Censorship of Student Expression:

An Analysis of Student Expression Cases

Reported to the Student Press Law Center

by

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APPROVED:

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ABSTRACT

A content analysis was conducted of cases of censorship of student expression in public schools reported to the Student Press Law Center (SPLC) between the years of 2006 and 2008 to determine if content being censored was Truly Disruptive to a school environment or Merely Upsetting to administrators or other members of the school community. Cases were chosen using the News Flashes feature on the SPLC's web site (www.splc.org), a non-profit student press advocacy group. The analysis looked for patterns that existed amongst outcomes of censorship cases, given like circumstances or subject matter. The ultimate goal of the study was to develop a set of guidelines for public school administrators to use when determining how best to handle specific types of student expression, based on commonalities between the outcomes of cases analyzed and court decisions. The guidelines aim to balance students' free expression rights and the professional responsibilities of public school administrators.

The findings suggest that most content censored by public school administrators is Merely Upsetting in nature, which indicates that administrators may not have a clear understanding of students' rights or of their responsibility to uphold these rights in their professional capacity. It also suggests that administrators may be taking certain liberties with the somewhat vague parameters set by the U.S. Supreme Court in student expression cases like *Tinker v. Des Moines Independent Community School District*, *Bethel School District No. 403 v. Fraser* and *Hazelwood School District v. Kuhlmeier et al.*

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PREFACE

The idea for this project came from a personal interest in helping students, teachers, and administrators find some common ground and develop a common language for dealing with issues of student expression. All too often those involved are not equipped with the experience or expertise to navigate the complexities of student expression in public schools. In the absence of a solid understanding of their rights and responsibilities, students are likely to find themselves being restricted in ways that are not only unnecessary, but could very well be unconstitutional. Even after seven years of advising high school student publications, in addition to completing a master's degree in mass communication, I have many times found myself unsure of how to handle specific situations and conflicted about the policies in place in my school district. I wanted to know what others were facing, and through this analysis, draw some conclusions about how best to take a stand against unwarranted censorship.

The Student Press Law Center was an obvious choice to be the basis for the study. As the nation's only legal assistance organization devoted to championing student press rights, it is a tremendous resource for issues of student expression. The News Flashes published by the SPLC provide snapshots of censorship cases from around the country and offer students a look inside other schools' conflicts. While these individual cases are enlightening, the purpose of this study was to analyze a significant sample of cases to look for similarities that could elevate the information from interesting anecdotes to useful source material. When taken together, it would serve as the foundation for a set of suggested guidelines to help individual schools appropriately and effectively handle issues of student expression.

Chapter 1. Introduction

Despite its essential role in the foundation of the United States' democracy, the idea of protecting certain types of expression strikes fear in the minds of many. The First Amendment was drafted, in part, to protect individuals who held unpopular opinions, a notion U.S. Supreme Court Justice Oliver Wendell Holmes, Jr. supported when he famously wrote, "I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death."[1] However, expression that elicits emotion or controversy is likely to cause problems. While the U.S. Supreme Court throughout its history has often upheld an individual's freedom of expression,[2] the inclination to squelch expression perceived as unpopular or unsavory continues to grow strong on both sides of the political spectrum, from conservative and religious groups to liberal civil liberties groups. For First Amendment defenders, this desire to tightly control individual expression plays like a scene from George Orwell's *1984*.[3] No place is this more evident than in the nation's public schools.

The purpose of the American public school has long been at the center of debate.[4] As agencies of the state, American public schools help instill the values of democratic society in their young citizenry.[5] Schools also work to prepare students for productive

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[1] Abrams v. United States, 250 U.S. 616 (1919) at 630.

[2] See, e.g., Near v. Minnesota, 283 U.S. 697 (1931), West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), Cohen v. California 403U.S. 15 (1971), and Texas v. Johnson 491 U.S. 397 (1989).

[3] George Orwell, *1984*, (New York: Harcourt Brace Jovanovich, Inc., 1950). See, e.g., Ronald J. Krotoszynski Jr., *Favorite Case Symposium: Cohen v. California: "Inconsequential" Cases and Larger Principles*, 74 Tex. L. Rev. 1251 (1996).

[4] See, e.g., Curtis G. Bentley, *Student Speech in Public Schools: A Comprehensive Analytical Framework Based on the Role of Public Schools in Democratic Education*, BYU Educ. & L.J. 1 (2009), Stephen M. Feldman, *Conflicts 101: Higher Education and the First Amendment: Free Expression and Education: Between Two Democracies*, 16 Wm. & Mary Bill of Rts. 999 (2008).

[5] Stephen M. Feldman, *Conflicts 101: Higher Education and the First Amendment: Free Expression and Education: Between Two Democracies*, 16 Wm. & Mary Bill of Rts. 999 (2008).

lives outside high school.[6] One might think the protections granted in the U.S. Constitution would figure prominently in this curriculum. But as schools have moved away from civics in favor of the core skills found in high-stakes testing,[7] the principle of free expression for students has similarly lost some of its caché.[8] It is not merely a curricular shift that has lessened the presence of free student expression in schools. School administrators are faced with a legitimate challenge when it comes to maintaining an orderly school environment. The same conundrum that free speech presents outside the schoolhouse gates is even further compounded within the microcosm of a public school: the expression that often is most in need of protection is also the expression most likely to cause the greatest controversy and discomfort.

Controversy and discomfort, however, do not equal disruption, and the U.S. Supreme Court made clear in its landmark student expression ruling in *Tinker v. Des Moines Independent Community School District*[9] that student expression is protected unless it poses a material or substantial disruption to the school environment.[10] The *Tinker* standard has created a dynamic in which school administrators are expected to accept speech that may prove to be unpopular and even upsetting in the event that they cannot prove a disruption to the school environment. This, of course, is a task that is easier said than done, a fact evidenced by the steady stream of cases of censorship

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[6] Scott Andrew Felder, *Stop the Presses: Censorship and the High School Journalist*, 29 J.L. & Educ. 433 (2000).

[7] Pamela F. Brown, "Preparing Principals for Today's Demands," *Phi Delta Kappan* 87 no. 7 (March 2006): 525-526.

[8] David L. Martinson, "School Censorship: It Comes in a Variety of Forms, Not All Overt," *The Clearing House* (May/June 2008):211-214.

[9] 393 U.S .503 (1969).

[10] Id. at 514.

reported each year to the Student Press Law Center (SPLC), a Virginia-based student advocacy group.

From a school administrator's perspective, the main objective is to establish an environment in which students are safe to thrive academically without quarrel.[11] This charter is difficult to achieve, if not often entirely unrealistic. Middle schools, junior highs, and high schools are made up of pre-adolescents and adolescents, a population notorious for its innate need to test limits and push boundaries. This stage in human development is characterized by experimentation and a redefining of social groups,[12] a fact that is bound to have an effect on expression that takes place during the school day. While administrators may be justified in their desire to maintain an orderly environment, doing so by censoring certain types of expression is not only unconstitutional and antithetical to the mission of the public school, but it also does a great disservice to the students who are seeking their own identities and attempting to make decisions that could define their futures.[13] When these interests collide, the result too often is the suppression of student expression.[14]

The culture of the public school system in recent years has become one of trepidation when it comes to dealing with controversial topics.[15] Schools are under

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[11] Kelley R. Taylor, "Another Free-Speech Court Case Off T-Shirts," *Principal Leadership* (November 2006): 37-40.

[12] Jacquelynne S. Eccles, *Adolescence – Grand Theories of Adolescent Development, Biological Changes Associated with Puberty – Social Changes Associated with Adolescence in Western Industrialized Countries*, in Social Issues Reference http://social.jrank.org/pages/16/Adolescence.html (accessed March 15, 2010).

[13] Thomas S. Eveslage, "Stifling Student Expression: A Lesson Taught, A Lesson Learned," *Contemporary Education* 66 no. 2 (Winter 1995):77-81.

[14] Id.

[15] Diana E. Hess, "Controversies about Controversial Issues in Democratic Education," *PSOnline* (April 2004):257-260.

pressure from a variety of stakeholders—students, parents, community members, school officials—to uphold their own vision of an idyllic school community.[16] This has come to mean that school administrators are increasingly leery of anything that may "rock the boat." Unfortunately, this approach cannot be successful for two reasons: not everyone's idea of how a school should operate is going to jibe, and in seeking to suppress expression that may evoke an emotional response, school administrators are robbing students of the opportunity to learn to use their voices responsibly.[17]

While organizations like the SPLC fight to uphold First Amendment rights granted by the U.S. Constitution, the reality in the trenches is that school officials often get away with censoring far beyond the scope of *Tinker,* and the courts are helping them do so. The purpose of this study is to create a protocol that honors *Tinker* and its support of free expression, but that also gives credence to the issues facing school officials that prompt them to react in a defensive and retaliatory manner. This may seem too great a compromise to some First Amendment supporters, but to those who work in a public school environment, it can be recognized as more likely to be successful.

This study will attempt to answer four Research Questions related to censorship of student expression in public schools, in order to develop useful guidelines for handling student expression issues.

RQ 1: Was content censored in the cases reported to the Student Press Law Center between 2006 and 2008 "Truly Disruptive" or "Merely Upsetting?"

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[16] Mary Lee Howe & Renee Townsend, "The Principal as Political Leader," *High School Magazine* 7 no. 6 (2000):10-16.

[17] Martinson, "School Censorship Not All Overt," 214.

RQ 2: What types of censorship were most often exercised in the cases reported to the SPLC between 2006 and 2008?

RQ 3: What types of content were most often censored in the cases reported to the SPLC between 2006 and 2008?

RQ 4: How did the courts decide cases of censorship reported to the SPLC between 2006 and 2008? What similarities exist between the outcomes of cases decided by the courts and those decided by school officials?

Chapter 2. Method

To answer the proposed research questions, a content analysis was conducted of cases reported to the Student Press Law Center (SPLC) between 2006 and 2008. After an advanced search was conducted on the News Flash page of SPLC's web site, 106 cases related to press freedom and censorship were selected for analysis. Each case was analyzed for the nature of the censorship, the type of content censored, and the outcome of the case. The ultimate purpose of the analysis was to categorize each case in one of two distinct categories of student expression: Truly Disruptive or Merely Upsetting. A set of attributes was developed based largely upon recent court decisions and applied to each case in order to make these distinctions in a uniform manner.

Content analysis

Content analysis was chosen as the means to answer the research questions posed in this study. The Student Press Law Center (SPLC), a nonprofit organization that provides legal resources and advice to students and educators, reports on hundreds of cases of censorship of student expression each year.[18] As the nation's only organization devoted entirely to offering legal aid and education on First Amendment issues related to students, it is an ideal source from which to access cases for further study. Information was drawn from the "News Flashes" page of the SPLC web site,[19] which provides a chronological list of newly reported cases of censorship.

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[18] Student Press Law Center, "About the Student Press Law Center," http://splc.org (accessed March 22, 2010).

[19] Student Press Law Center, "News Flash," http://splc.org/newsflash.asp.

To get a robust picture of the types of expression recently censored in public schools, a time frame of two years was chosen. This time frame is large enough to provide a more-than-adequate quantity and variety of cases to study, but not so large so as to be unmanageable. Using the Advanced Search function on the SPLC's News Flashes page, cases were selected using specific parameters: Cases of Press Freedom and Censorship in Public Middle Schools, Junior Highs, and High Schools (some elementary school cases were also included in this search) that occurred between January 1, 2006, and December 31, 2008. This particular two-year time frame was chosen because while it is still very recent, enough time has passed for most of the cases to have been resolved, allowing for a more comprehensive analysis. In addition, the time frame also includes cases before and after the 2007 *Morse v. Frederick* decision.[20] Although it has not yet risen to the same level of notoriety as landmark Supreme Court student expression cases, *Morse* has been cited and discussed—somewhat controversially in some cases—in several lower court decisions in recent years.[21] Its addition to student expression case law gives the time frame a fitting benchmark.

Taking a deeper look into the decisions made by school officials and classifying cases in one of two areas, Truly Disruptive or harmful to the school environment or Merely Upsetting to school administrators, is helpful for several reasons. First, it provides a holistic view of what topics are most commonly censored in public schools. While

[20] 551 U.S. 393 (2007).

[21] See, e.g., Ponce v. Socorro Independent School District, 508 F.3d 765(2007), and Nuxoll v. Indian Prairie School District #204, 523 F.3d 668 (2008).

several surveys have been conducted gauging the attitudes of principals on censorship,[22] little information exists about what actually is being censored in public schools today. Analyzing the censorship cases reported to the Student Press Law Center between 2006 and 2008 provides a clear picture of the general trends in public school censorship in a way that surveys cannot measure. Secondly, analyzing censorship cases that escalated to the level of a school board or legal action provides an overview of how cases that fall into each of the two designated categories are typically concluded.

Determining what patterns exist between outcomes in each category will be useful in drafting recommendations for school officials that can help mitigate unnecessary conflict between students and administrators. Open discussion and education are two of the greatest tools in the fight against censorship.[23] Developing a more complete picture of how censorship is actually handled in schools makes it easier to determine where to focus those discussions and how better to prevent unwarranted censorship. Practical and tested guidelines that fairly and effectively balance students' rights with administrators' professional responsibilities are vital to promoting the open exchange of ideas that is essential to a public education.

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[22] See, e.g., Laurence B. Lain, "A National Study of High School Newspaper Programs: Environmental and Adviser Characteristics, Funding and Pressures on Free Expression" (paper, Annual Meeting of the Association for Education in Journalism and Mass Communication, Montreal, Quebec, Canada, August 1992) and Lillian Lodge Kopenhaver and J. William Click, "High School Newspapers Still Censored Thirty Years after Tinker," *Journalism & Mass Communication Quarterly* 78 no. 2 (Summer 2001): 321-339.

[23] John Bowen and Mark Goodman, "Press Freedom in Practice: A Manual for Student Media Advisers on Responding to Censorship," *Student Press Law Center published by the Newspaper Association of America Foundation* (2004).

Development of coding attributes

The terms Truly Disruptive and Merely Upsetting are subjective in nature, so to ensure that coding produced results that were as consistent as possible, it was necessary to first develop attributes that were rooted in an established parlance. Ever since the U.S. Supreme Court gave credence to students' rights within the school environment in *Tinker v. Des Moines Independent Community School District*,[24] students and school officials alike have looked to the courts to help navigate the complicated issues that arise when student expression collides with a school's educational mission. It followed, then, that the four Supreme Court cases and recent lower court decisions related to student expression should be the basis for crafting the attributes used in coding whether a case was Truly Disruptive or Merely Upsetting. Judicial precedent is an important component in establishing student expression guidelines for public school administrators to follow, as studies have shown high school principals typically have a high awareness of the guiding court decisions related to student expression.[25] A review of literature regarding principals' attitudes toward censorship was also conducted to ascertain common conceptions that would assist in making the attribute set. Thus, this method chapter deviates somewhat from the typical construct in that it contains a review of the relevant court decisions and literature to clearly outline the process used to code each case.

[24] Piotr Banasiak, *Morse v. Frederick: Why Content-Based Exceptions Deference, and Confusion are Swallowing Tinker*, 39 Seton Hall L. Rev. 1059(2009).

[25] Rosemary C. Salomone, "The Impact of Hazelwood v. Kuhlmeier on Local Policy and Practice," *NASSP Bulletin* 78 (December 1994): 47-61.

Truly Disruptive vs. Merely Upsetting

The four U.S. Supreme Court cases regarding student expression have created a somewhat mismatched set of guidelines for school officials to adhere to,[26] but they do provide some structure from which to establish a set of attributes to analyze cases of school censorship. Central to this structure is striking a balance between students' rights to free expression and the public schools' mission of providing an orderly and safe educational environment.[27] Since *Tinker* put the onus on school officials to prove a material or substantial disruption of the school environment,[28] subsequent cases have shifted the responsibility to students to prove their expression merits protection.[29] As a result, schools have generally been successful in placing time, place, and manner restrictions on personal expression.[30]

Trager and Russomanno looked at the Supreme Court cases on student expression prior to the 2007 *Morse v. Frederick*[31] decision using a three-category approach.[32] While *Tinker* provides students with the broadest protection for speech that happens to occur on campus,[33] *Fraser* gave school officials the authority to restrict speech that is lewd, vulgar, or obscene. The majority opinion in *Fraser* highlights the schools' duty to teach "the

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[26] Piotr Banasiak, *Morse v. Frederick: Why Content-Based Exceptions Deference, and Confusion are Swallowing Tinker*, 39 Seton Hall L. Rev. 1059, 2009

[27] Martha M. McCarthy, "The Principal and Student Expression: From Armbands to Tattoos," *NASSP Bulletin* 82 no. 599 (September 1998): 18-25.

[28] Tinker et al. v. Des Moines Independent Community School District et al., 393 U.S. 503 (1969).

[29] McCarthy, "The Principal and Student Expression," 18-25.

[30] Id.

[31] 551 U.S. 393 (2007).

[32] Robert Trager and Joseph A. Russomanno, *Free Speech for Public School Students: A 'Basic Educational Mission*, Hamline Law Review 17:2 (Winter, 1993): 275-305.

[33] Hazelwood School District et al. v. Kuhlmeier et al., 484 U.S. 260 (1988) at 281.

habits and manners of civility"[34] in order to justify the restriction to students' First Amendment rights. *Hazelwood* offered schools the ability to restrict speech that is school-sponsored,[35] thereby creating another category of student expression that gives greater deference to the schools. The more recent *Morse* ruling added a fourth distinct area: speech that advocates illegal drug use.[36]

The foundation established by the Supreme Court is one that honors student expression, but only in the areas that it can neatly fit within a safe school environment.[37] First Amendment absolutists would argue that First Amendment rights should be upheld above all other concerns,[38] but the reality is that expression in a school environment is rarely that simple. Between safety concerns and issues of discrimination, prejudice and bullying, school officials have their hands full. The courts have upheld schools' desire to protect and educate the young people attending public schools when weighed against freedom of speech.[39] The problem arises when school officials become overly sensitive to the notion of creating controversy, without realizing that in a public junior high or high school, just about any topic can create controversy.[40] An understanding of how the courts have ruled on controversial student expression was integral to the coding process for this study.

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[34]Bethel School District No. 403 et al. v. Fraser, A Minor, et al., 478 U.S. 675 (1986) at 681. "[I]f the schools are to perform their traditional function of 'inculcating the habits and manners of civility.'"

