingly vulnerable to assault” (p. viii). Surveys of high school students by the Knight
Foundation to gauge young people’s appreciation for and understanding of the First Amendment have shown mixed results. About three-fourths of the students surveyed in 2004 expressed little appreciation for the freedoms the First Amendment protects. This figure shifted slightly in the 2011 survey as more students said they thought about those five freedoms.

As such, the need to foster an appreciation for the First Amendment is rife with debate regarding how school administrators should balance the competing values of protecting students from harm online while encouraging them to express themselves. At the core of this debate is how much authority, if any, school administrators possess to control or punish speech that occurs off school grounds. Second, courts and legal scholars debate the appropriate standards through which to assess off-campus speech. Courts have begun to apply to off-campus expression the standards used in cases to assess on-campus speech, most notably the “substantial disruption” standard in Tinker.

Calvert (2009) argued that Tinker’s standard should never be applied to off-campus speech. In his view, the Court only addressed expression that took place on-campus, even when it offered hypothetical scenarios that could lead to disruption, and while no one 40 years ago could have envisioned a digital communication environment, the Court’s reasoning demonstrated a desire to apply Tinker’s standard to on-campus speech. Calvert noted that those defamed or threatened by off-campus speech have civil and criminal remedies at their disposal. The author also argued that overuse of Tinker to allow school administrators the right to intervene in off-campus speech diminishes the rights of parents to properly teach and discipline their children while in their care.

Some argue for a more nuanced approach that considers whether the speech is legally considered on- or off-campus. “Whether a student can be considered ‘on campus’ for purposes of
disciplining their [sic] expression should depend on whether their expression was intended to
directly influence the school environment, or whether such influence arose as the incidental
result of off-campus expression” (Pike, 2008, p. 1007). The author argued some consideration of
intent could draw clearer distinctions among the varying sets of circumstances surrounding each
case. However, Pike acknowledged the difficulty of achieving this level of analysis without
further guidance from the courts (p. 1007).

Others have suggested that Tinker’s standard undermines the authority of public school
teachers and administrators and that expression students post on the Internet should be treated as
actions, not speech (Braiman, 2009). This could give administrators more control to curtail
improper student behavior online and help mitigate the risks students take when posting
information online. “In many ways, the Internet is an even riskier place than the real world, but
ironically young people seem to perceive even less risk online than they do in school. It would
therefore seem prudent for the courts to recognize these risks and fashion rules which [sic]
compel schoolchildren to do the same” (Braiman, 2009, p. 470).

Others argue that schools should act as the primary authorities to curb cyber bullying.
Zande (2009) contended the Tinker standard is appropriate for allowing school administrators to
assess and punish acts of bullying that occur online and off-campus. If “the cyber bullying
caused a material and substantial disruption inside the school or infringed on the rights of
another student, the school should be able to punish the cyber bully regardless of the physical
location where it occurred” (p. 133). Zande used the Court’s decision in Morse v. Frederick to
suggest a further blurred line between on- and off-campus speech to allow schools more
justification to regulate speech that occurs off-campus (p. 135).
Some courts have started to rely on a “sufficient nexus” test, which seeks to determine whether it can reasonably be concluded that the speech posted off school grounds had affected the school environment (Hoover, 2009). However, it remains unclear which specific cases (especially Tinker, Fraser, Hazelwood, and Morse) and standards do and should apply to off-campus speech. “However, as courts continue to consider this issue, it is imperative that they not lose focus of the fundamental importance of the First Amendment to the American landscape, especially in shaping the minds of our future generations” (Hoover, 2009, p. 328).

**Framing Theory**

Perhaps colloquially some believe the news media possess an unlimited ability to shape, or even manipulate, public opinion. However, the process is more nuanced. The news media’s prevalence in daily life sustains their position as a significant social force. “Media don’t manipulate passive individuals. Instead, media’s power lies in their ability to provide communication services that are routinely used by individuals and are central to the maintenance of our social order” (Baran & Davis, 2006, p. 301).

Part of this power rests with the frames the news media create and transmit about the issues, topics and people they choose to cover. At their core, frames are different ways of discussing or processing the same issue—liberation versus oppression, economic stimulus versus wasted money, etc. Frames allow people to make sense of a given issue by structuring socially understood meaning (Reese, 2001).

**Foundations of framing theory.**

Goffman (1974) is credited with developing the frame concept to explain how people navigate through everyday social occurrences. The expectations people place on given situations can explain their reaction to specific circumstances. For instance, people might react differently
to another’s kind comments if they feel the other person is flirting or simply being polite.

Goffman described frames as sets of expectations used to make sense of a given situation by defining situations as “strips” of reality or “any arbitrary slice or cut from the stream of ongoing activity” (p. 10). Patterns of social cues influence the frames people use to interpret one another’s behavior and emotions, and people are able to navigate through the cues effortlessly most of the time because they experience a primary reality in which a wide set of expectations exists. Others have expanded Goffman’s ideas to describe framing by the news media.

Frames can affect how journalists process information. Gitlin (1980) described media frames as “persistent patterns of cognition, interpretation, and presentation, of selection, emphasis, and exclusion, by which symbol-handlers routinely organize discourse, whether verbal or visual” (p. 7). Frames allow journalists to process a stream of information, assign it to categories, and package it for consumption by the audience.

Entman (1993) defined framing as a process to select “some aspects of a perceived reality and make them more salient in a communication text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation” (p. 52). Frames serve four purposes—to define problems, diagnose causes, make moral judgments, and suggest remedies (p. 52). In addition, Entman postulated frames exist in the communicator, the media text, the receiver, and the culture (pp. 52-53).

Others have also located frames within the audience, news organizations, news sources, news texts, and within the culture in which news is constructed (D’Angelo & Kuypers, 2010).

Reese (2001) defined frames as “organizing principles that are socially shared and persistent over time, that work symbolically to meaningfully structure the social world” (p. 11). Reese argued that frames perform their organizing function both through cognition and culture.
Their cognitive effect occurs by inviting people to “think about social phenomena in a certain way, often by appealing to basic psychological biases” (p. 12). Frames organize culture by creating a specific understanding that can be applied to circumstances beyond those immediately in one’s view. “These are strategic frames that speak to a broader way to account for social reality” (p. 13). Reese’s later research explained that frames are abstractions that reside in various locations, from the text of a media message to the receiver’s cognition and mental structures (2010, pp. 21-22).

Frames encompass more than viewpoints about issues. Nisbet (2010) found that both conservatives and liberals used an economic frame to discuss climate change, even though they expressed opposing views. Nisbet also differentiated between frames and frame devices, which are those cues that indicate or transmit a frame in the public’s mind. These can include slogans, catchphrases, metaphors, sound bites, and other linguistic or visual cues (p. 49). In the climate change debate, the catchphrase “climate crisis,” promulgated by Al Gore, is a frame device to signify and transmit the frame of impending disaster that some say climate change will cause.

Iyengar (1991) observed a difference between episodic frames—those that focus on people or small sets of events to tell a larger story—and thematic frames—those that focus on collective social functions. Regarding an issue like homelessness, a group of families might tell their experience with homelessness as an episodic frame, while a thematic frame might focus on governmental policies toward homelessness. “Episodic framing depicts concrete events that illustrate issues, while thematic framing presents collective or general evidence” (p. 14).

In a later study, Iyengar (2010) discussed how frames could pertain specifically to topics under consideration. In politics, frames could include an “issues” frame to discuss the
candidates’ positions about matters of public concern, a “personality” frame to discuss personal attributes, and a “horse race” frame to discuss the candidates’ standing the polls (p. 187).

Three paradigms have developed to explain both the source and impact of frames: cognitive—deciphering how frames affect the mental processing of the audiences, constructionist—examining the social and institutional influences that affect a frame’s creation and maintenance, and critical—understanding how elites control and manipulate public perception and opinion (D’Angelo, 2002).

For purposes of this study, the researcher chose to focus on the constructionist nature of frames in the sample under analysis to best decipher the potential meanings and interpretations of the text.

**Frame construction and creation.**

Society experiences a socially constructed sense of reality in which collective forces change and reinvent the way people relate to each other and interpret given facts and situations (Berger and Luckmann, 1967). News itself is a social construction that creates a selective picture of reality. “The picture of ‘reality’ that news claims to provide cannot help but be a selective construct made up of fragments of factual information and observation that are bound together and given meaning by a particular frame, angle of vision, or perspective” (McQuail, 2005, p. 101).

Journalists create meaning from this fragmented picture by the information and interpretation they provide. “They cannot tell stories effectively without preconceived notions about how to order story elements and about what meanings they could or should impose on those story elements” (Van Gorp, 2010, p. 84). This could include, for instance, use of culturally
understood frames, such as the hero and villain, to provide meaning and context to the issue under consideration in that story (p. 87).

While framing is often regarded as an unavoidable aspect of public communication, some stakeholders employ frames deliberately to sway perception and understanding (Nisbet, 2010). Different actors possess varying levels of power and influence over how a frame is maintained, transformed, and transmitted. This is affected by access to and control over material resources, strategic alliances with others who seek to influence the frame, and knowledge of how to sponsor frames (Pan & Kosicki, 2001, p. 44). The influence over frames travels in multiple directions because of public participation and numerous advocates involved.

Because social forces affect the framing process, Miller and Riechert (2001) described a cycle that explains the development, maintenance, and transmission of competing frames: Emergent phase—Proponents seek media attention through triggering events, spokespeople, information campaigns; Definition phase—Proponents establish a specific characterization of the issue; Resonance phase—The resonant frame takes hold; Equilibrium phase—One frame dominates. However, new information can break the equilibrium (pp. 111-115).

The issue under study—how the media frame stories related to student online speech—is no exception to these processes affecting the creation, maintenance and reification of frames. When journalists gather, analyze, and compile information into a story, it will be subject to these social processes that create a constructed picture of reality. The sources journalists use in compiling the story may try to influence the frames and messages the public hears in order to shift opinion or to build an argument for a specific course of action.

Effects of news frames.

Deciphering the exact power frames possess is the subject of debate among media
scholars, sociologists, and psychologists. The precise nature and location of frames can be difficult to assess. Do frames reside with journalists themselves who write the stories? Do they reside in the surrounding cultural elements that influence a journalists’ decisions about which information to include in a story and why? Do they exist already in the minds of the general public and their interpretative use is merely activated by news reports? Is the primary effect of frames a change in audience attitude or a change in behavior? Examining these questions can provide a roadmap to assess the state of research and scholarship about effects of framing.

Even though this study’s purpose is only to analyze the text of the message—news stories, in this case—it is important to note the effects frames can have on the general public as a way to appreciate the potential ramifications such devices can possess for shaping public knowledge. Studying effects of the frames employed by the texts in this sample could provide an avenue for further research and exploration.

Frames serve a comprehension function, according to Van Gorp (2010), by allowing people to feel in control of their environment. The public can feel better able to assess issues like poverty, immigration, or genetic engineering when viewing them through frames (p. 104).

Nisbet (2010) contended that frames connect the “mental dots for the public. They suggest a connection between two concepts, issues, or things, such that after exposure to the framed message, audiences accept, or are at least aware of, the connection” (p. 47). If the frames fail to make such a connection, they will be largely ignored (p. 48).

Indeed, frames can fail to influence attitudes or behavior. These shortcomings counteract the negative influences of framing on society’s institutions and people (Schaffner and Sellers, 2010). The individual, interest group, or institution promoting them, the frequency of their use, or the medium used to promote them can limit their effectiveness (p. 6). Brewer and Gross
(2010) concurred by stating that “the literature on framing in public discourse often conveys a portrait of powerful frames and malleable citizens…To be sure, the presence of a frame in communication does not necessarily imply that exposure to it will influence the receiver” (p. 160).

Nisbet (2010) agreed. “Media frames might help set the terms of the debate among citizens, but rarely, if ever, do they exclusively determine public opinion” (p. 49). The researcher cited people’s access to additional sources of information and commentary as mitigating factors.

If frames are to be studied as influential to public opinion, Brewer and Gross (2010) argued that the definition of “public opinion” should be widened to include actions, not only beliefs and attitudes. They proposed studying the effect of news frames of political candidates on behaviors like donating money to a candidate, wearing buttons, or displaying bumper stickers.

A divergent view of framing examines its effects on cognition. Some researchers, notably Price and Tewksbury (1997), argued that exposure to frames creates an applicability effect by which frames trigger cognitive schemas and thought patterns to help the receiver of the information interpret its meaning and significance in light of previously processed information.

Schemas represent a “cognitive structure consisting of organized knowledge about situations and individuals that has been abstracted from prior experiences. It is used for processing new information and retrieving stored information” (Graber, 1984, p. 23). To Price and Tewksbury (1997) schemas are culturally shared, but individual recipients will process them differently.

B. T. Scheufele and D. A. Scheufele (2010) further investigated the relationship between cognitive schemas present in both the communicators and the audience, as well as how frames present in media texts activated these schemas. They concluded that as the news media draw
attention to specific schemas, those schemas are more readily available for use in interpretation (p. 117).

**Effects of journalistic norms on frame creation.**

Journalism performs an essential service in a democracy by providing people with information for self-governance (Kovach and Rosenstiel, 2001). However, the way in which journalists interact with sources, the expectations of editors and superiors, the shared standards and values of the profession, and the time, spatial, and economic constraints journalists operate under will affect the final product presented to the audience for consumption.

Framing lies at the center of this story-generation process. If journalists do not draw attention to a given issue, it could occupy little to no significance in the public’s perceptions. Taking this notion further, frames are created, maintained, altered, or even distorted amid this exchange between journalists, their superiors, sources, and the public. Journalists actively participate in frame creation; they do not simply relay those frames promulgated by elites in society (Reese, 2010).

To better understand the origin of the frames found in the texts analyzed in this study, it is imperative to consider how newsgathering processes and rituals shaped the final product presented to the audience for consumption. Appreciating the contribution of external factors like time, resources, and professional expectations could inform how and why frames and other storytelling devices exist within the sample.

Schudson (2011) described news as a social construction. The final news product results from a complex interplay of shared standards of newsworthiness, the inner workings of the news organization, professional norms, and time and economic constraints. Information is reduced to fit the allotted time of a broadcast or space available on a printed or electronic page.
Producing the news effectively requires journalists to rely on rituals, or sets of patterned behaviors and expectations that clearly demarcate acceptable work product and standards of professionalism to gather and disseminate information. These rituals provide the news media with a pervasive and generally accepted power to shape society’s sense of reality (Zelizer, 1997).

In the first stage of this social construction process, journalists and editors act as “gatekeepers” to determine which events, ideas, and trends merit coverage and how many resources will be harnessed in creating the story. Thus, even at this initial stage, journalists help determine whether stories will receive robust public attention or will melt into oblivion. “Some happenings in the world become public events. Others are condemned to obscurity as the personal experience of a handful of people. The mass media, and in particular news organizations, make all the difference” (Fishman, 1997, p. 210). Thus, someone must notice and recognize happenings as worthy of coverage. The world is filled with a myriad of interactions, conversations, activities, and incidents. Journalists create a public reality composed of those events not directly observed or experienced by an individual (p. 212).

