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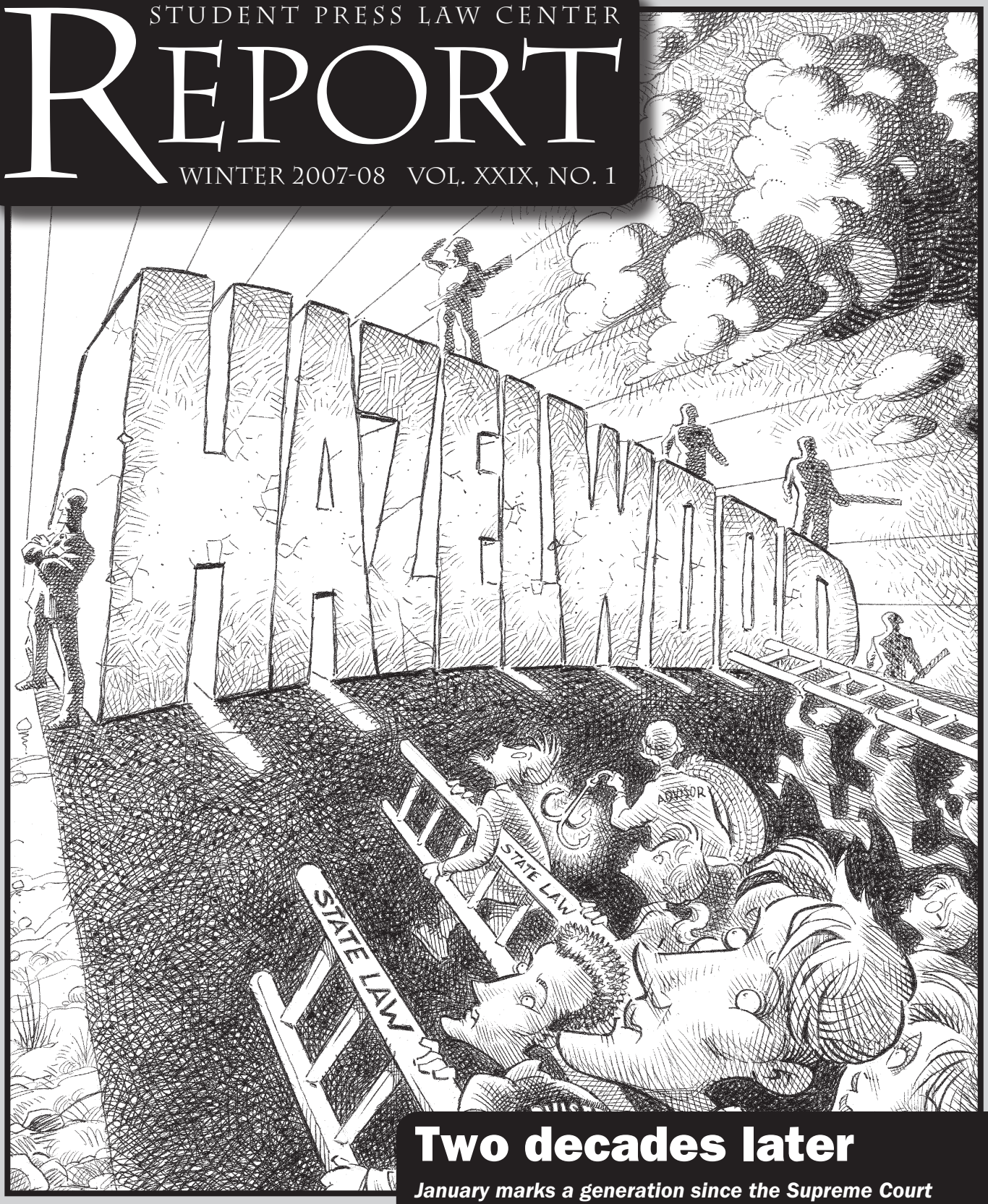
STUDENT PRESS LAW CENTER

REPORT

WINTER 2007-08 VOL. XXIX, NO. 1



Two decades later

January marks a generation since the Supreme Court curtailed the rights of high school journalists, **Page 19**

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STUDENT PRESS LAW CENTER
REPORT
WINTER 2007-08 VOL. XXIX, NO. 1

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SPLC
STUDENT PRESS LAW CENTER

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INSIDE

CLARIFICATION

— The story "Students, adviser reach agreements with college," in the Fall 2007 SPLC *Report*, should have noted that the student paper at Ocean County College did receive the right to choose its own Web site as part of its settlement with the school. *The SPLC regrets the omission.*

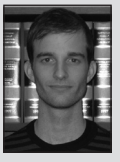
REPORT STAFF

Michael Beder, McCormick Tribune Foundation Publications Fellow, graduated from Northwestern University's Medill School of Journalism in June 2007. He worked for four years at the student newspaper, *The Daily Northwestern*, where he served in a variety of roles, including as news editor, Forum editor and managing editor. He interned as a reporter and Web producer at the *St. Louis Post-Dispatch*, and he was a Dow Jones Newspaper Fund copy editing intern at the *St. Paul Pioneer Press* in Minnesota.

Moriah Balingit, fall 2007 Louis Ingelhart Journalism Intern, will graduate this term from the University of Oregon with a bachelor of science in journalism. She has worked for her college newspaper, the nationally recognized *Oregon Daily Emerald*, covering the university's administration, higher education policy and issues of diversity on campus. She has also interned at *The Sacramento Bee*, *The Oregonian* and *The Spokesman-Review*. She covered Internet issues, libel, confidentiality and privacy for the *Report*.

Maggie Beckwith, fall 2007 Scripps-Howard Foundation Journalism Intern, graduated in May from Syracuse University with a dual degree in newspaper journalism and history. While at SU, she regularly contributed to the student newspaper, *The Daily Orange*, and spent a semester as a copy editor. She interned at *The Post-Standard* and wrote for community newspapers in Central New York and Northeast Ohio. Maggie covered high school censorship for the *Report*.

Casey Wooten, fall 2007 Scripps Howard Foundation Journalism Intern, graduated from the University of Houston in May 2007, where he double-majored in journalism and political science. While in college, Wooten worked at *The Daily Cougar* as a copy editor, senior staff writer and finally as the opinion editor. Over the summer of 2007, Wooten was the editorial intern at the *Houston Business Journal*. He covered college censorship for the *Report*.



A farewell …

As many *Report* readers know, at the end of 2007 I am leaving the Student Press Law Center to become the Knight Chair in Scholastic Journalism in the School of Journalism and Mass Communication at Kent State University. After 22 years as executive director, I can say what a wonderful experience this has been.

Photo courtesy of Mark Goodman

Mark Goodman

As the students and advisers we assist know, no work is more satisfying than defending the First Amendment. Helping young Americans understand, appreciate and practice press freedom has been the SPLC's mission since 1974. And while I may have been the face and name most often associated with that mission, our dedicated, hard-working staff, interns and board of directors are what make our work succeed. I thank them all for their enthusiasm and support.

Beyond those on the inside, many others have been crucial to the Center achieving its goals. All the national, regional and state scholastic and collegiate press organizations that allowed us to present at their conferences or distributed our materials helped our cause. And every attorney who agreed to provide *pro bono* representation to a student journalist in need did so, too. I owe them my thanks.

Of course, it is only because of our funders — the foundations, corporations and individuals — that the SPLC exists and thrives today. There is no organization that does a better job of stretching your dollars to have the greatest impact. I hope that all *Report* readers, like me, will continue to make the SPLC part of your annual giving to allow this work to continue for many more years.

And finally, I have to thank the people who inspired me every day of these last 22 years: the student journalists and advisers from coast to coast who are on the front lines of fighting to ensure that all voices are heard. I know the future of this nation, and of the First Amendment, is in good hands.

— Mark Goodman, Executive Director

… and a new beginning

Frank Daniel LoMonte will be the Student Press Law Center's next executive director, officially joining the SPLC on Jan. 2, 2008. Currently he is an associate attorney with Sutherland Asbill & Brennan LLP, Atlanta, where he has had a diverse commercial practice focusing on energy and telecommunications litigation.

Prior to joining that firm in 2003, LoMonte was a law clerk at the 11th U.S. Circuit Court of Appeals and for the U.S. District Court for the Northern District of Georgia. LoMonte also has more than 12 years experience as a journalist, including serving two years as a state capitol reporter for the *Florida Times-Union*, nine years as bureau chief for the Morris News Service in Atlanta, and two years as Washington correspondent for Morris.

"The board of directors of the SPLC enthusiastically welcomes Frank LoMonte to the organization. His strong credentials — both legal and journalistic — made him a compelling candidate to lead the SPLC, and his passion for our cause impressed us as just the right combination of qualifications we sought," said Rosalind Stark, board chair.

Photo courtesy of Frank LoMonte

Frank Daniel LoMonte

Since early 2005, LoMonte has been a member of the SPLC's Attorney Referral Network. He also is a member of the State Bar of Georgia and holds memberships on the state legal committee of the ACLU of Georgia, Georgia First Amendment Foundation, American Constitution Society and the American Bar Association. He also is an active volunteer with the Atlanta Bar Asylum Project and Atlanta Legal Aid.

"I am tremendously honored and excited to be succeeding Mark Goodman, who is rightfully one of the most respected voices in media law in this country," LoMonte said. "Mark has established SPLC as a leading voice against censorship and in favor of open government, and I intend to work with SPLC's friends in law, education, and the media to bring SPLC's message and services to an even wider audience."

Editors under fire

By Casey Wooten

Imagine you are editor in chief of your college newspaper. Like any day, you walk into your office to check your voice mail, and it is full of angry messages. You check your e-mail. It is loaded with posts from students, faculty and administrators who want you fired.

Then, one of your staffers comes into the office. The local television station wants to ask you some questions about what ran in yesterday's edition.

When criticism and scrutiny hit the newsroom, it is the editor who absorbs much of the flak. Keeping a cool head — and having a little media savvy — is important when hoards of protesters are calling for your removal, collegiate press experts say. But having a good understanding of school speech policies, your publication board's bylaws and the law might help more when fighting to keep your job.

Under the microscope

By any account, Mark Rowan has had a tough year as editor of *The Recorder*, Central Connecticut State University's student-run newspaper. In February, the newspaper drew national attention when it ran a satirical column titled "Rape only hurts if you fight it." The day the article ran, the campus erupted in protest, with several groups calling for Rowan's removal.

The newspaper's editorial board fired the author — who also was the opinion editor — but the move was not enough to prevent the school's president from organizing a task force to review *The Recorder's* editorial policies.

"It was definitely weird. Some people were trying to say, 'Oh you wanted all the attention to just get in the spotlight,'" Rowan said. "It was weird finding myself in that place. You turn on the news and they are talking about you, news stations are calling you up. It was a very weird experience."

In an interview with CNN, Rowan said that running the column was a mistake.

Despite calls for Rowan's removal, President Jack Miller promised to respect the newspaper's First Amendment rights throughout the inquiry. Two months after the article ran, the task force recommended *The Recorder* hire a full-time media adviser and that Central Connecticut create a journalism major to provide more training for *Recorder* staff.

Media organizations were back again outside *The Recorder's* offices in September, after the paper published a cartoon depicting two characters conversing about locking a "14-year-old Latino girl" in a closet and urinating on her.

The cartoon was part of an ongoing series called "Polydongs: based on true idiots." At the bottom of the strip, a disclaimer read: "*The Recorder* does not support the kidnapping of (and subsequent urinating on) children of any age or ethnicity."

The disclaimer proved ineffective, and the following Friday several student groups organized a protest on campus, again calling for Rowan's removal.

After the incident in February, *The Recorder* had revamped how it handled potentially controversial material, which included having it reviewed by the all-student editorial board prior to publication. Rowan defended the editorial board's decision to run the September cartoon, saying board members agreed it was no more offensive than what students would see on an episode of "South Park."

Miller publicly chastised Rowan and *The Recorder*, but reminded the public of the newspaper's protections under the First Amendment.

"I share the concerns of my Latin-American colleagues and students and others for the hurt inflicted by [Rowan's] decision to run this offensive cartoon," Miller said in a statement posted on the school's Web site. "We learned from the work of the Task Force on Journalistic Integrity that there are clear limits about what a state-supported public university can do in response to such actions."

Both incidents brought unwanted attention to the university and *The Recorder*. Rowan said it took a while to get used to speaking to the media. In the February incident, Rowan said he was blindsided by the ordeal and was not able to offer any words of wisdom to the staff. All he told them was to be careful when speaking about the controversy.

"At least the first time, in February, I was just as shocked and unprepared as everyone else in the newsroom, so I wasn't really in any position to give any speeches about what to expect or anything like that," Rowan said. "Obviously there was a heightened sense to be careful of who you are talking to and what you are saying to them, because, who knows how it can be taken, especially when we were under the microscope by the national and local media."

Being at the center of a big story was an odd feeling, Rowan said. For editors who

find themselves in his position, Rowan advises that they make sure they get their argument across to reporters in a few concise sentences.

"For someone who is speaking to a reporter in front of a camera, make sure that the things that are most important to them when dealing with the controversy are the things that come across in the interview the most," Rowan said.

"All journalists do it, they'll have a 10- or 15-minute interview and end up only using two or three sentences," Rowan said. "I think we sort of, as student journalists, take that for granted and don't really realize what kind of effect that has on people — 'Oh, is that the most important thing I was trying to get across?'"

Battling boards, bylaws

Rowan was fortunate that his school's president recognized the newspaper's First Amendment protections.

But when editors must fight for their jobs, they should be sure they understand the bylaws under which their publications operate.

At a public university, the organization of a student paper's governing body can vary widely, but often there is a board — generally composed of both school officials and students — that creates bylaws and oversees all student media, including the student-run newspaper, television or radio station. At Central Connecticut it is called the Student Media Board.

Despite the calls for Rowan to be fired, he was insulated by the board's bylaws from punishment for speech protected by the First Amendment.

"Editors and managers of student publications and student media shall be protected from suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy and content," the board's constitution said.

Rowan said the only body with the power to remove *The Recorder's* EIC is the all-student editorial board.

Boards affiliated with a public university generally cannot remove an editor based on protected speech but can fire editors who fail to perform their duties, said Lance Speere, former president of College Media Advisers.

"It's going to depend upon the operating papers for each student media organization," said Speere, who also is student publications director at Southern Illinois University at Carbondale. Speere said legitimate reasons to remove an editor might include failing to meet deadlines or embezzling funds.

Some content might not be protected, however. It is uncertain whether an editor can legally be removed, for example, for publishing defamatory material, said Mike Hiestand, legal consultant for the Student Press Law Center.

"Because defamation is not protected speech, I don't know whether there would be a First Amendment violation for removing an editor, especially if there were more than a single instance," Hiestand said, noting that the issue has never been legally tested.

In place of removing an editor outright, some boards or student governments might try to cut funding from the newspaper as punishment for running a controversial piece. It is important to remember, Speere said, that money from the university cannot be taken away based on protected speech.

"There is enough case law that says absolutely no one can start tampering with fees because of the content," Speere said.

Controversy in Colorado

Despite the protections afforded public school student journalists, some boards – either pressured by administrators or the public – still entertain the idea of ousting an editor.

The latest high-profile battle between an editor and a publications board was at Colorado State University's flagship Fort Collins campus. In September, *The Rocky Mountain Collegian* published a four-word editorial — "Taser This, Fuck Bush" — several weeks after a University of Florida student, Andrew Meyer, was tasered by campus police at a John Kerry speech on the Gainesville, Fla., campus.

Editor in Chief David McSwane said the editorial was meant to raise awareness about freedom of speech on college campuses. Critics saw it as an attempt to blame the president for the tasering incident in Florida, or an attempt by McSwane to grab headlines.

The editorial drew national attention and was the subject of tirades from several television pundits. McSwane became the target of protests from groups on and off campus. CSU's College Republicans gathered some 500 signatures on a petition calling for his dismissal.

In the following weeks, Colorado State's Board of Student Communications held two meetings to decide whether to punish the newspaper for running the article, potentially by removing McSwane.

The board's bylaws posed a challenge to those trying to predict whether McSwane would keep his job. One section stated the school could not ban speech solely because some found it "distasteful" or "unpleasant" and could not punish the publication for occasional use of "four-letter words" in publications. Yet, another section stated that "profane or vulgar words are not acceptable in opinion writing."

The board decided not to remove McSwane. Instead the board issued a statement admonishing him for his decision to run the editorial, calling it "unethical" and "unprofessional," yet acknowledging his right to print it.

"By definition, the September 21 editorial was an expression of opinion, which we regard as protected by the First Amendment," the statement said.

But that was not the end of the matter.

Shortly after the uproar over the editorial at CSU died down, Jim Landers, then-interim president of the school's publications board, proposed a change in its bylaws that would give the board the authority to punish the use of "indecent, vulgar or so called 'four-letter' words in student publications."

The change would have made it easier for the board to punish *The Collegian* for editorials like the Sept. 21 piece. Landers' justification was that, because the board considers itself publisher of *The Collegian*, it has ultimate authority over the paper.

But unlike a private publisher, the board at CSU includes faculty members — government employees — and therefore is an arm of the university itself, said Hiestand. Hiestand said regardless of any bylaws the board might have had, it still would have violated McSwane's First Amendment rights by punishing or removing him for running the editorial.

The board was scheduled to vote on the proposed change in December. But about two weeks before the meeting, Landers withdrew the proposal and resigned in protest. Landers called the EIC of *The Collegian* the *de facto* publisher, and said he found that unacceptable.

Private and independent

Editors at private universities have more limited options when defending themselves. Administrators at private institutions are not bound by the same Constitutional limits as their public counterparts.

Some private schools voluntarily promise to give students the same rights as they would have at public institutions. And in California, the 1992 Leonard Law grants free-expression rights to all student publications, whether at public or private colleges.

But editors at many private schools have little or no legal protection from being removed based on content.

The lack of First Amendment protections does not mean all student newspapers operate under the thumb of their administrators, and many schools are hesitant to threaten an editor's job.

"The more enlightened private schools would tend to limit it to acts of omission, where they just don't do their job," said James Tidwell, chairman of the department of journalism at Eastern Illinois University.

To shelter themselves from administrative control, some newspapers become independent, converting to private corporations. At Vanderbilt University, *The Vanderbilt Hustler* celebrated its 40th year of independence from the university last fall. *The Hustler* rents space at Vanderbilt's student center, but that is about as close as Vanderbilt Student Communications Inc. gets to affiliating itself with the school.

The company's board comprises three faculty members and five students. Faculty members serve a three-year term, with the board inviting a replacement member each year. The board is the entity that selects, or removes, the editor of *The Hustler*.

Like most incorporated college papers, the board's bylaws generally place editorial control of the newspaper under the purview of the editor in chief, said Chris Carroll, director of student media for Vanderbilt Student Communications Inc.

Carroll said removing an editor would take a serious violation.

"I'm pretty sure the bylaws are specific as to the reasons that they can do that," Carroll said. "For the most part it's limited to a failure to perform — if there is any kind of fiscal malfeasance, and things that are outside the scope of journalism behavior, misconduct."

Most large private universities generally will encourage a free press on campus, even though they might not have an independent newspaper, Carroll said. Carroll has worked at three other schools, though Vanderbilt Student Communication is his first incorporated paper.

"The more national institutions … tend to operate more like a state school because they embrace a mindset of freedom of inquiry, they essentially have freedom of speech on campus," Carroll said.

At many well-known universities, ousting an editor for controversial speech would appear to contradict the school's position as a marketplace of ideas, Carroll said.

> *"The more national institutions ... tend to operate more like a state school because they embrace a mindset of freedom of inquiry."*
>
> **Chris Carroll**
> director of student media, Vanderbilt Student Communications Inc.

"It's counter to the notion of liberal arts education," Carroll said. "But it's also horrible public relations."

Carroll said editors are more likely to run into trouble at smaller, often religious, institutions where there are more rigid ideological standards.

Facing challenges like Rowan's or McSwane's is a trial by fire for anyone at the top spot of their publication. Balancing the media scrutiny and an often unhappy board — all while just trying to get the paper out on time — can be unnerving. But Rowan said even though at times he felt like he was in over his head, he came through the ordeal with valuable lessons learned.

