

Hazelwood reverberates 25 years later

Twenty-five years ago, on Jan. 13, 1988, the U.S. Supreme Court announced a devastating blow to student speech and the student press when it validated the authority of the principal of Hazelwood East High School to remove controversial stories about teen pregnancy and divorce from the school newspaper over student objections.

The court's decision in *Hazelwood v. Kuhlmeier* was one of the most far-reaching decisions restricting free speech in the past quarter-century. Even as the Supreme Court has recognized expanded free speech rights for corporations, makers of violent video games and fundamentalist picketers at veterans' funerals, it has continued to limit the free speech rights of students in the public schools.

With today's social media, Hazelwood's restrictions on student speech are following students back to their homes. Some courts have ruled that principals can punish students who write ribald comments or parodies on a home computer, if the comments disrupt the school.

Gregory P. Magarian, a professor at Washington University law school, says Hazelwood "remains a very important speech-restrictive decision."

"The court has put much more energy into expanding the free speech rights of politically or economically powerful speakers while largely disdaining the First Amendment concerns of politically and economically disempowered speakers," Magarian wrote in an email. "Through this lens, Hazelwood represents perhaps the most important instance of the court's steady retreat from protecting students' free speech rights."

Mitch Eden, adviser to Kirkwood High School's award-winning

Call newspaper, says "advisers all know of the damage done 25 years ago with the Hazelwood decision. There are too many schools today in which scholastic journalism is simply a public relations tool for the administration or, worse, being cut because journalism is not part of the 'common core,' the latest educational buzzword. Well, journalism is a field where the goal always has been ... focused on excellence, on independent thinking and on leading, not following the crowd.

"I am so happy the Kirkwood administration supports scholastic journalism and students are getting an authentic experience. The worst thing Hazelwood did was teach self-censorship, and that is the worst type of censorship. Some students quit before they even start because they know they do not have a chance. What a horrible environment to be in. ... Simply put, censorship is anti-education and anti-American."

Last-minute decision

The Hazelwood East case began at the end of the school year in 1983, when the Journalism II class, which produced the Spectrum, compiled two full pages of stories under the headline: "Pressure describes it all for today's teen-agers. Pregnancy affects many teens each year."

Principal Robert Reynolds objected to two of the six articles. One was an account of three Hazelwood East students who had become pregnant. The article made references to birth control and sexual activity and reflected the positive attitude of the girls toward their pregnancies. The other article was an account of a student whose parents were divorced. The student complained that her father often was absent, "out late playing cards with the guys."

The names of the pregnant girls had been changed, but Reynolds was concerned that they could be identified from other information in the articles. The Spectrum planned to delete the name of the student in the divorce article, but the real

name was on the proof read by Reynolds. Reynolds thought it unfair that the father did not have a chance to respond. The principal ordered the two pages removed from the Spectrum, excising four unobjectionable articles along with the two controversial ones.

Three students on the staff, led by Cathy Kuhlmeier, challenged Reynolds' action. With the help of the American Civil Liberties Union of Eastern Missouri, the students won in the federal appeals court in St. Louis. But the lawyers handling the case botched the argument in the U.S. Supreme Court, according to the recollections of former ACLU leaders.

Fred Epstein, past president of the ACLU, said: "As I recall, Hazelwood was argued by a couple of incompetent lawyers who would accept no advice from the ACLU or other lawyers who had Supreme Court experience. Worst of all, the two ACLU lawyers handling the case would not even let friendly lawyers conduct a mock court to prep the two lawyers handling the case."

Justice Byron White, who wrote a number of decisions hostile to the press, wrote the 5-3 majority opinion in which he said high school newspapers were part of the school curriculum, not public forums for the exercise of free speech.

"Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns," White said.

In dissent, Justice William J. Brennan Jr. said, "The mere fact of school sponsorship does not ... license ... thought control in the high school."

Brennan added: "The young men and women of Hazelwood East expected a civics lesson, but not the one the court teaches them today."

Cathy Kuhlmeier Frey – who now lives in southwest Missouri, where she is a risk manager for Bass Pro Shops – continues to see things differently from Reynolds. The two appeared last fall at a forum on student speech.

Education Week described a tense exchange.

“I was so angry because we had worked so hard” on those articles, Frey said, as she and Reynolds argued over the details of the controversy. “I stood up for what I believed in. That has molded me into someone who is not afraid to speak up.”

