



[Note to Presenter: The notes that follow work as either a presentation script or as preparatory material for the presenter. If you're reading the notes as a script and allow for moderate discussion, the full presentation should last approximately 45-60 minutes.]

Press Freedom for High School Student Journalists

A legal guide to protecting the free press rights
of high school student journalists

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This presentation addresses the free speech and free press rights of high school student journalists. Allowing for a few questions or comments along the way, it should last just under an hour and is designed to help students and their advisers understand their legal right to publish accurate, newsworthy information free from censorship.

Student Press Law Center

Provides free legal help and information on media law issues to student journalists and their advisers

Web site: www.splc.org

Phone: (703) 807-1904

Monday - Friday 9 a.m. - 6 p.m. Eastern Time

Between Memorial Day and Labor Day the SPLC closes at 4:30 p.m. on Fridays

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This presentation will not make you a First Amendment expert. What it will do, we hope, is help you make more informed decisions and give you a better sense of when you might have a problem that requires outside help. For those cases, you may want to keep the contact information for the Student Press Law Center handy. The SPLC is a nonprofit organization based just outside Washington, D.C., that since 1974 has provided free legal help and information to student journalists and their advisers on a variety of media law issues. Much more information on student press freedom topics is available on the SPLC Web site and in various publications produced by the Center. In addition, “live” help is generally available from the SPLC staff Monday through Friday.

Well, there is a lot to cover, so let’s get started.

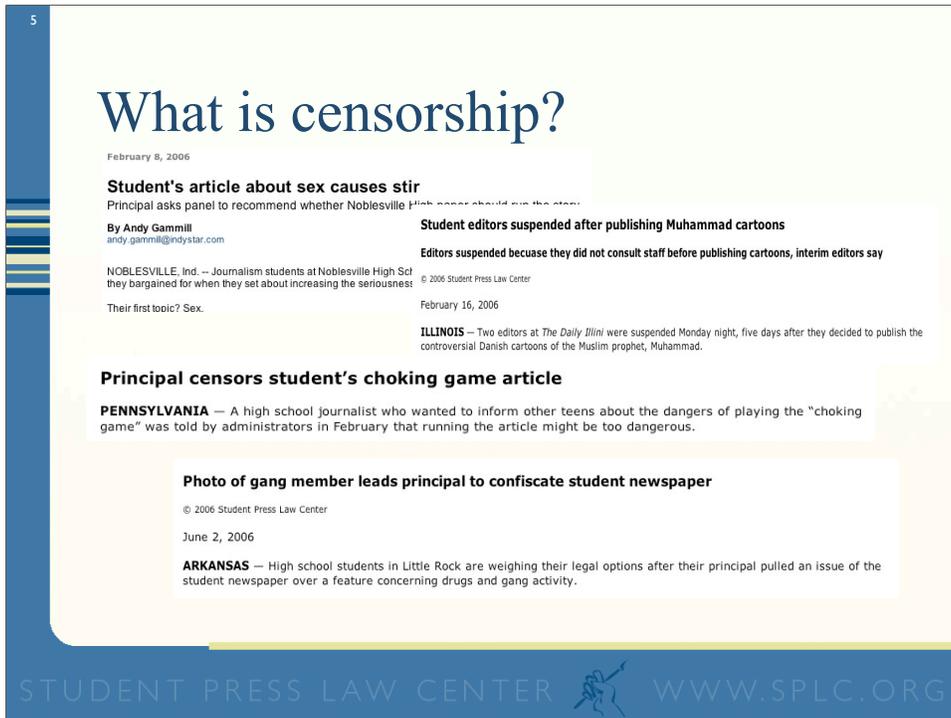
Censorship and the First Amendment

What authority do school officials
have to control the content of high
school student media?

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Unfortunately, each year censorship — and problems related to safeguarding a free and independent press — is the number one reason high school student journalists contact the Student Press Law Center for legal help.

But when we talk about censorship, what do we mean?



Some forms of censorship are obvious and easily spotted. For example, where a principal or other school official cuts a story, removes a photo, refuses to send a publication to the printer, takes a student TV or radio show off the air, bans an advertisement or confiscates an entire issue of a student publication because of its content — that’s censorship.

Censorship, however, can also occur in more indirect, less obvious ways. For instance, it’s also censorship when any of the following acts are directly related to the content of student media: suspending or disciplining a student journalist, cutting a student media program’s budget, firing or failing to renew an adviser’s contract, refusing to allow attendance at a student journalism conference or reducing a student’s grade for expressing an unpopular or controversial viewpoint. While administrators will often go out of their way to characterize or label such actions as something different — and while, in some cases, their acts may not violate the law — it is, nonetheless, censorship.

On the other hand, it is not censorship when a student editor changes or decides not to publish a staff reporter’s story. Editing is a normal and necessary part of news reporting and is not censorship provided it is done by the student editor and not by a school official (including the student media adviser) over the editor’s objections.

The role of a free press

- Creating an informed citizenry
 - “Marketplace of ideas”
- Watchdog
- “Conscience of society”

Several theories attempt to explain why it is important to protect the right of free speech and free press in a democracy.

A healthy democracy requires an educated and informed citizenry that has access to the latest ideas and most accurate information from a wide variety of sources. Consequently, one of the most powerful justifications for safeguarding a free press is that free expression is the “protector of truth.” Under this theory, speech competes in what has been called the “marketplace of ideas,” where ideas and opinions are vigorously debated and tested. Some ideas will be rejected outright; others may be changed and reworked. Ideally, however — in the end — the best ideas and most accurate information will survive. Censorship skews such results. The speech that survives is not necessarily the best or most accurate, but simply that favored by the censor.

A second rationale for free expression and press freedom is its importance in ensuring that citizens can prevent the abuses of those in power. In fact, it is often said that the media is the “watchdog” of a free society. Throughout history, those in power have tried to increase their influence and control by stifling dissent and censoring critical voices among those they govern. A free, robust and independent press is a vital means for the people to keep an eye on those in positions of power.

Finally, more idealistic advocates of the First Amendment argue that the primary responsibility of the media is to bring about needed social change. As the “conscience of society” the media should ferret out and publicize social problems and injustices in order to improve the plight of the underprivileged.