"Pretty much any sort of controversy may seem like you are in this whirlwind and it's never going to end, and your journalism career is in shambles," Rowan said. "But I think anyone who handles themselves the best they can, and is willing to learn from the experience, can definitely come out of it with something that they can be proud of." ■

COLLEGE CENSORSHIP IN BRIEF

Tufts reverses panel decision requiring bylines in newspaper

MASSACHUSETTS — Tufts University's administration announced Aug. 27 it had overturned a decision banning a student journal from running unsigned editorials. In a separate statement, President Lawrence Bacow said the private school in the future will behave as though it were bound by the First Amendment.

But the university let stand the finding by the school's Committee on Student Life — composed of faculty and students — that two articles in *The Primary Source*, a conservative journal on campus, violated the school's policy against harassment.

The articles — a Christmas-carol parody, titled "O Come All Ye Black Folk," criticizing affirmative action and a mock advertisement titled "Islam, Arabic Translation: Submission" — prompted an outcry on campus. A Tufts student and the Muslim Student Association lodged complaints against the paper last spring.

The committee ruled in May that the articles constituted harassment and required that all future *Primary Source* articles carry bylines.

Primary Source editor in chief Matthew Schuster said reversing the byline requirement was "a small step in the right direction" but ignored "the most serious and troubling part of the decision."

"The dangerous precedent of labeling political speech as harassment still stands," Schuster said.

Grambling orders paper to take down story from Web site

LOUISIANA — Administrators at Grambling State University on Sept. 28 ordered the student newspaper to take down from its Web site an article and photos about an anti-racism lesson.

The Gramblinite sent a reporter and photographer to cover an event designed to teach young students about racism in the context of the Jena Six case. One of the images taken showed a girl — a student at Grambling's Alma J. Brown Elementary lab school — held up in the air with a noose placed around her neck.

De'Eric Henry, editor in chief of *The Gramblinite,* said he received a call from his news editor while driving to Dallas to cover a sports event. The news editor told him the paper's adviser had removed the photos at administrators' request. When Henry returned the next week, he put the story and all photos — except the one image of the girl and the noose — back on the newspaper's Web site.

The Gramblinite had clashed with administrators in early 2007, when former editor in chief Darryl Smith fought off the administration's attempts to institute prior review. For his efforts, Smith won the 2007 College Press Freedom Award, sponsored by the Student Press Law Center and the Associated Collegiate Press.

New president vows to keep 'hands off' restarted newspaper

MISSOURI — After a brief hiatus, Ozarks Technical Community College's student newspaper will resume publication with a promise from college president Hal Higdon to remain "hands off" regarding editorial content.

The Eagle ran into trouble in early 2006 after sending out questionnaires to six candidates — including Higdon — during the school's search for a new president. Jackie McKinsey, then president of the board of trustees, ordered the newspaper not to publish the responses.

Higdon also changed rules governing who can be on the paper's staff. Previously, students were required to be in a journalism class; today, positions are open to anyone. Higdon said the newspaper also moved from the English department to the communications department.

David Fotopulos, *The Eagle*'s faculty adviser, said he is excited about helping restart The Eagle, although he does not know if he will remain as permanent adviser.

"This year we are just going to do one [issue] in October and one in December," Fotopulos said. "We would like to see it go to a monthly publication, but that's going to depend on budget and staff."

The Eagle's $5,000 budget will be funded by the college, Higdon said.

IN THE COURTS

Ex-editors lose bid to keep suit against Kansas State alive

KANSAS — Two former Kansas State University students who sued their school over their newspaper adviser's removal lost their bid to amend their lawsuit and keep their case alive.

Kansas State removed Ron Johnson, adviser to the *Collegian* student newspaper, in 2004. Students and school officials demanded Johnson's removal after the *Collegian* failed to cover a minority-student event on campus. Johnson was removed based on a content analysis of the paper, conducted by a university administrator, which concluded that the *Collegian*'s quality was sub-par.

A three-judge panel of the 10th U.S. Circuit Court of Appeals ruled in July that because plaintiffs Katie Lane and Sarah Rice, both former *Collegian* editors, had graduated, their First Amendment claim — which sought only an injunction against the school — was moot.

The appellate court denied Lane and Rice's petition for a rehearing before the full court Aug. 20. A U.S. District Court on Dec. 7 denied the editors' request to amend their lawsuit to add a request for damages.

Case: *Lane v. Simon*, No. 04-04079 (D. Kan. dismissed as moot Dec. 7, 2007)

Suit accusing school of interfering with paper dismissed

ILLINOIS — The U.S. District Court in Chicago dismissed a suit Sept. 11 filed by two former student journalists who claimed administrators at Governors State University violated their First Amendment rights.

Former Editor in Chief Stephanie Blahut and former business director David Chambers alleged that administrators purposefully restricted their access to the *Phoenix* newsroom, refused to process orders for new equipment, reduced the newspaper's funding approved by the student government and withheld their pay.

Blahut said they might appeal and also are considering suing the school in state court for withholding their wages. A university spokeswoman said the school had no comment on the case.

Case: *Blahut v. Oden*, No. 05-04989 (N.D. Ill. dismissed Sept. 11, 2007).

Court rules against DJ fired for on-air comments about Iraq

MICHIGAN — Eastern Michigan University's radio station did not violate a former disc jockey's First Amendment rights after firing him for making controversial on-air comments, the Michigan Court of Appeals ruled Aug. 2.

After hearing the case for a second time, the appellate court affirmed the trial court's decision, siding with Arthur Timko, the station manager at WEMU-FM. Timko fired disc jockey Terry Hughes after Hughes made comments supporting the war in Iraq on air and failed to run hourly National Public Radio newscasts during his show. Neither Hughes nor Timko are EMU students.

Timko fired Hughes from the university-run radio station after listeners called in to complain about his comments, citing a failure to run the newscasts as well as a violation of the station's policy requiring on-air personnel to maintain a neutral position on controversial issues.

James Fett, Hughes' lawyer, said he will appeal to the state supreme court, and to the U.S. Supreme Court if necessary.

Case: *Hughes v. Timko*, No. 255229, 2007 WL 2214147 (Mich. App. Aug. 2, 2007).

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Papers with article on athletes' arrests taken at Shepherd U.

WEST VIRGINIA — Staff at Shepherd University's *The Picket* discovered Sept. 21 that nearly all of the paper's 2,500 issues had been taken. The staff and adviser suspect the theft was caused by a front-page article reporting the arrest of two football players on drug charges.

Three hours before the discovery, Demetrius B. Weeden, one of the players arrested, had confronted Editor in Chief Jillian Kesner about the article, Kesner said.

Weeden was angry because both players had their felony charges dropped by the local district attorney on Monday, Kesner said. *The Picket* had gone to press before the charges were dropped.

Kesner said two police officers escorted Weeden out of the newsroom. Campus police chief Grover Boyer confirmed that police were called to remove Weeden.

Weeden could not be reached for comment.

Boyer said police are investigating the theft but did not have any suspects.

Column on Jena Six might have prompted theft of 4,000 papers

MISSOURI — A column about the Jena Six case in Louisiana might have led to the theft of thousands of issues of the University of Central Missouri's *The Muleskinner*, the newspaper's managing editor said Sept. 25.

About 4,000 copies were stolen, worth about $1,000 in advertising and $775 in printing costs, said Charles Fair, the paper's faculty adviser.

The column said the six black defendants in Jena "should not be seen as heroes or even worse martyrs. They are still misguided individuals who physically harmed another human being."

Fair said most of the complaints he received about the article revolved around the idea that the writer did not give a complete description of the controversy in Jena.

Fair said several witnesses saw what looked like students loading the newspapers into vans.

Matt Vessar, the campus police detective in charge of the investigation, said he could not comment about whether police have any suspects because the investigation is ongoing.

Security cameras record 3 removing papers from stands

OHIO — Three students at Findlay University in Findlay, Ohio, were seen on campus security cameras taking stacks of issues of *The Pulse*, the university's student-run weekly newspaper, campus security and the newspaper said.

Students Kelsey Wesaw, Caitlyn Yoder and Sarah Frankart — members of the school's volleyball team — are alleged to have taken the papers in response to an article about an off-campus fight involving two other members of the team, *The Pulse* reported in its Oct. 18 issue.

Ken Walerius, director of campus security, confirmed to the Student Press Law Center that Wesaw, Yoder and Frankart were the individuals recorded removing the newspapers.

Chris Underation, *The Pulse*'s adviser, said about 600 copies were taken, costing the newspaper about $100. Underation wrote in *The Pulse*'s Oct. 11 issue that the students returned most of the issues to newspaper stands or drop-off areas three to four days after the newspapers' disappearance.

Wesaw and Yoder did not respond to e-mail messages sent to their school e-mail accounts. Frankart sent an e-mail declining to comment to the SPLC.

In the Oct. 18 issue, *The Pulse* ran a letter to the editor written by Wesaw's and Yoder's parents apologizing for their daughters' actions.

Police: Ad mocking student official likely sparked papers' theft

MISSOURI — About 1,600 copies of the Nov. 8 edition of the University of Missouri at Rolla's student newspaper were stolen, possibly in response to a mock campaign ad criticizing a member of the student government.

Chris Stryker, editor in chief of the *Missouri Miner*, said staffers noticed Nov. 12 that the distribution bins around campus were empty. Stryker said that was unusual for the weekly paper, which prints 4,000 copies a week and distributes them on Thursdays.

Stryker filed a police report Nov. 13, after he was contacted by a witness who claimed to have seen someone taking stacks of papers out of a university building. Stryker estimated that the theft cost the paper about $1,000 to $1,500, based on production costs and advertising revenue.

Bill Bleckman, director of University Police, confirmed that police were investigating the disappearance of the papers as a theft, and that the investigation was focusing on a mock campaign ad as the likely impetus for the theft. Bleckman said campus police had no suspects and had made little progress as of Dec. 3.

Most stolen copies of Nicholls State paper returned to stands

LOUISIANA — The majority of the stolen copies of Nicholls State University's student-run newspaper, *The Nicholls Worth*, were found returned to their stands around campus, Stephen Hermann, the university's director of student publications, said Nov. 14.

About 4,000 copies of the paper were taken the morning of Nov. 8, shortly after being dropped in the stands. Staffers and administrators suspect the motivation for the theft was an article reporting the arrest of a student earlier that week on rape charges.

Hermann said six individuals — four men and two women — have been identified by the school's administration in the theft, but administrators have not yet released the students' names.

Eugene Dial, vice president of student affairs and enrollment services, said his office has interviewed the students.

As of Nov. 29, Hermann said the newpaper had not yet filed a formal complaint.

School searches newsroom

Experts: State shield law should have protected *Western Oregon Journal*

By Moriah Balingit

It happened after hours, in the dark, when the reporters and editors had all gone home.

Western Oregon University computer technicians were let in to the newsroom of the student newspaper, the *Western Oregon Journal*, to look for a file containing students' confidential information that had been accidentally released on the university's public server. A day earlier, *Journal* staff member Blair Loving had inadvertently discovered it when using the public server. He made a copy and gave it to his editor, who decided to write a story about it.

Director of Computing Services Bill Kernan, who directed the search, said because the newsroom is university property, officials were not required to seek permission or inform the news staff of the search.

Kernan said in an e-mail interview that the search was initiated because "We asked for the illegally copied files to be returned to us immediately — they were not."

The technicians did not find or confiscate anything. But in their wake they left a lot of anger and uncertainty as to whether college newsrooms could be protected from being searched by campus authorities.

"The fact that they did it in the middle of the night is very disconcerting," said Loving.

In addition, Loving was nearly expelled from school for violating the university's computer use policy, which prohibits "accessing clearly confidential files that may be inadvertently publicly readable." Adviser Susan Wickstrom also was dismissed because the university said she mishandled confidential information and failed to inform the students about the university computer policy.

"It's just shocking that this would happen in Oregon," Wickstrom said.

Wickstrom's dismissal is being investigated by College Media Advisers. Loving's disciplinary sanctions were lifted after he appealed, but the infraction will remain on his record.

Oregon's shield law

Oregon has the broadest state shield law in the United States, said Duane Bosworth, a Portland, Ore.-based attorney who specializes in media law. The law protects journalists from compelled disclosure of news sources and unpublished or unbroadcast material in almost all circumstances. It also protects newsrooms from being "subject to a search by a legislative, executive or judicial officer or body, or any other authority having power to compel the production of evidence, by search warrant or otherwise."

Opinions differ on whether the law can be applied to college newsrooms, especially if the university or college is providing all or part of the newspaper's funding or if the newspaper is operating on university prem-

See **Western Oregon**, Page 10

COLLEGE CENSORSHIP IN BRIEF

From **College briefs**, Page 7

LEGISLATION

State schools in Calif. must release salary info under new law

CALIFORNIA — Gov. Arnold Schwarzenegger (R) signed into law Oct. 12 a bill designed to open to public scrutiny the way state universities set compensation packages for their top officials.

The Higher Education Governance Accountability Act, introduced by Senator Leland Yee (D-San Francisco/San Mateo), will require executive payment packages at the California State University system and the University of California system to be voted on in an open session by their respective boards of regents. The bill passed unanimously in both the California Senate and the state assembly.

Cite: Higher Education Governance Accountability Act, S.B. 190, 2007-08 Session (Calif. 2007) (enacted).

Anti-*Hosty* law grants new protections to student journalists

ILLINOIS — A new set of protections for student media at state colleges takes effect in June after gaining final approval Aug. 31from Gov. Rod Blagojevich (D). The College Campus Press Act declares any student media outlet at a public college to be "a public forum for expression by the student journalists and editors." The law also prohibits school officials from exercising prior review.

Illinois Sen. Susan Garrett (D-Lake Forest) introduced the bill in early February — with assistance from the American Civil Liberties Union — in response to a 2005 ruling by the 7th U.S. Circuit Court of Appeals. That decision, *Hosty v. Carter*, said college-sponsored student publications that are not designated as public forums can be controlled by school administrators in the same way high school officials can control student media on their campuses.

The new law effectively nullifies the *Hosty* ruling in Illinois for student media. The decision remains in force in Indiana and Wisconsin, the other two states that make up the 7th Circuit.

The Illinois law makes students responsible for all content decisions and gives state schools immunity from being sued over material printed in campus media. It also protects media advisers from being fired, punished or retaliated against "for refusing to suppress protected free expression rights."

Cite: College Campus Press Act, 110 Ill. Comp. Stat. 13 (2007).

From **Western Oregon**, Page 9

ises with university equipment.

Judd Nelson, the adviser to Portland State University student paper the *Daily Vanguard*, said that because the newspaper he advises operates on campus property, he believes authorities can search it without permission.

"In our case, the university owns the property and we don't pay rent, so it is their property," he said.

Still, Nelson said that even though Western Oregon University authorities might be able to search a newsroom without permission, they should have at least told the staff of the *Journal* beforehand.

"My guess is that they probably can," he said. "But I think it's ridiculous that they did. … It's downright sneaky and unnecessary."

Kyu Ho Youm, a professor of journalism at the University of Oregon who specializes in communication law, said whether university authorities can search a newsroom might depend on the relationship between the newspaper and the university.

"It has a lot to do with what kind of arrangement is defined by tradition and by practice between the campus and the university authority," he said.

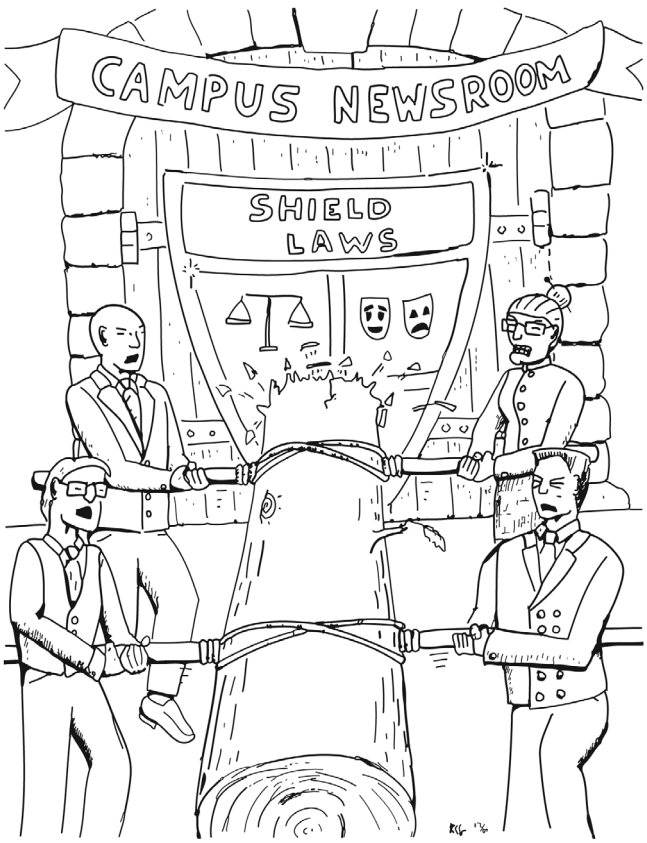
But he also agreed with Nelson that a newsroom search can have a "chilling effect," and that regardless of a university's authority to search a newsroom, university officials should consider the grave consequences to students' freedom of the press.

"The university administrators should give the students the benefit of the doubt instead of sending someone to search the newsroom without any sort of warning," he said. "That is alarming."

Who owns the newsroom?

The relationship between the university and the newspaper has been in dispute. The newspaper is funded with student funds and advertising revenue; the university pays for a faculty adviser. But when editor in chief Gerry Blakney changed the masthead in October to "Student owned and operated, reporting the unabashed truth," it prompted Vice President for Student Affairs Gary Dukes to e-mail the current newspaper adviser and demand that the statement be removed.

"(The newspaper) isn't actually student owned," he said in the e-mail. "That part of the statement needs to be changed. Student fees go to the operation of the paper, which makes it university owned … They could say student funded or student supported … both of these would be true."



Blakney said the newspaper has successfully resisted pressure the administration has put on the paper's current adviser to censor stories, but that the paper's editorial independence remains precarious.

"This university has … a serious history of taking over student rights and abusing student rights," he said. "They've been very good at squelching any student response to it."

Kernan said he believed he could search the newsroom without permission because the technicians searched university-owned computers and because the newsroom was on "university premises."

But Bosworth, the media law attorney, challenged the notion that the university ownership of the newsroom exempted the newspaper from the shield law.

"I have no question that the shield law applies," he said. "The statute does not itself allow for any exception that arises out of the fact that it's the school or student publication that's funded by the school."

The only exception the statute provides is if a crime is actually being committed on the premises of a newsroom. But Bosworth said that violating a school policy does not constitute a crime.

"In this case, if I had to guess, the actions were taken without considering the media shield law," he said. "Had there been a subpoena there would have been time to decide whether the statute applied. Instead, they just walked in."

Mike Hiestand, an attorney and legal consultant to the Student Press Law Center agrees.

"There's no doubt the law protects student media. Keep in mind that the federal newsroom search law and many of the state laws were passed as a direct result of a 1978 Supreme Court ruling that involved law enforcement officials searching Stanford University's student newspaper offices," Hiestand said. "These laws exist precisely to prevent officials at Western Oregon from doing what they did at Stanford nearly thirty years ago."

Bosworth also said college newsrooms need to be guarded against such searches in order to maintain their editorial independence.

"The only way that a newsroom really functions properly is when there is confidence that what happens in the newsroom can stay in the newsroom," he said. "There must be freedom within the newsroom to make decisions without someone looking over your shoulder."

However, Loving said he believes the university will not repeat its mistake.

"I think they would make different choices now in this situation," he said. "They understand now that they have the potential to create a giant issue."

He added that he doesn't believe the university's attitude towards the newspaper has diminished its freedom of the press.

"We're really not afraid of the administration," he said. ■

Shield law may leave gap

Federal protections for reporters could exclude unpaid student writers

By Moriah Balingit

For many journalists, the passage of the Free Flow of Information Act through the House of Representatives was an important step in creating the first federal shield law, which would protect journalists from being compelled by federal prosecutors to disclose their sources and other unpublished material in most circumstances.

But many student journalists may find themselves left out in the cold. The bill's current definition of who would be covered by the law includes an income requirement. Specifically, it defines a "covered person" as a journalist who works "for a substantial portion of the person's livelihood or for substantial financial gain."

Student journalists, who are frequently either unpaid or only nominally paid, might not be covered by the law, which concerns some First Amendment advocates.