[35] 484 U.S. 260 (1988) at 289.

[36] Perry A. Zirkel, *The Rocket's Red Glare: The Largely Errant and Deflected Flight of Tinker*, 38 J.L. & Educ. 593 (2009).

[37] Trager and Russomanno, "Free Speech for Public School Students," 275-305.

[38] Bowen and Goodman, "Press Freedom in Practice," (2004).

[39] Jay Alan Sekulow and Erik M. Zimmerman, *Tinker at Forty: Defending the Right of High School Students to Wear "Controversial" Religious and Pro-Life Clothing*, 589 Am. U.L. Rev. 1243 (2009).

[40] Michael Murray, "I Didn't Always Think Well of the Student Press." *School Administrator* 65 no. 3 (March 2008): 44-45.

Lower court decisions have not necessarily helped minimize the confusion surrounding the extent to which schools can regulate student expression. During the 2006-2008 time frame of this study alone, lower courts addressed issues including student dress,[41] on-campus communication,[42] and religious expression.[43] When looked at together, these rulings have not created an entirely clear path for students or school officials to follow, but the courts have in several cases pointed to context and manner stipulations. This can be seen in several cases involving student dress. A U.S. District Circuit judge in South Carolina ruled in *Hardwick v. Heyward*[44] that a school could prevent a student from wearing clothing displaying the Confederate flag because of the school's history of racial tension.[45] Similarly, a U.S. District Court in New Hampshire found that a student's rights were not violated when he was prevented from wearing a patch that read "No Nazis," because it was a reference to the "redneck" group on campus and school officials had reason to believe wearing the symbol would lead to violence between the "rednecks" and the "gay students."[46] In these instances in which school officials were able to determine that the context of the speech led to a reasonable presumption of disruption, the courts have deferred to the schools.

Fear of a violent disruption is not the only reason school officials prohibit certain types of dress. In *Harper v. Poway Unified School District*,[47] the Ninth Circuit affirmed a

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[41] See, e.g., Harper v. Poway Unified Sch. Dist., 445 F.3d. 1166 (2006), Hardwick v. Heyward, U.S. Dist. LEXIS 122399 (2009), Guiles v. Marineau 461 F.3d 320 (2006).

[42] Bowler v. Hudson, 514 F. Supp. 2d 168 (2007).

[43] See, e.g., Erica Corder v. Lewis Palmer School District, 566 F.3d 1219 (2009), and Brittany McComb v. Gretchen Crehan, 320 Fed. Appx. 507 (2009).

[44] U.S. Dist. LEXIS 122399 (2009).

[45] Id.

[46] Governor Wentworth Regional School District v. Hendrickson, 421 F. Supp. 2d 419 (2006) at 7.

[47] Harper v. Poway Unified Sch. Dist., 445 F.3d. 1166 (2006).

district court's opinion in favor of the school, which prohibited Tyler Chase Harper from wearing a shirt that read "I will not accept what God has condemned" on the front and "Homosexuality is shameful" on the back.[48] School officials were concerned that the anti-homosexuality message in protest of the annual "Day of Silence" would cause harm to gay students of the school. In an effort to avoid further conflict following altercations the previous year,[49] the school's principal asked Harper to take off the shirt. Although Harper was not punished for his insubordination, he filed suit against the school alleging a violation of his First Amendment rights.[50] The district court, and later, the Ninth Circuit found that the school did not violate Harper's right to free expression, maintaining that Harper was made to take off the shirt not to suppress his views against homosexuality, but rather to avoid infringing upon the rights of other Poway students to be "secure and let alone."[51] The court found this was not a case of viewpoint discrimination because his "speech intruded upon the rights of other students."[52]

Student expression that contains violent messages is another particularly sensitive area for schools in this post-Columbine and Virginia Tech era. Lower court decisions have come down heavily on the side of schools, arguing that where student safety is concerned, it is not necessary to prove a substantial disruption was imminent.[53] Instead, a school need only show that the violent expression could cause a substantial distraction to

[48] Id. at 1171.
[49] Id.
[50] Id.
[51] Id. at 1175.
[52] Id. at 1185.
[53] See, e.g., Wisniewski v. Board of Education, 494 F.3d 34 (2007), and Ponce v. Socorro Independent School District, 508 F.3d 765 (2007).

justify its censorship.[54] Because of this certain deference to schools in such matters, characteristics specific to violent expression accounted for nearly half of the attributes used to code the SPLC cases included in the study.

The pervasiveness of technology has allowed for one of the greatest challenges administrators face when dealing with student expression: off-campus cyber speech. This category includes any communication posted to the Internet, whether it is via e-mail, social networking sites like Myspace or Facebook, or personal blogs. Gone are the days when students would complain about their teachers or fellow students in a note passed in class; today's junior high and high schools are increasingly turning to the Internet to air their dirty laundry.[55] This creates an interesting conundrum for school officials trying to keep the peace on their school campuses: should they—and can they—regulate what is communicated online outside of school, if it will pose a material or substantial disruption to the school environment?

Between 2006 and 2008, the courts largely found that schools do, in fact, have some authority to regulate off-campus speech if it makes its way onto campus[56] and if, in doing so, it causes a disruption. Examples include a case involving a student who called members of the school administration "douchebags" on the blogging site Live Journal,[57] and one in which a student was punished for creating an instant messaging icon that read,

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[54] R. George Wright, *Doubtful Threats and the Limits of Student Speech Rights*, 42 U.C. Davis L. Rev. 679 (2009).

[55] James B. Raskin, *No Enclaves of Totalitarianism: The Triumph and Unrealized Promise of the Tinker Decision*, 58 Am. U.L. Rev. 1193, (2009).

[56] Brannon P. Denning and Molly C. Taylor, *Morse v. Frederick and the Regulation of Student Cyberspeech*, 35 Hastings Const. L.Q. 835 (2008).

[57] Doninger v. Niehoff, 527 F.3d 41 (2008).

"Kill Mr. VanderMolen,"[58] referring to an English teacher. While the content of the expression in these cases may seem vastly different, in both the courts found that the effect it had once it reached the campus was one of substantial disruption.

On the other hand, where a school could not prove that the off-campus speech disrupted the school environment, the courts ruled the school did not have jurisdiction over it. In *Layshock v. Hermitage*,[59] the Third Circuit ruled that Justin Layshock's web site disparaging the school principal was protected speech because it did not disrupt the school environment.[60]

In part because of the indeterminate and sometimes conflicting body of jurisprudence related to student expression, school officials and students are often ill-informed or misinformed as to their rights.[61] While this can cause confusion, it also means that the courts have largely left the decisions in the hands of the schools and the students. This has advantages and disadvantages, as the SPLC has noted by stating that administrators are increasingly wary of dissent or controversy in their school papers.[62]

Although the courts provided the predominant guidance in developing the attributes from which to code the cases in this study, it was also important to consider what education and media scholars have found regarding principals' attitudes toward censorship, since the majority of censorship cases reported to the SPLC never see the inside of a courtroom. Most are resolved within the school, sometimes with the help of a district governing board or settlement outside of court. This is true for censorship of

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[58] Wisniewski v. Board of Education, 494 F.3d 34 (2007).
[59] 593 F.3d 249 (2010).
[60] Id.
[61] Andrea Billups, "Schools' Censorship Growing, Says Group; Poor Civic Education Blamed," *The Washington Times*, (September 19, 2007): A05.
[62] Jill Rosen, "High School Confidential," *American Journalism Review* (June 2002): 56-60.

student publications, as it is one area of student expression that has not been addressed by the courts very often since the 1988 *Hazelwood v. Kuhlmeier* decision.[63] While many scholars believed *Hazelwood* would have a "chilling effect" on student publications,[64] a survey of high school principals and advisers conducted just prior to the *Hazelwood* ruling found that found that 97 percent of principals and 89 percent of advisers believed that all copy should be reviewed by an adviser prior to printing.[65] The survey also found that 60 percent of high school principals believed they had the right to censor articles they found harmful and that maintaining order was more important than free student press.[66] These findings indicate that even after *Tinker* affirmed the constitutional speech rights of public school students, the climate was not necessarily censorship-free in most public schools.

Nearly fifteen years after *Hazelwood*, the picture remained largely unchanged. A 2002 survey conducted by Kopenhaver and Click found that half the principals and three-fifths of the advisers believed that the adviser was responsible for the content of the student newspaper, while nearly half the principals and one-fourth of the advisers said the principal had that same control. Only one principal responded that the students controlled the newspaper.[67]

The same survey found that only 27 percent of the principals and advisers believed that their newspapers were not censored. The study also found that a majority of

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[63] 484 U.S. 260 (1988) at 289.
[64] Student Press Law Center, "Fighting Censorship After Hazelwood" Student Press Law Center, (1992).
[65] Lillian Lodge Kopenhaver and J. William Click, "High School Newspapers Still Censored Thirty Years after Tinker," *Journalism & Mass Communication Quarterly* 78 no. 2 (Summer 2001): 321-339.
[66] Id. at 322.
[67] Id.

advisers and principals believed that the school has a right to censor certain material if it pays for a portion of the publication costs, or if the content could be harmful, even if it was not found to be "libelous, obscene or disruptive by a court of law."[68]

With regard to parent involvement in student publications, 79 percent of the principals and 71 percent of the advisers surveyed agreed that parents would prefer the school newspaper publish "good" news rather than controversial topics and similarly agreed that the school board should place a higher priority on image than having a free student press.[69]

Operational definitions

Most students and First Amendment advocates wish to hold all expression to the highest standard established in *Tinker*: a material and substantial disruption. However, the reality of the present situation in the public school system is that the scales of justice are tipping toward school administrators and the *Hazelwood* standard of a legitimate pedagogical concern.[70] An attempt to create greater balance between students' rights to free expression and schools' rights to maintain an orderly school environment was the key to the operationalization of the terms "Truly Disruptive" and "Merely Upsetting." Court decisions since *Tinker* have shown that a disparity exists between what First Amendment advocates herald as constitutionally protected and what public schools can tolerate within the context of upholding their school's educational mission.[71]

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[68] Id. at 330.
[69] Id.
[70] Clay Calvert, *Tinker's Midlife Crisis: Tattered and Transgressed but Still Standing*, 58 Am. U.L. Rev. 1167 (2009).
[71] Id.

In describing the status of student expression in schools following the *Morse* decision, Denning and Taylor defined unprotected speech as any on-campus speech that causes widespread disruption, that is sexually suggestive or sexually explicit, that bears the imprimatur of the school and from which the school wishes to distance itself, or that advocates or celebrates the use of illegal drugs. Protected speech includes otherwise protected off-campus speech that is not part of a school activity or bears the school's imprimatur, and "non-disruptive, on-campus speech not otherwise unprotected (including speech administrators find offensive)."[72] These descriptions do not necessarily align with Supreme Court precedent, but they do illustrate the types of expression likely to create problems for school administrators. *Fraser, Hazelwood,* and, most recently, *Morse,* have given the schools leeway to declare certain speech off-limits. The goal here is to provide guidelines that ensure that schools do not exercise that leeway in a manner that is overreaching. For this reason, expression that is considered Truly Disruptive for the purposes of this study includes:

- Expression that has caused or can easily be proven to cause a material or substantial disruption to the school environment,
- Expression that can be proven to cause a substantial disruption based on the context and manner in which the expression takes place,
- Expression that poses a serious threat to members of the school community. A serious threat is one that is perceived by a reasonable person to be more than simply a violent statement, one that is directed at a person or group of people, and that includes reference to a desire to take action,

[72] Denning and Taylor, *Morse v. Frederick and the Regulation of Student Cyberspeech* (2008).

- Expression that may result in harm to individual members of the school community, whether it is inflicted on someone else or is self-inflicted, and
- Expression that is libelous or slanderous, or that violates the privacy of an individual, particularly a minor.

Cases that are labeled as Truly Disruptive would not pass the *Tinker* test, the most stringent of the student expression standards.

Expression categorized as Merely Upsetting is anything that does not fall under the Truly Disruptive moniker. This includes:

- Expression that may be considered unflattering or embarrassing to school administrators or other decision-makers,
- Expression that may be considered by school administrators to be controversial or inappropriate, and
- Expression that is considered violent but not threatening.

Making this distinction is essential to creating guidelines that are amenable to all parties involved in student expression. If the majority of cases censored turn out to be Truly Disruptive, then *Tinker* emerges as the benchmark for developing these guidelines. However, if the cases analyzed skew more toward the Merely Upsetting, then it becomes apparent that less student-friendly standards that reinforce schools' authority over student expression, like those established in *Hazelwood*, *Fraser,* or *Morse*, need to be addressed.

A set of attributes was developed to help classify each case of censorship as Truly Disruptive or Merely Upsetting.[73] These attributes describe possible effects of censorship that could upset the balance between a student's First Amendment rights and a school's

[73] See Appendix A.

responsibility to maintain order. Each case, as reported in the SPLC News Flash article or subsequent legal or other documentation related to the case, was coded for each of these attributes. Attributes range from those that alone constitute a material or substantial disruption to the school environment to those that alone indicate the censorship is Merely Upsetting. In the middle of this range are attributes when, combined together, create enough of a case for school officials to warrant censorship, as per school and court precedent. In these instances, the expression in question may fall more closely in line with *Hazelwood's* standard of a legitimate pedagogical concern,[74] but for the purpose of creating guidelines that are more amenable to school officials—and potentially more likely to be honored—these cases may be coded as Truly Disruptive.[75]

Once the 106 cases were analyzed and coded, the findings were used to develop a set of guidelines to assist public school principals and other school officials in making decisions related to student expression.

Data collection

Employing the aforementioned search parameters, the SPLC web site's Advanced Search function returned 106 separate cases of press freedom and censorship within the designated time frame, after repeat and other unrelated items—including SPLC press releases and other publicity-related notices—were removed from the search results. Although the SPLC did post a News Flash about the 2007 *Morse v. Frederick* decision, it was not included in the case analysis. Instead, the decision was included in the discussion of Supreme Court jurisprudence related to student expression (see Chapter 3). The SPLC

[74] 484 U.S. 260 (1988) at 273.
[75] See Appendix B.

News Flash report for each case served as the basis for analysis, but legal documents, local newspaper reports, and other information related to each case obtained through searching databases like LexisNexis Academic were also used as needed to create as complete a picture as possible. The final 106 cases were reviewed and classified into the two designated categories of Truly Disruptive and Merely Upsetting. Cases in each category were then analyzed on a macro level, for the purpose of finding commonalities between the facts surrounding each case. Each case was reviewed for the following information: nature of censorship, type of content censored, and the outcome of the case.

Nature of censorship

To examine similarities between instances of censorship, each case was categorized by the type of censorship involved. A total of 10 categories were identified:

- Apparel: Censorship related to the wearing of any type of apparel, from t-shirts or other clothing to armbands and other accessories.
- Student Publications: Censorship related to student printed work in a student publication. This category was split into three subcategories:
    - Censorship of Article Pre-Production (a): Content that was censored before the printing of a student publication, typically as part of a prior review arrangement,
    - Censorship of a Publication Post-Production (b): The prior restraint or confiscation of a student publication after it has been printed, and in some cases, distributed,

    - Change in Student Publications Policy Following a Controversial Article (c): Any change to a school or school district's student publications policy following the publication of controversial content.

- Other Writing, Not Student Publication: Any written speech, including both school assignments and personal writing found on campus.
- Flyers, Posters, Other Speech: Any written or verbal expression that is not related to a student publication or a class assignment. Includes pamphlets and flyers distributed to students during school hours, posters hung on school walls, and speeches given at school-sponsored activities,
- Petition: Censorship related to students petitioning school administration or faculty.
- Off-campus Cyberspeech: Censorship related to any expression taking place on the Internet that originated outside of a school's campus.
- Artwork: Censorship related to student artwork.
- Underground Publications: Censorship related to an underground (non-school-sponsored) publication.

Differentiating between these areas of censorship was necessary because they may be affected by precedents exclusive to that type of censorship. For instance, censorship involving school-sponsored publications may be affected by *Hazelwood*, while underground publications would not. In addition, because each type of censorship has its own individual characteristics and because some occur with greater frequency than

do others, it was important to develop guidelines to address the intricacies of each of these discrete categories.

Type of content censored

Another aspect of censorship that was examined in each case was the type of content censored. Because certain topics will automatically rise to a greater level of concern than others—as in the case of violent expression—it was useful to look at similarities between cases that involved the same type of content.

Outcome of the case

Case outcomes were split into two basic categories: Cases that were decided in favor of the student or group censored, and cases that were decided in favor of the censor. Determining the outcome of each case in relation to the type of censorship is instructive in developing guidelines for school officials that most effectively mirror recent decisions made in each area.

A further distinction was made between cases that were settled at a school or school district level, cases that were settled with the help of legal intermediaries but did not go to trial, and cases that were settled in a court of law. In order to develop fair and constitutionally-sound guidelines for student expression, existing court precedent must be taken into consideration.

Chapter 3. Literature Review

A review of legal and educational literature related to the interpretation and application of student expression jurisprudence was conducted in order to develop attributes for coding the cases in this study and was included in Chapter 2. Therefore, this chapter focuses exclusively on the four U.S. Supreme Court cases related to student expression in public schools. Together, these four cases are the foundation for any discussion on this issue. In reviewing in-depth the facts of each case, a road map is developed that illustrates where the discussion began and how it got to its current state.

Tinker v. Des Moines Independent Community School District

The 1969 ruling *Tinker v. Des Moines Independent Community School District*[76] was a pivotal event in the history of student expression. In this case, two high school students, John Tinker and Christopher Eckhardt, and middle school student Mary Beth Tinker (John's sister), were suspended from their respective schools for wearing black armbands to symbolize their support for a Christmastime truce in the Vietnam War. School administrators used a dress code policy prohibiting the wearing of black armbands, adopted two days prior, as justification for the suspensions. The students sought an injunction against the policy, and their case was denied by the U.S. District Court, on the grounds that the armbands were likely to cause a "disturbance of school discipline."[77] The Eighth Circuit Court of Appeals affirmed the District Court's decision without opinion.

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[76] 393 U.S. 503 (1969).
[77] Id. at 505.