As a foundational ritual, journalists employ a shared set of news values to determine which events and people merit coverage. Journalists and editors are able to reduce a multitude of facts, events, and happenings into a selection of stories prepared for public consumption. Journalists assign significance to some events while dismissing others (Fishman, 1997).

Gans (1979) noted that because news is an empirical study, it is affected by the methods employed to create and decipher it. As such, Gans identified eight news values that endure throughout the selection phase of news over time: ethnocentrism, altruistic democracy, responsible capitalism, small-town pastoralism, individualism, moderatism, social order, and national leadership. Gans did not necessarily attribute these values to journalists seeking to
impose their own views on the public, but rather these values originated from the sources used to
tell the news (p. 39).

Johnson-Cartee (2005) identified more practically based news values that journalists use
to determine the focus of stories: conflict, negativity, drama, social impact, importance,
consequence, significance, size, proximity, timeliness, novelty, familiarity, action, brevity, and
visual attractiveness. These values are relevant to understanding how and why journalists choose
to cover issues like student First Amendment rights. The news stories used in this study are
connected to specific litigation. That definitive event—a court proceeding—might employ
almost all of the news values Johnson-Cartee identified and, therefore, might attract the attention
of a journalist or editor.

Appreciating the power of the news media to direct public attention is extremely relevant
to an issue like student free speech rights off-campus. If the news media fail to discuss or explore
the question of whether school-sanctioned punishment of off-campus expression is appropriate
or legal, the ramifications of such actions might go unnoticed by the general public.

Another step in this story-identification process is journalists’ familiarity with the inner
workings of an institution or agency they routinely cover. Fishman (1997) discussed how
journalists’ comprehension of an institution’s functions steers their decisions about which events
related to that institution are newsworthy. Thus, if a journalist regularly covers city council, that
reporter will develop a sense of which actions the council undertakes are newsworthy—
approving meeting minutes might not be, while discussing and approving the city’s budget might
be. Journalists tend to focus on official debates and actions in their reporting because these fit the
generally accepted standards of shared values among journalists (p. 219). Knowing this is
especially important for a study like this one that explores coverage of court proceedings, the
product of another social institution. Journalists who frequently report about courts will rely on their understanding of procedures and standards of judicial institutions to determine what is relevant. For instance, the outcome of the case and the reason the court reached that conclusion might become paramount in crafting the final story.

As another analogy to describe the news-selection process, Tuchman (1978) used the metaphor of a “news net.” Much like a fishing net, the news net captures ideas for stories based on where it is cast and the size of the holes it contains. Journalists tend to look for stories at legitimated social institutions, such as the White House, and focus their attention on the action of officials or those with authority because those institutions and persons are perceived to be legitimate and credible.

Tuchman further explained this reliance on officials feeds a shared sense of professionalism journalists rely upon to gain respect from the public, their peers, and their superiors. Such respect provides journalists with a sense of autonomy to make decisions about the stories they cover (p. 65).

Other external factors drive the journalist’s reliance upon specific sources. Gans (2003) contended that because news is mass produced and adheres to strict deadlines, its creation resembles an industrial process that takes place on an assembly line in order to create a product as quickly, cheaply and competitively as possible (pp. 49-50). Speed is necessary and routines and standards create efficiency. This process hearkens back to a journalist’s access to sources. Reporters must know what to ask them and how to fashion sources’ responses into a story. Such knowledge also allows a news organization to better allocate its resources by understanding the time and intensity of the work required to produce a specific type of story. A shorter brief requires few resources than an in-depth package.
These economic constraints led Gans (2003) to conclude the information needs of the citizenry might become secondary to the commercial constraints and other considerations journalists must make when constructing a story (p. 57).

More rituals and standards manifest themselves throughout the information-gathering process. Journalists often speak of the need for objectivity when reporting a story—simply gather information from all sides involved and report only the facts. Most argue that is implausible because human beings cannot divorce themselves completely from their values, beliefs, past experiences, and preconceived attitudes because one’s sense of reality is modeled through “constructed, learned, and modified behavior” in a social setting over one’s lifetime (Johnson-Cartee, 2005, p. 113). Kovach and Rosenstiel (2001) contended that journalists’ methods should be objective—the process of verifying information—rather than the journalists themselves.

Sources again play a key role. In matters of public controversy, journalists rely on the views of those in positions of authority or who possess a sense of legitimacy. Quotations from these sources allow journalists to distance themselves from the veracity of the information provided by allowing the public to decide what and whom it believes. This gives more power to those who wish to shape public conversation regarding a given issue (Johnson-Cartee, 2005; D’Angelo, 2010). Understanding journalists’ interaction with sources could prove especially important to this study because journalists’ stories craft a narrative about student First Amendment rights through the voices of those whom they choose to interview.

One principal subtopic of the narrative style of news storytelling is a concept known as “scripts.” Discussed by Gilliam and Iyengar (2000), scripts help to explain the storytelling narratives journalists employ to craft particular types of stories. The researchers pointed to the definition of scripts developed by cognitive psychologists—a sequence of events an individual
expects to happen. Certain behaviors or storytelling narratives contain an expectation of how things will progress. For instance, they noted that mystery novels follow a script—a murder, an investigation of clues and suspects, and a conclusion in which the mystery is solved. While individual plots will differ, mystery novels follow this script.

In their view, scripts offer predictability, which aids comprehension. “Because they provide an orderly and quite predictable set of scenarios and roles, scripts allow the ‘reader,’ quite effortlessly, to make inferences about events, issues, or behaviors” (p. 561). They noted these expectations have become so engrained that people can fill in missing parts if presented an incomplete script. Gilliam and Iyengar studied how scripts influence stories about crime on local television news. Based on their study, television crime reports often contain elements such as an anchor’s introduction of what occurred, shots from the crime scene, comments from witnesses or neighbors, and a description of the suspect. They found that use of this script when reporting about violent crime could influence the audience’s perceptions about the prevalence of such incidents.

The concept of scripts illuminates a key facet of this study. The texts used in the sample are all reports about litigation initiated by students and their parents against a school district because of a perceived violation of the student’s right to free speech. Civil court proceedings follow their own script: lawyers representing both sides present their arguments to the judge, he/she deliberates and issues a ruling based on the application of the law, and the party the judge ruled against has the option to appeal. These elements are the logical, taken-for-granted points that most members of the public would associate with the civil judicial system. Because of how embedded these elements are into judicial proceedings, they might logically show up in news stories written about those proceedings. Recognizing the script of a court proceeding in a news
story could prove essential to deciphering the frames and messages the narrative structure employs.

In summation, the rituals and practices journalists use in order to efficiently and quickly produce a news product for consumers directly affect both that product’s creation and its final form. In order to study framing in a sample of news stories, it is necessary to consider the power these socially shared practices and expectations exert in shaping those stories and the potential messages contained therein.

V.

Methodology

This study was guided by the following research questions:

RQ1: What legal context does newspaper coverage of lawsuits regarding off-campus online student expression contain?

RQ2: How does newspaper coverage frame the actions of students who initiate legal action against their schools for discipline of off-campus online expression?

RQ3: How does newspaper coverage frame the off-campus online expression that leads to school discipline?

RQ4: How does newspaper coverage frame administrative action in disciplining students for off-campus online expression?

The study examined these questions by performing a textual analysis of news coverage related to four court cases: Layshock v. Hermitage School District, J. S. v. Blue Mountain School District, Doninger v. Niehoff, and Kowalski v. Berkeley County Schools. All four are relevant to the legal issues under study, and all four traveled through the federal court system between 2006 and 2012. The United States Supreme Court declined to hear all four cases between October
2011 and January 2012. Thus, each of these cases has generated timely news coverage because of both its recentness and the amount of litigation involved. Concentrating on four court cases has limited the scope of this topic and provided structure to the study by focusing attention on a means (i.e. litigation) that would spur news coverage about this topic rather than simply investigating isolated incidents with no legal action connected to them. To further limit the scope, this study only examined newspaper coverage.

**Sample Selection**

To gain a sample of news coverage to analyze, the researcher first used LexisNexis and performed the following search parameters: *the case name; the name of principal actors in the case*—student litigants, school officials named in the case, parents whose names were joined in the lawsuit; *the name of the school district and/or school building*. Coverage that was not pertinent to the study was removed from the sample—for instance, news about a school’s sports teams. The bulk of the coverage originated from midsize or metro daily newspapers in geographic proximity to the school where the case originated. This is logical because a student lawsuit against a local school district is a plausible topic for a news organization to cover. In addition, the researcher performed these same searches on the websites of several newspapers in geographic proximity to the school district where the case originated. This netted more articles. This study’s focus begins once legal action was initiated and continues until the Supreme Court declined to hear the case.

This initial sample included 82 articles. Upon further review, this number was pared down to 76 articles spanning the four cases. Two of the articles written by The Associated Press ran in more than one paper with different headlines. Thus, even though they initially appeared to be distinct stories, both were repeats of another article. Another was removed because, upon
closer inspection, the story was not pertinent to the topic of this study. Two more were removed because they were repeated in two editions of a daily metro paper and appeared twice in the LexisNexis search. One article appeared twice in the LexisNexis search because it discussed two of the cases under study. The researcher did not realize the repeat until the article was inspected more closely. Of the 76 articles that comprised the sample, 60 were written by local reporters, seven were written by The Associated Press, and nine were opinion/editorial pieces written by either local newspaper editorial boards or members of the newspaper’s staff. Opinion pieces written by guest columnists and those submitted as letters to the editor were excluded from this study because the authors were not members of the practicing news media.

For purposes of the analysis, each subsection of the sample pertaining to a particular case was divided further into three categories: breaking news stories, trend stories, and opinion/editorials. The production process for each of these categories of stories is unique, so it proved wise to analyze each type separately to look for similarities and differences.

*Breaking news stories* were those in which the main focus of the story was to react to or anticipate a discrete event, such as an upcoming trial or the court’s announcement of a decision. The story’s primary purpose was to provide readers with specific information about an event that recently occurred or would occur in the near future. Information included in the story often originated from court opinions and lawyers representing both sides in the proceedings. Story lengths generally ranged from about 100 words to 700 words.

*Trend stories* sought to explore the underlying issues and questions that arose when school administrators chose to discipline students for the speech they posted online while off-campus. These stories were usually published in the intervening days following a major court decision as a way for journalists to follow up and provide the audience with further context than
they could in the breaking news account of a court’s decision. Trend stories included more perspectives from experts and other stakeholders representing the interests of both students and school administrators. These articles generally ranged between 1,000 and 1,500 words.

*Opinion/Editorials* sought to influence public perceptions. In the sample five were bylined pieces of commentary, and four were staff editorials, which were unsigned pieces that reflected the consensus opinion of the publication’s editorial board. Editorials ranged from 350 to 500 words, while the signed commentary pieces were generally about 600 to 800 words.

Table 1 describes the breakdown of the three types of articles that related to each of the four cases. The values in the column headings reflect the total number of articles in the sample that pertained to that subsection. Because of the inter-related nature of these cases, a portion of the articles substantively discussed more than one of the four cases. This overlap was especially prevalent once the *Layshock* and *Blue Mountain* cases became joined as one action in 2010.

Because of the overlap, the sum of the values in each of the three columns of subsections adds up to more than the total value listed in the column header. Similarly, the value of the sum of all the articles pertaining to a particular case is greater than \( n=76 \), the total number of articles in the sample.

A complete list of articles used in this study, including the case subsamples divided by category of articles, appears in Appendices A through D.

### Table 1: Breakdown of the sample by type of article and court case

<table>
<thead>
<tr>
<th>Total by case</th>
<th>Opinion/Editorial (N=9)</th>
<th>Trend (N=11)</th>
<th>Breaking News (N=56)</th>
</tr>
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<tr>
<td><em>Layshock v. Hermitage</em></td>
<td>3</td>
<td>9</td>
<td>31</td>
</tr>
<tr>
<td><em>J. S. v. Blue Mountain</em></td>
<td>2</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td><em>Doninger v. Niehoff</em></td>
<td>6</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td><em>Kowalski v. Berkeley</em></td>
<td>0</td>
<td>1</td>
<td>6</td>
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Justification of the Chosen Method

To perform this study, the researcher employed textual analysis, a qualitative method that allows the researcher to examine the underlying meanings of the text under study. McKee (2003) explained some of the key tenets of textual analysis. At its core, textual analysis allows the researcher to “make an educated guess at some of the most likely interpretations” of a given text (p. 1). In this study, the text was newspaper articles.

McKee (2003) argued that textual analysis allows the researcher to decipher reasonable interpretations of a given text in light of accepted cultural practices and norms within a given society at a given time (p. 19). However, no single interpretation is correct, so the goal is to discover and discuss likely interpretations of the text, not to decide which one is correct (p. 63). The researcher should formulate a question and then analyze the most important pieces of the text that are relevant to understanding the question under study (p. 75). The researcher should be versed in intertexts, or those the audience has available to form likely interpretations of the text under study. Such knowledge will allow the researcher to form educated guesses about the text being studied (p. 92). Other researchers analyzing the same text could reach differing conclusions about likely interpretations of a given text. A person’s mind could interpret the same type of text differently when exposed to it subsequent times (p. 120).

Fursich (2009) contended that textual analysis is an appropriate tool for understanding the cultural context from which a given text arises. The author noted that textual analysis is not a means to discover the creator’s intentions or the audience’s interpretation through interaction with the text. Focusing on the creator or audience can narrow the range of interpretations based on what those groups thought they intended to communicate or consume. Rather, “the textual analyst needs to establish the ideological potential of the text between production and
consumption. The question is not how accurately does the text reflect reality but what version of reality is normalized as a consequence” (p. 250). Versions of reality are created and normalized through given texts. Performing a textual analysis can both provide insight into the cultural and production factors that influence the text’s final form and shed light on which facts are included and excluded from the sense of reality a text can create (p. 246).

For purposes of this study, textual analysis was an effective method to examine the news stories under investigation to find the potential frames the stories employed. While it is impossible to see inside the minds of those reading the stories to gauge their reactions and interpretations, textual analysis helped pinpoint some of the likely interpretations one could form based on the stories’ content.

The four research questions were selected so as to investigate specific aspects of the journalistic storytelling process. As the literature review established, news is produced from a shared set of norms and professional standards journalists use to discover which events, issues, and happenings are worthy of coverage. The four points under study—legal context, the students involved in the case, the expression itself that led to the legal action, and the actions of school administrators—are all key points journalists would likely focus on when researching and writing a story because each of these points contributes to a basic rendering of the facts involved.