“[W]ere it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”

— Thomas Jefferson

Letter to Colonel Edward Carrington (January 16, 1787)

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Whatever the rationale, the importance of a free press to a democratic society is nothing new and was widely acknowledged as among the most important goals of our country’s founders. Reacting to the ruthless acts of censorship practiced by most European governments of his day, Thomas Jefferson once famously noted that “were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”

To make sure that America did not fall into the same patterns as many of the corrupt and oppressive governments that preceded it, our country’s founders looked to try something different.

In fact, in its earliest days America was called by some “The Great Experiment.” The new American system — a government of the people, by the people and for the people — had never been tried before. It was intended to be a limited government controlled by the people governed instead of the other way around.

The First Amendment

- A promise by the government to respect the individual rights of its people relating to:
 - Religion
 - Speech
 - Press
 - Assembly
 - Petition
- First Amendment rights are not unlimited

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.

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As part of the founders' plan to ensure that individual freedoms would be respected, they enacted the Bill of Rights, the first ten amendments to the U.S. Constitution. The very first of those amendments restricted the government's right to enact laws that interfered with five specific individual freedoms: freedom of religion, speech, press, assembly and petition.

Though the First Amendment contains exceptionally strong language limiting government interference of these freedoms — “Congress shall make *no* law,” the amendment begins — we have come to accept that the rights protected are not absolute. At times, the freedoms guaranteed by the First Amendment can conflict with other important rights or obligations and a balance between the two must be reached. For example, because of the threat to public safety and the general welfare, it has been famously noted that there is no free speech right to scream “Fire!” in a crowded theater. As we'll talk about later, there is also no First Amendment right to publish libelous statements or material that invades another's legal right to privacy or that infringes on a valid copyright.

Still, the First Amendment remains an ongoing promise by our government that, but for exceptional reasons, it will not interfere with the right of its people — including its youngest citizens — to engage in freedoms deemed so essential.

Public vs. Private Schools

- Because they are government agencies, public schools are limited by the First Amendment in their ability to censor
- The First Amendment does not regulate the behavior of private schools. However, state law or school policy could provide legal protections for press freedom

It is important to note, however, the distinction between the legal protections available to students attending public school and those enrolled at private schools.

The First Amendment only prohibits censorship by government officials, *not* private individuals. Because private school administrators are not classified as “government officials,” or “state actors,” they are not bound by the same constitutional limits as their public school counterparts. It may come as a shock to some to hear, then, that the First Amendment does not generally prohibit censorship of private school student media.

Legal protections for private school student media

- State Constitutional Protection

Even so, there may be other legal limits placed on the ability of private school officials to censor.

One place for private school students to look for protection may be their own state constitution. In addition to the federal Constitution's First Amendment, every state has its own constitution. And every state constitution has a provision — like the First Amendment — that protects free speech. Some of these have been interpreted by courts to provide even broader protection from censorship than that afforded by the First Amendment, including, in some cases, imposing limits on private school censorship. Additionally, lawmakers in at least one state — California — have passed a law that specifically protects private school students from some types of censorship.

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Legal protections for private school student media

- State Constitutional Protection
- **Contract Law**

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A second — and more likely — option for private school students is to look to their school’s own written policies. While a private school is not required to promise its students that it will refrain from censorship, if it does so, it may be legally bound to honor its promise. For example, where a school adopts a student publications policy that limits administrative censorship or includes similar language in a student Bill of Rights or in its student handbook — and where students have paid their tuition and relied on the school’s promises — a court may find that an enforceable contract exists.

Legal protections for private school student media

- State Constitutional Protection
- Contract Law
- **Public Pressure**

Ultimately, however, private school students may find it more effective to fight their censorship battle in the court of public opinion rather than a court of law. School officials who may not think twice about censoring a student publication often find it difficult to ignore the bad public relations that accompanies actually being labeled a “censor.” By practicing sound journalism and challenging censorship in a measured, courteous — but firm — manner, public pressure has persuaded many private school officials to do the right thing.

Press Freedom at Public High Schools

**Public school officials do not have
unlimited authority to censor
student media**

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For public high school students, however, it is a different story. Despite what school officials may claim or believe, student journalists attending a public high school have important free speech and free press rights that school officials are obligated to respect.

If you remember nothing else today, do remember this: there is no such thing as an unlimited license to censor at a public school.

The “Publisher” Myth

- | | |
|---|--|
| <ul style="list-style-type: none"> • Private Publishers <ul style="list-style-type: none"> – Legally own the publication – Private money used to fund the publication – Private publisher is not a state actor limited by the First Amendment – Can freely dictate publication’s content | <ul style="list-style-type: none"> • Public School Officials <ul style="list-style-type: none"> – Do not own the publication – Taxpayer dollars used to support publication – Public School Principal = Government Official – First Amendment clearly limits ability of school officials to control publication’s content |
|---|--|

Unfortunately, many high school officials — and others — continue to cling to the notion that the law provides little or no protection to high school student journalists.

One of the biggest “myths” held by school officials is that they are the “publisher” of student media because the school provides financial or other support and, as publisher, they have the absolute right to dictate the publication’s operations and content. In fact, the publisher comparison breaks down pretty quickly.

First, private publishers own their publication. A principal no more owns the student newspaper than he or she owns the school buses or the school football team. Where a student newspaper receives school funding (and not all do), taxpayer money — not the school officials’ private funds — support the student media program. Most importantly, however, public high school principals, superintendents and other school officials are government officials and— as government officials — they are specifically limited by the First Amendment when it comes to restricting the free speech and free press activities of others. After all, that’s why the First Amendment exists; we don’t want government officials dictating individual speech. This distinction will always distinguish public school officials from a genuine private publisher.

Tinker v. Des Moines Independent Community School District (1969)

The U.S. Supreme Court recognizes that the First Amendment protects on-campus student speech

Of course, it's easy to simply proclaim that public school students have important First Amendment rights that must be respected — but what specifically does the law say and how did we get there?

Well, when talking about the First Amendment limitations on censorship available at public schools, any discussion must begin with the most important case on student speech rights to be handed down by Supreme Court: *Tinker v. Des Moines Independent Community School District*. Decided almost four decades ago, the *Tinker* decision — often known simply as the “armband case” — is still cited in almost every legal opinion involving student free speech rights.



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Mary Beth Tinker (right) with her mother, Lorena, and younger brother, Paul

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The case began on December 16, 1965, when 13-year-old Mary Beth Tinker wore a small black armband to her eighth-grade classes at Warren Harding Junior High School in Des Moines, Iowa, to protest the war in Vietnam. Over half the school day passed quietly and without incident. Just before her afternoon algebra class, however, Mary Beth was called down to the principal's office and ordered to remove the armband. She did so. The principal then suspended her and sent her home for violating a quickly enacted school board policy prohibiting armbands. Eventually, the school suspended a total of five students — including Mary Beth's brother, John, and a friend, Chris Eckhardt, for wearing armbands to school.