The U.S. Supreme Court reversed. In the majority opinion, Justice Abe Fortas affirmed the notion that students retain their First Amendment rights even on school grounds, writing, "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[78] Fortas addressed the need to balance the First Amendment rights of students and the policies of the school; according to the Court, the circumstances surrounding the silent protest produced no evidence that it was disruptive but rather was akin to "pure speech"[79] and therefore deserving of protection.

Justice Fortas pointed out that any expression in a school setting that is contrary to the majority opinion is likely to cause some dispute, but to attempt to preemptively squelch such controversial expression would be a violation of the First Amendment. "Our Constitution says we must take this risk," Fortas wrote, stating that the willingness to stand up for potentially controversial or unpopular expression is "the basis for our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society."[80] For circumstances that inevitably arise that put students' expression rights in conflict with the policies of the school, the Court found that the school must show evidence that the expression would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others."[81] Anything short of this would be a violation of students' First Amendment rights. The Court ruled

[78] Id. at 506.
[79] Id.
[80] Id. at 509.
[81] Id. at 513.

that because expression occurs on school grounds does not preclude it from Constitutional protection, as long as it does not "materially and substantially disrupt the work and discipline of the school."[82]

The *Tinker* decision established a broad measure of protection for student expression rights. By requiring school officials to adhere to the material and substantial disruption test, the Court emphasized the importance of free expression and placed the burden of proof on the school. Although the cases that followed would constrict some of the freedom granted to students, *Tinker* effectively remains the standard for school expression.

Bethel School District No. 403 v. Fraser

The U.S. Supreme Court next broached the subject of student expression in 1986, in *Bethel School District No. 403 v. Fraser*.[83] The case involved a speech given by Matthew Fraser at a Bethel High School assembly. In the speech, for which Fraser was nominating a fellow student for a position in student government, Fraser referred to the nominee "in terms of an elaborate, graphic, and explicit sexual metaphor."[84] According to faculty members who observed the speech, the students' reactions and subsequent discussions that took place in some classrooms indicated the speech caused a disruption to the school environment.

As a result of the speech, Fraser was suspended from school for three days and had his name removed from the list of candidates to speak at graduation. The assistant

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[82] Id.
[83] 478 U.S. 675 (1986).
[84] 478 U.S. 675 (1986) at 678.

principal cited Fraser's violation of a Bethel High School policy that states "conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures."[85] Fraser appealed to the school district, but the school's decision was upheld. The U.S. District Court for the Western District of Washington ruled in favor of Fraser, noting that Fraser's speech should be protected as the *Tinker* armbands were. Furthermore, the District Court found the district's policy to be unconstitutionally vague and overbroad. Fraser was awarded damages and legal fees, and after being elected by his fellow-students as a write-in candidate, was allowed to give a speech at the school's graduation ceremony. The Ninth Circuit Court of Appeals affirmed the District Court's judgment.[86]

In a 7-2 decision, however, the U.S. Supreme Court reversed the lower court's ruling. In the majority opinion, Chief Justice Warren Burger drew a distinction between the passive political expression in *Tinker* and Fraser's "indecent speech and lewd conduct"[87] by noting that Fraser had a captive audience of 600 students. Burger cited a book about the role American public schools play: "[Public] education must prepare students for citizenship in the Republic … It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation."[88] In order to uphold this mission, then, students' rights to express themselves must be "balanced against the society's countervailing interest in teaching students the boundaries of socially

[85] Id.
[86] 478 U.S. 675 (1986).
[87] Id. at 679.
[88] Id. at 689.

appropriate behavior."[89] The Court found that Fraser's conduct did not meet these standards and, therefore, was subject to consequence.

Burger's majority opinion not only gave credence to the competing interests within a school environment, but also to differences between adult and student speech. The Court "reaffirmed that the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings"[90] and ceded the power to the schools to determine "what manner of speech in the classroom or in school assembly is inappropriate."[91]

Because Fraser's "offensively lewd and indecent speech"[92] was not in keeping with the values of the school community, the Court argued it did not warrant the protection granted by *Tinker*.

In a concurring opinion, Justice William Brennan held that while the school was within its rights to punish Fraser for the content of his speech, he did not agree that it was obscene or vulgar, but rather that it "exceeded permissible limits"[93] for school educational activities.

Hazelwood School District et al. v. Kuhlmeier et al.

Just two years later, the Supreme Court again took on the issue of student expression, this time in the form of a high school newspaper. Journalism students at Hazelwood East High School in metro-St. Louis filed suit after two stories in their school

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[89] Id.
[90] Id. at 682.
[91] Id. at 683.
[92] Id. at 685.
[93] Id. at 688.

newspaper, the *Spectrum*, were censored. Principal Robert Reynolds took issue with the first, a story on teenage pregnancy, because he felt the reporters had not done enough to protect the identity of several of the subjects, including the pregnant teens' boyfriends and parents. In addition, Reynolds felt that some of the sexual subject matter was inappropriate for younger students. The principal objected to a second story was on the topic of divorce because the parents of a student who was interviewed and who he had said critical things about were not given an opportunity to respond or to consent to the article. Unbeknownst to Reynolds, the student's name had been removed from the final version of the story. According to Reynolds, because of time constraints at the end of the school year, the only possible solution was to eliminate the two pages on which the articles in question appeared—even though there was no objection to the other articles on those pages—and to run a four-page, instead of the planned six-page, newspaper. The students sought a reversal of the school's prior review policy, monetary damages and a declaration that their First Amendment rights were violated. A District Court denied the reversal of the policy and ruled that no constitutional violation had taken place.[94]

Because the newspaper was school-sponsored, the District Court argued, school officials had the right to restrict student speech so long as they had "'a substantial and reasonable basis.'"[95] Upon appeal, the Eighth Circuit Court of Appeals reversed the District Court's decision. The court argued the paper was a public forum for student ideas, which protected it from censorship. Furthermore, because no evidence existed to suggest the articles in question would cause a material or substantial disruption of the

[94] 484 U.S. 260 (1988).
[95] Id. at 264.

school environment, the school official did not have the right to prevent the articles from being published.

The Supreme Court reversed the Eighth Circuit Court's opinion. In the majority opinion, Justice Byron White looked to both the *Tinker* and *Fraser* rulings to sort out the balance between an orderly school environment and student expression rights. In doing so, the Court determined that a public school would not be considered a public forum unless school officials have "by policy or by practice" been opened "'for indiscriminate use by the general public.'"[96] In the event that a public forum has not been created, then school officials reserve the right to impose "reasonable restrictions on the speech of students, teachers, and other members of the school community."[97] Because Hazelwood School Board Policy stated that "[s]chool sponsored publications are developed within the adopted curriculum and its educational implications in regular classroom activities,"[98] the students could not argue the *Spectrum* was a public forum. White wrote that while *Tinker* dealt with expression to be tolerated by public school officials, *Hazelwood* concerned expression to be promoted by the school, and therefore should be held to a less stringent standard than a material or substantial disruption. In order for public schools to ensure students derive the greatest benefit from their lessons and to protect students from material inappropriate for their age level, White wrote:

> [A] school may in its capacity as publisher of a school newspaper or producer of a school play "disassociate itself," not only from speech that would "substantially interfere with [its] work … or impinge upon the

[96] Id. at 266.
[97] Id. at 267.
[98] Id. at 268.

> rights of other students," but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.[99]

The Court concluded that school officials have the right to assert editorial control of school-sponsored activities "so long as their actions are reasonably related to legitimate pedagogical concerns."[100]

In his dissenting opinion, Justice Brennan, who had concurred in *Fraser*, was harsh in his criticism of the Hazelwood school officials' actions. He noted that the journalism students expected to have the opportunity to express their views and this expectation was met by Principal Reynolds, that is, until it became uncomfortable to do so.[101] Brennan opined that the stories in question neither disrupted the school environment nor invaded the rights of others, and that speech could not be stifled simply because it was incompatible with the school's pedagogical mission. He also argued against a distinction between school sponsored and "incidental"[102] student expression and, thus, disagreed with the Court's departure from the *Tinker* standard in *Hazelwood*.

Deborah Morse, et al. v. Joseph Frederick

On January 24, 2002, staff and students of Juneau-Douglas High School in Juneau, Alaska, were invited by Principal Deborah Morse to view the Olympic Torch Relay as it passed along the street outside the school. Senior Joseph Frederick, who was late to school that day and had not yet been in the building, met his friends along the

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[99] Id. at 271.
[100] Id. at 272.
[101] Id. at 277.
[102] Id. at 282.

sidewalk to watch the relay. Just as the runners passed by the school, Frederick and his friends unfurled a banner that read, "BONG HiTS 4 JESUS," in full view of the student body and local camera crews.[103]

Morse demanded the students take down the sign, a request with which all involved but Frederick complied. For his insubordination, Frederick was suspended for 10 days. According to Morse, the banner advocated illegal drug use, which violated a Juneau School Board Policy.[104]

Frederick appealed his suspension to the School District Superintendent, who upheld it but reduced it to eight days. Frederick then filed suit in District Court, alleging his First Amendment rights had been violated. The District Court ruled that Morse had correctly identified the content of the banner as advocating illegal drug use and that she was within her rights to confiscate the banner because the event, though not on school grounds, was clearly a school-sponsored event.[105]

The Ninth Circuit Court of Appeals reversed the decision. While the court agreed that Frederick was taking part in a school-sponsored event, and that his message did encourage illegal drug use, it ruled that Morse and the school district had not shown sufficient evidence that the banner posed a "risk of substantial disruption." [106]

At the U.S. Supreme Court, Chief Justice John Roberts addressed two concerns in his 5-4 majority opinion: whether Frederick had a First Amendment right to display the banner, and whether Morse could be held liable for damages for violating that right. In its

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[103] 551 U.S. 393 (2007).
[104] Id. at 398.
[105] Id. at 399.
[106] Id.

decision, the first question was resolved, and in doing so, the Court ruled there was no need to address the second.[107]

As had the lower courts, the Supreme Court rejected Frederick's notion that his speech did not take place at a school-sponsored event. The proximity to the school and the fact that Morse had granted permission for the entire school population to view the event, made it clear it was school event, which meant the banner could be subjected to more stringent school expression standards. With regard to the content of the banner, Roberts wrote, "The message on Frederick's banner is cryptic. It is no doubt offensive to some, perhaps amusing to others. To still others, it probably means nothing at all. Frederick himself claimed 'that the words were just nonsense meant to attract television cameras.'"[108] Still, Roberts agreed that Morse's interpretation of the banner as one promoting illegal drug use was justifiable.[109]

The Court agreed with Morse's assessment of the banner's content. While the dissenting opinion called it "nonsense" and "silly" among other things,[110] the majority emphasized that the reference to illegal drug use could not simply be written off as meaningless. The majority also dismissed the dissent's suggestion that the speech should be protected as if it were political speech. In drawing from precedent set in *Fraser*, the Court gleaned two main points: that students' rights in public schools are "not automatically coextensive with the rights of adults in other settings" and that the ruling in

[107] Id. at 400.
[108] Id. at 401.
[109] Id.
[110] Id. at 434 (Stevens, J., dissenting).

Fraser makes clear that *Tinker*'s "substantial disruption" standard is not absolute.[111] The Court rejected any possible *Hazelwood* influence on this case because it could not reasonably be argued that the banner bore the school's imprimatur. Citing lower court decisions, the Court deferred to school officials' right to make decisions based on "'what is appropriate for children in school.'"[112] Finally, the Court ruled that there is a compelling government interest to educate students on the dangers of drug use.

The concurring and dissenting opinions in *Morse* underscore the incongruity that exists in applying student expression precedent. Justice Stephen Breyer, who concurred in part and dissented in part, expressed his concern that a narrow ruling on speech advocating illegal drug use, in the vein of *Fraser* and *Hazelwood*, may lead to other "viewpoint based restrictions."[113] Breyer did not wish to address the First Amendment issue in *Morse* at all, believing that interpretations either too broad or too narrow cannot offer practical guidance to school officials.

> Students will test the limits of acceptable behavior in myriad ways better known to schoolteachers than to judges; school officials need a degree of flexible authority to respond to disciplinary challenges; and the law has always considered the relationship between teachers and students special. Under these circumstances, the more detailed the Court's supervision becomes, the more likely its law will engender further disputes among teachers and students. Consequently, larger numbers of those disputes will likely make their way from the schoolhouse to the courthouse. Yet no one

[111] Id. at 405.
[112] Id. at 406.
[113] Id. at 426 (Breyer, J., concurring in part, dissenting in part).

> wishes to substitute the courts for school boards, or to turn the judge's chambers into the principal's office.[114]

In his concurring opinion, Justice Clarence Thomas agreed with the majority that Morse was within her rights to restrict Frederick's speech, and went even further to dismiss *Tinker* altogether as unconstitutional. He wrote, "In my view, the history of public education suggests that the First Amendment as originally understood, does not protect student speech in public schools."[115]

Justice John Paul Stevens, in his dissent, wrote that the "First Amendment demands more, indeed, much more" than an "ambiguous statement" about drugs to discipline a student for his speech.[116] By allowing the school to punish Frederick for a "nonsense banner" which contained a viewpoint with which it disagreed, Stevens wrote that the Court did "serious violence to the First Amendment"[117] Stevens pointed to *Tinker*'s substantial disruption test as the tool for measuring the limitations of student expression and concluded that Frederick's speech did not meet this standard and should therefore have been considered protected.

The effect of *Morse* as the fourth U.S. Supreme Court decision in the area of student expression has yet to fully be realized. However, it is certain that *Morse* did little to elucidate the picture created by its three predecessors. The disparities between the majority, concurring, and dissenting opinions epitomize the complexities of applying the First Amendment to student expression. Although the case could have been used to

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[114] Id. at 428.
[115] Id. at 410-411 (Thomas, J., concurring).
[116] Id. at 434 (Stevens, J., dissenting).
[117] Id. at 435.

clarify confusion over the breadth of *Fraser*,[118] it fell short of this mark. Some scholars and at least one court view *Morse* as a third exception to *Tinker* and another move toward deference to school officials in determining the limits of student expression.[119]

Novell argues the Court's interpretation of the banner as advocating illegal drug use is tantamount to viewpoint discrimination. Should *Morse* be interpreted in that way, it could have a chilling effect, not only on speech related to illegal drug use, but also on speech related to other illegal topics.[120] Naim asserts that *Morse* poses a threat to students' rights if courts choose to apply it to other topics or to "legitimate discourse on the subject of drugs."[121] By deferring to school officials to make decisions about what types of speech can be prohibited, *Morse* is at odds with other Court decisions that emphasize the rights of the speaker.[122]

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[118] Sarah Tope Reise, *"Just Say No" To Pro-Drug and Alcohol Student Speech: The Constitutionality of School Prohibitions of Student Speech Promoting Drug and Alcohol Use*, Emory Law Journal 57(2008).

[119] Joseph N. Novell, *Student Free Speech After Morse v. Frederick*, 54 Wayne L. Revi. 1847 (2008).

[120] Joanna Naim, *Free Speech 4 Students? Morse v. Frederick and the Inculcation of Values in School*, 43 Harv. C.R.-C.L. L. Rev. 239 (2008).

[121] Id. at 7.

[122] Id.

Chapter 4. Results

Research Question 1: Was content censored in the cases reported to the Student Press Law Center between 2006 and 2008 "Truly Disruptive" or "Merely Upsetting?"

Of the 106 cases of censorship included in this study, 26 met the Truly Disruptive standard.[123] Of these 26 cases, 13 were decided in court.[124] Nearly half of the Truly Disruptive cases (12) dealt with controversial topics that could infringe upon the rights of others, while eight dealt with the threat of violence against either students or teachers.[125]

Table 1 Nature of censorship of cases classified as Truly Disruptive, with case outcome

Nature of Censorship	Number of Cases Decided for Student	Number of Cases Decided for School
Apparel	0	4
Flyers/posters/other speech	0	3
Off-campus cyberspeech	0	3
Other writing/not student publication	1	4
Student publication	1	7
Underground paper	1	2

Although the SPLC's main charter is to provide legal advice for student journalists,[126] only eight of the cases meeting the Truly Disruptive standard involved students writing for publication, with the others concerning students keeping their own

[123] See Appendix D.
[124] Id.
[125] See Appendix D.
[126] Student Press Law Center. "About the Student Press Law Center." http://splc.org (accessed March 22, 2010).

personal journals, whether in writing or online, or expressing themselves through speech or their apparel (see Table 1). Topics most frequently censored in the student publications subgroup included sex (five times), discrimination and immigration issues (five times), and drugs (three times).[127] Religious viewpoints on topics like homosexuality and abortion and other religious speech appeared four times (see Table 2). While none of these topics by themselves are enough to restrict expression, each one of the cases had special circumstances that, when weighed together, warranted the Truly Disruptive label. The same can be said for the cases dealing with violent expression. While it may be difficult to truly ascertain whether a student's writing indicates an actual threat, the outcomes of these cases indicate that schools—and the courts—are not likely to take chances with students' safety and will defer to the school's need to maintain order.[128] The actual outcomes of the cases were not factored into the coding of cases as Truly Disruptive or Merely Upsetting; however, it should be noted that only one of these cases came back from the judge in favor of the student, and only two of those settled by the school favored the student.

[127] See Table 2.

[128] See, e.g., Wisniewski v. Board of Education, 494 F.3d 34 (2007), and Ponce v. Socorro Independent School District, 508 F.3d 765 (2007).

Table 2 Type of content classified as Truly Disruptive, with case outcome

Type of Content Censored	Number of Cases Decided for Student	Number of Cases Decided for School
Political speech	0	1
Religious expression	0	2
Abortion leaflets	0	1
Homosexuality	0	1
Immigration/discrimination	1	4
Sex	0	5
Drugs	0	3
Violent expression	1	8
Content critical of teacher or faculty	0	2
Underground paper	1	0

*Note: N=30, some cases concerned more than one type of content.

Seventy-five percent of the cases reviewed did not meet the Truly Disruptive standard. Of the 80 cases found to be Merely Upsetting, just over half (41) were settled in favor of the students.[129] Resolutions in favor of the school included revision of a student publication policy, typically denying forum status and invoking prior review, and disciplinary action against individual students.[130] Among the 80Merely Upsetting cases, those related to student apparel and off-campus cyberspeech were most frequently decided by the courts. Of the 12 total apparel cases analyzed, five went to court, with none settled in favor of the school, and seven of the 10 off-campus cyberspeech cases

[129] See Appendix B.
[130] Id.

included in the analysis were heard by the courts, with three settled in the school's favor.[131]

Research Question 2: What types of censorship were most often exercised in the cases reported to the SPLC between 2006 and 2008?

