

MASS MEDIA AND SOCIETY

Student Press Law

Introduction

In 1969 the Supreme court ruled that "students do not shed their Constitutional rights when they cross the schoolhouse gate" in *Tinker vs. Des Moines*. And courts ruled consistently for years that students had the same rights of free expression as anyone else, as long as they did not disrupt the operation of their schools.



Often most disconcerting to administrators are editorials that criticize them and feature stories about controversial subjects, such as surveys of student sexual habits.

Even underground newspapers enjoyed freedom from censorship (*Dickey vs. Alabama* 1967). And one could presume that the same guidelines apply to other student media, such as campus radio stations -- at least as far as Federal Communications Commission guidelines allow.

That was why it was surprise when the Supreme Court ruled in 1988 in *Hazelwood vs. Kuhlmeier* that states could allow high school administrators to censor official school newspapers or hold them to prior review. Apparently students don't have the same rights of free expression as other citizens.

The courts did not say that schools HAD to censor school newspapers, only that states could give them those rights. In California it was already against the law for high school administrators to interfere with student publications. The California Education Code says:

Students of the public schools shall have the right to exercise freedom of speech and of the press, including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges and other insignia, the right of expression in official publications, whether or not such publication or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous.

Also prohibited shall be material which so 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, or the substantial disruption of the orderly operation of the school.

and

Student editors of official student publications shall be responsible for assigning and editing the news, editorial and feature content of their publications subject to the limitations of this

section. However, it shall be the responsibility of a journalism adviser or advisers of student publications within each school to supervise the production of a student staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section.

There shall be no prior restraint of material prepared for official school publications except insofar as it violates this section. School officials shall have the burden of showing justification without undue delay to any limitation of student expression under this section.

Of course, that is not to say that high school publications in California are not subject to prior review or censorship by administrators. But when it does it is not legal. Many high school advisers have little or no training in journalism. Furthermore, journalism is an expensive subject to offer and schools are not required to. Even advisers who know better might agree to prior review in order for the paper simply to exist.

The Freedom Forum, sponsored by the Gannett Corp., does an annual survey of people's attitudes about the First Amendment. In early 2000 more than 55 percent felt that high school students should not be allowed to report on controversial issues in their student newspapers without approval of school authorities.

Kincaid vs. Gibson

The justices in the Hazelwood case specifically said they were not addressing the issue of whether or not college newspapers faced the same restrictions as high school students. Presumably, one reason for restricting high school students' rights is that they most of them are not legal adults. But at college newspapers most of the students ARE legal adults. So there are two ways to look at the Supreme Court's words as applied to college newspapers:

- Since the court did not say that the restrictions DID apply to college newspapers, they don't.
- Since the court did not say that the restrictions DID NOT apply to college newspapers, they do.

Obviously, college administrators and student journalists are on opposite of this issue. And college student publications advisers are caught in the middle, though most would side with the students.

Then along came Kentucky State University, which decided that it did not like the student yearbook and decided to withhold distribution against the wishes of the students. A Federal appeals court panel ruled in 1999 in Kincaid vs. Gibson that Hazelwood case did apply to college publications. Only three judges of the seven-judge court had ruled on the case, however, and in spring the rest of the justices decided to stay the decision and rehear the case in May 2000. The full court reversed the original decision and the yearbooks were distributed on campus, effectively ending this assault on student press freedom.

Hosty vs. Carter

Yet another more recent attempt to apply Hazelwood to the college press was the Hosty vs. Carter case decided by a federal appeals court in 2003. In this case Carter, the student activities official at

Governor's State University in Illinois, told the newspaper's printer not to print any more issues of the school paper until school officials gave approval. At issue was a lot of poor grammar and spelling in the paper. Carter wanted to have the school edit the copy and clean it up before the paper was printed. That's the students' responsibility. Nowhere in the Constitution does it say that a paper must spell words correctly or use good grammar, though it is not a bad idea. The appellate court at first rejected the school's arguments that it had the right to review copy and clean it up. A copy of [the court's decision](#), which is probably the strongest argument to date saying that Hazelwood does not apply to the college press, can be found online.

But in late June, 2003, the Federal Appeals Court agreed to rehear the case later in the year. In June 2005 the full court ruled 7-4 that Hazelwood DID apply to college newspapers under some circumstances. The full decision can be found [here](#).

The question is whether or not the paper is considered a public or open forum. An underground paper certainly is an open forum. But is an official student newspaper run as part of a journalism class an open forum? Maybe, depending on how open it is to all students. Or does it only include information from students in the class as a result of classroom activity? And remember, Hazelwood only says that schools MAY give college officials the right. California high schools clearly are protected. Are California's colleges? The Hosty/Carter decision does not directly affect schools in the California jurisdiction, but such cases in other jurisdictions often serve as precedents where no other decision exists. The problem here is that Hosty/Carter and Kincaid are conflicting precedents.

And some California college administrators already have shown signs of wanting to control content of the student newspaper. An administrator in the Riverside Community College District in Southern California made overtones that the school had the right to control content and the board of trustees has been asked to revise school policies on free speech that could result in control of newspaper content if an administrator wants to try.

A few years ago, even before the Hosty decision the college president of San Joaquin Delta College in Stockton asserted that he had the right control newspaper content. When challenged, he backed down.

At the CSU level an attorney for the system's chancellor in 2005 wrote a finding that administrations might, as a result of the Hosty decision, have more control of student newspaper content than previously considered. The memo drew a lot of fire, but it shows that school administrations and their attorneys are weighing the thought of controlling the student press more. Most are content with staying as far away from controlling content as possible, but it is only a matter of time before someone actually tries it. Nearly every college president will admit that at times there have been stories or opinion columns written by students that they would like to have had "filtered," which is a kind way of saying that they wish the stories had not run or had been censored.

The Supreme Court in February 2006 declined to hear the case at that level, leaving the conflicting circuit court decisions standing. Hosty/Carter would not have been the strongest case for the student press to present. After all, there WERE a lot of grammar and spelling problems with the paper and the court might look at students who act unprofessionally as undeserving of protection. But who is to say that schools that require administrators or faculty advisers to clean up grammar cannot manage to control students' opinions at the same time?

In spring 2006 the California Newspaper Publishers Association sponsored [a bill](#) in the state

legislature that would assure that the Hazelwood principle would NOT apply to students at California's public community colleges and universities. Gov. Schwarzenegger signed it into law in August and it goes into effect officially Jan. 1, 2007. The law reaffirms that college students have freedom of the press. Shortly after signing the law protecting free student press, the governor also signed into law a measure that would prohibit people from stealing copies of free newspapers from newsstands with the intent to censor the press. Because most student newspapers are distributed for free, the law applies to their papers as well. It is okay to take multiple copies for personal use, but the it is against the law to take copies to prevent others from seeing them.

And more recently CNPA has worked to introduce a follow-up bill that would protect advisers. If administrators cannot censor students, then their next recourse is to threaten faculty advisers into subtly doing it for them. If they won't, they'll be reassigned and someone else more willing will be put in their place. The bill, which is going through the state legislature this summer, seems to be sailing through without much opposition.

Reading Assignment

You should be reading the chapter on media law in your textbook to get more information about mass media law.

Exercise

When in California may school administrators interfere with student publications?

Note that when submitting the answer start the subject line with:

J100x - YourLastName - Students

Send to rcameron@cerritos.edu