After the school board refused to overturn the ban on armbands — and following heated debate on both sides — Mary Beth, Chris, John and some of the other students sued the school district. Four years and two courts later, in 1969, the United States Supreme Court handed down its decision.

Neither students nor teachers
“shed their constitutional rights
to freedom of expression or
speech at the schoolhouse gate.”

— Supreme Court majority opinion

Tinker v. Des Moines Independent Community School District (1969)

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By a 7-2 vote, the Court ruled for the students. In a famous line from its decision, the Court said that neither students nor teachers “shed their constitutional rights to freedom of expression or speech at the schoolhouse gate.”

The Court, however, recognized the unique nature of schools and the legitimate concerns of school officials in maintaining a productive learning environment. To the extent that school officials interfered with the right of students to express themselves, the Court — as it usually does in such cases — created a balancing test to analyze and weigh the competing interests.



Student speech is protected from censorship except for:

- Speech that invades the rights of others (unprotected speech)
- Speech that creates a material and substantial disruption of normal school activities

The balancing test the Court came up with — now widely referred to as the “*Tinker* standard” — was this: Before school officials could censor a student’s on-campus speech, they must first show that the speech: (1) invaded the rights of others or (2) created a “material and substantial” disruption of normal school activities. Only where school officials could overcome that Constitutional hurdle would censorship be allowed.

Unprotected Speech

- Libel
- Invasion of Privacy
- Copyright Infringement
- “Fighting Words”
- Speech that creates a clear and present danger
- Speech that presents a clear and immediate threat to national security
- Obscenity*
- Etc.

Some types of speech are not protected by the First Amendment. Speech that falls into an “unprotected speech” category can be lawfully punished — and in some cases prohibited — by the government. Some of the more common categories of unprotected speech for student media include libel, invasion of privacy and copyright infringement. These categories, however, are not simply labels that school officials can apply at their whim. Rather, they are legal terms that are defined by a substantial body of law. In other words, before a school official can censor speech by calling it “libelous,” he or she had better understand the specific elements of a libel claim and the standards of libel applied by the relevant state court. Other common categories of unprotected speech include: so-called “fighting words,” speech that creates a clear and present danger to others and speech that seriously threatens national security. Obscenity is also not protected by the First Amendment. True obscenity — which is mainly limited to extremely graphic, visual depictions of sex — almost never appears in student media. However, in recent years, courts have seemed to allow censorship of school-sponsored speech by high school students that is something less than true obscenity and probably falls into a category that is more accurately described as “indecent” or “vulgar” speech. Such speech probably includes the use of lewd and sexually suggestive speech. In most cases it would not include straightforward, “clinical” speech on sexual topics or the use of less offensive four-letter words in a newsworthy context. Much more information about the various unprotected speech categories is available on the SPLC Web site.

“Material and Substantial Disruption”

- Serious, physical disruption generally required

Another category of unprotected speech — and one specifically referred to by the Supreme Court’s *Tinker* decision — is expression on school grounds that would cause a material and substantial disruption of school activities.

In fact, the standard is fairly high and there have been few cases where courts have actually found student expression disruptive enough to justify censorship. In most instances, the courts have required the would-be censor to show that the speech would create a serious, *physical* disruption of normal school activities. It is not enough simply to show that the speech is controversial or that it would offend listeners, hurt their feelings or lead to heated, verbal debate.

For example, an article in a school newspaper that encourages students to participate in a class walkout in response to a controversial new school policy and that provides specific information regarding when, where or how to take part could be considered materially disruptive and not protected under *Tinker*.

On the other hand, an editorial that was highly critical of the policy and that encouraged students and their parents to contact the school board to voice their disapproval would likely upset some school officials, but it would not seriously interfere with a school’s day-to-day operations and would not be considered disruptive under *Tinker*.

“Material and Substantial Disruption”

- Serious, physical disruption generally required
- Reasonable forecast of disruption required

Courts have also required that before school officials can censor such speech they must have more than just a “hunch” that a disruption will occur. They must be able to provide evidence to a judge that reasonably forecasts that the speech would result in a physical disruption that would seriously interfere with a school’s normal operation.



Source: U.S. Supreme Court (www.supremecourtus.gov)

U.S. Supreme Court, Washington, D.C.

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The *Tinker* standard sparked by Mary Beth Tinker's armband has been applied to all types of student expression on campus, including student media. It provides significant, though not unlimited, protection and creates a meaningful barrier that administrators must justify crossing before they can legally censor.

Following the Supreme Court's decision in 1969, *Tinker* remained the sole standard for analyzing student media censorship cases for about the next two decades. During that time, lower courts applied the *Tinker* standard to a number of situations specifically involving high school student newspapers and other student media. In most of those cases, the administrative censorship was struck down as unconstitutional.

Hazelwood School District v. Kuhlmeier (1988)

The U.S. Supreme Court significantly reduces the level of First Amendment protection provided to *most* school-sponsored student media at public high schools

In 1988, however, the Supreme Court addressed the question it had never specifically answered before: What First Amendment protection do high school students have when working on a school-sponsored student newspaper?



Hazelwood East High School

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In the spring of 1983, students working on the *Spectrum* student newspaper at Hazelwood East High School just outside St. Louis, Mo., decided to publish a special two-page section in their newspaper that would focus on some of the hot issues facing teens at that time.

Pressure describes it all for today's teenagers Pregnancy affects many teens each year

Birth control — Birth control, in its many forms, is the key to preventing teenage pregnancy. It is the only way to prevent the physical and emotional damage that can result from an unwanted pregnancy. It is the only way to prevent the financial strain that can result from an unwanted pregnancy. It is the only way to prevent the social stigma that can result from an unwanted pregnancy. It is the only way to prevent the physical and emotional damage that can result from an unwanted pregnancy. It is the only way to prevent the financial strain that can result from an unwanted pregnancy. It is the only way to prevent the social stigma that can result from an unwanted pregnancy.

Consequences — The consequences of teenage pregnancy are often severe. They can include physical damage, emotional distress, financial strain, and social stigma. They can also include the loss of educational opportunities and the loss of a future. They can also include the loss of a family and the loss of a life.