Textual analysis also provided a means to investigate both the content of the story itself and what the journalist or editor chose to omit. For instance, if a particular story in the sample was devoid of any legal context and omitted references to legal precedents, laws, or other court cases, this method allowed the researcher to better grasp how the stories were constructed, especially when compared with other stories in the sample.
The issues the research questions explored were apt for discovering potential frames. Reading stories to see how these issues are presented through word choice, tone, description, use of detail, use of sources, and the amount of substantive space devoted to them in a particular story shed light on how journalists and editors created frames (even perhaps unknowingly) when writing stories about legal action relating to student online expression that took place off-campus.

**Operationalization of the Research Questions**

During the analysis phase, the researcher used the following questions to operationalize the research questions and guide the collection of relevant data.

RQ1: What legal precedents and court cases did the article cite? What nexus, if any, exists between off-campus expression and on-campus effects? Can off-campus speech be considered “on-campus”? What role do long-standing legal standards regarding student speech play in assessing off-campus online speech? Is school punishment of off-campus online speech justifiable? What new legal questions, if any, does the issue of school regulation of off-campus online speech raise? Does the article quote from the court’s opinion in the current case? Does the article quote from previous court decisions? Do the articles encapsulate the central question of whether school administrators do or should possess the ability to control off-campus speech?

RQ2: What description, if any, is provided about the student litigant’s personal life or character? How does the article describe the student’s action pursuing legal redress against the school? How does the article describe the student’s behavior in creating and posting the material that precipitated the court action?

RQ3: How does the article describe the nature of the online speech that led to school discipline?
Does the article use exact quotations, paraphrases, or descriptors? Was the speech directed toward a school official or another student? How did courts or other entities interpret the speech?

RQ4: How did school administrators discover the student speech in question? How do administrators justify their actions to discipline students even though the expression occurred off-campus? How did courts or other entities interpret the actions of school administrators who disciplined a student for expression that took place off-campus? How did the news articles describe the intended targets of the speech?

To perform the analysis, the researcher read through the articles in sample several times. Each read had its own purpose. The first read was a general gloss over in order to become familiar with the texts. In the next read, the researcher began coding the stories to note which parts of the text pertained to specific research questions. On the third read, the researcher began to look for and document key themes that were emerging within each discrete text in the sample. Finally, the fourth and fifth reads allowed the researcher to discern commonalities among articles in the sample, especially within the subsample pertaining to a particular category of story (breaking news, trend, or opinion/editorial).

VI.

Results

RQ1: What legal context does newspaper coverage of lawsuits regarding off-campus online student expression contain?

Opinion/editorial.

The nine articles in this section of the sample offered legal context with varying degrees of detail and emphasis. All of the authors used legal arguments to bolster the main crux of their argument.
Six of the nine pieces explored—to some degree—the central issue as to whether the school possessed the authority to discipline speech that originated off school grounds. The overall message of each of those pieces sided with the students in arguing that school officials overstepped their bounds. However, each piece diverged slightly in its focus and rationale. Two of those six (J. H. Smith, *Connecticut Post*, October 19, 2007; J. H. Smith, *New Haven Register*, March 4, 2009) posed the matter in the form of a question asking whether parents or school officials should be responsible for what students post while at home. Neither of the pieces immediately tried to answer the question directly. (It should be noted J. H. Smith, the author of those two pieces is the same person working for different publications two years apart. J. Smith authored a 2011 opinion piece and worked for the *News-Times.* ) A third (Blumner, *St. Petersburg Times*, February 21, 2010) asked how far the school’s authority stretches off-campus. The author argued not that far for fear of providing school authorities too much deference in censoring student speech.

Saternow (*The Herald*, June 5, 2010) posed the question but narrowed its scope slightly by asking, “When does free speech become libelous in electronic communication and how many rights do schools have in controlling their students?” The introduction of questions about libelous speech stemmed from the piece’s focus on the *Layshock* case, which contained speech that could have potentially been libelous. However, the author did not question whether the school was the appropriate means to discipline speech that originated off school grounds, even if it were potentially defaming.

An editorial from the *Pittsburgh Post-Gazette* couched the question in terms of students’ First Amendment rights by noting that even speech that imposes emotional distress on its targets does not mitigate a student’s right to free speech (June 17, 2011).
The question of whether schools can or should control speech posted online is the central question before the court in each of these cases. Crafting an effective opinion piece requires some exploration or mention of that question. While all nine pieces mention that the students’ online speech originated at home, four pieces did not explicitly draw attention to the central question before the court in these cases.

Even though the court opinions pertaining to the cases used in this study all contained some exploration of the relationship of the “substantial disruption” standard set forth in the Tinker case to the facts in the respective case, any substantive examination of how the courts deemed the speech “substantially disruptive” was missing. Six of the nine pieces mentioned the concept of “disruption” in some form, mostly in terms of claims school officials made about the speech and to note that courts used the standard to craft their holdings.

The language some of the authors used hinted at the significance of determining whether the speech could have been “disruptive,” but no further discussion took place. “Neither parody caused a ‘substantial disruption,’ an important element in free speech cases at schools” (Editorial, Pittsburgh Post-Gazette, June 17, 2011). “Why would anyone think school would be substantially disrupted because of an intemperate Internet posting? Administrators didn’t even discover the offending blog entry until weeks after ‘Jamfest’ was canceled” (J. H. Smith, New Haven Register, March 4, 2009). “Was Doninger’s ‘douchebag’ remark disruptive to the education of classmates at Lewis S. Mills High School? I think not” (J. Smith, News-Times, May 3, 2011).

Only three of the pieces contained any mention of court precedents that established the legal standards to which they referred. Thus, in most instances when “disruption” was mentioned, the piece contained little to no legal context as to why it might be significant. The
author of one of those pieces, arguing that school officials inappropriately used their power to punish Doninger for her blog post, referenced the *Tinker* case by noting the Supreme Court permitted students to wear armbands in protest of the Vietnam War. However, the author did not mention the “substantial disruption” test that resulted from that case. The author only brought up the case as a means to document that courts have given school officials some deference over speech that originated on school grounds but then went on to pose arguments about why school-sanctioned punishment of off-campus speech is an overreach of school authority (J. H. Smith, *Connecticut Post*, October 19, 2007). A second piece from J. H. Smith (*New Haven Register*, March 4, 2009) again only noted that the Supreme Court allowed students to wear the armbands without mentioning how it reached that conclusion.

The piece from J. Smith (*News-Times*, May 3, 2011) mentioned the “substantial disruption” standard as means to note that students’ First Amendment rights have been curtailed by courts to enable school administrators to balance the need of a functioning learning environment against the rights of students to speak freely.

The scant discussion of both legal precedents and the rationale courts used to apply that law to the facts in the current cases is buttressed against another question: Should the “substantial disruption” standard in *Tinker* ever be applied to off-campus speech? None of the pieces in this subsection of the sample approached that question. As noted in the examples above, most took it as a forgone conclusion that *Tinker* was the applicable standard. Part of this could have stemmed from the courts’ reliance on that standard to reach their conclusions, but none of the authors questioned it or offered alternative standards courts and school administrators might use to assess off-campus speech.
Beyond considering the applicability of the “substantial disruption” standard, the authors of the pieces explored other relevant legal issues to support their positions.

Two of the pieces noted, almost in passing, that when schools impose discipline on students for their off-campus speech, it usurps parental authority (Saternow, *The Herald*, June 5, 2010; Blumner, *St. Petersburg Times*, February 21, 2010). Neither piece explored that further.

None of the pieces questioned whether a potential nexus between behavior at home and potential impacts at school could exist. Some courts have relied on finding such a nexus to assert that school authorities had the right to impose discipline on off-campus speech. Two of the pieces touched on the issue, one noting that the judge in the Doninger case ruled that her speech could be considered in-school speech because it “addressed school issues and was likely to be read by students at the school (Editorial, *Connecticut Post*, September 7, 2007). The other quoted a later ruling by the same judge that noted, “Off-campus speech can become on-campus speech with the click of a mouse” (J. H. Smith, *New Haven Register*, March 4, 2009). Neither piece investigated whether such a nexus did or could exist, but both used those mentions of a potential nexus as a spring broad to bolster other arguments about why they felt school punishment for off-campus speech was wrong.

Five of the nine pieces noted the ambiguity of whether school authorities had the right to discipline students for their off-campus postings online. Two quoted the judge in the Doninger case, one by stating the judge “conceded…that the courts are still finding their way on issues relating to the Internet, blogs and off-campus speech” (Editorial, *Connecticut Post*, September 7, 2007). Use of the word “conceded” gives the impression that the judge admitted that the issue was far from resolved and that courts are doing the best they can to wade through these cases. The other piece quoted the same judge as saying the courts were in “complete disarray”
regarding the issue (J. H. Smith, *New Haven Register*, March, 4, 2009). The other pieces described the ambiguity by stating that disagreement among lower courts made the issue “ripe for review” by the Supreme Court (Editorial, *Las Vegas Review-Journal*, August 1, 2011) and that “the laws governing what’s said through cyberspace aren’t clearly laid out” (Saternow, *The Herald*, June 5, 2010). One of the pieces did hypothesize about the impact such ambiguity could have if clear standards are not established. “So far the courts are all over the map. It’s a real muddle. Judges seem to respond viscerally to the cases before them, determining the reach of free speech protection based on how offended they are by the speech” (Blumner, *St. Petersburg Times*, February 21, 2010). That argument from the author pointed out that ambiguity could lead to judges and school administrators making decisions based on their personal reaction to the content. The author questioned the standards judges were using to form their decisions and hinted that clearer standards should be established. The author then described the facts of *J. S. v. Blue Mountain* as evidence that judges reacted based on their personal sensibilities and possibly crafted the law to conform to them.

Blumner argued that administrators could use such ambiguity in the law to censor student speech regardless of the geographic location of its origin. The author called for clearer standards. “Otherwise you give school officials the expansive power to censor their students anytime, anyplace and on any controversial subject. And don’t think they won’t use it whenever a nose gets out of joint” (*St. Petersburg Times*, February 21, 2010). Again, the author surmised that ambiguous standards could lead to an overreach and abuse of authority.

Three other pieces explored the overreach argument. One quoted the court opinion from the *Layshock* case in which the presiding judge ruled that it was a dangerous precedent to allow school authorities to reach into a child’s home (Editorial, *Pittsburgh Post-Gazette*, June 17,
Another piece argued that allowing school authorities such power could “muzzle” any student who writes offensive or vulgar comments about school officials, no matter the location (Editorial, Connecticut Post, September 7, 2007). Perhaps most vivid was the metaphor offered by J. Smith in the News-Times in Danbury, CT, when describing school administrators’ punishment of Doninger for her at-home blog post. “The school’s arm of discipline was reaching into a student’s private time. The court should have yanked that arm back” (May 3, 2011).

The authors’ most revealing points were their inclusion of arguments about the need to foster open dialogue and to teach young people the value of free speech by letting them practice it. This theme was a common feature in six of the nine pieces, and, in several of the pieces, the space devoted to these points was significant. Discussion of the importance of teaching the First Amendment was often a summation point of the entire piece.

However, the way in which the authors presented their arguments differed. The editorial board of the Las Vegas Review-Journal argued that kids are still citizens even when they attend school. “How many other planks of the Bill of Rights are suspended—24-7, as they say—just because a young person is enrolled in public school? Let the justices explain whether 17-year-olds retain any constitutional rights at all” (August, 1, 2011). That quote painted students as equal to adults in terms of whether they deserve constitutional protections. The editorial board articulated its feelings that the courts have overstepped their bounds by allowing school administrators such discretion over off-campus speech.

Other pieces employed arguments about the need to tolerate viewpoints that most find offensive. The authors argued such tolerance was a bedrock principle of First Amendment law. As The New York Times editorial board stated succinctly in defense of Doninger’s online speech, “Ms. Doninger’s right to express an opinion, no matter how offensive, is what the First
Amendment is all about” (June 22, 2007). Blumner (St. Petersburg Times, February 21, 2010) expanded this argument by focusing on the importance of protecting offensive speech in order to protect valuable discourse. The author broadened this point to include all members of society, not just students, and used the rest of the piece to juxtapose how the concept is relevant to instances when school administrators impose discipline on off-campus speech. Blumner equated students as equals with adults in terms of First Amendment protection.

J. H. Smith (Connecticut Post, October 19, 2007) used a quote from the judge in the Doninger case that described the need for schools to teach civility and respect as a necessary part of training students to be functioning adults in order to build a case for the need to teach simultaneously the value of free speech.

“My concern is that schools are losing the opportunity to teach about the importance of the Bill of Rights, free speech included…Let’s teach that civil discourse is a societal good, but also teach that the right to free speech is the foundation of that good.”

The author drew out the notions that fostering free speech is a societal good, even if it means tolerating speech that is offensive, and that schools possess the responsibility to promote such values by allowing students to practice them.

**Trend stories.**

The subsample of trend stories sought to explore the question of school regulation of off-campus online speech with the most depth. These stories included the deepest substantive treatment of the legal issues and questions of any of the three types of stories examined in this study.

Trend stories often contain a “nut graf,” or paragraph that succinctly explains the main point of the story. In a story that explores conflicting legal standards, the nut graf would most
likely attempt to flesh out the central conflict and then proceed to present multiple sides of the argument throughout the story. The majority of the stories, seven in all, contained a nut graf that attempted to draw attention to the conflict between student First Amendment rights and school administrators’ responsibility to maintain orderly school operations. However, most of them failed to explore whether the school authorities possessed, or should possess, the power to discipline students for expression they create off-campus. An in-depth examination of these points is necessary to show how the stories vary in their presentation and description.

Several of these “nut graf” statements primarily focus on potential concerns of school administrators. A *Pittsburgh Post-Gazette* article described these types of cases as ones in which “free speech advocates and strict disciplinarians meet head-to-head before a judge who must weigh constitutional rights against the rights of administrators to rule their own schools” (Ward, February 5, 2006). Another article, which focused on cyber bullying, contained the following: “But though they are under pressure to stop bullies, school officials face a dilemma, because students have First Amendment rights that limit schools’ power over what they say off-campus” (Crawford, *Pittsburgh Tribune Review*, January 17, 2011). Both of these statements could be interpreted as hinting that First Amendment protections for student speech are a hindrance to administrators effectively providing a safe, productive learning environment.

Another article began by asking, “Does the First Amendment protect a student who fabricates a raunchy profile about his high school principal and posts it on the Internet” (Simonich, *Pittsburgh Post-Gazette*, February 25, 2007)? It was another two paragraphs until the authored raised the point that the speech in question took place off-campus. The statement, as it was written, failed to consider whether the location in which the speech was created was a factor in determining the level of First Amendment protection. That statement also does not question
whether the school has a right to discipline a student for speech that originated outside of school, even if the speech’s content could possibly be subject to civil litigation.

