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Views

In Loco Parentis, Post-Juicy Campus

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By **Joseph Storch**

The legal and practical implications of colleges standing *in loco parentis* (latin for “in the place of the parent”) have waxed and waned over the history of higher education.

Colleges traditionally had the same rights and responsibilities as parents; the power to discipline the student as a parent could, but also the liability for harm that befell the student. Both the rights and responsibilities of *in loco parentis* began to recede as the Woodstock generation declared its independence. As the boomers asserted their freedoms at colleges and universities across the nation, *in loco parentis* fell away, and with it came a legal regime that treated colleges and universities as bystanders, rarely responsible for harms that befell students. And yet those same boomers, hovering over their children like “helicopters,” now insist that colleges take responsibility for the actions of their millennial children due to the “special relationship” that they believe forms upon enrollment.

As *Inside Higher Ed* [reported](#), Security on Campus (SOC), a campus safety advocacy group, has interpreted a recent letter of findings by the Department of Education's Office for Civil Rights (OCR) regarding an incident involving a Hofstra University student, to impose a new responsibility on colleges and universities -- “the same obligation to respond to sexual harassment in cyberspace that they have when the harassment occurs in the classroom.”

If what SOC is saying is that they read this findings letter to require campuses to take on the *in loco parentis* responsibility of protecting students from activities that occur outside of the campus environment, that is not an accurate reading of the OCR decision. Rather, the letter found insufficient evidence of any wrongdoing by the campus inasmuch as the parent of the complainant did not provide sufficient information to the campus.

Contrary to the SOC press release, the letter of findings did not reach the merits of the case. The language cited by SOC as creating a “first of its kind” standard is simply the boilerplate language describing the law and jurisdiction standards that OCR includes in its letters. One sentence of boilerplate that should be noted, however, states “[l]etters of findings are not formal statements of OCR policy and should not be relied upon, cited, or construed as such.”

Juicy Campus and its ilk are a result of some uniquely millennial math. The rise of Facebook, Myspace and other social networking sites allowed first young people (and increasingly many older folks, too) to transform their anonymous selves into mini-celebrities, sending out tiny bursts of “press release” on their minute-by-minute activities, opinions on sports, politics and celebrities, and relationship status. The ideal for some was to acquire as many “friends” as possible and send them as many press-release “updates” and “tweets” as time and patience would allow. Concurrently, celebrity blogs like Perez Hilton and Pop Sugar would casually insult traditional celebrities, instantaneously sharing even the glitterati’s most mundane private secrets, while thousands of anonymous comments spewed forth all manner of vitriol. It was not long before the two forces would meet with anonymous students summoning up their e-courage to cyber-slime their mini-celebrity friends and classmates.

What resulted were anonymous gossip sites that targeted ordinary individual students. Juicy Campus was the best known of these sites. Started by a recent Georgetown University graduate in 2007 ostensibly to discuss important campus issues, the site facilitated anyone to post essentially any statement about any topic or any person, true or otherwise. While some topics on these sites are mild, much is lewd, insulting and often times horrifying.

Unlike the “bathroom wall” of old, here professors, potential employers and grandmothers could log onto a Web site and read the gossip. Juicy Campus **closed its doors** in February of this year, although other, less-well-known sites such as College Anonymous Confession Board (ACB) and Campus Gossip continue on. Juicy Campus may be gone, but the genre is not. Like the National Enquirer and other supermarket tabloids, the site was universally denounced, but a popular read on campuses. It took the Internet to turn public slander into a private, anonymous weapon which, once created, will never fully recede.

When Juicy Campus arrived on a particular campus, the first instinct of student affairs professionals was one of pure *in loco parentis* protectionism; they sought to block network access to the site. **Two campuses did so.** Yet blocking is inadvisable for several reasons.

First, these sites are not hosted on campuses so the college has no more jurisdiction than it does over the bathroom wall of a local bar. Blocking such sites is as effective as telling students they cannot drink at said bar; it will only pique a prurient interest. Second, now that the Blackberry, iPhone and other Internet-capable smartphones have become almost ubiquitous on campus, students are not limited to accessing the Web over a college broadband network; if students cannot access content on their college network, they will access it on their phone, at the local Starbucks, or while at an off-campus apartment.