The most common type of censorship during the 2006-2008 time period was censorship of student publications; fifty-four cases of censorship existed between the three designated subcategories (see Table 3). One of these subcategories, Policy Changes Related to a Controversial Article, recorded the largest number of cases with 23. This was followed closely by Student Publication Censored Post-Production with 19. Cases of censorship involving student publications were more likely to be settled in favor of the school, and by a decent margin: 38 of 54 total cases favored the school or censor, while 16 favored the students.[132]

[131] See Appendix C.
[132] See Table 3.

Table 3 Most common types of censorship across all cases, with case outcome

Nature of Censorship	Number of Merely Upsetting Cases Decided for Student	Number of Truly Disruptive Cases Decided for Student	Number of Merely Upsetting Cases Decided for School	Number of Truly Disruptive Cases Decided for School	Number of Cases Brought to Court
Apparel	8	0	5	4	9
Student Publications (a): Article censored pre-production	5	0	7	0	0
Student Publications (b): Publication censored post-production	3	1	11	4	0
Student Publications (c): Change in student publication policy following controversial article	7	0	13	3	1
Other writing/Not student publication	0	1	0	4	3
Flyers/posters/other speech	3	0	5	3	6
Off-campus cyberspeech	5	0	5	3	8
Underground publication	0	1	0	2	1
Artwork	2	0	0	0	2
Petition	1	1	0	0	2

While student publications were the most commonly censored type of expression, only one case in this category was settled by a judge in a court of law: *Smith v. Novato*

Unified School District.[133] In this case, a California appeals court ruled that a student's rights to free expression were violated under the United States and California Constitutions when the school district stated it should not have published his editorial related to illegal immigration.[134] California is one of only seven states with student expression laws prohibiting school officials from restricting student expression outside of the scope of *Tinker*.[135]

With the exception of *Smith*, the censorship cases involving student publications were resolved within the school or school district. While articles that were censored under prior review were as likely to end up being printed as they were not to be printed, articles or publications that were censored post-production resulted in sanctions that limited student expression nearly twice as often as outcomes that favored student expression. Topics that could be considered controversial for an adolescent audience were most commonly censored post-production.[136] Content that faced censorship post-production or that resulted in an attempt to change the student publication policy was predominantly related to sex.[137] Of the 42 articles in these categories, 17 were sexually themed, while another three dealt with homosexuality.[138] Drug-related content, issues of race, immigration, and gangs, and articles critical of the school or related to other personnel issues were all censored seven times each.[139]

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[133] Smith v. Novato Unified Sch. Dist. 59 Ca. Rptr. 3d 508, 526 (Ct. Appt. 2007).
[134] Id.
[135] Students are protected under the California Student Free Expression Law, Cal. Educ. Code 48907 (1977).
[136] See Appendix B.
[137] Id.
[138] Id.
[139] See Appendix B.

Research Question 3: What types of content were most often censored in the cases reported to the SPLC between 2006 and 2008?

Across all types of censorship, expression related to school policies or personnel, and those dealing with teenage sexuality were most commonly censored (see Table 4). Violent or threatening speech was next, with 18 cases; racial issues including immigration and homosexuality had 10 cases, respectively.[140] The topic of teen drug use was censored six times and religious expression was censored eight times.[141]

Table 4 Topics Most Commonly Censored

Subject of Censored Content	Number of Truly Disruptive Cases	Number of Merely Upsetting Cases
Abortion	1	1
Age-inappropriate language/images	0	2
Critical of faculty/school	3	19
Drugs/alcohol	1	5
Homosexuality	1	9
Racial issues/discrimination	5	5
Religious expression	2	6
Political speech	1	7
Teen pregnancy	0	2
Teen sexuality	4	16
Violent expression	10	8

* Note: N=108, some cases involve more than one type of expression

[140] Id.
[141] Id.

Research Question 4: How did the courts decide cases of censorship reported to the SPLC between 2006 and 2008? What similarities exist between the outcomes of cases decided by the courts and those decided by school officials?

Of the 106 cases analyzed between 2006 and 2008, 32 were decided by the courts, with 15 decided in favor of the student, and 17 in favor of the school. The category with the highest number of cases decided by a court was apparel (9), followed by cases related to off-campus cyberspeech (8) (see Table 3). Of the remaining 74 cases, 11 were settled through legal intermediaries. Of note is that of these 11 cases, only one was settled entirely in the school's favor, with the remaining 10 ending solely in favor of the students or in a compromise benefitting both the students and the school. The final 63 cases were decided by the school or school districts themselves and indicate a higher level of administrative control, with 13 cases ending in favor of students and 50 ending in favor of the schools.[142]

Within specific types of content, no clear pattern exists to indicate consistency between court decisions and those of school officials. An example of this inconsistency is seen in the two types of content that accounted for just over half of all cases settled in court, student apparel and off-campus cyberspeech. In both categories, cases decided by the courts split nearly evenly between the students and the schools. However, student apparel cases decided by school officials favored students in five of seven cases, while off-campus cyberspeech cases decided by the schools favored the schools four of five times. Clearer patterns emerge in relation to the cases' classification as Truly Disruptive

[142] See Table 3 and Appendix B.

or Merely Upsetting. The courts and school officials both decided cases coded as Truly Disruptive almost exclusively in favor of the schools. But cases coded as Merely Upsetting received vastly different treatment from the courts and school officials. Seventy-four percent of the Merely Upsetting cases decided by the courts favored the students, while 82 percent of the Merely Upsetting cases decided by school officials favored the schools.

Chapter 5. Conclusions and Discussion

This study was designed to answer a series of questions related to student censorship cases reported to the Student Press Law Center between 2006 and 2008. This chapter addresses the findings of the study and discusses several conclusions drawn from the results. Finally, a set of suggested guidelines has been crafted for high school administrators. The goal of these guidelines is to help administrators better understand their rights and responsibilities related to student expression in public schools by outlining a suggested course of action for the various areas of censorship discussed in the study.

A sample of 106 SPLC cases was analyzed using a set of attributes defined to classify each case as Truly Disruptive or Merely Upsetting. Cases were also further categorized by the nature of the censorship, content censored, and case outcome in order to determine similarities or patterns that might exist in the handling of like cases.

Results indicate the majority of decisions made by school administrators fall into the Merely Upsetting category. These cases of censorship involve expression that evokes an "undifferentiated fear of disturbance,"[143] but that otherwise would not meet the standards set forth in the four U.S. Supreme Court cases on student expression.

The results suggest that when school administrators must decide between maintaining an orderly and controversy-free educational environment and honoring students' free expression rights, they are more apt to choose the former.[144] In many of these cases, however, administrators were acting out of fear of a possible disturbance

[143] Tinker et al. v. Des Moines Independent Community School District et al., 393 U.S. 503 (1969) at 508.

[144] See Appendix B.

rather than with proof of an actual disruption to the school. Likewise, administrators' actions often showed a misinterpretation or complete disregard for the rights granted to students by the Court, all in the name of avoiding conflict that may or may not occur. What is worse is that, when left unchecked, school administrators are largely getting away with stifling student expression for whatever reason they deem appropriate. Of the 63 cases settled by the schools themselves, 50 of them ended in a resolution that favored the school.

While the U.S. Supreme Court decisions subsequent to *Tinker* did place some limitations on specific types of student expression, these limitations were not meant to replace *Tinker*'s substantial disruption standard, but rather they affirmed school officials' authority to restrict student expression under specific circumstances.[145] Unfortunately, those limiting factors are repeatedly being misapplied to content that is little more than an annoyance, inconvenience, or embarrassment to school administrators. This is clearly illustrated in the findings, as the largest category of content censored is content that is critical of the school or faculty.

After expression critical to school or faculty, material that was deemed too controversial for students, including issues such as teenage sexuality and drug use, and viewpoints that administrators thought infringed upon the rights of others, such as messages for and against homosexuality and that are religious in nature, earned the next highest counts. In the spirit of political correctness, it seems school administrators are

[145] Specific circumstances include the lewd and vulgar expression at issue in Bethel School District No. 403 et al. v. Fraser, A Minor, et al., expression in school-sponsored publications, as in Hazelwood School District et al. v. Kuhlmeier et al., and expression advocating illegal drug use in Deborah Morse, et al. v. Joseph Frederick.

overly sensitive to expression that may have an adverse effect on even one student.[146] It should be noted that, while the topics of sex or drugs are never going to be taken lightly by school administrators, many of the cases that dealt with these subjects did so in an ostentatious manner. One cannot suggest that school administrators are the only adults who believe articles discussing anal sex and the use of sex toys or that quote minors discussing their oral sex practices[147] are outside the purview of appropriate high school subject matter. Parents, religious leaders, and other community members are likely to take issue with that sort of adult subject matter, and while they have no jurisdiction to restrict student expression, their influence can carry great weight with both the schools and the students themselves. That extent of that influence—or the magnitude of the fear of antagonizing someone with such influence—is apparent in the fact that censorship of student publications post-production and changes to student publication policies following a controversial article were the two types of censorship that occurred most frequently in the analysis.[148]

Although school publications were the target of much more censorship than other types of expression during the 2006-2008 time frame, they were also the cases least likely to end up in court. One possible explanation for this is that the *Hazelwood* standard for school-sponsored publications has been so consistently applied in favor of the schools

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[146] "The growing sensitivity to political correctness has led some school districts to overreact to students bearing political symbols of any kind," [Sheldon E.] Steinbach [senior attorney in the education practice at the District law firm of Dow Lohnes] said. Andrea Billups, Schools' Censorship Growing, Says Group; Poor Civic Education Blamed," *The Washington Times* (September 19, 2007).

[147] See, e.g., Appendix B, No. 61, "Sex Edition Causes Newspaper to be Held from Distribution at Middle School," and No. 6 "Wash. School District Approves New Policy Allowing Prior Review of Student Publications."

[148] It should be noted here that I have worked as a newspaper and yearbook adviser at a public high school in Arizona for seven years. Many of the findings of this survey corroborate first-hand experiences I have had during my tenure.

that publications advisers and students do not believe they can win a challenge in the courtroom. The one case that was decided in court concluded in favor of the student. Incidentally, this case was heard in California, one of seven states with a student expression law on the books. These "anti-*Hazelwood* laws" have been established to minimize the impact the decision has on the student press.

Another reason students do not often pursue legal action in cases involving student publications may be that students and their legal advisers are choosing to "pick their battles" when it comes to prior review and censorship, unwilling to risk the future of their publication as a whole or concerned about the personal repercussions of a First Amendment battle.[149] Cases analyzed in this study include several examples of publications that were shuttered and teachers who were removed from their positions or lost their jobs as a result of controversial or unpopular content in student publications. Not everyone who faces censorship is prepared to take such great risks, so students and advisers often avoid issues they believe will cause trouble. Such acts of self-preservation, however, perpetuate self-censorship and restraint, causing students to miss out on invaluable lessons on the power of free expression.

The increased deference to school administrators from *Tinker* through *Morse* is most prevalent in curricular or school-sponsored activities, especially the school publications. Schools feel pressure from their communities to adhere to commonly held values, and this pressure has manifested itself in greater control of student expression that

[149] Thomas V. Dickson, "Self-Censorship and Freedom of the Public High School Press," *Journalism Educator* (October 1, 1994):61. In a survey of 323 student newspaper editors, Dickson found 51% answered they would get into trouble if they wanted to publish an article on a controversial topic.

can be viewed as bearing the imprimatur of the school.[150] Based on the results of this study, the desire to protect the image of the school and of its employees is a more compelling interest than having a free press. The cases included in the study collectively describe a relationship between administrators and student journalists that is tenuous, one that operates on cautious understanding until some content ruffles the feathers of a school stakeholder. Not surprisingly, this is most obvious in cases involving expression that is critical of the school or certain faculty members. In several of the cases reported to the Student Press Law Center (SPLC), administrators could be described as defensive, as though the offending expression was an affront to the image of the school, an idea that was regularly shown to prompt a change in the student publications policy.[151] Rather than engaging students in a discussion about the rights and responsibilities of a free press, a discussion that emphasizes the educational impact of the situation, administrators in these instances have instead effectively silenced the voices of dissent, the unpopular opinions, and the topics that most impact students' lives. In doing so, they are also eliminating much of the pedagogical purpose for a student press, a move that would seem contrary to the school's mission. Even more disappointing is that administrators are, in most cases, willfully denigrating the significance of their own schools' publications for content that is Merely Upsetting.

In addition to the large number of cases of censorship of school publications—and the high percentage of cases being settled in favor of a more school-friendly publication

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[150] See, e.g., Hazelwood School District et al. v. Kuhlmeier et al., 484 U.S. 260 (1988).

[151] See, e.g., Appendix B, No. 56 "High School Students Lose Censorship Appeal to School Board," No. 62 "Controversial Sex Article Leads to Slight Revision of High School's Prior Review Requirements," and No. 88 "Anti-Illegal Immigration Editorial Censored."

policy—school assignments, dramatic performances, and school speeches have all been subjected to restrictions by school administrators.[152] Certain topics, most notably sexual content and religious materials, elicit a fear of disruption that often causes administrators to take a strong reactionary position. In order to avoid controversy, administrators seek to stop the expression. But controversy is not equivalent to a substantial disruption to the school environment, a fact that is illustrated in the 75 percent of the cases analyzed in this study that do not meet the Truly Disruptive standard. The repercussions of administrators overstepping the authority granted them are varied; examples in this study run the gamut from administrators issuing a written apology to the school community for their decision to censor student speech, to the story playing out in public after the local media learns of the situation.[153] In the most extreme cases, school districts have been forced to settle with students whose rights were infringed upon, sometimes for significant sums of money.[154] One such case involved a student who was arrested at school for lyrics he posted on the Internet.[155]

Apparel expressing contentious viewpoints has proven to be an area of student expression that causes much confusion and discomfort to school administrators who are hypersensitive to the well-being of their students. Messages that have the potential to be construed as harassment or infringing on the rights of others were most commonly censored; a majority of those cases were resolved in favor of the student after administrators were unable to deliver proof that a disruption was imminent. Apparel

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[152] See Appendix B.

[153] See, e.g., Appendix B, No. 26 "Illinois High School to Remove Paper Adviser over Drug Articles.".

[154] See, e.g., Appendix B, No. 63 "Students Receive Settlement after Off-Campus Movie Got Them Expelled.".

[155] Appendix B, No. 72 "Teen Rapper Receives Settlement from Police Department."

cases that earned the labeled Truly Disruptive did so largely because the specific message collided with the specific history of the school and the context and manner in which the apparel was worn. Based on the findings, the trend toward an increased deference to school administrators does not apply to student apparel. Instead, *Tinker* proved to be the de facto standard because the clothes a student chooses to wear cannot be seen as a school-sponsored activity. The only exception to the *Tinker* standard would be when a student's apparel violates an established, content-neutral dress code.[156]

The 1999 shootings at Colorado's Columbine High School and subsequent violent crimes on school campuses have instilled a grave sense of fear in administrators charged with protecting their students. As a result, many schools have a zero-tolerance policy toward violence, a fact illustrated by the cases analyzed involving violent expression. Although it is incumbent upon administrators to prove that a substantial disruption occurred or was imminent before censoring student expression, in the case of violent or threatening expression, the bar was proven to be significantly lower. Providing a safe learning environment for students is a top priority for administrators, and they are not likely to take chances with students who have expressed violent sentiments. Only two cases involving violent student expression were settled in favor of students, not because the expression was not violent, but because it did not occur on campus and the school acted outside of its authority by punishing them.

[156] Palmer v. Waxahachie, 579 F.3d 502; 2009 U.S.

A recent survey of teen Internet usage revealed that 93 percent of teens ages 12-17 go online, with 63 percent of them logging on at least once a day.[157] As Internet usage has become so pervasive, how to handle student cyberspeech that occurs off-campus has become an unnerving dilemma for school administrators. Between 2006 and 2008, the SPLC reported on cyberspeech cases involving everything from students making critical statements about teachers to students creating cruel social network "fan" pages about fellow classmates.[158] While administrators have shown a tendency to want to control speech that somehow involves the school, the courts have indicated that this can only be possible if that speech makes its way onto campus in a disruptive manner. Instances of off-campus cyberspeech will no doubt continue to increase, and the cases are likely to become more complex with advancing technology.

That school officials went from having to demonstrate that offending speech had caused a material disruption to the school environment—a feat that would undoubtedly be difficult to do in many cases—to merely having to express a legitimate pedagogical concern represents the sentiment of fear and distrust that pervades modern-day public schools.[159] In an era of 24/7 communication, students and other members of the school community have the ability to express themselves in a wide variety of formats to a limitless audience. Technology has proven to be a double-edged sword for public schools: they are determined to incorporate it into the learning environment, but are

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[157] Pew Internet & American Life Project 2004-2009, "Millenials: A Portrait of Generation Next," Pew Research Center, http://pewresearch.org/millennials/teen-internet-use-graphic.php (accessed March 28, 2010).

[158] See, e.g., Appendix B, No. 1"Florida High School Student Files Complaint after Suspension for Creating Facebook Page Critical of Teacher," and No. 100 "Students in Myspace.com Group Suspended after Contents Deemed Threatening.".

[159] See, e.g., Diana E. Hess, "Controversies about Controversial Issues in Democratic Education," *PSOnline*, http://apsanet.org (April 2004): 257-261.

terrified of their inability to control it. In some respects, this fear is warranted. The vehicle of choice for personal expression in eras past was often a note passed between classmates or an underground publication; these methods of communication seem tame compared to the social networking sites, text messaging, and blog options available to students today. To make matters worse, students are increasingly using these electronic options to bully or harass other students anonymously. The reach is broad but the risk is minimal when students are able to conceal their identities to those they attack. But for students on the receiving end of these cyber invectives, the anguish can be insurmountable. The risks of students creating a disruption or causing harm to fellow students increase with the myriad options, ease-of-use, and reach of technology, and this is a justifiably strong consideration for school officials. Add to this mounting pressure from parents and other community groups to adhere to their individual interests and it is easy to appreciate the bind in which school officials find themselves. But to react to this potential risk by tightening the grip on student expression is overly cautious at best and overreaching the First Amendment at worst. School officials can ill afford to sway too much in the direction of keeping unpopular expression off their campuses, not only because it is unconstitutional, but also because this censorship in itself poses a legitimate pedagogical concern as it relates to the government's educational mission for public schools.

