ABSTRACT

Title of Document: **EVERYTHING BUT "CENSORSHIP": HOW U.S. NEWSPAPERS HAVE FRAMED STUDENT FREE SPEECH AND PRESS, 1969-2008**

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Legal scholars rarely focus on student First Amendment rights, and general public understanding of the extent of these rights is vague at best. While media scholars have focused much attention on newspaper coverage of more mainstream issues, no notable attention has been given to examining the way news media cover student First Amendment rights. As future leaders in a democracy, students at public schools are inculcated with notions of civic duty, independent thinking, and a respect for the freedoms that distinguish the U.S. from other countries. However, many public school students are consistently denied their rights to the very same freedoms they are expected to value. When students seek legal action to guarantee First Amendment protections, how U.S. newspapers frame these lawsuits and the students involved can greatly impact public perception of these issues.

This study examines newspaper coverage of eight court cases that set precedent on student free speech and press rights. The cases are *Tinker v. Des Moines*, *Papish v. Board of Curators*, *Healy v. James*, *Hazelwood v. Kuhlmeier, Kincaid v. Gibson*, *Dean v. Utica Community Schools, Hosty v. Carter,* and *Morse v. Frederick.* Using a grounded theory approach and relying on agenda setting literature, a textual analysis of these eight court cases answers the central research question: How do U.S. newspapers frame high school and college students' right to freedom of speech and press? This study finds U.S. newspapers fail to adequately cover student First Amendment cases in four distinct ways. Most significantly, by framing the infringement of students' First Amendment rights as everything but "censorship," U.S. newspapers minimize students' claims and marginalize their positions.

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Dedication

For Michael, my peaceful warrior who always believes that some things are worth fighting for. For Mark, the teacher who sparked the flame. You are a kindred spirit and friend for life. For Erik and Laurena, who never hesitated to do what was right, no matter how hard. And for Landon, who had no one to stand up for him when he needed it the most.

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Years ago, a Colorado lawyer named Kenzo Kawanabe trusted me enough to defend my rights as a student journalist. His dedication to my cause and ardent belief in a free press further fueled my interest in student press rights. I owe him many thanks for his devotion to my case, which surely would not have been so successful without his diligent efforts. Finally, I sincerely thank my family. My parents, Deborah Arnold, James Fromm and Nancy Hugenberg, and my brother, Chris Fromm, were sources of constant support and encouragement. Maggie and Jason, thank you for never doubting my capacity to take on this endeavor, and for refusing to let me quit. Michael, thank you for letting this dream take over our lives (and our office); for never pressuring me to get it done; and for reminding me of my own strength. All my love.

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Introduction

When junior high school student Mary Beth Tinker wore her black armband to school in December of 1965 to protest the Vietnam War, she had no idea her act of civil disobedience would culminate in a 1969 Supreme Court ruling that set precedent on student rights (Johnson, 1997). When students at Hazelwood East High School in Missouri were prohibited almost two decades later from printing articles on divorce and pregnancy in the school newspaper, journalists and educators had no way to know the Supreme Court would overrule a decades-old standard that guaranteed freedom of speech, press, religion, petition and assembly for public school students. And when high school student Joseph Frederick unfurled his "BONG HiTS 4 JESUS" banner outside a schoolhouse in Juneau, Alaska, in 2005, student rights advocates had no reason to predict his act would instigate a two-year court battle that would drastically alter the legal limits against school censorship as established decades earlier in the *Tinker* case.

Context of the Problem

As these and other significant court cases addressing the extent of students' First Amendment rights have progressed through the court system, U.S. news media have given them varying levels of attention. As the "fourth estate" or "watchdog" of government, the news media are tasked with doing exactly that: covering what happens in the three branches of government as it affects and is relevant to the public. In *The Press (*Overholser and Jamieson (eds), 2005), scholars W. Lance Bennett and William Serrin note journalists' many tasks:

> Watchdog, record keeper, coauthor of history, citizen's guide to action, purveyor of daily social sensation: all of the above are part of the job description of the American Press, and have been for some time. But what is the proper role of the press in a democracy? Of all the established functions of the press in American public life, the watchdog role is among the most hallowed. (p. 169)

Bennett and Serrin contend that the watchdog role is fragile and lacks institutionalization within the news media. They argue that to be a watchdog requires

> (1) independent scrutiny by the press of the activities of government, business and other public institutions, with an aim toward (2) documenting, questioning, and investigating those activities, in order to (3) provide publics and officials with timely information on issues of public concern. (p. 169)

The watchdog function of the news media may demand coverage of certain events, but undoubtedly, some issues generate more attention and news coverage than others. High-profile crime cases and corrupt politicians are standard material for page 1A, while often less-sensational issues of policy are pushed to the inside of newspapers. Since news media have limited space and time to present information, they must make decisions about what receives attention, what doesn't, and the extent and nature of that attention. The manner in which stories are covered is an indication of how important the news media perceive these topics to be and their opinion of these topics' places in a larger national conversation. News media are the first filter of public debate because they seek information from across the country and world and make a calculated decision about what is most important on any given day.

This "modern notion of a political journalism which is adversarial, critical and independent of the state," as described by media scholar Brian McNair in *The Handbook of Journalism Studies*, is essential for the existence of a vibrant democratic

culture in the U.S. (Wahl-Jorgensen and Hanitzsch, 2009, p. 237). However, it would be naïve to assume the news media actually cover all facets of democratic culture equally. Instead, the news media create a hierarchy—often a hierarchy of power—in which those groups with the least political or social power, and thus the least ability to instigate change or direct movement, are often relegated to the bottom of the news media coverage hierarchy. Often, students in public high schools and universities are at the bottom of this hierarchy.

Adults often consider students, such as Mary Beth Tinker and Joseph Frederick, as "citizens-in-training," not fully-formed participants in all facets of society. They are understood to be a subclass of citizens with less (if any) political and social influence and less stake in the larger power struggles at the upper echelons of society. Students are perceived to lack agency in the social structure (indeed, most high schools students are not even of age to vote), so student issues are marginalized. When students *do* insert themselves in these larger power struggles—say, by suing their school districts for First Amendment rights—their actions should alert the "watchdog" news media tasked with evaluating these dynamics at all levels of government. Yet, news media coverage of student issues—when coverage even exists—often lacks depth and context. This oversight can have serious implications in instances when students challenge their place in a power structure.

The suggestion that news media can impact public perception of an event or situation simply by how they cover it is not a new concept, and a full discussion of the agenda-

setting nature of news media is discussed in Chapter One. Historically, key moments in American history have been defined by the news media coverage of the time, and how the news media write about and broadcast those events has shaped public perception. The 1960s-era Civil Rights movement, for example, illustrates the role of news media coverage in documenting the struggle for human rights. President Lyndon Baines Johnson demonstrated his understanding of the power of the press when he advised Martin Luther King, Jr., to have the press cover the most violent instances of abuse against blacks and to televise these events. Doing so helped Johnson to pass the 14th amendment. Johnson realized the power of an aggressive news media to shift public sentiment about Civil Rights.

The news media has at times played an important role by covering power struggles involving the right to freedom of expression or other First Amendment freedoms. For instance, journalist and CBS broadcaster Edward R. Murrow's investigations of McCarthy's 1950s Cold War campaigns against prominent public figures demonstrated exactly the importance of news media probing and thoroughly covering government and politics. With core American values—such as freedom of political association and political expression—at stake, Murrow's coverage exemplified the "watchdog" news media at work.

Whether the news media write about stories involving personal freedoms and government action matters greatly; without journalists' coverage, the public would have little knowledge of much of what happens in the government. What's more, the

way in which these stories are written or constructed is also important; journalists provide information and context to the public in a way that is useful and relevant. News media coverage, at times, acts as 'the court of public opinion.' In this court, how the news media portray fact or fiction can sway public perception of what is happening in any given circumstance. One need not look far to see how news media coverage influences public understanding of a government-related event. Most recently, studies of news media coverage prior to the U.S. invading Iraq in 2003 document how inadequate, slanted and at times entirely inaccurate press coverage fueled a misguided public support for the war[1]. Distinguishing the nuances in news media reporting that *could* contribute to such changes in public perception is a difficult process, but it begins with an examination of the news media themselves.

This study aims to provide exactly that kind of examination by analyzing news media coverage of court cases regarding student freedom of speech and press. Unlike the hot-button topic of war—on which countless studies exist analyzing news media coverage of the Iraq and Afghanistan conflicts—issues of student freedom receive much less attention. As such, this study seeks to answer a specific central research question: *How do U.S. newspapers frame high school and college students' right to freedom of speech and press?*

The research presented here examines an intersection of spheres in today's society: education, politics, culture, and the media. By relying on vast scholarship regarding

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[1] Overholser, G. and Jamieson, K.H. (eds)(2005). *The Press*. Oxford: Oxford University. See page 171.

the news media's agenda-setting function and utilizing a grounded theory approach, news media coverage was analyzed for the themes and frames presented. This study analyzes coverage of court cases involving students who claimed their First Amendment rights to speech or press were violated and deciphers how, exactly, newspapers framed these battles. Using agenda-setting literature to contextualize the findings, this study suggests that how news media cover these cases creates a unique frame of reference for public perception of these issues. It is this baseline, this conceptual framework established through news media coverage, that is the focus of this study. Future research on audience effects, as discussed in the final chapter, is outside the major scope of this research.

Why News Media Coverage Matters

When so much of the public's knowledge of government action and policy issues is gleaned from news media reports, the news media play an important role in shaping and extending (sometimes truncating) public debate. And when that debate requires a basic understanding or appreciation of the personal liberties extended to people in the U.S., the stakes are high.

As First Amendment scholars David Alistair Yalof and Kenneth Dautrich (2002) point out in *The First Amendment and the Media in the Court of Public Opinion*, "in a democracy, civil liberties are a precious commodity" (p. viii). Yalof and Dautrich liken civil liberties to any other market "good" that must bear the ebb and flow of a capitalistic market. Media and economic scholar C. Edwin Baker (2002) extended

this metaphor by addressing common economic factors, like supply and demand and identified the danger of treating personal freedoms like an everyday market good. Baker noted that in a capitalistic economy, when demand for a good sinks, this good ceases to be produced, thereby diminishing its inherent value. Applied to the market "good" of civil liberties, this model suggests that the failure of citizens to appreciate and sufficiently demonstrate a desire for these goods (freedoms) would likely result in a market response—that is, a decrease in production and value of the goods (freedoms). The societal translation of this economic philosophy is summed up in the ever-popular phrase: *use it or lose it.* In short, the less we use and value our freedoms, the more they become obsolete (Baker, 2002). If an agenda-setting media fails to value these same freedoms, there is real potential for a similar public response.

Further, public knowledge and understanding of core American values and laws such as the First Amendment is an essential prerequisite to actually expressing these basic rights (Yalof and Dautrich, 2002):

> Stated simply, a mass public that is more knowledgeable about this liberty is less likely to hold back its support of those rights. Finally, awareness and knowledge of free expression rights such as those embodied in freedom of the press are important precursors to the exercise of those liberties. If the public is encouraged to exercise liberty to promote democracy, it must know what liberty is at its disposal. In short, knowledge of liberty may well contribute to the exercise of liberty. (p. 40)

While the notion of a "mass public" likely oversimplifies the ways in which individual attitudes form a collective mindset and contribute to "mass" action, Yalof

and Dautrich's key point is this: knowing that certain freedoms exist facilitates individual use in both personal and public ways.

Building on this premise, the authors determine that "the more attention people pay to news reports related to free expression rights, the higher and more stable will be the levels of public support for those rights" (p. 43). They argue that heightened exposure to freedom of expression issues allows readers and viewers of news reports to develop a deeper understanding of free expression rights. Although making an astute connection between exposure and understanding, Yalof and Dautrich ignore the agenda-setting function of the news media in the way the news media report on free expression rights.

Essentially, Yalof and Dautrich gloss over an important factor: *how* those news reports cover free expression rights. It would be hard to argue that if news reports were to cover free expression rights in an almost exclusively demeaning or marginalizing way that public support would grow or become more stable. Instead, the scholars' observation is most fitting when those news reports already reflect a high and relatively stable level of support. So, to extend their argument, this study hints at important questions that Yalof and Dautrich, among other scholars, largely ignore: what happens if news reports devalue free expression rights? Or, the corollary: what happens if news reports extol free expression rights? Before researchers can begin to answer these questions, we must first understand *how*

freedom of expression issues—namely speech and press—are covered in the news media. The main intent of this study is to answer this "how" question.

While Yalof and Dautrich (and others) have focused their research around issues relating to adults and the general public, this study focuses specifically on news coverage of student freedom of expression issues. The rationale is simple: today's students are tomorrow's leaders. They are the foundation "on whom the future of our democratic system rests" (Dautrich, Yalof & Lopez, 2008, dedication). The net effect of how students are treated is not only apparent in the functioning of student newspapers or the attitudes of petulant or anti-authority college students, but in the actions of the country's next generation of civic leaders. These freedoms "serve as a foundation for the next generation of citizens' knowledge of and appreciation for their own First Amendment rights" (p. 128).

The purpose of this study is to ask the central research question:

> RQ_1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

This question generates six secondary research questions that guide this study's textual analysis:

> RQ_2: How do U.S. newspapers characterize high school and/or college students who initiate legal action to protect freedom of speech or press rights?
>
> RQ_3: To what extent do U.S. newspapers provide a legal framework to contextualize the speech and press rights high school and college students currently possess?
>
> RQ_4: How do U.S. newspapers characterize the role and importance of free speech and free press in high school?

RQ_5: How do U.S. newspapers characterize the role and importance of free speech and free press in college?

RQ_6: Do U.S. newspapers support high school students' freedom of speech and press? If so, to what extent?

RQ_7: Do U.S. newspapers support college students' freedom of speech and press? If so, to what extent?

Because each secondary research question (RQ_{2-7}) deals with only one aspect of news media's larger "framing" of students' First Amendment rights, the findings for each research question provide a comprehensive picture of how U.S. newspapers cover issues of freedom of expression for high school and college students.

Design of the Study

This study is an analysis of U.S. newspaper coverage of eight court cases in which high school and/or college students have claimed a First Amendment right to speech or press in school. The court cases were chosen for their significance in setting legal precedent regarding First Amendment protections in public schools. The study focuses on both straight news and editorial coverage of the cases—four involving high school students and four involving college students—as they progressed through the court system. Chapter Four contains a thorough review of the methods, including case selection.

But first, a brief note on commonly used terms seen in Chapters Two and Three. Some of these terms, such as news media and framing, are further explicated in the methods chapter, Chapter Four.

Freedom of expression: Any combination of the five freedoms outlined in the First Amendment (religion, speech, press, assembly and petition), but especially the combination of speech and press.

Democracy: the philosophical construct, not the government structure. The U.S. government is structured as a Republic but assumes the cultural principles associated with a democracy: providing citizens the right to vote; freedom from government mandated political and religious ideology; the pursuit of individual ideals and lifestyles; active participation in civic life; and vibrant, public debate over government policies and actions.

News media: newspapers published in the U.S, including local, state, and national daily newspapers. This construct denotes media scholar Barbie Zelizer's (2004) reference "to mediating agencies" used to transmit information and relies on U.S. newspapers as those mediating agencies. This construct also eliminates any and all broadcast media for the purpose of limiting this study to newspaper coverage only.

Frames and *framing:* For the purpose of this study, framing considers the strategies and approaches through which journalists create and convey meaning in their articles. These strategies include ordering of the narrative structure of newspaper articles, word choice, sources, quotations and context used to package a story for ease of readers' comprehension and for more effective salience. In other words, the news

media frame a story by "taking into account their organizational and modality constraints, professional judgments, and certain judgments about the audience" (Neuman, Just and Crigler, 1992, p. 120 as cited in Scheufele, 1999, p. 105).

Framing recognizes that discrete parts of news media accounts create a whole, constructing impressions of truth and angles of understanding for readers who have no first-hand knowledge of the situation or event itself. Media scholar Dietram A. Scheufele argued "frames have to be considered schemes for both presenting and comprehending news" (p. 106). In this way, he considers what framing scholar Robert Entman (1993) describes as "salience," or the extent to which certain facets of a news story are made more prominent. By promoting the salience of some facts or circumstances over others in a story, the reader is essentially predisposed to consider what the author has deemed most important. As Entman (1993) argued:

> To frame is to select some aspects of perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation. (p. 50)

Chapter Four presents a more thorough discussion on framing as used in this study.

Layout of the Dissertation

This dissertation consists of six chapters, beginning with this introduction. Chapter One explores the state of the First Amendment, scholastic journalism, and media's role in society as both an agenda setter and a watchdog of minority rights. This chapter explores major research that indicates a deep lack of understanding of and

appreciation for the First Amendment in the U.S. and discusses prevailing scholarship on how news media coverage shapes public discussion. Finally, this chapter examines what it means for news media to act as a watchdog and the responsibilities this role assumes.

Chapter Two explores First Amendment theory from many philosophical justifications and discusses scholarly, legal and professional attitudes toward media, the First Amendment and student freedoms. This chapter moves through six major interpretations of the First Amendment and makes suggestions for how these interpretations are manifest in social and education settings.

Chapter Three provides a detailed legal account of case law pertaining to student freedom of speech and press. It outlines major cases that have set precedent for student First Amendment rights, including the eight cases used in this study.

Chapter Four presents the methods used in this study and further examines the notions of agenda setting and framing. It discusses the grounded theory approach used in this research and also addresses limitations of the study. It provides a scholarly framework for the textual analysis approach while justifying the data sets used.

Chapter Five documents the findings of this study with sections devoted to each of the eight cases. This chapter is presented chronologically and uses excerpts from the

news media coverage to elucidate trends in word choice, construct, context, and news media attitude. Each case section begins with a summery of developments in politics, media and technology over the course of the legal proceedings that may have affected news media coverage of the cases.

Chapter Six aggregates the findings from Chapter Five and makes distinctions about the overall frames news media used to cover the eight cases. This chapter suggests that news media coverage fails to adequately cover student First Amendment issues in four distinct ways and discusses those ways across the cases. Finally, this chapter identifies potential reasons for these failures and forwards suggestions for further research.

Chapter 1: The First Amendment, Media and Society

Before expanding the discussion begun in the introduction on the role of media in society, this chapter will start by surveying research on how adults and students perceive the First Amendment in society and schools. Major studies in the last decade have demonstrated just how ambiguous respondents in the U.S. feel about the First Amendment. Moreover, research increasingly shows just how little high school students (and the U.S. population in general) know about the First Amendment and other basic tenets of U.S. government and democracy. The confluence of these realities has created a situation wherein it would be easy for the public to lose appreciation for civic participation and personal freedoms.

The State of the First Amendment

The extended findings of a 2005 survey released by the Knight Foundation demonstrate respondents' ambiguous attitudes toward the First Amendment. On one hand, the concept of freedom is at the forefront of U.S. diplomacy: two concurrent wars in Iraq and Afghanistan bear the word 'freedom' in their military namesakes (Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom). Still, the 2005 Knight survey findings suggested most students are unable to decide whether they would support or deny basic First Amendment freedoms in the U.S., or under what conditions those freedoms even exist. The Knight Foundation surveyed more than 100,000 high school students, 8,000 teachers and 500 administrators and principals at both public and private high schools. Of those, three-fourths of student respondents said either they do not know how they feel about the First Amendment or

that they take it for granted. The study also found that almost three-fourths of students surveyed believe flag-burning is illegal (it is not), and nearly 50% believe the government currently has the legal jurisdiction to censor the Internet (it does not).

And it is not just students who demonstrate a mixed understanding about the First Amendment. Since 1997, the First Amendment Center has conducted an annual *State of the First Amendment* survey. In 2008, only 3% of 1,005 respondents could name "petition" as the fifth and final right guaranteed by the First Amendment. The 2009 survey found that 39% of Americans could not name any of the five freedoms guaranteed by the First Amendment. This prompts the question: how likely are citizens to promote or defend freedoms they cannot identify? The Center's 2007 study found that 25% of adults surveyed agreed with the statement "the First Amendment goes too far in the rights it guarantees." This number is lower than the 49% who agreed with that sentiment in the 2002 survey (after the 9/11 terrorist attacks in 2001), but the 2007 figure is a jump from 18% of adults in 2006 who said the First Amendment goes too far in the rights it guarantees. In other words, the overall trend is toward increasing skepticism over how far the First Amendment goes in the rights it guarantees.

These figures illustrate a progression in which adults are increasingly wary of First Amendment rights. In the 2007 survey, respondents were also asked questions relating to how the First Amendment should apply to students, with 74% of

respondents agreeing that the respondents would "prevent public school students from wearing a T-shirt with a slogan that might offend others."

And it is not just adults who favor restricting students' freedoms; in the 2007 Knight report, only 58% of students agreed that student journalists should be able to publish controversial issues in school newspapers without administrative approval; roughly 27% of students disagreed with that statement, and 14% said they did not know if they agreed or disagreed. That students would restrict the freedoms of their peers, especially student journalists, demonstrates the low esteem in which students hold the First Amendment. As a part of many schools' co- and extra-curricular programming, students who participate in scholastic journalism—including student-produced yearbooks, newspapers, and television and radio stations—directly use the First Amendment. By participating in journalism and journalism-related activities while in high school or college, students learn first-hand how the words of the First Amendment translate into real-life protections for their work. It is while engaging in scholastic journalism that many students encounter their first experiences with censorship or restraint of those freedoms. In fact, some of the most seminal student First Amendment cases have originated from an individual student's practice of scholastic journalism. Therefore, to understand why it is important how news media cover issues of freedom of expression for high school and college students requires an understanding of scholastic journalism and the role of the First Amendment in schools.

"In this day and age, when school systems are so concerned about academic performance, no school can justify *not* having a student newspaper and yearbook." These are the words of Kent State University's Mark Goodman, who holds the Knight Chair in Scholastic Journalism and is the former director of the Student Press Law Center, as quoted in a 2008 report on the benefits of high school journalism. The Newspaper Association of America published the report, *High School Journalism Matters*. Among other things, the report compared the ACT scores of 31,175 high schools students, over a span of five years, to those of 6,137 student journalists, finding that the latter "earn higher grade point averages, score better on the ACT college entrance examination and demonstrate better writing and grammar skills in college" (*High School Journalism Matters,* 2008, n.p.) than their non-journalism peers. A report in 1994 titled *Journalism Kids Do Better* by Jack Dvorak yielded similar results. The studies echo what secondary journalism teachers already claim: their students are more responsible, more engaged, more creative, and more likely to be active in their community and school (Dvorak, 1994). While it's unclear whether scholastic journalism attracts higher-performing students or creates them, Dvorak's report shows that students who do partake in secondary and collegiate media are positively influenced by their participation (Dvorak, 1994).

Even so, in the era of standardized tests and with increasing financial pressure on schools to justify every program that lies outside the proverbial "core," scholastic journalism is taking a beating (Jordan & Waters, 1996). Funding is decreasing, and

many programs are being reduced or eliminated altogether. A 2004 resolution from the National Council for Teachers of English (NCTE) elucidated these trends:

> Many school districts have recently cut or eliminated journalism courses and student media. Budget cuts, emphasis on state curriculum standards, and remedial classes, as well as attempts to restrict students' speech and press rights, have contributed to the decline in the number and the quality of journalism programs. Their loss is a blow to English curricula; journalism classes, including publications classes, are valuable courses. (NCTE Position Statement: Resolution on the Importance of Journalism Courses and Programs in English Curricula)

The resolution addressed the benefits of journalism and journalism education, such as enhancement of critical thinking and communication skills and an increased civic awareness. Recognizing the positive effects of participating in scholastic journalism, NCTE resolved to develop a policy statement that "promotes the value of journalism programs that, under the guidance of a qualified journalism educator, give students a voice and allow them to exercise their constitutional right of free speech."

The Knight Foundation and First Amendment Center's studies, coupled with the *High School Journalism Matters* and *Journalism Kids Do Better* reports and the NCTE resolution, paint a bleak image—one in which a nation of adults and students are apathetic about the First Amendment and the rights it guarantees. However, none of the aforementioned scholarship draws any conclusions about *why* the apathy exists. What's more, the above research fails to contextualize the findings by examining attitudes toward the First Amendment that might exist within major societal institutions, such as education and the press. Instead, the aforementioned research merely *describes* these attitudes.

The research presented here is situated precisely *within* this gap, but it cannot fill it entirely. Instead, the findings of this study aim to uncover a missing link in the contextualization of why these mindsets—specifically those related to student freedoms—are so prevalent. A major consideration, this research contends, is U.S. news media coverage of cases in which high school and college students have sought First Amendment protection from the courts. In analyzing the way news media cover and frame issues of student freedom of expression at both the high school and collegiate levels, this study seeks to make a contribution to existing First Amendment scholarship. Current research and scholarship regarding scholastic speech and press rights is lacking an analysis of the way media cover these issues.

Media and Society

This study is premised on a concept well-established in media research: news media play an important role in society by providing information necessary to keep society functioning and to make the public aware of the goings-on in the government. Both scholars and professional journalists have their own expectations for exactly how the news media should accomplish these tasks. This section explores those expectations and deconstructs the news media's role in society in order to give context to the central research question—*How do U.S. newspapers frame high school and college students' right to freedom of speech and press?*

This section will look at the agenda-setting function of the news media and their role as mediators of information in a democracy[2] by discussing those scholars whose work on agenda setting is highly relevant and significant to this study.

