JOURNALISM LAW & ETHICS

Talking about the scholastic journalism law may not be on the top of your list of discussion starters, however an understanding of the topic is incredibly important for a high school journalist.

Dozens of books have been written about this topic, however we will focus on the main areas that minimally, every student journalist should be familiar with. Court cases may not sound exciting, but those featured here are quite important for a journalist such as yourself.

Before a discussion takes place about laws, ethics, court cases and such, a student journalist should become familiar with the First Amendment of the constitution, the amendment that is the basis for everything else we will discuss.

The First Amendment reads: "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."

At only 45 words, the First Amendment provides us a strong foundation for everything we do.

Although the First Amendment grants us the right to a free press, there are **nine specific areas that are not protected** by the constitution. These nine areas are:

(1) Invasion of privacy.
This might include printing medical information about a fellow student or taking pictures in the locker room.
(2) False advertising.
Proclaiming a product will make you a hit at the party just by using it is likely a false claim.
(3) Fighting words.
These are words, spoken or written, that are so volatile they would cause a person to be incited to violence or unruly actions.
(4) Copyright violation.
Anytime someone uses work that is not theirs, without permission, is a copyright violation.
(5) Disruption to the school day.
Publications distributed at school that might cause students to walk out of class, riot or engage in rulebreaking are not prohibited.
(6) Obscenity.
Something repulsive that is disgusting to the senses is considered obscene.
(7) Defamation.
Untrue statements made about a person to damage their reputation are considered defamation.
(8) Expression likely to incite unlawful action.
Encouraging your friends to loot a store falls under this category.
(9) Threats to national security.
Appearing on the news and giving detailed notes about what our soldiers are about to do, giving the opposition an advantage, could be a threat to national security.

Of course, the nine unprotected areas might need some further explanation, and as you read on you'll get some further details about many of the areas.

There are several important Supreme Court cases, some of which help flesh out the nine areas of unprotected speech.

Every student journalist should be familiar with the **Tinker v. Des Moines Independent Community School District** case from 1969. This case confirmed that students do not shed their constitutional rights at the schoolhouse gate, effectively saying students have First Amendment rights.

The case came about after Mary Beth Tinker—13 at the time—her brother and friend wore black armbands to school to protest the Vietnam War. The school board, aware this might happen, created a policy banning the wearing of armbands. Mary Beth and the others ignored the policy which resulted in their suspension from school.

Upset with the suspension, the parents of the students sued the school district, with the court siding with the school district. The parents appealed, but the U.S. Court of Appeals had a tie vote, which sent this case to the Supreme Court.

On Feb. 24, 1969, the Supreme Court, with a 7-2 vote, determined that the school district violated the students' First Amendment rights. The majority opinion, written by Justice Abe Fortas, noted that school administrators would need to show a constitutionally valid reason to stop student free speech. As the court decided that wearing armbands did not constitute a disruption to the school day, it was affirmed that students in public schools could enjoy First Amendment rights.

Pressure describes it all for today's teenagers
Pregnancy affects many teens each year
Runaways and juvenile delinquents
are common occurrences in large cities
Divorce's impact on kids may have lifelong effect

The issue in question from Hazelwood East High School.

The decision featured the popular words, ""It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Subsequent court cases have muddied the Tinker v. Des Moines waters. The first, **Bethel School District v. Fraser,** 1986, came about after the following speech was delivered at a school assembly:

Suggestive speech was at the center of the Bethel v. Fraser court case.

"I know a man who is firm — he's firm in his pants, he's firm in his shirt, his character is firm — but most [of] all, his belief in you the students of Bethel, is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts — he drives hard, pushing and pushing until finally — he succeeds. Jeff is a man who will go to the very end — even the climax, for each and every one of you. So please vote for Jeff Kuhlman, as he'll never come… between us and the best our school can be. He is firm enough to give it everything."

The above speech was delivered in 1983 by Matthew Fraser on behalf of his friend Jeff Kuhlman, who was running for student body vice president. Because of the sexual innuendo of the speech, administrators were quick to discipline Fraser. Despite appeals, Fraser was suspended for three days and not allowed to speak at commencement.