"I am worried about any definition that has the potential to exclude student journalists," said Kevin Goldberg , the legal counsel for the American Society of Newspaper Editors.

Many say the income requirement was included to alleviate the fear that amateur bloggers or non-journalists would take advantage of the legislation to avoid testifying.

"The fear is that the common citizen will wrap themselves in the cloak of journalism by writing something, anything, in their blog and claiming reporter's privilege as a result," said Goldberg.

In the end, the push to create a definition that would exclude non-journalists led to the income requirement.

"They were trying to come up with a workable definition of journalists … and not to let perfection get in the way of progress," said Matt Lloyd , the spokesman for Congressman Mike Pence (R-Ind.) who co-authored the legislation. "There was concern about bloggers."

But Goldberg said there was little or no discussion about the definition's ramifications for student journalists.

"People had the right intentions but didn't think of how it would affect this one subset of the (journalism) community," he said.

Laura Rychak, a policy expert with the Newspaper Association of America, echoed this sentiment.

"The House members were concerned about creating a workable definition that wasn't too broad and covered legitimate journalists," she said.

Currently, the Senate's version of the bill, which passed the Senate Judiciary Committee in October and is awaiting action on the Senate floor, includes no income requirement. But Goldberg said the final Senate bill likely will include some sort of income qualification.

Student journalists who are unpaid likely would not be covered by the legislation because of the income requirement. But those who are paid for their work may qualify for protection, even if the compensation is only nominal, as is the case for many student journalists.

"For college students that don't make very much, any compensation can be considered a substantial financial gain," Goldberg said.

Rychak said that courts will likely interpret the income requirement to include all paid student journalists.

"A paid student journalist could have a strong argument that they should be covered under the financial gain or livelihood requirement," she said.

Though the possibility of student journalists being subpoenaed by a federal prosecutor seems remote, Goldberg said the situation could arise with federal prosecutors issuing subpoenas to student journalists covering anti-war protests on campus.

This would not be unprecedented. Though he was not a student, 24-year-old video blogger Josh Wolf was subpoenaed for video footage he had of a protest that turned violent against a Group of Eight summit. When he refused to turn over the tapes, he was charged with contempt and jailed.

"Take out video blogger and insert student journalist and you have your situation ready-made," he said. "He was covering an event where college-aged or college students were protesting."

Goldberg said the income requirement will not only put some student journalists at risk but also set a bad precedent.

"It's a bad example to set to the next generation of journalists to say, 'We're going to exclude you,'" he said. "It's obvious that there is an importance in protecting college journalism and high school journalism, and it's unfair that it's being lost in the shuffle of getting this bill passed." ■

Cite: Free Flow of Information Act, H.R. 2102, 110th Congress (2007); S. 2035, 110th Congress (2007).

Walking a fine (color) line

Students trying to write about race must struggle to address sensitive topics without triggering censorship

By Maggie Beckwith

Only a few hours after the *Little Hawk* staff distributed its October edition — with a cover story about students' attitudes toward race, including a colorful pie chart indicating 13 percent of students polled viewed blacks unfavorably and 2 percent viewed whites unfavorably — the principal pulled all remaining copies, saying the issue caused a disruption.

Mark Hanson, principal of Iowa City High School, said three separate incidents between black and white students broke out before he made his decision to collect the newspapers.

In each verbal altercation, the students were shouting about racism, he said. Teachers were able to separate the students before it escalated into a fight.

"This was in the name of school safety," Hanson said, explaining that he has never pulled copies of the paper before and does not plan to change any policies regarding student publications.

The paper's executive editor, Adam Sullivan, says the principal's actions constituted censorship.

It is a pattern that student journalists around the country are running into. Articles involving race relations — racism, immigration, discrimination — touch on topics that are important but often attract negative and critical reactions from the community and student body — and in some circumstances, a backlash from the administration.

There is no magic test to determine if an article goes too far. Administrators who censor articles about race, fearful they will increase racial tensions or upset a particular group, usually claim they are trying to prevent a material disruption.

For student expression that is not "school sponsored," the 1969 Supreme Court decision in *Tinker v. Des Moines Independent Community School District* establishes that an administrator cannot censor student speech unless the school can show it would cause a "material and substantial disruption" of normal school activities or violate the rights of others.

School newspapers often operate under the more restrictive standards set by the U.S. Supreme Court's 1988 ruling in *Hazelwood v. Kuhlmeier*, which gave administrators more control over school-sponsored outlets. But several states, including Iowa, have laws guaranteeing *Tinker*-like protections for all student expression, school-sponsored or not.

Material disruption

In interpreting the *Tinker* standard, lower courts have generally said that a material and substantial disruption is a physical event that significantly interferes with the normal operation of the school, such as a walk-out, a riot or a sit-in, said Adam Goldstein, the Student Press Law Center's attorney advocate.

Goldstein said there are not many examples of student journalists being censored by administrators based on the material disruption standard, but many are connected to racially intolerant speech.

But a discussion about race alone will not cause a disruption.

There is no absolute test to tell what will cause a disruption, said Robert O'Neil, founding director of The Thomas Jefferson Center for the Protection of Free Expression. Without a blanket answer to what will cause a disruption, schools are left to decide on a case-to-case basis.

Administrators must rely on the history of the school, including racial problems in the past, and how similar scenarios played out in other schools, he said.

O'Neil said schools do not meet the standards for censoring speech simply because students are upset.

In the City High incident, Sullivan claims that Hanson's actions were "illegal."

Courtesy of the *Little Hawk*
Iowa City High School's principal collected all remaining copies of an issue of the *Little Hawk* featuring a front-page survey of students' racial attitudes. The principal said several fights broke out over the survey, which he believed created a disruption that justified taking the papers. The paper's executive editor called the move censorship.

Hanson said the fights did cause a disruption and that his actions were "absolutely not" illegal.

"There was a disruption at the school and I needed to find the source of the problem," he said.

Goldstein said one fight is not a substantial disruption. But several fights that cannot be stopped in any other way might be.

"It depends on what else the school did to prevent the fights," he said.

The First Amendment prohibits a "heckler's veto" — when an individual reaction to someone exercising a legal right causes the government, law enforcement or public schools to silence the speaker rather than punish the person causing the disruption.

Goldstein said Hanson's decision is a close call.

"On the one hand, schools aren't required to wait for a riot before preventing one," he said. "On the other hand, a verbal confrontation is just two students disagreeing, and a disagreement is not a disruption."

Sullivan said the survey and editorial discussing the results were meant to create discussion about racism.

"We wanted to show everybody it's not okay to sweep this under the rug," he said. "Racism is one of those subjects you don't touch. The administration wants to ignore the white elephant in the corner … and pretend that everything is great."

Filling a need

When a Nebraska student newspaper published an issue in April with a series of stories focusing on the use of the "n-word," the school district fielded angry complaints from parents, temporarily removed the principal and considered changes to the student publication policy.

Omaha Public Schools launched an investigation to determine how several articles and cartoons, which used the full spelling of the "n-word" in both its "er" and "a" endings, made it into the student publication.

Then-Editor in chief Sarah Swift maintains that the article addressed an important issue facing the students.

The *Benson Gazette's* "n-word" series came out months after the Michael Richards incident, where the former *Seinfeld* star used the "n-word" six times in response to a heckler in the audience.

The issue was distributed only a few days after radio talk show host Don Imus was criticized for using racial language by describing the Rutgers University women's basketball team as "nappy-headed hos."

Swift said these incidents put racial speech fresh in the students' minds and that it was important to discuss them with the student body.

> *"The way students are, you'll see articles scattered on the floor because they are sick of reading about the football star. They want to be engaged about something that actually matters to them."*
>
> **Sarah Swift**
> *Benson Gazette* editor in chief

After the issue came out on April 10, the school district placed Benson High School's principal, Lisa Dale — who reviewed and approved the articles before publication — on administrative leave, but reinstated her three days later. She could not be reached for comment.

The Omaha public school district, in response to complaints, said the "n-word" articles did not belong in the student newspaper, issuing a press release stating that they have "never condoned and cannot support the actions which recently resulted in the inappropriate articles published."

While the district might have considered the articles "inappropriate," a school cannot legally censor student speech or publications just because some people find the words offensive.

O'Neil, director of The Thomas Jefferson Center, said that even with hate speech codes, "non-threatening, offending speech is seldom subject to sanctions."

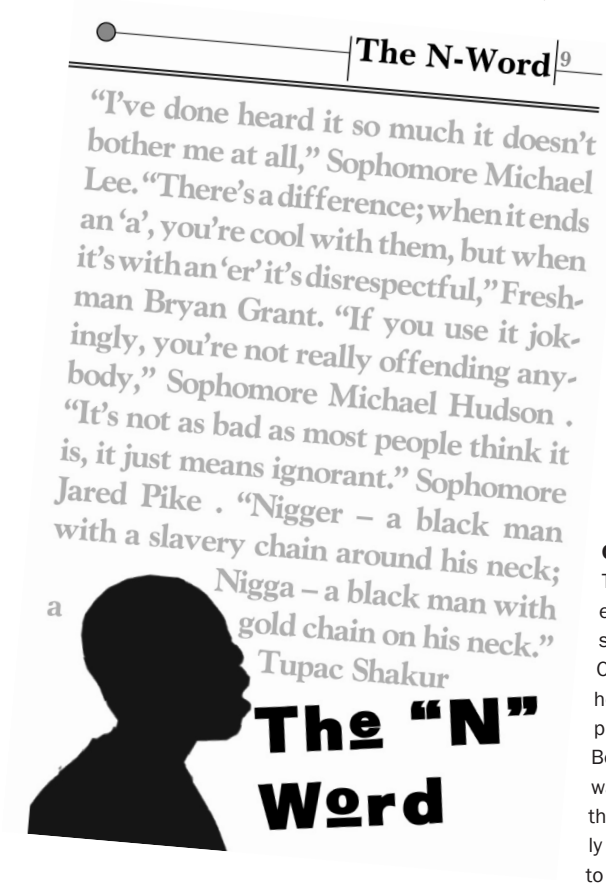
In the Benson case, O'Neil said discussing the "n-word" in the newspaper and printing the full version of the word would probably not be considered "materially disruptive."

"There is a tendency to overreact," he said.

The investigation — launched by the Omaha Public Schools shortly after the issue circulated — found that the staff did nothing wrong. Parents and community members stopped complaining and the staff continues to produce the newspaper without any policy changes.

"We are moving on," said Luanne Nelson, school district spokeswomen. "There's been no policy changes and all we are asking is that students be sensitive to race issues."

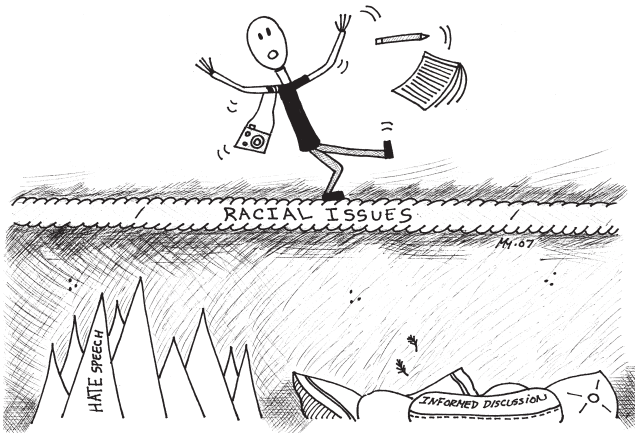
Goldstein said an article in a student newspaper using the full "n-word" has potential to meet the standards of a material and substantial disruption, but the law requires more than mere "potential" to justify


The N-Word 9

"I've done heard it so much it doesn't bother me at all," Sophomore Michael Lee. "There's a difference; when it ends an 'a', you're cool with them, but when it's with an 'er' it's disrespectful," Freshman Bryan Grant. "If you use it jokingly, you're not really offending anybody," Sophomore Michael Hudson . "It's not as bad as most people think it is, it just means ignorant." Sophomore Jared Pike . "Nigger – a black man with a slavery chain around his neck; a Nigga – a black man with gold chain on his neck." Tupac Shakur

The "N" Word

Courtesy of the *Benson Gazette*
This controversial feature package exploring the use of the "n-word" sparked an investigation by the Omaha public school district into how and why administrators approved publication of the feature. Benson High School's principal was put on administrative leave for three days, but the district ultimately did not make any formal changes to its publications policies.



censorship.

"Students don't write about controversial subjects because they want to cause a controversy," he said. "They are writing about what is actually going on, whether that be racial tension or the use of the 'n-word.'"

The school's actions, including the subsequent investigation, constitute censorship, Goldstein said.

"Actions designed to discourage the next student who wants to speak is still censorship," he said. "The schools don't seem to get that there's nothing wrong with saying 'I don't like this,' but there is a problem with saying 'I'm going to investigate this.'"

Despite some negative reactions, the student staffers stand by their decision to run the articles.

"We went to a school where you heard it every day," Swift said. "We wanted to focus on when did the word start getting popular and why do people use it."

The "n-word" series featured an article called "Rules of a Word" by Jeremy Bagby, two editorial cartoons, a student panel Q&A, surveys about the word's usage, an opinion article and several student quotes with pictures.

Bagby's article explained that the word comes with a set of unwritten rules, the first of which is that "no person of any other race can use it and the word can only be used with an 'a' ending, not an 'er' ending."

Bagby, a black student, said he was assigned the article and at first did not have much invested it in.

"After reviewing the subject matter and writing the story a little, I started to get into it," he said. "What I was really hoping to accomplish was to get a grasp on my feeling about the word."

Swift said the staff's intent was not to cause controversy. Instead, she said the staff wanted the articles to spark a dialogue within the student body.

"The way students are, you'll see articles scattered on the floor because they are sick of reading about the football star," she said. "They want to be engaged about something that actually matters to them."

The incite provision

Even in states with anti-*Hazelwood* laws, students can face roadblocks when trying to publish articles that discuss racial issues.

Andrew Smith, then a senior at Novato High School in California, learned that firsthand after he published a column, "Immigration," expressing his desire for stricter immigration enforcement in the fall of 2001.

His article suggested, "if a person looks suspicious," immigration officials should "just stop them and ask a few questions, and if they answer 'que?', detain them and see if they are legal."

In response, some students walked out of school and protesters complained to Principal Lisa Schwartz. She collected the remaining copies and sent a letter home to parents saying the article should never have been published, according to court documents.

Schwartz required students to submit all future issues of *The Buzz* to her for review

When Smith tried to publish his follow up piece, "Reverse Racism," in February 2002, Schwartz suggested the students write a counterpoint piece to accompany Smith's article, according to court records. Smith's new opinion piece criticized affirmative action and politically correct names for minorities.

When administrators refused to publish his article, Smith teamed up with Pacific Legal Foundation, which filed a lawsuit on his behalf in May 2002 to have "Reverse Racism" published. The judge decided not to force administrators to run the article because they agreed to publish it in the next issue. It ran in the May 14, 2002, issue.

Smith continued to fight in court, arguing that the measures school officials took to delay publication were unconstitutional.

A California appellate court ruled for Smith in May. The court ruled "speech that seeks to communicate ideas, even in a provocative manner, may not be prohibited merely because of the disruption it may cause due to reactions by the speech's audience."

In September, the California Supreme Court declined to review the case.

Smith's case is only the third on record addressing the California free speech statute, and it is the first one to look at the "incite" provision, said Paul Beard, his lawyer.

"Whenever free speech issues come up, this will set an important precedent for trial courts and school districts," he said. "It will offer a high level of protection to free speech."

The "incite" provision refers to a section of the California Student Free Expression Law. Besides speech that is "obscene, libelous or slanderous," officials can restrict student speech that "incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations,

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Some officials silence 'Jena Six' demonstrations

T-shirts banned in several schools, sparking federal suit in Tennessee

By Maggie Beckwith

Several students around the country felt the chill of censorship as they commented on or showed their support for the "Jena Six" — the name given to the six black students in Louisiana who activists point to as symbols of racial injustice in the legal system.

Administrators at high schools and colleges banned T-shirts and photos with messages about the Jena Six, and at least one newspaper theft is believed to have occurred in response to a column written about the students.

One of the censorship incidents resulted in a federal lawsuit, filed in early October in Tennessee.

Dani Super, 16, filed a lawsuit alleging a violation of her First Amendment rights against the Rutherford County Board of Education and Smyrna High School's assistant principal, after administrators told her she was not allowed to wear her "Free the Jena Six" T-shirt to school.

Super wore her shirt on Sept. 20, a day of national support for the Jena Six. Leaders in the black community, including the Revs. Al Sharpton and Jesse Jackson, planned rallies and marches to coincide with a hearing for one of the students. The Jena Six all were originally charged with attempted murder for attacking a white student who was knocked unconscious and spent three hours in a hospital. Many believe the charges were excessive and based on the students' race.

Smyrna's principal was only trying to prevent a disruption, said James Evans, Rutherford County Schools' spokesman. Before school started on Sept. 20, a group of students were making racial slurs in the hallway and the assistant principal had to break it up, Evans said.

"Tensions were high and we made the decision that students wearing shirts that expressed a clear opinion, like 'Free the Jena Six,' wouldn't be able to wear those," Evans said.

The Supers' attorney, W. Alan Alder, is a civil rights attorney in Nashville. He said the school does not have the authority to censor shirts based only on a fear that something might happen.

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or the substantial disruption of the orderly operation of the school."

The school argued that Smith's article was likely to incite disruption of the orderly operation of the school.

Confederate flags

One area where schools have been able to use the material disruption provision in *Tinker* is to prohibit Confederate flag symbols on campus.

"The courts have gone different ways," Goldstein said. "Part of that is that the Confederate flag means different things to different people in different parts of the country. The reaction to a Confederate flag in Maine is different [than]… in Georgia."

The ambiguity of the symbol makes it hard to anticipate the reaction, he said.

In order to legally censor a Confederate flag image, school officials would have to show it is a symbol likely to cause a disruption based on the history of the school and the region.

For example, a federal judge threw out a case last August filed by three students in Missouri against Farmington High School after they were punished or told to remove clothing with a Confederate flag.

U.S. District Judge Jean C. Hamilton ruled that because of racially motivated incidents at the school over the previous year, school officials had reason to believe the Confederate flag clothing would cause a material disruption by increasing racial tensions. The case is still in the appeals process.

Avoiding problems

When covering racial issues, student journalists can avoid problems by exercising sensitivity, O'Neil said.

"Put yourself in the position of the person or group you're writing about and consider how it might affect you," he said.

O'Neil said students also should watch out for generalizations, especially in cartoons.

"This includes making sure not to engage in stereotypes, caricatures, simplistic characterizations," he said.

But Goldstein said student journalists should not shy away from covering racial stories.

"You have to ask what is journalism for," he said. "At the end of the day, it is a service profession. You're trying to educate the public. If you don't tell them the truth you're not doing that. And if you offend them and they don't read it, you're not doing that either." ■

Free-speech rights upheld in modern-day *Tinker*

Judge: Ark. district wrong to suspend students who wore armbands in protest

By Maggie Beckwith

Just months after a lone United States Supreme Court Justice said he thought "the Constitution does not afford students a right to free speech in public schools," a federal district judge upheld three students' rights in a modern-day *Tinker* case, affirming once again that students can wear black armbands as a silent protest and do not lose their First Amendment rights at school.

When students at Watson Chapel High School in Arkansas were punished in October 2006 for wearing black armbands to protest the district's new dress code, free speech proponents assumed the case was a clear violation of the students' First Amendment rights.

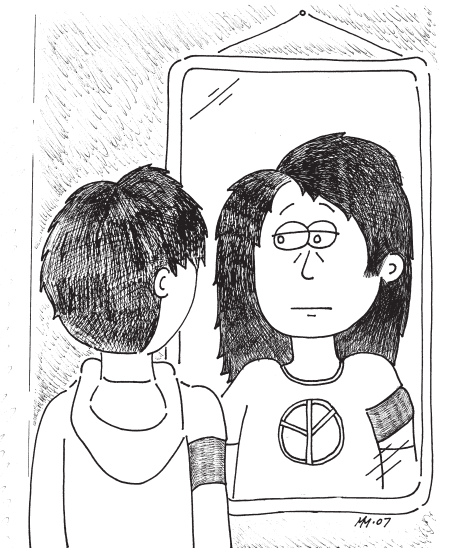
"It's troubling that decades and decades after *Tinker* there still is anybody who is not sure about black armbands," said Adam Goldstein, attorney advocate for the Student Press Law Center. "It raises the question, if we need to re-litigate *Tinker*, then what good is *Tinker*?"