This study borrows media scholar Barbie Zelizer's (2004) definition of media: "the mediating agencies that allow the relay of information to take place" (p. 26). City, state, and national newspapers are the preferred news media. In reference "news media," forms of media used solely for entertainment, including but not limited to parodies, arts and entertainment magazines, and other lifestyle press and publications are eliminated. Because this study aims to understand an inherent, and perhaps institutional, attitude of the U.S. news media in covering student freedom of speech and press, this definition of news media is appropriate. The definition at once represents an institutional view, the inference being that "the practices and institutions [of media] are seen as agencies for quite other than their primary purposes" (Raymond Williams as quoted in Zelizer, 2004, p. 26). In other words, according to this perspective, the news media as a whole and through their parts can be "seen as agents of empowerment or disempowerment, of marginalization of certain groups" (p. 26). This perspective, then, views news media not only as tools for disseminating information—their primary purpose—but also as agencies that convey standards (community, political, even moral) and viewpoints to readers and viewers. Thus, a

[2] There is neither the space nor the need to include here a comprehensive discussion on the nature of agenda setting. For an unabbreviated discussion of agenda setting, see McCombs and Shaw (1972); Pan and Kosicki (1993); Tuchman (1978).

construction of the term "news media" that invokes its mediating, empowering, or disempowering qualities guides this study.

Media, Society and the First Amendment: Setting the Agenda

Journalists are "sensemakers," according to journalists Bill Kovach and Tom Rosenstiel (2001, p. 24). Journalists inform the public about what is happening in the world around them, and they provide a wealth of information for the casual and ritual consumer alike. Journalists not only tell the public *what* is happening, but Kovach and Rosenstiel argue that ideally, they provide information that is comprehensive and proportional, mapping various social worlds—political, economic, and the like. The U.S. news media's purpose is to provide the public with the information needed to understand and participate in democracy, to make life decisions, and to place people within a larger human network. Citizen's ability to do this, to sift through facts and figures in an attempt to bring relevancy to their own situations, "satisfies a basic human impulse […] an intrinsic need—an instinct—to know what is occurring beyond [one's] direct experience" (Kovach and Rosenstiel, 2001, p. 9).

Journalism is not merely recording and ordering of facts—it is a large-scale and institutional expression of democracy. The act of writing without the constraints of government censorship is a reification of the thing itself; the tool is the creation. But what happens when the news media, in practicing their own First Amendment rights, cover the infringement of the press speech and press rights of others? Do the U.S. news media—referring to newspapers—uphold others' rights to speech and press?

The answer to this question provides insight into the world of journalism and other spheres of society the news media cover (such as politics, history, education, culture). As Zelizer (2004) describes it:

> If we are to take journalism seriously, then, we need to develop scholarly frameworks that can accommodate the more coherent dimensions of the journalistic world. All of this supports a way of thinking about journalism and its study through a necessarily interdisciplinary lens. (p. 213)

Of the five lenses she goes on to describe—sociology, history, language studies, political science, and culture analysis—political science is of greatest import to this discussion because "its considerations derive from long-standing expectations about the news media acting in democracies as government's fourth estate" (p. 145). In acting as a "fourth estate," the media is tasked with observing and reporting on the government and its three branches. By exploring how news media cover issues directly related to their own values and processes—such as the First Amendment rights of others—specific connections between practice and theory are made that better inform how the First Amendment is exercised and preserved in the United States.

Because news media, including newspapers, are understood to set the tone and scope of discussion for many topics, this exploration of how news media cover the First Amendment rights of students uses the agenda-setting nature of the news media to understand how perceptions of students' freedoms are established. As one of the foremost thinkers on agenda setting, Maxwell McCombs calls the theory "a complex intellectual map still in the process of evolving" (McCombs, 2004, xiii). Agenda setting proposes that the news media will influence the public's perception of how

important student First Amendment issues are. Indeed, "the agenda-setting role of the mass media links journalism and its tradition of storytelling to the arena of public opinion, a relationship with considerable consequences for society" (McCombs, 2004, xiv).

More simply put, scholar Bernard Cohen (1963) explained that "[t]he press may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about" (p. 13). In his book on foreign policymaking, Cohen contends that the media's power to influence perceptions lies in its relationship *among* sections of society—government, politics, public opinion, etc.—instead of *within* any one area (1963). This omnipresence of sorts allows the news media to create links between news media content and public opinion on many topics.

Extending this line of thinking, media scholars Sei-Hill Kim, Dietram A. Sheufele and James Shanahan (2002) concluded that not only do the types of stories covered by the news media direct consumers toward topics of thought and conversation, the *type* of coverage the news media give those issues also helps to frame the ways in which those topics are actually considered. In other words, "the media, by emphasizing certain attributes of an issue, tell us 'how to think about' this issue as well as 'what to think about'" (2002, p. 7). Media scholar David H. Weaver (2005) more succinctly describes the function of agenda setting as priming, which focuses on "the consequences of agenda setting for public opinion" (p. 145). In this way,

priming suggests that how the news media covers something can make it easier for a person to access personal attitudes similar to those displayed in the media coverage (Weaver, 2005).

This understanding of priming as an attribute of agenda setting makes a vital point: by emphasizing certain points, downplaying others, or entirely eliminating information, "media professionals in general are able to write or speak in authoritative ways about the world, making claims to know what other people feel or what is really happening which few others in society could get away with" (Matheson, 2005, p. 2).

Media as a Watchdog and Protector of Minority Rights

James Madison, the key figure in writing the First Amendment, once said in a speech to the Virginia Constitutional Convention in 1789 that the great danger of a Republic was that "the majority may not sufficiently respect the rights of the minority." Trying to avoid a major conflict between states concerned with the protection and interpretation of individual rights, Madison sought to explain the ideal balance of power. He advocated a country whose government was structured as a representative republic but guided by the philosophical convictions of a democracy: equality, personal freedoms, privacy, the pursuit of happiness. It was his hope that the press, facilitated by the First Amendment, would serve as watchdog of the new government. Should the government fail to create and maintain adequate protections for *all* citizens, regardless of minority or majority status, he hoped the press would sound the

alarm, informing citizens of the government's indiscretions and, by doing so, helping to restore justice.

This "watchdog" sentiment is echoed repeatedly in media theory and in private journalism scholarship. For example, the Commission on the Freedom of the Press—also known as the Hutchins Commission—issued a report in 1947 that enumerated the press' social responsibility to "provide a full, truthful, comprehensive and intelligent account of the day's events in a context which gives them meaning" (1947, p. 11). The report argued the news media possess an obligation to the public that, if executed properly, would protect society from government and political manipulation. Thus, the "watchdog" description endures. While the basic premise is sound, some scholars believe the "watchdog" notion "obscures, simplifies, and ultimately distorts" news media's true purpose in a democratic society (Curran as cited in Overholser, 2005, p. 120). More specifically, scholars such as Curran argue that the media enable and mobilize the people's voice, helping them to speak for themselves, instead of being their only purveyor. By viewing "tyranny as the only potential threat to the welfare of society" (Curran in Overholser, 2005, p. 129), the potential capacity for the news media in their truest watchdog role is shortchanged. Instead, tyranny against the government is just one of many concerns the news media must guard against—they must indeed be watchdogs that guard more than one house.

To account for this misleading interpretation, news media scrutiny must extend beyond traditional forms of power and consider the major systems that contribute to

democratic life: education, business, trade, etc. In other words, to fulfill their watchdog function, news media must pay attention to most—if not all—facets of society, not just government. Accordingly, Curran argues that education and the social upbringing of young adults through the institution of schools must make the list.

Many adults have no immediate point of reference for the contemporary free expression struggles of high school and college students since they are no longer in the students' position (although presumably most adults, as students, may have had access to student newspapers or participated in other forms of free expression such as music or art). Still, adults can relate to these struggles by reading or hearing news accounts since news media coverage of any topic acts as a lens for those without first-hand knowledge of the topic itself. In this way, consumers who read the news are really citizens who "deal with a second-hand reality, a reality that is structured by journalists' reports about these events and situations" (McCombs, 2004, p. 1). Nor does the influence of the news media stop at the average citizen consumer. In gleaning "specific bits of information from the press, the public and policy makers in government at all levels also receive subtle but powerful messages about what is really important in the vast realm of public affairs" (McCombs as cited in Overholser, 2005, p. 156).

This function of the news media justifies further discussion on how the educational and legal systems interact to protect or diminish student speech and press rights.

Knowing the news media is capable of providing such "subtle but powerful messages" leads to a significant realization regarding the research presented here: the extent to and manner with which the news media cover student freedom of speech and press matters precisely *because* it intersects these divisions of power between policy and education. What's more, how the news media cover these issues in the U.S. reflects the news media's prevailing attitudes toward a societal subclass.

Chapter 2: First Amendment Theory

Passed in 1791, the First Amendment is only 45 words long:

> *Congress shall make no law regarding an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble; and to petition the government for a redress of grievances.* (U.S. Bill of Rights)

Its very existence was at the heart of the debate surrounding passage of the U.S. Constitution (Levy, 1999) as Federalists and Anti-Federalists battled over who should be mostly responsible for citizens' rights and protections: the federal government, or states and citizens themselves. In the year of ratification, many of the freedoms that would later be guaranteed in the First Amendment already existed within state constitutions, such as those in Virginia or Maryland. When James Madison finally introduced the text of the First Amendment, it was with some shame and a heart to appease (Levy, 1999). And appease, it did. With the passage of the Bill of Rights and the U.S. Constitution, the newly formed country of America finally had a governing document, and what's more, a government. Contrary to popular belief, the First Amendment was never intended to be first in the Bill of Rights. Though its current position is believed to be an indicator of its importance among our founding fathers, the First Amendment was actually written to be the Third Amendment. When the first two amendments failed to be ratified, the five freedoms embodied in the First Amendment that are much extolled today took their place at the top of the list.

In the more than 200 years since its ratification, the First Amendment has never been altered, but the "spirit" of the amendment is continually being interpreted and applied in many different ways. As such, the freedoms of the First Amendment have been applied differently to people in the United States depending on their discrete situations. At times, this has created confusion about exactly when and how those five freedoms apply.

Though the founding fathers recognized the vital role of a free press in society, today the value and scope of free expression such as press and speech—and how those freedoms are allowed or constrained by the First Amendment—is an ongoing debate. Taken generally, freedom of expression refers to *the ways* in which people use the five freedoms guaranteed in the First Amendment—religion, speech, press, assembly and petition—to communicate their opinions and values. Freedom of expression is the notion that collectively, these five freedoms facilitate the rights of citizens to express themselves. As this dissertation references "freedom of expression," it connotes any combination of those five freedoms specified in the First Amendment, especially speech and press.

Conceptualizing the importance of freedom of expression first requires exploring its theoretical underpinnings. To do so, this chapter summarizes the main scholarship on the value and necessity of the First Amendment as interpreted through six theoretical justifications: the supremacy of the individual, the social value of speech, the absolute protection clause, the expression versus action divide, the purpose hierarchy, and a

flawed marketplace. Each of these perspectives on freedom of expression can be applied to different types of student expression, including freedom of speech and press. Also, each of the case studies analyzed in this study stem from a student's argument that he or she had a First Amendment right to some type of expression; the arguments these students used to justify their claims are rooted in the theories described below. What's more, the legal findings of the eight cases analyzed often reflect or reject, to greater and lesser extents, the philosophical approaches to the First Amendment justified by these scholars throughout history.

The Supremacy of the Individual

The work of John Stuart Mill relied on an individualistic notion of the First Amendment held by many anti-Federalists in the 1700s. Mill premised his work on the idea that government- or society-given rights exist yet are acceptable only to the extent that they allow each person to find his or her own greatness. According to this perspective, individuality and the right to self-growth or fulfillment are the priority for each person, no matter their social or economic status. Mill argued that laws or obligations that do not facilitate these priorities are unlawful and doomed to fail. This position would suggest that every person, regardless of age, possesses a certain right to expression that cannot be denied and is, in fact, a basic natural right. Mill's essay *On Liberty* (1869), for example, explicitly supports the concept of individual rights and self-fulfillment as the primary function of law and government. Anything less, he argued, would be tyrannical.

> Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought

> not to meddle, it practises [sic] a social tyranny more formidable than many kinds of political oppression. (p. 5)

In other words, according to Mill, the individual and his or her right to individual opinions, desires, and conduct must be protected at great costs, even if the supreme good of a society might conflict with such rights. A government must never lose sight of the individual citizen as an independent actor within a populace. In *On Liverty,* Mill invoked an individual's right to dissent as paramount to society-mandated expression:

> Protection, therefore, against the tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism. (p. 5)

Mill offered three justifications for allowing dissenting, false, or incendiary ideas within public discourse: truth needs to be tested by dissent; censored ideas may be true while majority opinion may be false; and most truth likely contains some amount of opinion. Here, Mill echoed Milton's polemic in *Paradise Lost* (1667) that truth always prevails in the fight against falsehood. Both Mill and Milton suggested that if society were given the opportunity to observe and participate in a debate between good and evil—truth and falsehood—what is true would prevail because it had been tested in the minds of the public against all else. This notion is evocative of the nineteenth century marketplace of ideas concept attributed to Supreme Court Justice

Oliver Wendell Holmes and is also reminiscent of the ancient philosophic debate traditions of Socrates and Plato. Just as Socrates believed that inquisitive and directed examination of life leads to truth, so did Mill. Still, it could be argued that Mill's search leads to a far more individualistic concept of truth than does Socrates'.

Examined practically, Mill's concept of individual freedoms would likely demand extensive protections for student expression—or at the very least, protections equal to adult standards—especially as a means to further personal growth. Because students, through the school environment, are exposed to myriad truths and falsities from other students, books and teachers, the ability to contribute to and engage in this marketplace is of utmost personal concern.

The Social Value of Speech

To understand why some expression is subject to censorship or restriction, we must examine the scholarly argument that some things are not worth saying—or conversely, that some things are more worth being said than others. This argument is one commonly employed when censoring student expression, and it is one free speech expert Zechariah Chafee, Jr., explicated well in his 1941 book *Free Speech in the United States*. Chafee's central claim was that speech serves a social interest beyond that of the individual (Tedford, 1997). While his position is not to be interpreted as a preference for social interests *over* individual rights, Chafee's argument that the social order is preserved (or harmed) by free speech established a hierarchy of political speech over other kinds of expression. Simply put, Chafee

argued that political speech has a social value greater than other types of speech, particularly profane, indecent or defamatory speech (Chafee 1941, p. 150). Chafee believed because political speech aims to advance society and provide feedback to those charged with keeping society intact, it is to be protected more fiercely than speech that serves only a personal need. Chafee's (1941) theory of the First Amendment proposed "maximum protection for 'worthwhile' speech that serves the social interest, while permitting constraints on speech that presents a clear and present danger to the community or to the nation" (p. 376).

This clear and present danger theory, first articulated by Supreme Court Justice Oliver Wendell Holmes, Jr., in the 1919 court case *Schenck vs. United States,* 249 U.S. 47, established a model for categorizing speech that has often been applied in First Amendment adjudication. It established what Tedford (1997) described as the two-level system of speech. This system places speech into categories of worth, ranging from wholly worthwhile to utterly worthless. Chafee's theory was largely aimed at democratic maintenance since his ultimate goal was to preserve the right to political speech and dissent that he valued most:

> You make men love their government and their country by giving them the kind of government and the kind of country that inspire respect and love: a country that is free and unafraid, that lets the discontented talk in order to learn the causes of their discontent and end those causes, that refuses to impel men to spy on their neighbors, that protects its citizens vigorously from harmful acts while it leaves the remedies for objectionable ideas to counterargument and time. (Chafee, 1941, p. 565)

Absolute Protection Clause

If there are canonic authors on First Amendment theory, surely Alexander Meiklejohn is among them. And if there are canonic texts, surely "The First Amendment is Absolute" (1961) and *Free Speech and its Relation to Self-government* (1948) would qualify. These proclamations on the scope of First Amendment protection have been cited in many debates on Constitutional rights. Those who believe in absolute protection read the first phrase of the First Amendment, "Congress shall make no law abridging," to mean just that: *no law* which abridges or reduces these freedoms is permissible or constitutional.

However, Meiklejohn (1961) took issue with the semantics of the word "abridge" and did not agree that *restrictions* amount to *abridgements*. While abridgments meant a categorical denial of freedom, restrictions established limitations on expression in certain circumstances. Therefore, he did not advocate an "unlimited license to talk" (1961, p. 249) but instead distinguished between two types of expression similar to Chafee's model. Though Meiklejohn did not go so far as to call speech in the service of the individual as "worthless," he did place a premium on freedom of speech that directly relates to self-government. Meiklejohn (1948) then created two unequal categories through which speech rights are protected: public rights to liberty, and personal rights to life and property. A Meiklejohnian model of First Amendment rights, for example, strictly argues against regulations relating to the personal right of freedom of religion—even in the case of clear and present danger—but tolerates laws

related to property rights, such as taxes (1948), because such laws enable public rights to liberty.

Where student freedoms fall among Meiklejohn's spectrum is perhaps less clear. Because regulations against total student freedom of speech and press are often believed to maintain the order and safety necessary for successful public education—a public liberty—perhaps he would tolerate such restrictions.

Expression Versus Action Divide

According to mid-1900s constitutional scholar Thomas Irwin Emerson, the First Amendment facilitates four tasks: individual self-fulfillment, advancement of knowledge and truth, stabilization of community, and promotion of democratic decision-making (1963). Emerson explained that people conduct themselves through two outlets: expression and action. Expression, he contended, "must be freely allowed and encouraged" (p. 17-18). Action, on the other hand, can be controlled by laws that impose reasonable regulations but do not conflict with expression. Within these categories are examples of expression and examples of action, and it is this expression-action dichotomy for which Emerson is most noted (1970).

Emerson turned to defamation as an example of his model; he believed all comments about public issues were protected as expression while private libels were 'action' and thus could be restricted (1970). Because comments about public issues help to stabilize the community and promote democratic decision-making, Emerson argued

that such comments would be understood to be expression, not action; they contributed to the debate but were not cause for direct engagement. But private libel, or attacking a private person's reputation, directly engaged that person in a defensive position, and therefore would be categorized as an "action" instead of an expression. This exemplifies why Emerson found it reasonable to limit that which he would categorize as "action." Similarly, Emerson argued that socially obscene expression—the legal test for obscenity was not established until 1973[3]—as represented in books and art, should receive protection while live action, such as live sex shows, would receive no protection. Emerson's distinction between expression and action has been used to limit student's First Amendment rights in school based on the idea of educational disruption, as discussed later in this chapter.

Purpose Hierarchy

In 1981, free speech philosopher Franklyn Haiman proposed a "communication context" theory of freedom of speech. This theory divides speech into four contexts: speech about others, speech directed toward others, speech functioning within the marketplace of ideas, and government speech or participation in the marketplace. For each of these contexts he provided examples, including defamation, fighting words,

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[3] In 1973, the U.S. Supreme Court in *Miller v. California,* 413 U.S. 15, established a three-prong test to determine whether an expression is obscene. That test characterizes obscenity based on "(a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest ... (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constitutional claims when necessary" (p. 24-25).

freedom of expression, and compelled speech, respectively (1981). Then, for each context he illustrated a respective response: provide for more speech, not less; hold the individual responsible for his own response to the speaker unless deprived of choice; allow government promotion of communication diversity while permitting neutral restraints on time, place, and manner; and force the government to provide a compelling reason for the communication.

In short, Haiman argued, the response to speech should depend upon the context of the speech (and perhaps its intended receiver) and may require modification or even government regulation of the speech. Haiman's context theory represents a prevalent attitude among First Amendment scholars—that no single expression or utterance can be good or bad except in how it is delivered. However, administrators or teachers in the education field have not always located a place for student speech within Haiman's four categories, and have therefore made a rationalized argument for censorship.

A Flawed Marketplace

Call him pessimistic, but C. Edwin Baker did not buy into the marketplace of ideas approach to the First Amendment. His liberty theory (1989) outlined the perceived flaws of the marketplace and instead refocused freedom of speech on the notion of individual liberty. Baker dismantled the basic tenets of the marketplace theory, which propose that truth is good and desirable, truth is discoverable, and humans are rational, among others. Instead, he argued that truth is not always discoverable nor is

it desirable, especially in a true marketplace (2002). Were traditional marketplace norms to be forced upon expression and the press without government regulation or oversight, Baker wrote, truth would rarely prevail when rumor-mongering pays dividends and competition stifles the weak and diverse (2002).

Instead of the marketplace theory, he proposed a liberty theory that protects individual speech even if it has no greater collective good or social value—in other words, he argued for protection of goods that are neither profitable nor produced in a competitive market. Baker's approach mandated that speech that would never survive in a traditional marketplace receive government protection, allowing it to flourish or, at the very least, remain viable. According to Baker, "[s]peech or other self-expressive conduct is protected not as a means to achieve a collective good but because of the value to the individual" (1989, p. 5). So, whether student speech contributes to the collective good of the student body, school, or community is irrelevant; every student has a right to self-expressive conduct regardless of the "value" of that conduct.

These six approaches to First Amendment theory—the supremacy of the individual, the social value of speech, the absolute protection clause, the expression versus action divide, the purpose hierarchy, and a flawed marketplace—are not all-encompassing, though they reflect the evolving scholarship since the 18th century. They also establish a framework to better understand how extensions or restrictions of student First Amendment are justified. The next section will discuss the values of student

freedom of speech and press in schools by building on the aforementioned theories and applying them to seminal legal decisions that affect student rights.

Chapter 3: Scholastic Freedom of Speech and Press

As with all questions of Constitutional law, federal courts have been shaping the meaning of the First Amendment since it was ratified in 1791. Depending on the era and the makeup of the court, First Amendment protections have waxed and waned. On the whole, however, the courts have established the standard that each individual has the freedom to express his or herself so long as it does not harm another person. However, in cases relating to free speech in public schools, the courts have historically been divided on exactly what is "harm." The interpretation of this one word "harm" has accounted for almost all the disagreements among teachers, administrators, students, lawyers and First Amendment advocates about what is or is not appropriate expression in school.

High school student journalists, perhaps more than any other group of students, have faced the reality of First Amendment restrictions in many ways. Student newspapers are often prohibited from publishing articles that might cast the school in a bad light; for example, yearbooks are at times prohibited from printing photographs of students being too rowdy at home football games. While these acts of censorship may or may not be legally defensible, most never make it into a courtroom for judges to decide. Moreover, these are not the only instances when freedom of expression is at stake. Many instances of student censorship are unaccounted for in the news media because students do not protest the infringement or simply because the students' actions were not necessarily seen as free expression. Such instances occur when a student is forced to turn inside-out his t-shirt carrying a political message. They occur when a

student wishes not to recite the pledge of allegiance, or even to stand and remain silent while her fellow students do so. They occur when students' political speech is silenced, and when students are punished in school for off-campus activity. These and more are the types of cases this project is designed to explore, and a thorough review of the legal and pedagogical standards for free expression will accompany the individual case study findings.

The courts have, at times, issued rulings that reflect a certain expectation and pedagogical justification for both extending and limiting First Amendment rights to students.

In *Keyishian v. Board of Regents,* 385 U.S. 589 (1967)), Justice William J. Brennan, Jr., wrote that the First Amendment

> does not tolerate laws that cast a pall of orthodoxy over the classroom…the classroom is peculiarly the marketplace of ideas. The nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.' (*Id.* at 603)

Herein lies the distinction that must be made between schools and other social arenas: schools have a social responsibility to cultivate in their subjects an appreciation for civic participation and a sense of democracy as a revered American value. Such is the backbone of our society (Dautrich, Yalof and Lopez, 2008). So, education theorists Janet Price, Alan Levine and Eve Cary argue "[t]he First Amendment is not just to be grudgingly tolerated in school: it is fundamental to the American theory of education" (Price et al. 1988, p. 12) and must be extended to students accordingly.

Lawyer and First Amendment activist Alan Dershowitz (2002) suggests that educational institutions that attempt to stymie student expression are "failing in their responsibility to educate and prepare students for the real world. Campus censorship is both bad politics and bad education" (p. 193). Still, some argue that students, who possess varying ages and levels of maturity, do not possess the critical analysis skills necessary to execute Constitutional freedoms in safe and productive ways. Scholastic journalism scholar Samuel N. Feldman (1968) would suggest otherwise:

> Academic freedom and freedom of the press can be understood by student minds. They are not too young to learn that freedom is earned through responsibility. If we simply pass it along from one student generation to the next, we lose it. (p. 50)

Scholars such as Dershowitz and Feldman see the current status of student press rights as an indictment against a society that espouses First Amendment freedoms as hallmarks of a civil, democratic-minded society. By restricting student freedoms so much that something as democratic as self expression is perceived as subversive or inappropriate, what can adults expect but that instead of a healthy respect for democracy, students will harbor frustration and apathy? As Feldman (1968) explained:

> If the young are prohibited from learning how to govern themselves and from following their best instincts, including common sense, in high school, they do not receive appreciably more growing room in most colleges. There they continue to be prepared for the basic feeling of powerlessness of American life…The empty, formal democracy of the campus is not only a frustrating experience; it becomes also a training ground for the acceptance of patterns of pseudodemocratic government. (p. 104-105)

These First Amendment scholars are not the only ones who see the delicate balance that must be achieved in the educational system—one of extending student freedoms

to the greatest degree possible while also instilling in pupils the sense of responsibility necessary for using them. Indeed, Supreme Court Justice William Brennan shared this sentiment in his famous *Hazelwood v. Kuhlmeier* 484 U.S. 260 (1988) dissent, wherein a student newspaper was prohibited from printing articles on teen pregnancy and divorce. The Supreme Court upheld the censorship. In his dissent, Brennan argued that instead of "teach[ing] children to respect the diversity of ideas that is fundamental to the American system" and "that our Constitution is a living reality, not parchment preserved under glass," the court's ruling "teach[es] youth to discount important principles of our government as mere platitudes" (484 U.S. 260 at 290-291). The job of educators, Brennan continued, is to prepare students to contribute to civilized society, not just to understand or observe it as outsiders. Brennan minced no words in his disappointment about the ruling:

> Such unthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees. (p. 290)

In their 1988 book on the rights of students, Price et al. argued students' rights should be boiled down to a single statement: "school officials can make and enforce only reasonable rules of behavior that are directly related to the students' education." What's more, the authors contend, arbitrary decisions and actions are unlawful. In fact, a 1943 Supreme Court ruling supported the inherent Constitutional rights of students. In *West Virginia v. Barnette,* 319 U.S. 624 at 637 (1943), the Court ruled*:* "That [Boards of Education] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual."