Statistics — According to the Centers for Disease Control, about 1.5 million teenagers become pregnant each year in the United States. This is a significant increase from the 1 million teenagers who became pregnant each year in 1970. The increase is due to a number of factors, including the widespread availability of birth control and the increasing number of teenagers who are sexually active.

Prevention — The best way to prevent teenage pregnancy is to use birth control. There are many different types of birth control available, including condoms, diaphragms, and pills. It is important to choose a method that is safe and effective for you. It is also important to use birth control correctly and consistently.

Education — Education is also an important part of preventing teenage pregnancy. It is important for teenagers to learn about the risks of pregnancy and the benefits of birth control. It is also important for teenagers to learn about the importance of communication and decision-making.

Teenage marriages — Teenage marriages are often short-lived. They are often based on passion rather than love. They are often based on a lack of communication and decision-making. They are often based on a lack of understanding of the responsibilities of marriage. They are often based on a lack of understanding of the risks of pregnancy.

Men and dad — Men and dad are often the same person. They are often the same person who is responsible for the physical and emotional damage that can result from an unwanted pregnancy. They are often the same person who is responsible for the financial strain that can result from an unwanted pregnancy. They are often the same person who is responsible for the social stigma that can result from an unwanted pregnancy.

Runaways and juvenile delinquents — Runaways and juvenile delinquents are often the result of teenage pregnancy. They are often the result of a lack of communication and decision-making. They are often the result of a lack of understanding of the risks of pregnancy. They are often the result of a lack of understanding of the responsibilities of marriage.

Sexual life — Sexual life is often a source of pressure for teenagers. It is often a source of physical and emotional damage. It is often a source of financial strain. It is often a source of social stigma. It is often a source of the loss of educational opportunities and the loss of a future.

Help available for runaways — Help is available for runaways. There are many organizations that provide support and resources for runaways. There are many organizations that provide support and resources for runaways. There are many organizations that provide support and resources for runaways.

Teenage marriages face 75 percent divorce rate — A study by the National Center for Health Statistics found that 75 percent of teenage marriages end in divorce. This is a significant increase from the 50 percent of teenage marriages that ended in divorce in 1970. The increase is due to a number of factors, including the widespread availability of birth control and the increasing number of teenagers who are sexually active.

Runaways and juvenile delinquents are common occurrences in large cities — Runaways and juvenile delinquents are common occurrences in large cities. They are often the result of a lack of communication and decision-making. They are often the result of a lack of understanding of the risks of pregnancy. They are often the result of a lack of understanding of the responsibilities of marriage.

Divorce's impact on kids may have lifelong effect — Divorce has a significant impact on children. It can lead to emotional distress, financial strain, and social stigma. It can also lead to the loss of educational opportunities and the loss of a future. It can also lead to the loss of a family and the loss of a life.

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Censored pages from the May 13, 1983, issue of the Hazelwood East High School Spectrum

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The section included two articles — one on teenage pregnancy and the other on the impact of parents' divorce on students — that resulted in the principal pulling the entire special section from the newspaper. The articles contained no unlawful speech. Nor did school officials claim that the articles would have caused a serious physical disruption to the school. Rather, the principal claimed he censored the articles because, among other things, he felt the topics were "inappropriate" for a high school audience.

When neither side backed down, the students sued. After about four years in the lower courts, the case made its way to the U.S. Supreme Court, which handed down a decision that surprised and disappointed many First Amendment advocates.

Tinker case “distinguished”

Mary Beth Tinker’s armband =

Non-school-sponsored speech (independent student expression)

Hazelwood East *Spectrum* =

School-sponsored speech

(Curricular, school-funded, has a faculty adviser)

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Rather than simply applying the *Tinker* standard to the case — which almost certainly would have meant a victory for the student journalists — a five person majority of the justices concluded that the facts of *Hazelwood* were significantly different from those it had considered in *Tinker*. The Court reaffirmed the holding of *Tinker*, but distinguished it.

Mary Beth’s armband, the Court said, was private, or independent, speech. She made the armbands and wore them all on her own.

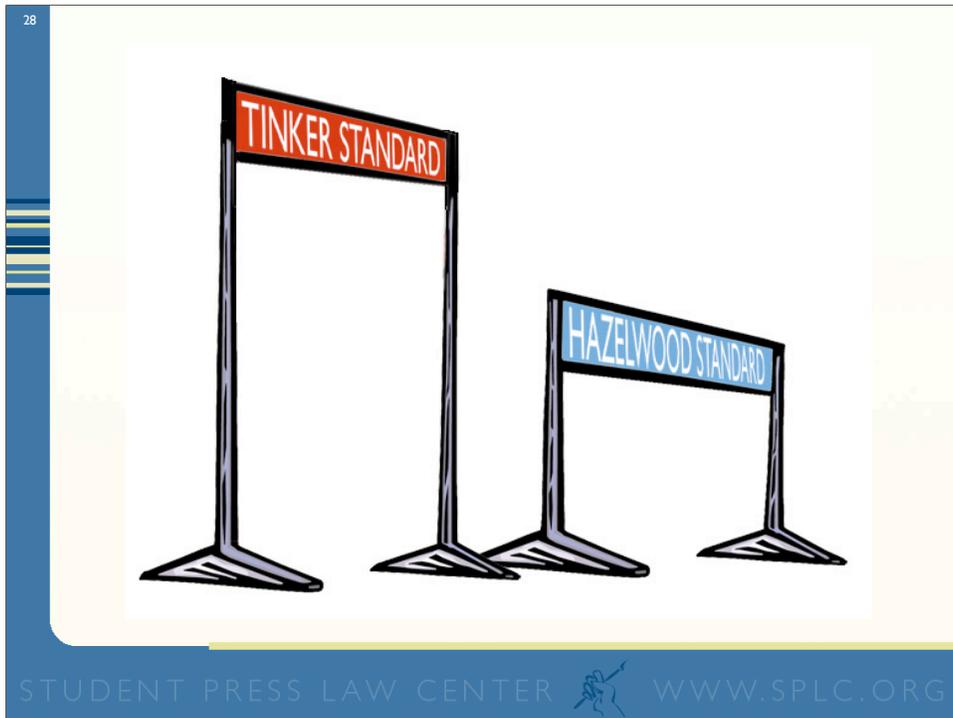
The Hazelwood *Spectrum* newspaper, on the other hand, was funded by the school, produced as part of a journalism class and overseen by a journalism teacher paid by the school. It was, the Court said, school-sponsored student speech, closely associated with the school itself, which the Court concluded fell into a different legal category — and required the application of a different legal standard.