The nut grafs in some of the articles failed to articulate legal questions and pointed to external factors as potentially determinative of the level of First Amendment protection afforded to student speech. One questioned whether the Internet’s broad reach changed the boundaries of off-campus and on-campus speech (Becker, *Hartford Courant*, February 1, 2009). Another, by quoting an attorney who specializes in intellectual property law, claimed that school districts had the right to impose discipline for such speech if it negatively affected a teacher’s classroom performance (Bushouse, *South Florida Sun-Sentinel*, December 13, 2008). Neither of these statements encapsulated the question of whether schools legally possessed the authority to regulate off-campus speech, even if technology has changed or if the speech does affect a teacher’s comfort level in the classroom.

One of the most concise nut grafs appeared in a January 2012 article after the Supreme Court declined to hear three of the cases. The author wrote that First Amendment scholars saw the cases as an “opportunity to clarify conflicting lower court rulings on whether school officials may discipline a student for offensive comments made at home and posted on the Internet about fellow students or school officials” (Richey, *The Christian Science Monitor*, January 17, 2012).

Beyond these nut graf statements, other legal issues were discussed as well. Despite the extra space to explore underlying issues and the courts’ citation of the “substantial disruption” standard in *Tinker*, all of the articles in this subsection of the sample were lacking in their discussion of what that standard means and how it might be applicable to off-campus speech. In most instances when the concept was mentioned, it was part of a reference to a court opinion that cited the standard as part of its conclusion. The reporting followed in step with the judge’s
opinion. The articles simply mentioned the opinion. None of the articles directly questioned how that particular judge—or any judge, for that matter—would determine whether speech meets the “substantial disruption” standard. None of the articles questioned whether the standard could ever be applied to off-campus speech. Even the four articles that mentioned and explained the holding in *Tinker* did not explore the standard’s meaning or application.

The word choices around the reference to “substantial disruption” could leave an impression through subtle clues that there is more to know about the standard. For instance, when reporting the holding in the *Layshock* case, one article noted that the judge ruled Layshock’s speech was not “disruptive enough” to merit school punishment (Becker, *Hartford Courant*, February 1, 2009). Those words suggest a clear demarcation line judges and/or school administrators use to determine which forms of speech meet the standard. However, the article contained no further context or explanation. Similarly, another article noted that courts have given school administrators leeway to control speech that “disrupts education,” but the article contained no further examination of how courts or administrators would reach that determination (Crawford, *Pittsburgh Tribune Review*, January 17, 2011).

Three articles from the early stages of the *Layshock* case did offer concrete examples of what school officials contended constituted disruption of the educational process in that particular case—school administrators’ actions to block Internet access at school to prevent students from viewing the offending MySpace profiles, to call meetings with staff members to discuss the profiles, and to subdue the general “buzz” the profiles created among students. Because the case had not gone to trial at that point, the evidence administrators offered as proof of disruption was merely speculation. However, the inclusion of such facts did provide concrete ideas as to the thought process administrators used to decide whether disruption had taken place.
In subsequent articles, references to the examples mentioned above disappeared because the judge ruled that those occurrences were not evidence of disruption. These same articles also included counter arguments from free speech advocates and Layshock’s attorney, all of whom contended that Layshock’s speech, while juvenile, did not meet the “substantial disruption” standard in *Tinker*. In this example, Stuart Knade, chief counsel of the Pennsylvania School Boards Association, offered perspectives about the need for schools to promote civility.

“Administrators should be able to ‘promote a certain amount of civility and dignity in the school hallways,’ Mr. Knade said. ‘It’s a more effective way to promote learning than in a chaotic environment.’ But Sam Chaltain, the director of the First Amendment Schools Project, in Arlington, Va., said in Justin’s case, that might be hard to prove. ‘It’s very hard to make an argument that that kind of behavior, while certainly inappropriate, that it actually created a material and substantial disruption,’ Mr. Chaltain said” (Ward, *Pittsburgh Post-Gazette*, February 5, 2006).

The point-counterpoint fashion of that argument was repeated throughout the stories in this subsection of the sample. The reporters appeared to have simply written down the quotes and placed them one after another in the final story. It seemed as through they did not question the presumptions of either side in the dispute. However, including the arguments did provide multiple lenses through which to view the situation.

Sources representing the interests of the school systems offered their perspectives about a potential nexus that could connect off-campus speech with on-campus effects and thus subjugate such speech to oversight by school officials. In most instances, when a nexus was discussed in these articles, it was under the guise of speculation—what the source speaking felt it should be rather than what a particular court ruled it could be. Only in one instance did an article cite an
occasion when the court discussed the term “nexus.” There, the article quoted the Fourth Circuit’s holding in the *Kowalski* case in which the court found a nexus between Kowalski’s off-campus speech and the school environment. The court did not expound on what that was specifically (Richey, *The Christian Science Monitor*, January 17, 2012). Another article included an interview with the senior staff attorney for the National School Boards Association who argued that off-campus speech’s effect on the school environment should be a paramount consideration. The article then continued with comments from the attorney about how cyber bullying can affect the school environment even though it may originate at home (Becker, *Hartford Courant*, February 1, 2009). The attorney representing the Burlington School District in the *Doninger* case concurred with a similar line of reasoning by arguing that if a student “got into his car, went 15 yards off-campus, opened his laptop and then called out the school principal or superintendent using all kinds of four letter words, that would clearly be disruptive” (Fermino, *The New York Post*, May 29, 2009). The article then contained a rebuttal from Doninger’s lawyer who contended that off-campus speech was afforded the same level of protection as adult speech in general society.

Another example of “nexus” appeared as the *Layshock* case moved through the court system. The school district argued that Layshock’s copying of the principal’s photo from the district website constituted a nexus between his off-campus speech and the school environment. It also claimed that because Layshock’s speech was aimed at the school district, it was foreseeable it would come to the attention of school officials. In a 2008 article in *The Herald*, the school district’s lawyer made those arguments and claimed that courts have ruled “that school districts can regulate speech when a student uses the Internet and aims the speech at the school
community” (Pinchot, June 21, 2008). However, the article did not contain any examples of such rulings.

Over and over again, sources in this section of the sample maintained that determining the level of authority school officials possessed was a perplexing issue. Word choices made these sentiments clear: the law is “absolutely confusing”; school districts have “struggled” with the issue; administrators face a “whole new set of challenges.” These comments originated from sources on all sides of this issue—lawyers representing school districts, free speech advocates, and judges who issued rulings in the cases. Such language gives the impression that these questions are far from resolved and those responsible for making decisions do struggle as they work without what they see as clear guidance or definitive standards.

Two divergent prongs emerged from the question of how to deal with less-than-clear legal standards: the need to give administrators leeway to make decisions and warnings about overbroad use of their power to regulate what happens off-campus. The reach of new digital technologies was one recurring argument the sources in these stories offered for allowing administrators more leeway to regulate off-campus speech. The lawyer representing the school district in the Doninger case offered this scenario to illustrate the point: “A student is standing in the audience on the stage and talking to a full audience of the student body because he or she can reach every one of those students, even though he or she is off-campus” (Becker, Hartford Courant, February 1, 2009). This attorney and others argued that because the Internet provides the potential to reach more people, students who post information there should be subject to greater regulation from school officials. Another article stated the point more succinctly. An assistant professor of popular culture from Bowling Green State University said “the Internet’s
broad reach blurs that line” between home and school (Bushouse, *South Florida Sun-Sentinel*, December 13, 2008).

Other sources argued that the potential consequences of some forms of student speech mandated a response from school administrators. In quoting from a brief written on behalf of the Blue Mountain School District, one lawyer urged the court hearing that case to offer a clearer set of guidelines to schools by weighing in on whether the First Amendment required administrators to “sit on their hands” in light of student behavior that can “ruin careers, disrupt and undermine the school’s learning environment, and, indeed, endanger the very health and well-being of their students” (Richey, *The Christian Science Monitor*, January 17, 2012). The head legal counsel for the Pennsylvania School Boards Association echoed this sentiment in a 2008 article about the Layshock case by stating that preventing schools from disciplining students “simply because” the expression occurred off-campus hampered schools’ ability to effectively carry out their mission. The attorney was then quoted as saying, “The answers in the profile have a real capacity to undermine Trosch’s authority and standing in the Hermitage School District community” (Pinchot, *The Herald*, June 21, 2008).

Other sources countered these claims by arguing such discretion in the hands of school administrators to regulate behavior off-campus represented an overreach of school authority. The starkest language came from an article about three civil liberties groups filing amicus briefs in the Layshock case. The founder of one of those groups, John Whitehead of The Rutherford Institute, argued that despite changes in technology, school authority could be easily misused if courts permitted school officials to regulate off-campus speech. “Such free-wheeling power by schools has the ‘rife potential for abuse by school administrators,’ Whitehead said. Administrators could punish private speech in some way related to the school ‘simply because
they disagree with it” (Pinchot, *The Herald*, July 27, 2008). Whitehead’s quote also pointed out that factors like the offensive or demoralizing nature of the speech do not counteract the First Amendment protection afforded to speech that originates off-campus. An attorney writing a brief on behalf of the Student Press Law Center and the Pennsylvania Center for the First Amendment echoed these sentiments later in the same article. Thus, a range of sources in a short amount of space supported the same argument.

Other examples simply quoted court opinions or briefs filed on behalf of the litigants. For instance, one article quoted a brief on behalf Kara Kowalski’s petition to the Supreme Court that argued the Fourth Circuit’s holding gave school officials “carte blanche to punish any off-campus speech based solely on the speculative belief that similar speech might be repeated on school grounds” (Richey, *The Christian Science Monitor*, January 17, 2012). While that quote from the brief raised its author’s contention that the ruling provided school authorities with too much deference, that article failed to explore that point further. That quote was the article’s ending.

Another strong set of opinions from sources in this subsection of the sample expounded upon the need to effectively teach the First Amendment to students. This line of opinion was strong throughout these stories as the sources touched upon the broader implications of this issue. The approaches each source took varied, but they included the following themes: society must foster open communication in order to remain free, students learn freedom by practicing it, students must learn to question in order to grow, students are citizens entitled to free speech protections, and students learn responsible use of freedom through practice. For instance, a staff attorney from the Electronic Frontier Foundation was quoted as saying, “What you want to do is to teach students to use liberty responsibly, not take it away because you don’t trust what they’ll
do with it” (Cato, *Pittsburgh Tribune Review*, February 3, 2006). Another article quoted an attorney filing a brief on behalf of Layshock as saying, “Young people do not learn civic responsibility by being told to sit down, shut up and not make waves” (Pinchot, *The Herald*, July 27, 2008). The quote continued on that students must be afforded the chance to participate in the ongoing “dialogue of the community” taking place online without fear of school reprisal.

Even though these points comprise a small fraction of the entire article, the quotes from free speech advocates presented a noticeable theme. Inclusion of these viewpoints also elevated the notion of conflicting interests and more deeply entrenched the stark differences between both sides of the argument. These sources also point out, perhaps subtly or inadvertently, that the giving school authorities discretion over off-campus speech could allow them to control speech that is not vulgar, potentially defaming, or disruptive. This theme was reflected most notably in an article that featured an interview with Frank LoMonte, the executive director of the Student Press Law Center, an advocacy organization that filed an amicus brief on behalf of Snyder in the *Blue Mountain* case. LoMonte maintained that providing leeway to administrators to control off-campus speech “could spill over into student journalism, with children punished for any negative information printed in a school newspaper or other publication” (Wolfgang, *Republican & Herald*, March 2, 2009). The article failed to make clear how standards that apply to off-campus speech would be applicable to on-campus speech, for which legal standards already exist. A state senator from Connecticut who sponsored a bill to prevent school administrators from exercising discretion over off-campus speech raised the point in another article. That senator was quoted as saying, “This is going to come up a lot in the future, given the growth of journalism or pseudojournalism on the Internet. There’s [sic] clear free speech issues there” (Becker, *Hartford Courant*, February 1, 2009).
Only a few of the articles raised the point that other avenues beyond school discipline exist for dealing with the fallout from off-campus student speech. The only three mentioned were talking to a student’s parents instead of issuing a suspension, allowing the rebuke the student faces from peers to serve as punishment for negative speech, and seeking redress in the criminal or civil legal systems when applicable.

**Breaking news.**

The articles in this section focused their attention on the facts of one particular case (or perhaps more when several cases were joined together and heard before the same court). Because of the treatment of the cases as discrete entities, it is necessary to look for broad similarities and differences in the legal context presented about each of the four cases.

Even though it was longest lasting in the court system, coverage of the *Layshock* case proved the most basic to analyze because clear patterns emerged as the case traveled through the court system. In its initial stages, administrators argued that school had been disrupted because of the profiles. They offered evidence they had to shut down computer access at school to prevent students from viewing the offending profiles. At this early stage, the articles did attempt to explain that “substantial disruption” was a standard courts used to determine whether students could be punished at school for their expressive activity, but the articles did not attempt to explain which sets of circumstances made the standard applicable. As subsequent court proceedings came out in Layshock’s favor, the articles continued to record that the judge found no evidence of “substantial disruption,” but they generally contained no further explanation or discussion of that standard.

Layshock’s attorney was particularly vocal in many of the stories and bolstered the argument that school punishment for off-campus speech was an overreach of school authority.
The attorney drew attention to broader implications than simply the facts in the case. In contrast, discussion of legal issues in the coverage of the other cases was more nuanced. Snyder created a profile that falsely accused the principal of committing criminal activity, and the courts—at least initially—deemed it to be an “attack” and ruled in favor of school discipline of her speech. The content of her speech seemed to dictate how the courts ruled in this case. This deference to school authorities played out again in the news stories that covered these initial court actions. This was especially prevalent in three articles that were printed in the days immediately following the decision in 2008. The inclusion of quotations from the court’s opinion and sources associated with the school district reinforced the notion that school authorities need broad deference regarding student speech online. One quote from the decision is particularly telling: “‘The federal courts do not sit as a super-school board. It is not our task to micromanage the school’s disciplinary procedures,’ Munley wrote” (Bortner, Republican & Herald, September 12, 2008). Again, reporters used the court opinion and other relevant facts of the proceeding to craft their stories. Coverage at this early stage of the case also focused on the nexus the court found between Snyder’s online speech and its effect at school.

As this case traveled through the federal court system, the full Third Circuit reversed the previous holdings in the case and found that no “substantial disruption” occurred. A notable shift took place in the focus of the legal issues in the articles as they begin to draw attention to the concept of “substantial disruption” and how the court failed to find it. But missing again was any substantive discussion of what constituted “substantial disruption” or whether that standard was the appropriate one for assessing student speech that originated outside of school. Most articles simply noted that the judges found no evidence of disruption, and, therefore, overturned the previous holding. The inclusion of quotations from the dissenting judges in some of the articles
did provide more context about the issues the panel of judges considered when deciding the case, but these comments also lacked any in-depth discussion or exploration.

The discussion of whether Doninger’s online expression constituted a “substantial disruption” of the school environment varied widely. This stems from conflicting notions of the concept by judges who authored the various court opinions and the sources the journalists chose to include in their stories. The articles presented contradictory notions of what “substantial disruption” entailed and whether the expression in the present case met the criteria.

