

The Hazelwood decision reopens the discussion of student First Amendment rights in relation to school authority.

# Freedom of Speech/Press and High School and College Newspapers

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The First Amendment of the United States Constitution states it clearly: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances" (Alexander 130).

But where does it say, except for high school students? What does freedom of speech or press really mean, especially where high school publications are concerned? How should a high school journalism adviser implement the constitution in his or her role as adviser? And what are the rights of high school journalists versus college journalists versus professional journalists? Where does imposing journalistic standards end and censorship begin?

The issue surrounding censorship of student press and legal restraints on student publications are both controversial and complex (Avery 1). Traditionally, high school and college publications alike have operated under a relative freedom of expression. In *Tinker vs. Des Moines Independent Community School District* "students and teachers do not shed their constitutional rights to freedom of speech and expression at the school house gate" (Avery 3). *Dickey vs. Alabama State Board of Education* extended First Amendment protections to students and the school or university can only restrict those rights through reasonable regulation (Avery 9). However, the recent *Hazelwood School District vs. Kuhlmeier* Supreme Court decision may affect the legal bases of freedom of expression as it has traditionally existed in high schools by emphasizing the school's role as "publisher."

The *Hazelwood* decision has been supported by those who place emphasis on the need to maintain discipline and order in the schools and criticized by those who place relatively greater emphasis on the protection of civil liberties and constitutional rights ("Supreme" 1).

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The roles of the administrator, adviser, and student may become increasingly intertwined and diverse as the *Hazelwood* case is discussed and applied. High schools and colleges may need to re-evaluate or establish policies that clearly define the role of the newspaper as well as the role of administrators, advisers, and students.

## Importance of Study

Since the 1969 *Tinker* decision students have been entitled to free speech and expression unless school authorities could show restraint is reasonable to prevent substantial interference with school discipline. Although the *Hazelwood* case involves circumstances which apply only to its local school district, the *potential* for further censorship of high school publications has been established, since the decision against constitutional protections for students of all ages in the *Hazelwood* case has been highly publicized throughout the United States, not only as editorials in professional publications, but in student publications as well. This publicity may find administrators placing further restrictions on "time, place, and manner of distribution of literature created and distributed by their students" (Avery 6). The Supreme Court also gave public school officials broad, new authority to censor student newspapers and other forms of student expression (Carelli). "Educators are entitled to exercise greater control over this second form of student expression . . . to assure that activity is designed to teach, that readers, or listeners are not exposed to material that may be inappropriate for their level of maturity, and that views of the individual speaker are not erroneously attributed to the school" (White 20).

School administrators and advisers must understand the reasoning and special circumstances in this decision. The implications could be far reaching for misinformed or uninformed school personnel. If administrators begin to apply *Hazelwood* broadly without an understanding, many First Amendment rights could be violated.

## Limitations of Study

Special characteristics and circumstances are key terms used in Justice Byron H. White's opinion of the *Hazelwood* case. However, in the 1985 *New Jersey vs. T.L.O.* decision, the court also recognized that the school environment has special characteristics and the law must be applied with this in mind.

*Hazelwood's* school board policy reflects that the school-sponsored publication is a laboratory situation in which the students publish the school newspaper. Students received grades and academic credit. This course was taught during regular school hours (*Hazelwood East Curriculum*). All of these factors gave the school board the right to "reserve the forum for its intended purpose," as a supervised learning experience. The Court said the school officials, therefore, were entitled to regulate the contents of the publication in "any reasonable manner" (White 20).

The Court said these special circumstances apply to only this one case and, therefore, the public should not intend to use this case as a precedent. Each case would have its own limitations and special circumstances.

## Background

Prior to 1985, cases involving student rights had been decided with careful attention to the 1969 *Tinker* case giving students constitutional rights that they did not shed at the schoolhouse door. A standard also made it the responsibility of the school, before restricting the constitutional rights of students, to demonstrate that the actions to be sanc-

tioned would "substantially interfere with the work of the school or impinge upon the rights of other students" ("Supreme" 1).

However, in three recent cases dealing with student rights since 1985, the Supreme Court has fixed new boundaries within which those rights are to be considered ("Supreme" 2).