Price et al. (1988) maintain that schools cannot on First Amendment grounds restrict a student's behavior after school or off school property, nor can they require students with religious objections to participate in military training. Schools also should not be able to require students to submit to blood or urine drug testing. These standards all support a clear of view of students as autonomous figures, even within the constraints of a state-sponsored system.

Having looked at the social, political, economic and historical context implicit in schooling, educational theorists Michael Haubrich and Vernon Apple (1975) concluded that while schools are encouraged to be a place a student could "get to know himself, to find a place for himself, to establish some kind of individuality," they are not the best institutions for actually facilitating or supporting such changes. Because of this, a gap widens between what school administrators need to maintain order in school and those behaviors students need to experience to become individuals and adults.

For instance, the Civil Rights movement, argued Haubrich and Apple, allowed students to better understand the legal system and their rights so that they became better protestors who were less apt to accept the status quo of what administrators offered. This new understanding facilitated students' capacity to question whether certain government powers—like institutionalized segregation—were legitimate (1975). At times, and as evident in the Civil Rights movement, young people have

become increasingly politicized for their ability to draw attention through rallies and demonstrations. In the 1960s, students began to demand justification for the actions of school personnel and developed a distrust for authority figures' ability to keep the best interests of the students at heart (Haubrich & Apple, 1975). The authors also noted a key obstacle to codifying student rights: because principals and teachers are accountable to parents, school boards, and the state, "there exists no central 'authority' on which to base 'authoritarian' policies" (1975). A solution, they suggested, would be a student's bill of rights.

Much debate also exists regarding a child's or young adult's ability to make sound judgments and to comprehend the responsibilities and consequences that accompany certain actions. Elementary and middle school students have not been seen by educators and psychologists as having the same cognitive functions, maturity or judgment as high school students, generally as a function of their age. Whereas high school students are presumed to have the ability to make rational, consequence-oriented decisions, the same is not argued for younger students. Yet there is no single age at which courts have universally drawn the line mandating that a child or teenager be treated as an adult even if he or she has not yet reached the legal adult age of 18. This confusion is evident in criminal cases when teenagers and even younger children are on trial for committing heinous acts of violence. For instance, in California and Ohio (among other states), a child as young as 14 can be tried as an adult for certain crimes such as murder, rape, and crimes with firearms.

With this in mind, Haubrich and Apple (1975) take a social-psychological approach to granting rights to children by first discrediting maturity markers, which are vague at best. Traditional rights "conferred on the basis of age, sex, and other qualifying conditions" (1975) are what the authors describe as "welfare rights" and include goods and services a person feels society ought to provide. These rights, unlike "human rights" derived from the Constitution, change over time. Because of *Tinker v. Des Moines* (393 U.S. 503, 1969), when the Supreme Court ruled the First Amendment applies to students, the authors contend a child "has only to show that he is a member of the class 'persons' to qualify for these rights" (1975).

In reality, proving students have a legitimate claim to certain rights is not always that easy. Regardless of philosophical reasons to grant or restrict First Amendment freedoms, the legal limits of speech and press have been interpreted and mandated through the courts.

Legal Constraints on High School and College Students

Only a handful of student freedom of speech and press cases have crossed the Supreme Court's threshold, although many others have risen to the federal appellate level. The rulings in all these cases tend to support the rights of the educational system by arguing for different First Amendment applications on school grounds. This section summarizes the most significant cases relating to free speech and press for high school and college students by focusing on Supreme Court cases and those district and appellate cases that have caused a marked shift in attitude toward student free press and speech. As such, the court cases examined in this study are divided

into two groups: cases pertaining to public secondary schools and those pertaining to public colleges and universities.

Not all cases summarized in this section were analyzed in this study, but a selection of eight cases was chosen to represent both speech and press issues for both college and high school students. Those cases are marked with asterisks, and further information on case selection can be found in the methodology section. Since each case represents a distinct question to the court (i.e. Is nonviolent protest protected? Can a student use sexually suggestive speech in a school assembly?), examining a range of cases helps establish the courts' tests for acceptability of student expression. As a whole, these cases demonstrate the current legal precedents regarding student speech and press rights, and they are the standard against which future cases will be considered.

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969)

Of all student First Amendment cases, *Tinker v. Des Moines,* 393 U.S. 503 (1969) is undoubtedly the most-referenced. In 1965, a principal at a Des Moines high school suspended a handful of students for wearing black armbands to their public high school to protest the Vietnam War. Of those students, siblings Mary Beth and John Tinker and fellow pupil Christopher Eckhardt took their case to court, arguing their Constitutional rights to freedom of expression were unduly violated. The district court dismissed their case, and the 8th Circuit Court of Appeals affirmed the district court opinion. The Supreme Court granted certiorari in 1968 and ruled against the school district in 1969. It found that the symbolic speech of the students was "akin to

'pure speech'" (393 U.S. 503 at 506) and therefore, protected. The "pure speech" the court was referencing was political speech, which historically receives the highest level of First Amendment protections. The majority opinion in this case ruled that "it can hardly be argued that students and teachers shed their Constitutional rights to freedom of expression at the schoolhouse gate" (393 U.S. 503 at 506 (1969)). Instead of relegating students to second-class citizens, the Court found that speech that does not materially and substantially disrupt the educational process must be tolerated, no matter what the topic.

> In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint…In our system, state-operated schools may not be enclaves of totalitarianism…Students in school as well as out of school are 'persons' under our Constitution. (*Id.* at 509-512)

Since 1969, the *Tinker* standard, or the "materially and substantially disruptive" standard, has held a place in protecting school publications, and seven states have adopted the standard as the legal authority in student free expression rights. However, arguments in Justice Hugo Black's dissent would be echoed in other student First Amendment battles decades later. Black did not agree with the majority opinion that students preserve their Constitutional rights while on school grounds:

> The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that 'children are to be seen and not heard,' but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach. (Justice Black dissenting, 393 U.S. 503 at 522-523)

Bethel v. Fraser, 478 U.S. 675 (1986)

Almost 20 years later, a case tested students' First Amendment rights in a very different way. This case, *Bethel School District No. 403 v. Fraser* (478 U.S. 675 (1986)) is remarkable for its finding that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings" (*Id.* at 682). The case arose when a student, giving a stump speech for a student government candidate at a school assembly, used what school officials deemed vulgar and sexually obscene metaphors to describe the candidate and his platform. Matthew Fraser was a student at Bethel High School and gave his speech to approximately 600 students, some of whom were 14-year-olds.

The court ruled that "the undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior" (478 U.S. 675 at 681 (1986)). What's more, the Supreme Court also ruled that "the First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission" (*Id.* at 685).

Justice John Paul Stevens, in his dissent, pointed to the difference in acceptable speech between age groups, noting that it was a stretch to assume a Court with members two generations away from Fraser could be in a position to rule on the appropriateness of his speech. Still, almost twenty years after the black armbands

were worn, *Bethel* represented to the Supreme Court majority an obvious exception to the *Tinker* standard granting students the same Constitutional rights as any other citizen.

Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988)

The first case strictly revolving around prior review of high school publications reached the Supreme Court in October of 1987 and was decided in January of 1988. The principal at Hazelwood East High School in Missouri censored articles in the student newspaper that discussed teenage pregnancy and the effects of divorce on students. When the principal removed the offending articles and sent the altered newspaper to press, newspaper editor Kathy Kuhlmeier and two of her colleagues on the newspaper staff sued, contending their First Amendment rights were violated. The district court dismissed the case on appeal. The 8th Circuit Court of Appeals reversed the decision and held the newspaper was a public forum and thus "intended to be and operated as a conduit for student viewpoint" (795 F.2d 1368 at 1372 (1986)). Based on the *Tinker* standard, the appeals court could find no reason to believe the school principal foresaw a material and substantial disruption would occur if the articles were printed, invalidating his decision to remove the content. The school district then appealed to the Supreme Court, which agreed to hear the case.

Though the high court began its review of the *Hazelwood* case with a reference to *Tinker*, it deviated from the *Tinker* ruling by turning to the question of whether the newspaper was a public forum. Traditionally, a public forum receives greater First Amendment protection than other types, such as a limited and non-public forum.

Instead, the Supreme Court ruled that the newspaper was part of the educational curriculum and therefore not a public forum (484 U.S. 260 (1988)). Furthermore, the newspaper had established a policy of submitting content to the principal for review prior to publication, also limiting its forum argument.

The Court maintained it was answering a different question than the one addressed in *Tinker*; instead of deciding whether a school must tolerate particular student speech, the Court was addressing whether the First Amendment requires school promotion of speech such as what appeared in the curricular newspaper. Finally, the Court established a different standard for evaluating free press claims: "we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their action is reasonably related to legitimate pedagogical concerns" (484 U.S. 260, 273).

"Legitimate pedagogical concern" along with "school-sponsored" became the *Hazelwood* standards, both seemingly irreconcilable with the *Tinker* ruling. The result was the establishment of potentially dueling precedents for high school students. In states wherein *Tinker* is not adopted as the supreme law via state legislation, the *Hazelwood* standard allows for more sweeping claims to censorship rights. This fear was made evident in Justice Brennan's dissent: "The young men and women of Hazelwood East expected a civics lesson, but not the one the Court teaches them today" (484 U.S. at 280, Justice Brennan *dissenting*).

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

In 2002, Michigan high school student Katy Dean, a junior staffer on her school's newspaper, wrote a story regarding a lawsuit Utica residents had filed against the school district, alleging that bus exhaust fumes contributed to one man's cancer and other illnesses. The couple, who lived next to a school bus garage, alleged that diesel fumes infiltrated their house and neighborhood, making them sick. Dean's story relied on an interview with the couple and scientific studies on the health effects of exposure to diesel fumes. Dean's story noted that the school district refused to comment for the story.

Before the story could be published, Utica High School principal Richard Machesky ordered the article and related coverage pulled from the newspaper, arguing the story was inaccurate and based on unreliable sources. Dean sued in federal district court in 2003, and Arthur Tarnow, federal judge for the Eastern District of Michigan, ruled in favor of the student, arguing the censorship was essentially indefensible and finding nothing in favor of the school. Judge Tarnow also found that the *Arrow* was a limited public forum with no history or policy of prior review, so it was subject to the greater protections of the *Tinker* standard even though Michigan falls under *Hazelwood* legislation. As a federal judge, Tarnow's ruling sets precedent in a state with no enshrined *Tinker* protections, paving the way for other limited or public forum school publications in the Eastern District of Michigan to receive the same protections.

Morse v. Frederick, No. 06-278 slip op.

The last case to review regarding First Amendment rights for public high school students is also the most recent, receiving Supreme Court review in 2007. High school student Joseph Frederick was suspended at an Olympic torch rally held off school grounds in Juneau, Alaska, because he unfurled a banner reading "BONG HiTS 4 JESUS." The principal, Deborah Morse, was attending the event with most of the student body and considered the banner a promotion of illegal drug use—a violation of school policy. Though the event was school-sanctioned, students were not required to attend, nor were permission slips issued. When Frederick refused to lower the banner, Morse suspended him. Frederick sued Morse and the school district but lost in district court. The 9th Circuit Court of Appeals applied the *Tinker* standard and reversed the ruling because the school failed to demonstrate the speech created a substantial disruption.

The Supreme Court ruled against Frederick and upheld Morse's right to restrict student speech at a school event; "[t]he concern here is not that Frederick's speech was offensive, but that it was reasonably viewed as promoting illegal drug use" (slip op. at 14). In his concurring opinion, Justice Clarence Thomas justified Morse's action by invoking the doctrine of *in loco parentis*, wherein schools have the right to discipline students in their parents' stead. He also noted that the ruling in *Morse* is a move to "distance ourselves from *Tinker*, but we neither overrule it nor offer an explanation of when it operates and when it does not" (Justice Thomas, *concurring* at 9). Once again, a separate standard was created, not to replace those that came before

it but to offer an *ad hoc* solution. In this case, as in the others, the Justices addressed only the specific context in which the contentious speech or press occurred; the larger question of the scope of student rights went unanswered.

In a partial dissent, Justice Stephen Breyer moved for the Court to leave the First Amendment question unresolved—to do otherwise would be "unwise"—and instead asked his colleagues to answer the question of Morse's immunity from damages. Breyer was concerned the case would create a slippery slope and "authorize further viewpoint-based restrictions" (Justice Breyer, *partially dissenting* at 2) on student speech. In his unqualified dissent, Justice John Paul Stevens went even further: "it is a gross non sequitur to draw…the remarkable conclusion that the school may suppress student speech that was never meant to persuade anyone to do anything" (Justice Stevens, *dissenting* at 2). He applied a test from *Brandenburg v. Ohio* (395 U.S. 444 (1969)) in arguing that punishment for speech advocating illegal activity is only permissible when the advocacy provokes imminent harm. In *Brandenburg*, the Supreme Court ruled it illegal "to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate" (*Id.* at 444).

First Amendment advocates see *Morse* as a further erosion of student free speech principles granted exclusively and unhesitatingly in *Tinker* but diminished by the *Hazelwood* ruling. Others see it as so narrowly tailored to speech advocating illicit drug use that the average student, and student journalist, would be unaffected. But

which of these standards, if any, apply to the press in public colleges? To this question the courts have responded in equally conflicting terms.

Freedom of speech and press for high school students is generally more restrictive than its college counterpart. As a whole, college students have enjoyed more expansive free speech and press rights than younger students. This difference can be attributed both to maturity and age levels and to perceived differences in the purposes of secondary and post-secondary educational systems: one to impart necessary intellectual and societal knowledge in preparation for adult life, the other to challenge and expand upon those norms while establishing skills for a professional niche. However, more recently, courts have narrowed college students' rights in similar ways as they have done for high school students. Examination of a handful of the most significant court cases reveals conflicting assumptions about the role of speech and press on college and university campuses.

Trujillo v. Love, 322 F.Supp. 1266 (D. Colo. 1971)

Three court decisions set the stage for later conflicts regarding the free press rights of college students and are briefly explored here. In *Trujillo v. Love*, 322 F.Supp. 1266 (D. Colo. 1971), an editor at a college newspaper sued for violation of her First Amendment rights when the newspaper was required to submit controversial content to a faculty adviser. When Dorothy Trujillo, the editor of *The Arrow* at Southern Colorado State University, refused to submit the newspaper to prior review, she was removed from her position. Trujillo had wanted to publish an editorial cartoon

critical of the administration as well as an editorial chastising a local Colorado judge, but she met with opposition from the faculty advisor and university president.

The U.S. District Court for the District of Colorado ordered Trujillo to be reinstated to her managing editor position and found that

> The state is not necessarily the unfettered master of all it creates. Having established a particular forum for expression, officials may not then place limitations upon the use of that forum which interfere with protected speech and are not unjustified [sic] by an overriding state interest. (322 F. Supp. 1266 at 1270)
>
> Healy v. James, 408 U.S. 169 (1972)

In *Healy v. James*, 408 U.S. 169 (1972), the Supreme Court found that a state college "could not restrict speech or association simply because it found the views expressed by the group to be abhorrent" (Inglehart, 1985, p. 53). The Court ruled that Central Connecticut State University could not restrict the Students for Democratic Society group—a left-wing club with a violent reputation on some campuses—from being recognized as an official campus organization. Failure to achieve official status on the campus meant the group couldn't distribute literature, advertise in the college paper or use campus facilities. The court found that simply because the school disagreed with the group's mission or feared its philosophies did not mean the school could deny the group official recognition. The court noted that such denial would only be justified if the group failed to observe a campus rule or regulation; in other words, the act to deny the group recognition must be content-neutral, or separate from a judgment over the group's purpose. Finding support in *Tinker,* the Court ruled that

"state colleges and universities are not enclaves immune from the sweep of the First Amendment" (408 U.S. 169 at 180 (1972)).

Papish v. Board of Curators of the University of Missouri, 410 U.S. 667 (1973)

Similarly, in *Papish v. Board*, 410 U.S. 667 (1973), the editor of an underground newspaper was expelled for distributing an issue with the word "motherfucker" and a sexually explicit cartoon was reinstated when the court found that "[t]he mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of 'conventions of decency'" (410 U.S. 667, 667 (1973)). Barbara Papish, a graduate student at the time and editor of the *Free Press Underground* newspaper, contended that her First Amendment rights were violated when she was expelled for content in her newspaper. Aside from the expletive, the newspaper contained a graphic political cartoon of policemen raping the Statue of Liberty and the Goddess of Justice, with the words "with liberty and justice for all" surrounding the image.

The school's conduct code required students "to observe generally accepted standards of conduct" (*Id.* at 668), and the Student Conduct Committee determined Papish to be in violation of this code. Though the school made a case for her continued poor performance and questionable behavior on campus during her five and one-half year tenure as a graduate student, the Supreme Court found "disenchantment with Miss Papish's performance, understandable as it may have been, is no justification for denial of constitutional rights" (*Id.* at 671).

The resolution of the *Papish* case marked the beginning of almost three relatively quiet decades for college speech and press litigation. Instead, courts, students and professors turned their attention to notions of academic freedom, an important legal struggle that merits more attention than what can be given here.

Kincaid v. Gibson, 236 F.3d 342 (6th Cir. 2001)(en banc)

Almost 20 years after *Papish*, a state university confiscated the school's 1993-1994 yearbook because it took issue with the publications' supposed poor quality. The school argued that the yearbook was the wrong color and poorly written, and it did an inadequate job of capturing student life—the purpose of a yearbook. Charles Kincaid, a student, and Capri Coffer, editor of the yearbook, sued the school. The students claimed that not only did the school violate their First Amendment rights, but also that the school did so in retaliation for content in the school newspaper and yearbook, both of which had been advised by the same faculty member who was subsequently removed from her post. The students lost their First Amendment suit in district court, but the 6th Circuit Court of Appeals reversed this decision, deciding that *Hazelwood* does not apply to college publications and that the school's conduct violated the students' First Amendment rights.

Ruling en banc, the court found that "[t]he university is a special place for purposes of First Amendment jurisprudence. The danger of 'chilling…individual thought and expression…is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition'" (*Kincaid v. Gibson*, 236 F.3d 342, 352(6th Cir.

2001)(en banc)). The 6th Circuit reversed the lower court's findings and ordered the yearbooks be distributed on campus, in addition to requiring the school to pay the students' attorneys' fees and $5,000 each to Kincaid and Coffer.

Hosty v. Carter, 412 F.3d 731 (7th Cir. 2005)(en banc) *cert. denied*

The 7th Circuit Court of Appeals made an about-face in 2005 when it ruled the *Hazelwood* standard could, indeed, be applied to college press not designated as a public forum (*Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005)(en banc), *cert. denied*. The Supreme Court declined to review the *Hosty* case about public university journalists who sued their school when it enacted a policy of prior review for the student newspaper. Therefore, the 7th Circuit's ruling stands, which allows three states—Illinois, Indiana, and Wisconsin—to apply the more restrictive *Hazelwood* standard to college publications. Arguably, the Supreme Court's refusal to hear the case could also be interpreted as approval of the 7th Circuit's ruling; when the Supreme Court declines to grant certiorari, its declination is often cited as support for a lower court's ruling in legal arguments.

The *Innovator* at Governors State University in Illinois had published stories critical of the campus's administration, and despite a university policy giving the staff sole discretion over the newspaper's content, the appeals court ruled in favor of the university's actions. The federal district court in Illinois had previously ruled in support of the students; the appeals court ruling vacated that judgment. Central to the appeals court's judgment was the question of whether the newspaper was a designated public forum or open public forum: "by establishing a subsidized student

newspaper the University may have created a venue that goes by the name 'designated public forum' or 'limited purpose public forum'" (412 F.3d 731, 737). Thus, the *Innovator*, subsidized by school funds, was not an open forum. The ruling maintains that school publications designated as a public forum by policy or practice are still eligible for protection under the less restrictive *Tinker* standard.

State Freedom of Expression Laws

In light of some of these court rulings, a handful of states across the country have passed their own freedom of expression laws for high school and college students. When states seek to override court decisions that run contrary to the states' educational goals for students, state freedom of expression laws can better specify the extent of student freedoms. Such state laws generally have granted students more extensive rights, ones that mirror the standards set forth in *Tinker*. Fewer than a dozen states have passed such laws.

According to the Student Press Law Center, seven states have passed freedom of expression statutes that extend *Tinker* protections to high school students: California, Colorado, Iowa, Massachusetts, Arkansas, Iowa, and Kansas. Oregon has passed student free expression laws for both public secondary schools and public colleges and universities. In Illinois, a state law protects college campus press. Since the *Hazelwood* ruling in 1988, many other state legislatures have unsuccessfully considered similar bills as those passed in the aforementioned states.

Because of conflicting established case law, how the First Amendment applies to public high school and college students is murky. Seemingly conflicting rulings put both students and administrators in positions where the legal mandate is not always apparent. This dilemma is evidenced by a quote from Justice Thomas's concurring opinion in *Morse v. Frederick*, "I am afraid that our jurisprudence now says that students have a right to speak in schools except when they don't" (No. 06-278 slip op. (2007) Justice Thomas, *concurring*). As a general rule, legal scholar John Hogan noted in 1985 that the courts have concluded "once a personal liberty is shown to be affected by a school rule, the burden of justifying that rule — in 'the absence of an inherent, self-evident justification on the face of the rule' — is on the school authorities" (Hogan, 1985). Ultimately, how the news media cover student First Amendment cases can lend (or take away) legitimacy of this debate in the public eye.

Chapter 4: Methods

This study looks at news coverage of eight legal cases over the span of 39 years, from 1969-2008. This study uses news stories, commentaries and editorials from local, state, and national newspapers to answer its central research question: How do U.S. newspapers frame high school and college students' right to freedom of speech and press? A textual analysis of the articles identified frames that emerged throughout the newspaper coverage.

High school and college students, as tomorrow's leaders, often face a delicate balance of educational imperatives and attempts at expression related to personal growth. Yet, journalism and media scholars have given too little attention to news coverage of students' rights, an area of First Amendment scholarship that can generate significant legal questions. Many scholars (see Yalof & Dautrich, 2008) recognize the need for extensive research of the First Amendment and how it is used and appreciated in America. However, none—to this researcher's knowledge— have considered how news media coverage provides the public with specific frames of reference in this matter, or what those frames look like.

This study is designed to fill this gap by providing a foundation for more research. Characterizing and describing the way news media frame freedom of speech and press for high school and college students establishes a much-needed context for more serious discussion on the state of the First Amendment in America. The ways in

which the news media cover certain legal cases involving student freedom of expression—namely speech and press— is the main concern, but this research also provides a gateway to more extensive research regarding the relationships among education, the First Amendment, civics, and democratic practices in this country. In short, this study is a textual analysis of the frames that emerge in coverage of freedom of expression lawsuits involving high school and college students. The textual analysis approach is explained in the proceeding section on central data collection and grounded theory.

This study's introduction and literature review explored scholarship relevant to high school and college students and focused on freedom of expression from social, legal and pedagogical standpoints. Many, if not most, legal cases arise from questions regarding what student *media* can and cannot print. However, in this study, student media are considered within the larger populations of all high school and college students. To focus solely on student media would require different case selections altogether, and while student media may be the springboard from which many legal disputes arise, high school and college student challenges to the First Amendment occur under many different circumstances. So, whether or not a legal case originated from within the confines of a student media activity—such as a yearbook or newspaper—is not a consideration in this study. This is a necessary qualification to maintain a broad stroke approach to the research question. In addition, as made evident in the case discussions, even those legal questions arising specifically from

student media activities are often discussed by the courts as peripheral to a central question of general student autonomy.

Extended Definition of Terms

Important terms, while briefly defined at the beginning of this study, are more fully developed here.

News Media: Local and national U.S. newspapers. This construct denotes Zelizer's (2004) reference to "mediating agencies" used to transmit information and relies on U.S. newspapers as those mediating agencies. This construct also eliminates any and all broadcast media for the purpose of limiting this study to newspaper coverage only. Local, state and a selection of national newspapers were all used for database and online archival searches. These national newspapers included three newspapers within the top five largest national newspapers (based on circulation): *The Washington Post, The New York Times,* and *USA Today*. These three were selected because of their large circulation sizes and prominence in the U.S. news media based on World Association of Newspaper rankings. The *Christian Science Monitor* was added as a fourth newspaper because of its mix of international and national focus, providing a litmus test of sorts as to whether a case was deemed newsworthy for an international audience. Using these specific national newspapers as well as state and local newspapers (i.e. local to the city/state where the case originated) allowed for a more thorough analysis of news frames across all media.

Democracy: the philosophical construct, not the government structure. The U.S. government is structured as a Republic but assumes the cultural and institutional principles associated with a democracy: providing citizens the right to vote; freedom from government mandated political and religious ideology; the pursuit of individual ideals and lifestyles; active participation in civic life; and vibrant, public debate over government policies and actions.