Fraser, unhappy with the discipline, accepted help from the ACLU and sued the school district, claiming his First Amendment rights had been violated. Circuit court sided with Fraser, as did the Court of Appeals, though that court requested the Supreme Court consider the case.

The Supreme Court ruled in favor of the school district, saying that the school's policy about appropriate speech was not a violation of the First Amendment. This ruling, to

MOMENTS IN TIME

HOSTING A LEGEND
October 2013

As part of the nation-wide Tinker Tour, First Amendment champion Mary Beth Tinker, along with First Amendment lawyer Mike Heistand, visited North Central and spoke to several journalism and social studies classes. Tinker is best know from the Tinker v. Des Moines court case that sided with her and her wearing of a black arm band.

some, was the first to chip away at what had been decided with the Tinker case.
While scholastic journalism advocates applaud the Tinker case, the next case, **Hazelwood School District et al. v. Kuhlmeier et al.,** 1988, is largely frowned upon.

The case gave public school officials broader control of what can appear in student publications, though certain restrictions still apply.

In 1983, Hazelwood East High School's student newspaper, the Spectrum, a closed form publication, published articles about teenage pregnancy and the effects of divorce on children. The principal, Robert Reynolds, who exercised prior review, believed that the students in the teenage pregnancy story, even though given pseudonyms, might be easily identified and that the divorce story lacked balance without the comments from the parents. Reynolds also thought the stories may not be appropriate for all ages, so he pulled the stories so the paper could still be distributed on time.

Spectrum staff members, including editor Kathy Kuhlmeier, sued the school saying that the censoring of the two stories was a violation of their First Amendment rights. The trial court sided with the school district while the Court of Appeals took the side of the students. Once the case reached the Supreme Court, with a 5-3 decision, the court ruled the school did not violate the staff's First Amendment rights.

The court determined that because the paper operated as a closed forum, the students enjoyed less First Amendment rights than papers that are open or limited open forums. The case also determined that administrators could exercise censorship when the content of a publication conflicts with the school's "legitimate pedagogical goals."

It is important to know that Hazelwood does not erase the Tinker standard. If a school operates a publication that is an open forum, allowing for comments from everyone or a limited forum, where student editors determine content, the Hazelwood case would not be used at all. No matter the forum, though, speech that could cause a substantial disruption to the school day is never acceptable. Because Hazelwood East was a closed forum, students had less legal wiggle room to sue the school. Even in a closed forum, though, the school can't censor based on personal bias; stories cut must go against the school's pedagogical goals. Therefore, if a student writes a negative review of a TV show the principal loves, he can't censor the article simply because he doesn't agree.

The idea of forums stems from the **Gambino v. Fairfax County School Board,** 1977 case. The Circuit Court of Appeals determined that if a publication is established as a "public" or "open" forum, it cannot be censored even if the school supports the paper financially or if students receive credit for taking the class. The court defined "public forum" as a publication that (1) consists of published news, student editorials and letters to the editor and (2) is distributed outside the journalism classroom. The Gambino case was the result of a principal claiming a story about teenage sexual practices would be a violation of school policy regarding sex education.

This concept was confirmed with the **Dean v. Utica Community Schools**, 2004, federal court case.

Utica High School principal Richard Machesky censored a story Katie Dean wrote about the school district being sued by a couple who claimed the district's idling school buses contributed to the husband's lung cancer. Dean interviewed the couple and attempted to interview school and city officials, though they declined.

Before the issue went to press, Machesky asked the adviser to cut the story and corresponding editorial and cartoon. He claimed the article was inaccurate and that sources were unreliable. For the next year Dean asked that the decision be reconsidered, however after making no progress, Dean decided to sue the school district.

Because the Arrow newspaper was considered a limited open forum, the outcome of this case was much different than Hazelwood. Federal court judge Arthur Tarnow said there was not a "significant disparity in quality between Dean's article in the Arrow and the similar articles in 'professional newspapers.'" Tarnow admonished the school district, saying they censored the story in their own interest by claiming Dean's story was inaccurate.