Individual court decisions included in this analysis do not by themselves provide step-by-step instructions for administrators who are dealing with student expression issues. However, some interesting conclusions can be drawn from looking at the

decisions collectively. Of the 13 court cases that were coded as Truly Disruptive, 12 were decided in favor of the schools. In these cases, the courts deferred to school administrators by acknowledging that they were most qualified to make decisions when a substantial disruption occurred in their own school environment. The 19 cases decided by the courts that were coded as Merely Upsetting, however, tell a very different story. Fourteen of these cases were decided in favor of the students. The high percentage of student victories demonstrates that in cases dealing with expression that has not risen to the level of a substantial disruption, the courts are quite willing to put school administrators back in their proper place and reassert students' First Amendment rights. It seems that administrators have grown comfortable with the idea that the courts will defer to them in matters that are Truly Disruptive to a school environment, and this analysis suggests they are correct in this assumption. However, administrators would do well to think twice before engaging in a legal conflict over speech that is Merely Upsetting in nature, as this is likely to be a losing battle. Because Merely Upsetting cases would not meet the *Tinker* standard, the courts turn to precedent set by the U.S. Supreme Court in *Fraser*, *Hazelwood,* and *Morse.* But results indicate that these narrow decisions do not directly apply to most censorship scenarios, and that when put to the test against content that is Merely Upsetting to school administrators, the scales tip in favor of students' rights. That 10 of the 11 cases settled by legal intermediaries were settled either entirely in favor of the students or in a compromise between the students and the school should be seen as a red flag to school officials. Rash decisions made primarily with the schools' ability to operate smoothly and without interruption often lead to lengthy and expensive

legal proceedings, which are typically more disruptive than the censored expression in question. Students who are educated on their rights know that knee-jerk reactions to student expression often amount to censorship of protected speech. When they challenge those decisions, they have a high degree of success. So while the courts repeatedly give deference to school administrators to police student expression, the schools themselves are finding the fallout from instances of censorship on their campuses is not often worth the disruption.

Limitations

Several limitations to this study need to be acknowledged. First, the coding system for determining whether a case is Truly Disruptive or Merely Upsetting is relatively subjective. Although a series of attributes were defined based upon the decisions of the U.S. Supreme Court and several lower courts related to student expression, as the courts themselves have shown, these attributes are difficult to universally define. So many factors go into an individual censorship decision that are beyond the scope of the actual expression: the demographics of the school environment, the specific history of the school, and the context and manner in which the expression occurred, just to name a few. Every effort was taken to clearly operationalize the definitions of each label and to eliminate bias from the coding, but these other factors may have, in some cases, affected the final classification. Furthermore, due to time and money constraints the cases in the study were only coded by one person.

A second limitation is the absence of first-person accounts from the parties involved in the cases included in the study. While the SPLC reports offer background

details for each case, and in some cases additional supporting material existed, whether in the form of local news reports, articles in the school paper, or court decisions, it is not possible to ascertain the exact motivation behind censorship decisions without discussing them with the decision makers.

Furthermore, not every case included in the analysis reached a clear conclusion. Among those cases that were not settled in court, several ended with the prospect of a change in the publication policy, or a complaint filed by a student, but no further documentation could be found. So while a case seemingly ended in favor of one party, this may not actually be the entire story. Likewise, some SPLC News Flashes related to newspaper censorship detailed the facts of the specific case but did not indicate whether a subsequent change in prior review status occurred. It is also impossible to know if the students or publication adviser implemented a greater degree of self-censorship following the incident, such that the actual policy did not change but the practices of the student publication staff did.

This study analyzed only cases of censorship reported to the SPLC between 2006 and 2008. There is no way to know what percentage this represents of the total instances of censorship that occurred during this time frame. Conclusions drawn from this study may not reflect the overall attitudes and actions of the public high school community.

Finally, this study was limited only to public elementary, middle school, junior high, and high schools, as they are the only schools governed by the decisions of the U.S. Supreme Court. The issue of censorship in private and parochial schools is subject to different factors that are outside the scope of this study. Therefore, while private school

teachers and administrators may find the results and conclusions garnered from this study interesting, and the guidelines proposed useful, they may also be largely anecdotal for that environment.

Implications for Future Research

Preserving the First Amendment rights of students should be included in every public school's educational mission. Unfortunately, the prevailing attitude of many school administrators is that *Hazelwood* grants them free reign to control student expression when it conflicts with their idea of an orderly school environment. Such egregious liberties can only serve to dampen the spirit of adolescents who are just beginning to find their own voice and understanding the power and responsibility that comes with free speech. For this reason, this topic deserves a greater level of attention from media, legal, and education scholars. Several national surveys have been conducted on the attitudes of high school principals regarding censorship,[160] but this method of study has its own limitations.

As has been previously suggested, communication is one of the keys to successfully dealing with student expression rights in a way that balances the rights of the students and the responsibility of school officials. Further study into the ways in which administrators engage with their student population may help to lend more credence to this approach. Research related to the effect the community has on censorship decisions would also be useful in developing tools to combat limitations to student expression.

[160] See, e.g., Laurence B. Lain, "A National Study of High School Newspaper Programs: Environmental and Adviser Characteristics, Funding and Pressures on Free Expression" (paper, Annual Meeting of the Association for Education in Journalism and Mass Communication, Montreal, Quebec, Canada, August 1992), and Lillian Lodge Kopenhaver and J. William Click, "High School Newspapers Still Censored Thirty Years after Tinker." *Journalism & Mass Communication Quarterly*, 78 no. 2 (Summer 2001): 321-339.

Guidelines for Student Expression

The following guidelines are designed to assist school administrators in making decisions related to student expression. These guidelines are not meant to be exhaustive, but rather should be used as a foundation upon which individual schools or school districts can develop policies that best serve their unique populations.

It is no doubt a delicate balance managing the intricacies of the school environment in a way that fosters critical thinking and individuality but that at the same time keeps the students safe and the learning environment free from distraction. The inclination to want to control student expression as a means to achieve this balance is not ungrounded, but it is misguided. The landmark U.S. Supreme Court decision in *Tinker v. Des Moines Independent Community School District*[161] affirmed that students in a school setting are entitled to the their First Amendment rights so long as they do not cause a material or substantial disruption to the school environment or infringe upon the rights of others.[162] Although subsequent decisions have served to limit these rights in specific circumstances,[163] the emphasis remains on the preservation of students' rights. These guidelines take into consideration both sides of the issue—the Constitutional provisions of the First Amendment and the limitations placed on student expression in favor of the regulatory functions of a school administrator—and provide a framework that honors freedom of expression in a way that respects the special needs of the school environment.

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[161] 393 U.S. 503 (1969).

[162] Id at 513.

[163] Bethel School District No. 403 et al. v. Fraser, A Minor, et al., 478 U.S. 675 (1986), Hazelwood School District et al. v. Kuhlmeier et al., 484 U.S. 260 (1988), and Deborah Morse, et al. v. Joseph Frederick, 551 U.S. 393 (2007).

While school officials have authority to restrict student expression in certain, specific instances, it is best when these restrictions are made based on established, narrowly tailored policies to help minimize confusion.[164] Any restrictions made to student expression must be objective and unambiguous.[165] The attempt to avoid offending anyone has created a situation in which people's expression rights are being stifled to maintain "political correctness"; the intentions may have been honorable, but the outcome has been one of self-censorship and overly sensitive administrators.[166]

Howe and Townsend argue that an effective administrator understands the disparate needs of a school community;[167] through open dialogue and education, this community can work together to craft a set of guidelines—informed both by rulings of the courts and by values specific to the group—to handle conflict related to student expression.[168]

Guidelines presented here are based on court precedent, as well as a thorough analysis of censorship cases reported to the Student Press Law Center between 2006 and 2008 and analyzed above. Examining not only the decisions of the courts, but also a substantial number of recent censorship cases not decided by a court, offers a robust view of what school administrators can expect when restricting various types of student expression. Administrators may wish to minimize the controversy that occurs within their

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[164] Kelley R. Taylor, "Another Free-Speech Court Case Off T-Shirts," *Principal Leadership* (November 2006): 37-40.

[165] Martha M. McCarthy, "The Principal and Student Expression: From Armbands to Tattoos," *NASSP Bulletin* 82 no. 599 (September 1998): 18-25.

[166] Judith Vidal-Hall, "Your Lips Are Most Definitely Sealed," *The Times Higher Education Supplement*(August 11, 2006) 16.

[167] Mary Lee Howe and Renee Townsend, "The Principal as Political Leader," *High School Magazine* (2000):10-16.

[168] Id.

school sites, but they also do not want to find themselves embroiled in a legal battle over First Amendment issues, as there is as great a chance they will lose as they will win. Taking the time to become educated on the rights afforded to students and following the suggested guidelines are the first steps in creating an atmosphere in which student expression will thrive, and not at the expense of an orderly school environment.

Student expression guidelines are organized first by the nature of the censorship. These guidelines will assist administrators in making decisions based on the type of expression. Next, guidelines are offered for particular types of content that have been shown to consistently cause trouble between administrators and students.

Nature of censorship

Apparel

Students' rights to individual expression through apparel have typically been honored by the courts. Very few topics are entirely off-limits when it comes to students expressing themselves through what they wear. Although one of the greatest concerns as it relates to apparel is how a controversial message might affect particular individuals, administrators would do well to resist the inclination to give too much credence to that fear. There is no doubt that it is incumbent upon the schools to keep students safe and to prevent bullying and discrimination; however, eliminating inappropriate or unpopular expression from attire is not only impractical, it is unfeasible. Viewpoint discrimination, even of those viewpoints that are unpopular or unsavory, violates the principles of the First Amendment. While there is a tipping point, the priority must lie in upholding those principles. To wit, the courts have recently ruled in favor of students wearing armbands

and Hitler Youth buttons to protest a school dress code policy,[169] clothing showing support for gay rights,[170] and an anti-war T-shirt depicting President George W. Bush drinking and using illegal drugs.[171]

Schools stand on more solid ground in cases involving established and content-neutral policies related to student dress. These policies should spring from a legitimate need to protect the school from a substantial disruption. Schools facing real safety concerns should tailor policies to address those specific issues, as policies that are overly broad do not typically hold up in court.

Taking too protective of an approach may spare certain students' feelings—although any reaction is difficult, if not impossible, to predict—but it does so at the expense of other students' civil liberties. This is a battle with no clear winner, and one that is likely to end in favor of the censored student.

Flyers/posters/other speech

Students are entitled to distribute or display materials on campus, but schools may be within their rights to require approval prior to dissemination. As in the case of apparel, narrowly tailored policies that do not seek to suppress particular viewpoints are generally upheld in court.

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[169] See, e.g., Lowry v. Watson Chapel Sch. Dist., 540 F.3d 752 (8th Cir. 2008) and Laura DePinto v. Bayonne Board of Education, 514 F. Supp. 2d 633 (2007).

[170] Heather Gillman v. School Board for Holmes County, 567 F. Supp. 2d 1359 (2008).

[171] Guiles v. Marineau, 461 F.3d 320 (2006).

Petition

Although students speaking out against school policies or particular faculty members by way of petition may create uncomfortable situations, these situations will only rise to the level of Merely Upsetting unless they are conducted in a way that substantially disrupts the school environment. Distributing a petition alone does not cause that disruption. Students should feel free to speak out against issues—or people—that they believe are not supportive of the school's mission without fear of repercussions. School administrators should welcome this sort of open exchange of opinions, as it could lead to positive change.

Off-campus cyberspeech

The newest form of student expression, that which is posted to the Internet from an off-campus location, has caused quite a panic amongst school administrators. The negative ramifications of online speech, particularly speech that is violent or harassing in nature, is potentially staggering. This is no small matter, and certainly not one that should be taken lightly. However, the courts have drawn a pretty clear line when it comes to what school administrators can control: speech that makes its way onto the school campus and causes a disruption will typically be considered within the school's jurisdiction. What is less clear is what constitutes a disruption, and the answer will usually lie in the content of the speech itself.[172]

[172] For instance, in Layshock v. Hermitage, 593 F.3d 249 (2010), the courts have in favor of a student who copied and pasted an official school picture of a school administrator from the district web site to use in a mock Facebook page. In Requa v. Kent Sch. Dist. No. 415, 492 F. Supp. 2d 1272 (2007), however, a

Another factor in establishing guidelines for off-campus cyberspeech is the extent of the punishment. Schools should not necessarily ignore news of alarming speech posted by students online, but excessive punishment for speech initiated off campus is not prudent. In these instances, schools would do better to allow guidance counselors, parents or even the local authorities handle such matters.

Student publications

Censorship of student publications is by far the most rampant form of censorship in today's public schools. Too often administrators perceive school publications as a threat and wish to control them by using them as public relations tools. This approach is inadvisable for two reasons: first, the U.S. Supreme Court established the student press as a limited public forum, and secondly, any restriction on what students can cover in their publications robs them of the opportunity to practice critical thinking and ethical journalistic decision making. Princeton University Professor Amy Gutmann has said that giving free speech rights "enables individuals, as they mature, to accept responsibility for their speech as well as their actions, and to learn by exchanging their own views with other similarly responsible (and responsive people)."[173] Entrusting students with that degree of freedom is not supposed to be an easy thing; anyone who has spent time in a school setting knows that not all students understand the responsibility that comes with such freedom. But, as Emerson wrote, students must be able to develop their own beliefs

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school's decision to suspend a student for 40 days for creating a Youtube video making fun of a teacher's hygiene was upheld, even though the video only came to light through a local television news station.

[173] Brandon James Hoover, *An Analysis of the Applicability of First Amendment Freedom of Speech Protections to Students in Public Schools*, 30 U. La. Verne L. Rev. 39 (2008).

in order to achieve self-realization,[174] so denying all students because some students make bad decisions cannot be the solution. Prior review of student publications is a systematic squeezing of student expression, until students and advisers become so concerned with preventing controversy that they routinely censor themselves. The *Hazelwood v. Kuhlmeier* decision[175] provided some leeway for school administrators to censor school publications when it was related to a legitimate pedagogical concern, and schools have been largely successful in restraining material deemed controversial or inappropriate. But the costs are often great. Even when school policies of prior review are upheld, censorship cases can result in more bad publicity from the local media than running a controversial article in the first place. Most importantly, heavy handed administrators deny students the opportunity to find their own voices, an act that can have a detrimental effect on the democratic values of American society.

Other solutions exist. Properly trained faculty advisers and administrators can make all the difference to a scholastic journalism program. Keeping the lines of communication open is another easy way to create mutual understanding. Some of the most successful journalism programs in the country—including some that have had past censorship-related controversy—meet regularly with their school administrators to get their take on issues pertaining to the school, to share ideas, and to ask questions. Regular communication with administrators does not equal giving up control; on the contrary, it solidifies a trusting relationship with some of the most important sources on campus. This should not be seen as bowing to authority, but rather as a smart journalism practice.

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[174] Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 Yale L.J. 877 (1962-1963), 879.

[175] 484 U.S. 260 (1988).

In spite of best efforts, unpleasant situations are bound to arise when dealing with student publications. This is when a clearly crafted editorial policy comes into play. It will keep administrators from overreaching, as well as provide justification to parents or other concerned parties.

Student journalism programs offer aspiring journalists training and insight into a career they may well be hoping to pursue after high school. Some administrators, like Kathleen Klink, superintendent of Lakota Local Schools in West Chester, Ohio, recognize that the student press—like its professional counterpart—has a responsibility to provide information of value and interest to its audience.[176] When a student publication tackles a controversial issue, it quite often has a high degree of reader interest. Rather than hiding from these issues, the student press can help shed light on all sides of an issue and prompt open discussion.[177]

Students want to report on controversial issues such as teen sexuality and drug use because these issues play a large role in many students' lives. Topics such as these cannot be made completely off-limits, as there is no legitimate pedagogical concern in discussing such issues, which are typically covered in school curriculum. Rather than prohibiting articles of this nature altogether, administrators should set the expectation that students approach them with sensitivity. Students should be reminded of the various age and maturity levels of the students in a middle school, junior high, or high school, and should be reminded to take these varying audiences into consideration when developing a story on a controversial topic. While the best solution is for the students to maintain

[176] Kathleen Klink, "Freeing the Student Press for Their Good and Ours," *The School Administrator* (April 2002).
[177] Id.

control of their own publications as limited public forums, administrators should feel comfortable reminding students that there is a line that cannot be crossed. Lewd, vulgar, or offensive language and content advocating illegal drug use fall in a category that is subject to closer scrutiny, and administrators and students should work together to set guidelines that represent standards the specific school community can accept. Standards of good taste and decorum are a good basis for this discussion. Students must also understand the implications of invading an individual's privacy, especially if that person is a minor.

If someone in the community still gets upset, administrators should avoid giving into the pressure. The views of a few do not represent the views of the community as a whole, and phone calls from angry parents do not constitute a substantial disruption to the school environment. In the spirit of the First Amendment, community members should be allowed to express their opinions, preferably in letters to the editor. Students should be part of this process, and should be made fully aware of the power of their words.

Underground publications

Underground publications remain largely outside of the jurisdiction of school administrators. As long as an underground publication is produced without the aid of any school equipment and is distributed off campus, it remains off limits to administrators. If, however, copies of the paper appear on campus and cause a substantial disruption, the school may have cause to take action.

Types of content

Religious Expression

Religious expression in public schools is a particularly complicated matter because administrators must walk a fine line between allowing students to express their beliefs without violating the principle of the separation of church and state. While religious expression, especially expression that is proselytizing in nature, is generally prohibited from school-sponsored activities, the courts have ruled that it may be acceptable in activities that are voluntary. Furthermore, the use of religious icons in artwork or religious expression in class assignments should be considered within the realm of acceptable student expression, so long as it does not violate the specific requirements of the assignment or existing school policies. The context and manner in which the assignment is carried out may play a role in these instances; if a class assignment is to be displayed in a public area on campus, for instance, the religious expression could be viewed as proselytizing and subsequently subjected to more restrictive standards.[178]

Violent expression

The stark reality of the pervasiveness of school violence has led to many schools adopting a zero-tolerance policy related to violent expression. This often includes any speech that is perceived as potentially harmful to others, even if no direct threats are evident. Schools can ill-afford to take chances with student safety, and the courts have

[178] See, e.g., Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000), in which the U.S. Supreme Court held that a school district's policy to allow student-led, student-initiated prayer before football games violates the Establishment Clause.

repeatedly upheld schools' right to suppress speech in the name of maintaining a safe environment. However, this does not mean administrators have carte blanche to censor all violent expression. This is particularly true for students writing creatively, either for a school assignment or in their personal notebooks. Students are influenced by and often attempt to emulate certain writers' styles. There is no shortage of examples of writing that contains violent subject matter. Even literature that is part of many schools' approved curriculum often features violence. To unilaterally censor all expression containing violent images could be seen as too broad an application of an existing violence policy. A recommended course of action would be to involve a school psychologist or other mental health professional, as well as local law enforcement, to help determine if a student's violent expression indicates an actual threat.