Judge Leon Holmes, in a September 2007 ruling, said that although the Watson Chapel School District's dress code policy was legal, punishing students for protesting it was not. He pointed to the landmark 1969 case *Tinker v. Des Moines Independent Community School District,* in which the Supreme Court ruled that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" and that schools can restrict student expression only if it materially and substantially disrupts the school environment or invades the rights of others.

The school district is appealing the decision.

"They are basically asking the court to overturn *Tinker*, which the 8th Circuit can't do," said Rebekah Kennedy, an American Civil Liberties Union lawyer representing students Chris Lowry, Colton Dougan and Micheal Joseph.

The case began in October 2006, when students and parents passed out more than 200 black armbands for students to wear around their wrists or arms to show their disagreement with the district's dress code. The protest stemmed from complaints that the policy passed the previous spring was too restrictive, even stipulating exact numbers for buttons on shirts, belt holes and pants pockets. The policy did allow students to wear personal jewelry and similar items as long as those items did not overlap the uniform.



According to court records, about 20

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"It must be substantially more than that," he said, citing *Tinker v. Des Moines Independent Community School District*, a 1969 Supreme Court case that ruled public schools may only censor student speech if they can reasonably forecast it will cause a material and substantial disruption or invade the rights of others.

The lawsuit asks for an injunction to allow students to wear shirts that say "Free the Jena Six" to school. The Supers also are asking for a non-specified amount in damages and attorney fees.

Other censorship issues involving comments about Jena included:

• At Jena High School, about eight students were told they could not wear "Free the Jena 6" T-shirts in August. One of the students wore the shirt to support her brother, Carwin Jones, one of the Jena Six. The superintendent said the shirts caused a disruption.

• Students at Alta Loma High School in California were told to turn "Free the Jena 6" T-shirts inside out when they wore them Sept. 20. Administrators said the decision was made before first period and the shirts had not yet caused a disruption. The *San Bernardino County Sun* quoted the principal saying that he can censor messages "any time there is a potential for disruption."

• Administrators ordered the student newspaper at Grambling State University in Louisiana to take down photos of an "anti-racism lesson" held at a local elementary school, including a photo depicting an elementary student with a makeshift noose around her neck.

The lesson, held in late September, was intended to teach students about the events surrounding the Jena Six.

The *Gramblinite's* adviser complied and took the entire news package off the Web site. The paper's editor in chief, De'Eric Henry, quickly put the story and most of the photos back on the site. He did not repost the photo with the noose, which editors had agreed to take down after administrators made their initial complaint.

• About 4,000 copies of University of Central Missouri's student newspaper, *The Muleskinner,* were stolen in what the editors believe was a response to a column in which the writer said the Jena Six should not be considered heroes or martyrs because their actions were still illegal, even if the initial charges were excessive. The papers were stolen either late Sept. 20 or early Sept. 21.

The paper's faculty adviser said he believes the thefts were an organized attempt to stop people from reading the column. Before the theft, the newspaper received complaints that the article did not give a complete description of the controversy in Jena. ■

students from the junior and senior high schools were suspended for participating in the protest. Most students did not wear the armbands or removed them after they heard about the suspensions.

The most recent Supreme Court case involving student free speech was *Morse v. Frederick*, popularly known as the "Bong Hits 4 Jesus" case. The Court ruled that school officials can limit student speech that can reasonably be interpreted as advocating the use of illegal drugs.

In his concurring opinion in *Morse*, Justice Clarence Thomas, supporting the majority opinion ruling against the student, went so far as to say that, given the opportunity, he would "dispense with *Tinker* altogether," explaining that the *Tinker* standard was "without basis in the Constitution."

Thomas argued that *Tinker* "utterly ignored the history of public education" and that schools, acting in place of the parents, should be able to govern students' behavior, including limiting their speech.

Although Thomas stated he would not uphold *Tinker* if it were in the Supreme Court today, legal experts believe the rest of the Court would protect students' First Amendment rights.

"There is no question that Thomas is alone on the Supreme Court in his thinking that *Tinker* should be overturned," Goldstein said.

Still, even if Thomas stands alone on his opinion of *Tinker*, his views — that schools should have more control over student expression — are held by administrators across the country.

"It's sad but not surprising because administrators are generally not well-versed in student press law," Goldstein said.

In addition to *Morse*, two other Supreme Court cases have limited the protections offered by Tinker.

The 1986 *Bethel v. Fraser* decision established that schools could prohibit lewd and indecent speech during school-sponsored events. *Hazelwood v. Kuhlmeier*, decided in 1988, went further by ruling that administrators could censor school-sponsored speech that interferes with the school's basic educational mission.

Goldstein said that administrators often claim the law is unclear.

"So they make these shoot-from-the-hip decisions that are legally indefensible," he said.

Even the jury in the Watson Chapel case, told that the school did violate the students' First Amendment rights, did not award the students even nominal damages, despite the judge's instruction that they must award at least $1.

Holmes overruled the jury's decision and awarded the students $1 in nominal damages, which also allows the students to file for attorney fees. While the students are currently filing for attorney fees, the school district also is appealing the judge's decision to award the nominal damages.

"Frankly, this is such a settled point of law, I don't see the 8th Circuit ruling against decades of case history and a Supreme Court ruling," Kennedy said.

Goldstein said that while the courts overwhelmingly continue to maintain students' First Amendment rights, it's important to remember that some individuals in the schools and community may disagree.

"Students need to be aware of the fact that there is a portion of the population that believes their obligation as a student is to show up, shut up and keep their head down until they get their diploma," he said. ■

Journalism program in Indiana folds after censorship battle

INDIANA — Citing low student interest, Woodlan High School canceled its journalism program following a high-profile censorship case earlier this year, but said the student paper will continue with essays from English classes filling the pages. For now, with no jounalism teacher on staff, English teachers will select pieces for the paper.

After *The Tomahawk* published a column in January 2007 in which the writer advocated more tolerance for homosexual students, the staff and the paper's adviser, Amy Sorrell, found themselves at odds with Woodlan's administration. The principal, believing the material was inappropriate for younger students, started reading the paper before publication, and the school board named him as the publisher of the paper. *The Tomahawk* staff responded by halting publication.

Sorrell was put on leave, then reached an agreement with the East Allen County School District that would have moved her to a different school and barred her from teaching journalism for three years. Instead, Sorrell took a position at Keystone Schools, a private school, where she teaches English and is launching a student newspaper and yearbook.

For her actions, Sorrell received the 2007 Courage in Student Journalism Award in the advisers category. The award is sponsored by the Student Press Law Center, the Newseum and the National Scholastic Press Association.

Students in charge of paper again after fight over photograph

MINNESOTA — *The Crier* came back under student control this fall after the principal told the staff last January that they could not print a photograph taken during a school play, which showed a girl ripping an American flag.

In response, Eric Sheforgen, then-editor in chief of the St. Francis High School newspaper, removed the photo but ran a story describing the principal's censorship. The story reached the local and national media and Sheforgen worked to retain the public forum status of the newspaper. His efforts won him the 2007 Courage in Student Journalism Award in the student category.

The paper's adviser, Glenn Morehouse Olson, said the school board will vote on an official student publication policy sometime in the late fall or early winter. In May, a subcommittee of the board recommended that *The Crier* retain its student-forum status.

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From **High School briefs**, Page 17

Student expelled for describing shooting returns to school

WASHINGTON — The Northport School Board allowed Lance Timmering to return for his senior year of high school after school officials expelled him for writing a piece in his notebook that described a school shooting.

Police dropped the initial felony charge against Timmering to a misdemeanor count of disorderly conduct. Timmering's father, who serves on the school board, said the notebook contained only a page with writing for a video game level his son was developing. Timmering continues to develop games but now leaves his writings at home, his father said.

School ends prior review of paper, but staffers still worried

WASHINGTON — Student editors at Lake Stevens High School are once again in charge of determining the content of the student newspaper this fall.

Katie Van Dyke, the current editor in chief, said the administration is no longer trying to use prior review.

Administrators made "minor changes" to an article scheduled to run in *The Valhalla* last spring. The story covered a controversial assignment in an English class from an atheist teacher to compare Biblical and mythological stories. The controversy was covered heavily in the local media. The principal asked to remove content that pitted a student's words against the teacher's, according to the former adviser.

The prior review continued through the end of the school year. The paper's adviser resigned, citing other reasons but noting the distanced relationship between the paper and the administration.

Van Dyke said she still is concerned about relations with school officials.

"If something runs that the administration doesn't agree with, we may end up back where we were last year, but for now, we have been reinstated as an open forum," she said.

IN THE COURTS

5th Circuit upholds student's punishment for violent faux-diary

TEXAS — School officials were justified in punishing a high school student who wrote a violent story in his journal, a federal appeals court ruled Nov. 20.

A three-judge panel of the 5th U.S. Circuit Court of Appeals based its decision on its interpretation of the Supreme Court's June ruling in *Morse v. Frederick*, the so-called "Bong Hits 4 Jesus" case. In that decision, the Court ruled that school officials can censor student speech that a reasonable observer would believe advocated the use of illegal drugs. The 5th Circuit found that by similar reasoning, officials also can punish speech they believe advocates behavior endangering students' physical safety.

A Montwood High School sophomore, identified in court documents as E.P., was suspended for three days in August 2005, after Montwood Assistant Principal Jesus Aguirre discovered a violent story in the student's notebook at school. The story, written in the form of a first-person diary, described the formation and growth of a neo-Nazi party at Montwood and other high schools in the Socorro Independent School District, culminating in a Columbine-style shooting at graduation two years later.

E.P. and his parents maintained that the story was entirely fictional, but Aguirre concluded the writings constituted a "terroristic threat." When district officials upheld E.P.'s suspension and sought to transfer him to an alternative educational program at another school, his parents — Enrique Ponce Jr. and Rocio Ponce — put him in a private school and sued the school district.

The family has asked for a rehearing before the full 5th Circuit but has not decided what to do if that motion is denied, said Stephen G. Peters, the Ponces' attorney.

Online

See more briefs on our Web site:

http://www.splc.org/report.asp

Case: *Ponce v. Socorro*, No. 06-50709, 2007 WL 4111241 (5th Cir. Nov. 20, 2007).

Former *Kodak* editors settle with district in suit over masthead

WASHINGTON — Everett School District settled with two former editors of the Everett High School *Kodak* in August, ending a lawsuit over administrators' rights to read the paper before publication.

According to the settlement, editorial decisions are made by the students but are subject to Everett School District Policies 3221 and 3221P. Under 3221, administrators may review the paper but can only bar articles that contain unprotected speech such as libel, obscenity or advocacy of illegal drugs.

However, in policy 3221P, material that "runs counter to instructional program" is prohibited, along with content that "is inappropriate for the maturity level of the students," wording that suggests the newspaper will be held to the *Hazelwood* standard rather than the more protective *Tinker* standard.

Still, both the school district and the students claimed victory.

The agreement ends a dispute that began in 2005, when the principal stopped students from printing a masthead stating the paper was not subject to prior review. The students argued that the paper operated in practice as a public forum, which would limit an administrator's power to censor the paper.

The then-co-editors of the *Kodak*, Claire Lueneburg and Sara Eccleston, filed a lawsuit after the school's new principal prevented the paper from printing the revised masthead, which stated in part that the paper was "not

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SPECTRUM May 13, 1983

Pressure describes it all for today's teenagers

Pregnancy affects many teens each year

■ **LEGAL ANALYSIS:** All your *Hazelwood* questions answered ... **page 32**

Twenty years of *Hazelwood*

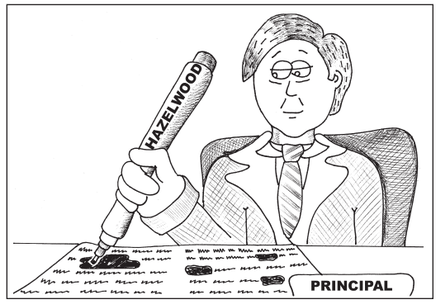
BY MAGGIE BECKWITH

For weeks following the 1988 *Hazelwood v. Kuhlmeier* decision, students at Upper Arlington High School in Ohio wore black armbands to protest the Supreme Court's ruling giving administrators the right to censor "school-sponsored" speech that interferes with the "basic educational mission" of the school.

Student journalists around the country feared the *Hazelwood* case — arising from a Missouri principal's decision to censor newspaper articles about teen pregnancy and divorce — would create a "chilling effect" by making it easer for high schools to censor speech, especially in student publications.

"*Hazelwood* gave administrators the authority to quiet articles that otherwise would have gone to print," said Chad Kister, who was a student journalist at Upper Arlington when the *Hazelwood* decision came down. "This creates bad government and corrupt officials when you don't have the transparency you need with a free press."

By wearing the armbands, Kister and other students were copying the students in *Tinker v. Des Moines Independent Community School District*. The 1969 Supreme Court case was the high water mark for student speech rights. The Court ruled that school officials could not ban students from wearing black armbands to protest the Vietnam War because students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."



Under *Tinker*, student speech can only be censored if administrators show it would be likely to cause a material disruption or invade the rights of others.

Although the *Tinker* standard still applies to most independent student expression, *Hazelwood* significantly cut back the protections for school-sponsored outlets such as plays and newspapers. Student journalists and advisers recall how *Hazelwood*, from the moment it was announced, seemed to give administrators the idea that they could censor articles for just about any reason. Twenty years after *Hazelwood*, journalism educators fear the decision has encouraged more self-censorship among high school journalists and discouraged them from writing aggressive, in-depth stories in student publications.

Kister said the students of Upper Arlington also wore pins protesting the *Hazelwood* decision. And the first post-*Hazelwood* issue of the Upper Arlington student newspaper, the *Arlingtonian*, featured a full-color photo of the First Amendment burning with the American flag in the background.

The principal "wasn't too happy" with the paper's coverage of *Hazelwood*, Kister said. But it was not until the following fall that the principal attempted to change policies and institute prior review in response to an investigative piece about the local police department.

Months after the *Hazelwood* decision, the newspaper staff at Upper Arlington investigated claims by students that police officers were violating their Fourth Amendment rights by entering private households without warrants and arresting students for underage drinking. Kister and other staff members set up a "party" to see what actions the police would take. Using a decibel meter to ensure the music played at the party did not violate any noise violations, the student journalists waited for police to arrive, Kister said.

In a 1989 article for *The Quill*, a Mississippi newspaper, then-Upper Arlington Police Chief Tom Kulp said responding officers heard one student saying he was going to get more beer. When the police reached the front door, it was slightly ajar. Inside, they could see cups filled with "amber-colored" liquid. Kulp said the officers believed the liquid was beer, when really it was apple juice, according to *The Quill*.

Kister said the police came and entered the house without knocking and without a warrant. Some of the staff members climbed trees with cameras to take shots of the police entering the house.

"They were threatening to arrest me and eventually left," Kister said.

After the faux party, the newspaper staff wrote a "huge" cover story about it, Kister said.

That's when the relationship between the principal and the newspaper turned sour.

Then-Principal Ralph A. Johnson told *The Quill* that the students were practicing unethical journalism by staging the party. He sent a letter home to parents stating that the school disagrees "with the methods that mislead or misrepresented journalistic motives to get a story."

Johnson could not be located to be interviewed for this article.

Kister said the principal called him into his office and threatened disciplinary action. He demanded to see a copy of the articles before they ran. Kister said he told him the students would refuse to print the newspaper if the principal instituted prior review.

"This is not censorship," Johnson said in the 1989 article. "It is an issue of counseling and advising."

Kister, his adviser and the *Arlingtonian* staff were able to work with the superintendent of Upper Arlington to get a district-wide policy in place making student publications an "open forum" for student expression that stipulated student editors — not school officials — were responsible for determining the paper's content, Kister said. An open or public forum, either by policy or practice, is not subject to the guidelines established by *Hazelwood*. Instead, it falls under *Tinker's* protections.

Kister and other student journalists and educators in Ohio later lobbied unsuccessfully for a state law that would guarantee free-speech rights to high school students. California passed a similar law before the *Hazelwood* decision.

"I think it's important to give student journalists the right to make decisions and exercise their First Amendment rights," he said.

Six other states —Oregon, Arkansas, Colorado, Iowa, Kansas and Massachusetts — have since passed anti-*Hazelwood* legislation guaranteeing free-speech rights to public high school students.

The road to *Hazelwood*

After the Supreme Court decided *Tinker* and upheld student journalists' rights, high school newspapers flourished.

"We saw the best reporting ever in high school papers throughout the '70s and into the '80s," said H.L. Hall, a retired Journalism Education Association president and former newspaper adviser at Kirkwood High School in Missouri.

Chris Zombory, then a student journalist at Lakewood High School in Ohio, said his school never had a problem with censorship. When he graduated from Lakewood in 1985, *Hazelwood*, which was filed in 1983, was "just gaining steam." Looking back through his newspaper's coverage of censorship cases in the years preceding *Hazelwood*, Zombory said he still can see the pattern he perceived as a student back then.

"Public school officials were trying to clamp down, shut us up, make us march in lines and not cause an embarrassing ruckus," he said.

Their chance came in January 1988, when the Supreme Court ruled against three students on the staff of the *Spectrum* newspaper at Hazelwood East High School in Missouri.

The decision ended a struggle between the *Spectrum* staff and Hazelwood principal Robert Reynolds over what the paper could print in a spring 1983 issue after the *Spectrum's* new adviser, Howard Emerson, submitted copies of the paper to Reynolds for review before publication. Reynolds objected to several articles, including ones about teenage pregnancy and divorce, and ordered them removed from the paper. *Spectrum* staffers called their former adviser, who in turn called Hall, an adviser at a nearby school.

"I suggested he tell the students they should call the Student Press Law Center," Hall said.

Three students on the newspaper staff — Cathy Kuhlmeier, Leslie Smart and Leanne Tippett — filed a lawsuit against the school, claiming their First Amendment rights were violated. The American Civil Liberties Union represented the students and the Student Press Law Center filed a friend-of-the-court brief on their behalf.

The students lost in federal district court but won in the appeals court. The school board appealed to the U.S. Supreme Court. The

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Close call in California

A little-noticed state law shielded students in *Hazelwood*'s wake

By Moriah Balingit

Twenty years after the Supreme Court announced its decision in the landmark student press case *Hazelwood v. Kuhlmeier*, experts still struggle to gauge its impact.

But for a short three days at Homestead High School in Cupertino, Calif., the effects of the case were dramatic and immediate. Within two hours of the Court's announcement and just two days before the school's newspaper was to go to press, Principal James Warren swiftly revoked the long-established editorial independence of the school's newspaper, *The Epitaph*, when he told students they would be punished if they ran an article about a student who was HIV-positive. Students braced themselves for what they envisioned would be a tense fight against the administration to maintain their editorial independence.

Then, hours later, a newspaper reporter tipped the students off to a California law that nullified the decision and ultimately saved the newspaper from censorship. The statute – signed into law 11 years earlier – was the first of its kind in the nation and has saved countless high school student journalists from censorship under *Hazelwood* in California.

Though the students ultimately prevailed, the events that unfolded at Homestead after the Court's announcement foreshadowed the new challenges student journalists would have to face in the wake of the *Hazelwood* decision.

The story

In the fall of 1987, high school senior and *Epitaph* reporter

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Jan. 13, 1988
The U.S. Supreme Court issues its *Hazelwood* ruling.

July 14, 1988
The first law designed to nullify *Hazelwood* is signed in Massachusetts; California already had passed a similar law protecting student free-expression rights in 1977.

May 11, 1989
Iowa's anti-*Hazelwood* legislation becomes law

June 7, 1990
Colorado's anti-*Hazelwood* law enacted.

Feb. 21, 1992
Kansas' anti-*Hazelwood* law enacted.

April 10, 1995
Arkansas' anti-*Hazelwood* law enacted.

Oct. 12, 2004
A federal district court rules that a Utica, Mich., school system had no legitimate pedagogical reason to censor a student newspaper article about a lawsuit filed against the district.