Freedom of Expression: Any combination of the five freedoms outlined in the First Amendment (religion, speech, press, assembly and petition), but especially the combination of speech and press. This definition looks at legal issues pursued in court as a violation of the First Amendment rights of freedom of speech and/or press. The term "speech" refers to both literal speech and symbolic speech—which the courts have ruled (*Tinker v. Des Moines,* 1969*)* is akin to pure speech. This study does not investigate media coverage of other First Amendment cases in which students have pursued freedom of religion, assembly and petition through the courts

Data

This study analyzed data comprising newspaper articles and editorials on specific legal cases involving freedom of speech and press for both high school and college students. The data reflected a two-cell approach: the researcher selected two cases for each type of freedom and at each education level, for a total of eight cases.

The eight cases reflect instances in which high school or college students exercising freedom of speech or press were reprimanded or restricted, and legal action was pursued. The cases were chosen for their status as legal precedents, their prominence in subsequent legal literature, and their continued and detailed explication in scholastic media law books. Legal action occurs when a student files a complaint in court against the school or administrator.

For each of the eight cases, the data consisted of local, national and editorial coverage. However, for some cases, only local or national coverage existed in the data set, not both. And in some cases, no editorial coverage was present in the data set. This study analyzed the following eight cases:

Table 1

Court Case Matrix

Case name	**High school or college**	**Speech or press issue**	**Year decided**	**Court level**	**Final ruling**
Tinker v. Des Moines	High school	Speech	1969	Supreme Court	In favor: student
Healy v. James	College	Speech	1972	Supreme Court	In favor: student
Papish v. Board of Curators	College	Speech	1973	Supreme Court	In favor: student
Hazelwood v. Kuhlmeier	High school	Press	1988	Supreme Court	In favor: school
Kincaid v. Gibson	College	Press	2001	6th Circuit Court of Appeals	In favor: student
Dean v. Utica	High school	Press	2004	Federal District Court (E.D. Michigan)	In favor: student
Hosty v. Carter	College	Press	2005	7th Circuit Court of Appeals Supreme Court *cert. denied*	In favor: school
Morse v. Frederick	High school	Speech	2007	Supreme Court	In favor: school

Data Collection

This study analyzes how news media covered these eight specific cases. The data set included case coverage originating from the initial First Amendment issue, meaning news media coverage prior to suit being filed was not analyzed. News media coverage prior to the suit being filed was eliminated from the central data set because while a student complaint against administration for disciplinary action is relatively common, a student's filing suit against an administrator or school is not. Therefore, the unique circumstance of a student filing suit against a school would likely predispose the story to some degree of news media coverage. This limitation to the data set helped to eliminate those initial stories that, because no proper legal claim was staked, would likely have focused not on the First Amendment issue but the disciplinary action instead.

This study also analyzed follow-up coverage relating directly to the case as it progressed through the legal system and was resolved, and anniversary coverage if available, including but not limited to special coverage on the case or in-depth articles relating to the case.

Database searches using keywords relating to each case located relevant articles. LexisNexis was the primary database and starting point for the keyword searches. In addition to searching LexisNexis, online archival searches of local (city) newspapers in which the case originated, online archival searches of major state newspapers (as identified by state capitols and largest circulating newspapers in the state), and online

archival searches of four national newspapers, *The New York Times, The Washington Post, USA Today,* and *the Christian Science Monitor* located the remainder of the coverage. When articles were unavailable electronically, the researcher sent emails to newspapers requesting hard copies of articles relating to the case. A full list of newspapers used and dates of located articles can be found in the appendix for each case.

Keywords entered into both LexisNexis and individual newspaper archives included:

- the case name (ie *Tinker v. Des Moines*)
- the full names of individuals filing or defending the suit
- names of the school and school district involved
- names of the student newspaper (if a press case)
- year of the final case decision paired with "student freedom of speech/press"
- year of the final case decision paired with "freedom of expression"

Keywords and date-specific searches located a total of 178 articles. This study eliminated coverage in which the story itself was substantially devoted to something other than the specific legal case (i.e. the story was about the student's subsequent trip to China, and not the lawsuit he filed) or if the keyword search generated articles not actually related to the case or articles outside the limits of the study (i.e. international articles, scholarly articles, or transcripts from television coverage). In total, this study

analyzed 98 articles across seven cases. One case search, *Healy v. James*, generated no significant coverage. This case will be discussed further in Chapter Five.

Data Analysis and Grounded Theory

A textual analysis of the news media coverage revealed frames and themes reporters used to cover and characterize the cases, including themes related directly to the student, the Constitutional significance of the case, and the educational significance of the case. The researcher allowed themes to emerge from the coverage instead of creating a set of expected themes prior to analysis.

The principles of grounded theory as explored by researchers A.L. Strauss and J. Corbin (1990; also Glaser and Strauss, 1967) guided this textual analysis. These scholars describe their approach to this methodology as "a way of thinking about and studying social reality" (1990, p. 4). The grounded theory approach demands flexibility and creativity, as well as sensitivity to nuance and detail (1990). Accordingly, the researcher paid significant attention to semantics, descriptions, word choice, rhetoric, repetition, and characterizations in the news media coverage. Grounded theory is a largely comparative method, and as such, this approach to analyzing the data required constant comparison between themes and across data samples. This method is consistent with "interpretation based on systematically carried out inquiry" (p. 8). As a nonmathematical process, this research is "carried out for the purpose of discerning concepts and relationships in raw data and then organizing these into a theoretical explanatory scheme" (p. 11).

In other words, the articles used as data were interpreted according to the themes that arose, generating an explanatory scheme that described ways the news media frame issues of freedom of speech and press for high school and college students. The researcher read the coverage of each case to establish an understanding of the tone, sentence structure, theme, voice, word choice, sourcing, fact inclusion and omission, and story structure each article used. As the researcher progressed through the data set, these elements were compared within and across court cases for any similarities and differences. This process exemplifies a basic tenet of grounded theory: that the researcher may make assumptions from findings based on significant interaction with the subject of inquiry—in this case, the news media coverage. Grounded theory premises this approach on the "belief that persons are actors who take an active role in responding to problematic situations…[and] the understanding that meaning is defined and redefined through interaction" (Strauss and Corbin, 1990, p. 9-10). Ultimately, these characteristics of grounded theory research lead to "an awareness of the interrelationships among conditions (structure), action (process), and consequences" (p. 10). It is these relationships, actions and consequences derived from the news media coverage that are discussed in the results sections.

While traditional grounded theory methods suggest an emergent approach to data sampling, that is, allowing one piece of selected data to lead to another based on interpretation of the first, this research demanded a slightly more systematic approach**.** In order to limit this inquiry to a reasonable length, both in terms of the

end product and time needed for completion, it was necessary to further refine the data to specific cases on student freedom of speech and press issues.

Many researchers have used the tenets of grounded theory to explore media-related relationships and to develop foundations for interpreting media. The theory itself is a staple in communications research textbooks. Because of its constant comparison, interaction with the data, and focus on interrelationships among subjects of inquiry, this method represents a high level of fit for this study.

Framing and Procedures

Many media scholars have worked to deconstruct, interpret, and understand the rhetorical strategies news media use to relay information to the public. Media theorists Yoonhyeung Choi and Ying-Hsuan Lin (2008) analyzed news coverage of three major hurricanes and concluded that, "as the primary means of communication between government agencies and the general public, the media play an important role in shaping [public perception]" (p. 294). With grounded theory as its foundation, this study used framing methodology as its primary tool to determine, as did Choi and Lin, the many nuances in news media coverage that actively shape public perception. In addition, this study relied on methods related to discourse analysis and grounded theory to answer the central research question. The researcher used framing and discourse analysis procedures to identify and analyze the frames present in each article, commentary or editorial sampled and the themes explicit in these frames.

Based on the frames identified in the news coverage, this study makes conclusions about the way news media treat issues of student freedom of speech and press.

As media scholar Todd Gitlin (1980) argued, framing reflects "the principles of selection, emphasis and presentation composed of little tacit theories about what exists, what happens, and what matters" (p. 6). A grounded theory approach to Gitlin's framing could lead to identifying concepts, categories and hypotheses as discussed by grounded theorists J. Corbin and A. Strauss (1990; see also Glaser & Strauss, 1967). So, identifying and grouping frames and themes from news media coverage that reflect similar or distinct selection, emphasis, or presentation into larger categories of understanding generates a guide, a key of sorts, for understanding the coverage.

Media framing theorists Sei Hill Kim, Dietram A. Sheufele and James Shanahan (2002) have provided a useful approach to news media's use of frames, and their concepts are invoked in this study**.** These scholars argue that the news media create "interpretive packages" to make news easier to understand. In doing so,

> [T]hese frames also serve as interpretive shortcuts for audience members, leading them to make attributions of responsibility or other judgments, based on different frames or interpretations offered by mass media for the same factual content. (p. 8)

This approach to framing "assumes that it is 'terminological or semantic differences' in how an issue is described rather than the salience of an issue itself that evoke audience responses. In other words, different descriptions of the 'same' issue will be interpreted differently by different audience members" (p. 10).

While grounded theory requires the researcher to withhold from solidifying thematic categories until all data has been interpreted and compared, Choi and Lin give suggestions for frames commonly used in the media, such as logical vs. emotional, and image-evoking vs. non-image-evoking. Likewise, W.L.W. Siu (2008), in analyzing news discourse of teacher suicide, uses critical discourse analysis to "analyze the way power and news ideology are negotiated in the news discourse" (p. 249). This analysis gives way to exploration of social and political relationships as played out in the news media sphere. These techniques are especially appropriate considering the potential for the revelation of ideology inherent in the way the news media cover student freedom issues.

In order to determine the specific themes and frames the news media used in their coverage of scholastic speech and press rights, one must first acknowledge that "the semantic superstructure, the theme is important because it is important to the understanding of a text" (Sui, 2008, p. 249). Analysis and examination of the news media coverage showed that words, phrases, sources, use of quotations, inclusion or omission of facts and the inherent themes present within the coverage all directly contributed to the construction of these themes. In turn, the themes that emerged represented a reliable interpretation of the perceived meaning of the news text because "[w]hereas people may not recall specific details of news text, the semantic superstructure, the theme usually can be recognized as time goes by" (Sui, 2008, p. 250). These "competing themes of the news coverage reflect the way reality is

negotiated and constructed" (p. 250)—the reality of the importance of student press and speech issues portrayed in the text themselves**.** As these emerging themes repeated themselves throughout the news media coverage in all court cases, and as certain themes proved to be stronger or weaker throughout time, they were consolidated into frames through which the news media presented information on the cases. The frames reflected the ways in which the news media presented the students involved, the schools, the case itself, the students' actions, the particular freedom in question, and the larger philosophical questions involved. The specific frames that were uncovered are discussed fully in Chapter Six.

Professor Robert M. Entman (1993), a leading scholar of media theory and framing expert, distinguishes framing as the purposeful selection or omission of information that creates a final news text, one in which the audience's understanding is shaped in part by the inclusive or exclusive decisions of the author. Because the reader had no part in the creation of the text, he is left only with the frame of reference or understanding the author created, ignorant to any alternative understanding. In Entman's words, "[t]o frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described" (p. 50). By identifying frames used in a text, readers can identify "content and meaning reflecting a message consistent with the beliefs of the writer" (Sui, 2008, p. 250). So, what reporters choose to disclose or omit and the way in which they frame a story creates a reality for the reader that may

or may not be the reality the reader would gather if writing or researching the story herself.

In *Framing Analysis: An Approach to News Discourse,* authors Z. Pan and G.M. Kosicki found that strategies used to frame stories may reflect a hierarchy of importance the author constructs within the text, and may also facilitate the marginalization of perspectives by "attributing them to a social deviant" (Pan and Kosicki, 1993, p. 284). Pan and Kosicki's findings are relevant to this study because the frames that emerged from the news media coverage, at times, exposed this hierarchy of importance journalists created through their articles and editorials. More specifically, journalists in this study used the following strategies to construct and present meaning in their texts: source selection, source identification, direct and indirect quotations, source placement within the story, rhetorical choices, extent of source coverage, and factual and source hierarchies. This final strategy, the hierarchy of facts and sources as presented in the story, is used to guide the reader towards the most important information. As Pan and Kosicki (1993) demonstrated, the thematic structure of the media text generally lies in the lead, or the first few paragraphs, and is confirmed and supported in the remaining text.

While a comprehensive examination of news media coverage of student press and speech rights would be an almost insurmountable task, by examining the news media strategies used to cover the eight cases analyzed here, this study aims to lay a foundational account of different news media portrayals of these issues. The

differing nature of the legal cases, as well as the different locales from which they emerged, and the differing types of news media coverage explored, provided a broadstroke approach to an issue that has received no notable attention from media or legal scholars.

Limitations

A Note on Sample Size

As with any study confined in scope by time and resources, this study has its limitations. Such limitations are both practical and personal. In this study, there was not a consistent level of coverage across cases. Some court cases received considerable attention while others received next to none. This type of limitation can neither be predicted nor remedied, but a thorough review of available databases and online records ensured no significant coverage was overlooked. Because this study used online newspaper archives and educational and media databases to locate potential articles, those newspapers with no electronic records were eliminated from the search. Due to the span in years covered by the court cases, older stories were less likely to be digitally archived, and researcher requests to newspapers for access to decades-old archives were at times ignored or rejected.

There is no doubt the sample size of newspaper articles analyzed here is humble, with individual court case coverage ranging from zero articles to more than 40. This span, and the disparate number of articles available for analysis in each court case, generates questions about the generalizability of the findings presented. However,

these scant or generous, unpredictable and at times incongruous levels of newspaper coverage are exactly what this study is designed to highlight. Each time the courts in the U.S. lay down their gavels, law is made or altered. In theory, these laws and alterations to existing law reflect legal interpretations of contemporary, community issues. In effect, courts make history every day, and whether the U.S. news media bother to write about it—and in what way—is worth studying.

Additionally, because the number of student First Amendment cases, as compared to other types of litigation, is relatively small, it is not surprising that newspaper coverage would also be somewhat limited. Therefore, the coverage is relatively proportional to the occurrence of student First Amendment court cases (although, as discussed in the final chapter, *proportionate* does not necessarily mean *adequate*). And while the sample of articles for each individual court case studied here may fluctuate, the overall number of articles sampled across cases—98 stories, editorials and commentaries—represents a strong sample size. In an online journal *The Qualitative Report,* researcher Margaret Myers (2000) noted that "small qualitative studies are not generalizable in the traditional sense, yet have redeeming qualities that set them above that requirement" (n.p). These qualities include proliferation of knowledge through situational observations instead of truth *a priori*. Knowledge and understanding happen incrementally, and this study is premised on the belief that any significant dip into knowledge making begins with an initial testing of the waters. And, as demonstrated in the final chapter, these waters run deep with potential for research, exploration, and understanding.

A Note on Grounded Theory Approach

Using textual analysis to deconstruct media coverage implies some level of researcher bias. By selecting the cases to be covered, the researcher implies a certain level of innate significance to some cases that others may not recognize. To be sure articles used were representative of the news media's coverage, the researcher selected cases that reached a level of legal significance, meaning they were tried or settled at least at the federal circuit level. Cases decided at this level or beyond set precedent for First Amendment theory by either reversing or reinforcing prevailing court doctrine.

This study cannot be representative of any and all news media coverage relating to student's First Amendment rights; it is a limited selection of newspaper coverage on a limited number of legal cases. Semantic and rhetorical limitations arise with the use of terms like "news media, citizenship, self-fulfillment, etc." Legal and scholarly understandings of these terms were provided to avoid confusion or misrepresentation. All of these limitations were the result of the researcher's choices, and they were choices based on significant consideration of the study's design.

Chapter 5: Findings

This chapter documents the findings of cases regarding high school and college students' freedom of speech and press. It reports on four high school cases and four college cases. The cases are presented chronologically. Each case section opens with a brief historical discussion of the time in which the case was filed as well as a discussion of relevant media and world events that could have impacted the scope and nature of coverage. Then, each section outlines the main frames found within the articles and provides excerpts, analysis and extended discussion of these frames. Because each case generated articles with specific focuses, constructions, and themes, the categories across cases are similar but not identical.

For each excerpt, a citation including the last name of the journalist and full name of the newspaper is provided to give background information on the excerpt's source. Full newspaper source citations can be found in the appendix for each case. While the effects of news media ownership and a reporter's personal and political ideology on news media coverage are beyond the scope of this paper, this source information provided can be used as a tool in further understanding the different types of coverage. Comprehensive conclusions based on the findings and analysis follow in Chapter Six.

Tinker v. Des Moines

Case filed: 1965
Supreme Court ruled: 1969

Make Peace, Not War: A Historical Perspective

It was a decade of violence. A decade of protest, a decade of love, and a decade of "Help" when the Beatles emerged on the music scene in full force. When middle school student Mary Beth Tinker and her high school-aged brother John, as well as a handful of friends, decided to wear black armbands to school in 1965 to protest the Vietnam War, their actions reflected a growing nationwide concern. Anti-war protests drew thousands in cities across the world, and personal demonstrations of protests ranged from commonplace picketing to rare violence, as evident when a man set himself on fire in front of the United Nations Building that year.

Findings

In hindsight, it is surprising that one of the most famed First Amendment cases received such little coverage while later cases generated more significant attention. This section summarizes the findings of the only two articles located which covered the court case *Tinker vs. Des Moines Independent Community School District*, 393 U.S. 503 (1969). This study looked at one article and one commentary, both in *The New York Times.* The coverage spanned from February to March of 1969.

Previous scholarly research into the *Tinker* case has discussed local coverage of the story. In legal scholar John Johnson's chronicle of the *Tinker* case, *The Struggle for*

Student Rights: Tinker v. Des Moines and the 1960s, Johnson (1997) discusses the tenor of editorial coverage from the now-defunct Des Moines *Tribune* and its sister paper, the Des Moines *Register*. His discussion suggests the local newspapers' editorials hedged, offering pleas that the issue might be resolved in a timely and pleasant manner. According to Johnson, one editorial snidely critiqued the school board's dodging of the issue until the board realized the case wasn't going away (Johnson, 1997). Unfortunately this study was unable to discover that coverage. Archival and database searches found no such editorials, and a written request for direct copies from the Des Moines *Register* went unanswered. A search of the Des Moines *Register* index for terms "Tinker" and "Tinker v. Des Moines" yielded no results.

In light of this, the findings here are based solely on the two *New York Times* pieces. Appendix A provides a complete list of newspaper sources. The article and commentary were both analyzed according to the central research question:

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the article and commentary focused on how the reporter:

1. Provided legal context and case background
2. Relayed court rulings and judges' opinions
3. Opined potential reactions from students
4. Iterated legal limits of the ruling; and
5. Characterized the court's dissent

In the *Tinker* case, the editorial voice was as significant as the straight news coverage, though there was no significant use of expert testimony in either article to discuss the

case. Instead, the opinion column was an equally dominant vehicle for information regarding the case and the legal ruling. Sections from the opinion column are grouped with similar excerpts from the straight news piece to show similarities and differences in the media coverage. It is important to note that the same reporter wrote both the opinion column and the straight news article. Traditionally, this would represent a conflict of interest and signal a level of bias in the reporter, since journalists do not usually write opinions on the same stories they cover.

1. Providing Legal Context and Case Background

Because *Tinker* marked the first significant case to rule on students' First Amendment rights in schools, there was little legal context to which newspapers could refer. As a result, both the opinion column and the straight news story referenced a 1943 Supreme Court ruling that protects students from being forced to salute the American flag. The opinion column gave no significant background on what happened in the *Tinker* case, but the straight news story devoted five paragraphs to case history. Interestingly, the paragraphs on case history first stated the claim that "school officials in Des Moines, Iowa, had violated the First Amendment rights of three *children*" (Graham, *The New York Times*, Feb. 25, 1969, italics added). However, the article continued by providing the age range of those students involved, all of whom were ages 13-16, a range most would characterize as teenagers, not children.

2. Relaying Court Ruling and Judges' Opinions

In describing what the court ruled and what the judges said, the straight news article and opinion column were appropriately different. The former maintained a "he said,

she said" approach to this by allowing quotes from judges and the rulings to speak for themselves. The author balanced the quotes from the judges' favorable ruling for the students with a quote from dissenting Justice Hugo Black:

> " 'In our system, students may not be regarded as closed-circuit recipients of only that which the state chooses to communicate'" (Graham, *The New York Times*, Feb. 25, 1969).
>
> " 'This is the more unfortunate for the schools,' he [Black] said, 'since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins and smash-ins'" (Graham, *The New York Times*, March 2, 1969).

The opinion column, however, was more descriptive and critical of the ruling, and went beyond merely reprinting the text of the decision:

> "The only real alternative to the decision was to say that students have no free speech rights, and the law had almost developed too far to take that position now" (Graham, *The New York Times*, March 2, 1969).
>
> "There is less than meets the eye to the Supreme Court's new ruling that public school students have a constitutional right to be heard as well as seen" (Graham, *The New York Times*, March 2, 1969).
>
> "On the face of it, the Court seemed to be doing a groovy new thing" (Graham, *The New York Times*, March 2, 1969).

3. Opining Potential Student Reactions

The personal opinion column by Graham suggested students might have seen the ruling as a get-out-of-jail free card, protecting any and all bad behavior:

> "…some youngsters may have believed that they had scored in a big way" (Graham, *The New York Times*, March 2, 1969).

However, Graham's column later rejected this fear by noting the limitations of the ruling.

> "So before the school children of the country decide to begin swinging with their new constitutional rights, they would do well to read some of the fine print in the decision and reflect that all nine justices are, after all, 'over 30'" (Graham, *The New York Times*, March 2, 1969).

In these excerpts, Graham assumed he knew how students would react to the ruling without actually providing first-hand responses from students. This level of assumption is pretentious and contrary to common journalism ethics that advise journalists never to assume; Graham and the story would have been better served had he actually provided a student's perspective on the case.

The "fine print" Graham referred to was examined more thoroughly in both the straight news article and the opinion column as they iterated the legal limits of the ruling.

4. Iterating Legal Limits of the Ruling

The opinion column expressed concern about the restrictive standard of the ruling, but both the straight news article and the column cited similar circumstances that demonstrated the ruling's limitations. Note the similarities in these examples:

> "their rights included only political expression, and that the Federal courts would not become involved in disputes over the permissible length of students' hair or skirts" (Graham, *The New York Times*, Feb. 25, 1969).
>
> "Finally, the student's new right of expression does not help those who choose miniskirts and hippie hair styles as a way of expressing their individualism" (Graham, *The New York Times*, March 2, 1969).

In his opinion column, Graham indicated he believed the ruling might still be overly restrictive, yet in his news article, he chose to emphasize the ruling's narrow parameters:

> "the free speech right extended by the Supreme Court to students…a restrictive standard that will give school personnel power to limit students' speech under many, and perhaps most, circumstances" (Graham, *The New York Times*, March 2, 1969).
>
> "Justice Abe Fortas emphasized in the Court's opinion that school children's free speech rights are limited to conduct that does not disrupt discipline or interfere with the rights of others" (Graham, *The New York Times*, Feb. 25, 1969).

Even the headline in Graham's column told of his uneasiness over the decision, and his column revealed his ambivalence toward the ruling:

> "Freedom of Speech, But Not License" (Graham, *The New York Times*, March 2, 1969).

> "The Justices…realized when they extended the First Amendment's free speech right to children that it would have to be a child-sized First Amendment—and so they trimmed it down to fit the occasion" (Graham, *The New York Times*, March 2, 1969).

> "Furthermore, free 'speech' to students means only non-disruptive talk, plus a narrow class of conduct called 'symbolic speech,' such as armbands, placards, and banners. Last week's decision specifically said that sit-ins, picketing and demonstrations are not protected" (Graham, *The New York Times*, March 2, 1969).

> "The Court had never before said that students of public schools—or colleges for that matter—have free speech rights that the courts will enforce against their elders" (Graham, *The New York Times*, March 2, 1969).

This accurate characterization of the ruling's precedence was downplayed in the straight news article:

> "today's ruling marked the Supreme Court's first ruling on the question of free speech rights" (Graham, *The New York Times*, Feb. 25, 1969).

In discussing how the ruling might affect schools, Graham once again used the same examples in both his personal column and his news article:

> "Despite efforts by Justice Fortas to confine the ruling to narrow limits, it may make it more difficult for public schools to censor student publications or to purge school libraries or curriculums of 'objectionable' material" (Graham, *The New York Times*, Feb. 25, 1969).

> "The Supreme Court's new decision will reinforce these actions and will probably pave the way for a few embellishments. Students may get by with more criticism of teachers and school officials, and parents' efforts to purge material they don't like from the reading lists will probably be barred" (Graham, *The New York Times*, March 2, 1969).

These similarities between the column and article serve to confound Graham's position, making his opinion and reporting indistinguishable and, in part, chipping away at his credibility as a reporter. Subsequently, it became entirely too difficult to judge whether his news analysis in the article was accurate or merely a toned-down reflection of his opinion, as evidenced in his personal column. While his lukewarm

appreciation for the ruling could help set the bar for public perception in those who read his stories, it also glossed over important details.

5. Characterizing the Court's Dissent

Graham, in his news article, spent seven paragraphs discussing the court's dissent from the perspectives of Justices Hugo Black and John M. Harlan as compared to two paragraphs on the dissent found in his opinion column. Those seven paragraphs included a detailed description judge Black.

> "He objected that young persons are currently too prone to try to teach their elders rather than to learn from them, and that today's ruling would make the situation worse" (Graham, *The New York Times*, Feb. 25, 1969).

> "Justice Black, whose dissents have tended to become longer and more acid in recent years, spoke extemporaneously for about 20 minutes this morning. At one point he used mocking tones to quote from an old opinion with which he disagreed, and he finished by stating that 'I want it thoroughly known that I disclaim any sentence, any word, any part of what the Court does today'" (Graham, *The New York Times*, Feb. 25, 1969).

Graham ended his description of Black's dissent with a single sentence that could be loaded with multiple implications:

> "Justice Black will observe his 83d [sic] birthday next Thursday" (Graham, *The New York Times*, Feb. 25, 1969).