While schools can determine the time, place and manner in which student publications are distributed, this case confirmed that students working for open and limited open forum publications are not held to the Hazelwood standard.

But as is often the case, with the good sometimes comes the bad. Enter Alaskan high school student, 18-year-old Joseph Frederick and the **Morse v. Frederick,** 2007, case.

In January 2002 Juneau-Douglas High School students were allowed to leave school to watch the Olympic Torch Relay as it came through town. Frederick attended, holding a "Bong Hits 4 Jesus" banner. The school, unhappy with the banner, suspended Frederick for promoting drug use.
The district court sided with the school, while the circuit court ruled in favor of Frederick. The Supreme Court also sided with the school, using the Bethel v. Fraser decision in part. Dissenting justices noted that the message was ambiguous and difficult to prove as pro-drugs in nature, though the majority ruled giving schools that leeway to discipline students for speech

Joseph Frederick's "Bong Hits 4 Jesus" banner as seen during the Olympic event.

that involves promotion of illegal drug use.

It is important to note, though, that while promoting illegal drug use is not protected under the First Amendment, it is legal to call for the legalization of drugs, a political statement that does not involve breaking the law.

Several states have enacted laws that provide broader freedoms to student journalists, effectively negating the Hazelwood decision. These states include California, Colorado, Kansas, Arkansas, Iowa, Oregon and Massachusetts.

Many times the question of who **the publisher of a student publication** comes up when controversy arises. Adam Goldstein, a lawyer with the Student Press Law Center, explains: "The school district is neither the publisher nor the owner of the student publications—the state itself is. The school is a trustee of the state, entitled only to a bailment of the state's assets. A bailment isn't ownership.

"Furthermore, the state has entrusted its funds to the school with the purpose of educating students and providing them with an educational experience—not with providing the principal with educational experience. Similarly, the student newspaper receives state funds because the state perceives a value in permitting students to learn how to be editors. The state perceives no value in teaching principals how to do so, and the principal is therefore in no way a publisher.

"The easiest way to explain this logical flaw is to point out that the principal doesn't have unlimited authority to determine the fate of the newspaper—a power which private publishers possess. The school buses are another common example. The school can determine the bus routes—but the principal can't hop on a bus and drive it to the ball game on Saturday.

"Why not? Because the principal doesn't OWN the bus. He's entrusted with the bus only for very limited purposes. The same is true of all school-funded entities, including a student newspaper. At best, then, the school district is the secretary of the publisher (the state), and must follow all the publisher's directives—which, in this case, includes the First Amendment.

"So, the state is the publisher; the publisher's directive is to provide students with educational opportunities related to newspaper production; and the principal, as the publisher's secretary, is in defiance of his employer's directive by trying to usurp the publication for his own ends.

"The government does not cease to be government simply because it decides to engage in business generally performed by private parties. The government could not, for example, make a men-only country club, even though it is not illegal for other private parties to do so."

Libel and slander are important terms every journalist should be familiar with. Libel is any published communication that falsely harms a person's reputation. It can occur anywhere in a newspaper or online publication. There are four elements, all of which must be proven in court:

(1) Publication.
Plaintiff must prove the statement was communicated to someone other than the person it was about.
(2) Identification.
If statement in question doesn't mention the person's name, plaintiff must prove that people who read it believed the plaintiff was the one identified.
(3) Harm—also called defamation.
Plaintiff must prove the statement harmed his/her reputation in the eyes of the community.
(4) Fault -- one of two standards applies.
(a) Negligence: failure to exercise ordinary care. A private person must prove this.
(b) Actual malice: knowledge of falsity or reckless disregard for the truth. A public person or public official must prove this.

There are several things a journalist can do to make sure they avoid libelous situations.
• Confirm or verify all defamatory material.
• Make sure that questionable material can be proven true.
• Be especially careful of arrest reports, damage suits and criminal court proceedings.
• Watch out for charges, assertions and claims -- it doesn't matter whether we're saying it or we're quoting someone else directly. If we print it, we're responsible for it.
• Libel can be found not only in news stories, but also letters to the editor, cartoons, classified ads, display ads and electronic publications. Again, it doesn't matter who's saying it. If we print it, we're responsible for it.
• Words such as alleged and reported are not protections against libel.
• Be careful of unofficial statements made by police, or by court officials outside the courtroom.
• Truth is a defense. Good intentions are not. It doesn't matter how you intended something to be perceived. What courts look at is how it was perceived.
• Running a correction (the legal term is retraction) is not a defense, but doing so can reduce punitive damages if you're sued for libel and lose.