Some of the articles did not even mention “substantial disruption” at all (The Associated Press, Connecticut Post, January 18, 2009; Beach, New Haven Register, September 10, 2007), while others quoted from the court opinion and stated Doninger’s speech “created a foreseeable risk of substantial disruption” with no further discussion (Beach, New Haven Register, November 13, 2008). In these and other examples, the articles failed to explain how administrators or courts reached the conclusion that Doninger’s online expression was disruptive to the school environment. It seemed to be a foregone conclusion that her expression was, on its face, disruptive. While it is true that courts have given schools the power to control speech that is disruptive, these articles offer no substantive discussion of how “substantial disruption” is defined as a legal concept or how administrators are able to determine whether it is likely to occur.

Other iterations of the notion of school control veer away from “substantial disruption” into reasoning that provides school administrators with wide deference to control off-campus student speech. For instance, “Administrators have the right to impede some speech to promote school goals” (O’Leary, New Haven Register, October 31, 2011).

Incomplete descriptions of legal precedents further complicate this picture. Because the
court raised the issue that Doninger’s speech could have been considered vulgar, several of the articles tried to discuss the concept of lewd and vulgar speech as established by the Fraser case. However, of the few articles that tried to discuss it, none succeeded in defining it or describing how courts would recognize vulgarity.

The notion of ambiguity stemming from an area of law that is still evolving comes to the forefront even more clearly when trying to discover where the line between on- and off-campus expression exists. Determining where this line can be found is an important step in determining how much control administrators can and should exert over off-campus speech. The text of the articles revealed again the notion that the issue is far from settled and that words uttered and posted beyond the walls of the school can affect daily school operations. Even though courts in the past have ruled that administrators and school officials have little right to punish students for what they say while off school grounds, the global nature of the Internet, which allows speech to disseminate across geographic boundaries, seems to call for a re-examination of these standards in light of what some perceive as new circumstances and concerns.

Sources in these articles, both the court opinions and the insights from the school district’s attorneys, even sidestepped the issue of whether schools can regulate off-campus expression and argued that Doninger’s speech was actually on-campus expression because its content interfered with school-related objectives. Juxtaposed against the question of school regulation was the concern that schools needed to be able to intervene to keep pace with new technology. Quotes from the court opinions, lawyers, and others reiterated the need for clearer standards about administrative action. This is a quote from the judge during one of the early proceedings: “The whole issue of blogs and off-campus e-mails is coming to the fore. Courts
themselves are kind of feeling their way along,’ Kravitz said in court Friday. ‘These are difficult issues’” (Becker, *Hartford Courant*, September 1, 2007).

In coverage of the Kowalski case, several of the articles mentioned that school administrators deemed the website Kowalski created “disruptive” to school operations, but they contained no explanation of “disruption” as a legal standard relating to school administrators’ actions to control student speech. Some of them did not mention disruption as a justification for punishment. One of the articles quoted the court opinion by stating, “It was foreseeable that the off-campus conduct would reach the school; and that it was foreseeable that the off-campus conduct would ‘create a substantial disruption in the school’” (Cronk, *The Journal*, August 20, 2011).

Another article mentioned disruption as part of an interview with Sheri Bauman, a researcher who studies cyber bullying at Arizona State. She said “one of the issues that needs clarification is the definition of ‘substantial disruption’ of the learning environment” (The Associated Press, July 28, 2011). The notion that the law pertaining to school regulation of off-campus speech is ever changing and unsettled appeared again here. This advances the idea that school administrators must try to navigate a precarious minefield while trying to balance one’s right to expression against another’s right to a stable learning environment.

Bauman, mentioned above, described the issue as a “real conundrum” for courts as they balance the First Amendment rights of the speakers against the need for administrators to maintain order. She continued, “This is all quite new. That’s what makes it so difficult for schools to decide when and where they have the option to intervene” (The Associated Press, July 28, 2011).
RQ2: How does newspaper coverage frame the actions of students who initiate legal action against their schools for discipline of off-campus online expression?

Opinion/editorial.

The authors of all nine pieces included some description or analysis of the students involved in the cases by commenting either on the students’ action of posting the material that led to school discipline or the students’ and parents’ decision to file a lawsuit after the discipline took place. Two editorials employed a motif that referenced the 1980s comedy movie “Ferris Bueller’s Day Off,” in which a mischievous high school student defied the authority figures in his life in order to take the day off of school by faking an illness. An editorial from the Pittsburgh Post-Gazette began by stating, “Ferris Bueller can now relax” because of the joint appellate court decision affirming student First Amendment rights in the Layshock and Blue Mountain cases (June 17, 2011). The other, in discussing the Doninger case, asked whether school officials could stop the distribution of movies like “Ferris Bueller” or “Rock ‘n’ Roll High School” because they promote what the editorial board dubbed “contempt of principal” (Las Vegas Review-Journal, August 1, 2011).

References to these images from popular culture that depict young people defying authority defined the discussion in terms of rebellion versus order. However, these cultural references stemmed from comedies in which mischievous students resisted authority to test the boundaries to better discover themselves and their personalities. From that treatment, one could reasonably conclude this sentiment applies to the students involved in these court cases: They might have exercised poor judgment, but they are still kids who are learning how to appreciate the consequences of their actions.
Saternow (The Herald, June 5, 2010) made this point explicitly by writing, “Let’s face it. Even smart kids do dumb things. That’s part of being a kid.” The author went on to describe Layshock’s apology to his principal and his subsequent “outstanding college career.” The juxtaposition of those statements and the description of the student and his behavior demonstrated the author’s point that young people will make mistakes as they learn the boundaries of acceptable behavior.

This notion—that the students in these cases acted poorly but were also discovering the acceptable boundaries of personal conduct—echoed throughout the other pieces as well by the subtle ways the authors described the respective students’ behavior, especially in light of some of the other circumstances of these cases. One noted that Layshock, in creating the fake profile of his principal at home, “reasonably assumed his online activities were beyond the school’s jurisdiction” and that the appellate court affirmed “the right of students to mock their principals on the Internet” (Editorial, Pittsburgh Post-Gazette, June 17, 2011).

The authors who discussed Doninger appeared to give her even more leeway despite the language she chose to use to describe school administrators. J. Smith (News-Times, May 3, 2011) noted Doninger was “unhappy with an administrative decision” and that led her to create the blog post that became the subject of school discipline. An editorial from the New York Times presented the facts of the case by noting Doninger, acting as class secretary, was helping to organize a music event that administrators might have canceled because of a scheduling conflict. The editorial’s author wrote that Doninger composed the blog post “in a fit of frustration” (June 22, 2007). Similarly, Smith (Connecticut Post, October 19, 2007) wrote that Doninger was “angry because she thought school officials were canceling the annual Jamfest” and that anger
led her to vent her frustration online. Another noted her post followed a “heated” dispute with school officials (Editorial, *Connecticut Post*, September 7, 2007).

At times, the authors also included descriptions and qualifiers of the students involved in these cases. These descriptions, while brief, added another layer of information and context about the students. The six pieces that discussed the Doninger case referenced her status as class secretary. That point was, of course, material to the case because it was through that status the facts of the case unfolded. However, J. H. Smith’s piece in the *New Haven Register* from March 4, 2009, cited her work as an AmeriCorps volunteer following graduation. Smith’s earlier piece in the *Connecticut Post* included comments from the judge’s initial opinion that described Doninger as “poised, intelligent, and articulate” (October 19, 2007). Blumner described Layshock as “a gifted student in advanced placement classes” (*St. Petersburg Times*, February 21, 2010).

Blumner was one of only two authors to mention the *J. S. vs. Blue Mountain* case and the only one to offer substantive commentary about the case. The author concluded that the student “deserves to be grounded for life by her parents. And those texting privileges? Gone” (*St. Petersburg Times*, February 21, 2010). Thus, in contrast to the overarching theme that portrayed Layshock and Doninger as kids who made an error in judgment, this piece portrayed Snyder as a rebellious child in need of severe parental discipline for her actions. The author continued by drawing the distinction that current cases involving such speech considered whether school officials could impose discipline for such expression when its content was directed toward them. Here, the author was able to discuss the central question confronting the courts today by documenting the belief that proper discipline in these matters belongs with parents, not school officials. While it is difficult to assess the significance of such a description based on one
opinion piece, it appears noteworthy that the author drew a distinction when describing the students based on the content of their speech. Still, the piece concluded that disciplinary action should rest with the parents, not the school system, no matter how offensive the speech was.

**Trend stories.**

Most of the articles in this subsection of the sample only mentioned the facts of the cases used in this study to establish examples of the types of litigation that are taking place today. The majority did not focus specifically on any particular action by a given student but rather used the context from the case to illuminate broader points about the legal questions facing courts and school administrators. The focus of these stories was the broader implications, not the students themselves. Three of the stories were in-depth pieces about the *Layshock* case written immediately before or after a court proceeding took place in the early stages of litigation—two immediately following the judge’s refusal to reinstate Layshock into his regular classes in 2006 and another written before the case went to trial in 2007. These articles did focus more intently on the facts of that particular case and provided more details about Layshock’s personality, standing in school, and plans for college.

Two themes did emerge throughout the subsample, though. First, several of the articles hinted at conflicting classifications of the student litigants as citizens entitled to their First Amendment rights versus troublemakers who sought to misuse a privilege. This most starkly became apparent when examining several lines of the narrative a journalist used to explain the conflict between the parties in the case. After stating that Layshock felt his profile was off-limits to school sanction because he created it at home, the journalist wrote the following statements: “Like every citizen, he said in his lawsuit, he has a right to free speech. But Mr. Trosch saw the case as one in which an insolent teenager degraded him and broke the law” (Simonich,
These sentences encapsulated the conflict between two divergent interpretations of the same actions. Frank LoMonte, executive director of the Student Press Law Center, hinted at this notion as well in an article describing his organization’s involvement in the *Blue Mountain* case. The first quote the reporter included from LoMonte stated, “It does not seem you can uphold a discipline policy that extends anywhere, at any time…when a student leaves the school campus, he or she becomes a human being again” (Wolfgang, *Republican & Herald*, March 2, 2009). LoMonte hinted at the notion of differing levels of First Amendment protection through his comment based on the speech’s place of origin.

The common nature by which students lambaste their principals and teachers is a second theme that ran through this subsection of articles. The specific context of the cases under study is couched within the idea that students have mocked school authorities throughout time. However, new technologies make such comments more visible. Two of the articles began with multi-paragraph leads that drew attention to the notion that such off-the-cuff comments could now come to school authorities’ attention and they might feel prompted to act. The authors contrasted how students used to scribble notes or write on the bathroom wall, but now they post such speech for the world to see (Ward, *Pittsburgh Post-Gazette*, February 5, 2006; Bushouse, *South Florida Sun-Sentinel*, December 13, 2008).

**Breaking news.**

Personal descriptions of Layshock were prevalent. Close to half of them mentioned his 3.3 GPA, his enrollment in advanced placement classes, and his work tutoring middle school students in foreign languages. Others noted that he was applying to college when he was suspended and that upon graduation he attended St. Johns University in New York, where he
received an economics degree. He was working in the insurance industry at the time the Supreme Court declined to hear the case. Two articles even noted that he spent the summer of 2007 volunteering at an orphanage in Africa. Discussions about why Layshock and his family decided to file a lawsuit were somewhat scant, other than recording they felt his First Amendment rights had been violated. One article provided clues to describe the family’s conflict with district officials. “It seems to us that the school district is trying to crucify our son just to set an example,’ said Don and Cherie Layshock in a written statement. ‘We regret that they have chosen this path’” (Ward, Pittsburgh Post-Gazette, February 1, 2006). Another article described Layshock’s testimony on the stand during the initial hearing that sought an injunction to allow him to return to his normal classes. The description included details that Layshock was “skinny and unsure of himself” and that he interspersed “the word ‘like’ throughout his answers” on the stand. The author contrasted this description by saying “his intelligence and maturity came through” by the substance of his answers and noting that he apologized to the principal following the incident (Ward, Pittsburgh Post-Gazette, January 31, 2006). However, even those articles focused predominantly on the reactions of school administrators to the speech.

One other key strand emerged throughout the articles about the Layshock case. In several instances, the journalist used the motif of a battle to describe the dispute between Layshock and the school district. This was especially evident in comments from Layshock’s attorney throughout the six-year lifespan of the case. The lawyer vowed they would fight on each time the school district appealed.

In contrast, this subsection of the sample is largely devoid of personal descriptions of the other three litigants. The reader learns no contextual clues about Snyder’s personal traits. Two of the articles seemed to suggest Snyder and a friend created the profile after the principal

Most of the articles were silent as to why Snyder and her parents filed the lawsuit. A few pointed out that they did so because they perceived a breach in her free speech rights. One article did point out that Snyder’s parents filed the lawsuit as a response to the school’s interference in their parental rights to discipline their child.

The articles pertaining to the *Doninger* case similarly contained few details about her personal characteristics. Most noted she had previously served as class secretary and her punishment prevented her from seeking the post again. However, most of the stories focused on her involvement with the case. One article did indicate the time she spent “doing volunteer disaster relief work for AmeriCorps, assisting the victims of Hurricane Ike” in the fall of 2008 following her graduation the previous spring (Beach, *New Haven Register*, November 13, 2008) and that she enrolled in Eastern Connecticut State University (Mahoney, *Hartford Courant*, October 31, 2011; Mahoney, *Hartford Courant*, January 15, 2010). When seeking Doninger’s comment following the Supreme Court’s denial to hear the case in October 2011, the *Hartford Courant* recorded that she was spending the year abroad in Africa and was not available for comment (Mahoney, October 31, 2011). These scant details do provide some context about Doninger’s personality beyond her involvement in the case.

Beyond describing Doninger’s personal characteristics, the sample of articles portrayed the disagreement between Doninger and school officials and subsequent legal proceedings through the lens of a battle. Each side was trying to win its case, and both sides remained committed to their cause. One article described Doninger’s mother as “undaunted” about seeking an appeal (Gittens, *The New York Post*, May 30, 2008). A *Hartford Courant* article declared that
the Supreme Court ended Doninger’s First Amendment fight by refusing to hear the case (Mahoney, October 31, 2011). One particular set of dialogue from a 2009 article in the New Haven Register was particularly illustrative. The school district’s lawyer commented he was satisfied to have won the latest court battle and said the school would “continue to fight each battle as it arises.” Doninger’s lawyer countered by arguing that the school district was attempting to impose “extreme” censorship on students by its actions. He then commented, “If this is the new frontier of student censorship, I’ll take it as far as I can go. If we lose, let’s lose it at a higher level” (Beach, New Haven Register, February 9, 2009).

Both parties, Doninger and the school system, viewed themselves in the right and perceived the importance of winning their case both for themselves and for the precedent it would create for similar situations in the future. Their language spoke of battle, strategy, and perseverance against the odds.