“Reasonably related to legitimate pedagogical concerns”

Is there a reasonable educational justification?

Instead of having to justify their censorship by pointing to an established legal category, such as libel or obscenity, or by demonstrating that the speech would lead to a serious, physical disruption of school, the Supreme Court said that high school officials could censor some school-sponsored student speech, including the *Spectrum*, when the censorship was “reasonably related to legitimate pedagogical concerns.” In other words, the Court said censorship would be permitted where school officials could demonstrate a reasonable educational justification for their actions.



This was, of course, a far cry from the Court's earlier *Tinker* standard.

But what exactly is a reasonable educational justification? And what isn't?

Unfortunately, for student journalists — and school officials — trying to figure out where the new lines are drawn, the Supreme Court's standard has been a recipe for confusion.



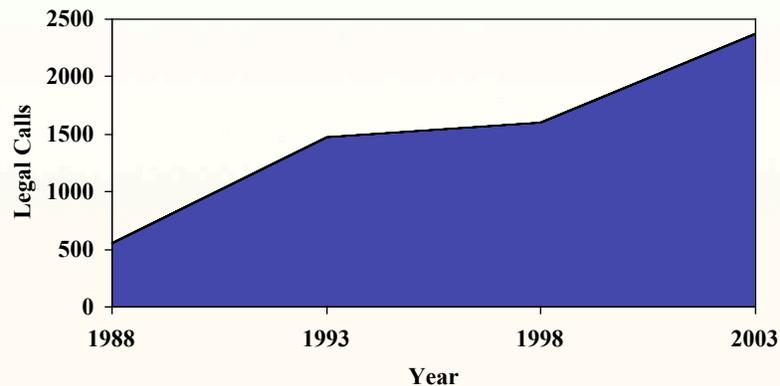
Is there a reasonable educational justification?

According to the U.S. Supreme Court, examples include material that is:

- “Poorly written”
- “Biased or Prejudiced”
- “Unsuitable for immature audiences”
- “Ungrammatical”
- Material that would “associate the school with anything other than neutrality on matters of political controversy”
- Material that is “inconsistent with the shared values of a civilized social order”

Indeed, the Court gave some examples of censorship that would satisfy the new standard that are truly shocking in their vagueness and breadth. For instance, the Court said that, under *Hazelwood*, school officials could censor student speech that was “poorly written,” “inadequately researched,” “biased or prejudiced” or “ungrammatical.” The Court also said school officials could censor student speech that was — and you need to think about this one for a moment — “inconsistent with the shared values of a civilized social order.” Whether you’re a student or an administrator, it’s pretty tough to come up with a fair and workable definition of what that means.

Post-*Hazelwood* calls to the SPLC from student journalists seeking legal help



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Predictably, *Hazelwood* has led to an increase in the censorship of high school student media as reported to the Student Press Law Center.

If all school officials have to show is that a censored news article is “poorly written” or that an opinion column is “inconsistent with the shared values of a civilized social order,” the First Amendment’s shield is more like a sieve. And the numbers bear that out.

Since the decision was handed down in 1988, calls to the Student Press Law Center from student journalists seeking legal help have skyrocketed — up about 350 percent. And those numbers continue to rise almost every year.

Hazelwood does not create an unlimited license to censor!

- Applies only to school-sponsored speech

While *Hazelwood* was, undeniably, bad news for high school student journalists, it's reach is not unlimited.

First, *Hazelwood* only applies to school-sponsored speech. Independent, non-school-sponsored student speech — such as a political armband like Mary Beth Tinker's — continue to be protected by the higher *Tinker* standard. For example, an independent, or “underground” student newspaper or zine produced by students with their own resources outside of school is protected by *Tinker*. In such cases, students have the right to distribute their publication on school grounds while students are present as long as it contains no unprotected speech and would not create a serious, physical disruption. School officials are allowed to establish reasonable rules regarding when, how and where the material is distributed — for example, a rule that prohibits distribution during a class would be a reasonable restriction — but unless they can demonstrate a violation of the *Tinker* standard, they cannot ban underground publications entirely.

Material that is created *and distributed* entirely outside of school — such as a private, off-campus Web site — is also not covered by *Hazelwood*. In fact, some courts have said such off-campus speech may even be entitled to greater protection than *Tinker* affords.

Hazelwood does not create an unlimited license to censor!

- Applies only to school-sponsored speech
- Does not apply to “public forum” student media

Second, *Hazelwood* does not apply to student media where students have been given the authority to make their own content decisions, either by a written school policy or by an established practice. Such student media organizations are considered “public forums” and are also protected by *Tinker*.

Hazelwood does not create an unlimited license to censor!

- Applies only to school-sponsored speech
- Does not apply to “public forum”
student media
- ***Hazelwood* standard has some teeth**

Third, even under *Hazelwood* school officials must demonstrate that they have a reasonable educational justification for their censorship. They cannot censor something for no reason or simply because they disagree with the viewpoint it expresses. There are cases where courts have found that school officials failed to meet the *Hazelwood* standard. One of the most important occurred in Michigan.

Dean v. Utica Community Schools (2004)

The post-*Hazelwood* case public high school student media have been awaiting

That case, *Dean v. Utica Community Schools*, leaves no doubt that high school student journalists retain significant First Amendment protection that school officials ignore at their peril.

The case began in early 2002 when Katy Dean, then a junior and sports editor for the *Arrow*, Utica High School's award-winning student newspaper, and fellow staff member Dan Butts learned that their school district in Utica, Mich., was being sued by a husband and wife who alleged that school bus exhaust fumes had contributed to the husband's lung cancer and other illnesses. The couple lived next to the school district's garage and claimed that buses were frequently allowed to idle for extended periods of time resulting in heavy diesel fumes settling into their house and neighborhood.

UCS should relocate bus garage in order to protect community

The Utica Community School district is currently facing a lawsuit regarding the district bus garage, and one member of the neighborhood is arguing that the diesel exhaust from the buses is responsible for his recent diagnosis of lung cancer.

One community member, along with his wife, is suing Utica Community Schools based on the district's alleged negligence and unwillingness to move their transportation facilities. Along with the Frances, we believe that Utica Schools should invest in a safer, less residential location for their bus garage in order to protect the health of both students and community members.