This factual statement is unusual and almost seems to imply more than the information given because Graham did not list the age of any other Supreme Court justice who ruled on the case. The reader is left to conclude that this tidbit of information is significant and relevant to the court decision, and while that may very well be the case, Graham does not further develop his thought process, leaving the reader to make assumptions as to Graham's true intentions.

Justice Black's dissent provided insight into one member of the Court's perspective on students: disobedient rabble-rousers. His wariness of students, and of student freedoms, demonstrated a skepticism found in many later rulings. In fact, at one point Justice Black even appears to condemn the idea that free student expression can be a part of the educational experience:

> The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach. (*Tinker vs. Des Moines Independent Community School District*, 393 U.S. 503 (1969), Justice Black, *dissenting*)

Justice Black's dissent was deserving of news media attention and public debate for the simple fact that Black, nominated by the president and appointed for life to the nation's highest court, was expressing his belief that because schools accepted taxpayer dollars (taxes paid by adults, no less), that adult mandates for student behavior were the only acceptable educational approach. Justice Black, while serving the public through government appointment, did not necessarily speak for all tax-paying citizens, and therefore, the public had the right to a level of accountability for and discussion of the beliefs of those who hold public office.

Perhaps more than any other case, the juxtaposition in *Tinker* coverage of a single news article and a single opinion column written by the same person represented an intrinsic dilemma journalists face in covering issues of student freedom of expression. The news story, located on page A1 and continued on page A25, received an

esteemed front-page location, while Graham's column was located inside the newspaper—whether Graham's opinion column actually appeared in the opinion or op-ed section of the newspaper is unclear. In separating the two articles, *The New York Times* did, on some level, distinguish between the significance of the case versus the importance of the writer's opinion. However, the fact that Graham wrote from both sides of the story is still an ethical problem. Most journalists hold the concepts of freedom of speech and press in high esteem, so one would expect Graham to take this side in his opinion. But as an adult, he might not agree that all ages share the same First Amendment rights. Graham's dual approach as reporter and columnist, journalist and adult, complicate the presentation of both pieces, leaving the reader wondering exactly which article is indeed fact, and which is opinion.

Healy v. James

Case filed: 1969
Supreme Court ruled: 1972

More than any other case analyzed in this study, *Healy v. James* is an enigma. It is one of the most significant legal cases for student freedoms, and one that is oft-cited in legal and media textbooks. However, archival searches turned up no coverage of the Supreme Court's ruling on June 26, 1972, beyond several newspapers simply listing the case in their summaries of the Court's business. Instead of eliminating this case from the study and choosing another student First Amendment case, *Healy v. James* was retained as an extreme example of how these cases are eclipsed by other stories and to provide an opening to a broader discussion of why student First Amendment cases so often run hot or cold in the news media.

Buried News

Perhaps related to the lack of coverage, *Healy v. James* was decided and announced amid a slew of other rulings the Supreme Court released at the end of the its 1971-1972 session. Though the Court officially recessed on June 30, it released its final set of rulings on June 26, 1972. That same day, the Court announced its decision to delay rulings on two politically heated cases, both challenging the constitutionality of anti-abortion legislation.

Two other momentous political stories occurring at the same time might have accounted for the lack of attention the case received. The ongoing conflict in

Vietnam and the daily breaking news on peace talks and incursions into Cambodia were likely enough to steal the media spotlight. But perhaps even more critical was the state-side news of the Watergate scandal, breaking in early June, 1972. Three days before the Supreme Court released the *Healy* decision, details related to the Watergate reached a new level with presidential implications: President Nixon was taped when talking with chief of staff H.R. Haldeman about using the CIA to interfere with the FBI investigation of the break-in ("Richard M. Nixon: The Watergate Tapes"). All eyes were on the government, and few stories beyond the Watergate agenda made it to the presses.

Aside from Watergate, news media focus in June of 1972 was also on catastrophes, as a string of important events overseas and at home captured the media's attention. Between a plane crash in England, trains colliding in France, a hurricane slamming the East Coast and floods in South Dakota, man-made and natural disasters were responsible for the deaths of hundreds. Internationally, a grand political gesture was made on June 17 with the return of Okinawa to Japan, and on the same day, Chile announced a new form of government. Just days after the Supreme Court's ruling in *Healy v. James*, major shifts in U.S. policy were still occurring; Nixon's announcement that no new draftees would be sent to Vietnam marked a shift in military strategy for the conflict. Finally, a dramatic ruling by the Supreme Court making the death penalty unconstitutional was released on June 29, 1972, just three days after the *Healy* ruling was announced.

In the media world, technology was at the forefront with the first public demonstration of ARPANET at the International Conference of Computer Communications in Washington, D.C. (Sheddon, 2009). Newsrooms across the country also began slowly integrating computer interfaces into their newsrooms (Sheddon, 2009).

The fact that no significant coverage of this case was found could be indicative of the low priority the news media place on stories relating to student freedom of expression. While it is understandable to note that other, perhaps even more significant, events were taking place around the same time period, the fact that a case of this scope went essentially unnoticed at the time hints at the news media's regard for student issues.

Had media been paying attention, they could have written about Justice William O. Douglas' separate concurring opinion that highlighted other pressing issues in academia at the time. His opinion expressed his concern that universities were not keeping up with the changing tides:

> Many, inside and out of faculty circles, realize that one of the main problems of faculty members is their own re-education or re-orientation. Some have narrow specialties that are hardly relevant to modern times. History has passed others by, leaving them interesting relics of a bygone day. More often than not they represent those who withered under the pressures of McCarthyism or other forces of conformity and represent [408 U.S. 169, 197] but a timid replica of those who once brought distinction to the ideal of academic freedom. (Justice Douglas, *concurring*)

The opinion suggested that, given the struggles of the 1960s and 70s, the case was actually rather insignificant for its purpose. But, Justice Douglas argued that the real

implication of this case reaching the Supreme Court was that it reflected a rather ill academy:

> Students - who, by reason of the Twenty-sixth Amendment, become eligible to vote when 18 years of age - are adults who are members of the college or university community. Their interests and concerns are often quite different from those of the faculty. They often have values, views, and ideologies that are at war with the ones which the college has traditionally espoused or indoctrinated. When they ask for change, they, the students, speak in the tradition of Jefferson and Madison and the First Amendment.
>
> The First Amendment does not authorize violence. But it does authorize advocacy, group activities, and espousal of change.
>
> The present case is minuscule in the events of the 60's and 70's. But the fact that it has to come here for ultimate resolution indicates the sickness of our academic world, measured by First Amendment standards. Students as well as faculty are entitled to credentials in their search for truth. If we are to become an integrated, adult society, rather than a stubborn status quo opposed to change, students and faculties should have communal interests in which each age learns from the other. Without ferment of one kind or another, a college or university (like a federal agency or other human institution) becomes a useless appendage to a society which traditionally has reflected the spirit of rebellion. (Justice Douglas, *concurring*)

Essentially, the entirety of Douglas' concurring opinion is a treatise on the state of education—primary, secondary and higher—in the early 1970s. Given that no other justices joined his separate yet concurring opinion in the case, it can be assumed that Douglas' thoughts were not shared by the rest of the majority. This, then, was a news story that the media could have profitably written about. Douglas' opinion noted a change in American ideals; and his authoring of an individual opinion suggested that there might be a shifting taking place in the balance and mentality of the court—both of these were observations that Court "watchdogs" should have deemed worthy of public scrutiny.

It is likely inaccurate to assume *Healy v. James* did not receive *any* news media coverage. That no coverage could be found in the databases this study utilized, and through targeted searches of local and state newspaper archives, is potentially a result of the era of the coverage and the relatively slow nature in which decades-old newspaper articles become publicly archived. Still, that no major national news media voices, such as *The New York Times* or *The Washington Post*, gave the story substantial coverage is a gross oversight.

There are perhaps many reasons why student First Amendment issues, as a whole and as demonstrated in the rest of this chapter and Chapter Six, receive such little attention. While this study was not designed to address this "why" question, the news media response to *Healy v. James* provided an opportunity to address possible reasons. This section introduced some immediate reasons why the case received such little attention; the conclusions chapter contains a more thorough discussion of news media coverage of student First Amendment issues.

Papish v. Board of Curators

Case filed: 1969
Supreme Court ruled: 1973

Testing the Limits of Personal Freedom: A Historical Perspective

When *Papish v. Board of Curators* hit the Supreme Court in March of 1973, the Court had a docket full of personal freedom-testing cases. *Roe v. Wade* was decided in January the same year, and *Papish* was closely followed in June by the infamous *Miller v. California* case, which tested (and consequently reestablished) the limits of Constitutionally protected obscenity. On some levels, the *Miller* case was the legal embodiment of the cultural hoopla observed after a Pacifica station aired the uncensored version of George Carlin's skit containing his list of "Seven Words You Can Never Say on Television." The broadcast of that skit would later go to the Supreme Court in 1978 after the FCC put Pacifica's station WBAI on notice for the broadcast, and the nation's first formal indecency laws were established for the airwaves.

Despite efforts to tame media content, the political landscape engendered a significant amount of dissent in 1973, and news media coverage followed. Protestors demonstrated against the inauguration of U.S. President Richard Nixon, and secret peace talks between the U.S. and North Vietnam were underway. A peace agreement was eventually signed, but antiwar protesters continued as pressure mounted on Congress to pass the War Powers Act, which essentially limited the ability of future presidents to send troops into battle without Congressional approval ("How War

Powers Act Works," *New York Times,* 1984). Meanwhile, the first of the Watergate burglars pleaded guilty in federal court.

Findings

This chapter summarizes the findings of a sample of 10 articles covering the court case *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973). This study looked at nine articles from local newspapers and one article from a national newspaper. Of the 10 articles analyzed, there was one local editorial. The coverage spanned from Sept. 20, 1972 to April 14, 1973. Appendix B provides a complete list of newspaper sources. The articles were analyzed according to the central research question:

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the articles, editorials and commentaries focused on how the reporters:

1. Established case background
2. Provided legal context
3. Relayed court rulings and judges' opinions
4. Described the student's position
5. Described the school's position; and
6. Characterized and editorialized the lawsuit

Unlike some cases, news media coverage of the *Papish* case did not include significant use of expert testimony. There was also little discussion regarding potential effects of the ruling on greater issues of student press and student rights. A single editorial provided perspective on how professional journalists viewed the case and its outcome. As compared to other court cases in this era, the *Papish* case

received considerably more attention, although most of it was local, as will be discussed later.

1. Establishing Case Background

While news media coverage of other cases involving prior review or censorship often substituted a euphemism for the word "censorship," this was not true for *Papish*. Because censorship itself is a proactive measure—prohibiting the publication or expression of something—and the actions in *Papish* were reactive, the focus shifted to terms used to describe her being removed from the university. Descriptions of what happened to Barbara Papish after she published her underground newspaper were almost evenly split between two words: "expelled" and "dismissed." Three articles and one editorial used the term "dismissed," while five articles used the term "expelled." One article used both terms interchangeably.

As with the use of the word "censorship" in coverage of other cases, euphemistic substitutions in the *Papish* coverage could imply entirely different meanings for any given reader. The seemingly slight difference in word choice between "expelled" and "dismissed" actually represents two entirely separate implications about what happened to Barbara Papish. The word "dismissed" is much less forceful and can even imply a level of compliance or acceptance on Papish's part, while the word "expelled" clearly indicates a retaliatory act of punishment.

Interestingly, only one article provided background information on Papish's academic record and how it did (or perhaps did not) affect the school's decision to expel her:

> "When dismissed, Ms. Papish was on both academic and disciplinary probation at the university. The university had claimed in its case against Ms. Papish that the question of her removal for distributing "indecent" literature was moot because she had failed also to fulfill scholastic requirements while on academic probation. The failure to fill these requirements also would keep her from returning to UMC, university attorneys had claimed" (Noblin, *Columbia (MO) Daily Tribune*, March 19, 1973).

Why only one article included this information is unknown. To include this information could suggest the court case is about something other than Papish's right to distribute an underground newspaper; it minimizes her agency as a person entitled to First Amendment protections according to the law and essentially makes the case an issue of behavior. In doing so, this contextual addition could also perpetuate the notion that the First Amendment only applies to thought and speech that is publically acceptable. On the contrary, the Supreme Court's ruling confined itself to the question of whether Papish's expulsion was legitimate by noting only in passing that "disenchantment with Miss Papish's performance, understandable as it may have been, is no justification for denial of constitutional rights" (*Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), footnote 1).

2. Providing Legal Context

Only two articles and one editorial provided any amount of legal context by referencing contemporary legal constraints on students. One article referenced *Healy* as the reigning legal standard (the case was referenced multiple times in the Court's opinion), while another referenced a general order from Missouri that was discussed during the court case. The editorial referenced neither but instead provided a single, general paragraph describing student freedom of expression law.

> "…the case he was referring to involved the recognition of the Students for Democratic Society (SDS) at a Connecticut university. That university had refused recognition, but recognition was mandated by the Supreme Court. Wulff said that case was the landmark decision involving the free speech rights of college students. He said the election today

merely affirmed the court's previous decision" (Noblin, *Columbia Daily Tribune*, March 19, 1973).

"However, the District Court for the Western District of Missouri, in a 1971 decision, issued a 'General Order' which provides that universities and colleges may '…require scholastic attainments higher than the average of the population and may require superior ethical and moral behavior. In establishing standards of behavior, the institution is not limited to the standards or the forms of criminal law'" (Vandiver, *Columbia Daily Tribune*, Dec. 2, 1972).

"There has developed quite a body of law which says that schools and universities can make rules for student conduct to preserve the educational function. These rules do not always have to follow precisely the same guidelines that would apply to individual citizens off the campus. Due process must be exercised in imposing penalties under university rules, but once this has been established the courts have been relatively lenient in permitting regulations of strict substance" (Staff, *Columbia Daily Tribune,* March 20, 1973).

3. Relaying Court Ruling and Judges' Opinions

Descriptions of what the court ruled ranged from sweeping interpretations that served to place the ruling in a greater context of student First Amendment rights, to more narrow descriptions that confined the scope of the ruling to the university:

"The court ruling yesterday said universities cannot impose free speech regulations on students if those regulations are stricter than the First Amendment" (Noblin, *Columbia Daily Tribune,* March 20, 1973).

"The high court ruled today that universities cannot impose free speech regulations on students if those regulations are stricter than the First Amendment" (Noblin, *Columbia Daily Tribune*, March 19, 1973).

"State university officials cannot shut off the dissemination of offensive ideas by expelling a student who circulates them in print, the Supreme Court ruled today" (Weaver, *The New York Times*, March 20, 1973).

"The court ruled recently that the university was wrong in expelling Ms. Papish in 1969 for distributing on the Columbia campus an underground newspaper which the university deemed to be indecent and obscene" (Staff, *Columbia Daily Tribune*, April 14, 1973).

"The court's recent ruling held that the university could not expel Ms. Papish for distributing an underground newspaper which the university deemed 'indecent' on the Columbia campus" (Noblin, *Columbia Daily Tribune*, April 6, 1973).

Use of direct quotations from the ruling was sparse, and only one article devoted significant space to the court's dissenters. In that article, the dissent received approximately four paragraphs out of an approximately 11-paragraph story. Likewise, only one article went so far as to recall the arguments Papish's attorney

used in court. This pattern provided little discussion and context as to how the court reached its decision and what the ramifications of that decision were.

As in *Healy*, the two separate dissenting opinions provided significant insight into the Court's approach to the case. In his dissent, Justice Warren Burger submitted that

> A university is not merely an arena for the discussion of ideas by students and faculty; it is also an institution where individuals learn to express themselves in acceptable, civil terms. We provide that environment to the end that students may learn the self-restraint necessary to the functioning of a civilized society and understand the need for those external restraints to which we must all submit if group existence is to be tolerable" (*Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), Burger, *dissenting*).

Also dissenting were Justices William Rehnquist and Harry Blackmun, who took their argument a step further by arguing that, were the Court to continue to support such actions at public universities, tax-payers might also become "disenchanted" with higher education's role in civil society. These separate but similar dissents demonstrated a significant departure from the *Healy* ruling and in some ways anticipated rulings in future cases such as *Hazelwood* by reinforcing the argument for society-enforced civility as a function of public education.

4. Describing the Student's Position

To describe the situation, two articles—one from 1972 and one from 1973—quoted Papish directly, using her opinions to shore up the articles' account of her First Amendment claims and antagonized position. However, out of 10 articles, only two reporters used Papish as a primary source. Instead, most articles simply quoted from the legal documents or Papish's lawyer to establish and describe Papish's position.

Many articles offered no content procured either directly or indirectly that conveyed the student's position, instead confining the stories to an account of the legal proceedings. Still, that any article quoted Papish is a step beyond other newspapers' coverage of student First Amendment cases. It must be noted, however, that the quotations that were obtained from Papish did little to flesh out the discussion about the extent of students' First Amendment rights. Instead, they were rather superficial and, in the case of the second quotation, were not entirely flattering:

> " 'I hope I win.' She added if the case were decided in her favor, 'It would give me great pleasure to return to Missouri next fall'" (Staff, *Columbia Daily Tribune,* Sept, 20, 1972).

> " 'I am very happy and very surprised,' she said. 'With the Nixon government, you never know what to expect. But there never should have been a trial at all,' she concluded. 'The university should have realized in the first place that there is a Bill of Rights'" (Noblin, *Columbia Daily Tribune*, March 19, 1973).

5. Describing the School's Position

Comments from the university were more common amid the articles than were comments from Papish, and three of the articles were directly written from the angle of the university's position and/or disagreement with the ruling. One article was written with the headline "MU dean upset by decision" (Noblin, *Columbia Daily Tribune*, March 20, 1973). In total, the university's position received considerably more coverage than did Papish's position. One article framed the school's position against Papish as an issue of decency versus offensiveness and suggested a hierarchy of protected speech:

> " 'I grew up in Sedalia and by the time I was six I could match any of the language of the railroaders,' Thelen [school dean] said. 'When I came to the university, I tried to improve my language. I hope I've learned to express myself in a decent manner. There's no place for that kind of language here'" (Noblin, *Columbia Daily Tribune*, March 20, 1973-brackets added).

> " 'This business of four-letter words is immature,' he [university board member] said. 'Those that I saw when I was young were always written behind a barn somewhere. I don't think that

> because in this case they came off a typewriter, that dignifies them any'" (Noblin, *Columbia Daily Tribune*, March 20, 1973-brackets added).

There were no direct quotations from Papish in these articles to respond to the perspectives of the dean and school board member.

6. Characterizing and Editorializing the Lawsuit

The articles as a whole were largely devoid of modifiers that could be construed to characterize the lawsuit in a positive or negative light. Only one article called the lawsuit a "battle," using a loaded noun to illuminate the difference between stories written decades ago and today's coverage of similar court cases (see *Utica* and *Morse* for more discussion). This lack of characterization could represent more strict journalism standards against such embellishments, or it could signify an uninterested press that deemed the case relatively unimportant and therefore did not write to the scope of the case. However, a single editorial voice (Staff, *Columbia (MO) Daily Tribune*, March 20, 1973) backed Papish (although it hedged its bet not on Papish's right to voice vulgar and obscene opinions but on the school's authoritarian stance) and characterized the school's administration as Machiavellian despots:

> "A First Amendment victory" (headline).
>
> "This is a good decision."
>
> "Not because there was anything of particular value in the message Ms. Papish was trying to distribute. *As a matter of fact, the underground newspaper was not an important organ of communication* and would not have received much notoriety at all except for that which the traumatized university officials gave it" (emphasis added).
>
> "The court decision was good because it said that those officials should not have taken it upon themselves to judge the quality or propriety of the communication – this should be left to individuals who had the options of either refraining from reading the paper, rejecting the message after reading it or accepting it."
>
> "The First Amendment says that the people should be allowed to make these choices for themselves. Let all kinds of information flow and let the people use their individual powers of intelligence and discrimination to determine what they will believe and what they will not believe."

> "The primary tool of the despot is the 'judging' of information for the 'benefit' of the people he would control."
>
> "Trust the folks, you high muckedy-mucks. It's their system, not yours."

This editorial position coincided with a "marketplace of ideas" approach to the First Amendment. By supporting all kinds of speech in the marketplace, it argued that individuals must be allowed to choose for themselves that speech which they believe is most true and which most resonates with their own personal values.

On the whole, analysis of the *Papish* coverage shed light on some of the secondary research questions by showing that newspapers focused mostly on the student, the court ruling and the school's position. The analysis invoked these secondary research questions:

> RQ_2: How do U.S. newspapers characterize high school and/or college students who initiate legal action to protect freedom of speech or press rights?
>
> RQ_3: To what extent do U.S. newspapers provide a legal framework to contextualize the speech and press rights high school and college students currently possess?
>
> RQ_5: How do U.S. newspapers characterize the role and importance of free speech and free press in college?
>
> RQ_7: Do U.S. newspapers support college students' freedom of speech and press? If so, to what extent?

The focus on Barbara Papish's academic record and activities as a student demonstrated the journalists' attention not only to the legal claim but also to the personal characteristics of the students involved. At times, it seemed as if it were not the school's actions but the students' moral dispositions that were at the heart of the

debate— Papish was often characterized in ways that made her appear as an aggressor picking a fight. Since this case is one of the first to deal directly with student free speech rights, the legal context is vague and superficial. It could be argued, in reference to RQ_3, that there was little legal framework from which a reporter could draw significant legal context. However, the strong—if lone—editorial voice and characterizations in the news articles spoke to RQ_7. Because the coverage included only one article from the national press, the analysis results reflect news media coverage that was hyper-local. Whether the national press as a whole would have taken the same approach, with similarly strong sentiments as found in the local newspapers, is unclear.

Hazelwood v. Kuhlmeier

Case filed: 1983
Supreme Court ruled: 1988

Signs of the Times: A Historical Perspective

As the Hazelwood East High School newspaper, *The Spectrum*, wrapped up publication during 1983 school year, two articles piqued the principal's attention. The stories—discussing pregnant students and the effects of divorce on teenagers—were subsequently pulled from the paper, and the student editors objected. After five years in the justice system, the case, *Hazelwood v. Kuhlmeier,* was granted certiorari by the Supreme Court and decided in January of 1988. In the year preceding the ruling, a number of national and world events changed history.

In many respects, it was a year of pushed boundaries and uncertain fears, as the Holy See condemned artificial insemination and for the first time an eyewitness described the Unabomber leaving the scene of a bombing in Utah. In August 1987, the Federal Communications Commission rescinded the Fairness Doctrine, in a sense deregulating broadcast content but opening the door to years of similar questions over fairness and access. This occurred just two months after then-President Reagan's famous demand: "Mr. Gorbachev, tear down this wall." This affront on communism was broadcast across the world and was seen by many as the beginning of an end to Cold War-era diplomacy.

In the media world, invisible lines were also being crossed. The debut of *The Simpsons* as brief cartoons on the Tracey Ullman Show was met with mixed emotion for its dysfunctional depiction of an American family and its glorification of rebellious children.

In schools, parents and educators were advocating pedagogical change based on the 1983 report from the National Commission on Excellence in Education, "A Nation at Risk." The report documented "widespread failure in American schools" (Lips, 2008) and likened the state of education to a war-crime against students: "If an unfriendly foreign power had attempted to impose on America the mediocre education performance that exists today, we might well have viewed it as an act of war" ("A Nation At Risk," 1983). The Report chastised the political powers that sat idle as educational systems crumbled and also critiqued a dominant American mentality that the Report claimed failed to see the bigger picture and purpose of education. So, the Report issued a challenge not only to reshape U.S. schools, but also to reshape the place of America in McLuhan's larger "global village."

> Our concern, however, goes well beyond matters such as industry and commerce. It also includes the intellectual, moral, and spiritual strengths of our people which knit together the very fabric of our society. The people of the United States need to know that individuals in our society who do not possess the levels of skill, literacy, and training essential to this new era will be effectively disenfranchised, not simply from the material rewards that accompany competent performance, but also from the chance to participate fully in our national life. A high level of shared education is essential to a free, democratic society and to the fostering of a common culture, especially in a country that prides itself on pluralism and individual freedom. (Report)

It is a distinct combination of these dynamics that shaped the perspective of both the news media's and the Supreme Court's view of what happened at Hazelwood East.

Findings

This section summarizes the findings of 10 articles covering the court case *Hazelwood v. Kuhlmeier et al.,* 484 U.S. 260 (1988). All 10 articles used in this study were from non-local state or national newspapers. Of those, six were editorials or commentaries. The coverage spanned one year, from March 3, 1987 to May 29, 1988. Appendix C provides a complete list of newspaper sources. The articles were analyzed according to the central research question:

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the articles, editorials and commentaries focused on how the reporters:

1. Established case background
2. Relayed court rulings and judges' opinions
3. Explained effects of ruling
4. Provided legal context
5. Described community and expert response
6. Described dissent; and
7. Analyzed the role of the First Amendment in society and schools

1. Establishing Case Background

In establishing the case background, reporters generally focused on the original action that led to the lawsuit and the students' claims, while at times supporting those claims by characterizing and evaluating the work of the student journalists.

Original action

Only one article, in describing the action that initiated the lawsuit, used the word "censorship." Others, including two opinion articles and one editorial, used euphemisms to describe what happened:

> "The case arose in 1983 when the principal of a high school in Hazelwood, Mo., a suburb of St. Louis, removed, without consulting the student editors, two pages from The Spectrum" (Hechinger, *The New York Times*, Jan. 17, 1988).
>
> "The case, Hazelwood School District v. Kuhlmeier, No. 86-836, began in 1983, when the principal ordered deletion before publication of two full pages of the newspaper because he objected to two articles" (Taylor, *The New York Times,* Oct. 14, 1987).
>
> "He did not allow Spectrum, the school-financed newspaper, to publish articles on teen-age pregnancy and the impact of divorce" (Goldstein, *The New York Times*, May 29, 1988).
>
> "When the principal saw the proofs of the last issue of the school year in May 1983, he rejected two pages of the paper" (Staff, *New York Times,* Jan. 15, 1988).
>
> "The case began in May, 1983, when a high school principal in Hazelwood, Mo., deleted two pages from the school newspaper" (Taylor, *The New York Times,* Jan. 14, 1988).