Feb. 21, 2006
U.S. Supreme Court refuses to hear *Hosty v. Carter*, letting stand a 7th U.S. Circuit Court of Appeals ruling that the reasoning of *Hazelwood* could be applied to colleges.

Aug. 28, 2006
In response to *Hosty*, California enacts the nation's first law prohibiting prior restraint and other forms of censorship of student media at state colleges.

July 13, 2007
Oregon anti-*Hazelwood* bill becomes law.

Aug. 31, 2007
Illinois College Campus Press Act signed, nullifying *Hosty* in that state.

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Court agreed to take the case and heard oral arguments on Oct. 13, 1987; three months later, on Jan. 13, 1988, a sharply divided Court issued its decision upholding the school's actions.

Initial reactions

High schools across the country felt the aftershock of the *Hazelwood* decision.

Susan Hathaway Tantillo, an adviser in Illinois, recalls how the principal reacted after the first issue post-*Hazelwood* came out. He went out to the loading dock to take a look at the just-delivered papers, something he never did until after the *Hazelwood* decision, she said.

"He let me know the Supreme Court now said it was okay for him to see it before it 'hit the streets.' At least that was his interpretation of the decision," said Tantillo, Wheeling High School's adviser from 1971-2001 and current JEA awards chairwoman.

But Tantillo said the principal never interfered after that.

In Washington state, Douglas McComas, then-adviser of Wenatchee High School's newspaper, the *Apple Leaf,* said the *Hazelwood* decision, plus some "slightly controversial articles," prompted administrators to tell McComas he must bring in the paper's paste-ups to the office for prior approval.

"I simply responded that he could come by the newspaper room any time to look over our shoulders," McComas said. "I added that if he insisted that we take the paper to the office prior to sending it to the print shop, I would be contacting the Student Press Law Center for legal support. I never heard anymore about it, and he never bothered to come look over our shoulders."

Kirkwood's approach

While some administrators may have seen the Court's ruling as a way to control students' expression, others took a strong stance in support of students' rights.

Not far from Hazelwood East was Kirkwood High School's principal, Franklin McCallie.

Several other school districts near Hazelwood signed a court brief in support of the Hazelwood administration, but McCallie did not.

Hall, Kirkwood's adviser, said McCallie was a "staunch supporter of student press rights" and that he "had words over the issue more than once" with Reynolds, Hazelwood's principal.

"There need to be more administrators like McCallie who aren't paranoid and who don't think that anything negative that occurs in their school district is a black mark against their school," Hall said.

McCallie, now retired from his position as Kirkwood principal, said he knew right away that the *Hazelwood* decision would be terrible for student journalists.

"When the principal says 'you need to run it by me first,' then he'll get less than the best because it's not the students' newspaper," he said. "If you limit what they can write about, it's not as good of a paper."

A few years after *Hazelwood*, in the fall of 1990, McCallie faced a controversy at his school in response to an ad *The Kirkwood Call* published from Planned Parenthood.

Unknown to McCallie at the time, Planned Parenthood sent the ad out to 80 schools in Missouri and only eight chose to publish the ad in the school newspaper.

The Call ran the ad in the first few issues of the year without any incident. In the October issue, the Planned Parenthood ad ran with an ad from Missouri Right to Life on the facing page, and still no one complained to McCallie.

But in November, the *St. Louis Post-Dispatch* ran a front-page story about the Planned Parenthood ad, saying that only eight schools chose to print it and naming only two schools: Kirkwood and Clayton.

"The phones went off the hook," McCallie said.

Anti-abortion groups and parents called his office to complain, and local Catholic churches collected 1,400 signatures on a petition asking to have the ad removed from future publications.

McCallie said he got a call from his superintendent midway through the week. He wanted to meet with the staff and ask them to remove the ad.

"I said, 'That's not us,'" McCallie said. "And he said, 'You don't know these anti-abortion groups; they will try to beat us down. We'll lose our levies. They'll come to all our meetings.'"

After getting off the phone with the superintendent, McCallie called his wife to tell her that it might be his last day. He said he was so upset he was nearly in tears.

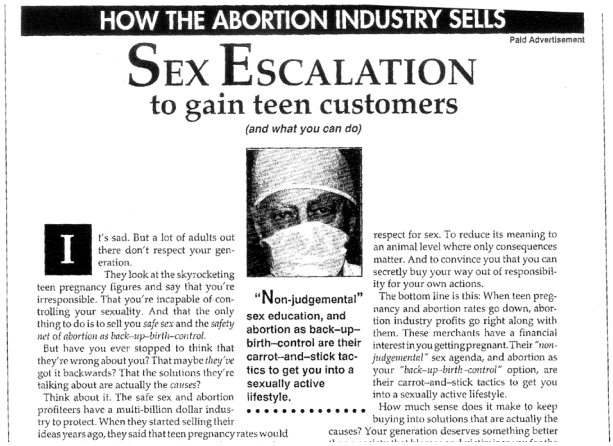
"If the superintendent forced these kids to pull the ad, that is not the mission I signed up for," he said. "And it does not meet the mission of the district. What are we yielding to?"

McCallie said telling the students to remove the ad would not be in line with what the district was trying to teach the kids to do: make their own decisions.

The following day, McCallie said he went with the superintendent to meet with the students.

"We went during last period and the superintendent introduced the idea that there was nothing wrong with the decision to run it, but now we want you to reconsider," he said. The superintendent told the students they would have a week to decide and that he knew they would "make the right decision." But before the deadline was up, public opinion shifted in the students' favor.

McCallie, in an interview with the *Post-Dispatch*, said the school was getting a lot of negative feedback. After that, the positive letters and phone calls started rolling in.



HOW THE ABORTION INDUSTRY SELLS

Paid Advertisement

SEX ESCALATION
to gain teen customers
(and what you can do)

It's sad. But a lot of adults out there don't respect your generation.

They look at the skyrocketing teen pregnancy figures and say that you're irresponsible. That you're incapable of controlling your sexuality. And that the only thing to do is to sell you *safe sex* and the *safety net of abortion as back-up-birth-control.*

But have you ever stopped to think that they're wrong about you? That maybe *they're* got it backwards? That the solutions they're talking about are actually the *causes*?

Think about it. The safe sex and abortion profiteers have a multi-billion dollar industry to protect. When they started selling their ideas years ago, they said that teen pregnancy rates would

"Non-judgemental" sex education, and abortion as back-up-birth-control are their carrot-and-stick tactics to get you into a sexually active lifestyle.

respect for sex. To reduce its meaning to an animal level where only consequences matter. And to convince you that you can secretly buy your way out of responsibility for your own actions.

The bottom line is this: When teen pregnancy and abortion rates go down, abortion industry profits go right along with them. These merchants have a financial interest in you getting pregnant. Their *"non-judgemental"* sex agenda, and abortion as your *"back-up-birth-control"* option, are their carrot-and-stick tactics to get you into a sexually active lifestyle.

How much sense does it make to keep buying into solutions that are actually the causes? Your generation deserves something better

Courtesy of Franklin McCallie
The decision to run these ads in the *Kirkwood Call* at Kirkwood High School drew protests from parents and activist groups.

It's not enough to "just say no." *Say KNOW.*

Know what you're doing. Know the facts.

If you don't know, find out. It's O.K. to ask questions.

Call us. We're part of the oldest and largest family planning organization in the country. We'll give you honest, factual, non-judgmental answers and referrals. You don't have to give your name. And it's free.

Now that you know that much, the rest is up to you.

Planned Parenthood® of the St. Louis Region

Hotline: 533-9933
Ballwin Clinic: 227-8575

"Before that interview, the letters were three-to-one against us. After the statement, they were five-to-one for us," he said.

The superintendent changed his mind and the students continued to run the ad. McCallie said protesters with picket signs gathered outside of the school board meeting in February, and the school lost several elections to raise the levy in the years that followed because of the ad. By 1993, the school board passed a levy and it seemed voters had moved on.

"We had one of the most exciting, stimulating years in 1991 because of *The Kirkwood Call*," McCallie said, recalling the discussions created by the controversial ad.

McCallie said principals and administrators do not give enough credit to student journalists. Students, under the guidance of a trained journalist, are learning to make their own decisions. Taking editorial control from their hands sends the wrong message and does not teach them anything, he said.

"These are 14, 15, 16, 17-year-old kids and we're telling them you can't make any decisions; you don't have the intelligence to make decisions," McCallie said. "Then after high school, they are going to college, to work, to war — are they going to grow up five minutes after graduation?"

Finding a forum

After a column in the January 2007 edition of *The Correspondent* mentioned an incident at another district high school — involving a student ejaculating into a container of ranch salad dressing — school administrators at John Hersey High School in Illinois wanted to remove the paper's statement that it was an "open forum." The incident was widely reported in the local media before *The Correspondent* mentioned it.

It is a scenario that high school newspapers across the country operating under the *Tinker* standard dread.

"Before *Hazelwood*, we didn't need a statement in the paper," said Janet Levin, *The Correspondent's* adviser for the past 23 years.

But in a post-*Hazelwood* world, where the so-called "forum status" of a student publication dictates the amount of First Amendment protection it will receive in a legal battle, student journalists and advisers must constantly be mindful of where they stand.

Student media that can claim "public forum" (or more accurately, "limited public forum") status, expressed in either a written school policy or followed in practice, can take advantage of the protection against censorship set forth in *Tinker*. Student media that do not qualify as public forums are subject to administrative censorship under *Hazelwood's* less protective standards.

After *The Correspondent*'s January issue, and other "controversial" articles in district student newspapers, Levin said the district held a workshop for advisers in June. The district's lawyer also attended the workshop.

Venitia Miles, a district representative, said the workshop was not in response to any particular article. Instead, the district wanted to address questions that had arisen regarding student publications.

"(The lawyer) was bothered by the open forum status," Levin said. "She thought we were completely ignorant about press law and that she could just come in there and tell us how to run the paper."

Miles said that the school district has never practiced prior review and they have no intention to do so in the future.

"There's been some articles that have raised the eyebrows of community members and maybe some administrators, but the administration is not going to start asking to see the articles before publications," she said. "That's not what this is about. The administration is very supportive of student publications."

Miles said the district questioned the newspaper's forum status not only for student publications, but also for the school grounds and facilities. She said this was to emphasize that outside groups do not have equal access to school property.

Ultimately, Levin and her students decided to remove the words "open forum" from their staff box, while leaving in an explanation that school officials do not review any material before publication and that the student staff determines the content of the paper. Without putting in the exact words, the masthead still describes the paper as a public forum.

The students accompanied the new masthead with a column detailing the reasons the paper would continue to operate as an "open forum."

Explaining a need to "ensure that the paper's standards do not decline" or that "the staff's journalistic values are not compromised," the August 2007 editorial addresses the question of the public forum status. The newspaper "will function as a public forum, controlling its own content and maintaining its mission to inform," it says.

Online

Courts, advisers and student journalists still struggle with the language of Hazelwood's *standard. Read the story on the Web:*
http://www.splc.org/report.asp

Hazelwood's legacy

Advisers agree that *Hazelwood* has resulted not only in more censorship from the administration but also self-censorship by student journalists.

"The *Hazelwood* decision had a somewhat chilling effect on what the students elected to cover," said Tantillo, a retired adviser from Illinois. "My students always were concerned they not be the first staff 'to drive the administration to implement prior review.' They may have chosen not to cover some issues because of this fear."

The fear of tackling stories that might anger administrators affects the quality of high school journalism.

"There's no doubt in my mind that newspapers after the *Hazelwood* case became more conservative and less willing to take on the more controversial, sensitive stories," said Hall, the former adviser at Kirkwood High School in Missouri.

Hall said *Hazelwood* made teachers and students more afraid to challenge the administration, which often does not understand the implications of the decision.

"It does not give administrators the right to censor anything they want, but some think it does," he said. "In fact, if a publication has been operating as a public forum, it doesn't give the administration the right to censor at all [under *Hazelwood*]."

Coping strategies

Since the decision, advisers have learned ways to fight and beat censorship resulting from the *Hazelwood* standards.

Hall said a good editorial statement should prevent censorship.

"However, a heads-up to the administration about a controversial article might be wise," he said. "That doesn't mean the administration censors the article, it just means they are made aware of a possible

sensitive issue."

Another suggestion by a former adviser is to practice good journalism.

"If you don't want to face problems, then do a good job of reporting," said John Bowen, chairman of JEA's Scholastic Press Rights Commission and a professor at Kent State's School of Journalism and Mass Communication. "Do a good job of digging, get the facts right."

Still, even with thorough reporting, administrators might not trust student journalists. Former Illinois advisor Tantillo said she thinks new administrators start censorship policies or practices out of "fear."

"Many of the problems student journalists across the country are having currently are a result of young, inexperienced administrators who have yet to develop faith in students to make sound decisions," Tantillo said. "They probably fear for their own job security and worry they may lose their positions if student media in their buildings are allowed to research and write the truth, especially about school-related issues."

Students can work to calm administrators' fears by meeting with them to discuss the importance of First Amendment rights for students, suggests Levin.

Levin, who has worked with four principals since the *Hazelwood* decision, said it is important for students to know press law before they meet with administrators.

When a new principal enters the school, the first thing Levin and her students do is ask if he or she believes in censorship.

"They always say no, but it's hard in practice," she said. "It's my job and the students' job to explain to the principal about censorship and the role of the student journalist."

Finally, if administrators do censor an article or attempt to change existing policies, Bowen said students should go to the commercial media and ask the community to support the students.

"Show the public the democratic value in having students make decisions." ■

From **California**, Page 21

Kathryn Pallakoff learned that a close friend had recently tested HIV-positive. While she helped her friend cope with the revelation, she saw an important opportunity to educate other students about the virus.

"People were very ignorant about what it was and how you contract the virus," she said. "Here was a student that contracted HIV, the point being that it was not some distant weird thing happening to other communities. It was happening here."

Elsewhere, the virus had created fear and panic, said Nick Ferentinos, who was then the newspaper's adviser. So he decided to let the principal know about the story because of the sensitive nature of the topic.

Before the paper went to press in November for its December edition, Pallakoff and Editor in Chief Mike Calcagno received a visit from district officials.

"They urged the students not to run the story," Ferentinos said. "They were afraid of repercussions on the campus. … They predicted there would be gay-bashing."

Warren, in his first year as Homestead's principal, also expressed anxiety over the story and urged the students not to run it.

"The principal was concerned there might be violence and it didn't feel to me like that was going to happen," Pallakoff said. "If anything, I was more concerned there was apathy, that people would just not care."

Ferentinos had some concerns about the story. Pallakoff used a pseudonym to protect the identity of the student and never revealed the student's name to anyone but her mother. The student claimed to be HIV-positive but had not yet developed any of the physical symptoms of AIDS. Pallakoff also indicated that the student wanted his story told. Ferentinos told Pallakoff to triple-check the story so they could be absolutely sure of its accuracy if the newspaper came under fire.

Pallakoff agreed to hold off a month to make absolutely certain the subject of her story was HIV-positive. The story, they decided, would run in January.

January 13

On Tuesday, Jan. 13, 1988, Ferentinos learned that a case his journalism class had been following, *Hazelwood v. Kuhlmeier*, had been handed down in Washington, D.C., that morning. The case dramatically expanded a school's ability to censor many high school publications. The Court determined that a school-sponsored newspaper that is not a public forum could be censored based on any "legitimate pedagogical concerns."

Ferentinos, before starting class, peeked into the principal's office and told him about the decision. Two hours later, while Ferentinos was in the midst of explaining the day's ruling to one of his journalism classes, the principal interrupted his class and announced that he would be shelving Pallakoff's article. It was the first time in the school's history that a principal had exercised censorship over the paper, Ferentinos said.

The students were furious and anxious. The January edition was to go to the printer in two days and Pallakoff's story constituted a large chunk of it.

"At this point, we have about 24 hours to put this baby to bed," Ferentinos said. "We really didn't know what to do."

In an interview with *The Epitaph* in the days that followed, Warren said he put a hold on the article because he thought the Court's decision might confer additional responsibility on him to oversee the newspaper.

"I told (*The Epitaph*) to hold off on publication of that article until I got clarification of the decision," he said.

But Calcagno saw the move as prior restraint.

"I was livid," Calcagno said said. "Not only was it a regressive decision, but it was being applied to us. It was such a betrayal."

The principal had threatened to suspend Pallakoff and Calcagno if they defied him, Pallakoff recalled. Ferentinos had left the decision to run the story up to the students, and they told Warren that they were going to run the story and accept the consequences.

"I didn't care about (getting suspended)," Pallakoff said. "To me the principle was larger. The issue of protecting free speech was not something you backed down about."

Within hours, local media had descended on the campus to witness the effects of the decision unfold. As the students braced themselves to go to bat against the principal, *San Jose Mercury-News* reporter Dan Nakaso tipped Ferentinos off to a law that suddenly gave the students hope.

The law, California Education Code Section 48907, delegates the responsibility for "assigning and editing the news, editorial, and feature content of their publications" exclusively to student editors. It also granted freedom of the press to students except for material that is "obscene, libelous, or slanderous" or incites a "substantial disruption."

Passed 11 years earlier, it was the first

state law in the nation to specifically protect student journalists. In January 1988, it was still the only one of its kind on the books.

Ferentinos knew of the law but assumed the Supreme Court decision had superseded it. In reality, the decision only established the minimum rights a school must provide; states were free to offer broader protections.

Even with knowledge of the law, the principal held his position, telling the students that he wanted to get legal advice before he would lift the ban.

By Wednesday night, Calcagno's confidence was building. Legal experts, including one from the State Department of Education, reassured him that *Hazelwood* did not change California law.

'Ultimate teaching moment'

The following morning, Ferentinos called Mark Goodman, the executive director of the Student Press Law Center, who again confirmed that the California law nullified *Hazelwood*.

Two hours later, Warren announced he would lift his hold of the article after consulting with the chief counsel of the State Department of Education.

Pallakoff and Calcagno prepared to take the newspaper to the press that night. The next day, a special issue of *The Epitaph* hit the stands with Pallakoff's article and an accompanying story that detailed the struggle to get Pallakoff's piece in the paper in the first place.

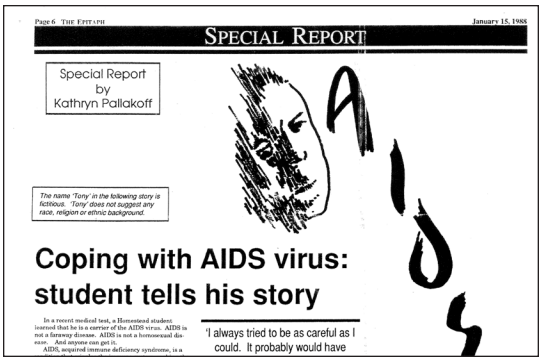
The violence district officials had feared never materialized. That Friday was like any other publishing day, Ferentinos said.

"Students were really avid readers of the newspaper," he said. "When the paper came out, the silence on the campus was palpable."

Calcagno was relieved and content that the article had survived the threat of censorship because he viewed the subject as especially relevant to students.

"Education about AIDS for a lot of students who are just starting out their sexual life could be a matter of life or death," he said. "The HIV story was exactly the sort of story we thought was important to run."

Pallakoff recalls the tense 48 hours of wrangling with the principal as "the ultimate teaching moment." Ferentinos schooled all of his journalism students in press law, which ultimately appeared to pay off.


Page 6 THE EPITAPH January 15, 1988

SPECIAL REPORT

Special Report by Kathryn Pallakoff

The name 'Tony' in the following story is fictitious. 'Tony' does not suggest any race, religion or ethnic background.

Coping with AIDS virus: student tells his story

"I always tried to be as careful as I could. It probably would have

Courtesy of Nick Ferentinos

"We had a sense of justice and injustice and we took it really seriously," she said. "The issue of free speech was incredibly important … and we wanted to make a stand about that."

That year, *The Epitaph* added the Student Press Law Center Freedom Award to its many journalism awards.

"It's probably the most important award we ever received," he said. "It really confirmed that we were a champion of student press rights." ■

From **High School briefs**, Page 18

subject to prior review by administrators, faculty or community members."

Shortly before the settlement, U.S. District Court Judge Ricardo Martinez denied the school's request to dismiss the case. He said that while students could not sue the principal for threatening to read the articles before they were published, exercising prior restraint — not letting the students publish a specific, otherwise lawful article — is illegal in Washington state.