To the left and directly behind the bus garage lies an entire neighborhood. While there is only one case in which people are suing the district for health purposes, others are subject to the noise and fumes of the buses throughout the day. Perhaps it would be better to move the garage away from a neighborhood, or at least more than a few yards away from one.

According to the Environmental Protection Agency, diesel exhaust contains formaldehyde and acetaldehyde, each which cause irritation of the eyes, nose and throat. Toluene, lead, cadmium and mercury are responsible for birth defects and reproductive disorders. Other dioxins are toxic to the immune and reproductive systems, and interfere with hormonal functions.

Toluene, lead, cadmium, mercury and the other dioxins are carcinogenic. While research on the carcinogenic effects of diesel exhaust hasn't provided all of the many specifics that may be desired, it is known that the particles are small enough to travel deep into the lungs where they remain lodged for the duration of one's life.

The garage is next to Wiley Elementary and across the street from Utica High. Not only does the garage cause extra traffic in an already crowded area during the beginning and end of school, but it is a threat to students' health as well.

In both the spring and fall, athletes cross the street and take to Utica's field as often as six days a week. There they practice, play football or soccer games and hold track events. The bus garage lies only yards from the fence which surrounds Swenheart field, so students may be giving their lungs more than the intended workout and operators may get more than they originally paid for. They could be breathing in one or many of the harmful ingredients in diesel exhaust.

Multiple times a day, Wiley Elementary students go outside for recess. They play kick ball and swing on the swing sets, but little do they, or their parents, think about the fumes they breathe in from the bus garage which lies only footsteps behind the fence on playground.

While cancer may not be directly linked to diesel fumes, other problems clearly are. Relocating the bus garage may be better for the health of students and community members than in residential areas. It would be best for the district to begin looking for a new location to house their transportation facilities.



Censored editorial from Utica H.S. Arrow (March 15, 2002)

Nevertheless, on March 7, 2002, Utica High School's principal ordered Gloria Olman, the *Arrow's* veteran adviser, to pull the story, and an accompanying editorial and cartoon.

School officials claimed that the story was based on unreliable sources and contained a number of inaccuracies. They also claimed that it was inappropriate for the student newspaper to write about a legal case in which the school district was involved.



Macomb Daily photo by Ray J. Skowronek. Used with permission.

Utica H.S. *Arrow* editor Katy Dean with copy of newspaper censored by school officials

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Not wanting to delay distribution of the entire issue, the *Arrow* staff removed the censored material and sent the paper to the printer with an editorial on censorship. Next to the editorial was a black box with "Censored" stamped in white lettering.

Dean also decided to fight the censorship. A year later — after school officials had repeatedly refused to reconsider their decision — she filed a lawsuit against the school district in federal court. The *Arrow* staff also took their case public, garnering wide support at both the state and national level. In fact, a month after school officials censored Dean's article, a local commercial newspaper published it along with an editorial condemning its censorship.

Still, school officials continued to maintain that *Hazelwood* supported their decision to censor.

In October 2004 — nearly two-and-a-half years after school officials censored the *Arrow* — the court issued its opinion.

Censorship “Indefensible”

— U.S. District Court Judge Arthur Tarnow
Dean v. Utica bench ruling

- *Utica H.S. Arrow* = Limited Public Forum
- *Even if not a limited public forum, censorship was “unreasonable” under Hazelwood*

After examining the evidence and hearing courtroom testimony, Judge Arthur Tarnow called the school's censorship "indefensible."

The case was an important victory for just about all public high school student journalists working on school-sponsored media. Importantly, the judge affirmed the two primary limitations on the application of *Hazelwood*, mentioned earlier.

Arrow = “Limited Public Forum”

- Degree/type of administrative/faculty control
- Written policy statements
- The school’s practice with respect to the forum
- Curricular/extracurricular nature of student media
- The nature of the property at issue and its compatibility with expressive activity

First, the judge found that the *Arrow* was a limited public forum where students — and not school officials — were primarily responsible for determining the newspaper’s content. To reach that conclusion, the judge examined nine factors to determine the degree of control school officials exercised over the *Arrow*.

Among them, he noted that students had no practice of submitting content to school officials for prior review nor did the faculty adviser regulate the topics the newspaper covered. In fact, the judge found that during the preceding 25 years, school district officials had never intervened in the editorial process of its student newspapers. He also pointed to language in the district’s curriculum guide, course descriptions and the masthead of the *Arrow* itself as evidence that student editors were generally responsible for determining the content of the newspaper. However, not all factors weighed in favor of the *Arrow*. For example, the *Arrow* was produced as part of a class and not as a purely extracurricular activity. Nevertheless, on the whole, the court determined that the newspaper’s operations were consistent with that of a limited public forum.

Censorship “Unreasonable” under *Hazelwood*

- Fairness, Balance and Opportunity to Respond
- Grammar
- Writing Quality ("well-written and adhered to established journalistic standards")
- Suitability for Potential Audience
- Research quality
- No Bias or Prejudice
- Accuracy
- Discipline, Courtesy and Respect for Authority
- Timing (could problems with story be reasonably "fixed")
- Continuity/Experience of Journalism Instructor

Fortunately, for students unable to argue that their newspaper or yearbook is a limited public forum, the judge in *Dean* went on to say that regardless of the *Arrow*'s forum status, he still would have ruled that Utica administrators violated the First Amendment because their censorship did not meet *Hazelwood*'s "reasonable educational justification" standard.

The judge closely examined Dean's article and, using criteria gleaned from *Hazelwood* — including the article's fairness, proper use of grammar, writing quality, bias, accuracy and quality of research — determined that, in spite of school officials' arguments to the contrary, there was not a "significant disparity in quality between Dean's article in the *Arrow* and the similar articles in 'professional' newspapers."

Katy Dean's article, the judge found, was so well-researched and so well-written and the administration's reasons for censoring were so weak that the actions of Utica school officials simply did not pass constitutional muster. Good student journalism, the judge decided, prevails.

The judge also found that the superintendent censored the article because she disagreed with the viewpoint it expressed and that her description of the article as "inaccurate" was simply an attempt to disguise "what is, in substance, a difference of opinion with its content" — something the First Amendment prohibits.