Interestingly, one article took a slightly different approach in its description of what caused the lawsuit:

> "The case, Hazelwood School District v. Kuhlmeier, grew out of a long-standing conflict between two theories of education" (Hechinger, *The New York Times,* Jan. 17, 1988).

This description hints at a larger issue—one that lies deep within the heart of American pedagogy but is not explored to any significant extent in the remainder of the article. This allusion to what was likely a complicated and profound conflict gives short shrift to the real issues involved with censorship and was an example of the news media oversimplifying what, in reality, should have been a more substantial discussion on educational theory.

The trend towards euphemistic word choice to describe what happened contradicted the language used in the Supreme Court ruling. Both the dissent and the majority ruling in *Hazelwood* exclusively used the term "censor" and its many iterations (censored, censorship, censoring) to describe the actions of the school. In

fact, the majority ruling used iterations of the word "censor" 34 times throughout the ruling, while the dissent used the term 22 times. Whether journalists used other word choices besides "censorship" out of attempts to avoid the mundane or fear of repetition was beside the point. Using any word other than the legal term denudes the seriousness of the charge and minimizes the students' claim.

The student journalists

Reporters most commonly described the student editors' claim as a "charge" that the principal's actions amounted to prior restraint and therefore violated the students' First Amendment rights. While journalists tend to judge the quality of their own and others' work by its sourcing and use of primary materials, only two articles included any significant account or analysis of the stories that were censored. However, one opinion article and one straight news story used multiple sentences to describe the stories that were pulled:

> "The articles that the Hazelwood principal removed contained statistical information on teen-age pregnancies in Missouri and nationwide. They included accounts, based on interviews, on how three unidentified teenagers had been affected by unwanted pregnancies. They also dealt with birth control, mainly in terms of what groups such as the Alan Guttmacher Institute and Planned Parenthood were saying" (Hechinger, *The New York Times*, Oct. 27, 1987).

> "The Spectrum's embattled articles did not seem in any way disruptive. The originals, furnished by the Student Press Law Center, an organization based in Washington that researches and reports on controversies involving high school and college publications by students, show that the articles dealing with teen-age pregnancies contained statistical information, both nationwide and for Missouri. They included accounts, based on personal interviews, of how three teen-agers, not identified by name, were affected by unwanted pregnancies…They also warned that 75 percent of teen-age marriages end in divorce" (Hechinger, *The New York Times*, Jan. 17, 1988).

> "The issue here is the principal's assertion that certain topics – even if they are of legitimate interest to students – are automatically taboo, even if the topics figure prominently in public discussion and are, as in the case at hand, treated seriously" (Hechinger, *The New York Times*, Oct. 27, 1987).

By including these descriptions of the stories in question, the articles demonstrated a level of independent journalistic investigation not achieved by the rest of the coverage. As an editorial noted:

> "The student journalists made mistakes but deserved commendation as well as correction. They tackled tough subjects, where many school newspapers content themselves with publishing dull community billboards. They did so in a serious way" (Staff, *The New York Times,* Jan. 15, 1988).

2. Relaying the Court Ruling and Judges' Opinions

Reporters relied heavily both on direct quotations from the court ruling and on summary analysis to explain how the justices ruled in the case. Almost every article cited a direct quotation either from the ruling or the judges' majority or dissenting opinions—and sometimes used quotations from both. Most of the quotations used reiterated the ruling's position that restriction of student newspaper content was permissible because of students' age and maturity level, as well as the formative nature of school activities.

> " 'A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school,' Justice Byron R. White wrote in issuing the decision" (Watson, *San Jose (CA) Mercury News*, Jan. 14, 1988).

> "Justice White upheld the school authorities' right to censor speech that is 'ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences'" (Hechinger, *The New York Times*, Jan. 17, 1988).

One article's lead elevated the school's position by implying the principal's "right to censor" already existed, and the principal was merely defending this right:

> "School administrators and student editors faced each other last week before the Supreme Court as a school board defended a principal's right to censor the student newspaper" (Hechinger, *The New York Times*, Oct. 27, 1987).

This seemingly innocuous twist of rhetoric stripped power and position from the students, who were, after all, the central figures in this case. It was the students who

initiated the lawsuit—but this article instead placed the focus on the school's defense of its "right to censor."

Other articles— two straight news stories and one editorial—chose to frame the case in terms of its overall significance:

> "the U.S. Supreme Court ruled Wednesday that school newspapers and other forms of student expression are not protected by the First Amendment" (Watson, *San Jose Mercury News*, Jan. 14, 1988).
>
> "The Supreme Court gave public officials sweeping power to censor school-sponsored student publications yesterday, rejecting the complaints of three dissenting justices that it was approving 'brutal censorship'" (Kamen, *The Washington Post*, Jan. 14, 1988).
>
> "The Supreme Court has upheld in broadest terms the power of public school authorities to control the content of school newspapers" (Staff, *The New York Times,* Jan. 15, 1988).

3. Explaining the Effects of the Ruling

More than the straight news stories, opinions and editorials tended to explain the immediate outcome of the ruling and potential effects by focusing on two aspects: the effects of the ruling on student press, and the larger issue of student freedoms. The majority of these editorial and opinion pieces wasted no space in painting the ruling as the demise of scholastic journalism.

> "The remaining Associate Justices…set journalism for high school students back 20 years" (Hechinger, *The New York Times*, Oct. 27, 1987).
>
> "This decision gives the impression that journalists lose some of their free-press rights when they go through the high school door" (Hechinger, *The New York Times*, Oct. 27, 1987).
>
> "Now just about any educational reason will justify heavy editing and outright exclusion of student articles" (Staff, *The New York Times,* Jan. 15, 1988).
>
> "But the Court's affirmation puts heavy responsibility on how educators will use that authority" (Staff, *The New York Times,* Jan. 15, 1988).
>
> "It is ironic that the same institution in which students learn of America's bountiful freedoms has become a shelter for unrestrained and unjustified censorship" (Achorn, *The (Harrisburg, PA) Patriot-News*, April 4, 1988).

> "The outcome could have a lasting effect on student journalism and young people's views about freedom of the press and responsibility" (Hechinger, *The New York Times*, Jan. 17, 1988).

One reporter, writing an opinion piece, interpreted the ruling as simply pragmatic, noting that even the very opinion piece he was writing was subject to content control by a higher-up. The piece suggested that all writing, when part of a business or publication, is subject to some degree of scrutiny and content control, which at times appears as censorship. Instead of the devastating blow to student freedoms, as seen by other writers, the opinion viewed the ruling as a reality check.

> "one unintended positive feature is that student writers will now get a more realistic view of how the publishing world works…Student journalists now have to face the awful truth that all professional and amateur writers face: not everything they write will be published" (Goldstein, *The New York Times*, May 29, 1988).

This analysis ignored the fact that as an arm of the government, public schools are not private book publishers and so must observe the letter and spirit of First Amendment as much as Congress or any other government branch. Whether this omission of detail in his comparison was purposeful or the result of ignorance matters little since the overall effect was still the same: to give the impression that government interference with First Amendment expression is the same as editorial discretion at a private publisher.

In addition to explaining the potential effects of the ruling, a handful of articles went so far as to discuss what was at stake ethically, pedagogically, and politically, if students were censored. Much of this discussion took place within the confines of editorials and opinion pieces, in which the writers could take greater liberties in word choice and voice. However, the lone editorial voice spent a great deal of space equivocating, giving no clear opinion on the issue.

> "The 5-to-3 majority is basically correct in upholding the authority of educators over students of this age."
>
> "The court made a practical decision about responsibility and control of student expression at the high school level. It is of enormous importance, however, that this power not be exercised to prevent students from investigating matters of high interest, sensitivity and relevance to the school community. The decision is a challenge to educators to help their students tell the story fairly and accurately, not to squelch them."
>
> "It's a pity that the justices, who did not hesitate to sustain school officials beyond the strict needs of the case before them, could not find space to admonish school systems to wield their power with wisdom, care and restraint" (Staff, *New York Times,* Jan. 15, 1988).

One columnist did not hesitate to elaborate on the high stakes involved in the ruling.

> "If hard issues that trouble teen-agers are to be off limits, there will be no need to shut school papers down – they won't be read anyway"
>
> "This means that the Court may have to come up with a fair and workable definition that is educationally sound without ignoring students' First Amendment rights. Telling school administrators to keep hands off completely is educationally hard to defend. But so is muzzling adolescent expression, with the effect of making school newspapers dull, intellectually bankrupt and unread" (Hechinger, *The New York Times*, Jan. 17, 1988).

4. Providing Legal Context

Because the 1969 *Tinker* case set precedent in regards to student freedoms, almost all the reporters and commentators who provided legal context for the Hazelwood case explicitly referenced *Tinker*. In most instances, the writer used *Tinker* to demonstrate exactly how incongruous the *Hazelwood* decision appeared.

> "Student newspapers have come to rely on their First Amendment rights since a 1969 Supreme Court declaration that students do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.' In that case, the justices concluded that students had a right to wear black armbands to school as part of a non-disruptive protest of U.S. involvement in the Vietnam war" (Watson, *San Jose Mercury News*, Jan. 14, 1988).
>
> "The ruling was a departure from a key 1969 ruling, Tinker v. Des Moines Independent Community School District, in which the court said officials could not expel students wearing black armbands to protest the Vietnam War" (Kamen, *The Washington Post*, Jan. 14, 1988).

There was one reporter—Stuart Taylor, a Harvard Law graduate—who suggested implicitly that *Tinker* was perhaps the incongruous ruling, and that *Hazelwood* was a step toward a necessary center:

> "Under the Court's precedents, government officials have very little latitude to limit expression in a 'public forum'" (Taylor, *The New York Times,* Jan. 14, 1988).

Another article suggested that even attorneys for the student journalists were unconvinced by the argument for scholastic press freedom:

> "Even an attorney for the students conceded that some editorial control is acceptable" (Hechinger, *The New York Times*, March 3, 1987).

No other writer made mention of this concession, which is ambiguous at best. While certainly a very interesting concession from the students' attorney, and perhaps worth mentioning for context, the reporter doesn't elaborate. If *some* editorial control is acceptable, *how much*? These questions point to an important need for journalists to have a thorough understanding of the issues they cover so they may accurately relay all important facts and contexts to the readers.

One article interpreted the *Hazelwood* ruling to be limiting while also suggesting, without elaboration, that it did not override *Tinker*:

> "The ruling…continued a recent trend in which the Court has taken a narrower view of the constitutional rights of public school students than that suggested by its earlier rulings. The decision did not overrule any Supreme Court precedent" (Taylor, *The New York Times,* Jan. 14, 1988).

This brief mention of the ruling's place in the larger scheme of precedent for student rights was accurate but irresponsible. With no significant follow up, the reader was left to wonder how, exactly, *Hazelwood* and *Tinker* can coexist, and what information should be gleaned from the rulings. With no direct mention of *Tinker*, readers may not have realized there was another precedent. It is this kind of confusing and shallow exposition of student rights that may have helped to perpetuate misunderstanding of scholastic speech and press freedoms.

Two articles, one of which was an opinion column, provided legal context by framing the larger, often political, dilemma of the case among adults and educators:

> "There is much agreement, shared by the dissenting Justices and spelled out in the Tinker decision on antiwar arm bands, that limits exist to student rights, in particular those of the student press. But there is no consensus about how far school administrators can go in imposing their own views, or those of the political mainstream" (Hechinger, *The New York Times*, Jan. 17, 1988).

> "Demands for a complete hands-off stance by adults in charge of the school, and particularly by students' faculty advisors, may therefore be unrealistic. Yet the 1969 Tinker decision seems to set standards, especially concerning disruption of education, that adults should be able to live with. Ultimately, the issue is the adult view of the students' world" (Hechinger, *The New York Times*, Jan. 17, 1988).

Finally, it is important to note that very few of the reporters or opinion writers made mention of other lower-court legal battles students were waging at the time. While most mentioned the Supreme Court's ruling in *Tinker*, only three articles hinted at the larger legal climate regarding students at the time. Those three all explained that legal rights for students were dwindling, but none went into detail about other cases students were fighting:

> "The court, continuing its curtailment in recent years of students' constitutional rights."

> "In earlier curtailment of students' rights, the court three years ago said school officials did not need a warrant or probable cause to search students and two years ago said officials could discipline a student for using vulgar language" (Kamen, *The Washington Post*, Jan. 14, 1988).

> "The case was the Court's third decision in the past two years limiting students' constitutional rights in public schools. Two years ago, it approved 'reasonable' searches, without warrant, of students and their lockers" (Taylor, *The New York Times,* Jan. 14, 1988).

> "the third time in four years that the Supreme Court has ruled that students do not have the same rights as adults" (Watson, *San Jose Mercury News*, Jan. 14, 1988).

The brief mention of these other cases represented a missed opportunity for the journalists to provide much-need scope in regards to student freedoms. Instead of adding context to the issue, the fleeting reference to these other cases minimized the

extent to which students were fighting for their freedoms on many levels, and especially through the courts.

5. Describing Community and Expert Response

Quotations from experts, students, teachers, and journalism advocates illustrated the varied responses to the rulings. However, none of the articles analyzed quoted the student journalists at Hazelwood who filed suit. This represented a significant failure to use a primary source, though there is no way to know whether the journalists tried to contact the students and were unsuccessful or never attempted to do so in the first place. Journalists used other student journalists, teachers, and scholastic journalism experts as the main sources to document responses to the ruling. Only one article quoted directly from a student journalist.

> "Tammy Mukoyama, features editor of the Eagle's Eye, the student newspaper at Oak Grove High School in San Jose, argued that the court ruling could discourage students from exploring controversial subjects" (Watson, *San Jose Mercury News*, Jan. 14, 1988).

The articles did not include any specific, analytical discussions of the ruling; instead, the articles mostly used generalizing statements from professionals and educators to discuss attitudes toward the ruling.

> "The ruling was denounced by many press groups and civil rights and civil liberties organizations but was praised by some educators and others" (Taylor, *The New York Times,* Jan. 14, 1988).

> "The ruling drew sharp criticism both inside and outside the court" (Watson, *San Jose Mercury News*, Jan. 14, 1988).

Rather than quoting more extensively from student journalists who were affected by the ruling, most articles quoted from teachers and student press law expert Mark Goodman. It should also be noted that most coverage of response to the stories came from only two articles.

> " 'Kids already feel like second-class citizens in this country, and this confirms it for them,' said Nick Ferentinos, faculty advisor of the Epitaph, the student newspaper at Homestead High School in Cupertino."
>
> " 'School newspapers are often the only avenue young people have for expressing their views, and this opinion says school officials can cut off that avenue whenever they disagree with what the students are saying,' Goodman said" (Watson, *San Jose Mercury News*, Jan. 14, 1988).

Only one article directly juxtaposed a response from schools with a response from a journalism advocate:

> "School officials hailed yesterday's ruling as an appropriate redefinition of the 1969 decision…But Richard M. Schmidt, Jr., general counsel of the American Society of Newspaper Editors, said the ruling could open the door to increased use of censorship" (Kamen, *The Washington Post*, Jan. 14, 1988).

6. Describing Dissent

More than other cases analyzed in this study, most articles on the *Hazelwood* ruling included some description of the dissenting judges' opinions. In total, five articles and one editorial devoted space to covering the dissent. Of these, four articles and the editorial reprinted direct quotes from Justice William Brennan, the outspoken voice of dissent for the Court. Because dissents in Supreme Court rulings can also be used to gauge a ruling's precedence, they are an important part of any case. Dissents provide insight into the Court's ruling by showing the full spectrum of the Court's opinions and elucidating any concerns or potential issues the dissenting judge(s) would like to address. A published dissent could even provide ample fodder for future litigation of similar cases. Coupled with a majority ruling, dissents and concurrent rulings in any case expose each individual judge's positions on an issue, thereby outlining the Court's position as a whole and its weaknesses or strengths.

> "Justice Brennan conceded that educators have an 'undeniable, and undeniably vital, mandate to inculcate moral and political values' but that this is 'not a general warrant to act as thought police. The young men and women of Hazelwood East,' he wrote, 'expected a civics lesson,

> but not the one the Court teaches them today'" (Hechinger, *The New York Times*, Jan. 17, 1988).
>
> "The court's standard for allowing censorship, Brennan said, could allow school officials to suppress any speech that might run counter to the administration's moral or political views, allowing authorities to 'convert…our public schools into enclaves of totalitarianism…that strangle the free mind at its source. The First Amendment,' he said, 'permits no such blanket censorship" (Kamen, *The Washington Post*, Jan. 14, 1988).

While one article compared Brennan's dissent to Dewey's famous treatise on education, the single editorial voice was less impressed by Brennan's position:

> "he vainly seeks a constitutional line clear enough for judges to say the principal crossed it."
>
> "He is profoundly right, however, that educators teach a civics lesson in a most telling way when they supervise student expression" (Staff, *The New York Times,* Jan. 15, 1988).

This lukewarm acceptance of Brennan's dissent showed the editorial board would only go so far as to agree that free expression rights for students are important without making the leap that the principal (or any principal) would be authoritarian enough to completely ignore those rights however he saw fit. This quibbling is an example, as seen in coverage of the other cases, of general uncertainty among professional journalists as to which rights students should have, and to what extent.

7. Analyzing the Role of the First Amendment in Society and Schools

Two opinion columns analyzed the role of the First Amendment in schools as a counterpart to the role the Amendment plays in society as a whole. One column stopped short of suggesting students should have the full freedoms enjoyed by adults in society since schools must serve a variety of constituents; instead, it suggested student journalist do not necessarily have the same protections as their professional counterparts. The other column insisted the *Hazelwood* ruling was simply a reality check for students who would think professional journalists were actually free to

write and publish as they please, when in actuality, journalists are subject to the whims of those who pay the printing costs. This oversimplified the ruling in a way that could be detrimental for students.

> "Although school newspapers have helped train many students for careers in journalism, student press freedom is not entirely comparable to freedom of the press at large. Student papers, subsidized by school funds, generally need not worry about satisfying readers in order to maintain circulation. On the other hand, principals and school boards worry about displeasing voters whose support they need" (Hechinger, *The New York Times*, Jan. 17, 1988).
>
> "So while all people have the right to voice an opinion in print, if they don't have the resources to publish it themselves, they must find someone else to do so."
>
> "Freedom of the press does not protect the writer from an editor's knife and blue pen."
>
> "Students must face the facts and limitations of the real world" (Goldstein, *The New York Times*, May 29, 1988).

One article in particular stood out for its attempt to link contemporary student freedom issues to historical trends:

> "For decades the student press has taken a zig-zag course between docile publications that attract little attention and the more enterprising or provocative ones that are read and debated. During the campus upheavals of the late 1960's, students came to equate supervision with suppression, and rebelled by creating an underground press that eluded adult influence altogether. This same spirit of rebellion led to the Tinker case and the limits it placed on the authority of school administrators. With last week's ruling, the principals have regained lost ground, but they will be under an even greater burden to draw the difficult distinction between instilling values and repressing developing minds" (Hechinger, *The New York Times*, Jan. 17, 1988).

This passage emphasized some very important considerations that go untouched in other articles, especially the notion that the fight for student freedoms has historical roots similar to other major uprisings, even though the former is often perceived as a contemporary development.

Because of its rejection of the *Tinker* precedent, much of the *Hazelwood* coverage addressed not only the central research question, but also secondary RQ_3, which asks:

> RQ_3: To what extent do U.S. newspapers provide a legal framework to contextualize the speech and press rights high school and college students currently possess?

By devoting considerable space to the court ruling, the judges' language, potential legal effects of the ruling and the dissent, newspapers seemed to place a high priority on the legal niceties of the case. However, neither the depth nor the comprehensiveness of the legal context these stories presented were always consistent or accurate. The lack of legal understanding exhibited within many stories represented a significant failure on the part of newspapers to adequately inform readers. In doing so, the scope of the *Hazelwood* ruling, its applicability in public schools nationwide, and its effect on student journalists was vastly underplayed.

Kincaid v. Gibson

Case filed: 1994
U.S. Court of Appeals 6th Circuit ruled: 2001

Distrust of Authority: A Historical Perspective

The legal battle of *Kincaid v. Gibson* spanned almost seven years, from 1994 when the students' yearbooks were first confiscated, to 2001, when the U.S. Court of Appeals for the Sixth Circuit ruled that the students' First Amendment rights were indeed infringed upon because of the administrator's actions. During those seven years, Bill Clinton and George W. Bush held the presidential office. In the United States, two major bombing incidents (Oklahoma City and the Olympic Park bombing) rocked the country, and the worst school shooting to date bloodied the halls of Columbine High School in Colorado.

Major headlines included the explosion of TWA flight 800 in the Atlantic Ocean, the acquittal of O.J. Simpson in the murders of Nicole Simpson and Ron Goldman, the transfer of Hong Kong from England to China and the death of Princess Diana. In addition, in 1997 the death of Mother Theresa, the murder of child beauty queen Jon Benet Ramsey and the landing of the Mars Pathfinder captured the news media's attention. In 2000, the uneventful passage of the Y2K threat, the attack of the USS Cole and the election of George W. Bush made it a year of turning points and transitions. The legal chaos that ensued as a result of flawed voting machines in

Florida and the Supreme Court's subsequent refusal to decide the presidential election was a politically polarizing affair.

These major events all led up to 2001 and the final ruling in the *Kincaid* case, decided on January 5, months before the nation—and indeed the world—changed dramatically after the Sept. 11 terrorist attacks.

Findings

This section summarizes the findings of a sample of 12 articles covering the court case *Kincaid v. Gibson,* 236 F.3d 342 (6th Cir. 2001)(en banc). This study looked at six articles from local newspapers and three from national newspapers. Of the 12 articles analyzed, three were editorials or commentaries. The coverage spanned almost three years, from August 2, 1998, to January 11, 2001. Appendix D provides a complete list of newspaper sources. The articles were analyzed according to the central research question:

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the articles, editorials and commentaries focused on how the reporters:

1. Provided case background
2. Established student claims
3. Established school claims
4. Described what the court ruled
5. Provided legal context via Hazelwood
6. Described potential effects of the case
7. Relayed expert testimony and community response
8. Characterized the case via editorial and opinion columns; and
9. Engaged in a larger discussion on the role and value of free press in a democratic society

Coverage of the *Kincaid* case included a strong editorial and opinion presence that allowed a comparative analysis of the media's reigning attitude toward the case. The mix of local and AP/national coverage also indicated the perceived importance of the case in the news media world when compared with other compelling stories at the time.

1. Providing Case Background

Journalists used varying terms to describe exactly what happened to spark this lawsuit. The difference in word choices created descriptions that conveyed varying levels of urgency:

> "KSU administrators in Frankfort *confiscated* nearly 2,000 yearbooks" (Riley, *Daily News (Bowling Green, KY) Online*, Sept. 10, 1999).
>
> "In 1994, KSU administrators *confiscated* nearly 2,000 yearbooks because they were of 'poor quality'" (Staff, *Daily News*, Sept. 12, 1999).
>
> "University officials […]*forbade* the yearbook to be distributed" (Associated Press*, Daily News,* Jan. 7, 2001).
>
> "Kentucky State University's 1994 *seizure* of a yearbook" (Staff, *Courier-Journal (Louisville, KY),* Jan. 11, 2001).
>
> "When the 1994 yearbook arrived from the printer, Betty Gibson, KSU vice president for student affairs objected to the color of the cover, the theme and what she believed was its poor quality, the opinion said. After consulting with then-KSU president Mary Smith and others, Gibson and Smith *ordered the yearbooks seized* and locked up" (Yetter, *Courier-Journal,* Jan. 6, 2001).
>
> "Gibson immediately *ordered the yearbooks seized* and locked away" (Cheves, *Lexington Herald-Leader (Lexington, KY)*, Aug. 2, 1998).
>
> "Few of the students at Kentucky State University ever saw their purple-covered yearbooks in 1994 before an administrator – unhappy with the books' design – ordered them *confiscated*" (Cheves, *Lexington Herald-Leader*, Aug. 2, 1998) (emphasis added in all).

While the most common word choice to describe the president's action was some form of "confiscate," use of words such as "seizure" and "locked away" conveyed more aggression in the school's actions.

2. Establishing Student Claims

Some stories gave significantly more background to the students' claims than others. For example, one story summed up the claims in one sentence, while another used at least three paragraphs to give full context to the situation:

> "Coffer and another student, Charles Kincaid, filed suit, alleging First Amendment press freedom violation" (Yetter, *Courier-Journal,* Jan. 6, 2001).

> "Kincaid and Ms. Coffer accused the administration of trying to keep 'negative' news out of The Thorobred News and of forbidding distribution of the 1992-94 yearbook, The Thorobred. Kincaid wrote letters to the editor of the newspaper and paid an $80 activity fee which he said entitled him to receive the yearbook. Ms. Coffer worked on the newspaper and was editor of the 1992-94 yearbook. Orwin said the administration never consulted a student publications board about confiscating the yearbooks. He said the administration transferred the coordinator of student publications out of that job, against her will, after she took the position that the students had the right to determine the newspaper's contents" (*Associated Press*, Sept. 8, 1999).