Case: *Lueneburg v. Everett School Dist. No. 2*, 2007 Westlaw 2069859, (W.D.Wash. July 13, 2007).

Newspaper settles open-meeting suit against school board

TEXAS — A Texas newspaper reached a settlement in November in its open-meeting lawsuit against the Danbury school board.

In a March 19 closed-door meeting, the board heard an appeal from Danbury High School students protesting their principal's decision to pull the December 2006 issue of the student paper from distribution. *The Brazosport Facts*, a local commercial paper, alleged the meeting should have been open under Texas law. The district argued the meeting fell under the law's exception for discussing personnel issues. As part of the settlement, the district gave *The Facts* a recording of the meeting, which the paper posted online.

Board must pay legal costs for student who fought leaflet policy

FLORIDA — The Lee County school board must pay attorneys' fees to a former middle school student who was not allowed to pass out anti-abortion literature at school.

Michelle Heinkel, then a student at Cypress Lake Middle School, sued the district in March 2004, arguing that the district's policy on distributing written materials — which banned anything that included "political, religious or organizational symbols" — was unconstitutional.

The 11th U.S. Circuit Court of Appeals agreed in an August 2006 ruling, although it still allowed the school to bar Heinkel's literature based on officials' judgment that it would cause a substantial disruption.

A federal district court in September ordered the school board to pay Heinkel's attorneys' fees and expenses of about $108,000.

Case: *Heinkel v. Sch. Bd. of Lee County*, No. 04-184, 2007 WL 2767366 (M.D. Fla. Sept. 20, 2007).

A different path

Hazelwood expanded principals' authority to censor — but not all school leaders choose to exercise the power

By Casey Wooten

When Nelson Beaudoin became principal of Kennebunk High School in Kennebunk, Maine, seven years ago, he said students thought his philosophy about free speech was novel, even a bit strange. But within a few years, the school had started a student newspaper and a student senate, and Beaudoin had developed a reputation as one of its most approachable administrators.

With the help of a grant from the Nashville-based First Amendment Center, Beaudoin created an example of the benefits of school policies that advocate free speech.

Beaudoin and principals like him represent an often-overlooked group — administrators who choose to reject the power they could exercise under *Hazelwood*.

"I think it's much easier to have the kids view you as someone who understands them and listens to them, and cares about what they think," Beaudoin said.

Aside from being a principal, Beaudoin is a well-known education consultant and author of several books on education reform and student speech.

About four years ago, Beaudoin's school received a grant through the First Amendment Center. The group was expanding its First Amendment Schools project, and Kennebunk High School was among five schools added to the inaugural class of 11 in May 2004, receiving $12,000 a year for three years to support free-speech initiatives.

"Our premise is that everyone may be born with their inherent rights, but we are not born with knowing how to use them," said Molly McCloskey, project director of First Amendment Schools.

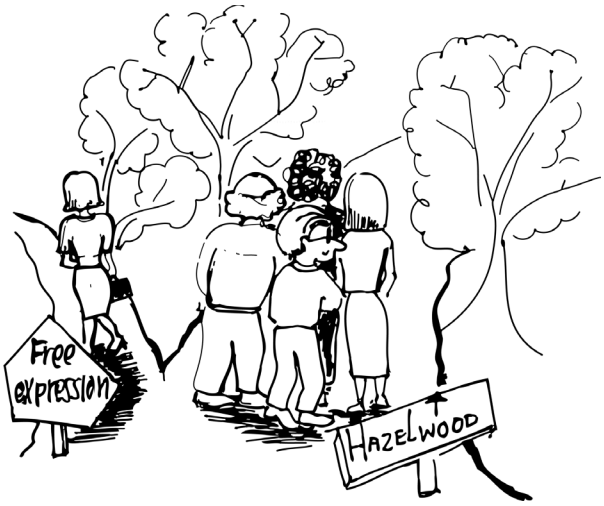
To date, almost 100 institutions officially have adopted the program's philosophy; the program is directly working with 17 schools from California to New York.

McCloskey said the program fosters a vibrant press at its schools. Some funding the initial schools received was put toward buying newsroom equipment, as well as sending faculty to receive training in First Amendment law.

"One of the things that we have really focused on is the parallel tracks of freedom of the press and teaching journalistic ethics," McCloskey said. "We gradually sort of withdrew adult supervision."

Even before working with First Amendment Schools, Beaudoin had taken prior review of the school's newspaper off the table.

"We've been able to walk that balance between things being so sterile that nobody wants to read them and things being so outrageous that it creates all sorts of controversy," he said.



Sometimes, Beaudoin said, the newspaper staff will come to him with a "red flag" issue, to give him a heads-up on an upcoming controversial story.

"I'm not somebody who is big into protest," Beaudoin said. "I'm more into compromise. A lot of time controversies happen in school when people draw lines, as opposed to communicating well."

From his early years as a basketball coach, Beaudoin says his experience as an educator has shown him the value in supporting student speech. Involving his players in the decision-making process led them to play more inspired, Beaudoin said.

"I've found it worked — the more I gave kids responsibility, the more they participated," Beaudoin said.

When Kennebunk's student paper, *The Rampage*, published a survey in September about students drinking at a recent dance, Beaudoin didn't object. Beaudoin had faith in his students' judgment.

"They did a very responsible thing," Beaudoin said. "They put in a qualifier in there saying that this is a survey of only 44 kids out of 80. They said it wasn't a scientific survey."

The survey showed that each student who attended the dance knew at least one person who was there intoxicated.

"Obviously putting that in the newspaper creates a funny world for the high school principal," Beaudoin said. "But at the same time, not putting it in would be a funnier world."

Newspaper staffers at Kennebunk High say they appreciate the trust Beaudoin puts in them.

"We're really in a great position in that, pretty much, as long as we have some kind of journalistic purpose we really can write just about anything we want," said Ben Goodman, managing editor of *The Rampage*. "Certainly any red flags the adviser or the editorial boards find, we run by school administration, and they'll give us their input."

Goodman said when the newspaper went to the administration with the alcohol survey, administrators told him that although they had doubts it was accurate, "we are not going to tell you not to publish it."

Molly Pierce, *The Rampage*'s adviser, came to Kennebunk High School six years ago with no intention of teaching another journalism class.

After teaching journalism at two schools in Colorado — one of seven states protected

by student free-expression laws — Pierce was nervous, concerned that there might not be enough freedom to run the paper properly. When she got to Kennebunk High School, the newspaper had been dormant for several years. After a year of teaching, the rest of the English department convinced Pierce to start publishing the paper again.

Pierce said Beaudoin's commitment to a free student press helped grow the newspaper into the popular class it is today.

"I feel that Nelson has our back 100 percent," Pierce said.

In the hot seat

Some principals have come under fire from their supervisors, and occasionally their communities, for protecting the student press.

In December 2005, the quiet, mid-western town of Columbus, Ind., was thrust into the media spotlight when Columbus North High School's *The Triangle* published an article about the dangers of oral sex. Newspaper staffers had gone to the principal, David Clark, to alert him about it. Clark, impressed with the quality of the article, did not object to running it.

"I went out on a limb and I trusted that what they were doing was right, this was something that needed to be heard," Clark said.

After the story ran, members of the community complained about the piece, with several calling for Clark's resignation. The district's administration was at odds with Clark as well as the students, but Clark stood by his decision to let the story run.

The incident eventually gained the attention of national media.

"It got to be a circus as far as I was concerned," Clark said. "There were calls from the *O'Reilly Factor*, calls from *Geraldo*, they wanted me to appear on their show and debate their subject. My response to those guys was, 'No, that's not what this is about, this is about my students.'"

For tenaciously backing *The Triangle's* piece, the Newseum, Student Press Law Center and National Scholastic Press Association gave Clark a Courage in Student Journalism Award in 2006.

Over time, the public's attention moved elsewhere. But in retrospect, Clark said the experience benefited his students. The newspaper's staff in particular, he says, got a first-hand lesson on the First Amendment.

"They will know these laws — *Hazelwood, Tinker* — and now the more current laws that are coming out, in terms of *Morse v. Frederick*," Clark said. "They'll know these laws. They understand, they've been through them and they've lived it."

Alan Weintraut, adviser to Annandale High School's award-winning newspaper, *A-Blast*, said he feels fortunate his school has always been one where the paper can operate free of prior review or censorship.

Weintraut, who has been advising at the Annandale, Va. school for seven years, has never worked under prior review and said he has told all three principals he has worked for that he never will.

Weintraut said administrators often invoke *Hazelwood* because they fear their schools could be sued over articles published in a student newspaper.

"We are living in an age of increasing accountability and authority in the school, and that has to be vested with a person — the principal," Weintraut said. "It's just one more task that is added to the very long list of school activities that the principal feels that he is empowered to govern."

But liability does not extend as far as some principals imagine, said Mike Hiestand, legal consultant to the Student Press Law Center. Hiestand said there has been no published court decision in which a school district has ever been held liable for material published in student media. Some are sued, but Hiestand said it happens rarely, and most cases are settled before they go anywhere.

"If you want to eliminate a liability at your school, get rid of your football team," Hiestand said.

Like-minded principals

Warren Watson, director of J-IDEAS, a program at Ball State University dedicated to advancing high school journalism, said interacting directly with principals on First Amendment issues may be one of the best ways to keep censorship — and *Hazelwood* — out of high school newsrooms.

"We can reach a higher level of First Amendment awareness not just by talking to advisers, but by working with principals and administrators to set a good environment where the First Amendment is encouraged," Watson said.

Watson and the rest of the staff at J-IDEAS recently created a program to help educate and encourage principals to support free speech in their schools.

Started in May 2007, the inaugural members of the Principal's Coalition for the First Amendment are educators who took Ball State's graduate course in free-speech law for principals and administrators.

The course is designed to help educators see the benefits of student speech on campus, as well as familiarize them with the complexities of cases such as *Hazelwood*.

"One of the goals is to better educate administrators and principals about the law, to point out that the First Amendment can be an asset for the administrator, not something that's a yoke around your neck," Watson said. "The main goal is to familiarize administrators about what *Hazelwood* does and doesn't do, and the other cases that create this labyrinth of legality."

Watson said he hopes the coalition will extend the philosophy behind Ball State's course into more high schools. By connecting like-minded administrators, Watson said the coalition will create examples other principals can follow.

"We saw the potential for the development of the organization, a group of people who could then showcase best practices and model principles, showing a lot of good things about principals who exhibit strong support of the First Amendment in the governing of their schools," Watson said.

Others have seen the value in reaching out to educators who want to shed *Hazelwood*'s legacy. In October 2007, the McCormick Tribune Foundation announced a $40,000 grant to help the coalition to develop its ideas.

For student journalists who work with administrators sympathetic to a free press, the experience can leave them with a better sense of civic duty and appreciation for the Constitution. The classic mindset of the educator lends itself to viewing the student as someone whose opinions need to be tempered by a higher authority, Beaudoin said. But Beaudoin thinks differently.

"We go into education thinking that we are going to help kids, help them develop and improve," Beaudoin said. "Yet there is something in us that subconsciously wants to keep them incapable and quiet and silent.

"I don't know why that happens in education, but I think it's kind of a subconscious thing. It makes teachers and educators feel needed, and I think we need to believe that kids are capable and thoughtful and help them when they stumble." ■

Safety alerts go high-tech

By Casey Wooten

The text message to students read: "From Public Safety. Male was found on campus with rifle. Please stay in your buildings until further notice. He is in custody, but please wait until the all clear."

In late September, a student, armed with a rifle, walked onto the campus of St. John's University in New York. Later identified by police as Omesh Hiraman, the man was spotted by student police cadet Chris Benson. As Benson and campus police officers were subduing Hiraman, Benson felt his cell phone vibrate; it was the text message from the university warning him of the gunman on campus, he later told reporters.

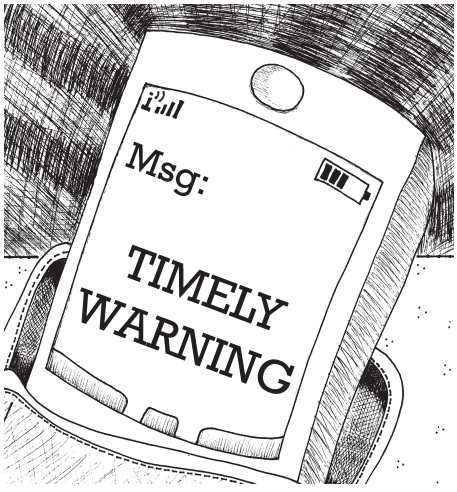
The same month, at the University of Wisconsin at Madison, a suicidal gunman came onto campus. Part of the university's efforts to alert the public included a $100 ad placed on UW-Madison's Facebook network warning students of the danger. Students who clicked on the ad were brought to the school's Web page, which provided-up-to-the-minute information about the incident.

Both incidents ended with no one hurt, but in the wake of April's shootings at Virginia Tech, public and private universities are investing in technology to better disseminate information about campus security. Mass text-messaging and e-mail, flat-panel televisions displaying campus information and partnerships with social networking sites such as Facebook are popping up on campuses across the country.

Since the passage of the 1990 Campus Security Act, all universities that receive federal funding have been required to issue alerts in a timely manner on all crimes that pose a serious, ongoing threat to the campus community. The act was amended in 1998 and renamed the Clery Act, after Jeanne Clery, a Lehigh University student murdered in her dormitory in 1986.

Student newspapers rely on the information guaranteed under the Clery Act to report campus crime. In addition to giving timely warning, schools must maintain a daily police log and publish an annual statistical report of incidents on campus.

With technology changing how universities comply with the Clery Act, some



experts say the acceptable amount of time for a university to give warning might be shrinking. Others say new systems may improve compliance, but the effect will not set a new standard for the largely nebulous "timely warning" requirement.

No definite timeframe

With the law stating only that "reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences," experts say what is timely warning under the Clery Act is mostly subjective. The act does not give a finite window for a university to report a crime on campus. That determination is left to the U.S. Department of Education, which, after a complaint is filed, decides whether the school gave adequate notice and issues any penalties. If a school is found not to have given timely warning, it could be fined up to $27,500.

Catherine Bath, vice president of Security on Campus, a Pennsylvania-based group that promotes Clery Act compliance, said she would want administrators to warn students sbout serious crimes immediately.

Realistically, though, it takes a little longer, Bath said.

"I would say within 30 minutes of the discovery of the crime," Bath said.

Few experts can agree on what is an acceptable length of time for a university to report campus crime. It is a function of speed versus accuracy, and some say adequate investigation is needed before students can be informed.

Douglas Tuttle, an instructor and policy scientist at the University of Delaware and a Clery Act expert, said the majority of campus crime investigations need time before any useful information can be given.

"One of the challenges with the criminal incidents is that oftentimes there needs to be some amount of investigation before you know what really went on," Tuttle said. "It's hard to give meaningful warning if you don't think you understand what went on. Crimes are often reported incorrectly by the person who calls on the outset."

In most cases, Tuttle said, he believes an informative report by the next business day is adequate. For more serious crimes, or if a danger is still posed to the campus, that time may shorten, Tuttle said.

"Frankly, the more serious the crime or outrageous the behavior that goes on, the easier it is to figure out what you need to tell people," Tuttle said. "The majority of crime on campus is more complex."

According to Security on Campus, in the nearly two decades since the Clery Act's passage, the Department of Education has ruled that five schools failed to tell the public about a crime on campus in a timely manner.

The latest timely warning violation occurred at Eastern Michigan University, where the Department of Education found the university failed to meet federal safety standards after 22-year-old Laura Dickinson was discovered murdered in her dormitory room in 2006.

The school issued a release the day after the body was found but stated there was "no reason to suspect foul play." Later releases did not inform the public that police were investigating Dickinson's death as a murder. Ten weeks after the body was found, police arrested another student, charging him in Dickinson's killing.

In an 18-page report issued in July, the Education Department said, "EMU's failure to issue a 'timely warning' concerning the death of this student is exacerbated by its issuance of contradictory published state-

ments, which publicly claimed that a crime had not occurred."

In the report's aftermath, EMU's board of regents fired the school's president. The board also chose to accept the resignations of the university's vice president of student affairs and the director of the school's department of public safety. Both administrators were involved in the investigation into Dickinson's death. The ousted president is suing the university and the board of regents, claiming his firing was an attempt to silence his criticisms of some in the university's administration.

The Department of Education's final report, issued in November, concluded that the school did violate the Clery Act. The Department has not yet determined how or whether to punish the university.

Raising the bar

College students are no strangers to using the Internet or cell phones, so it is no surprise they would adopt the new warning systems so quickly, Tuttle said.

Tuttle said with the new technology comes a higher expectation among students and faculty that they will learn about incidents quickly.

"Over time I think it will have the effect of raising the bar," said Tuttle. "But, it will also focus some more attention on the importance of having a policy that lays out how these decisions are made."

Tuttle said in the past many universities had not laid out a plan to warn the entire campus of impending danger.

"They've never really thought 'how can we really provide a timely warning?' 'What is timely?' 'Who needs to be the decision makers?"' Tuttle said.

Tuttle said mass e-mail or text messaging might be the most efficient way to inform a tech-savvy student body about campus crime.

"There is nothing in the [Clery] Act that mandates how a school elects to provide the warnings. There's always been a great deal of flexibility, but I think now that there are several providers of, let's say, e-mail or text messaging systems, if you want to reach students, I thinks it's the best way to do it," Tuttle said.

Leesburg, Va.-based Omnilert is one of the leading companies offering mass communication systems for schools. Omnilert's product, e2campus, combines text messaging, e-mail, digital signage and Web-based methods of informing the student body about events on campus. When the company launched its product in 2003, it had seven customers. Today, the company has installed its system on close to 300 campuses.

Clery Act compliance plays an important role in his business model, said Ara Bagdasarian, president and co-founder of Omnilert. Bagdasarian said he was motivated to develop a better way to warn students of danger when he read about the Clery Act's namesake.

"The idea was sparked in 2003 when I was actually reading an article about Jeanne Clery," Bagdasarian said. "It immediately made sense that students carried phones; why not use mobile phones and text messaging as a means to communicate to students to prevent another Jeanne Clery-type situation."

Bath said such systems help get information out quickly not only to students but to media outlets as well.

"The fallout is that reporters are getting hold of it right away, so now incidents that we wouldn't have heard of in the past — not only are they warning their campus effectively and in a timely fashion, but the world knows," Bath said. "So no longer are they keeping their campus in the dark, but the rest of the world is also not being in the dark."

Within a few years, the influence new technology will have on the DOE's decision-making will be better understood, Bath said. After more timely warning cases are reviewed by the Education Department, universities will be able to better gauge what is an acceptable amount of time to inform students of a crime.

"I think that there will be tighter standards," Bath said. "And sometimes when it is not specified in the law, when the Department of Education starts making rulings about the timely warnings, they kind of set a precedent that people find out about and start following."

Stephen Janosik, associate professor at Virginia Tech and co-author of a number of studies on the Clery Act, agrees timely warning might be on the verge of a change, but he said he does not know if that will influence how the DOE interprets "timely warning."

"I think there's an evolving standard, and I can see that day certainly where being able to alert people by e-mail or by cell phone will become the industry standard, for example," Janosik said. "Whether or not that causes an individual administrator or an institution to become liable for failing to act responsibly remains to be seen."

The DOE is tight-lipped about its decision-making process when it comes to timely warning. Education department spokeswoman Stephanie Babyak said only that while the DOE could not require schools to adopt any new security technology, it certainly encourages them to do so.

Technology not a panacea

Janosik said despite new systems that make communicating with students easier, students and faculty cannot expect them to flawlessly deliver information to every person. Technology has its limits and is only as helpful at the people using it, Janosik said.

"I do think that all of the technology that is available today will certainly create the expectation that students, staff and faculty on campuses are notified more quickly," Janosik said. "But I think that it is going to be important for everyone to remember that despite all of these advances and conveniences in technology, that none of them will really guarantee that everyone get notified in a timely manner."

Technology does not replace human judgment, and even the latest systems still have the potential to fail, Janosik said.

"We've been though two serious emergencies at Virginia Tech, and the thing that I've noticed is that e-mail starts to slow down due to the tremendous traffic though the Internet systems," Janosik said. "Whether you are using a cell phone or a land line, the circuits get so overloaded that being able to get though to people becomes much more difficult in times of emergencies."

