This essay discusses the primary legal challenges or concerns that face fledgling directors of forensics. The essay offers "unofficial" advice from a professor of communication law (not a lawyer) who was for a long time director of forensics. No attempt is made to break new ground in the understanding of any legal issue. Rather, the paper summarizes established law that affects coaching activities. The legal areas covered include: libel, copyright, liability, disability, privacy, harassment, and prior restraint, as they apply to forensics activities.

Since "the law" requires it, let me open with a disclaimer. I am not a lawyer and this article in no way should be interpreted as rendering legal advice.

The gist of this essay is quite simple: although these are unbelievably litigious times, as a fledgling director of forensics you really have little to worry about regarding legal landmines if you use common sense. Exercising "common sense" is the layman's equivalent of applying the "reasonable person" standard (Posner, 1997, p. 685) that permeates most legal decision-making.

Specifically, the legal issues I find most relevant to forensic coaches include (1) the distinction between public and private colleges; (2) liability regarding travel; (3) copyright; (4) defamation; (5) due process; (6) privacy; (7) disability/access; (8) harassment; and (9) prior restraint. These are arranged in order of importance as I see them.

(1) Public vs. Private. Consider it a given that it makes a world of difference whether you work at a private college or a public college. If you work at a public college or university, you are afforded all of the first amendment protections the law and the courts have amassed over the years. And these protections are vast in scope. If you work for a private college, you are best advised to think that you check your first amendment rights at the college gates. Coaches at private colleges only have the protections provided by their college by-laws, student codes of conduct and faculty/staff handbooks that outline "due process" procedures. (Poskanzer, 2002; The academic administrator, n.d: pp. 3-4; Chambers, 1972, pp. 242-246). Even private colleges are legally bound by their due process commitments as found in official documents.

To give an example: a student at Public University who elects to do an oral interpretation of a salacious portion of *The Color Purple* that many would find offensive would be immune from legal repercussions. Established obscenity law protects works of "literary" value from prosecution. The same is not true for a student at Private University. If the private college proscribes certain topics not in keeping with the
college mission it may do so at will. And the coach could be held responsible (Kaplan, 1985, pp. 142, 274-275).

(2) **Travel Liability.** Quite obviously, as director of forensics, you and your college are subject to the legal doctrine of "respondent superior" (Porter & Summerness, 2000). This means that the employee (you or your assistant coach) acts on behalf of the larger ("deep pockets") organization - the college. (Kaplan, 1985, pp. 71-72) If the director of forensics is guilty of causing an accident on a forensics trip while driving under the influence, the college itself is liable. To simply, if a driver of a Coca-Cola truck causes an accident through negligence, the Coca-Cola Company will likely be held responsible for damages. The same is true for directors of forensics (public or private). This principle holds true of any and all travel-related situations: if you tell your students to meet you in the morning at 7:00 a.m. near the elevator, and there are three separate elevators at the hotel, and one student gets kidnapped/assaulted at the "wrong" elevator, you (and your college) may very well be liable. (Lake, 2001) Moral: simply exercise prudence. Recognize that you will be expected to adhere to a normal "standard of care" in your state. Be very specific in your instructions to your students. One major liability issue for coaches involves student drinking. Certainly, students over the age of 21 have a "right" to drink alcoholic beverages. Just as certainly coaches may, and should establish a policy (preferably in writing) prohibiting drinking alcoholic beverages while at a tournament. Were any student found to have engaged in disorderly or criminal conduct while "under the influence," and the coach be shown to have knowledge of the student's drinking (and did nothing to stop it), a case could be made for tacit consent, and thus liability. Moreover, any damages done by drunken students (to hotel rooms, vehicles, etc.) could easily become the liability of the university. The university rents the hotel room or van, not the student. If the coach has a firm policy in place prohibiting drinking and can demonstrate that the policy is enforced, then institutional liability would be mitigated in cases where students acted in violation of such a policy.

(3) **Copyright.** In general, you have little to worry about here. "Fair Use" exemptions in copyright law protect you to the point that you can practically forget about any concerns in this area. (Middleton, Trager, & Chamberlin, 2000, pp. 234-244)

(A) **Oral Interpretation.** Whether your students are interpreting Prose, Poetry, Drama, P.O.I., or whatever - these interpretations (regardless of "amount" selected) are for educational purposes. Such purposes are generally protected under the "Fair Use" doctrine. The only issue ever raised in this area is the taping of oral interpretation finals at national tournaments. Most, if not all, national tournaments refrain from taping finals in oral
interpretation. There is the possibility that such tapes, offered for “sale,” might be seen as commercial activities designed to obtain profits - a clear exception to the "Fair Use" doctrine. Participation in tournament activities (unless taped) clearly is educational in nature, and occasions no legal repercussions. In fact, the copyright law itself exempts classroom-like "face-to-face" recitation of copyrighted material. (Copyright Act of 1976; Harrington, 1989)