In 1985 the *New Jersey vs. T.L.O.* decision, which did not deal directly with freedom of speech and press, stated that students in public schools can have limitations placed on their constitutional rights. The Supreme Court decision, while stating that students enjoy the protection of the Fourth Amendment to the Constitution of the United States, their rights were balanced against the rights of administrators and teachers to maintain order in the schools ("Supreme" 3). In his dissent in the *Hazelwood* decision, Justice William J. Brennan stated that "only speech that 'materially and substantially interferes with the requirements of appropriate discipline' can be found unacceptable and therefore prohibited" (Brennan 2). The "reasonable suspicion" clause becomes an important aspect in dealing with students. The *T.L.O.* case involves a student's purse that was searched after two students were caught smoking in a lavatory in violation of a school rule. The search uncovered marijuana and other drug-related paraphernalia, money, and two letters. The Supreme Court overruled the Appellate court's decision saying that, although the constitutional provisions were applicable, the original search had been legal because:

"Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student had violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonable related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction" ("Supreme" 3).

The 1986 *Bethel School District #403 vs. Fraser* decision further separated the adult from the student. The First Amendment guarantees wide freedom in adult public discussion and would protect an adult using offensive language to make a point in a political speech. It, however, does not follow that "the same latitude must be permitted to children in a public school. The case involved a student speech which referred to a candidate "in terms of an elaborate, graphic, and explicit sexual metaphor." The Supreme Court reversed the court of appeals decisions saying it is an appropriate function of the public schools "to prohibit the use of vulgar and offensive terms in public discourse" (Supreme 3).

The most recent case to affect student rights is *Hazelwood* where the Supreme Court, by a 5-3 vote, once again overturned the court of appeals decision. The case started near the end of school in 1983 when a school principal decided not to permit publication of two pages of the school newspaper involving two stories, one dealing with the pregnancies of three teen-age girls and the other with the experiences of a student whose parents had gone through a divorce. Although the principal objected to only two stories, the entire two pages were pulled because of the pressure of time. The student editors argued that their First Amendment right of freedom of expression had been violated (Supreme 4).

## Role as Publishers

"A school may in its capacity as *Publisher* of a school newspaper or producer of a school play disassociate itself not only from speech that would substantially interfere with its work or impinge on the rights of other students but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audience" (Justice 10). This was the decision in the *Hazelwood* case concerning the school's role as publisher.

In effect, the school, as publisher, makes all the decisions concerning the newspaper since they "own" the newspaper. The owners, however, are covered by First Amendment rights and responsibilities.

Professional newspapers, such as *The Garden City Telegram*, describe the school's role as publisher: "If they (school administrators) believe students will benefit by participating in a newspaper laboratory, then they shouldn't be afraid to allow students to experiment in that setting. They should encourage open discussion and free speech on a broad range of subjects. They should allow students to define what subjects are 'appropriate,'" according to Jim Bloom, editor-publisher (Bloom).

The Supreme Court defines the school's role as "publisher" as: "Educators are entitled to exercise greater control over this second form of (school-sponsored vs. individual student-initiated) student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school" (Justice 10).

By making this ruling, the Supreme Court has given approval for administration to supervise and approve of each article and issue of the newspaper. In professional newspapers the department heads make these decisions.

"If they (employees) have questions," said Bloom, "about whether we should publish a story, photo, or advertisement, then they ask me for my advice." He said, however, he did not approve each front page.

"The right to ask questions and to expect public officials and the average citizen to offer honest answers" is Bloom's definition of a free press, and this should apply to school publications. "If it doesn't, the school administration should drop the charade. After all, wouldn't it be better to allow young people to continue to believe in an ideal, but without the chance to practice free speech, than it would be to force them to practice under a situation that is far removed from the idea" (Bloom).

## Language Versus Issue

Although the *Hazelwood* administration objected to only two articles which were to be published in the final edition of the *Spectrum*, the administration censored all the information dealing with teenage pregnancy or marriage, divorce, and runaways. However, society expects the school system to educate students so they are prepared to work in the "real" world.

"By teaching about the First Amendment in social studies classes and then not applying it themselves, schools say one thing and do another. This is the sort of thing that drives people crazy or into a protective stupor. I think the enduring lesson for high school students will be that one is not to be trusted to think things through on one's own and is dependent upon some wiser authority. This is not a lesson in democracy" (Risk). However, in its reversal of the Court of Appeals, the Supreme Court reasoned that parents and school authorities have an obvious interest in pro-

protecting children, especially in a captive audience, from "sexually explicit, indecent, or lewd speech." The Supreme Court also reasoned that since the *Spectrum* was a "laboratory" situation, a high school assembly or classroom is not the place for a "sexually explicit monologue directed towards an unsuspecting audience of teenage students" ("Supreme" 4).

