

**HAZELWOOD'S 25TH
ANNIVERSARY (1988-2013):
NO CAUSE FOR CELEBRATION**



What is Hazelwood?

Until 1988, students in America's public schools and colleges had substantial constitutionally protected freedom of expression. They could choose the songs and plays they wanted to perform, express views critical of school policies in student newspapers, and incorporate topical political and social themes into their artwork. Schools were governed by the Supreme Court's 1969 ruling, *Tinker v. Des Moines Independent Community School District*, which struck a balanced approach that allowed administrators to regulate speech only where "substantial" disruption was imminent.

Then, on January 13, 1988, the Supreme Court decided *Hazelwood School District v. Kuhlmeier*, unleashing what law professor Richard J. Peltz described as "a censorship tsunami" across public education.

In *Hazelwood*, the Court found that St. Louis-area Hazelwood East High School and its principal, Robert Reynolds, did not violate the First Amendment in censoring a two-page spread in the student newspaper, *Spectrum*, that dealt with teen pregnancy and other hot-button social issues. Reynolds contended that the stories lacked balance, and that the subject matter might be "inappropriate" for younger teens.

By a 5-3 vote (with one seat vacant), the Court decided that, when students use a "forum" provided by the school – such as a student newspaper produced as a graded class assignment – the *Tinker* level of First Amendment protection no longer applies, and schools no longer need demonstrate that speech was disruptive to justify censoring it. Rather, it is legal to censor such "curricular" speech for any basis that is "reasonably related to legitimate pedagogical concerns."

Justice William J. Brennan, perhaps the foremost First Amendment authority ever to sit on the Supreme Court, wrote a stirring dissent in which he predicted how schools would misuse their newfound censorship authority to the detriment of students' welfare. Censorship, Justice Brennan wrote, "in no way furthers the curricular purposes of a student newspaper, unless one believes that the purpose of the school newspaper is to teach students that the press ought never report bad news, express unpopular views, or print a thought that might upset its sponsors." He concluded:

[U]nthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees. ... The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today.

How has Hazelwood affected education?

By upsetting the delicate balance between authority and freedom and replacing it with an unbalanced approach, *Hazelwood* has changed the climate in public schools for the worse. It has reversed the presumption embedded in constitutional law for a century that, because freedom of expression needs “breathing space” to survive, any doubtful judgment calls should go in favor of the speaker and not the regulator. Instead, since *Hazelwood*, court after court has given school censors the benefit of the every doubt – even where there is no possibility that the students’ speech could harm anybody.

In a 2006 study published in the *Alabama Law Review* (“Censorship 101”), author Chris Sanders documented the litany of censorship, and retaliation against journalism teachers, that followed *Hazelwood*: “An Indiana principal censored an accurate story about a girls’ tennis coach who stole \$1,000 that players had paid for court time. A New York administrator banned a true report that his school of 3,600 students contained only two functional restrooms. A Florida principal fired the high school’s yearbook editor after she opposed his decision not to run a senior picture of a lesbian student who was wearing a tuxedo.”

Not only journalism has suffered as a result of *Hazelwood*, which has made it almost impossible for a student with even the strongest First Amendment claim to prevail over censorship. Relying on *Hazelwood*, federal courts have decided that:

- A Texas high school could discipline a cheerleader for quietly sitting down rather than perform a cheering routine that featured the name of a star basketball player, who – as the school knew – was the subject of a criminal complaint accusing him of raping the cheerleader. (*Doe v. Silsbee Independent School District*, 5th Cir. 2010)
- A Colorado school district could legally ban students and parents from putting crosses and religious-based messages of comfort on commemorative wall tiles installed at Columbine High School as part of a memorial to the April 1999 massacre. (*Fleming v. Jefferson County School District*, 10th Cir. 2002)
- A Washington high school could refuse to allow members of a student orchestra to play an instrumental version of “Ave Maria” as part of a medley of graduation songs, on the grounds that the religious title might offend some audience members. (*Nurre v. Whitehead*, 9th Cir. 2009)

Every leading authority on journalism education agrees that the *Hazelwood* level of administrative control is an inferior method of teaching. In July 2009, the National Education Association passed a resolution – marking the 40th anniversary of the *Tinker* ruling – reaffirming the importance of free expression in developing young minds: “[F]reedom of speech and press are fundamental principles in our democratic society granted by the First Amendment ... and these freedoms provide all people, including students, with the right to engage in robust and uninhibited discussion of issues in student media.” The Journalism Education Association, the organization that sets the professional standards for the teaching of journalism, adopted a resolution in April 2010 making much the same point:

As journalism teachers, we know our students learn more when they make publication choices and that prior review or restraint do not teach students to produce higher quality journalism. As journalism teachers, we know the only way to teach students to take responsibility for their decisions is to give them the responsibility to make those decisions freely.

Why does Hazelwood matter?