“The newspaper class at Utica High School is intended to teach journalism. A core value of journalism is to understand the role of the press in a free society. That role is to provide an independent source of information so that a citizen can make informed decisions. It is often the case that this core value of journalistic independence requires a journalist to question authority rather than side with authority. Thus, if the role of the press in a democratic society is to have any value, all journalists — including student journalists — must be allowed to publish viewpoints contrary to those of state authorities without intervention of censorship by the authorities themselves. Without protection, the freedoms of speech and press are meaningless and the press becomes a mere channel for official thought.”

— *Dean v. Utica*, 345 F.Supp.2d 799 (E.D. Mich. 2004)

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For years, too many school officials have assumed that *Hazelwood's* admittedly broad and vague language gave them an unlimited license to censor. This decision makes clear that is not the case: the *Hazelwood* standard does have teeth; all student journalists attending a public high school have important First Amendment rights that school officials cannot simply ignore.

As the judge noted in his opinion: “[I]f the role of the press in a democratic society is to have any value, all journalists — including student journalists — must be allowed to publish viewpoints contrary to those of state authorities....”

State and Local *Anti-Hazelwood* Protection

Hazelwood does not trump free
speech protection provided by state
law or local policies

Finally, when pointing out the limits on *Hazelwood's* reach, it is important to note that geography sometimes counts. Following *Hazelwood*, some state lawmakers concluded that the Supreme Court had gone too far in restricting the free speech of students. While states can never pass a law that provides *less* free speech protection than the federal First Amendment, they can always pass a law that provides *more*.

State Anti-*Hazelwood* Laws (and regulations)

Ark. Stat. Ann. Secs. 6-18-1201 - 1204

Cal. Educ. Code Sec. 48907

Colo. Rev. Stat. Sec. 22-1-120

Iowa Code Sec. 280.22

Kan. Stat. Ann. Sections 72.1504 - 72.1506

Mass. Gen. Laws Ann. ch. 71, Section 82

22 Pa. Code Section 12.9

Wash. Admin. Code 180-40-215

So far, six states — Arkansas, California, Colorado, Iowa, Kansas and Massachusetts — have passed so-called anti-*Hazelwood* laws that give back to their students much of the same protection they had under *Tinker*. Students in Pennsylvania and Washington may also have additional protection in the form of state regulations.

Student Media Policies

The screenshot shows a web browser window with the URL <http://www.splc.org/legalresearch.asp?id=6>. The page features the SPLC logo and a navigation menu with links to 'SPLC HOME', 'RESOURCE CENTER', 'NEWS FLASHES', 'ABOUT SPLC', 'SPLC TODAY', 'SPLC PROBABLYS', and 'SPLC SEOTO'. The main content area is titled 'Student Press Law Center Model Guidelines for High School Student Media' and includes a search bar and a list of legal topics such as 'SPLC LEGAL RESEARCH', 'Press Freedom & Censorship', 'Access to Records, Meetings & Places', 'Cyberlaw: Internet & Online Media', 'Libel & Privacy Invasion', 'Protecting Sources & Information', 'Copyright Law', 'Advertising', 'Online Legal Research', 'Tape', 'Obtaining Legal Help', and 'SPLC Law Library'.

Student Press Law Center Model Guidelines for High School Student Media

About the SPLC Model Guidelines

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I. STATEMENT OF POLICY

Freedom of expression and press freedom are fundamental values in a democratic society. The mission of any institution committed to preparing productive citizens must include teaching students these values, both by lesson and by example.

As determined by the courts, student exercise of freedom of expression and press freedom is protected by both state and federal law, especially by the First Amendment to the United States Constitution. Accordingly, school officials are responsible for encouraging and ensuring freedom of expression and press freedom for all students.

It is the policy of the _____ Board of Education that (newspaper), (yearbook), (literary magazine) and (electronic or on-line media), the official, school-sponsored student media of _____ High School have been established as forums for student expression and as voices in the uninhibited, robust, free and open discussion of issues. Each medium should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

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In addition to state laws or regulations, local school boards across the country — often prompted by student demands — have passed district policies limiting administrative censorship. For more information — including sample policies and legislation — visit the SPLC Web site.

Fighting Censorship: A Checklist

What to do if it happens to you

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In an ideal world, no student journalist or adviser would ever be faced with a censorship conflict. But censorship is an unfortunate reality for many; thus you need to be prepared. The following checklist provides some time-tested strategies for fighting — and winning — a censorship battle.

Fighting Censorship: A Checklist

- Practice sound journalism

First, nothing can help you more in your censorship fight than a well-researched, well-written, fair and accurate story. Similarly, nothing can sink you faster than a sloppy, mean-spirited article full of factual errors and grammatical mistakes. Write something you'd be proud to stand by and defend publicly — because that is what you may be called upon to do. Before publishing a story that you know might provoke a censor's pen, take the time to make it "censor-resistant": carefully check all facts, confirm quotes, make sure you have talked to all sides. Ask yourself, "Does it make sense? Is it fair?" Have multiple sets of eyes review it for grammar, spelling, punctuation and editorial errors. In short, be a good journalist. Do not give censors an easy target.

Fighting Censorship: A Checklist

- Practice sound journalism
- **Pick your battles wisely**

Fighting for a free student press is a worthy endeavor. But the truth is, some censorship fights are worthier than others. Do you really want to go to battle over the right to use a four-letter word? Or the right to publish a raunchy, rumor-filled gossip column? Is it worth pulling out all the First Amendment stops when the principal objects to an editorial's description of a curriculum change as "idiotic," but would agree to your calling it "unwise"? There are no hard rules for determining when a fight is worth the time and effort involved, but the question should always be asked.

Fighting Censorship: A Checklist

- Practice sound journalism
- Pick your battles wisely
- **Do your homework**

The law related to free expression in school can be complex — take the time to understand your rights. Every case has its strengths and weaknesses and it is important that you're able to accurately assess where you stand. Sadly, few administrators know — or sometimes, even care about — the law related to student free speech rights. Too often they act without taking the time to figure out what they lawfully can and cannot do. You may need to help educate them. After today, you should feel better prepared to explain the relevant legal standards and to refute the erroneous — but commonly held — belief that public school officials can censor at will.

Fighting Censorship: A Checklist

- Practice sound journalism
- Pick your battles wisely
- Do your homework
- **Meet with the censors**

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As soon as the threat of censorship emerges, the student staff — preferably a small group of student editors — should set up a meeting with the censor. The student media adviser, if he or she attends (and it's often best if they don't), should act merely as an observer. Students have much more freedom — and in many ways, more credibility — to fight a censorship battle than their adviser, who is a school employee. The purpose of this meeting is to air all sides' concerns and to resolve the situation before it heats up. Confront the threat, but avoid being confrontational. At all times, be courteous and show the appropriate respect. Take good, accurate notes of what is said and by whom.