Four articles pertinent to the Kowalski case identified Kowalski as the school’s reining “Queen of Charm,” a possible hint of sarcasm given the nature of the website she created. That title was awarded to her the previous school year as part of a school activity. The language used to describe her lawsuit was straightforward by noting she filed the suit because she felt her First Amendment and due process rights were violated. One article followed that course to explain her reasoning and added that she felt the school “lacked authority to punish her because she created the web page at home” (The Associated Press, July 28, 2011).

The most telling descriptions of Kowalski were placed in the context of how the judges in the case described her and her actions. Part of her lawsuit claimed she suffered depression because of her five-day suspension from school, but two of the articles noted she received no

A subsequent quote from the court opinion in an Associated Press story portrayed Kowalski as unremorseful for her actions. “Regretfully, she yet fails to see that such harassment and bullying is inappropriate and hurtful and that it must be taken seriously by school administrators” (July 28, 2011).

**RQ3: How does newspaper coverage frame the off-campus online expression that leads to school discipline?**

**Opinion/editorial.**

Overall, the pieces in this section contained little description or specifics of the online speech that led to school discipline in any of the four cases. The majority employed adjectives and descriptors like “unflattering,” “parody,” “profanity-filled,” “disparaging,” “crude,” and “vulgar” to describe the speech when spelling out the facts of the case.

Blumner’s (*St. Petersburg Times*, February 21, 2010) consideration of the facts in both the Layshock and Blue Mountain cases presented the starkest contrast of description among any of the pieces. The author pointed out that the MySpace profile in the Blue Mountain case included “vulgar references to [the principal’s] anatomy and insinuations of sex with children” and later described the profile as “disgusting and lewd.” In contrast, the author described Layshock’s speech as a “demeaning parody profile,” but that it was “insultingly silly” by “making fun of the principal’s size, except for one particular body part.” These contrasting descriptions seemed to stem from the author’s reaction to the speech’s content. However, the author maintained the conviction that discipline for these matters rested with parents, not school officials, because the speech originated at home.
Six of the nine pieces discussed the Doninger case. Of those six, four included the phrase “douchebag” when describing the speech Doninger posted. Two made reference to the phrase “to piss her off more” in describing why Doninger urged fellow students to contact the district superintendent.

**Trend stories.**

The majority of the stories only tangentially mentioned the actual text of the speech that provoked each of these lawsuits. Most included descriptors like “vulgar,” “lewd,” “crude,” “offensive,” “malicious,” or “raunchy.” A few did include specifics but only as a means to establish the provocation for the lawsuit. Six of the articles classified Layshock’s speech as a parody. In one instance, a paraphrased quote from Layshock himself stated that “what he did was a spoof, and an obvious one at that” (Simonich, *Pittsburgh Post-Gazette*, February 25, 2007).

**Breaking news.**

Most of the stories about the Layshock case only included general descriptions of the profile’s content. The majority of the articles referred to it as a “parody” of the principal. In the early stages of the case, such as when Layshock was first suspended from school, the articles contained specific descriptions of the profile’s content. Several articles noted how Layshock employed the word “big” when answering the questions on the MySpace profile. “One question asked what [Trosch] did on his last birthday, and Layshock responded, ‘too drunk to remember,’ according to the lawsuit” (Cato, *Pittsburgh Tribune Review*, January 28, 2006).

As the case moved through the court system, the descriptions became more general. The majority of articles simply referred to the profile as a parody. Several of these later articles hinted at specifics by either noting that the profile poked fun at the principal’s weight and
physical bulk or that it insinuated he drank beer at work and smoked marijuana. However, they provided little description beyond that.

In coverage of the *Blue Mountain* case, most of the articles described the profile as “vulgar” or “derogatory” by noting it included allegations of sexual misconduct. At their most detailed, the descriptions referenced the profile’s identification name on MySpace that included the phrase “kids rock my bed” and that the profile also disparaged the principal’s wife and daughter. An Associated Press story included the following:

“In that case, an eighth-grade girl created a MySpace page using a photo of the principal with a fake name, and purported that it was posted by a 40-year-old Alabama school principal who described himself—through a string of sexual vulgarities—as a pedophile and sex addict. The Internet address included the phrase ‘kids rock my bed’” (Associated Press, June 14, 2011).

Other descriptions were less specific about the profile’s content, only stating that the profile mocked the principal (e.g. McDonald, *The Times-Tribune*, February 5, 2010).

When describing the speech in the *Doninger* case, eight of the 14 articles pertaining to the case used in this subsection of the study either mentioned Doninger’s use of the phrase “douchebags” to describe school administrators or that she urged fellow students to call the superintendent in order to “piss her off more.”

Even those articles that did not include those phrases verbatim described her speech as “vulgar,” offensive slang,” a “crude slang term,” “insulting,” or “derogatory,” among others. In the early stages of the case, the articles tended to include a fuller description of the facts and context regarding why Doninger created the post. This involved describing the post as an angry
reaction regarding the possible cancellation of the battle-of-the-bands event as well as discussing administrators’ subsequent actions to bar her from running for senior class secretary.

As the case progressed through the court system, specific descriptions waned, and two of the authors did not mention the controversial nature of the speech in question when describing it. One wrote that Doninger’s blog “criticized” administrators for a mistaken belief that they canceled a music event (Mahoney, *Hartford Courant*, October 31, 2011). Another simply stated that Doninger was punished because her blog post claimed “the school canceled a popular event she helped to plan” (Associated Press, April 25, 2011).

Of the four cases, the sample of articles about the Kowalski case included the most context and description of the speech at the center of the lawsuit. All of the articles pointed out that she created a website that claimed another student had a sexually transmitted disease.

Several took the description further to create a more detailed picture of Kowalski’s actions in creating the site. “On the Web page, pictures were posted of the victim, including one with red dots drawn on her face to symbolize herpes and a sign near the pelvic area reading, ‘Warning: enter at your own risk.’ Another picture of the victim contained the caption ‘portrait of a whore’” (Cronk, *The Journal*, August 20, 2011).

One article noted that Kowalski did not post the offending photos of the student, but rather another student who joined the MySpace group at Kowalski’s invitation posted them (The Associated Press, July 28, 2011).

The Associated Press referred to Kowalski’s actions (and similar actions by other students) as “attacks,” in reference to whether schools can have the purview to control such action (The Associated Press, January 18, 2012; Umstead, *The Herald Mail*, January 18, 2012).
RQ 4: How does newspaper coverage frame administrative action in disciplining students for off-campus online expression?

**Opinion/editorial.**

The authors of all nine pieces were clear in stating their feelings that school officials overstepped their boundaries by punishing online student speech that took place off school grounds. Two explicitly argued that officials overreacted when punishing the students. “For their part, the high school principals overreacted to portrayals that were mean-spirited but protected speech. They responded inappropriately by punishing students at school for behavior that was committed at home” (Editorial, *Pittsburgh Post-Gazette*, June 17, 2011). The other discussed how Doninger’s mother stated her desire to discipline her daughter for her actions. In reference to that point, the piece stated, “The district should have let her. Instead, it overreacted” (Editorial, *The New York Times*, June 22, 2007). In both cases, the authors appeared to be chiding administrators for their behavior and expressing the view, however subtly, that students will make poor decisions, but it is up to those in authority to accurately assess the situation and make a judgment. Sometimes, that might mean standing down.

J. Smith spelled out this notion in more stark terms when referencing school administrators’ decision to bar Doninger from running for class secretary. “Oh my. One would think an adult principal could handle such a comment without feeling the need to retaliate against a young student” (*News-Times*, May 3, 2011). Smith went on to describe administrators’ actions as unfair. “When a student is treated unfairly, the matter is not likely to end there. Nor should it.” The author argued that administrators’ actions spurred Doninger’s subsequent filing of a lawsuit and noted the “quest to affirm rights of expression for students should continue.” The author portrayed school administrators as the cause of the legal action that followed Doninger’s
punishment because they chose to overstep their bounds. In the author’s view, it was up to Doninger and other students to reclaim an affirmation of their right to free speech from the courts.

An editorial in the Las Vegas Review-Journal posited this same argument most sarcastically by following up a sentence noting that Doninger referred to administrators as “douchebags” by writing, “Apparently determined to confirm Ms. Doninger’s evaluation, Ms. Niehoff barred the student from running for re-election for student office” (August 1, 2011).

Some of the authors of the other pieces discussed school administrators’ actions by employing strong verb choices to describe their viewpoints about the effect of such discipline on student free speech rights. Most often used was the word “violated.” Others described their actions as “robbing” students of their free speech rights.

School administrators were the intended targets of the online speech in the three cases addressed by the nine opinion pieces in the study. Only two of the pieces considered the negative impact the speech might have on the administrators who were the targets of the speech. An editorial from the Pittsburgh Post-Gazette pointed out that the fake profiles in both the Layshock and Blue Mountain cases “caused humiliation and emotional distress to their subjects,” but that did not overcome the First Amendment protection afforded to such speech (June 17, 2011).

Saternow pointed out that Layshock’s apology to his principal “doesn’t take away the hurt it may have caused Eric and his family” (The Herald, June 5, 2010). Referencing the principal by first name personalized the account and might draw attention to the consequences such speech could have.

Of all the authors in this section, Saternow took the least-firm stand on how courts and schools should deal with disciplining students for hurtful, and potentially defaming, online
speech directed toward school officials or other students. However, the author argued that schools could make these instances a learning experience for students by asking them to consider how they’d feel if the speech were directed toward them or someone they knew or loved. The author seemed to be defining a role for school administrators as instructors to facilitate learning about the consequences of one’s actions rather than as punishers bent on seeking retribution.

**Trend stories.**

Points relevant to this research question seemed to be the central focus of most of the articles in this section of the sample. The sources the journalists used and the narrative they employed drew attention to the decisions administrators must make regarding how to react to student speech they might deem inappropriate. Two patterns emerged to describe administrators’ role in defining the boundaries of off-campus speech. First, administrators needed the ability to keep order in their schools. Several of the articles described this quest in terms of a battle as illustrated by the following two quotes. “Civil liberties experts say this could be the newest battleground, pitting students’ free speech rights against schools’ rules” (Bushouse, *South Florida Sun-Sentinel*, December 13, 2008). “Free speech advocates and strict disciplinarians meet head-to-head before a judge who must weigh constitutional rights against the rights of administrators to rule their own schools” (Ward, *Pittsburgh Post-Gazette*, February 5, 2006).

Even more subtly, another article, which primarily focused on cyber bullying, noted that even though school administrators are pressured to stop bullies, students’ First Amendment rights “limit schools’ power” to control what students say off-campus (Crawford, *Pittsburgh Tribune Review*, January 17, 2011).

The second theme more thoroughly described administrators’ personal reactions to the speech and spoke of the broader implications the speech could have had on the school
environment and the community. For instance, in describing the potential impact of Layshock’s speech, the school district’s lawyer was quoted as saying the speech’s consequences exceeded “beyond the juvenile ridicule” students share among themselves and possessed the “capacity to undermine Trosch’s authority and standing in the Hermitage School District community” (Pinchot, *The Herald*, June 21, 2008). Treatment of the principal as a victim of the speech was raised several times throughout the sample, especially in articles written during the early stages of Layshock’s lawsuit. One article included passages from the principal’s deposition that described his reaction when he found the fictitious profile about him. He described it as an “attack” and as “degrading,” “demeaning,” and “shocking.” He noted that he cried when discussing its contents during a faculty meeting (Simonich, *Pittsburgh Post-Gazette*, February 25, 2007).

As the case traveled on, the articles devoted little to no space discussing the specifics of the principal’s reaction. The same was true of the other cases in the sample. None contained specifics of how the administrators in the other cases reacted, except one that stated the principal in the *Blue Mountain* case was not satisfied when the student apologized and that he inquired whether the state police would consider filing charges (Richey, *The Christian Science Monitor*, January 17, 2012).

However, throughout the sample, sources not directly connected to the legal action described administrators’ reactions in these off-campus speech cases as an overreaction. One student press rights attorney stated that administrators needed “the maturity to accept even sometimes-unfair criticism as part of the job” (Pinchot, *The Herald*, July 27, 2008). In another article, the executive director of the American Association of School Administrators said that school officials often overreacted to these types of situations because of personal feelings. “Kids
are making fun of the principal every day. That just goes with the turf. You just have to take it. You’re a lightning rod for that sort of thing” (Ward, *Pittsburgh Post-Gazette*, February 5, 2006). These classifications of principals as the typical subjects of student-initiated slurs point back to the notion that students have engaged in this type of behavior for many years, despite changes in technology.

**Breaking news.**

Articles about the *Layshock* case contained the most illustrative descriptions of school administrative action and also discussed the principal in the role of a victim. Part of this stemmed from the principal’s decision to file a personal defamation suit against the four students, including Layshock, who created the fake MySpace profiles. Especially during the early stages of the both Layshock’s and the principal’s respective lawsuits, the articles often contained quotes and dialogue from both the principal or the school district’s lawyer regarding the principal’s reaction to the MySpace profile. Concerning the decision to file the defamation suit, one article quoted a written statement from the principal stating that he filed the suit to “clear my good name, and the good name of my family” (Pinchot, *The Herald*, November 19, 2008).

However, throughout the sample, comments from Layshock’s attorney solidified an alternative perspective that no matter how hurtful the speech might have been, its content could not justify school punishment because it originated off school grounds.

Most of the articles pertaining to the *Blue Mountain* case simply noted that school officials suspended Snyder for her behavior and that her family chose to file a lawsuit in response. However, especially at the lawsuit’s initial stages when the courts ruled in favor of the school district, the articles contained perspectives sympathetic to that point. The stories focused more on the administrator’s right to control the speech rather than the student’s right to
expression. This was evident both in quotes from court opinions and from sources close to the case, including school district officials and their lawyers. “A federal judge has ruled that a Schuylkill County school district did nothing wrong when it suspended a middle school student for creating a phony MySpace profile of her principal” (Nissley, *The Times-Tribune*, September 12, 2008).

The sample’s discussion of school administrative action in this case was meager overall. However, a few comments were telling about the mindset administrators exercised in reaching their conclusions. One story compiled comments made by school board members during a meeting in which they were trying to decide whether to pursue an appeal to the Supreme Court following the Third Circuit’s reversal of its earlier holding. Some of the board members’ comments fleshed out some of the issues they saw as pertinent regarding whether to continue pursuing legal action. The board president argued that the district needed to take action to protect teachers and faculty members against students misusing their right to free speech to ruin the careers of school faculty members with unfounded rumors. The article included comments from a parent in attendance who countered that argument by stating the school cannot act in the role of a parent (Marchiano, *Republican & Herald*, June 24, 2011). Even though the article did not raise the issue explicitly, these juxtaposing comments allude to the question of whether parents or school officials should possess authority over online speech that occurs at home.