Janosik said universities also might not be able to reach students via cell phone when they are in class, as many professors ask students turn them off while they are teaching.

Despite possible shortcomings, Janosik said he is optimistic about the potential for new systems to continue to drive the improvements to campus security the Clery Act started 18 years ago.

"While a lot of people have these communication devices and use them frequently, technology is not going to be a silver bullet with respect to timely notice," Janosik said. "But it certainly will be better than anything else we've had before." ■

Digital divide

They share a nickname and news stories, but a hiring dispute has called into question who controls a student paper's Web site

By Moriah Balingit

Former editor in chief Jenny Redden of Oklahoma State University's student newspaper, *The Daily O'Collegian*, always thought of the newspaper and its Web counterpart, ocolly.com, as one and the same.

But in November, when general manager and Web site adviser Fritz Wirt allowed an employee that Redden had recently fired to write for the Web site over Redden's objections, this notion was shaken.

"His justification for this move is that the Web site and the print publication are different publications," said Redden, a former Student Press Law Center intern.

As a result of Wirt's move, the newsroom stopped providing content to the Web site in protest. As of Nov. 9, ocolly.com has featured content from the Associated Press and other college newspapers. The newspaper is still accessible on ocolly.com, but readers must download the entire paper in a PDF file.

The paper and the Web site are owned by The O'Collegian Publishing Company, whose board oversees the finances of both.

The fissure has caused the university's Board of Student Publications, which oversees student media at the university, to reexamine the relationship between the newspaper and its Web site.

Redden appealed to the board to establish a policy formally defining the relationship between the paper and the Web site to help resolve the dispute. But when the board failed to act, Redden pulled the newspaper content from the Web site.

While Wirt and Redden remain at loggerheads, the board has created a committee that will recommend a policy to define in the bylaws how the Web site and the newspaper would operate in relation to each other.

As of now, Wirt said there are no bylaws that define who has editorial control over the Web site, and he challenged the assumption that it should be the editor in chief.

He asserts the editor in chief should have control over all newspaper content that appears on the Web site, but content that does not appear in the newspaper — such as blogs and videos — should be the purview of the Web editor.

"The editors claim that they should have jurisdiction, editorial rights over of all material that doesn't appear in the newspaper," he said. "The bylaws don't allow it."

Until now, Wirt hired the Web editor, whose only job was to copy and paste stories from the newspaper onto the Web site, Redden said.

"All he did was load the stories we had already created," Redden said. "He was not making editorial decisions."

Redden said that past editors oversaw some non-newspaper content, like Web videos that accompanied print news stories.

But Wirt said a web editor would be better suited to manage exclusively Web material. The editor in chief position already requires 25 to 40 hours a week, he said, and a Web editor would have to possess skills that an editor in chief might lack.

"It seems to me that either broadcast majors, PR majors and broadcast photography majors would have more training and time to spend 25 or more hours on the Web site," he said.

Redden said time would not be an issue.

"I don't really think it would create so much extra work that it would make it unfeasible," she said.

She also said that having two editors would not solve personnel conflicts like the one that arose between her and Wirt.

"That still doesn't solve the personnel issue because if one person was fired by the newsroom they could still be rehired by the Web," she said.

Joey Senat, an associate journalism professor at Oklahoma State, agreed with Redden and said that the two largest newspapers in the state — *The Daily Oklahoman* and the *Tulsa World* — did not operate with co-equal Web and print editors.

> *"The public face of it is that it's the same organization ... The editorial content should come from the editor of the newspaper."*
>
> **Joey Senat**
> Oklahoma State journalism professor

"I don't know of any executive editor who would stand for having the Web site being co-equal in power," he said. "That doesn't seem to be the norm in the industry and it still defies a lot of logic for the set up down here."

Senat noted that the *O'Collegian*'s mission statement seems to indicate that the Web site and the newspaper were intended to be seen as one publication.

The mission statement reads: "It is the mission of *The Daily O'Collegian*, with its printed and Internet editions, to persevere as the definitive source and distribution vehicle for campus news …"

"Up until this point, I don't know of anyone who would have said the Web site is a separate entity," he said. "The public face of it is that it's the same organization … The editorial content should come from the editor of the newspaper."

Redden said ideally there would be a Web editor who was not co-equal, but on the same level as a managing editor.

"I recognize the Web is important," she said. "But in the end you need one boss to call the shots."

Rhiannon Mako will succeed Redden in January and plans to continue to withhold the newspaper's content from the Web site until the board clarifies its policy regarding hiring practices for the newspaper. She said if the board declares the Web site a seperate publication, she will explore the possibility of charging the Web site to host *O'Collegian* content. ■

Both sides to appeal in case over mock profile of principal

PENNSYLVANIA — Both Hermitage School District and former student Justin Layshock will file appeals in a case where the court ruled the district violated Layshock's rights by punishing him for creating a mock MySpace page of his principal.

In July, the U.S. District Court of Western Pennsylvania ruled the school district violated Layshock's First Amendment rights when it suspended him for 10 days and transferred him out of his school to an alternative program as punishment for the mock MySpace profile he created. Specifically, the judge ruled that the punishment was unconstitutional because Layshock created the profile off school grounds and the profile did not cause a "substantial disruption," even when accessed on campus. However, the judge disagreed with Layshock's contention that the policy that he was punished under was unconstitutionally broad and that the district's actions violated his parents' due process rights.

The parties filed their notices of appeal in late November.

Case: *Layshock v. Hermitage School Dist.*, 496 F.Supp.2d 587 (W.D.Pa. 2007), *certificate of appealability denied* at 2007 WL 3120192 (W.D.Pa. Oct. 23, 2007).

Official's proposal to end print version worries paper's staff

CALIFORNIA — A dean at California State University at Long Beach proposed converting the student newspaper, the *Daily 49er*, into an online-only publication in September, causing an uproar among faculty members and the newspaper staff and possibly resulting in the unseating of the journalism department's chairman.

Gerry Riposa, dean of the College of Liberal Arts, proposed hiring a consultant to explore the feasibility of the plan after announcing that he was pulling the college's subsidies from the newspaper. The newspaper covers nearly all of its costs with advertising revenue, but the college had been picking up the remainder of the tab, about $30,000 to $50,000 a year, since the paper ceased to be a class-produced publication in 2003.

After Professor William Babcock, who was then chairman of the journalism department, protested the proposal, he was removed from his post as chairman, although he remains on the journalism department's faculty. While Babcock insists it was the controversy around the proposal that led to his demotion, the university maintained that other factors, such as the department's failure to receive accreditation, contributed to his removal.

Newspaper staffers also were opposed to the idea, saying that an online publication was not feasible because online ad revenue accounts for less than a percent of their total ad revenue. Others argued that any changes should be approved by students on the newspaper staff.

As of December, no feasibility study has been conducted and the paper remains in its current format.

Student who posted picture of Robertson online sues Regent

TEXAS — A former student at Regent University School of Law filed suit Nov. 29 against the university, claiming that it violated his rights when it punished him for posting on Facebook a freeze-frame shot of university president Pat Robertson scratching his face with his middle finger on television.

Adam Key, who was a first-year law student at the private Virginia Beach, Va.-based university, was threatened with disciplinary sanctions and then suspended indefinitely because officials said he brought a gun to campus.

Key maintains he never brought a gun to campus and that Regent was punishing him for the online photo.

Key now resides in Spring, Texas, and filed his suit in the U.S. District Court in Houston. The case might mark the first time a student has made a First Amendment claim based on the Higher Education Act, a federal law that applies to all schools that receive federal funding. A portion of the act reads, "It is the sense of Congress that no student ... on the basis of participation in protected speech or protected association" should be punished.

But Mike Hiestand, legal consultant to the Student Press Law Center, said that because the free-speech provision is prefaced with the phrase "sense of Congress," it is not enforceable as law.

Key's complaint also alleges a breach of contract because Key said he was induced to come to Regent based on promotional material that boasted of the school's defense of religious liberties. Since he termed the posting of the photograph religious speech, he said his right to post the photo should be protected.

Case: *Key v. Robertson*, No. 07-04060 (S.D. Tex. filed Nov. 29, 2007).

Court rules against student who called officials 'douchebags'

CONNECTICUT — A high school student's bid to regain her class office after she was barred from running after calling administrators "douchebags" on her blog was denied Aug. 31.

Avery Doninger, now a senior at Lewis S. Mills High School, sued the school district in the U.S. District Court in New Haven in July, claiming that administrators violated her First Amendment rights by punishing her for speech that originated off-campus.

Doninger was barred from running for re-election as class secretary last spring after writing "vulgar" comments about school administrators on livejournal.com. Although her name was not on the ballot, she won the election through write-in votes. But she was not allowed to take office. The injunction she was seeking would have compelled administrators to hold new elections and allow her to run for class secretary.

Doninger appealed her case to the 2nd U.S. Circuit Court of Appeals, and the case will be heard sometime in January, according to her attorney, Jon L. Schoenhorn.

Case: *Doninger v. Niehoff*, 514 F.Supp.2d 199 (S.D. Conn. 2007) (denying preliminary injunction).

Hazelwood School District v. Kuhlmeier

The Supreme Court decision, its aftermath and what it means for student media 20 years later

By Mike Hiestand

In January 1988, the United States Supreme Court handed down its opinion in *Hazelwood School District v. Kuhlmeier*.[1] The decision upheld the authority of public high school administrators at Hazelwood East High School in suburban St. Louis, Mo., to censor stories concerning teen pregnancy and the effects of divorce on children from a school-sponsored student newspaper.

Hazelwood was in dramatic contrast to court decisions from across the country handed down over the previous two decades that had given student journalists extensive First Amendment protections.

Although the Supreme Court was only dealing with a student newspaper in *Hazelwood*, all public high school student news and information media have been affected. Student newspapers, yearbooks and literary magazines as well as online student media and non-broadcast radio and TV programs can use the information in this guide.

Probably the most significant aspect of the decision was the emphasis it placed on determining whether a student publication is or is not a "public forum" for student expression.

As a growing number of lower court cases have confirmed, student media that qualify as public forums receive greater First Amendment protection than non-public forum student media and are not subject to *Hazelwood*'s censorship standards. The determination of forum status may not always be clear, but this guide points out the factors that a court is likely to consider.

Recent court decisions have also helped to more clearly define what types of administrative censorship *Hazelwood* allows and what types it does not. While the *Hazelwood* standard remains far from clear, these cases provide some useful guidance about where the outer boundaries lie.

Please note one thing above all else: All public high school students still have important First Amendment protections that limit the ability of school officials to restrict what students publish or to punish them for what they say or write. Public school officials — no matter what they may say or think — do not have an unlimited license to censor.

What the Decision Says

Hazelwood School District v. Kuhlmeier was decided on January 13, 1988. The 5-3 vote reversed the decision of the U.S. Court of Appeals for the Eighth Circuit in St. Louis, which had upheld the rights of the students. Justice Byron White wrote the Court's majority opinion, which was joined by Justices Rehnquist, Stevens, O'Connor and Scalia. Justice William Brennan filed a dissenting opinion that was joined by Justices Marshall and Blackmun.[2]

Justice White began by noting that the rights of students in public schools are not necessarily the same as those of adults in other settings. White also pointed to a student speech decision the Court had handed down two years earlier, *Bethel School District No. 403 v. Fraser*,[3] where it found that even within the school, a student's First Amendment rights could vary depending on the type of expression involved and where and how it took place.

In *Hazelwood*, the Court found that the *Spectrum*, the student newspaper at Hazelwood East High School, which was produced as part of a journalism class, was not a "forum for public expression" by students.[4] Therefore, the Court held that the school was not required to follow the standard established in *Tinker v. Des Moines Independent Community School District*,[5] a 1969 Supreme Court case that struck down as unconstitutional a school's suspension of students who had worn black armbands to protest the Vietnam War. In *Tinker*, the Court said school officials could only limit student speech when they could demonstrate that it would cause a material and substantial disruption of school activities or an invasion of the rights of others.

The *Hazelwood* majority noted that unlike the school-sponsored *Spectrum*, however, the armbands worn by the *Tinker* students constituted independent, non-school-sponsored student speech. This distinction between school-sponsored and non-school-sponsored student speech was one that the Court had not directly made before. The *Hazelwood* Court went on to say that a different category of student speech allowed for the application of a different legal standard.

From that point on, the Court said, a new — and less protective — First Amendment test could be used to analyze administrative censorship of school-sponsored speech that occurred in a non-public forum. Henceforth, the Court said, school officials could censor such speech if they could show it was "reasonably related to legitimate pedagogical concerns."[6] In other words, if a school could present a reasonable educational justification for its censorship, it would be allowed.

Applying its new standard, the Court found that the principal at *Hazelwood* East had acted lawfully in censoring the newspaper. The Court found that it was "not unreasonable" for the principal to have concluded that "frank talk" by students about their sexual history and use of birth control, even though the comments were not graphic, was "inappropriate in a school-sponsored publication distributed to 14-year-old freshmen...."[7]

In his sharp dissent, Justice Brennan said he found the newspaper at *Hazelwood* East to be a "forum established to give students an opportunity to express their views...."[8] He said the Court should have applied the *Tinker* standard. Brennan said the censorship "aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the 'mere' protection of students from sensitive topics."[9]

"Such unthinking contempt for indi-

Note to students at private schools

Because the First Amendment only protects against the actions of government officials, and the Hazelwood *case only dealt with First Amendment rights, private school students are not legally affected by the decision. They must rely on school policies or state law to protect their free expression rights. For more information, see the SPLC's Legal Guide for the Private School Press.*[46]

vidual rights is intolerable from any state official," Brennan continued. "It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees."[10]

What the Decision Means

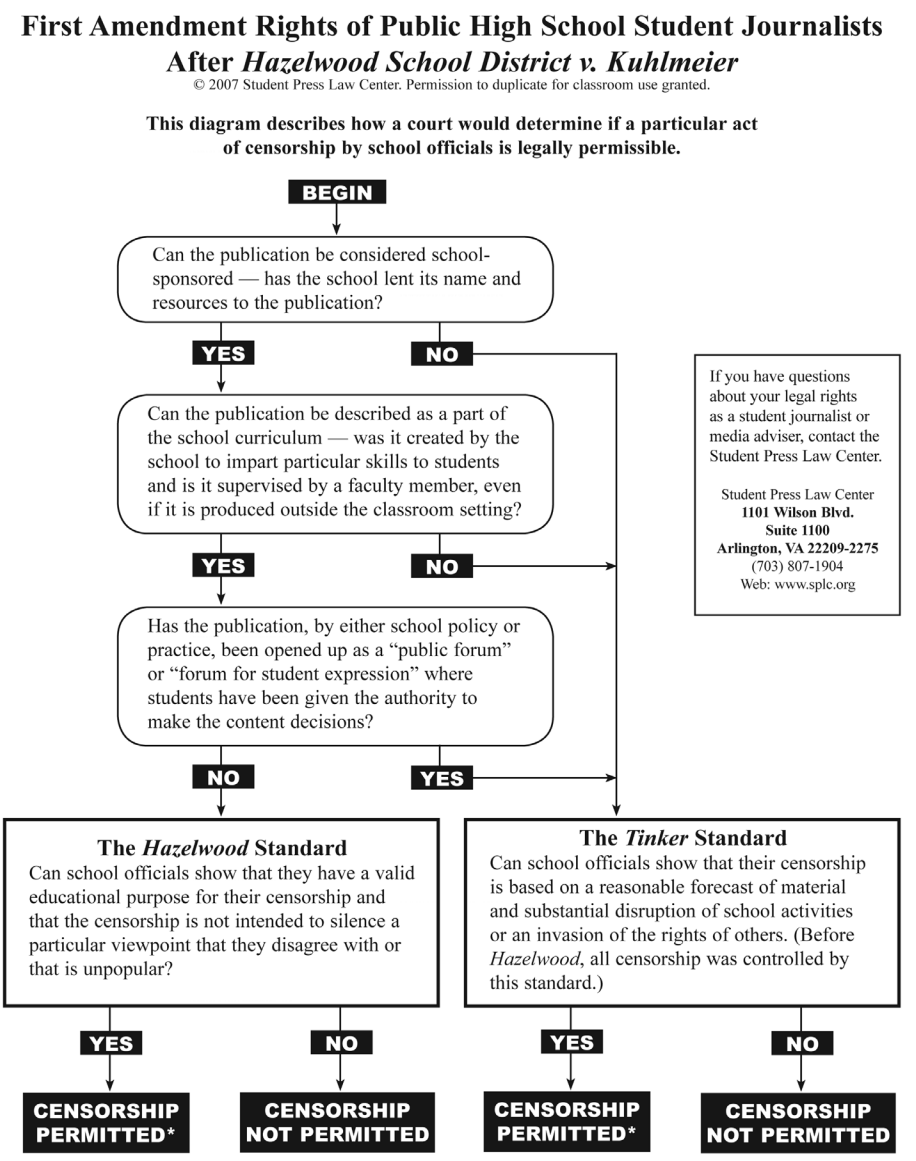
The *Hazelwood* decision struck a serious blow to scholastic journalism. The Court significantly cut back the First Amendment protections public high school students had been afforded for years. At some schools, censorship has become standard operating procedure; at any school it remains an ever-present threat.

In 1974, the report of the Commission of Inquiry into High School Journalism, titled *Captive Voices*, made some significant findings.

"Censorship is the fundamental cause of the triviality, innocuousness and uniformity that characterize the high school press," the report said. "Where a free, vigorous student press does exist, there is a healthy ferment of ideas and opinions with no indication of disruption or negative side effects on the educational experience of the school."[11]

If a free student press encourages active learning and civic participation by students, as *Captive Voices* found, *Hazelwood* was clearly a step backward and the decision, which one commentator has described as a potential "censorship tsunami,"[12] has been roundly criticized by journalism education groups.

While it is impossible to sugarcoat the negative impact *Hazelwood* has had on student media, the Court left some important safeguards against censorship intact. The following discussion will address those and other common questions raised by the decision.



*If your state is Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, Oregon, Pennsylvania or Washington, the censorship may not be permitted under your state law or regulations.

Does *Hazelwood* apply only to the student news media?

No. Any curricular, non-forum student activity that involves student expression is affected. The Court specifically mentioned theatrical productions, and over the years lower courts have cited *Hazelwood* in cases involving other student activities such as art shows, debates and academic presentations.[13]

Does *Hazelwood* apply to all high school student media?

No. It only applies to: (1) school-sponsored student media that are (2) not public forums for expression by students. Curricular and extracurricular student media that qualify as public forums, as well as independently produced (non-school-sponsored) "underground" student publications — even if distributed on school grounds — still retain much stronger First Amendment protections.[14]

Does *Hazelwood* apply to off-campus, private expression?

No. *Hazelwood* only applies to school-sponsored student expression. Independent student speech that takes place entirely outside of school — such as off-campus e-mail, a private Web site or social networking site, or a flier for a non-school organization published and distributed outside of school — is not subject to *Hazelwood*'s restrictions. Except in extraordinary cases, such expressive activity retains the highest level of First Amendment protection and school administrators will generally have no authority to restrict such content or punish students involved. Of course, as always, students remain responsible for everything they publish and can be held liable if they commit libel, invade another's legal right to privacy or engage in some other unlawful speech or activity.[15]

What is "school-sponsored"?

The Court's opinion mentions three different criteria that it might look to in determining if a publication is school-sponsored and thus covered by the *Hazelwood* decision: (1) Is it supervised by a faculty member? (2) Was the publication designed to impart particular knowledge or skills to student participants or audiences? and (3) Does the publication use the school's name or resources?[16] Even a student media organization that receives no direct funding from the school could be "school-sponsored" if it has a faculty adviser, uses school equipment or facilities or is produced in relationship to a class.

Are all school-sponsored student media covered by *Hazelwood*?

No. At least one federal court has found that school-sponsored student publications produced as part of a class can still be public forums where student editors have been allowed control over the publication's content.[17]

Does the decision apply to student media produced in an extracurricular activity?

It is unclear. In at least two federal court cases, judges have said that extracurricular student media may be beyond *Hazelwood* 's reach.[18] However, at least one court has said that even an extracurricular publication can be covered by *Hazelwood* if under faculty supervision and intended to impart particular skills to the student participants.[19]

What is forum analysis?