It is important to know that you can't libel a group. You also can't be held accountable for writing something like, "Tom Cruise is the worst actor in the world." There is no standard for determining the best and worst actor in the world. That comment is far too generic to be libelous.

Copyright is another important concept to be familiar with. Copyright is what protects the creator of a work from having said work used by another person without permission. Stories, art and music are a few examples of what can be copyrighted. Copyright, however, does not protect certain kinds of work, like titles, slogans and facts. This is why songs by different artists might share the same name, or reporting that the Mets beat the Yankees can be reported even if you didn't attend the game in person to report on that fact.

It is possible to use copyrighted material if you obtain permission from the work's creator. There are also instances when fair use applies. A book review might include a small selection of the book. A music review might include song lyrics. When not profiting from such uses, people tend to be OK to use small snippets of copyrighted materials.

A common misconception, though, is that someone can use 30 seconds of a song for their own purposes. This is not true, even if for "educational purposes."

In other words, for certain non-commercial, nonprofit educational purposes, a small portion of a film (for example, a still or clip) can be reproduced without first obtaining the permission of the copyright holder, but you should still give credit to and acknowledge the copyright holder as the source of the material. (For example, under an image or clip from BAMBI (1942): "©The Walt Disney Company".)

Cartoons are a unique area of copyright law. It is possible to take a popular cartoon character and use in your work so long as (1) you use just what you need to make your point and (2) your work will not profit at the detriment of the original work.

Parody law allows for such things to take place. Consider Saturday Night Live for example. The show owes much of its success to parodying popular shows and performers.

Speaking of performers, people are separated into different categories when it comes to coverage, and when proving libel and slander. **Public officials** are individuals who have substantial control over government affairs. These people are open to public scrutiny because of the job they hold. These people also include school board members, coaches and school administrators.

Closely related, **public figures** are individuals who voluntarily seek out the spotlight. These people include actors, athletes and political candidates. There are two types of public figures: general purpose and limited purpose. General purpose public figures include the folks mentioned already. Limited purpose public figures might be in the spotlight for one particular issue only.

Private persons are those who are neither public officials or figures.

When it comes to libel law, public figures and officials often have a harder time proving they have been libeled. Because these people have sought a living by being in the public, people have more leeway in what they can say about someone.

One of the areas of unprotected speech, **obscenity**, is tricky and comes with a test to determine if it in fact is present. The test for obscenity stems from the 1973 **Miller v. California** Supreme Court case which established a three-part test. The three parts are as follows: (1) Whether "a reasonable person applying contemporary community standards" would find that the

work, taken as a whole, appeals to a prurient (lustful) interest;
(2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined as obscene by the applicable state law; and
(3) Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific values.

All three parts must be met for obscenity to take place, not just one or two of the steps.

Note, words themselves are not considered obscene. Words can be profane, but not obscene. There are no laws against printing profanities, however most publications don't consider their inclusion necessary.

Citizens expect a certain right to privacy, and that is why **invasion of privacy** is another of the unprotected areas of speech. Invasion of privacy can happen in four ways:

1. Public disclosure of private or embarrassing facts. This is subject to a three-part test. The material must have been:
• Sufficiently private: known only to a small circle of family or friends. Note: If something appears in court records or is said in open court testimony, it's not considered private any more.
• Sufficiently intimate: personal habits, details or history that the person doesn't ordinarily reveal.
• Highly offensive: The information must be such that would humiliate or seriously offend the average person if it were revealed about him/her.