If the principal is the censor and refuses to change his or her mind and reasonable compromise is not possible, take your case to the superintendent, and, if necessary, later to the school board. Take time to explain your role as a student journalist. Remind school officials that the press's goal is not to publish good news or bad news — just *the* news. Failing to reach a compromise, it is important that these initial meetings end with administrators understanding that the student staff considers censorship a very serious matter. Make it clear that you hope to avoid a fight, but also leave no doubt that you are prepared to take a stand.

Fighting Censorship: A Checklist

- Practice sound journalism
- Pick your battles wisely
- Do your homework
- Meet with the censors
- **Use the court of public opinion**

Public pressure can be very effective. A good first step is to draft a press release about the censorship. A press release briefly and accurately summarizes the facts surrounding the censorship, includes a quote about the censorship from your staff spokesperson and perhaps from an expert on censorship or journalism (such as someone from the Student Press Law Center or your state scholastic press association), provides information regarding any upcoming developments (for example, a student protest, a school board meeting, etc.) and includes contact information for those wanting additional information. Send the press release to your local news media (including local high school and college student media) and follow up with a phone call to the editor or news director. Also send your release to civil rights groups, to your state press associations and to alumni, parent and civic groups. In some cases, students have found that creative, peaceful protests (for instance, wearing black armbands, symbolically covering their mouths with tape during lunchtime, passing out copies of the First Amendment after school, circulating a student petition, etc.) have generated favorable attention. Letters to the editor or guest columns in local newspapers can also be effective. Remember, despite your best efforts to resolve the matter quietly, school officials have chosen to censor. Sometimes, rather than a gentle nudge to do the right thing, they need a shove. It is, therefore, crucial that you now do whatever you reasonably can to make sure they are held publicly accountable as censors.

Fighting Censorship: A Checklist

- Practice sound journalism
- Pick your battles wisely
- Do your homework
- Meet with the censors
- Use the court of public opinion
- **Consider alternative media**

Unfortunately, some school administrators choose not to listen. If they consistently censor your school-sponsored student media and refuse to even consider allowing more editorial freedom, you may — in addition to fighting the censorship — want to consider an alternative means of getting your message out. A community newspaper may be willing to publish your work. Underground (independently published) student publications or off-campus Web sites are entitled to significant First Amendment protection. In fact, as long as an independent publication contains no disruptive or otherwise unlawful speech, public school officials must allow for its reasonable, in-school distribution. Most courts have found public school officials have even less authority to regulate (or punish) students' private Web sites or print publications that are created and viewed outside of school.

Fighting Censorship: A Checklist

- Practice sound journalism
- Pick your battles wisely
- Do your homework
- Meet with the censors
- Use the court of public opinion
- Consider alternative media
- **Consider your legal options**

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If, after appealing the censorship within the school system and making your case in the court of public opinion, school officials still refuse to budge, your next step may be a court of law. Unfortunately, cases that are worth challenging administratively and publicly are sometimes not always appropriate for a legal challenge. The facts of a case, the quality of evidence, the availability of witnesses and the history of court cases in a particular jurisdiction are among the factors that must be considered. An experienced media law or civil rights attorney can help you weigh the pros and cons of filing a lawsuit. Fortunately, where it is determined that their legal case is solid, student media have a number of allies. Groups such as the American Civil Liberties Union, the Foundation for Individual Rights in Education and the Student Press Law Center are among those that operate referral services that can put student journalists in touch with local, volunteer lawyers that have offered to provide legal help free of charge.

In the end, however, a positive court ruling is not the only measure of victory. In fact, many successful censorship battles have ended with the censored material never published. The victory in such cases is achieved in the battle itself — in having the courage to stand up for what is right. While a completely free and independent student press may not always be achievable, the very act of reminding others why it is important and worth defending — fighting the good fight — is always an honorable accomplishment.

Need more help?

Additional resources for high school student media

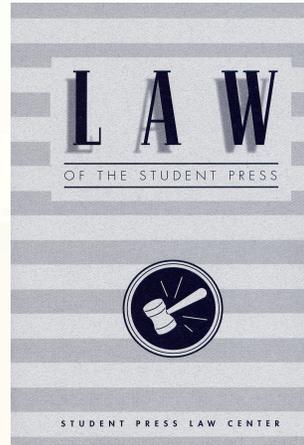
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Well, that's it.

Hopefully, you now feel a little more confident in understanding and being able to defend your free press rights. Still, we haven't covered everything and you may have more questions.

Other Student Media Law Resources

Student media newsroom
“Must Have” resource



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One of the most important resources for additional help is the Student Press Law Center’s book, *Law of the Student Press*, which every student newsroom in the country should have on hand. The book includes much more information about each of the topics talked about today — and many, many others. It is the only media law book available geared specifically to student journalists and the unique problems they face.

Purchase information is available on the SPLC Web site.

Other Student Media Law Resources

Student media newsroom
“Helpful” resources



VIRTUAL LAWYER



Student Press Law Center
News Flashes

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Other helpful resources — all of which are free and online — include SPLC News Flashes (which can be sent to your e-mail account or read on the Web site), the SPLC’s magazine, the *SPLC Report*, and *News Media and the Law*, a magazine published by the Reporters Committee for Freedom of the Press. All of these can help you stay up to date on the very latest developments affecting America’s student and professional news media.

Finally, as noted earlier, the SPLC Web site is packed full of resources and information on student press law issues. Of particular interest is the site’s Virtual Lawyer, which is available at any time and ready to conduct a short, online interview to answer your questions and help get you pointed in the right direction.

On behalf of the Student Press Law Center and the Newspaper Association of America Foundation, thank you for taking the time to watch this presentation. We hope you have found it helpful. Enjoy your time as a student journalist — and good luck!

Seek help when you need it!

Student Press Law Center

www.splc.org

(703) 807-1904

Monday - Friday, 9 a.m. to 6 p.m. Eastern Time

Between Memorial Day and Labor Day the SPLC closes at 4:30 p.m. on Fridays

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You can help the Student Press Law Center create new generations of Americans who will understand and defend the First Amendment to the U.S. Constitution and the values it embodies through your tax-deductible contribution. Go to www.splc.org/give for details.

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