Not all of the articles in this subsection of the sample included characterizations of the targets of the online speech. When characterizing school administrators, the articles relevant to the *Doninger* case emphasized the administrators’ role in maintaining order. Most of the articles referenced the holdings from various courts and sought reaction from others close to the case, namely the attorney representing the school district.
Most of the articles pertaining to the Kowalski case also did not substantively discuss the student victim in the case directly. However, they did include numerous reactions from school administrators and other advocates who sought greater deference for school officials to discipline cyber bullying. One of the most notable was Manny Arvon, superintendent of the Berkeley County Schools. This is one of his quotes:

“Prior to this, it was unclear about how school districts could deal with cyberbullying [sic] information that was created off-campus. So we’re pleased that this has been defined and gives us the ability to make school a safe and harassment-free environment” (Cronk, The Journal, August 20, 2011).

Arvon also said he had faith in the system that the court would issue the correct ruling. In response to the Supreme Court’s denial to hear the case, Arvon again noted that all of the judicial holdings in the case reiterated that the school did not “have to stand by when things are being said that disrupt” the learning environment and that the court decisions solidified “efforts to control the learning environment in schools” (Umstead, The Herald Mail, January 18, 2012).

Word choices portrayed administrators’ actions as decisive in dealing with the bullying. “Kowalski was prevented from crowning her successor as ‘Queen of Charm’…and was kicked off the cheerleading squad” (The Associated Press, July 28, 2011).

The appeals court noted administrators had the right to discipline Kowalski even though the website was created outside of school because it “was created primarily for Kowalski’s classmates” (The Associated Press, July 28, 2011).

None of the articles provided in-depth detail about the student victim in this case. However, two of them did use the student’s first name when describing the acronym used to name the MySpace page: S. A. S. H. Kowalski claimed this stood for “Students Against Slut’s
Herpes” and that she created the group to raise awareness about sexually transmitted diseases, while another student pointed out the second “s” really stood for Shay, the name of the speech’s target (The Associated Press, July 28, 2011; Umstead, The Herald Mail, January 18, 2012).

VII.

Discussion

The news coverage that comprised the sample varied in length, purpose, and structure. The opinion and editorial pieces were designed to sway public perceptions. The journalists employed arguments based on fact and logic to form and defend a given interpretation of events. This rendering could include insights from sources close to the case, but usually such insights stemmed from court transcripts or court precedents.

The trend stories sought to examine the background behind an ongoing social issue. For the articles in this sample, it was either the rise of cyber bullying or the concerns school administrators faced when dealing with speech that occurs online outside the physical boundaries of the school. These types of stories were generally more than 1,000 words and included in-depth interviews with multiple sources. The extra space devoted to these stories provided the journalist with a means to seek deeper background and to potentially look for causes and interpretations.

The purpose of the breaking news stories was to convey the point that something happened or soon would happen—a court issued a ruling or a case was scheduled for trial. Sources used in the articles mainly commented on the immediate action in the case or discussed potential next steps in the judicial process. At times, sources discussed broader implications, such as the question of whether school administrators should be able to control out-of-school expression, but the primary focus of these articles was the immediate action that precipitated the story.
To fully comprehend the analysis, it is essential to point out the differences among the facts of the four cases, especially the difference between three of the cases and *Kowalski vs. Berkeley County Schools*. While all four cases involved students punished at school for their at-home Internet postings, the treatment of the specific facts of each case proved noteworthy during the analysis. In the *Layshock* case, the student created a profile of his principal that most viewers might deem crude and juvenile, but its content mostly poked fun of his principal’s weight and included a few insinuations that the principal liked to drink alcohol and smoke marijuana. The student in the *Blue Mountain* case, in contrast, created a fake profile that accused her principal of being a pedophile. The online speech in the *Doninger* case expressed the student’s disapproval with school administrators’ actions (whether they planned to cancel a school-sponsored concert). Even though the content and purpose was different, the online speech in each of those three cases was directed toward school officials.

In contrast, the speech in the *Kowalski* case was aimed at another student. The difference in the target created dissimilar patterns of coverage. The articles pertaining to the *Kowalski* case included more discussion of both cyber bullying as a social issue and administrators’ need to protect students from online attacks than did the coverage of the other three cases. As the discussion will pan out, that distinction in the speech’s target made a significant impact during the analysis.

The study analyzed news coverage that spanned geographic regions across a six-year period. The journalists who wrote these stories certainly did not work in tandem to craft or steer messages a specific way. Rather, common links arose through shared practices and approaches to their work. Notable themes, patterns, and frames emerged despite the differences among the types of articles in the sample and the variations among the facts in the cases.
RQ 1: What legal context does newspaper coverage of lawsuits regarding off-campus online student expression contain?

This was a significant question because the issue of whether school administrators possess the legal right to control off-campus speech is deeply rooted in First Amendment concerns about protecting and fostering speech and debate. Any news coverage of this issue, no matter the type or purpose of the story, needs to examine legal issues. However, the majority of the legal discussion in this sample fell short of offering a comprehensive view of the implications regarding school discipline for off-campus expression. Most of the articles either did not fully explain previous legal precedents like the “substantial disruption” standard in *Tinker* or they glossed over those precedents entirely. Some mentioned them in the context of reporting that the court in one of the present cases used those precedents and standards to form its opinion. However, none of the articles ever raised the question of whether those precedents, which apply to on-campus speech, were ever applicable to off-campus expression.

The majority of the articles in the sample failed to articulate the primary question of whether school administrators could legally possess the ability to control off-campus expression. This might seem understandable in the breaking news coverage because the primary purpose was to report about a specific event or occurrence. However, seeing how poorly both the trend and some of the opinion pieces encapsulated that central question raises the uncertainty of whether the reader might be able to appreciate the First Amendment concerns found therein.

Examination of the nut graf statements from the trend stories speaks to this point. While these statements were but a sentence or two of an article that might span 1,000 to 1,500 words, the inability to state accurately the central issue could cause confusion among readers who turn to the news media to find information about a topic with which they have little direct experience
or knowledge. It is possible that more succinct and accurate statements of that central issue, like the one found in *The Christian Science Monitor* article from 2012, were the product of refinements in journalists’ understanding and articulation of the issue as time has progressed and more of these types of cases have arisen.

What appeared most questionable are some of the nut graf statements that attempted to sum up this central question by asking whether technological changes themselves permit more control by school authorities over off-campus speech. That treatment appears to suggest that First Amendment protection changes simply because technology does. Such a portrayal casts the central question’s answer in an arbitrary light connected to external forces, not changes in the law.

Given the wide array of treatments and summaries of how journalists described the central issue in these cases, it seemed clear that most do not possess the specialized knowledge to articulate the question of whether school administrators could or should be given the authority to regulate off-campus online speech. Journalists, even those who cover a particular issue over time, are not necessarily experts about every aspect of that field or issue. However, those who do consistently write about a particular topic are more likely to develop some level of specialized knowledge. Any branch of law is fraught with nuances that require a deep level of study, immersion, and analysis in order to become comfortable with all of the pertinent issues, rulings, and counterarguments. A journalist who lacks background in the subject matter cannot simply “brush up” on the laws and court opinions pertaining to student expression in a matter of hours in order to write a story for the next day’s paper. Truly understanding these issues would take a longer time commitment. While this is not an excuse for poor reporting, it is a reality one must consider when examining the underlying cause of how news articles discuss a particular legal
conflict or question.

Taking this a step further, the sources journalists consult will often make a difference in the “picture of reality” the article creates. The perspectives of the sources shaped the legal context found in the stories both in terms of which questions were raised on how they were answered—whether a nexus existed between off-campus speech and on-campus effects, whether school administrators should be provided leeway to discipline off-campus speech, etc.

Understanding the journalistic information-gathering process is illustrative here. All of the stories sought insights from sources who were deemed knowledgeable about the topic. At the very least, this meant seeking comment from the lawyers who represented both sides in the court action. Stories also contained quotes from the court opinions themselves, the parties involved (if they were issuing statements and if their lawyers allowed them to comment), and possibly other experts or advocates. A source’s stake in the case colored the perspectives he or she provided. Thus, sources connected to the school district tried to craft their interpretation of the law or the facts of the case to bolster their claim that administrators needed more leeway to regulate off-campus speech. The reverse was true for those sources connected to the student litigants. Most journalists sought balance among these competing perspectives by including viewpoints from both sides. Thus, both perspectives were matched point to point in the article. One lawyer said one thing; another for the opposing side argued the opposite. This led to a muddle of “he said/she said” journalism in which the story progresses by offering a point followed by a counterpoint from the opposite side. One lawyer or advocate argued that a nexus existed between the student’s online speech and its effects on-campus, and the other argued that it did not. The presentation of both sides of the argument did at least present divergent perspectives of the issue, but it could lead to confusion, especially if the information is inaccurate or misleading. For instance, quotes
from an attorney who suggested courts have already granted schools authority to control all off-campus speech that administrators deem negatively affects the school environment is one example. Without pressing sources for more specific information, the journalist allows them to reinforce their interpretation, even if it is faulty.

The majority of the articles under study did raise at least some pertinent legal issues. However, especially in the trend and breaking news stories, the presentation of legal issues seemed incomplete because the journalists either failed to explore them thoroughly or relied too heavily on the perspectives their sources provided without asking for more background and context. Thus, readers could be left to decipher how the law and previous court precedents apply to a given case.

This reliance on “official” sources stems from the journalistic norm of seeking credible information and allowing all sides of an argument to have a say in the story whenever possible. The sources mentioned above—lawyers, advocates, researchers, judges, the text of court opinions—are all viewed as legitimate ways by which to gather information for a story about court proceedings. Even though individual sources will possess differing levels of specialized knowledge of both the case and the broader types of legal issues found therein, these sources are seen as legitimate and proper. They are the logical place to turn for information about court proceedings. Thus, journalists may feel an obligation to use them even if some of the information they provide is biased or skewed toward a particular viewpoint.

Equally notable is the articles’ reliance on simply reporting the outcome of a court case without much context as to why the court reached that conclusion or what implications the holding could have for future actions. This treatment is especially prevalent in the breaking news analysis in which the primary purpose was to report about a court’s immediate actions.
The concept of scripts from Gilliam and Iyengar (2000) proved helpful to explain this. As was established in the literature review, scripts provide order and predictability by allowing the storyteller to follow a generally accepted format for relaying information. Just like murder mysteries follow a specific sequence, so do most court cases. The way reporters construct stories to relay information about a court decision follows a format as is evidenced by the articles in the sample—the court issued a ruling; these are the reasons why it issued that ruling; this is the response from one party; this is the response from the other. The article contains some basic information about the case, the parties involved, and the court’s holding. Some articles are short—perhaps 200 words—and relay only the basics of the script, while others are longer and give more detail and insight, but in large they follow this same format. To gather information, journalists rely on information presented in the court opinion as well as reactions from those involved. The script follows a point/counterpoint structure that is often not conducive to in-depth research. While this format creates a formula-based storytelling device that makes it easier for the journalist to “plug in” necessary information quickly, it can minimize the ability to explore the issue with depth and could render only a fraction of the total picture.

The legal context did differ slightly for the opinion and editorial pieces. The majority of the pieces articulated better the central question about whether school officials should have the authority to intervene in off-campus speech. However, all of the pieces in this study sided with the students in arguing that administrators overextended their authority by punishing students for information they posted while at home. That fact makes the analysis of their positions and supporting detail one-sided. The authors of the nine pieces employed various arguments to strengthen their main point. Most prominent were the arguments that students learn to use their free expression rights through practice and that administrative control of off-campus speech
presents a dangerous overreach of their authority to maintain an orderly school environment.

In summation, while it is true that journalists can only report events as they occur, it is essential to provide proper context and dig extensively for information to present as clear as possible of a picture for readers to decipher the truth for themselves. Thus, while journalists must accurately report how a court ruled in a particular case, they must also devote space to discussing the potential ramifications and clearly presenting differing viewpoints along with sufficient background information. Even though the storytelling process is far from a perfect system, journalists err gravely when short changing the depth and nuance an issue such as this requires.

In most court actions, the plaintiffs and defendants rarely talk to the press. They let their lawyers handle that. These cases were no exception, and both side’s lawyers sought to influence public opinion based on their own interpretation of the facts, the law, and the outcome they desired. These perceptions colored the statements they make. However, simply asking for comment from two opposing points of view plus interspersing quotes from the court’s opinion without providing further information created a less-than-telling picture of where the proper line of school control between off- and on-campus speech exists.

**RQ2: How does newspaper coverage frame the actions of students who initiate legal action against their schools for discipline of off-campus online expression?**

Overall, the amount of personal information about any of the student litigants in these cases was scant. It was mostly limited to a few details about the student’s academic achievements or subsequent performance in college. Most of it was tangential and was only reported matter-of-factly in relation to other occurrences necessary to the story—for instance, reporting that Layshock was unavailable for comment following a court decision because he was volunteering at an orphanage in Africa for the summer. These details, however small, did
provide context about the students involved and helped to humanize them as more than the litigants involved in these respective court actions. With a few exceptions, the sample contains little direct feedback from the student plaintiffs because they and their families often spoke through their lawyers.

One interesting point emerged, though. Only the articles about Doninger and Layshock contained these types of personal details. Those about Snyder and Kowalski were devoid of virtually any clues that provided context about those two students beyond their direct involvement in the respective cases. It is curious to note that the speech Layshock and Doninger created, while perhaps juvenile and crude, might be interpreted as “generally good kids acting out,” while Snyder and Kowalski’s speech could be seen as malicious and harassing. It appeared as though the content of the student’s speech could have been a factor in how the students were portrayed in news stories and opinion pieces about the case.

A closer analysis of the data related to RQ2 revealed more credence to this notion by discovering a conflicting frame that classified students either as aggressors—those who sought to cause trouble by the speech they posted—versus victims—those who were punished unjustly by school administrators for their actions. The frame of the student litigants as victims played out in several forms. First, students speaking outside of school were described as citizens entitled to their First Amendment rights to free expression. The authors of some of the opinion pieces most explicitly discussed this point. Several of them argued that students are entitled to free speech protection while at home that is coextensive to that afforded to adults in society because they are out of the purview of school administrators’ direct control. Many of those same authors also expounded that even though students are still learning how to use their freedoms wisely and effectively, misuse is not grounds for curtailing the privilege. Comments from some of the
attorneys representing the students in these cases bolstered this point in the other articles by arguing that a student’s behavior at home should be held to the same standards as adults.

This frame of students as victims of administrative overreaction gains further support from a line of reasoning that argues students have been making fun of school officials throughout history. Technology just makes the message all that more widely dispersible. Especially prevalent in the opinion pieces, comparisons between popular movies depicting students acting out against authority figures and the student speech in the cases used for this study suggested that rebellion and testing the boundaries of acceptable behavior were just part of growing up. Kids will make mistakes—that is how they learn. Most of the trend stories followed suit with quotes from lawyers or court opinions that supported this point. Both elements of this frame depicted students as deserving of their rights to free expression as they learned the best ways to use those rights in a quest to become functioning members of society.