A November 2011 “census” of public high schools by Kent State University found that 96 percent offered some student media – newspaper, yearbook, magazines, online publishing, broadcasting, or a combination. Student media is one of the proven most effective methods of conveying the leadership, communications and critical thinking skills that employers consistently say schools need to emphasize.

Censorship drives young people away from journalism – but it does not quench their thirst to share their stories. Instead, discussion that once took place in the accountable and adult-moderated pages of student media has now migrated to Twitter and Facebook. Lost with those students is the opportunity to effectively teach the values and ethics of journalism – verify your facts, consider opposing points of view, correct your mistakes, sign your real name and take responsibility for what you write – that no “digital citizen” should leave school without learning.

“I just have to say, plain and simple, the data show **we’re raising a generation of sheep**. I don’t think it’s extreme to say we risk democracy. ... I have been so alarmed by the kinds of students coming into our college programs who are completely unprepared for what journalism is about. **They think it’s okay to be told what to print and not to print**. They don’t challenge authority like they should. We have to reprogram them. **We have to retrain them.”**

*David Cuillier
Director, School of Journalism
University of Arizona
Speech to UNC-Chapel Hill Hazelwood Symposium
November 8, 2012*

Adults need uncensored student media to inform them about the shortcomings of school policies and programs. A 2009 study by the Brookings Institution found that coverage of education news had dwindled to just 1.4 percent of all news offered by mainstream print, broadcast and online media. Aggressive school security – and equally aggressive school public-relations machinery – means that even the few remaining education journalists can rarely get unfiltered access to students or teachers. And the Supreme Court has largely stripped away any First Amendment whistle-blowing protection for school employees themselves. If students are not protected when they blow the whistle on substandard school conditions, then the public may never find out.

Although students have seemingly unlimited publishing opportunities with the advent of blogs and social networking sites, in-school media remain the most effective way to reach, inform and influence a mass school audience. The readership of students' blogs is a tiny fraction of the readership of on-campus media. And it is no answer to government censorship to simply tell the speaker to speak somewhere else. A citizen who is denied a chance at the City Hall podium because she intends to criticize the mayor is not comforted that she can read her speech outside on the sidewalk.

Banning discussion of divisive issues from the student media flies directly in the face of the growing national consensus that young people need more substantive civics education to make them better-prepared voters and better-equipped news consumers. In its September 2011 report, "Guardian of Democracy," the nonprofit Campaign for the Civic Mission of Schools identified meaningful opportunities for student expression as an essential part of building civic readiness: "'Schools should incorporate discussion of current local, national, and international events into the classroom, particularly those that young people find important to their lives. ... Schools should encourage student participation in school governance.'" Yet school after school, relying on *Hazelwood*, has stifled student input into school policy – making education the only industry in America in which "the customer is always wrong."

Although *Hazelwood* started out as a rule governing K-12 schools, it is rapidly becoming the standard that governs at every level of education, including college and even graduate school – in 2011, a federal district court in Alabama applied *Hazelwood* and threw out the First Amendment claim of a 51-year-old graduate nursing student who claimed she was expelled for questioning the fairness of the school's disciplinary and grading policies (*Heenan v. Rhodes*, M.D. Ala. 2010). Four of the 12 federal geographic circuits – the 6th, 7th, 10th and 11th – now consider college students to have only the minimal *Hazelwood* level of First Amendment protection. Only two circuits, the 1st and the 9th, have expressed doubt whether *Hazelwood* is the proper standard. This turns upside-down the Supreme Court's long-held principle that colleges are a "marketplace for ideas" where censorship is rarely, if ever, at home.

How can my community respond?

The constitutional standards recognized by the Supreme Court provide a floor, not a ceiling. State and local governments can always provide greater protection, and many do. Seven states have statutes that give students in K-12 schools greater freedom of expression than the bare *Hazelwood* minimum: Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon. The combined history of student free-expression laws in these states – more than 146 years – amply demonstrates that no "horribles" occur when student speech rights are restored to balance. (An eighth state, Illinois, has an "anti-*Hazelwood*" law applying only at the college level. Pennsylvania, Washington and the District of Columbia have anti-*Hazelwood* rules in their state Board of Education codes that, while not carrying the force of a statute, offer some heightened protection.) Bills attempting to soften the impact of *Hazelwood* have been introduced unsuccessfully in more than a dozen other states, almost always killed by lobbying from school administrator associations.

Where can I find more information?

The Student Press Law Center, www.splc.org, has set up a clearinghouse for information about the *Hazelwood* case and its impact at www.curehazelwood.org. The University of North Carolina-Chapel Hill held a two-day symposium Nov. 8 and 9, 2012, in conjunction with the ruling's impending 25th anniversary, bringing together experts from the fields of law, education, journalism and civics. Video of the two-day event – including the remarks of featured speaker David Cuillier and many others – is available online at:

<http://new.livestream.com/accounts/191743/events/1661093>

<https://itunes.apple.com/us/itunes-u/one-generation-under-hazelwood/id580514536?mt=10>

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