Expression critical of the school

It may be a natural tendency for administrators to want to preserve the positive image of their school, but it is a desire they cannot control, as these cases will almost always fall into the Merely Upsetting category. Students have the same rights as any other American to question authority and express opinions about their leaders and the decisions they make. Students are bound to have opinions about their community, whether it is campus policies or views about certain faculty members, and administrators should work with students to turn these into educational opportunities for the entire school. No one likes to be criticized, but refusing to allow students to be critical of their school is only self-serving and may result in missed opportunities for improvement.

One set of student expression guidelines cannot work for every school, as there are too many individual characteristics to consider in each instance of censorship. Some universal principles do apply, however, established by both court precedent and past experiences of the schools themselves. By applying suggested guidelines to the specific needs of their own school, administrators can help to strike a more equitable balance between the interests of the school and the students. The key points highlighted below are meant to be used by school administrators as an entry point into establishing clear goals for addressing student expression in public schools.

- Open and ongoing communication is fundamental to a good approach to handling student expression. Talk to students and work with them to make decisions that are appropriate for the specific school community. Creating an environment of trust, in which students believe their opinions matter, will serve the school far better than heavy-handed control.
- Develop written guidelines that are narrowly tailored and content-neutral. Be specific with regard to different types of expression so as to avoid confusion, and thoroughly evaluate the pedagogical purpose for each provision of the policy. Keep in mind that the goal is to establish a safe and productive learning environment that honors individual expression and students' journey toward self-actualization.
- For student publications, allow students to develop an editorial policy that protects their right to exist as a limited public forum. Instead of insisting on

prior review, address concerns through a regular exchange of ideas and information.

- Students should feel free to express their opinions, even those that are critical of the school or particular faculty members. Students cannot be compelled to suppress those opinions, so long as they are not slanderous or libelous in nature.
- Avoid viewpoint discrimination. The courts have consistently ruled against school policies that can be viewed as discriminating against the message of a particular group or individual.
- Religious expression that can be viewed as proselytizing is generally off-limits to students. Other religious expression may be allowed.
- Although violence is a serious concern in today's public schools, avoid overstepping boundaries by censoring all violent expression. For instances that do not involve an imminent threat or substantial disruption to the school environment, consult mental health professionals or the local authorities to determine if a threat is imminent before doling out excessive punishments.
- Off-campus cyberspeech is a growing problem in public schools as more students engage in bullying and harassment via online methods. Schools must avoid getting involved in these situations unless the offending speech makes its way on campus and causes a material disruption. Otherwise, it is a matter for the parents or local authorities.

- Educate the school community about their First Amendment rights. Administrators, teachers, students, and parents should be familiar with the rights bestowed upon them as American citizens, as well as the special characteristics of the public school environment. Through education, schools can empower their communities to exercise their rights, while feeling confident that their members also understand the responsibilities that accompany those rights. Honoring students' rights as individuals will not feel like such a frightening prospect when a concerted effort is made to establish a common understanding.

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Appendix A

Attributes for coding cases of censorship as Truly Disruptive or Merely Upsetting

Attributes:

The following attributes are not afforded protection under the *Tinker* standard, and therefore would fall into the Truly Disruptive category:

1) Expression caused a substantial or material disruption to the school day
2) Content was libelous or slanderous
3) Content invaded upon the privacy of certain individuals
4) Expression collided with the rights of others (school officials must be able to demonstrate the expression in question did infringe up on the rights of others)

The following attributes would be applied under the *Fraser*, *Hazelwood*, or *Morse* tests, and therefore may fall into the Truly Disruptive category, depending on the context and manner of the expression. The more attributes from this subset that describe each individual case, the more likely it is to fall under Truly Disruptive.

5) Speech contained violent images
6) Speech contained violent images directed at a fellow student or faculty member
7) Faculty members or students expressed feelings of fear related to violent speech
8) Violent speech included threatening language (threats to do harm, described the use of weapons, described the manner in which violence was to be carried out)
9) Authorities were notified of violent speech
10) Authorities pressed charges as a result of violent speech
11) Psychological evaluations were requested as a result of violent speech

12) Threats of violence between students occurred on campus

13) Threats of violence between students occurred on campus mediated by faculty

14) Violence occurred on campus

15) Expression violated established School Board or Student Code of Conduct policy

16) Expression included lewd, vulgar or indecent text or graphics

17) Content was shared on campus

18) Content was part of a curricular activity

19) Content advocated illegal activity

The following attribute violates the Establishment Clause of the First Amendment[179] and therefore will fall into the Truly Disruptive category:

20) The purpose of the content was to proselytize

The following attributes have the highest protection under *Tinker* and therefore fall into the Merely Upsetting to school administrators category:

21) Expression constituted pure political speech

22) Banning of expression is viewpoint discrimination

The following attributes do not meet any of the standards established by U.S. Supreme Court precedent and therefore fall into the Merely Upsetting category:

23) Parent or other community member complained to school

24) Content not considered age-appropriate for audience

25) Expression prompted "undifferentiated fear or apprehension of disturbance."[180]

26) Content was critical of faculty or school personnel

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[179] Erects a "wall of separation between Church and State."Everson v. Board of Educ. Of Ewing, 330 U.S. 1 (1947) at 27.

[180] 393 U.S. 503 (1969) at 508.

Appendix B

Description of Student Press Law Center cases between 2006 and 2008 coded as Truly Disruptive or Merely Upsetting

Case Description	Nature of Censorship	Type of Content Censored	Attributes	Classification
1) **Florida high school student files complaint after suspension for creating Facebook page critical of teacher 12/9/2008** Student suspended and removed from AP classes for criticizing teacher on Facebook page. Actions violated school "cyberbullying" policy. * *Evans v. Bayer* – decided Feb. 12, 2010 Bayer's motion to dismiss was denied, Evans' request for the court to compel Evans to destroy the records regarding her post was dismissed without prejudice, leaving it open for her to file an amended complaint.	Off-campus Cyberspeech	Critical of faculty	26	Merely upsetting
2) **California high school re-opens newspaper after new adviser hired 12/2/2008** Administration shut down student paper after publication of an "inappropriate" column, a first-person column about the author's own sex appeal. School newspaper was operating as a school club. End result is that the paper becomes curricular (school-sponsored) instead of a club (forum).	Student Publication (b)	Sex	24	Merely Upsetting

3) **Arkansas school district asks Supreme Court to hear black armband case 12/2/2008** Supreme Court denied cert in case to rule on the legality of armbands: 8th Circuit Court of Appeals affirmed a decision in favor of students' right to wear armbands to protest school dress code. * *Lowry v. Watson Chapel School District* School district thinks 8th Circuit improperly applied *Tinker*, and that the right to distinguish between types of speech should be at the discretion of the school, rather than the federal courts. Cites *Hazelwood* and *Morse* giving "schools broad authority to discipline students for wearing armbands." District cited that the policy was content neutral and thus should not be held to the *Tinker* standard.	Apparel	Political speech – critical of school policy	15	Merely Upsetting
4) **ACLU, SPLC file lawsuit against Calif. high school over canceled student newspaper 11/21/2008** Fallbrook High School newspaper canceled after principal censored two articles: an editorial on abstinence education, and an article about the superintendent not wanting to use the school for fire evacuees.	Student Publication (c)	Sex, Critical of school	24 25 26	Merely Upsetting

5) **Sixth Circuit upholds middle school censorship of abortion leaflets 10/10/2008** Federal appeals court ruled against a middle-school student who was asked to stop handing out anti-abortion leaflets in the school hallway. A three-judge panel in 6th Circuit said hallways are not public forums, giving school officials' authority over regulating speech. Judge cited *Hazelwood* and two separate 7th circuit cases regarding forum status. **M.A.L. v. Kinsland*	Flyers	Abortion	1 6 20	**Truly Disruptive**
6) **Wash. school district approves new policy allowing prior review of student publications 9/24/2008** Pullyap School District enacted a new policy placing all student publications in school district under prior review after a controversial article on oral sex that named students. Four who claimed they had not given permission sued school district in March 2010.	Student Publication (c)	Oral sex	1 2 3 23 24	**Truly Disruptive**

7) **Calif. high school apologizes after punishing student for wearing American flag T-shirt 9/24/2008** School apologized for forcing a student to remove an American flag t-shirt because he violated a dress code policy that prohibits clothing that "promotes specific races, cultures, or ethnicities." Resulted in a student protest by wearing red, white, and blue, and a bit of a media frenzy.	Apparel	Political speech	15	Merely upsetting
8) **Administrators suspend students for wearing memorial T-shirts 9/18/2008** Twenty-seven students were suspended for wearing "Julius RIP" shirts memorializing a student who was shot. Administrators say he was a possible member and that the shirts glorified gang activity. Omaha Police Department could not confirm the gang connection. Students filed a complaint in the U.S. District Court for the District of Nebraska in October 2009. * Complaint filed: *Kuhr v. Millard Public School District*	Apparel	Gangs/violence	25	Merely Upsetting

9) **Middle schooler asks U.S. Supreme Court to hear First Amendment case 8/11/2008** Elementary school student was prohibited from selling candy canes with religious messages on them during school. Sixth circuit overturned a district court's ruling in favor of the student, citing Hazelwood. Supreme Court declined to hear the student's appeal. ** Curry v. Hensinger*	Flyers	Religious expression	4 18 20	**Truly Disruptive**
10) **Fla. district must pay $325,000 for banning pro-gay symbols 7/30/2008** Holmes County School Board ordered by a U.S. District Court to pay $325,000 for violating 1st and 14th amendment rights of a student prohibited from wearing apparel supporting gay rights. Students at Ponce de Leon High School started the gay-rights movement at the school in September 2007 after Principal Davis criticized a senior who said middle school students harassed her because she is a lesbian. ** Gillman v. School Board for Holmes County, US District Court for Northern District of Florida, Panama City Division*	Apparel	Homosexuality	21 23	Merely upsetting

11) **Texas high school student files new motion for right to wear Edwards T-shirt 7/7/2008** Waxahachie High School student was asked to change because his John Edwards t-shirt violated a content-neutral policy that barred students from expressing messages that did not concern colleges, universities, or the school district's "clubs, organizations, sports, or spirit." Supreme Court denied certiorari Jan. 11, 2010. ** Palmer v. Waxahachie*	Apparel	Political speech	15	**Truly Disruptive**
12) **Calif. district reverses decision to shut down paper that ran flag-burning photo 6/13/2008** School principal changed mind about cancelling newspaper class because of student photos of the burning of an American flag. Principal told local paper the issue/photo were embarrassing.	Student Publication (b)	Political	22	Merely Upsetting
13) **Former high school football players appeal to Supreme Court 6/13/2008** Sixth Circuit ruled football players kicked off team for a petition critical of their coach did not have their rights violated because their efforts "undermined the coach's authority." U.S. Supreme Court denied certiorari October 2008 ** Lowery v. Euverard*	Petition	Critical of faculty	n/a	Merely Upsetting

14) **Fla. high school punishes students for writing profane rap lyrics 6/6/2008** Three students not allowed to participate in graduation for writing a rap song that contained profane lyrics and posting them on Myspace, which then came onto school grounds. Staff member heard students listening to song and confiscated the iPod, then brought it to administration. Songs contained "profane" threats against administrators, a janitor and superintendent. Sherriff's department did not think lyrics were threatening.	Off-campus Cyberspeech	Violence	5 6 9 17 25	**Truly Disruptive**
15) **School board considers new policies for Vt. high school paper 6/5/2008** Story named and quoted a 17-year-old who said he got high during school. New policy adopted stating school publications are not public forums but that "censorship of viewpoints, opinions or ideas will not be tolerated" and that course teacher or adviser is "responsible for reviewing all material prior to publication" and the "Superintendent or designee has the final approval over all material."	Student Publication (c)	Drugs	3 23 24	Merely Upsetting

16) **Calif. paper reaches deal with principal who confiscated copies 6/3/2008** Student paper was censored resulting in a redrafting of publication policy, but students were invited to help draft it. Paper was removed from racks because of a story about an artist that included nude drawings. Principal found students he thought were trying to steal the paper, but it turns out the students found it offensive.	Student Publication (b)	Nude drawing	4 24 25	Merely Upsetting
17) **Minn. middle school student's suit alleges censorship of pro-life T-shirts 5/30/2008** Hutchison Middle School student was asked to stop wearing an anti-abortion t-shirt on National Pro-Life T-shirt Day. Mom filed lawsuit. According to suit, it was "inappropriate" and "annoying" to one teacher. Student was paid $1 in damages and a portion of the legal fees in a settlement with the school district, with the help of a U.S. District Court Magistrate. District did not admit to First Amendment violation. Student can still wear shirt as long as there was no disruption. * Complaint filed: *K.B. v. Independent School District No. 423*	Apparel	Abortion	4 22	Merely Upsetting

18) **Appeals court won't reinstate Conn. student to class office during free-speech challenge 5/30/2008** Second Circuit court ruled against student Avery Doninger for comments she made on the Internet. She was barred from running for class secretary after she called administrators "douchebags" on livejournal.com. Court found that Doninger's post created a "foreseeable risk of substantial disruption to the work and discipline of the school" because her blog encouraged others to escalate a controversy over a battle-of-the-bands event. Appellate court relied on *Wisniewski v. Board of Education.* * *Doninger v. Niehoff*	Off-campus Cyberspeech	Critical of faculty	25 26	Merely Upsetting
19) **Mass. school settles case over censored conservative posters 5/29/2008** School district settled three years after censoring conservative club posters. School agreed to amend school policy to forbid censorship of expression based on political viewpoints. The posters included a link to a website that contained graphically violent video clips. School blocked access to the site at school and forced the club to take down the posters.	Flyers	Violence	22 25	Merely Upsetting

20) **Md. student paper wins fight over article on allegations against principal 5/2/2008** A story about Richard Montgomery High School principal's questionable business dealings was censored by vice principal, but later allowed to run.	Student Publication (a)	Critical of faculty	26	Merely Upsetting
21) **Student can wear 'Be Happy, Not Gay' T-shirt in time for protests 4/25/2008** Seventh Circuit reversed District Court decision and said student can wear a "Be Happy, Not Gay" t-shirt. Student was told to remove the shirt during a "Day of Silence" protest. District court said school's rule had not "substantially burdened" the students' rights to expression. Judge Richard Posner said a school can protect students from their invasion of rights by other students. Posner said courts should not have a "heavy hand" in the regulation of student speech by administrators. "The contribution that kids can make to the marketplace in ideas and opinions is modest and a school's countervailing interest in protecting its students from offensive speech by their classmates is undeniable," Posner wrote. * *Nuxoll v. Indian Prairie School District*[a]	Apparel	Homosexuality	4 15 22	Merely upsetting

22) **Wash. adviser fired for helping underground paper regains job 4/14/2008** Everett School District reached a settlement over a fired teacher who helped run an underground paper. She received full back pay and resumed teaching, but not journalism, and agreed to resign the following year. Teacher had previously been involved in censorship dispute with school paper, settled in 2007. Underground papers were produced on school computers. A hidden camera was found in Powers' classroom (district denied having placed it there) played a part in the district's willingness to settle.	Underground Paper	Use of school property	6 18	**Truly Disruptive**
23) **Appeals panel reverses itself, dismisses Ky. student's free-speech lawsuit 4/10/2008** A federal appellate court reversed itself and dismissed a case student Timothy Morrison brought against Boyd County School District saying that his right to express anti-homosexual views was violated. ** Timothy Morrison v. Board of Education of Boyd County*	Other Speech	Homosexuality	4 6 22 25	Merely Upsetting

24) **High school student sues over ban on religious imagery in artwork 4/1/2008** A federal lawsuit filed on behalf of a student who was given an F for including Bible references in his artwork. Teacher asked student to remove reference because of comments from other students. * *A.P. v. Tomah Area School District*	Artwork	Religious expression	6 20	Merely Upsetting
25) **Mass. middle school paper delayed over poll on student concerns 3/21/2008** Amherst Regional Middle School's paper was delayed after school officials disputed a student poll, saying it was flawed, because only 175 students were polled (575 in school). Poll said students did not feel their voices were heard, that they did not agree with disciplinary practices, and were weary of the school's mission.	Student Publication (a)	Critical of faculty	26	Merely Upsetting

26) **Illinois high school to remove paper adviser over drug articles 3/17/2008** Naperville Central HS teacher refused to resign. Was told she would not be advising the paper because of a spread on marijuana use that "seemed to glorify drug use" and used unnecessary profanity. The adviser for the past 19 years, Linda Kane, said administrators were upset she talked to a local paper. She said in that interview that administrators "don't know squat" about the First Amendment.	Student Publication (c)	Drugs	24 26	Merely Upsetting
27) **Editor meets with officials over censored high school paper in Arizona 2/26/2008** Globe, Ariz. High school paper, the *Papoose*, was pulled because of two articles – one about a lack of motivation amongst students and one with a "Whudafxup" TRUTH campaign headline. The incident led to a change in advisers, caused the student editor to lobby for a new publications policy and spurred a public disagreement between editors and administrators over what actually caused the censorship.	Student Publication (c)	Drugs	24	Merely Upsetting

28) **District court again rules against Calif. student who wore anti-gay T-shirt** **2/21/2008** Shirt did cause a disruption by being "confronted by a group of students on campus" and a "tense verbal conversation." A 9th Circuit federal judge on Feb. 11 ruled for the second time that the Poway Unified School District did not violate a former student's rights to freedom of speech and free exercise of religion when officials punished him for wearing an anti-gay T-shirt. * *Harper v. Poway*	Apparel	Homosexuality	4 13 22 23	**Truly Disruptive**
29) **Former athletes' suit against Oregon school district to continue** **2/20/2008** Oregon basketball players kicked off team for petitioning against coach. U.S. District Court denied school district's motion for summary judgment. Students claim they were suspended from the team for the petition, school claims they were suspended for not boarding the bus and boycotting an away game. Suspension was upheld by appeals court and sent back to district court in 2008 to determine appropriateness of suspension.* *Pinard v. Clatskanie School District*	Petition	Critical of faculty	1	Merely Upsetting