In contrast, an opposing frame classified students as aggressors who sought to cause trouble by harassing fellow students or school personnel. This frame was most prevalent in the coverage directly related to the Snyder and Kowalski cases. While the details about Snyder’s actions were scant, two articles suggested she created the profile of her principal as retaliation for discipline she received for a dress code violation. Even though less coverage existed about the Kowalski case, what did exist depicted Kowalski as unremorseful for her actions. Quotes from school officials and court opinions noted she appeared to be an aggressor who harassed a fellow student and then feigned remorse only out of self-interest. For instance, when discussing Kowalski’s assertion that she suffered depression after she was suspended from school, two of the articles noted the judge in the case offered her little sympathy given the severity of her actions to inflict pain on a fellow student. Coupled with the high level of information discussing
the social issue of cyber bullying in the subsection of the sample pertaining to this case, Kowalski became an example of a quintessential cyber bully who sought to use the Internet to harass her peers.

The analysis revealed another frame—treating the court action as a battle between students and administrators. It became apparent that both sides involved in the case treated it like a battle that needed to be won—or at least the news media portrayed it as such. A clear winner and loser would result. Choices in language solidified this frame—one side vowed to fight on after it lost the case; another hoped for a favorable outcome in court but could not be sure how the judge would rule. This frame played out time and again, especially in stories that relayed each side’s position in preparation for or in reaction to a court proceeding. Each side laid out its battle plan hoping to persuade the judge of its perceived correctness of interpretation. This frame was most prevalent in the breaking news articles that described the outcome of a court proceeding—a definitive event in which the losing side must decide whether to accept the ruling or to appeal.

While a battle frame might be common when reporting about legal conflicts because it fits the script of a court action, it can minimize the deeper issues and ramifications presented by the central question of whether school administrators possess the authority to discipline off-campus behavior. Focusing on the element of battle could draw attention away from other means to solve the dispute and could mitigate a fuller understanding of the broader legal questions that require consideration. One might interpret the message as a student taking on the school system or vice versa while minimizing the deeper repercussions of allowing school authorities the power to regulate such activity when it occurs outside of school. For instance, only about half a dozen of the articles in the entire sample ever mentioned possible alternative means other than school-
sanctioned punishment administrators could employ to manage the problem—filing a personal lawsuit against the offending student, seeking help from law enforcement if the speech is criminal in nature, serving as a mediator of a bullying situation, or talking with the student’s parents.

**RQ3: How does newspaper coverage frame the off-campus online expression that leads to school discipline?**

The speech in each of these cases was different. Layshock posted a crude profile of his principal and claimed he had intended to be funny. Snyder created a profile that falsely accused her principal of sexual misconduct with students. Doninger vented her frustration about her administrators online by using what they deemed to be vulgar language. Kowalski set up a website that accused a fellow student of sexual promiscuity. Appreciating the difference in the speech’s content can help one better understand how it was discussed in the news coverage.

Most of the articles employed descriptive words ranging from “crude” to “vulgar” to label the speech the students posted online. The qualifiers journalists used to describe the speech were, at times, attributed to sources in the story. However, in the majority of instances, they appeared to originate from the journalists themselves. These classifications could shift the way the speech was interpreted, especially when the specific content of the speech was absent from the article. Calling something a “parody” might conjure up a different image than calling it “vulgar.” The inclusion of specific details, however troubling, could help the reader better assess the nature of what was posted.

At times, however, using only specific parts of the speech in question might create a false impression. Most notable was the inclusion of the phrase “douchebags” [sic] when describing Doninger’s online post. This whole case appeared to hinge on use of that phrase. The majority of
the articles in the sample that discussed the case contained that phrase with little or no context to explain why she posted it. She became known as the girl who got in trouble for calling her principal an inappropriate name. Context and thorough explanations are necessary in order to provide readers with a fuller understanding of the case’s background.

The overwhelming majority of the coverage seemed to suggest the speech in these four cases was not worthy of First Amendment protection. While this issue was not explicitly addressed, contextual clues provided some insight. This was especially true of the speech in the Snyder and Kowalski cases because the content appeared to be an attack. As was established when discussing RQ2, the articles portrayed Snyder and Kowalski in low light because of the false, and potentially defaming, statements they made against a school administrator or fellow student, respectively. The same proved true when assessing the treatment of the speech itself. Even though the speech in those cases added little to the marketplace of ideas of public discussion, the articles’ often narrow focus on the facts of a particular case shortchanges the larger question of whether some student speech that raises the ire of school administrators could be beneficial to society.

Such might have been true with the speech in the Doninger case. Even though Doninger’s use of an expletive garnered most of the attention, her purpose in making the online post was to express dissatisfaction with the decision of a school administrator—who is also a government official—and to encourage fellow students to express their dissatisfaction if they agreed with her position. While her wording might have been a poor choice, Doninger’s actions were solely in line with the First Amendment’s purpose to speak and to seek a redress of grievances from the government. None of the coverage, even the editorial coverage favorable to Doninger’s cause, ever raised that point. The First Amendment was not designed only to protect
polite protest. Again, consideration of the broader context beyond the facts of the case could help to alleviate these problems.

The speech in the Layshock case was perceived more favorably, especially as the case traveled through the court system and judges kept ruling in his favor. His speech was often described as a “parody,” which by its nature has traditionally been entitled to a high degree of protection. Discussion of the merits of protecting Layshock’s speech was expressed by observing that Layshock’s actions, which occurred off-campus, were entitled to First Amendment protection. Thus, arguments about the speech’s worthiness of protection were formulated in terms of the speaker, not the speech itself.

**RQ4: How does newspaper coverage frame administrative action in disciplining students for off-campus online expression?**

Two divergent classifications of school administrators emerged throughout the analysis. In one view, they are preserving order in their school buildings by working to protect personnel under their supervision and students entrusted to their care from malicious material spread online. In the other, they appear to be overreacting to seemingly juvenile behavior. These opposite classifications created a conflicting frame of administrators as guardians of order versus overreacting victims. The applicable frame seems to take hold depending upon the content of the student speech the administrator chose to discipline.

In the case of Kowalski, in which she created what could be deemed a malicious attack on a fellow student, school administrators appeared to be the guardians of order. The quotes from both the court opinions and interviews with administrators seeking reaction solidified this frame. District officials expressed their faith in the court system to resolve the matter, and they felt as though the court rulings in the school’s favor solidified a previously shaky and uncertain branch
of law. Word choices spoke of administrators’ decisive actions to control the situation.

Two of the articles even added a detail about the target’s first name in relation to the name of the MySpace group Kowalski created. This fact added further power to the victimization of the target student by personalizing her and allowing administrators’ actions to appear more justified. These findings emulated from the case’s distinct nature as the only one in the sample in which the target of the online speech was a fellow student, not a school official. That difference cast administrator’s actions in a unique light when compared with the news coverage of the other cases.

The majority of the breaking news coverage about the Doninger and Blue Mountain cases revealed similar findings—most of the discussion of administrative action centered on the need to maintain order within the school. A majority of those perspectives, of course, stemmed from the comments school district officials and attorneys offered during interviews as well as quotes from the court opinions themselves.

However, the contrasting frame of administrators as an overreacting victim was evident in the breaking news coverage of the Layshock case as well as in quotes and opinions expressed in both the trend stories and most of the opinion pieces. There, more sources took a broader view of the issue rather than focusing on the facts of one particular case and argued that principals have been the victims of malicious student speech for years. New technologies just magnify its reach. Principals of old survived being the targets of speech scribbled on paper and shared among students in the hall. Today’s administrators need to take a step back and set aside their personal reactions to the speech, especially if it is insulting or untrue. Under this frame, administrators are adults who should be able to exercise right judgment even when they are assailed unfairly by juvenile behavior.
VIII.

Conclusions

Several significant findings emerged from the analysis: a lack of sufficient legal context, a conflicting frame that classified the student actors in the cases as either aggressors or victims of an overreach of school authority, a frame of strategic battle to describe how both parties in the case related to each other, a use of descriptors and qualifiers in place of specific details of the content of the speech that spurred the lawsuit, a general sense that the speech in the four cases was not worthy of First Amendment protection, and a conflicting frame of school administrators as the guardians of order versus overreacting victims.

Journalistic norms and standard practices heavily influenced the way these articles were crafted and thus swayed the messages and frames contained therein. Especially prominent was the script journalists employed time and again to report about the outcome of specific court proceedings. Reliance on specific types of sources and the narrative structure of the articles shaped the rendering of the final product.

Implications

The results of this study denote implications for both educators and journalists. Teaching young people the value of free expression should be of the utmost concern to an older generation of Americans who hopes to preserve those protections in the future. In order to do that, students need to learn at a young age that their voices are important and that it is permissible for them to disagree with those in authority. However, they also need to be taught the way to express their viewpoints constructively. And that is where the conflict lies—even speech that is entitled to First Amendment protection can have drastically negative effects on people, especially if it is directed as an attack on someone else.
When the victim of such an attack is another young person, the effects can be emotionally devastating. It is important not to downplay the hurt and pain bullying can invoke. These impacts can be magnified when the attack occurs online and can be repeated over and over again, possibly through the guise of anonymity. This is a real problem, and school administrators are genuinely confronted with how to deal with it effectively to minimize the effects on the intended targets.

What happens outside of school can affect the learning environment, no doubt. However, paired against these concerns is the question of whether public school administrators, who are government officials, should possess the legal ability to impose school-sanctioned discipline on online speech that originates outside of the school environment. Allowing them that power does raise legitimate First Amendment concerns. For instance, if they are given power to control speech that could be deemed an attack on fellow students, could they exercise that power if a student joins an online forum promoting racial bigotry even though the school’s policy teaches tolerance and acceptance? The line can become rather blurry.

Educators and free speech advocates do not seek to excuse the poor choices some students make when posting material online. Each of the four students involved in the cases used for this study exercised varying degrees of judgment lapses. However, simply allowing the school to impose discipline misses the point that other legitimate means of dealing with the situation exist—talking with the student’s parents, counseling the student, or teaching students about the proper use of the Internet. In some instances, students could be subject to criminal prosecution or civil litigation based on the expression they post online while at home. Numerous means exist as redress to handle these questions.

This draws back to the news coverage analyzed for this study and the role journalists play
in constructing the dialogue about the level of First Amendment protection afforded to off-campus online speech. While the sample only examined articles related to four recent cases, the results demonstrated a lack of sufficient detail, especially as it pertained to presenting legal arguments about whether school administrators possess the ability to control off-campus speech and which legal standards are applicable to such cases. As was discussed earlier, journalistic norms and practices contributed significantly to the final news product. However, it is essential to remember that what journalists choose to include or exclude from a given story and how they gather pertinent information can affect—even unintentionally—the overall message and the characterizations of those involved in the story.

As the content of these news articles revealed, the legal question of how much authority school administrators can exercise over off-campus speech is still far from resolved. More news coverage is bound to follow in the years ahead as courts continue to grapple with this question. Understanding how journalists and editors choose to cover this issue can provide a window into one of the most basic means of social learning available to the public. And this could prove illuminating toward understanding how countless Americans might receive information about an important topic with implications for how future generations might regard their First Amendment freedoms.

Examining the lapses in journalists’ comprehension and coverage also hearkens to the need for free speech advocates and educators to seek more opportunities to instruct journalists about some of the central legal questions and their implications in society’s preservation of the rights guaranteed by the First Amendment. While doing this formally might appear difficult, such training could take the form of offering specialized institutes for journalists and editors so they can better understand the background and law regarding student First Amendment rights, or,
on a smaller scale, free speech advocacy groups could create “training kits” to alert journalists to some of the questions and issues they should consider when covering student off-campus speech cases.

**Limitations**

This study is by no means the definitive word on this topic. It was limited to print news coverage related to four cases because of the need to find a narrow sample with which to conduct the study. The number of court cases continues to grow, so new issues will need to be analyzed and considered in the future.

Performing a textual analysis limited the study’s scope to the media texts themselves. Determining how journalists’ background or understanding of this issue might affect the stories they produce would require a different method. This study’s focus was also limited to professional news media because they often have the greatest reach in terms of audience and are most likely to be affected by the journalistic norms discussed in this paper. While the sample was healthy in size, its results are not generalizable to all news coverage pertaining to school administrative control of off-campus speech. The findings reflect the work of one researcher.

While the researcher hoped this study would serve as a starting point to understand how these frames and messaging devices could affect audiences, any such conclusions are speculative because the study only analyzed the media texts. Moving beyond the speculative stage would require a direct survey method. It is also important to note that because of the geographic differences and span of time, no single person (except for the researcher) has probably read all of these articles. The average individual would probably only see a few of them in isolation. That point is important to bear in mind when discussing potential effects of the frames and messages because no one individual would probably ever encounter all of the coverage.
This study was a starting point to fill a gap in the academic literature about how the news media contribute to shaping the discussion of evolving First Amendment protection of student expression. The researcher hopes its straightforward design and narrow focus will inspire others to continue to investigate this ever-changing and important topic.

**Suggestions for Further Research**

The academic research regarding the presentation of student free expression in the news media is practically non-existent. This study aimed to delve into an almost untapped avenue of research and discovery. The analysis performed in this paper was but a simple beginning in that vein. The potential for research studies in this area is ripe with possibilities. To start, the sample selection could be expanded to include other media—broadcast, for instance.

This study only examined the messages within the texts themselves. It did not consider the story’s length or placement in the publication. For instance, was it featured prominently on the front page, or was it buried in obscurity on the bottom of an inside page? Examining this issue from the agenda-setting perspective to ascertain how much play this topic receives is another possibility.

Another qualitative approach could involve interviewing journalists and editors about how they reach the conclusions they do regarding their approach to stories and how they decide whom to interview, which facts to include, which stories to run, etc. This could be illuminating, especially since many of the same reporters covered a specific case for several months or years as it made its way through the court system. Such a study could shed light on the level of expertise journalists possess to understand the deeper legal issues and ramifications these types of issues present. A fourth possibility could involve conducting a more thorough case study of
one of the court actions. A researcher could target specific changes in language and theme in the sample of articles pertaining to an individual case.
Appendix A:

Newspaper Sources Pertaining to Layshock v. Hermitage School District

Opinion Pieces

Trend Stories

Breaking News


Appendix B:

Newspaper Sources Pertaining to J.S. v. Blue Mountain School District

Opinion Pieces

Trend Stories

Breaking News Stories
Appendix C:

Newspaper Sources Pertaining to *Doninger v. Niehoff*

**Opinion Pieces**


**Trend Stories**


**Breaking News Stories**


Appendix D:

Newspaper Sources Pertaining to Kowalski v. Berkeley County Schools

**Trend Stories**

**Breaking News Stories**
References


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