Although the court's reaffirmation of the schools' disciplinary powers certainly is welcome, if the schools now use those powers to push reality out of sight, "they will be doing no one any good, least of all students. A society that expects its educational system at all levels to act in loco parentis cannot insist this same system willfully ignore the facts of its students' lives. Somehow the schools have to reconcile their traditional educational mission with the responsibility we have foisted on them to teach students how to live in the real world; it's a tough assignment" (Yardley).

### Surveys/Adviser Statistics

A survey conducted by Seward County Community College revealed some startling facts about high school and college presses in Oklahoma and Kansas. The areas discussed in this survey included policy statements, prior approval for controversial issues, roles of these publications, and First Amendment rights. Principals, advisers, and student editors responded (Journalism).

#### Statement of Policy

Of the 17 schools responding, four indicated they currently have a statement of policy governing student publications; 10 do not and three do not know. In light of the *Hazelwood* decision, 10 indicated that they do not plan to incorporate a policy. Eight respondents, who currently have a written policy, do not anticipate any changes in that policy; two are not sure (Journalism).

#### Controversial Issues

Concerning controversial issues at these 17 schools, six currently need approval to run these articles; 11 do not. Merridith Pucci, editor at Putnam City West High School, said, "We need adviser approval to publish anything."

"We watch for profane language written, drawn, or inferred," said Jerome Reed, administrator at Goodland High School. "Again, a good sponsor is the reason for a good paper."

Nancy Zirkel, adviser at Liberal High School, indicated that she checks with administration if she has questions (Journalism).

Brent Bates, adviser at Labette Community College, who attended the April Kansas Association of Journalism Advisers' meeting in Manhattan, said he has no doubt that if the time comes, his administration will try to censor the paper, while Esther Gormley, adviser at Highland Community College, expressed her concern for the high schools in her area. She informed the group the Hiawatha High School principal said the administration would approve the paper now. Highland High School principal expressed concern to Gormley that the school would become more liable. Adams, who lead the discussion on *Hazelwood*, said many principals do not want the role of publisher because it would make them more liable. "Now the responsibility will be squarely the responsibility of the school instead of the responsibility of the student," Adams said. Suits that have been brought against students in the past have never amounted to much; however, suits against the administration will be more severe.

Topics that most respondents felt would be considered controversial were similar, such as "anything that sounds 'pro-sin,' such as abortion," said Thelma Workman, adviser at Cloud County Community College (Workshop).

"A few years ago, an adviser was removed for approving a 'sexual content' series of articles. This year a Planning Parenthood ad was vetoed. Anything dealing with teen sex and birth control are basically off-limits," said Pucci.

"Articles which point out faults of the faculty members or refute what has been said by the towns' people in the city paper" are generally eliminated, said Beckie Stephenson, adviser, Montezuma High School.

Kinsley High School administrators question the promotion of drugs or alcohol and the use of obscene or profane language; however, this has not happened, said David Gailey, administrator.

Most did not feel that their policies would change since the *Hazelwood* decision.

When an adviser is confronted with a student who wants to publish an article on a controversial topic, most discuss the topic, the necessity of coverage, and the angle to take in an article.

"We discuss the value of the issue to the student body and the importance of including it in the yearbook as historical information," said Marla Lord, adviser, Garden City Community College.

"I would discuss it with the student editor. If very controversial, I ask the principal as I did with an ad from Planned Parenthood," said Linda Ralls, adviser, Putnam City West High School.

"I discuss with the student the reason for wanting to do the article, its relevance to our readership, tactics to be used in gathering the news, and the probability of success in getting the necessary information," said Mike Welch, adviser, Hutchinson Community College. Kinsley High School requires the adviser to see the administration and discuss any issue that might be questionable, Gailey said.

"I let them tackle it after a discussion involving me, the editor, and the writer. If the article is researched completely and attempts journalistic fairness, I will consider using it," said Zirkel.

"Our sponsor wants to know why we want to publish it and then we talk about it and can maybe work something out," said Roberta Paxson, editor, Morland High School.

"I challenge them to examine the perspective of readers, sources, and other interested parties. Something 'controversial' is an opportunity for all sides to be quoted, as well as high reader service," said Ron Johnson, adviser, Fort Hays State University (Journalism).