The extreme difference in detail and context could reflect a lack of interest in the subject on the journalists' part, but it could also be the result of many other factors, such as story space, access to sources, etc. While it is impossible to know for sure why some stories provided vastly more context, the overall effect was that the stories that were over-simplified seemed out of place, half-hearted and appeared perhaps even more sparse when taken among the other, more detailed articles. In reading the news media coverage side-by-side, the articles with more detail and context read almost like different stories, or at least stories about a more significant event. In addition, seven stories did include details of support professional groups offered to the students, adding weight to the students' First Amendment claims.

3. Establishing School Claims

Almost every story described the school's claim in similar terms: that the yearbook was of poor quality and not suitable for distribution. Two stories included statements from university officials that the yearbooks were not withheld because they contained unpopular viewpoints, as alleged by the students. Only one article contained a quotation suggesting the case's insignificance:

> " 'I don't think (the case) is important or sweeping at all'" (Cheves, *Lexington Herald-Leader*, Aug. 2, 1998, parenthesis in original).

4. Describing What the Court Ruled

To describe the court's ruling, only three articles used direct quotations from the judge's opinion. Otherwise, coverage of the rulings were relatively similar across stories, sticking to generic descriptions of the legal decision at each court level:

> "An appeals court today rejected arguments by two former Kentucky State University students that the school violated their First Amendment rights by forbidding distribution of a yearbook and allegedly interfering with the student newspaper" (*Associated Press*, Sept. 8, 1999).

> "Two students who sued university officials over confiscation of the 1994 edition of The Thorobred presented sufficient evidence that their First Amendment rights were violated, the court said" (Associated Press, *Daily News*, Jan. 7, 2001).

Again, coverage of this case lacked significant discussion of one dissenting opinion and one partial dissent. Interestingly, one of the judges who originally ruled against the students when a 6th Circuit panel heard the case reversed his decision upon the final en banc ruling in 2001. In ruling against the students, Judge James Ryan concluded he "was in error"(*Kincaid v. Gibson,* 236 F.3d 342 (6th Cir. 2001)(en banc), Ryan, *concurring opinion*). He provided no further elaboration except that the he was persuaded by the Chief Judge's majority opinion.

In his partial dissent, Circuit Judge Danny Boggs concurred with the majority's opinion that the panel decision should be reversed, but he disagreed that the en banc ruling should favor the students. Instead, he contended there were discrepancies in material facts that still needed to be settled through trial. Judge Alan Norris, who originally authored the panel's majority decision against the student, maintained his position and authored a dissent against the en banc findings. Norris again found that the yearbook was not a public forum, and as such the university retained discretion over what material was included and the manner in which the yearbook was created.

This issue of whether a school publication constitutes a public forum, limited forum, or non-public forum—and the differences among these distinctions—is a vital part of the debate over whether scholastic journalists retain First Amendment protections. Because it was a matter of law not yet settled in the courts, the issue's absence in the news media coverage is disquieting. Since the news media do serve as the court of public opinion, leaving out significant facts (like legal distinctions) diminishes the public's ability to discern truth, and ultimately affects the verdict, or the public's thorough understanding of an issue.

5. Providing Legal Context Via Hazelwood

Of the four stories that gave some legal context regarding student First Amendment rights, every one referenced *Hazelwood* either directly or implicitly. None of the articles that gave legal context referenced *Tinker* or any other case. Within these four stories, only two mentioned that the *Hazelwood* ruling was not written to apply to

college publications. To leave out this vital information suggested either a lack of understanding of the court case and its significance or a disregard for detail and context.

> "The judge based his ruling in part on a 1988 U.S. Supreme Court decision that permitted high schools to censor their schools' publications. But that high court decision specifically excluded from its ruling college publications" (Cheves, *Lexington Herald-Leader*, Aug. 2, 1998).

> "In a footnote to Hazelwood, however, the Supreme Court justices refused to apply the decision to universities and colleges, saying they 'need not now decide whether the same degree of deference is appropriate'" (*Associated Press*, Aug. 2, 1998).

6. Describing Potential Effects of the Case

Only a handful of the articles covering this court case went into detail about the potential effects of the case or its impact on colleges and free speech. One editorial even went so far as to write in its headline "Decision is hardly a threat to the First Amendment" (Staff, *Daily News*, Sept. 12, 1999). Other writers did not share that belief:

> "University administrators could censor any views they disagreed with. They wouldn't even see the irony, as the folks at Kentucky State don't, in offering classes that examine the Bill of Rights on a campus that doesn't believe in those bedrock principles" (Robert, *Springfield News-Leader (Springfield, MO),* June 4, 2000).

> "The national and state organizations jumping into the fray to oppose that decision believe that if college officials can censor a yearbook that bothers them, they then could take steps against student newspapers or student plays that offend administrators" (*Associated Press*, Aug. 2, 1998).

> "Journalism educators say the courts will make a mistake if they extend the Hazelwood decision to include college campuses, which are supposed to encourage free thought and diverse points of view" (*Associated Press*, Aug. 2, 1998).

> " 'We have enough problems helping the kids understand what their rights and obligations are under the First Amendment,' Agin said. 'I'd be sorry to see the courts throw that out and allow the students to be censored'" (Cheves, *Lexington Herald-Leader*, Aug. 2, 1998).

7. Relaying Expert Testimony and Community Response

Journalists turned to student press law experts and journalism professors to provide expert testimony regarding the case. Significantly, all instances of expert testimony except one sided with the students and emphasized a need for First Amendment protections for students:

> "The courts will be making a terrible mistake if they expand the restrictive Hazelwood decision to include college campuses, which are supposed to encourage diverse points of view, journalism educators say" (Cheves, *Lexington Herald-Leader*, Aug. 2, 1998)
>
> "The legal tug-of-war over the 1992-94 edition of The Thorobred is a battle for college students' right to free speech, said Mark Goodman, executive director of the Student Press Law Center in Washington" (Robert, *Springfield News-Leader,* June 4, 2000).
>
> " 'It is a concern to anyone who relies on the First Amendment, and we all do; it is not just for the press, as many people believe,' said Harry Allen, a Western Kentucky University journalism professor" (Riley, *Daily News Online*, Sept. 10, 1999).

8. Characterizing the Case

Two editorials and one opinion column provided insight into journalists' reactions to the case. Both opinion columns and one editorial were sympathetic to the journalists, but one editorial expressed disbelief and irritation that the issue became a legal fight at all.

> "Having wasted $60,000 defending its indefensible act of censorship, KSU should not appeal" (Staff, *Courier-Journal*, Jan. 11, 2001).
>
> "There was nothing defamatory about this book. And nothing obscene except the administration's reaction to it" (Staff, *Courier-Journal,* Jan. 11, 2001).
>
> "Now a more frightening issue is percolating through the courts" (Robert, *Springfield News-Leader,* June 4, 2000).
>
> "The decision by Kentucky State University officials to withhold yearbooks from its student body may not have been the wisest one administrators ever made, but it doesn't mean the dark forces of censorship are gathering to shred the First Amendment."
>
> "Perhaps the administrators should have offered the yearbooks to any student who had a thing for purple, but they did have the right to dump them" (Staff, *Daily News*, Sept. 12, 1999).
>
> "For Pete's sake, the yearbooks were the wrong color. This is not a case of political dissent being stifled or an investigative report of administrative wrongdoing being deep-sixed. This decision has more to do with color coordination than censorship" (Staff, *Daily News*, Sept. 12, 1999).

> "With all due respect, this is not a case that will go down in journalism history" (Staff, *Daily News*, Sept. 12, 1999).

The single editorial that spoke out against the students made a good point: yes, the student journalists chose a different color for the school's yearbook, but if the school would not let them have even artistic authority, why did the editorial writer assume the school would let them print the other types of content he mentioned, such as political dissent or investigative journalism? As a whole, this editorial missed the point, especially considering the case did go down in scholastic journalism history for the precedent it set for student journalists. While this observation is in hindsight, it was arrogant at best for the editorial writers to suggest they knew what would or would not make journalism history. And it was this arrogance that stood out among the editorial voices.

9. Engaging in A Broader Discussion on First Amendment Rights

One editorial and one opinion column went further than just characterizing the case: they set out to engage in a broader discussion about First Amendment rights. However, each came to a drastically different conclusion. The editorial (Staff, *Courier-Journal,* Jan. 11, 2001) concluded that First Amendment rights are not automatically extended to college students, nor should they be. The opinion column (Robert, *Springfield News-Leader, June 4, 2000)*, on the other hand, chastised the school for being an example of anti-democratic practices.

> "A hard fact of life is that you cannot operate in total freedom on someone else's dime. When university officials basically own the presses, they can decide to start or stop them, and the state or federal government doesn't have much to say about it. That is also called freedom."

> "Universities own the publication. They are de facto publishers, and as such, if administrators don't like something, they have veto power over it."

> "Freedom of the press is not really threatened when the publisher of the New York Times decides a special section is awful and dumps it. Nor can reporters bring a First Amendment lawsuit when a publisher turns thumbs down on a story" (Staff, *Daily News*, Sept. 12, 1999).
>
> "Every censor wants to 'maintain its image.' But free expression isn't about maintaining image. It is about exchanging ideas, finding truth through debate, holding government accountable. Sometimes free expression leads to the discovery that image is nothing more than a veneer hiding plenty of rot."
>
> "It's ridiculous, in a nation that prides itself on being free, that these questions are even being debated."
>
> "We ought to be encouraging free expression, not stifling it. It is the pulse of a free society" (Robert, *Springfield News-Leader,* June 4, 2000).

The editorial's 'real-life' approach to university publications was strict but also somewhat misinformed. In fact, universities historically and legally have *not* been considered de facto publishers, and usually maintain less legal responsibility the more hands-off they are. The authors also ignored the fact that the universities did not entirely own the presses—they are paid for by student fees, tuition, and, in the case of a public university, by the state government. This makes public universities especially qualified for First Amendment protections.

Perhaps more than any other case examined in this study, *Kincaid's* newspaper coverage demonstrated journalists' conflicting attitude toward student First Amendment rights. Secondary RQ_7 asks:

> RQ_7: Do U.S. newspapers support college students' freedom of speech and press? If so, to what extent?

Depending on the article, editorial or commentary one were to read, the answer to this question could easily be yes or no. The ambivalent editorial and commentaries showed a deep split between journalists who clearly viewed the university's

censorship as a First Amendment violation and those who thought the students were exaggerating the offense beyond reason.

Dean v. Utica

Case filed: 2003
Supreme Court ruled: 2004

Authority or Authoritarian? A Historical Perspective

The ruling in *Dean v. Utica* was issued in October of 2004, a year marked by terrorism and violence across the world. Terror bombings at a subway in Madrid in March killed 191 and injured thousands more. A CIA report released in early March disavowed the U.S. government's claim that Saddam Hussein had stockpiles of illegal weapons prior to the start of the Iraq war in 2003. In April, television news magazine *60 Minutes II* broke the story of prisoner abuse at Abu Ghraib, showing images of U.S. mistreatment of prisoners of war and revealing an ongoing investigation that would result in almost a dozen courts martial. Further tainting public perception of the war, NFL star Pat Tilman's death in Afghanistan in April of 2004 was confirmed later in 2004 to be a death by friendly fire. In July, the 9/11 Commission released its much-anticipated report claiming U.S. government officials did not take terrorism threats seriously enough in the months and years leading up to the attacks of Sept. 11, 2001. And in September, a month before the ruling, Chechen terrorists invaded and took over a school in North Ossetia. The confrontation escalated into a gun battle in which 300 died, including 186 children ("Top 10 News Stories of 2004," *Arizona Republic*, Dec. 23, 2009).

In American media, Janet Jackson's infamous "wardrobe malfunction" at the Super Bowl in January received incessant coverage and was just one example of how questions of values and morality were being explored in the media. Also dealing with issues of morality, films such as *Passion of the Christ* and *Fahrenheit 9-11* polarized many communities ("Top 10 Stories of 2004," *CNN*), while television stations banned advertisements on gay marriage.

Findings

This section summarizes the findings of a sample of five articles covering the court case *Dean vs. Utica*. This study looked at five stories that appeared in local newspapers: four breaking stories and one editorial. The coverage spanned three years, from March 31, 2002 to March 27, 2005. Appendix E provides a complete list of newspaper sources. The articles were analyzed according to the central research question:

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the articles and single editorial focused on how the reporters:

1. Established case fact and history
2. Characterized the players and the game
3. Set up the legal claims
4. Provided expert testimony
5. Relayed court rulings and judges' opinions; and
6. Explored the aftermath

1. Establishing Case Fact and History

In setting up the legal and factual history of the court case, articles relayed information in largely chronological fashion, paralleling the actions of Dean with the

subsequent reaction and censorship of the school. The legal steps already taken in the case were documented, especially regarding legal action Dean took in response to censorship. In some news stories—but not all—the legal context regarding students' free expression rights in school was summarized, usually via citing *Tinker*, *Hazelwood*, or both.

Historical case background

Some news stories went so far as to describe the steps Dean took prior to her article being censored:

> "She had interviewed the plaintiffs and done research, including investigating the effects that diesel fumes can have on a person's health. She had tried to interview school district and township officials, but they refused comment" (Sampson, *The Indianapolis (IN) Star*, March 27, 2005).
>
> "Dean worked for about a month on the article, researching diesel fumes from school buses, talking with Reymond and Johanna Frances, the couple behind the lawsuit, and attempting to talk with district officials, who all declined to comment on the story" (Carroll, *Shelby-Utica (MI) News*, Oct. 4, 2004).
>
> "Dean, intrigued, researched and wrote the article "Fumes, Drugs, and Sue" for the Arrow, Utica High's award-winning student newspaper" (Sampson, *The Indianapolis Star*, March 27, 2005).

The extent to which Dean's actions prior to being censored were chronicled appeared on one hand sentimental to the student, as if building her up by proving she practiced acceptable journalistic standards in writing the story that would later be censored. This documentation of Dean's approach to her assignment as a journalist was offset by descriptions of the school's response to a story that put the school in a harsh light.

Utica High School's actions

In describing the school's actions against Dean's story, journalists never used the word "censorship." Instead, euphemisms were used to describe the principal's response to the critical story running in the student newspaper.

> "Her article was later *pulled* by the district's administration" (Carroll, *Shelby-Utica News*, Oct. 4, 2004).
>
> "Principal Richard Machesky *pulled* the story" (Vandenabeele, *The Detroit (MI) News*, March 31, 2002).
>
> "Machesky said the article was full of 'journalistic defects' and *removed* it from the paper" (Trela, *Detroit Free Press*, Oct. 13, 2004).
>
> "a story *pulled* from the award-winning Arrow newspaper" (Vandenabeele, *The Detroit News*, March 31, 2002).
>
> "their principal *told them* it could not appear" (Staff, *The Detroit News*, July 2, 1002).
>
> "reporter Katy Dean, whose story about it was *quashed*" (Staff, *The Detroit News*, July 2, 1002).
>
> "But when the principal *prohibited publication* of the story" (Sampson, *The Indianapolis Star*, March 27, 2005).
>
> "When school district officials became aware of the subject of her article…they ordered the high school principal to *suppress* it" (Sampson, *The Indianapolis Star*, March 27, 2005) (emphasis added in all).

That the term 'censorship' was never used could be a reflection of general confusion as to who is responsible for and in charge of content in student newspapers. For example, if the journalists viewed principals as the logical and legal supervisor of content for student publications, the act of removing content would not likely be interpreted as censorship. On the other hand, were journalists to regard students as the decision-makers, then any outside interference or rejection of content should be interpreted as censorship and labeled as such. Similarly, the use of euphemisms for an otherwise loaded word could signify a marginalization by professional journalists who do not accept the scholastic model of journalism as equivocal to their own.

Simply put, that journalists avoided using the term "censorship" contradicted even the court ruling itself. In his ruling, Judge Arthur Tarnow used iterations of the term

"censor" seven times to describe the school's action and the constitutional issue his opinion addressed. The judges in the case declared "censorship" an accurate description of the legal issue, and while terms such as "pulled" or "removed" described how the administrators physically kept the article from print, they did not fully connote the severity of the school's actions.

Legal Context

Most of the articles covering *Dean vs. Utica* lacked any significant context concerning the rights students have to express themselves in school. Only one article described the rights of students as established in *Hazelwood*, and even that explanation ignored the dueling *Tinker* precedent. The sole explication of students' rights was vague at best:

> "The Supreme Court, in the 1988 Hazelwood School District v. Kuhlmeier decision, gave public high school officials authority to censor school-sponsored publications, likening school administrators to publishers. Officials must demonstrate some reasonable educational justification for the censorship…Where Hazelwood often causes disagreement is that it gives administrators less latitude to censor school publications that are open forums for student expression" (Vandenabeele, *The Detroit News*, March 31, 2002).

This description of students' First Amendment rights was rather lacking and general. It failed to raise issues of the legal and working definitions for "school-sponsored publications," a term still being legally challenged and reworked in recent court cases. The intended benefit of contextualizing student rights is lost because the journalist either lacked the proper understanding of the *Hazelwood* case or chose not to explore the case minutia that would have more accurately depicted the current climate of student First Amendment rights.

2. Characterizing the Case

Journalists, like all other writers, rely on word choice to convey a specific message or to create meaning for their readers. These words leave impressions in readers' minds based on the connotation and context of the words as filtered by the readers' own experiences. In describing the principal's action and the subsequent legal filing, one article used a negative characterization to describe the court case. In calling it a "recent spat," a legitimate First Amendment claim is reduced to a sophomoric argument. This type of characterization was seen again in an editorial describing "the flap at the school paper." Both these characterizations minimize the serious nature of the student's claims and the principal's actions.

Characterizing Dean

Journalists used supportive phraseology in two of the articles and drew a picture of Dean akin to that of the courageous biblical David:

> "Dean decided to fight" (Sampson, *The Indianapolis Star*, March 27, 2005).
>
> "Dean battled for her First Amendment rights to tell that story" (Sampson, *The Indianapolis Star*, March 27, 2005).
>
> "students resolved not to be silenced" (Vandenabeele, *The Detroit News*, March 31, 2002).

These descriptions were often tempered or expanded upon by expert testimony and sources selected by the journalist.

3. Setting up the Legal Claims

Each article explained Dean's and the school's claims yet did not necessarily critically examine them, as is discussed more fully in Chapter Six. Often, the articles explained the school's rationale for censorship more thoroughly than they did Dean's rationale for press freedom. Overall, the news media coverage devoted more space to

establishing the school's reasoning for censorship than to exploring Dean's stance. The articles described the school's legal claims as justified by Dean's poor journalistic work.

> "school officials charged the article was biased and unbalanced" (Sampson, *The Indianapolis Star*, March 27, 2005).
>
> "The school district said the article was censored because it contained pseudonyms and factual inaccuracies, lacked adequate research and was unbalanced" (Trela, *Detroit Free Press*, Oct. 13, 2004).
>
> "[the story] was not consistent with 'sound journalistic principles" (Staff, *The Detroit News*, July 2, 1002).

Only one article explored the principal's claim that the students did not have editorial control over the newspaper, thus legitimating his removal of the article and rejecting the student's claim of censorship:

> "In a letter to Arrow staff, Machesky denied that his decision constituted 'censorship.' And he denied that the Arrow is considered an open public forum" (Vandenabeele, *The Detroit News*, March 31, 2002).

The news coverage gave no further explanation of this claim. To counter the school's claims, articles often included more vague explanations of the claims Dean made:

> "Dean was asking the court to declare UCS had violated her First Amendment rights, and that the article be published in the Arrow with a suitable explanation that the article was unconstitutionally censored from a previous edition and attorney fees" (Carroll, *Shelby-Utica News*, Oct. 4, 2004).
>
> "Dean is not seeking monetary damages, but has asked the court to order the school to publish the article with an acknowledgement that her First Amendment rights were violated" (Trela, *Detroit Free Press*, Oct. 13, 2004).

These two descriptions of Dean's claims are at once at odds—one served as a rather specific guide to the student's legal claims, the other only generally hinted at her claim.

4. Providing Expert Testimony

Quotations and indirect commentary from experts not associated with the case provided expert testimony. Three groups provided most of the testimony—educational administrators and their representatives, scholastic journalism advocates and lawyers associated with the ACLU. Agenda-specific testimony advocated outright for either the school or student, while other testimony focused on the significance of the case for student First Amendment jurisprudence.

> " 'There's not a lot of law in this area, so the more guidance we can get from the courts, the better off school districts are, and the better off the students are,' said Andrew Nickelhoff, who represents Dean" (Trela, *Detroit Free Press*, Oct. 13, 2004).
>
> "Dean's case was bolstered by statements from several educators and former journalists, including retired Free Press publisher Neal Shrine, who said it was properly researched and written" (Trela, *Detroit Free Press*, Oct. 13, 2004).

Overall, the expert testimony served to better explain and expand the significance of the case by relating the high stakes to larger legal issues and professional journalism practices.

5. Relaying Court Opinion

Beyond expert testimony, some journalists went directly to the court's ruling and judge's opinions to provide context. Often, headlines and leads were vehicles for passing along the exact statements and decisions of the judges. Only two articles quoted entire phrases from the judge's ruling, while the majority paraphrased or quoted specific wording from the decision. In all, most articles devoted little space to the specific legal ruling and any nuances found therein. Those that did quote at length selected segments that presented the judge's reasoning behind his decision.

> " 'If the role of the press in a democratic society is to have any value at all — journalists, including student journalists — must be allowed to publish viewpoints contrary to those of state authorities without intervention or censorship'" (Sampson, *The Indianapolis Star*, March 27, 2005).

> "The case should have been resolved when it was filed, thus saving the school district a lot of money for a principle that's indefensible" (Carroll, *Shelby-Utica News*, Oct. 4, 2004).

The descriptive "indefensible" was used in one story to describe Utica's actions against Dean. Only one story went so far as to provide a detailed justification from the judge:

> "Tarnow also found that The Arrow had always been a "limited public forum" and had never had a practice of submitting stories to school officials for prior review. Removing the story amounted to censorship, he ruled" (Staff, *The Detroit News*, July 2, 1002).

Scant reference to the judge's ruling and rationale established a level of simplicity within the story, making it clear and accessible to readers but also ignoring significant legal details found in the fine print of any court ruling. Isolating the court decision from the rest of the story's context could lead to a misguided reader perception on the importance of the ruling in a larger legal, social and educational framework.

6. Exploring the Aftermath

Given the ongoing nature of this case, not all stories presented a developed account of the aftermath of the situation. Generally speaking, only stories written about the final court ruling went so far as to explore the aftermath of the case. However, at all stages of the case, stories turned to reaction from Dean and the high school.

Student and school reactions to ruling

The school generally refused to comment, and review of the articles turned up not a single direct quotation from the school on the case's outcome. On the other hand, most stories provided paraphrased and direct reaction from Dean, including quotations from Dean on why the case was important.

> "'I think what we need to do is relate the First Amendment not to the past, but to the future, to the present so that (students) can understand how it affects them,' she said. 'When you make

> someone understand how it affects them individually, then they'll care more about it'" (Sampson, *The Indianapolis Star*, March 27, 2005, parentheses in original).

While the legality of the ongoing case contributed to absence of comment from the school, the comparatively copious record of Dean's reaction emphasized the student's perspective on the case and further legitimized her claims while distancing the school's position from the court's outcome in the case.

Describing the aftermath

One story in particular stood out for its inclusion of Dean's accomplishments after the case ruling was released. The story noted that Dean was a "featured speaker at the 'Future of the First Amendment' press conference in Washington, D.C." (Sampson, *The Indianapolis Star*, March 27, 2005) because of her fight for First Amendment rights for students. This seemingly peripheral piece of information contextualized Dean's action as part of a larger, ongoing struggle for students to achieve First Amendment protections. Other stories also detailed the aftermath of the case:

> "In 2003, Dean was awarded the Courage in Student Journalism Award from the Student Press Law Center, the National Scholastic Press Association and the Newseum, an interactive museum of news in Washington, D.C. that informs the public on how and why the news is made" (Carroll, *Shelby-Utica News*, Oct. 4, 2004).

> "Last year, she was awarded the Courage in Student Journalism award, presented by the Newseum, the National Scholastic Press Association and the Student Press Law Center, for her fight" (Trela, *Detroit Free Press*, Oct. 13, 2004).

> "In 2003, she was awarded the Courage in Student Journalism Award for her struggles" (Sampson, *The Indianapolis Star*, March 27, 2005).

Text in two stories suggested more wide-spread effects from the case, describing the fight between Dean and Utica as one in which "Student gets First Amendment lesson up close" (Sampson, *The Indianapolis Star*, March 27, 2005, headline). One story went so far as to suggest how other students might react: "High school journalists should have a little less fear today of having their work censored

when school officials disagree with reporting" (Trela, *Detroit Free Press*, Oct. 13, 2004, lead). A single editorial described the ruling as "a happy ending" (Staff, *The Detroit News*, July 2, 1002) after chastising the school for creating the drama in the first place by "spiking the story."

While coverage of *Dean v. Utica* provided many clues as to how news media frame student journalists who claim First Amendment protections, what was most telling in this analysis was how newspapers described the school's actions. These descriptions spoke directly to the central research question (RQ_1) by answering exactly *how* newspapers framed the student's First Amendment claim—as everything *but* 'censorship.' In using euphemisms to describe the school's actions—what the court rightly termed "censorship"—journalists rhetorically took sides, and Dean's claims were minimized. An all-too-common practice in most of the cases analyzed in this study, journalistic avoidance of the word "censorship" and the legal term "prior review" can have significant consequences, as are discussed in the final chapter.