Blocking may even discourage students from accessing the Web through the campus network, sending them to the more expensive, but less regulated, Internet services offered by cable, telephone and cellular companies. Finally, when a college blocks one offensive site, it had better be prepared to block all offensive sites. It is hard to justify blocking Juicy Campus (or its progeny) but not blocking Neo-nazi sites, antisemitic, racist or homophobic sites, or, in traveling down the slippery slope, political and media sites that include language offensive to some students. Free speech is so central to the experience at most colleges that a process of blocking offensive sites would quickly lead college administrators down the garden path.

The costs to students of anonymous cyber-sliming are not small. Self-harming thoughts and

activities, cutting, and suicidal ideation were reported among students who were victimized on these sites. Unfortunately, when the danger and harm to students comes from outside (especially digital) sources such as anonymous gossip Web sites, there is little that a college can do. Holding colleges responsible, as Security on Campus argues, for “stop[ping] the harassment of ... students on gossip sites in cyberspace” sets up an impossible standard for colleges to meet. Even more extreme, the idea that somehow an “effective response” by a college might entail “schools shut[ting] down these sites altogether” is beyond the pale.

Colleges have no such power over Internet sites. The days of Web site operators receiving cease and desist letters from colleges and quickly deleting the content while begging for mercy are long over (to the extent they ever existed). Today's Web site operators have a healthy skepticism for legal notices, may have their own lawyers, or take the legal stance that Juicy Campus took -- Section 230 of the Federal Communications Decency Act protects the site from liability for content created by individual users. Juicy Campus declared on its Web site that with the exception of lawful subpoenas and certain violent threats, it would not take down most posts even when contacted by college presidents.

Also discomfoting is a logical extension of SOC's expansive argument, that if a student complains about harassment on a Web site and the campus does not make heroic efforts to silence the slander, the campus would take on liability for later harm against the student, whether inflicted by another or by the student him or herself. Contrary to the widely-read SOC press release, such revolutionary change in college responsibility is best left to courts and legislatures, not to a controversial reading of an OCR letter that found no liability.

Yet courts are not likely to make such a leap. For public policy reasons, courts will often assign responsibility to the party able to prevent harm in the most efficient way. Here, colleges have no real power to prevent such harm, and assigning such responsibility would not efficiently empower colleges to protect future student victims. While, in some cases, colleges may appropriately act when threats or insults are hurled on campus by members of the college community (including when community members identifiably use cyberspace to defame other community members); colleges can do little with truly anonymous speech in cyberspace.

With the digital age in full swing, colleges must reconceptualize what it means to act *in loco parentis*, and how, to the extent they can do anything, they can best serve their students. The answer is not to read into OCR investigations a new era of control and responsibility. Disaggregated problems require disaggregated solutions. Colleges cannot wrap their students in bubble wrap whenever they venture outside of their comfortable residence halls, and even bubble wrap does not protect against digital slander. Rather than reasserting rights and responsibilities under *in loco parentis* and seeking to envelope students in a protective aura, colleges should return to their core mission and educate students on how to interact within, and protect themselves from, the dangers posed by the digital world.

Through extracurricular education, colleges can empower students to turn the tables on challenges within the digital environment and use the tools presented by the Web to their benefit. In another generation, lessons on how to balance a checkbook would help students better navigate their world. Today technology services and student affairs staff can join their professorial colleagues in educating students, concentrating on imparting lessons that help students navigate the churn and froth of the digital environment (a good example of such education is Tracy Mitrano's [“Thoughts on Facebook”](#)).

Whether it is through orientation sessions, programs and speakers spread throughout the academic year, e-mails and advice letters, or other means, colleges are in a strong position to provide a robust education on practical lessons students must learn outside of the classroom. In so doing, colleges can best empower young people to defend and protect themselves in the digital environment, both as students and later as alumni. Holding colleges responsible for policing cyberspace won't protect our students or serve their educational needs.

In part two of this series, Benjamin Bleiberg and I will lay out the framework for a set of disaggregated resources and strategies students can use when confronted by digital defamation.

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