#### Newspaper's Role in Teaching Human Sexuality

In light of the recent ruling to teach human sexuality, including teenage sexuality and communicable diseases, most respondents did not see the role of the high school publication changing.

"Although I realize our paper is an excellent media for reaching teens, I really do not feel my staff members who have a maximum of two years of journalism have the diligence or objectivity to write stories about controversial issues such as these," said Zirkel. Her editor, Stacy Jungel, said because of the conservative attitude the administration and the patrons from the high school paper she doubts that an important subject as such would be discussed in detail in their publication.

Jerome Reed, principal at Goodland High School, said such information would be taught in class with a professional teacher who is prepared to teach human sexuality.

Publication roles have been defined in a variety of ways. Many high schools see their roles as different from college publications and both of these see their roles as different from professional publications.

"Our purpose is to cover the year as it happened and create a historical record of the year," said Marla Lord, yearbook adviser, Garden City Community College.

The Johnson County Community College newspaper is designed to keep students and faculty updated on school happenings, programs, and policies, said Curt Sharp, JCCC student. However, it is not a public relations tool of the college; rather it is funded through activity fees, so it does not need to agree with administrator's wishes.

"The *Collegian* is produced by journalism students and I have been a practicing journalist for 15 years," said Mike Welch, adviser, Hutchinson Community College. "As a result, the *Collegian* is run as close to professional journalistic standards as possible. So, while our primary role is the same as a high school publication—serving its readers—we accomplish that by applying journalistic technique. That means that the reporters and editors do not inject their opinions and prejudices into the news columns and that even in opinion pieces they must establish a foundation of fact and use a recognizable pattern of logic to present it."

"FHSU student publications serve the same functions of the professional print media: news, information, entertainment, opinion, the list goes on," said Ron Johnson, Fort Hays State University adviser. "Now, however, high school publications are at the mercy of administration."

Rudy Louis, administrator at Holcomb High School sees their paper primarily as "a publication of positive things our students are involved in here at school. It is great for our public relations in the community" (*Journalism*).

### Limitations

*Hazelwood* addresses the issue of First Amendment rights for high school publications. Many respondents perceive the rights of high school publications as being similar to those the public press possesses with some limitations.

"We no longer have freedom of speech or freedom of the press," Pucci said. "We can be censored. I guess the only freedoms we have left are the freedom of religion and the right to assemble peacefully."

However, Ralls sees students as still having the privilege of communication with the student body as long as those privileges are not pressed to the maximum. "We must teach judgment somehow. I feel the students for the most part retain First Amendment rights."

Welch said college publications generally have the same rights as any publication, which are none except as a representative of those individuals exercising their First Amendment rights. "The obvious conflict is that, in most cases, the publication is owned by the college; therefore, the college has authority over it. Meanwhile, the individuals working on the publication have First Amendment rights and are exercising those rights; the college is justified in controlling one of its properties. It doesn't mean that they may have to look elsewhere for a vehicle. (There is no constitutional freedom of the press. There is a constitutional freedom of speech)," said Welch.

"They have the same rights as professional publications, at least at this time," said Mark Raduziner, adviser, Johnson County Community College. Ron Johnson agreed. "From my perspective, they have the same rights of professional journalists, with the exception of private colleges. Unfortunately, those rights are interpreted differently at different institutions, no matter what court precedent implied" (*Journalism*).

### High School Versus College

High school advisers and student editors may be more affected by *Hazelwood* than colleges. In dealing with these advisers, college and university advisers offered assistance and suggestions.

"I would suggest that the advisers become conversant in the restrictions placed on their publications by administrations, and that they convey these restrictions to the students before they begin publishing," Welch said. "It is a fact of life that such restrictions will be in place—especially at the high school level—so it is incumbent on advisers to incorporate them into the publication process. If there is no written statement of policy, the adviser should recommend to the administration that one be established. The adviser could even submit a proposed policy. Either way, it would be better to deal with the issue in a constructive way rather than wait until there is a crisis and suffer potential reprisal."

"Now more than ever, they must establish a solid, professional relationship with supervising administrators," Johnson said. "They must convince these administrators that they and their students are acting responsibly, and that coverage of news and issues will focus on all sides. Smart administrators should recognize that by allowing such free flow information, they can capitalize on the avenue of expression to get their views across."