30) **U.S. Supreme Court denies appeal from Calif. school in case over immigration editorial 2/20/2008** U.S. Supreme Court denied hearing case that said student was wrongfully disciplined by administration over immigration editorial. Student wrote an inflammatory editorial about illegal immigration. Paper folded in 2002 after prior review was instated. A student journalism club was formed in 2007. * *Smith v. Novato Unified School District*	Student Publication (b)	Race/immigration	1 12 18 22	**Truly Disruptive**
31) **Papers at L.A. high school confiscated over V-Day spread 2/19/2008** Students suspended for wearing t-shirts protesting the confiscation of the student newspaper. After a Valentine's Day spread that featured the word vagina, as well as an anatomical graphic, students wore t-shirts that said "My Vagina is Obscene." Articles were meant to bring awareness of V-Day, a day dedicated to ending violence against women. The *Los Angeles Times* reported that, once angry teachers notified Principal Bob Marks of the newspaper's content, he had nearly all of the 4,000 papers confiscated.	Student Publication (b)	Sex	24 25	Merely Upsetting

32) **Agreement reached over prior review request at Indiana school 2/14/2008** Principal wanted prior review because he thought he could be held liable for what was printed in the paper. He took issue with an article about sex. Decided against prior review.	Student Publication (c)	Sex	18 23 24	Merely Upsetting
33) **Principal pulls pregnancy story from Texas yearbook 2/13/2008** Principal restrained article about teen pregnancy from Burleson HS yearbook – students tried to fight it, but they were up again a deadline. Principal said the article "glamorized" teen pregnancy and conflicted with the school's abstinence-only curriculum.	Student Publication (a)	Teen Pregnancy	18 24	Merely Upsetting
34) **Play in Ohio pulled over raunchy dialogue 2/12/2008** Student-produced play "One Acts" prohibited by administration. Play director was notified the day of the play that there was concern about "six to seven items that were prohibited by the student handbook."	Other speech	Controversial topics that violate school policy	6 25	Merely Upsetting

35) **Sophomore suspended for posting photos taken in classroom sues district 12/21/2007** High school student took photos of teacher and posted online without teacher knowledge. A federal judge refused to lift the student's suspension early. Photos were posted on site for two weeks. School asked student to remove photos, which he did. Next day school informed student and parents he was suspended for three days. Letter said student's offense was "disruption of school environment." ** L.G. v. Rockwood, Eastern District of Missouri, Eastern Division*	Off-campus Cyberspeech	Surreptitious posting of teacher's photos	1 3	**Truly Disruptive**
36) **N.Y. student punished for wearing pro-gay T-shirt gets apology 12/18/2007** Student who wore pro-gay t-shirt gets apology from school for being punished – she was sent home because school officials were worried it would start a disruption.	Apparel	Homosexuality	21 4	Merely Upsetting

37) **5th Circuit upholds Texas school's punishment of student who wrote violent story 11/30/2007** Fifth Circuit judge agreed with school's decision to punish student who wrote a violent story in his notebook. Fifth Circuit's interpretation of the general rule established by *Morse* was that "speech advocating a harm that is demonstrably grave and that derives that gravity from the 'special danger' to the physical safety of students arising from the school environment is unprotected," thus administrators do not need to meet *Tinker* standard. The 5th Circuit's standard, unlike *Tinker*, doesn't require school officials to consider how realistic a supposed threat is. * *Ponce v. Socorro*	Other writing	Violence	5 6 8 17 25	**Truly Disruptive**
38) **Principal in Texas pulls paper with article on student drug use 11/27/2007** Principal pulled paper because of article on drug use. Article said that students dealt and used drugs on campus and that administration turned a blind eye. Information was largely based on interviews with two anonymous students who claimed to be drug dealers.	Student Publication (b)	Drugs, critical of faculty	2 6 18	Merely Upsetting

39) **Copies of paper collected in response to survey of students' racial attitudes 10/24/2007** Principal pulled paper with a survey on racism on the cover because of altercations between black and white students Principal had never censored before, did not plan to change publication policy, and claimed censorship was to keep school safe.	Student Publication (b)	Race	12 18 25	Merely Upsetting
40) **Student sues Tenn. district over ban on 'Jena Six' T-shirt 10/5/2007** Student asked to remove "Jena Six" t-shirt filed a lawsuit. District officials said they were trying to prevent a disruption. Racial slurs and altercations had been occurring. ***Super v. Rutherford County Bd. of Educ.*, No. 07-0992 (M.D. Tenn. filed Oct. 4, 2007).	Apparel	Race/violence	13 21	Merely Upsetting
41) **School officials in Ga. 'standing by' decision to run controversial column 10/3/2007** Marietta, Georgia, principal decided NOT to censor a column calling homosexuality one of biology's "reproductive errors" despite the "furor" caused and local media attention.	Student Publication (c)	Homosexuality	4 22	Merely Upsetting

42) **District may not censor button depicting Hitler Youth, court rules 9/20/2007** A fifth grader and seventh grader can wear Hitler Youth "no school uniform" buttons. U.S. District Court, District of New Jersey ruled the buttons were not disruptive. * *Laura DePinto v. Bayonne*	Apparel	Political speech, protesting school dress code	21 25	Merely Upsetting
43) **Valedictorian punished for speaking about Jesus sues district 9/14/2007** Colorado valedictorian filed federal lawsuit after she was forced to apologize to the community for mentioning Jesus Christ in her graduation speech. Cited a violation of the Colorado Student Free Expression Law and First Amendment. Religious references were added after speech was approved. * *Corder v. Lewis Palmer School District No. 38.*	Other Speech	Religious expression	4 18 20	Merely Upsetting
44) **Ind. paper to rely on submissions from English classes 9/12/2007** Adviser's firing because of an editorial that "expressed empathy for gay students" resulted in newspaper submissions from English classes, rather than a journalism class. Principal cited age for why the article was inappropriate.	Student Publication (c)	Homosexuality	18 22	Merely Upsetting

45) **High school editors reach settlement in suit over paper's masthead 8/31/2007** Everett High School Kodak settled two-year lawsuit regarding school editorial policy stemming from a story about personnel issues. Both sides claimed victory. Settlement ended with prior review of the paper. Lawyer for students believed it was student victory because policy states that only unprotected speech can be reviewed.	Student Publication (c)	Critical of faculty	18	Merely Upsetting
46) **Court rules against student who wrote violent dream story 8/3/2007** Federal appeals court ruled against a student who said her First Amendment rights were violated by being "suspended and nearly expelled" for a story she wrote about shooting her math teacher. Eleventh Circuit agreed that the school was right to punish. Cited F*rederick v. Morse.* Student's notebook was discovered when she was passing it to another student in class. * *Boim v. Fulton County School District*	Other Writing	Violence	5 6 7 8 9 17	**Truly Disruptive**

47) **Court says student's violent buddy icon not protected expression 7/18/2007** Second Circuit upheld suspension of an 8th grader whose AIM icon depicted his teacher being shot. The icon showed a gun shooting a bullet at a person's head, splattering red dots, and included the caption, "Kill Mr. VanderMolen," the student's English teacher. A police officer questioned Wisniewski and determined that he meant the icon as a joke and posed no real threat, closing a criminal investigation. A psychological evaluation reached the same conclusion. ***Wisniewski v. Board of Education*	Off-campus Cyberspeech	Violence	5 6 7 9 11	Merely Upsetting
48) **Fairfax school district considers student-expression policy change 7/9/2007** Fairfax County Schools lawyer suggests district change policy to eliminate any reference to the publications being a public forum. Adviser was removed from position after two controversial issues (included stories on homosexuality, transsexuality, a review of a documentary about bestiality).	Student Publication (c)	Sex	24 18	Merely Upsetting

49) **U.S. Supreme Court denies school's petition to hear anti-Bush T-shirt case 6/29/2007** Supreme Court denied school's writ of certiorari in case regarding a student suspended for wearing an anti-George W. Bush t-shirt.* *Guiles v. Marineau*	Apparel	Political	21	Merely Upsetting
50) **High school apologizes for removing reference to God from yearbook 6/21/2007** School apologizes for removing a reference to God in a yearbook.	Student Publication (a)	Religious expression	22	Merely Upsetting
51) **Student has charge reduced after notebook detailed school shootings 6/18/2007** Student originally accused of a felony of threat to kill but charge was reduced to a misdemeanor for keeping a notebook detailing how he was going to shoot dozens of his classmates. He was ordered to pay a $75 fine, complete mental health counseling, write letters of apology to the community and probation.	Other Writing	Violence	5 6 8 9 10 11 17	**Truly Disruptive**
52) **Two high schools ban plays featuring homosexual themes 6/12/2007** Plays at two high schools about teen homosexuality were banned for being "inappropriate." School board ruled against them and they were asked to look for outside venues.	Other Speech	Homosexuality	24 18	Merely Upsetting

53) **Student graduates after being investigated for explicit essay 6/7/2007** Prosecutors dropped charges against a senior arrested for writing a graphic essay in an English class. Occurred one week after Virginia Tech shootings.	Other Writing	Violence	5 6 7 8 9 17 18	**Truly Disruptive**
54) **Student journalists in hot water for James Bond-themed prom supplement 6/6/2007** Newspaper published James Bond-themed prom supplement featuring students posing with guns. Administration pulled paper and later allowed paper to be distributed to community and uploaded to web, but the newspaper staff decided against it in light of Virginia Tech shootings.	Student Publication (b)	Guns/violence	6	Merely Upsetting
55) **Judge will not end high schooler's 40-day suspension for Youtube video 5/31/2007** District Court judge denied request to repeal suspension for secretly taping a video mocking a teacher's sexuality and hygiene. Video came to light when a local news station used it in a story about students who make mean Youtube videos. Student voluntarily took it down.* *Requa v. Kent School District*	Off-campus Cyberspeech	Lewd, critical of faculty	3 26 16	Merely Upsetting

56) **High school students lose censorship appeal to school board 5/15/2007** School rebuked students request to override censorship of an article that concerned a "personnel issue," which violates district policy. School board upheld school's decision. Was a story about one of the school's coaches. Students ran an article about the censorship in the place of the original story, quoting school principal as writing in a letter to the staff, "a student newspaper is not an appropriate vehicle for airing concerns, complaints or criticisms about District staff." Principal said high number of calls the school was likely to get in complaint would cause a substantial disruption.	Student Publication (b)	Critical of faculty	26	Merely Upsetting
57) **Two Ohio high school newspapers now subject to advisory board criticism 4/17/2007** Two high schools in a district in Ohio were subjected to an advisory panel to address concerns from the community. One paper ran a satirical piece on teenage sexuality and a news article on date rape. The other school ran an issue devoted to sex, including articles on STDs and oral sex.	Student Publication (c)	Sex	18 23	Merely Upsetting

58) **Nebraska high school newspaper stirs controversy with articles on racist language 4/17/2007** High school administrator was put on administrative leave but then reinstated after a school newspaper that included racist language was distributed.	Student Publication (b)	Race	4 18	Merely Upsetting
59) **Seven-year-old underground newspaper case will have retrial in California 4/11/2007** Calif. Supreme Court denied an appeal from a teacher who alleged that her school district was responsible for an underground newspaper article that said she was a porn actress. * *Adams v. Los Angeles Unified Sch. Dist.*, 2007 WL 68104, No. B159310 (Cal. App. Jan. 11, 2007)	Underground Paper	Critical of teacher	2 3	**Truly Disruptive**
60) **Indiana court rules in favor of student who published MySpace.com page 4/11/2007** Student's free speech was violated when a student was placed on probation for a critical Myspace page about the school principal, according to the Indiana Court of Appeals. Called it protected political speech. * *A.B. vs. State*, No. 67A01-0609-JV-372 (Ind. Ct. App. Apr. 9, 2007) (Slip op.)	Off-campus Cyberspeech	Critical of faculty	22 26	Merely Upsetting

61) **Sex edition causes newspapers to be held from distribution at middle school 4/9/2007** High school Sex edition was pulled from middle schools after it drew complaints. Issue included a photo of two women kissing, a true-false sex quiz with a question about anal sex and reference to a vibrator found in the girls' shower.	Student Publication(b)	Sex	4 18	**Truly Disruptive**
62) **Controversial sex article leads to slight revision of high school's prior review requirements 4/6/2007** Student editorial policy slightly changed after an article on teen sexuality. Distribution of the paper was halted so that the school board could review the policy. Community members claimed the content was "inappropriate for inclusion in a student newspaper" and that the "school board should have the right to pull [the article] because of what's in it," according to Superintendent Mike Ognosky.	Student Publication(c)	Sex	18	Merely Upsetting

63) **Students receive settlement after off-campus movie got them expelled 4/5/2007** Three students who were expelled for making a movie off-campus about a teddy bear that kills a teacher share a $69,000 settlement from school district and suspensions removed from records.	Off-campus Cyberspeech	Violence	6 26	Merely Upsetting
64) **School superintendent reverses suspension for reading of 'Vagina Monologues' 3/21/2007** Superintendent reversed in-school suspension for using the word "vagina" at open mic night reading of the Vagina Monologues.	Other Speech	Sex	24	Merely Upsetting
65) **Washington state high school paper has 'minor' changes made to article 3/12/2007** Story held from publication about a literature teacher who assigned students to compare biblical and mythological stories was printed after "minor" changes.	Student Publication(a)	Religious expression	26	Merely Upsetting
66) **Middle school student arrested for distributing underground publication with explosive instructions 2/15/2007** 15-year-old middle schooler arrested for distributing underground publication that contained recipes for making explosives. Copies were found at school.	Underground Paper	Violence	8 17	**Truly Disruptive**

67) **Lawsuit over medieval-style senior portrait settled 2/2/2007** Senior who wore a medieval chain and sword in his senior picture was not allowed in the yearbook. State commissioner of education ruled that the school's decision to censor did not meet the standards set by the 1988 U.S. Supreme Court decision in *Hazelwood v. Kuhlmeier*.	Apparel	Medieval armor, weapons	18 21	Merely Upsetting
68) **Danbury High School editor files complaint with principal 1/26/2007** The editor of the Danbury High School student newspaper filed a formal complaint with the principal after he refused to distribute a December issue featuring sexually themed stories on its front page.	Student Publication(b)	Sex	18	Merely Upsetting
69) **Princeton High School magazine will not be subject to prior review 1/23/2007** In a reversal of his previous decision, a superintendent has announced that members of the staff of the high school magazine will not be subjected to prior review. Publication statement was instead revised to not say it is a public forum. Article in question was critical of school's football team.	Student Publication (c)	Critical of faculty	26	Merely Upsetting

70) **Supreme Court denies hearing to student suspended for horror story 1/23/2007** Supreme Court denied case about student who wrote a story that included violence toward other students. After psychiatric evaluation, he was then suspended for 30 more days. Second Circuit ruled in favor of the district. **D.F. v. Syosset Central School District*	Other writing	Violence	5 6 8 11 18	**Truly Disruptive**
71) **Minnesota high school newspaper photo stirs controversy 1/23/2007** Committee was formed to evaluate school censorship policy after controversy over a picture that appeared to be a torn American flag. Principal froze the paper's funds and threatened to take legal action against the paper if it published the photo, according to the *St. Paul Pioneer Press.*	Student Publication (c)	Political	22	Merely Upsetting
72) **Teen rapper receives settlement from police department 1/18/2007** A teen rapper received a $60,000 settlement from the police almost two years after he was arrested at school for lyrics he had posted on the Internet. Also received a $90,000 settlement from the school district. ** Latour v. Riverside Beaver School District*	Off-campus Cyberspeech	Violence	5 6 9 10 12 23	Merely Upsetting

73) **Court rules school should have allowed student to sing religious song 12/22/2006** U.S. District Court ruled in favor of a student who was not allowed to sing a religious song in the talent show. The court said in its decision that Turton's First Amendment rights had been violated because the event was voluntary. ** Turton v. Frenchtown, Court for the district of New Jersey*	Other Speech	Religious expression	22 25	Merely Upsetting
74) **Carson High School paper pulled for second straight week 12/5/2006** Carson HS administrators censored paper two weeks in a row, over stories related to drug use and sexual activity. One article referred to black patrons at a Taco Bell as "a pack of monkeys." The other referred to masturbation as "America's favorite forbidden pastime."	Student Publication (b)	Race/sex/drugs	4 16	**Truly Disruptive**
75) **Richmond principal changes paper's Internet publishing policy 12/1/2006** School changed online publication policy after administrators removed an editorial after community members said it was offensive and racist.	Student Publication(c)	Race	4 22 23	Merely Upsetting

76) **Settlement reached in East Bakersfield High School case 11/17/2006** A Kern County judge is expected to sign a settlement filed Nov. 16 that will end a censorship lawsuit between East Bakersfield High School student journalists and the school district. Articles discussed treatment of gay and transgendered students in school.	Student Publication (b)	Homosexuality	4 22 25	Merely Upsetting
77) **Florida high school principal delays newspaper to discuss articles with students 11/16/2006** An issue of a Florida school newspaper was censored because of eight articles the principal objected to. Principal wanted to discuss with the students the need to clarify between opinion and news.	Student Publication (b)	Critical of school	25	Merely Upsetting
78) **Florida high school newspapers passed out with a hole 10/27/2006** A story about an "achievement gap" between races in state testing was censored by the principal. Story was literally cut out of the paper. The administration had offered to pay for a reprint without the story, but the staff wanted the paper to go out.	Student Publication(b)	Critical of school	26	Merely Upsetting