In weighing the authority of the government to regulate expressive activity that occurs on government property or that uses government resources, courts have turned to what is commonly known as "forum analysis."[20] The idea is that the government's authority to regulate such speech varies according to the type of forum in which the speech takes place. Some places, it recognizes, are more appropriate for speech activities than others. For example, the government's interest in regulating speech that takes place in a town's public square, where speakers have traditionally been allowed to host gatherings and share their message, is much less than on a tightly guarded military base or in the private office of a government employee where the government can demonstrate a reasonable need to restrict free speech activities.

What is the difference between an "open public forum," a "designated public forum" and a "non-public forum"?

Courts analyzing the constitutionality of administrative censorship of public high school student media first look to determine whether the media at issue is: (1) a traditional, open public forum, (2) a "designated" or "limited" public forum or (3) a non-public forum.[21]

In open public forums, such as streets, sidewalks or a town square, the government must accommodate virtually all speakers. "Designated" public forums (also called "limited" public forums), meanwhile, have not historically been open to the general public but are considered to occupy a middle ground because the government has opened the forum for a specific expressive purpose or for free speech use by a specific group of people (such as student journalists working on a public high school newspaper). Speakers using such forums in their designated manner are entitled to the same strong First Amendment protections as speakers in a traditional, open public forum.

Non-public forums have not been opened to the public, and speakers in such forums receive the least First Amendment protection. Because non-student members of the general public are generally not permitted to use a student publication to publish anything they choose, student media will generally be categorized as either a "designated" (or "limited") public forum or a non-public forum.

Why is it important to determine whether a student outlet qualifies as a public forum for student expression?

Even curricular, school-sponsored student media may still be entitled to strong First Amendment protection and exempt from *Hazelwood*'s limitations if they qualify as "designated public forums for student expression." Thus the key question for most student media in determining the impact of *Hazelwood* is whether they operate as such a forum.

Indeed, at least a half-dozen post-*Hazelwood* cases have emphasized the importance of forum analysis. As one court has said, "Whether a school newspaper is a 'public forum' can be determinative of whether attempts to limit or control the expressional activities undertaken by the newspaper violate constitutional rights."[22]

What are the factors used to determine the forum status of student media?

A designated or limited public forum is created when school officials have "by policy or practice" opened student media for students to express themselves freely. In *Hazelwood*, the Court majority said it believed the adviser to the newspaper had acted as "the final authority with respect to almost every aspect of the production and publication... including its content."[23] (The dissenting justices said they thought the facts indicated otherwise.) That finding by the majority, combined with the fact that the school never explicitly labeled the student newspaper as a "forum" in its written policies or gave other explicit evidence of an intent to designate the newspaper as a forum, prompted the Court to say a forum did not exist.

In fact, *Hazelwood* was the first case to find that a particular student newspaper did not constitute a forum for student expression, and the Court indicated that had student editors been given final authority over content or had the school explicitly designated *Spectrum* as a public forum for student expression, the result in the case would likely have been different.[24]

As most Courts have agreed, the school's intent is a critical factor in the forum calculus.[25] That can be determined by written school policy, if one exists, or by how the publication has operated over time. "'Actual practice speaks louder than words' in determining whether the government intended to create a limited public forum."[26]

In two recent cases, federal district courts found that high school-sponsored student newspapers were not subject to *Hazelwood* because they were operating as public forums.[27] In both cases, the courts noted that the publications had been operating free from censorship and that school officials were well aware of that fact. The advisers to these student publications also testified that neither they nor school administrators were telling the students what they could publish.

In cases where the publication is a pub-

lic forum for student expression, school officials will only be allowed to censor when they can demonstrate a compelling reason, such as meeting the broader protections of the *Tinker* standard.

When is censorship by school officials allowed?

Hazelwood expanded the authority of school officials to censor student media that is school-sponsored and not a public forum. School officials will be allowed to censor non-forum student media when they can show that their censorship is "reasonably related to legitimate pedagogical [educational] concerns."[28] When the censorship has "no valid educational purpose," it will still be prohibited.[29]

Despite what many seem to believe, school officials were not given limitless authority under *Hazelwood*. Even where a student publication is a non-public forum, administrators still have the burden of showing that their censorship has a valid educational purpose. If they cannot, the censorship will be struck down as unconstitutional.[30]

What is a "legitimate pedagogical [educational] concern" that justifies censorship under *Hazelwood*?

That is a question that student journalists, school officials and courts have struggled with since *Hazelwood* was handed down. Considering that every major national organization of journalism educators in the country has said that censorship in and of itself is an educationally unsound practice, one might think that schools could never get away with censorship. However, the Supreme Court indicated otherwise.

The Court gave several examples in its decision of what might be censorable: material that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences." Potentially sensitive topics, such as "the existence of Santa Claus in an elementary school setting" or "the particulars of teenage sexual activity in a high school setting" can also be banned. And "speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the 'shared values of a civilized social order'" may also be censored. In addition, the Court said school officials could censor material that would "associate the school with anything other than neutrality on matters of political controversy."[31]

These examples — frightening in their breadth and vagueness — suggest that school officials might be allowed to censor a great number of things simply because they disapprove of them. In fact, the Court said schools could demand of their student publications standards "higher than those demanded by some newspaper publishers ... in the 'real' world."[32]

Fortunately, a growing number of lower court decisions decided since *Hazelwood* have indicated that this standard still imposes significant limitations on school officials' authority. For example, in *Desilets v. Clearview Regional Board of Education* the New Jersey Supreme Court rejected school officials' justifications for censoring reviews of R-rated movies from a student newspaper under the *Hazelwood* standard as "equivocal and inconsistent."[33] The court noted that there was nothing offensive in the reviews, that R-rated movies were discussed in class by teachers, that such reviews were available in the school library and that the student newspaper had, in fact, reviewed such movies in the past.

In *Dean v. Utica*[34], a federal district court in Michigan rejected a school's censorship of a student newspaper story about a lawsuit filed against the school by community members who claimed they were suffering health problems from breathing diesel exhaust from idling school buses.

The court found the student newspaper to be a public forum, but said even if it had not been, the school's actions were unconstitutional under *Hazelwood*. Assessing the story on criteria including fairness, accuracy, writing quality and bias, the court said the school had presented no legitimate justification for censoring. Good, solid journalism, the judge found, can trump *Hazelwood*-based censorship.

Are there any other limitations on school officials' authority to censor?

Most courts will also require that school officials be able to show that their censorship is "viewpoint neutral,"[35] that is, that they did not censor simply because they disagreed with a particular view students were expressing. For example, a principal who censored a pro-life editorial, but allowed the publication of a pro-choice editorial, would be engaging in viewpoint discrimination. However, there is some disagreement among lower courts about whether *Hazelwood* imposes a viewpoint-neutral requirement.[36] Until the Supreme Court clarifies the issue, most courts continue to conclude that censorship of student speech based on viewpoint is constitutionally impermissible.

Is prior review allowed after *Hazelwood*?

The *Hazelwood* Court indicated that school officials can review non-forum, curricular student publications before they go to press, and probably can do so without specific written regulations.[37] Prior review by school administrators has long been one of the most problematic and insidious forms of censorship. Where mandatory administrative prior review exists, it will likely be a rebuttable indicator that the publication is not operating as a public forum. For those publications that have been designated as public forums, prior review may require that written policies with procedural safeguards be present.

Did the Supreme Court overrule its decision in the *Tinker* case?

No. The *Hazelwood* Court reaffirmed the *Tinker* decision and the notion that neither students nor teachers lose their free expression rights at the schoolhouse gate. But it did seriously cut back on *Tinker*'s application. By refusing to apply that decision to any situation in a public high school involving a non-forum, school-sponsored student expression, the justices made *Tinker* a shadow of the protective shield for student journalists it had once been.

For all public forum, extracurricular and underground publications, the *Tinker* standard is still the law. School officials can only censor those publications when they can demonstrate their content will result in a material and substantial disruption of school activities, an invasion of the rights of other students or that the material falls in to another area of unprotected speech.[38]

Are there any other legal protections students might have to fight censorship?

Yes. It is important to remember that

Hazelwood only addressed the protections available under the First Amendment. The Court left open the possibility that other avenues of protection, including everything from state constitutional provisions or state laws to school board regulations, might still prevent school officials from censoring.

Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon have state laws that protect the free expression rights of their high school students.[39] Other states across the country have considered — and continue to pursue — enacting similar legislation. In addition, some states, such as Pennsylvania and Washington, have state regulations that may protect student rights. And dozens of individual school districts across the country, such as Dade County in Florida, Fairfax County in Virginia and Auburn School District in Washington State, have enacted student expression policies that provide significant protections to their student media programs.

Courts in New Jersey[40] and Washington[41] have specifically said their state constitutions may provide additional free speech protection to student media. Additionally, the free speech provisions of other state constitutions include language that could be interpreted as providing broader legal protections than the federal First Amendment.

Does *Hazelwood* apply to college student media?

In a footnote, the *Hazelwood* majority said, "We need not now decide whether the same degree of deference [to school censorship] is appropriate with respect to school-sponsored expressive activities at the college and university level."[42] For nearly twenty years — up until a 2005 decision by the 7th U.S. Circuit Court of Appeals in *Hosty v. Carter* — courts had consistently rejected the application of *Hazelwood* to college student media. In *Hosty*, however, a divided court found that *Hazelwood* provided the "starting point" for analyzing college censorship cases.

For students attending a public college or university in Illinois, Indiana and Wisconsin (the states covered by the 7th Circuit), *Hosty* is now the law. As a practical matter, most college student newspapers will still be considered designated public forums and entitled to the strongest First Amendment protection because that is the way they have been operating for decades. (Moreover, in 2007 Illinois lawmakers passed a law protecting college student media from administrative censorship that should effectively negate *Hosty*'s impact for college students in that state.[43]) Most importantly, however, the *Hosty* decision has no legal impact outside the boundaries of the 7th Circuit, and the law prohibiting virtually all forms of administrative college censorship remains unchanged. In fact, the *Hosty* decision is in direct conflict with court rulings dating back nearly four decades. Moreover, the U.S. Supreme Court, which has still not ruled on the question, has consistently noted in other cases the important role of free speech on American college and university campuses. Unfortunately, some misguided or opportunistic college officials outside the 7th Circuit have pointed to *Hosty* to justify more administrative control over student media. College student media must challenge such interpretations immediately.[44]

What the Decision Has Done

Requests for legal assistance to the SPLC from high school students and advisers around the country indicate that the *Hazelwood* decision has had at least one significant effect: a dramatic increase in the amount of censorship.

From 1988 to 2003, calls for help received by the Center increased by about 350 percent, a nearly constant rise that shows no sign of decline. Student media continue to report censorship of articles, editorials and advertisements that are perceived as "controversial" or that school officials feel might cast the school in a negative light. Disturbingly, professional student media advisers are also reporting a growing number of threats to their jobs if they refuse to follow school officials' orders to censor. And almost all student journalists and advisers have said that they attributed the censorship at least in part to the *Hazelwood* decision.

Some Final Words

The *Hazelwood* decision is now two decades old. An entire generation has lived its entire academic life — and is now moving into the professional ranks — under *Hazelwood*'s influence. Far too many of our future journalists, citizens and leaders unquestioningly accept that school administrators — government officials — should have the authority to dictate what they read, write and talk about.[45] What this means for the future of press freedom in America remains unknown, but we hope that no student or adviser is resigned to give up the battle against censorship.

Since 1974, the Student Press Law Center has been a source of free legal help and information for students and journalism advisers who are facing administrative censorship. You can contact our legal staff through our Web site (www.splc.org) or by telephone at (703) 807-1904. In addition, the Center remains the only national clearinghouse devoted solely to collecting information about the cases and controversies affecting America's student press, and we rely on you to help us track student media censorship. If you are involved in — or simply aware of — student media censorship in your area, please contact us. ■

Endnotes

1) 484 U.S. 260 (1988).
2) Because of the retirement of Justice Lewis Powell, Jr. in 1987, there were only eight sitting justices at the time *Hazelwood* was argued instead of the usual nine.
3) 478 U.S. 675 (1986).
4) *Hazelwood*, 484 U.S. at 270.
5) 393 U.S. 503 (1969).
6) *Hazelwood*, 484 U.S. at 273.
7) Id. at 274-75.
8) Id. at 277.
9) Id. at 288.
10) Id. at 289.
11) *Captive Voices*, The Report of the Commission of Inquiry into High School Journalism (J. Nelson ed. 1974).
12) Richard J. Peltz, *Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the "College* Hazelwood*" Case*, 68 Tenn. L. Rev. 481 (2001).
13) See e.g., *Hansen v. Ann Arbor Public Schools*, 293 F.Supp.2d 780 (E.D.Mich. 2003); *Curry ex rel. Curry v. School Dist. of the City of Saginaw*, 452 F.Supp.2d 723 (E.D.Mich. 2006).
14) More information about the rights of underground newspaper publishers — and suggestions for avoiding trouble — are available in the SPLC guide *Surviving Underground*: http://www.splc.org/legalresearch.asp?id=40
15) More information for student publishers of private, off-campus print and online media is available on the SPLC Web site at: http://www.splc.org/legalresearch.asp?subcat=5
16) *Hazelwood*, 484 U.S. at 272-73.
17) *Dean v. Utica Community Schools*, 345 F.Supp.2d 799, 806 (E.D.Mich. 2001).
18) *Romano v. Harrington*, 725 F. Supp. 687

(E.D.N.Y. 1989)(finding that rights of student journalists who produced newspaper after school and not for class credit rights were "less limitable" than those of the students on the *Hazelwood* newspaper, even though both publications received school funding); *Lodestar v. Board of Education*, No. B-88-257 (D. Conn. March 10, 1989)(holding that school-sponsored publication might not be "characterized as part of the school's curriculum" and censored under the *Hazelwood* standard if its history and method of operation show it was an independent student voice).
19) *Desilets v. Clearview Regional Board of Education*, 137 N.J. 585, 590 (N.J. 1994).
20) *Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37 (1983).
21) While some courts debate whether there is a distinction between a "limited" and a "designated" public forum, we use the terms interchangeably here. See, e.g., *Roberts v. Haragan*, 2004 WL 2203130 (N.D. Tex. Sept. 30, 2004).
22) *Desilets*, 137 N.J. at 589. See also *Lodestar*, No. B-88-257 at 10 ("fair ground for litigation exists as to [the student publication's] status ... as a 'public forum' never validly closed by school authorities"); *Planned Parenthood of Southern Nevada v. Clark County School District*, 941 F.2d 817 (9th Cir. 1991)(upholding the authority of school officials to limit pregnancy-related advertising in student publications, but only after it had determined that the publications in question had not been opened as public forums).
23) *Hazelwood*, 484 U.S. at 268.
24) Id. at 267-271
25) See, e.g., *Lueneburg v. Everett School District*, 2007 WL 2069859 (W.D.Wash. July 13, 2007).
26) *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001).
27) *Draudt v. Wooster City School District*, 246 F.Supp.2d 820 (N.D. Ohio 2003); *Dean*, 345 F.Supp.2d at 806.
28) *Hazelwood*, 484 U.S. at 273.
29) Id.
30) See., e.g., *Dean*, 345 F.Supp.2d at 810.
31) Id. at 570.
32) Id.
33) *Desilets*, 137 N.J. at 593.
34) 345 F.Supp.2d 799 (E.D.Mich. 2004).
35) See e.g., *Planned Parenthood*, 941 F.2d at 829; *Dean*, 345 F.Supp. at 813; *Hansen*, 293 F.Supp.2d at 780.
36) Compare, *Fleming v. Jefferson County School District*, 298 F.3d 918, 926-928 (10th Cir. 2002), *cert denied*, 537 U.S. 1110 (2003), with *Peck v. Baldwinsville Central School District*, 426 F.3d 617, 631-632 (2nd Cir. 2005), cert. denied, 547 U.S. 1097 (2006). See also, *Busch v. Marple Newtown School Dist.*, 2007 WL 1589507, *8 n. 15 (E.D.Pa. May 31, 2007)(discussing conflicts among circuits).
37) *Hazelwood*, 484 U.S. at 273 n. 6.
38) The Supreme Court's recent decision in *Morse v. Frederick*, 127 S.Ct. 2618, 2625-26 (2007), held that student expression that advocates illegal drug use or that is lewd or vulgar (citing *Fraser*, 478 U.S. at 685) are also unprotected by the First Amendment.
39) The text and citations for these laws can all be found at: http://www.splc.org/law_library.asp
40) *Desilets v. Clearview Regional Board of Education*, 266 N.J.Super. 531 (N.J. Super A.D. 1993); *affirmed on other grounds*, 137 N.J. 585, 590 (N.J. 1994).
41) *Lueneburg*, 2007 WL 2069859 at *9.
42) *Hazelwood*, 484 U.S. at 273 n. 7.
43) 110 ILCS 13/1 - 13/97. (Effective June 1, 2008). As of January 2008, Oregon and California had also passed laws protecting college student media as a result of the *Hosty* decision. The text and citations for these laws can all be found at: http://www.splc.org/law_library.asp
44) More information about the *Hosty* case and *Hazelwood*'s application to college student media can be found at: http://www.splc.org/legalresearch.asp?subcat=4
45) A 2004 national study sponsored by the Knight Foundations revealed, among other sobering statistics, that more than a third of all high school students surveyed believed the First Amendment went "too far" in guaranteeing freedom of speech and freedom of the press. More information from the "Future of the First Amendment" study is available at: http://www.firstamendmentfuture.org/
46) http://www.splc.org/legalresearch.asp?id=52

Jurors find for school in former student's suit against paper

INDIANA — Jurors on Oct. 5 found against a former Whiteland Community High School student who sued the school district, claiming the school's newspaper defamed her, violated her privacy and caused her emotional distress.

Heide Inman, formerly Heide Peek, sued the Clark-Pleasant Community School Corporation and several administrators in 2003 after an article in the May 2002 edition of the school paper, *Smoke Signals*, awarded her the "worst reputation" award and said her favorite song was "Underneath Your Clothes." Additionally, after quoting Inman saying that she hoped to be a zoologist, the article predicted that she would be fired from her zoo job "after being raped by a monkey." Inman found the comments especially egregious because she was allegedly raped in April 2002.

The paper's adviser intended to remove the comments but did not save the changes, the Associated Press reported.
Case: *Peek v. Clark-Pleasant Community School Corporation*, No. 41D01-0406-CT-00081 (Johnson Super. Ct. No. 1 Oct. 5, 2007)(jury verdict)

Former regent sues Nebraska paper over plagiarism allegations

NEBRASKA — Former university regent Robert Prokop filed suit Oct. 18 against the student newspaper of the University of Nebraska — Lincoln for $700,000, claiming an editorial libeled him and caused him to lose his bid to rejoin the board in the 2006 election.

The Daily Nebraskan published an editorial titled "Regents must be held to high standards" in October 2006 that said Prokop had plagiarized portions of a column he submitted to the newspaper when he was a regent in the early 1970s.

The allegations stem from a controversy surrounding the paper's refusal at the time to print Prokop's column. Editors defended their decision by running an article that showed similarities between the column and excerpts from the book "Homosexuality: Disease or Way of Life."
Case: *Prokop v. The Daily Nebraskan*, No. 07-441 (Colo. Lancaster Co. Dist. Ct. filed Oct. 18, 2007).

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The Student Press Law Center now offers annual memberships.* The SPLC is the only national, nonprofit resource center that educates and assists student journalists and their teachers/advisers on media law, censorship and other free-expression issues. Since its founding in 1974, the SPLC has been a leading advocate for student press rights and responsibilities in secondary schools, colleges and universities throughout the United States.

Join today and support the work of the SPLC.

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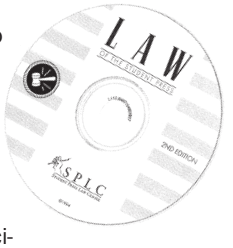

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• Access to free reprints of SPLC published legal analyses, which may be reproduced for classroom lessons, media staff handbooks and other uses. Topics include libel; copyright; Hazelwood Supreme Court decision; privacy; freedom of information; campus crime and campus court reports, among others.

• The opportunity to support the free legal assistance that you and all student journalists and advisers receive from the SPLC, including telephone and e-mail advice and referrals to media attorneys in your area when necessary.

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