

“MYTHBUSTING” HIGH SCHOOL JOURNALISM



This document was made by the Student Press Law Center, with input from board members of Friends of The Spoke.

Since 1974, the Student Press Law Center has been the leading source of information about legal issues impacting the student media. The legal staff and attorney volunteers of the SPLC publish the widely used reference text, *Law of the Student Press*, which is recognized as the nation’s most comprehensive compendium of legal research about student media.

The SPLC is frequently called upon to help resolve disputes between students and schools over what students may publish. Censorship of student publications typically grows out of unfounded fears and misperceptions, which don’t hold up when examined factually.

Myth: *Students will libel people, invade their privacy, and otherwise injure people if left to publish without tight administrative control.*

Reality: Seven states have laws under which student media are designated “public forums” over which students have editorial control, and there is no evidence of any greater incidence of libel, invasion of privacy or other injury in those states—even in California, which has had such a law on the books for over 30 years. But there *is* evidence that student autonomy creates better journalism—two of the longest-established “student free press” states, California and Kansas, are disproportionately represented among top award-winners in national student media competitions year after year. And, for the record, Pennsylvania is one of the seven states with regulations designed to protect free student expression.

Myth: *Administrators need to review the paper to minimize the risk of the school district being sued.*

Reality: A comprehensive search of the Westlaw© and Lexis© case law databases shows a grand total of zero—that’s right, *zero*—published cases in which a school district was held responsible for what students wrote in a student newspaper. While there is the rare nuisance suit that quickly settles or is dismissed, the fact is that people almost never file suits over the content of high school newspapers: it’s incredibly hard to show that a person’s life was ruined by a story in a high school paper, and the public understands that journalists-in-training are going to make errors. Other school activities are exponentially more dangerous than uncensored journalism—like football, which is blamed for an average of 12 student deaths nationwide each year. Yet no one advocates that students be forbidden from tackling each other because someone might get hurt (or even killed). We accept that students must run the risk of physical contact so they can learn to play the game properly and be prepared for the rigors of college athletics, and the same rule makes sense in journalism. As a matter of historical fact, a school is

more likely to be sued—and sued successfully—for violating students’ First Amendment rights by censoring a newspaper than by allowing the newspaper to publish uncensored.

Myth: *Administrators need to review the paper because the school district is legally liable for everything in it.*

Reality: Although lawsuits are so rare that this legal principle has never been put to the test in the high-school context, in the handful of lawsuits against *college* publications, the courts have unanimously said that colleges can’t be held financially liable for students’ editorial content if they are barred by law or regulation from censoring the content—no control, no liability. Increased administrative control over editorial content maximizes, not minimizes, whatever slight risk of legal exposure exists.

Myth: *A principal reviewing – and reserving the right to change – a student newspaper is just doing what professional newspaper publishers do.*

Reality: Actually, what professional newspaper publishers do is hire well-trained editors and get out of their way. Most publishers—like most principals—are not trained journalists, and (like principals) they don’t have the expertise, or the time, to be playing “super-editor.” And—unlike in a professional newspaper—the principal’s policies are the primary subject of the student newspaper’s coverage. If the publisher of a professional newspaper is personally involved in a story, it is imperative under all accepted codes of ethics that the publisher remove himself from reviewing that story. A principal who changes, or pulls, a story about her own administration is violating basic ethical standards—and is teaching students that ethics don’t matter.

Myth: *The Supreme Court has said that the principal is the publisher of the paper, and he can do anything he wants with it.*

Reality: Not true. The Supreme Court’s 1988 *Hazelwood* case reaffirms that students have First Amendment rights even when speaking in school-sponsored publications. All the Supreme Court said in *Hazelwood* is that school administrators can override students’ editorial judgments if they can point to a “legitimate pedagogical justification.” Subsequent cases have made clear that merely protecting the P.R. image of the school or its administrators, or eliminating references to controversial subjects, is not a “legitimate pedagogical justification.”

Myth: *“Prior review” isn’t “prior restraint.”*

Reality: Administrators sometimes play this word-game to comfort themselves because they’ve learned (correctly) that “prior restraint” is almost never permissible under the First Amendment and is the most disfavored form of censorship. “Prior restraint” simply means exercising authority to keep all or part of a newspaper from being distributed. That is exactly what most “prior review” systems provide—that the principal may remove editorial content, or keep it from being circulated. “Prior review” differs from “prior restraint” only if it functions as nothing more than an advance heads-up—allowing the principal to see, but not change or withhold, the newspaper before it goes public. And even though administrators insist that they are reviewing only for libel or other illegality, school principals are not trained libel lawyers and, in practice, they never limit prior review to those narrow confines. By far the most common reason that administrators cite when they remove content from a student publication is not that the content is unlawful, but that it “makes the school look bad.” That is the essence of prior restraint.

Myth: *Administrative control over student media is a widely approved practice.*

Reality: There are no statistical studies indicating whether prior review is or is not the majority rule among American schools, but the most authoritative and knowledgeable national organization – the Journalism Education Association, headquartered at Kansas State University – has adopted a policy statement disavowing the use of prior review: “Prior review leads only to censorship by school officials or to self-censorship by students with no improvement in journalistic quality or learning.” It is a violation of the JEA Code of Ethics for a journalism teacher to remove editorial content over the objection of student editors. In fact, Robert Harr, the lawyer who represented the school district before the Supreme Court in the *Hazelwood* case, has gone on record as saying he would not want his own child attending a school with prior review of student media because that is known to be an inferior way to teach journalism. School administrators would not overrule the leading standard-setting body in any other area of education—they would not tell school nurses how to administer shots contrary to protocols set by the national nursing association—and they should not do so in the field of journalism.