79) **New York City students subject to new punishments 9/28/2006** The New York City Department of Education's decision to adopt a more strict punishment for students who express themselves outside of school grounds using the Internet raised free expression concerns.	Off-campus Cyberspeech	Online expression that is disruptive		Merely Upsetting
80) **Student sues district for cutting microphone after preaching Christianity in graduation speech 7/20/2006** A valedictorian sued the school after her microphone was cut off during her graduation speech when she was talking about religion. School had asked her to remove references to God and scripture. * *Brittany McComb v. Crehan*	Other speech	Religious expression	4 6 18 20 22	**Truly Disruptive**
81) **New policy closes what students say is 'open forum' newspaper 6/23/2006** A Michigan school policy was enacted establishing prior review and prohibiting students from taking a political stand on topics. Teen sex story caused controversy, and school district said the open forum policy conflicted with district policy.	Student Publication(c)	Sex	18 25	Merely Upsetting

82) **Yearbook photos of students breaking law upset parents, superintendent 6/22/2006** Yearbook spread featured photos of students lighting pot pipe and drinking alcohol. Spread was entitled "Breaking the Law." Controversy over spread became a "city-wide" topic. Students were unidentifiable.	Student Publication (c)	Drugs/alcohol	18 19 23 25	Merely Upsetting
83) **Students face prior restraint after controversial 'sex issue' 6/19/2006** Students published a controversial sex story in their May paper, so the principal cancelled June issue. Spread included sexually suggestive photo and a word search. Got complaints from teachers and parents.	Student Publication (c)	Sex	16 – close 18 23 24	**Truly Disruptive**
84) **Popular adviser asked to leave after middle school confiscates paper 6/9/2006** A volunteer middle school adviser, a journalism professor at UNC, was asked to stop advising after a story about students who assaulted a bus driver.	Student Publication (c)	Critical of school	26	Merely Upsetting

85) **School censors editorial that mentions sexually explicit 'Top 25 List' 6/8/2006** Students were prohibited from publishing an editorial about a Top 25 List that had been circulated around the school. Although the local newspaper had written about it, and the editorial was negative, school still banned it.	Student Publication (a)	Sex	18 25	Merely Upsetting
86) **High school principal closes open-forum publication over sex survey 6/7/2006** A Virginia principal challenged an open-forum policy after students published a sex survey that discussed students' feelings about having sex, cheating, drinking, etc. Story featured anonymous quotes from students. Students say purpose was to show flaws of abstinence-only education. Paper didn't publish between Feb and June after the principal said she wanted a change in the editorial policy. New policy effective in July 2010, adopted Dec 2009, references *Hazelwood* as legal basis.	Student Publication (c)	Sex	18 24 25	Merely Upsetting

87) **School suspends student for organizing anti-illegal immigration protest 6/6/2006** Student filed a lawsuit because he was suspended for advertising an off-campus protest and he was stopped from wearing an anti-immigration t-shirt. Student was organizing an off-campus counter-demonstration to an on-campus protest against immigration legislation. He handed out flyers before school for protest to take place on a sidewalk outside of campus during lunch.	Apparel/Flyers	Race/immigration	21 25	Merely Upsetting
88) **Anti-illegal immigration editorial censored 6/5/2006** An Indiana student wrote an unsigned editorial on immigration. Paper was confiscated because the editorial caused a disruption at school. Administrators subsequently adopted prior review, and a new policy from the school board was expected to come banning unsigned editorials. School allegedly beefed up security as a result of article, and a meeting was held with Hispanic students about the appropriate response. Author was asked to stay home from school to avoid problems.	Student Publication (c)	Race/immigration	1 4 6 12 18 22	**Truly Disruptive**

89) **Photo of gang member leads principal to confiscate student newspaper 6/2/2006** Arkansas principal pulled issue of paper because of a feature about drugs and gangs. Paper was confiscated because of a cover photo of a gang member.	Student Publication(b**)**	Gangs/violence/drugs	2 3 18 25	**Truly Disruptive**
90) **Student's Columbine reference leads to expulsion hearing 6/1/2006** An Illinois student who referenced Columbine in a Xanga web log entry faced expulsion.	Off-campus Cyberspeech	Violence	5 26	Merely Upsetting
91) **Parent says school broke education laws by allowing articles in paper 5/26/2006** A student journalist's father accused school of breaking the law because it published articles about sex. One was an editorial advocating the formation of a gay-straight alliance, alongside an opposing article written by his daughter.	Student Publication (c)	Sex	23 24 18	Merely Upsetting
92) **Administrators censored teen pregnancy info, student editor says 5/17/2006** School officials censored school magazine article about teen pregnancy. Administrators removed telephone numbers of pregnancy counseling and abortion clinics.	Student Publication (a)	Teen pregnancy	18 25	Merely Upsetting

93) **Supreme Court declines case involving kindergarten student's Jesus poster 4/27/2006** Supreme Court declined to hear a case about a kindergartner's artwork containing a picture of Jesus. Second Circuit ruled the school violated student's First Amendment rights. Teacher asked that the Jesus part of the poster be folded back before hung on the cafeteria wall. * *Baldwinsville School District v. Peck*, 2nd Circuit	Artwork	Religious expression		Merely upsetting
94) **Student fights punishment for displaying American flag 4/14/2006** Student was forced to remove an American flag from her back pocket. Appeared at a press conference with the ACLU. Superintendent said the district has no policy against flags, but other students were wearing the flag as a cape so the school took issue with all flags.	Apparel	Political	21	Merely Upsetting
95) **Student sues for right to wear Confederate clothing 4/4/2006** Student sued school district for the right to wear Confederate flag on their clothing. School said her shirt "disrupted the education environment" because of racial tension. * *Hardwick v. Heyward*	Apparel	Race/political	4 12 15 22	**Truly Disruptive**

96) **School board remorseful after censoring biting student editorial 3/29/2006** School board apologized for barring distribution of a school newspaper because of an editorial critical of a board member. Superintendent admitted it was a "bad idea." Paper was distributed late, but the editorial also ran in a local newspaper with a story about the censorship.	Student Publication (a)	Critical of school	26 18	Merely Upsetting
97) **Principal censors 'choking game' article 3/28/2006** Principal censored an article about the choking game because she thought it could be dangerous. Article ended up running in the *Pittsburgh Post-Gazette*, then the article was sent home to parents and finally ran in paper in May. Censorship received national attention,	Student Publication (a)	School safety/violence	18 24 25	Merely Upsetting
98) **Court OKs school's censorship of 'No Nazis' patch 3/22/2006** District court ruled that a school did not violate a student's rights when they suspended a student for wearing a "No Nazis" patch. It also had a swastika with a line through it. ** Governor Wentworth Regional School District v. Hendrickson, district court of New Hampshire*	Apparel	Discrimination/ harassment	4 12 15 22	**Truly Disruptive**

99) **School punishes teacher for student-produced MySpace.com story 3/20/2006** Broadcasting teacher was reprimanded for including Myspace profiles that should students engaging in illegal activity (drinking alcohol, partially nude) in a news segment about the dangers of Myspace. Teacher was put on paid leave for more than a week. Piece was created by students. According to student producers, subjects' faces and body parts were distorted to protect identity. Teacher noted that piece was "racy" but felt that was necessary to be successful.	Student Publication (b)	Drugs/alcohol/sex	3 18 19	**Truly Disruptive**
100) **Students in MySpace.com group suspended after contents deemed threatening 3/8/2006** Middle school student who created a Myspace group was being investigated because of hate speech and terrorist threats. Three students were suspended – creator received a longer suspension. The site was called "I hate (girl's name)" and contained expletives and anti-Semitic references. Students brought printouts of the site to the school.	Off-campus Cyberspeech	Harassment/ violence	2 3 5 6 8 17	**Truly Disruptive**

101) **School district blames ACLU for student's defamation claim 3/3/2006** School district sued the attorneys representing a student who was disciplined for a parody posted to Myspace. Student created a profile of the principal on his grandmother's computer. He was suspended for 10 days and barred from school events and graduation. **Layshock v. Hermitage*	Off-campus Cyberspeech	Critical of teacher	26	Merely Upsetting
102) **Superintendent bans oral sex article 2/28/2006** Superintendent of an Indiana school district banned an article about oral sex risks, even though a committee recommended that the principal's decision to publish the article was appropriate. After a parent wrote a letter complaining, the principal decided to run the article by a committee of administrators, students and community members. Policy states that a committee can make recommendations to the principal who has final say. Superintendent does not necessarily have a veto, per policy.	Student Publication (a)	Sex	18 23 24 25	Merely Upsetting

103) **Administrators recall paper because of tampon, zipper illustration 2/16/2006** Administrators recalled a paper due to illustrations of a tampon and a boy with his zipper down, instituted prior review. Superintendent said illustrations "crossed the line."	Student Publication (b)	Controversial pictures		Merely Upsetting
104) **Community reacts to principal's banning of gay column 2/1/2006** A principal in Chicago censored a gay student's column urging others to come out. Community had mixed reactions. Principal said tone raised "red flags."	Student Publication (a)	Homosexuality	23 25	Merely Upsetting
105) **Two students accuse school of censorship, quit paper 1/31/2006** Students from a Chandler, Ariz., high school said principal censored them through prior review on a regular basis. Some articles put the school in an unflattering light.	Student Publication (a)	Critical of school, other	18 25	Merely Upsetting
106) **School board rejects proposed prior review policy 1/30/2006** Four-page spread on oral sex ran and a committee voted to not enact prior review as a result and instead keep the existing policy that favors students instead.	Student Publication (c)	Sex	18 24 25	Merely Upsetting

Note: Descriptions of cases in table are paraphrased from their specific News Flash articles at http://splc.org/newsflash.asp.

[a] 523 F.3d 668 (2008) at 670.

[b] 508 F.3d 765 (2007) at 770.

Appendix C
SPLC cases 2006-2008 decided by courts

Name of Case (SPLC headline and case number from Appendix B)	Court Case	Nature of Censorship	Merely Upsetting for Student	Merely Upsetting for School	Truly Disruptive for Student	Truly Disruptive for School
1) Florida high school student files complaint after suspension for creating Facebook page critical of teacher 12/9/2008	*Evans v. Bayer*	Off-campus Cyberspeech	X			
3) Arkansas school district asks Supreme Court to hear black armband case 12/2/2008	*Lowry v. Watson Chapel School District*	Apparel	X			
5) Sixth Circuit upholds middle school censorship of abortion leaflets 10/10/2008	*M.A.L. v. Kinsland*	Flyers				X
9) Middle schooler asks U.S. Supreme Court to hear First Amendment case 8/11/2008	*Curry v. Hensinger*	Other Speech				X
10) Fla. district must pay $325,000 for banning pro-gay symbols 7/30/2008	*Gillman v. School Board for Holmes County, US District Court for Northern District of Florida, Panama City Division*	Apparel	X			

11) Texas high school student files new motion for right to wear Edwards T-shirt 7/7/2008	*Palmer v. Waxahachie*	Apparel				X
13) Former high school football players appeal to Supreme Court 6/13/2008	*Lowery v. Euverard*	Petition		X		
18) Appeals court won't reinstate Conn. student to class office during free-speech challenge 5/30/2008	*Doninger v. Niehoff*	Off-campus Cyberspeech		X		
21) Student can wear 'Be Happy, Not Gay' T-shirt in time for protests 4/25/2008	*Nuxoll v. Indian Prairie School District*	Apparel	X			
23) Appeals panel reverses itself, dismisses Ky. student's free-speech lawsuit 4/10/2008	*Timothy Morrison v. Board of Education of Boyd County*	Other Speech		X		
24) High school student sues over ban on religious imagery in artwork 4/1/2008	*A.P. v. Tomah Area School District*	Artwork	X			
28) District court again rules against Calif. student who wore anti-gay T-shirt 2/21/2008	*Harper v. Poway*	Apparel				X

29) Former athletes' suit against Oregon school district to continue 2/20/2008	*Pinard v. Clatskanie School District*	Petition	X			
30) U.S. Supreme Court denies appeal from Calif. school in case over immigration editorial 2/20/2008	*Smith v. Novato Unified School District*	Student Publication (b)			X	
35) Sophomore suspended for posting photos taken in classroom sues district 12/21/2007	*L.G. v. Rockwood, Eastern District of Missouri, Eastern Division*	Off-campus Cyberspeech				X
37) 5th Circuit upholds Texas school's punishment of student who wrote violent story 11/30/2007	*Ponce v. Socorro*	Other Writing				X
42) District may not censor button depicting Hitler Youth, court rules 9/20/2007	*Laura DePinto v. Bayonne*	Apparel	X			
43) Valedictorian punished for speaking about Jesus sues district 9/14/2007	*Corder v. Lewis Palmer School District No. 38.*	Other Speech	X			
46) Court rules against student who wrote violent dream story 8/3/2007	*Boim v. Fulton County School District*	Other Writing				X

47) Court says student's violent buddy icon not protected expression 7/18/2007	*Wisniewski v. Board of Education*	Off-campus Cyberspeech		X		
49) U.S. Supreme Court denies school's petition to hear anti-Bush T-shirt case 6/29/2007	*Guiles v. Marineau*	Apparel	X			
55) Judge will not end high schooler's 40-day suspension for Youtube video 5/31/2007	*Requa v. Kent School District*	Off-campus Cyberspeech		X		
59) Seven-year-old underground newspaper case will have retrial in California 4/11/2007	*Adams v. Los Angeles Unified Sch. Dist.*	Underground Paper				X
60) Indiana court rules in favor of student who published MySpace.com page 4/11/2007	*A.B. vs. State*	Off-campus Cyberspeech	X			
70) Supreme Court denies hearing to student suspended for horror story 1/23/2007	*D.F. v. Syosset Central School District*	Other Writing				X
72) Teen rapper receives settlement from police department 1/18/2007	*Latour v. Riverside Beaver School District*	Off-campus Cyberspeech	X			
73) Court rules school should have allowed student to sing religious song 12/22/2006	*Turton v. Frenchtown*	Other Speech	X			

80) Student sues district for cutting microphone after preaching Christianity in graduation speech 7/20/2006	*Brittany McComb v. Crehan*	Other Speech				X
93) Supreme Court declines case involving kindergarten student's Jesus poster 4/27/2006	*Baldwinsville School District v. Peck*	Artwork	X			
95) Student sues for right to wear Confederate clothing 4/4/2006	*Hardwick v. Heyward*	Apparel				X
98) Court OKs school's censorship of 'No Nazis' patch 3/22/2006	*Governor Wentworth Regional School District v. Hendrickson*	Apparel				X
101) School district blames ACLU for student's defamation claim 3/3/2006	*Layshock v. Hermitage*	Off-campus Cyberspeech	X			

Appendix D

Cases of censorship meeting the Truly Disruptive standard, by type of censorship

Case (Identified by SPLC headline and number from Appendix B)	Type of Censorship	Content Censored	Attributes	Outcome of Case	Brought to Court?
98) Court OKs school's censorship of 'No Nazis' patch	Apparel	Discrimination against a group of people	4, 12, 15, 22	School	Yes
28) District court again rules against Calif. student who wore anti-gay T-shirt	Apparel	T-shirt with anti-gay messages	4, 13, 22, 23	School	Yes
95) Students sue for right to wear Confederate clothing	Apparel	Confederate flag, race	4, 12, 15, 22	School	Yes
11) Texas high school student files new motion for right to wear Edwards T-shirt	Apparel	Political speech	15	School	Yes
9) Middle schooler asks U.S. Supreme Court to hear First Amendment case	Flyers/Posters /Other Speech	Religious messages	4, 18, 20	School	Yes
5) Sixth Circuit upholds middle school censorship of abortion leaflet	Flyers/Posters /Other Speech	Anti-abortion leaflets	1, 6, 20	School	Yes
80) Student sues district for cutting microphone after preaching Christianity in graduation speech	Flyers/Posters /Other Speech	Religious messages	4, 6, 18, 20, 22	School	Yes
14) Fla. high school punishes students for writing profane rap lyrics	Off-campus Cyberspeech	Violent speech	5, 6, 9, 17, 25	School	No

35) Sophomore suspended for posting photos taken in classroom sues district	Off-campus Cyberspeech	Photos of teacher surreptitiously taken, posted on Facebook	1, 3	School	Yes
100) Students in Myspace.com group suspended after contents deemed threatening	Off-campus Cyberspeech	Violent speech, cyberbullying	5, 6, 8, 17	School	No
37) 5th Circuit upholds Texas school's punishment of student who wrote violent story	Other Writing	Violent speech, threats against students	5, 6, 8, 17, 25	School	Yes
46) Court rules against student who wrote violent dream story	Other Writing	Violent speech, threats against teacher	5, 6, 7, 8, 9, 17	School	Yes
53) Student graduates after being investigated for explicit essay	Other Writing	Violent speech	5, 6, 7, 8, 9, 17, 18	Student (because punishment was reduced)	No
51) Student has charge reduced after notebook detailed school shootings	Other Writing	Violent speech, threats against students	5, 6, 7, 8, 9, 10, 11, 17	School	No
70) Supreme Court denies hearing to student suspended for horror story	Other Writing	Violent speech, threats against students	5, 6, 8, 11, 8	School	Yes
30) U.S. Supreme Court denies appeal from Calif. school in case over immigration editorial	Student Publication (c)	Anti-immigration editorial	1, 12, 18, 22	Student	Yes
6) Wash. School district approves new policy allowing prior review of student publications	Student Publication (c)	Article about oral sex that named students	1, 2, 23	School	No

88) Anti-illegal immigration editorial censored	Student Publication (b)	Anti-immigration editorial	1, 4, 6, 12, 18, 22	School	No
74) Carson High School paper pulled for second straight week	Student Publication (b)	Stories related to drug use, sexual activity and derogatory remarks toward minorities	4, 16	School	No
89) Photo of gang member leads principal to confiscate student newspaper	Student Publication (b)	Drugs and gangs	2, 3, 18, 25	School	No
99) School punishes teacher for student-produced Myspace.com story	Student Publication (b)	Drug, alcohol use, teenage sexuality	3, 18, 19	School	No
61) Sex edition causes newspapers to be held from distribution at middle school	Student Publication (b)	"Sex edition"; included stories about homosexuality, anal sex and sex toys	4, 18	School	No
83) Students face prior restraint after controversial 'sex issue'	Student Publication (b)	Sex issue featured a word search and sexually suggestive photo	16, 18, 23, 24	School	No
66) Middle school student arrested for distributing underground publication with explosive instructions	Underground Paper	Instructions for creating explosives	8, 17	School	No
59) Seven-year-old underground newspaper case will have retrial in California	Underground Paper	Underground student paper called teacher porn actress	2, 3	School	Yes
22) Wash. adviser fired for helping underground paper regains job	Underground Paper	Underground paper	6, 18	Teacher (student)	No