"I don't think I'd want to be a high school adviser these days," Raduziner said. "It's important especially now that they all keep up with legalities occurring in the press and with the student press law center. They can cover controversial subjects. It's determining how to handle them that takes patience and time and I'd help them as an adviser in any way that I can."

What about advisers who have uncooperative administrators?

"The door may be shut, unless they wish to cooperative or seek their own legal redress," Johnson said (*Journalism*).

### Affect on Collegiate Publications

While these recent Supreme Court cases may not affect college media to the same degree they may affect high school media, the *Hazelwood* case may not be a "ringing endorsement that the *Hazelwood* standards will never apply to collegiate media," Adams said. The *Hazelwood* case stated that "we need not now decide whether the same degree of deference is appropriate with respect to school-sponsored expressive activities at the college and university level." White's statement gives the court the opportunity in the future to deny similar rights to college publications as well (Dave 1).

The *Hazelwood* ruling also indicates that each school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics (Justice 11). Although "certainly there would be few audiences anywhere which are more broad-minded than a collegiate atmosphere is expected to be," (Adams 1) nothing can rule out the possibility that decisions similar to *Hazelwood* could eventually affect college or university publications in the same fashion they may now affect high school publications.

Responsibility for newspaper content should rest "squarely on the backs of the students and ask that they rise to that responsibility. We can't teach good writing and editing unless students are held accountable for that product. We can't train journalists to seek truth in the real world unless they are free to find it in campus stories. We can't teach ethics and responsibility unless students are free to exercise judgment. Perhaps the highest compliment an adviser can be paid is when a student recognizes that the cam-

pus newspaper is real. Tangled in real conflicts, tied with heavy responsibilities, taught against the highest standards, and measured against the loftiest ideas, it's theirs. And the passion for keeping it theirs must be part of journalism education (Corner 14).

The theory that a university student publication would be identified as speaking for the department or the whole university is not valid reason for prior restraint, according to the *Bazaar vs. Fortune* decision (Avery 10). *Joyner vs. Whiting* further stated that the university cannot dictate what the publication may or may not print even though it has established the newspaper (Avery 10).

This does not, however, coincide with a recent poll that indicated the number of news-editorial majors has dropped, while the number of radio-television and advertising-public relations majors has dramatically increased. Students have changed from selecting news-editorial majors because most journalism programs have divorced themselves from the campus press. Large numbers of papers that are completely controlled by university administrations become nothing more than public relations tools of the administration, which does not know the function of a newspaper in a free society or its legal rights (Holmes 12).

#### Adviser Statistics

An additional survey conducted by College Media Adviser members analyzed the role and status of advisers and a profile of the media they advise. Results indicated that the case for advisers has grown worse in a number of areas. In 1984, for example, 19.6 percent of advisers received no release time or extra remuneration for serving in their positions; in 1987, 22.4 percent or 41 reported that status (Kopenhaver 8).

Nearly one-half (49.3 percent) of those responding advise newspapers only. The next largest group, 15 percent, have responsibility for newspaper, yearbook, and a magazine. Twelve percent advise both the newspaper and yearbook, and 9.1 percent advise all media. Almost 3 percent advise only radio and one advises television only (Kopenhaver 8).

More than half the advisers (57.1 percent) have master's degrees and nearly one-fifth (19.3 percent) have a doctorate. Of the 129 advisers responding, 50 had degrees in journalism, while 16 had degrees in English or English literature and 13 in history. The remaining 50 had other degrees. Half of the advisers had newspaper backgrounds, while 21 percent had work experience in public relations or advertising. Other types of experience included magazines, 13 percent; broadcasting, 11 percent; and free-lance writing, 4 percent (Kopenhaver 9).

On a state high school level, Johnson, who attended the April Kansas Association of Journalism Advisers' meeting in Manhattan, further suggested that approximately 30 percent of the publications advisers in Kansas have journalism degrees, and he said he may be overestimating (Johnson).

A recent telephone survey further analyzed the high school teacher's journalism background. Of the twenty-one advisers in the southwest Kansas area, none had a journalism education degree; nine had English degrees; six, business; and the remainder had either a history, art, drama, industrial arts, physical education, or computer science emphasis. One of the English teachers, indicated that she has a minor in journalism, while one is presently working on a master's in journalism (Phone).

If nothing else, *Hazelwood* should at least encourage Kansans to raise the standard of those people advising high school and college publications by encouraging a strong journalism background, said Adams (Adams).

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