(B) Photocopies and Links. "Fair Use" doctrine allows for unlimited photocopies of copyrighted articles for Extemp files or for information/persuasive/rhet crit speeches. More technologically sophisticated forensics teams may rely on internal web sites or blogs that provide URL links to assorted articles on the internet. Thus far, the courts have found no problems (liability) for links in terms of copyright law. (Kubiszyn, 2000)

(4) Defamation. Although important, this is a no-brainer. Simply avoid expressing opinions about members of your team that might possibly defame them. This includes coaching sessions, post-tournament critiques. Even though "opinion" is generally exempt from legal retribution (McLean, 2003) if such "opinion" can be interpreted to have a factual basis, all bets are off.

(5) Due Process. Before you cancel a forensic student's scholarship or ban a student from participation on the team, be sure you have all bases covered. I generally tell the program directors under my purview (Forensics, Publications, Broadcasting) that I will not sign a letter canceling a scholarship unless I see two or three letters/emails to the student warning him/her of serious infractions that will jeopardize the scholarship. If you have precise warnings in writing, you have conformed to the "due process" requirements of the law. (Kaplan, 1985, pp. 212-214, 237-251)

(6) Privacy. This is an issue that seems benign. But you should be aware of FERPA requirements, nonetheless. (The academic administrator, n.d., p. 24)

Any director of forensics who cares about his/her program is interested in publicity - putting the best spin on the program's success. All well and good. But press releases should not go beyond the bounds of FERPA restrictions without the consent of students involved. If one of your champion students is blind, has M.S., is bi-polar, etc., you should never publicize these facts in a press release without the expressed consent of the individuals named. You might also be careful with distribution of photos of team members to the media, especially if these photographs might put the students in a bad light. Unless students have granted permission for release of their photographs, they have grounds for pursuing several privacy torts.

(7) Disability/Access. Whatever you do, strive to accommodate the disabled. You are required by law to do the best you can, within reason,
to accommodate the blind, physically handicapped, et. al. (Thomas, 2000). If your forensic practice room is upstairs, and there's no elevator, then arrange to have a practice session with a wheel-chair-bound student somewhere downstairs. This is one area where you do not want to be found "un-accommodating." If you host a tournament, be sure your campus is accommodating to the disabled (ramps, wide bathroom doors for wheelchairs, etc.).

(8) Harassment. If there is one area of law (court decision) that has proven inimical to free speech, this is it. Harassment (sexual, racial, religious, you-name-it) largely falls under the category of "employments laws," EEOC, etc. Unfortunately, court decisions in this area have not kept pace with constitutional protections in the realm of free speech. (Volokh, 2000). Until this gap is closed, my best advice is: (a) watch what and how you frame your criticisms of student performances. Make sure you use the same/similar language for males and females, blacks and whites, gays and straights, etc. (b) recognize that the courts are most averse to "egregious, pervasive" cases of harassment. Make sure your emails, web pages, critiques (oral or written) do not smack of harassment. "Harassment" in this case is most often defined as "hostile work environment." The courts interpret an "educational environment" in the same manner as "work environment." Until the pendulum swings in the direction of "free speech," you are advised to be careful in the phrasing of your critiques to those who have recourse to EEOC — which means anyone who is not a male WASP.

(9) Prior Restraint. Free speech doctrine in this area is pretty clear. In the public arena (not private) the government may not prevent, in advance of publication, speech unless (a) it is obscene as defined by law; (b) it amounts to "fighting words"; (c) it threatens national security; (d) it violates FCC or FTC administrative law; (e) it violates civil rights guaranteed by the constitution. (Pember, 2005, pp. 67-75)

It should be remembered: the established doctrine of prior restraint only applies to public institutions. As noted above, private colleges are permitted to apply far greater restrictions occasioned by their missions. And it should be regarded as axiomatic: the larger your school, the greater the concern for legal protection. "Legal protection" means avoiding lawsuits at all costs. University human resources agencies are interested in risk management. Everyone wants to protect the university from the possibility of a lawsuit. This is a fact of university life. But what I advise is don't ask HR/University lawyers whether you/your students can do X or Y. These people are paid to protect the university from the possibility of a lawsuit. They will invariably say "no," even though they would be likely to win in the event of a lawsuit. My advice is to follow your common sense, and deal with the lawyers later. You and your students have everything to gain. In sum, don't obsess over your legal obligations as DOF. Take comfort
in the doctrine of "respondent superior" - as an agent of the college, acting within the scope of your job as director of forensics, the college lawyers will almost always defend you. You will not be out on a limb even if you make an honest mistake. In fact, in nearly all lawsuits, the plaintiff will go after the "deep pockets" (the university), not you.
References

Chambers, MM. (1972). The College and the courts: the developing law of the student and the college (First ed.). Danville, IL: The Interstate.