Speech at the schoolhouse gates

In a famous decision from the 1960s, the Supreme Court said that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” It upheld the right of Mary Beth Tinker to wear an armband to her school in Des Moines protesting the Vietnam War.

But it turned out that the students shed many of their rights inside the schoolhouse gates.

The Hazelwood decision was the most important of several decisions cutting back on student speech rights.

Alan Howard, a professor at Saint Louis University Law School, explains how the court could conclude that Kuhlmeier did not have a right of free expression, while Tinker did.

“The court recognized a distinction between kids *at* school and kids *in* school,” he wrote in an email. “So the court found that students (even those too young to vote) are still citizens, and when at school in their capacity as citizens can express their views on matters of public concern – in Tinker’s case, express opposition to a war. So when walking in the halls from one class to another class, or playing outside at recess, or eating lunch in the cafeteria, the school can’t

punish kids talking to other kids about political issues – even if school officials don't like what the students are saying or just don't want kids expressing views on controversial topics.

“Hazelwood was not a case where the school officials were seeking to suppress student/citizenship speech that occurred at school. Rather, it was a case where school officials were engaged in ‘teaching’ kids in their capacity as students – in this setting, the school was playing the role of educator, not sovereign, and the kids were playing the role of student, not citizen – and, in this context, the court concluded that schools should have more leeway to regulate student speech.

“The high school had a journalism class, a component of which was putting out a newspaper – but the purpose of the newspaper was not primarily to serve as an outlet for students as citizens to comment on matters of public concern, but was to provide a means by which the school would teach good journalism practices.”

Reynolds thought the story about divorce was poor journalism, because it criticized the father without having contacted him. Most journalists would agree that this is poor journalistic practice. But many journalism educators consider the Hazelwood stories to be example of extraordinarily good high school journalism.

First Amendment trends

In the years after the Hazelwood decision, there was a move to pass anti-Hazelwood laws to give student journalism free speech rights. Arkansas, Colorado, Iowa, Kansas, Massachusetts and Oregon joined California, which had a law before the decision. But the impetus to enact such laws seems to have passed.

In the years since Hazelwood, the Supreme Court has limited student speech in other ways. It ruled that a student running

for office could be disciplined for using risqué language in his campaign speech. More recently, it ruled that a student could be punished for holding up a sign across from school that appeared to promote drug use. The student held up a sign reading "Bong hits 4 Jesus" as the Olympic Torch parade passed. He said he was trying to get on television.

The big unanswered question is whether schools can discipline students for gross, disrespectful and potentially disruptive comments made on a home computer and sent to other students. This past fall, the court declined to take up the case of a high school student disciplined for calling called administrators "douchebags" on her blog written from home. Avery Doninger, a student leader, was angry that the administration had canceled "Jamfest," an annual event at the school. The blog was written as part of the students' effort to mobilize a letter-writing campaign to overturn the cancellation.

The Supreme Court's weaker protection of free student expression is consistent with weak support on the court for the press in general, Magarian says.

"The idea of press rights, as a specific, separate category of free speech rights, has all but died on the vine," he wrote. "That has more than anything else to do with changes in media economics and technology. But even before the Internet, the court had largely embraced an attitude toward press rights that was indifferent at best. Hazelwood is part of that."

So are decisions where the court refused to extend constitutional protection for journalists to protect confidential sources and held newspapers responsible for abiding by reporters' promises of confidentiality to sources.

Adds Magarian: "It is striking that the limitations on student rights and press freedom have come over a time when the court has expanded other First Amendment rights."

But, he adds, “First Amendment speech rights haven’t simply expanded over the past 25 years. Instead, First Amendment speech rights have changed shape. The court has put much more energy into expanding the free speech rights of politically or economically powerful speakers while largely disdaining the First Amendment concerns of politically and economically disempowered speakers. On the other side of the ledger, we can see the court’s expansion of commercial speech rights – and, especially, its conversion of campaign finance regulation into a First Amendment preserve.”

In an interview with the Freedom Forum a decade ago, Kuhlmeier recalled a girl coming up to her at a symposium on the case and calling her a “freedom fighter” while asking for her autograph.

“I never thought of myself as a freedom fighter,” she said. “But I guess I did at least try to make a difference. Students don’t have enough First Amendment freedoms. There are a lot of very intelligent kids out there, and we should listen to them more. Maybe, if we did, the world would be a better place.”

William H. Freivogel covered the oral arguments in Hazelwood v. Kuhlmeier when he was a reporter for the St. Louis Post-Dispatch. A version of this article was published in the St. Louis Beacon.