2. False light. You have unflatteringly portrayed -- in words or pictures -- a person as something he or she is not.

3. Intrusion. This deals with how the information is gathered -- trespassing on private property, using an eavesdropping device without permission, misrepresenting yourself in order to gain access to a place or person. A reporter doing this can be sued even if the story is never published. In short: When a person is in a place where he or she has a reasonable right to expect privacy, a reporter must respect that right.

4. Misappropriation. Unauthorized use of a person's name, photo, likeness, voice or endorsement to promote the sale of a commercial product or service.

While many professional news outlets don't print the names of minors, it is not because of any law. In fact, **Smith v. Daily**, 1978, allows for the use of the names of minors if the names were found in a legal manner.

Whether a minor or an adult is written about regarding a crime, be careful not to convict someone before a trial. You would write "Sam Jones was arrested on a charge of theft," nor "Sam Jones was arrested for theft."

The court case **Texas v. Johnson,** 1989, allows for unpopular free speech demonstrations. In this Supreme Court case, the high court ruled it was legal, though not popular, for someone to burn the American flag.

The First Amendment also provides a **separation of church and state**. Students may read the bible in class, or even as part of an assignment, but should a teacher lead the class in prayer, a violation of the church and state separation would occur.

Journalists vary on whether to use **anonymous sources** or not. Deep Throat, the most popular anonymous source ever, was an important part of the Watergate scandal during the Nixon administration. If you choose to use an anonymous source, you should keep that identity between just yourself, the source and perhaps your editor. It is best to not let your adviser know who the source is, as if asked by a school official of the identity, your adviser would be insubordinate not to answer the question.

The use of anonymous sources leads to a discussion of ethics. **Ethics** deal more in what is moral rather than in what is legal. For instance, keeping a the anonymity of source is an ethical matter, not a legal one. A reporter could reveal their source, but likely that would not be in the reporter's best interest in the future.

The same is true of **on-the-record** material vs. **off-the-record** material. If a source agrees to talk to a reporter off-the-record, he or she is expecting the reporter to be trustworthy and protect the source and information. Many states have laws that protect journalists from having to reveal sources. These are known as **shield laws.**

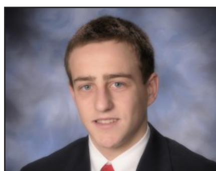
Speaking of interviews, in Indiana it is legal to record a conversation so long as one of the people in the room of the recording knows this is happening. For instance, you can record an interview you conduct even if you don't tell the person (though this brings up the question of what is ethical). However, if you leave a recorder in a room and record two other people's conversation while you are somewhere else, that is not protected. You should always follow the rules of the law, but you should also always do your best to be as ethical as possible. Don't put your reputation in jeopardy by walking an ethical fine line.

Many organizations have drafted **codes of ethics**, many of which are based on the idea of "doing no harm."

Sometimes students are unhappy with the school's official publication or have no school publication at all, so they create an underground publication. **Underground publications,** legally, are held to the same standards as any other publication, which some students fail to realize. An underground publication that avoids the nine areas of unprotected speech, though, legally must be allowed to be distributed on school grounds, though administrators can determine the manner in which the distribution occurs.

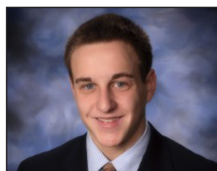
For all the talk of what you can't do, there is a time when fair use comes into play. Fair use applies to the times when a person can use the work of another person, be in full or in part.

ALUMNI ADVICE



CHARLIE BLUM
Class of 2014

"It sounds cliché, but do your assignments and get them done on time. It makes for a lot smoother process in creating the yearbook"



WILL BLUM
Class of 2014

"Get all of your assignments done at the beginning of each week and more importantly on time. It is to your benefit to be on good terms with the editors. "

SARAH HUGUS
Class of 2009

"Don't procrastinate. It's very stressful knowing you have to finish an entire page in one or two days."

BRANDON WALKER-ROBY
Class of 2005

"Just take as many pictures as possible. Also, get your spreads done."

ARDEN PRICE
Class of 2014

"Do what you say you're going to do. Don't be the person that comes up with an excuse for everything."

BEN BREYMIER
Class of 2012

"I advise future publication students to always work ahead and to never get behind on their assignments."