Hosty v. Carter

Case filed: 2001
Supreme Court decline cert.: 2005

A Quiet Year: A Historical Perspective

Domestically speaking, 2005 was a quiet year, especially when compared to the time periods surrounding other cases in this study. The launch of YouTube dominated the media scene. Arguably the most significant event of the year, Hurricane Katrina didn't make landfall until months after the *Hosty v. Carter* decision. This case was denied certiorari by the Supreme Court during its 2004-2005 term, which entertained only four First Amendment cases: two regarding Ten Commandments displays, one regarding religious accommodations in prison, and the fourth regarding government-mandated sponsorship of beef marketing for cattle growers.

Findings

This section summarizes the findings of a sample of nine articles covering the court case *Hosty vs. Carter,* 412 F.3d 731 (7th Cir. 2005) (en banc) *cert. denied*. This study looked at two articles from local newspapers and seven articles from non-local state or national newspapers. Of those, six articles were editorial or opinion columns. The coverage spanned more than a year from June 27, 2005 to March 6, 2006. Appendix F provides a complete list of newspaper sources. The articles were analyzed according to the central research question:

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the articles, editorials and commentary focused on how the reporters:

1. Provided legal context
2. Established case background
3. Relayed court rulings and judges' opinions
4. Characterized the lawsuit
5. Described responses to the ruling
6. Explained potential effects of the ruling; and
7. Editorialized the author's response to the case

Unlike some cases, coverage of the *Hosty* case did not reveal significant use of expert testimony; however, the editorial voice had a stronger presence than in other cases.

1. Providing Legal Context

In setting up the legal context of the court case, articles transmitted information through two major but separate contextual approaches: via reference to the First Amendment rights of students in general, and via reference to the *Hazelwood* case in particular.

Contextualizing the First Amendment rights of students

While most stories offered some amount of context about student press rights, it was the editorial and opinion pieces that offered the most thorough context in this area by demonstrating the issues student journalists are facing around the country:

> "According to the Student Press Law Center, a New York principal censored an accurate story from a student paper that reported there were only two working bathrooms in a school of 3,600 students. An Indiana high school newspaper's story about a tennis coach who illegally took more than $1,000 that team members paid for court time was muzzled by administrators" (Staff, *The News-Gazette (Champaign, IL)*, Jan. 6, 2006).

> "While the past decades have hardly been a golden age for student rights, there was good reason to be optimistic in recent years. Speech codes fell at colleges from New York to California" (Lukianoff, *The Boston Globe*, Sept. 3, 2005).

> "The courts have repeatedly found that government can't decide what a free press prints. To do so, they have relied on the First Amendment's prohibition against Congress passing laws the abridge freedom of speech or of the press…In essence, the courts have substituted the word "Congress" with "judge" or "district attorney" or, until now, "college administrator" and found their interests in suppressing information just as invalid" (Banchero, *Anchorage (AK) Daily News*, July 2, 2005).

Referencing Hazelwood as a litmus test

Repeated references used *Hazelwood* as a litmus test for what was happening in *Hosty*. These references generally clarified the position that was made in *Hazelwood*, which was to not yet extend the court's restrictions on high school press to colleges and universities.

> "While the case was being heard, the 1988 Hazelwood vs. Kulmeier [sic] decision was brought up numerous times. In the Hazelwood case, authority was given to high school officials to oversee and censor student publications. The court then ruled in the Hosty case, in a case separate of the lawsuit, that college administration – Carter in this case – had the authority to review and edit college publications before being printed" (O'Brien, *Suffolk Life (Suffolk, NY) Newspapers*, Oct. 12, 2005).
>
> "But what makes the finding in Hosty v. Carter even more terrifying is that it takes the Supreme Court decision in a 1988 case that said high school administrators could control the content of curricular student newspapers and applies it to college publications" (Banchero, *Anchorage Daily News*, July 2, 2005).
>
> "The case essentially extends to colleges the rationale established in the 1988 Supreme Court ruling in Hazelwood School District v. Kuhlmeier. In that case, justices found high school newspapers are subject to restrictions by school administrators" (Olsen, *Fort Collins (CO) Coloradoan*, June 27, 2005).
>
> "The case would have been a follow-up to a 1988 ruling that said public school officials could censor high school newspapers" (Holland, *Associated Press*, Feb. 21, 2006).
>
> "The court relied in part on a 1988 Supreme Court decision that allows high school administrators to censor student publications" (Cohen, *Chicago Tribune*, Feb. 22, 2006).

By referencing and explaining *Hazelwood*, journalists were able to put the *Hosty* case in context with a larger struggle for students over press freedom. This context served to demonstrate the minimal success students have had historically in earning the right to print without censorship.

2. Establishing Case Background

The case background was generally succinct, limited to a paragraph or two, and in some articles described the actions taken by the students and the school in response.

While the recounting of case history provided a foundation for readers, it was the description and characterizations of what exactly happened on campus that lent the most insight into what happened and the circumstances surrounding the lawsuit:

> "The case came about when the student newspaper of Governor's State University in Illinois, The Innovator, was *halted* from printing because the dean of the College, Patricia Carter, wanted to *review* and *approve* the publication before it was printed. Carter called the printer where the newspaper was to be published and told them not to print it because there had been some articles in the paper that were critical of the administration at the university" (O'Brien, *Suffolk Life Newspapers*, Oct. 12, 2005).
>
> "Carter called the publisher and had the printing *stopped*" (O'Brien, *Suffolk Life Newspapers*, Oct. 12, 2005).
>
> "The students sued after a deal *blocked* the paper's printing in 2000 until she could review the news stories" (Holland, *Associated Press*, Feb. 21, 2006).
>
> "The case was on appeal from three students who sued in January 2001 when a dean *blocked* the paper from being printed after several stories critical of the university administration appeared" (Cohen, *Chicago Tribune*, Feb. 22, 2006).
>
> "Last week's ruling stems from the Hosty v. Carter case where Governors State University student journalists working for the now-defunct school paper, the Innovator, sued to prevent university Dean Patricia Carter from *reading material before the newspaper was printed*" (Olsen, *Fort Collins Coloradoan*, June 27, 2005).
>
> "The case, Hosty v. Carter, arose in 2000 when a dean at Governors State, Patricia Carter, told the printer of the student newspaper, The Innovator, to *hold future issues* of the paper until a school official had *given approval of the paper's contents*" (Staff, *The News-Gazette*, Jan. 6, 2006).
>
> "The decision was based on an appeal of a lawsuit against Patricia Carter, dean of student affairs and services at GSU, who *shut down* the Innovator for what she deemed 'irresponsible and defamatory journalism'" (Staff, *The News-Gazette*, Jan. 6, 2006).
>
> "In 2000, Patricia A. Carter, dean of student affairs at Governors State University in Illinois, demanded that the off-campus printer of the college paper, The Innovator, *hold off* printing future issues until university officials could review content" (Banchero, *Anchorage Daily News*, July 2, 2005) (emphasis added in all).

The emphasis in all these selections is added to highlight the word choices different journalists used to describe the administration's censorship of the student newspaper. Similar to the way journalists described what happened in *Utica*, journalists in this case were—for whatever reason, it is unclear—hesitant to use words such as

"censorship" or "prior review" to describe the situation when in fact, these words best describe what happened.

Were journalists to use the court ruling itself as a guide, or any court document related to the case including documents that initiated the suit, they would have found iterations of the words "prior review" and "censorship" as the preferred legal constructs. The 7th district's ruling used combinations of "review" or "prior review" 12 times, and also used iterations of "censor" 12 times throughout the ruling. The students' petition for Supreme Court review used iterations of "censor" 15 times.

3. Relaying Court Ruling and Judges' Opinions

In writing about the court's opinion and what the judges said, articles rarely quoted directly from court documents. Instead, they summarized the ruling in ways that suggested, on one hand, that it was a sweeping restriction of student press rights or, on the other, that it was merely asserting the right for college administrators to continue to oversee the content of student publications. Opinion pieces on the case were less forgiving of the censorship and often pointed to institutional flaws that perpetuated a need for such censorship.

Sweeping restrictions

> "On June 20 of this year, the 7th U.S. Circuit Court of Appeals made a ruling in the Hosty vs. Carter case that allows college administrators to review and edit student publications" (O'Brien, *Suffolk Life Newspapers*, Oct. 12, 2005).
>
> "But the appeals court also found that Governors State administrators had a right to regulate the paper's contents because it was published under the auspices of the university" (Cohen, *Chicago Tribune*, Feb. 22, 2006).
>
> "Ruling allows administrators final say in newspaper content" (Olsen, *Fort Collins Coloradoan*, June 27, 2005-headline).

> "The appeals court ruling also said the newspaper must be designated a public forum, with students in charge of the content, before a censorship case can be considered" (Olsen, *Fort Collins Coloradoan*, June 27, 2005).

Open door

> "The 7th U.S. Circuit Court of appeals ruled that that [sic] university faculty *could* regulate the paper's contents because it is published under the auspices of Governors State" (Holland, *Associated Press,* Feb. 21, 2006) (emphasis added).
>
> "The U.S. Supreme Court declined on Tuesday to hear an appeal from former student journalists at Governors State University, letting stand a lower court ruling that *could* allow college administrators to censor student publications" (Cohen, *Chicago Tribune*, Feb. 22, 2006).
>
> "The 7th U.S. Circuit Court of Appeals ruled that college administrators – under certain circumstances – have the right to *review* the content of student newspapers before they hit the press" (Olsen, *Fort Collins Coloradoan*, June 27, 2005).
>
> "The Seventh U.S. Circuit Court of Appeals recently became the focal point of journalists and constitutional scholars across the world when it effectively ruled that university administrators *could* regulate content of college publications – and other non-designated public forums like student-run arts festivals – if the school provides any portion of their funding" (Tuck, *The Pilot (Southern Pines, NC)*, July 10, 2005)(emphasis added in all).

None of the stories elaborated by explaining the niceties of the term "limited public forum" or under what circumstances censorship within these forums would be tolerated. In fact, only one article quoted from the actual court ruling:

> "The Seventh District, which represents Illinois, Indiana and Wisconsin, ruled in Hosty that "speech at a non-public forum, and underwritten at public expense, may be open to reasonable regulation even at the college level – or later" (Tuck, *The Pilot*, July 10, 2005).

Institutional flaws

Many of the opinion pieces went at least one step beyond the straight news stories, attempting to isolate terms used by the court and to extrapolate the larger institutional issues at stake because of this ruling. However, even these more pointed discussions were brief and left many questions and details uncovered. Still, some of the opinion pieces openly scrutinized the rule for its sweeping nature and for its vagueness.

> "Writing for the majority, Judge Frank Easterbrook gets tangled in the issue of what is a 'limited public forum,' a term invented by the Supreme Court in other cases to distinguish the

> guy who proclaims his views in the Student Union from the publication of the university-sponsored alumni magazine" (Banchero, *Anchorage Daily News*, July 2, 2005).
>
> "Using a slippery-slope definition of a public forum, the appeals court ruled that any forum not designated as public can be censored by its funding contributor… 'In addition,' the court's opinion states, 'a school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual activity in a high school setting.'"
>
> "The court argues that it can craft higher standards for the college press, like the high school press, because of a legitimate educational concern – protecting immature minds – and because it foots a portion of the bills" (Tuck, *The Pilot*, July 10, 2005).

Missing Dissent

On the whole, the dissenting opinion of four circuit judges Terence Evans, Ilana Rovner, Diane Pamela Wood and Ann Claire Williams, was again ignored. The very first issue the dissenting opinion addressed was the legal difference between high school and college students:

> "The majority's conclusion flows from an incorrect premise—that there is no legal distinction between college and high school students. In reality, however, "[t]he Court long has recognized that the status of minors under the law is unique in many respects." *Bellotti v. Baird*, 443 U.S. 622, 633 (1979). Age, for which grade level is a very good indicator, has always defined legal rights." (*Hosty v. Carter ,* 412 F.3d 731 (7th Cir. 2005) (en banc), Evans, Rovner, Wood and Williams, *dissenting*)

This distinction was central in the plaintiff's argument, and it was also addressed in part of the initial favorable ruling the students' received from a 7th Circuit panel in 2003. In fact, this question of age and appropriateness is at the very heart of most scholastic journalism arguments and indeed strikes at the core purposes of education at every level. To prove their point, the dissenting judges cited a litany of cases in which courts, both state and federal, have noted the distinction between high school and college students and respective rights to freedom of expression. What's more, the dissent highlighted the divisive practice of limiting certain student speech merely

for its controversial nature, a growing trend in light of *Hazelwood*. This debate, too, speaks to the major concerns of both educators and lawyers about First Amendment in public high school and universities. Yet the opinions of the four dissenting judges—fully a third of the 11 judges who ruled en banc for the 7th Circuit in this case—were all but absent in news media coverage.

Finally, the dissenting judges minced no words in describing their opinion on the drastic repercussions this ruling could have on student First Amendment rights: "This court now gives the green light to school administrators to restrict student speech in a manner inconsistent with the First Amendment" (*Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005) (en banc) *dissent*). This broad admonishment from some of the country's top government-appointed legal minds should not have gone unnoticed.

4. Characterizing the Lawsuit

Editorials and opinion columns represented journalists' sentiments toward the *Hosty* case. Analyzing a sampling of descriptions the columns used to characterize the court, school and students involved made it apparent that not all professional journalists were in agreement over the final court ruling. Some writers were quite forward in detailing how troubling they found the case, and their comments were indignant; others were more reserved in their disapproval.

> "The First Amendment is under attack, and I'm using the only weapon I can legally wield to defend it" (Tuck, *The Pilot*, July 10, 2005).
>
> "Unfree Press: Ruling Against Student Paper is Alarming" (Tuck, *The Pilot*, July 10, 2005).
>
> "Such prior review is a classic no-no" (Banchero, *Anchorage Daily News*, July 2, 2005).
>
> "Pressure on the press" (Staff, *Tribune (East Valley-Scottsdale, AZ)*, June 28, 2005).

"brazen act of censorship."

"If this were all the decision said, it would still be wrong; legal scholars have long understood that free speech means, at a minimum, that state officials cannot require publications to get state approval before publishing. Then, perhaps satisfied with ignoring only one principle of First Amendment law, the court decided that Hazelwood v. Kuhlmeier (1988), in which the Supreme Court ruled that public high school had substantial control over the content of a student newspaper produced as part of a journalism class, also applied to universities" (Lukianoff, *The Boston Globe*, Sept. 3, 2005).

"Madigan, courts threaten to muzzle young journalists."

"Illinois Attorney General Lisa Madigan is arguing on the wrong side in a case that threatens the independence of college and university journalists."

"troubling college newspaper censorship case" (Staff, *The News-Gazette*, Jan. 6, 2006).

"In the meantime, they have reason to be disappointed in the Supreme Court's decision and grateful that the IPFW administration recognizes the importance of First Amendment protections and the right to learn by doing" (Staff, *The Journal Gazette*, March 1, 2006).

5. Responding to the Ruling

Articles spent little space tracking the responses to the ruling from students, professionals, and academics. In fact, exploration of coverage of the *Hosty* case turned up only a smattering of stories that included reactions, which ranged from student disappointment, to disagreement by state officials over any lasting effect, to worry within the academic community about how such a ruling might affect enrollment in journalism schools.

"The ruling has set a precedent that many college journalists fear will do much harm to their student publications and to their experience as a journalist" (O'Brien, *Suffolk Life Newspapers*, Oct. 12, 2005).

"The Illinois attorney general's office, which defended Carter, on Tuesday played down the possible implications on student press freedoms" (Cohen, *Chicago Tribune*, Feb. 22, 2006)

"university newspaper staffs are reeling" (Staff, *Tribune*, June 28, 2005).

" 'It is a sad day for journalism in the United States,' said Irwin Gratz, president of the Society of Professional Journalists, in a statement to the press. 'Students will now spend eight years with prior review and censorship as part of their journalistic experience…how can we expect these young people to grow to become forceful advocates of the First Amendment?'" (O'Brien, *Suffolk Life Newspapers*, Oct. 12, 2005).

" 'If we are going to be baby-sat until we are 23 or 24, how will our potential employers ever know how responsible we are?'" (Staff, *The Journal Gazette*, March 1, 2006).

It is important to note that there has been no significant follow-up coverage to document lasting effects of this ruling on Governors State publications or any other local student press that might have been affected by the ruling. Given the significance of this ruling, the dearth of post-event analysis may have reflected a low priority level for student issues within the news media.

6. Explaining Potential Effects of the Ruling

The editorial and opinion coverage of the *Hosty* case was rather extensive compared to other cases. In the half dozen opinion articles, commentators and editorial writers devoted a significant amount of space to explaining just what, exactly, would happen to student journalists and student publications under the new legal guidelines that could emerge from a ruling against the students. Some columns and editorials even suggested readers should be aware of a larger societal effect that would diminish appreciation for civil liberties in the U.S.

Threats to higher education and society

> "the Hosty decision threatens to take us back into those prior, darker ages" (Tuck, *The Pilot*, July 10, 2005).
>
> "The ruling in Hosty v. Carter is bad news for students, bad news for reporters and bad news for those who know that overthrowing the liberty of a nation – or of a college – begins by subduing freedom of expression" (Banchero, *Anchorage Daily News*, July 2, 2005).
>
> "If student groups' rights are no longer presumed, and the only way students can be sure their group has rights is to prove that in court, students' rights mean little indeed."
>
> "It discredits the special importance of academic freedom at universities."
>
> "It disregards the fact that 99 percent of college students are adults, as opposed to high school, where most are minors" (Lukianoff, *The Boston Globe*, Sept. 3, 2005).
>
> "To subject students journalists to the constraints imposed on high school students is to compromise the integrity of higher education" (Staff, *The Journal Gazette*, March 1, 2006).

Threats to student journalists

> "But it's disquieting to think that the Northern Light owes its existence not to the U.S. Constitution but to the benevolence of university administrators. It's a lesson I wish this generation of students didn't have to learn."
>
> "Now all publications that take student fees are fair game."
>
> "The decision sets back the rights of college journalists by condoning whatever authoritarian impulses university administrators may harbor" (Banchero, *Anchorage Daily News*, July 2, 2005).
>
> "Taken to its most pessimistic extent, the Hosty decision has revoked the ability of most college publications to report the news objectively and aggressively."
>
> "If administrators can shut down your publishing ability because they give you money and don't approve of content, then college journalists will be forced to be less aggressive in news judgment."
>
> "And instead of being a watchdog, a newspaper might more resemble a cowering puppy" (Tuck, *The Pilot*, July 10, 2005).

7. Editorializing About the Case

The opinion and editorial voices commented on the censorship and the consequences of muzzling students' First Amendment rights.

> "The worst legal decision of the summer" (Lukianoff, *The Boston Globe*, Sept. 3, 2005).
>
> "The importance of having an uncensored press cannot be understated. For centuries the press has worked as a check on public figures and government, and the ability to aggressively pursue information without restrictions has been the key to that ability."
>
> "The press has always been a check on bad ideas."
>
> "I discern two reactions among the industry: dread and uncertainty."
>
> "But now that this type of censorship is being institutionally recognized, we are heading down a dangerous path."
>
> "I find it dangerous to incrementally allow students to experience the benefits of a free press" (Tuck, *The Pilot*, July 10, 2005).
>
> "A university, above all else, should be a marketplace of ideas, where students feel free to explore issues and views from all quarters" (Staff, *The Journal Gazette*, March 1, 2006).
>
> "The summer of 2005 will be remembered as a rough season for student rights" (Lukianoff, *The Boston Globe*, Sept. 3, 2005).

Where other newspapers hedged, the majority of editorials and commentaries covering the *Hosty* case minced no words: Students were censored, and censorship was a dangerous action. The majority of the editorials and commentaries expressed disapproval over the court's ruling, and even the characterizations of the case, the students, and the school were mostly anti-censorship. Journalists reacted harshly to what they saw was a blatant infringement on First Amendment rights and a warning that the court could be opening the door to worse instances of censorship. Above all, the newspaper coverage of *Hosty* demonstrated that in rare instances, newspapers do frame student First Amendment claims in a way that legitimizes and supports them. What's more, this case coverage demonstrated that journalists could indeed be protective of their own—adopting the role of First Amendment advocate when the injustice was too one-sided to ignore. When the editorials and commentaries showed contempt for the actions of the schools, the word "censorship" was more common. However, when editorials and commentaries showed conflicting attitudes toward the school's actions, "censorship" was often replaced with a euphemism.

Additionally, that this case has essentially dropped off journalists' radar demonstrates a short-sighted interpretation of the ruling's repercussions. The rather superficial legal interpretation that this ruling is "bad news" gives little context and speaks only to a general understanding of what the ruling really means for student journalists and public university students.

Morse v. Frederick

Case filed: 2005
Supreme Court ruled: 2007

Year of the Bust or Year of the Bong? A Historical Perspective

When the Supreme Court heard arguments for *Morse v. Frederick* in March of 2007, the first signs of what would ultimately be a major mortgage bust appeared. Between the hearing and the Court issuing its decision in June that year, major newsmaking events occurred. That year, criticism of President George W. Bush and his commanders in Iraq heightened after May 2007 became the deadliest month for allied forces since the start of the war. But the Virginia tech shoot was perhaps the most reported event of 2007, occurring on April 16 and leaving 33 people dead. Endless media roundtables followed the shooting, discussing psychologically difficult students, campus security, and who should have known what shooter Cho Seung-Hui would do.

Also in April of 2007, New Mexico passed a law allowing the use of marijuana for medicinal purposes. The passage of this legislation occurred in close proximity to both the case hearing and ruling and made marijuana use once again a front-page debate. It might also be important to note that this state legislation allowed some medicinal marijuana use and directly contradicted the Supreme Court's ruling in 2001 against *any* medical use of marijuana.

Findings

This section summarizes the findings of a sample of 48 articles covering the court case *Morse v. Frederick* (No. 06-278, slip. op. (U.S. June 25, 2007)). This study looked at 20 articles from local newspapers and 28 articles from non-local state or national newspapers. Of those, 17 articles were editorials or commentaries. The coverage spanned more than six years, from April 8, 2002 to July 24, 2008. Appendix G provides a complete list of newspaper sources. The articles were analyzed according to the central research question

RQ1: How do U.S. newspapers frame high school and college students' right to freedom of speech and press?

Analysis of the articles, editorials and commentaries focused on how the reporters:

1. Established case background
2. Provided legal context
3. Characterized the student and his speech
4. Characterized the principal and her actions
5. Talked up the competition
6. Analyzed and described the court's opinion
7. Described community and expert response
8. Established editorial and opinion positions; and
9. Analyzed the role of the First Amendment in society and schools

1. Establishing Case Background

As with other cases, most articles covering *Frederick v. Morse* established case background by describing Frederick's act of holding up the banner and his subsequent suspension by the principal. Through a mix of straight news stories and editorial coverage, newspapers established the fact that Frederick used his banner as a ploy to get on television as the Olympic torch was passing through Juneau. Most descriptions of what happened read similarly:

> "In this case, the student unfurled a banner reading 'BONG HITS 4 JESUS' on a sidewalk as the Olympic torch passed by his Alaska school in 2002. The student said he used a nonsense

> phrase and meant only to attract national TV cameras. The principal angrily pulled the banner down and suspended the student" (Staff, *USA Today*, June 26, 2007).

Not every story included specific details about the incident, but some used a play-by-play approach to set the scene, describing how Frederick crossed the street to leave school property and how he recited Thomas Jefferson at the principal when she first approached him to take down the sign (Richey, *Christian Science Monitor*, March 19, 2007). Different writers described the event differently, some calling it a "confrontation" (Morris, *Juneau Empire,* Jan. 28, 2007), others describing it as a battle between youthful immaturity and adult authority. One editorial was heavy with disdain towards Frederick's actions:

> "A high school senior in Juneau, Alaska, decided that the Olympic torch passing through his city in 2002 was a perfect time to whip out his "Bong Hits 4 Jesus" banner. It wasn't like he was at school, right? Well, the reference to marijuana use got him suspended anyway, for violating the school's policy against promoting illegal substances at a school-sanctioned event. Joseph Frederick sued, claiming his free speech rights were violated, dude. He managed to win a lower court ruling that his civil rights suit could proceed. Now, the Supreme Court has stepped into the dispute, agreeing to hear an appeal by the Juneau School Board and principal Deborah Morse. Not wanting to get beat by a high school kid, the School Board has hired former Whitewater prosecutor Kenneth Starr to argue its case" (Staff, *St. Petersburg Times,* Dec. 2, 2006).

Only one editorial, in describing what happened, thoughtfully considered the dynamics of the situation as they related to Frederick's free speech claim:

> "Frederick said what he said – not inside a classroom, but outside, where the marketplace of ideas still functions – and all of Juneau was free to laugh at him, to scold him, to ignore him" (Staff, *Juneau Empire*, May 7, 2006).

In this editorial, the authors seemed to share the previous opinion column's notion that Frederick's actions were worthy of disdain, but the article's mention of a 'marketplace of ideas' implies a more tolerant attitude towards Frederick.

As a whole, diminutive editorial and opinion voices served to criticize the case. Common characterizations of the case framed it as a ridiculous stunt (notably a scene from a classic Hollywood movie on youth rebellion), as a David and Goliath-esque battle, or as an epic saga sucking the life out of the justice system:

> "The case sounds like something out of Ferris Bueller's Day Off, the 1986 film featuring a wisecracking senior who bedevils the dean of students" (Staff, *USA Today*, March 21, 2007).
>
> "Anyone who's seen the movie Ferris Bueller's Day Off will quickly grasp the dynamic in a second free speech case the Supreme Court decided Monday: Wiseguy high school senior provokes administrator. Administrator reacts angrily. Battle of wits ensues" (Staff, *USA Today*, June 26, 2007).
>
> "The whole thing is, to put it mildly, ridiculous" (Staff, *Juneau Empire*, May 7, 2006).
>
> "A silly banner and stupid court appeal" (Staff, *Juneau Empire*, May 7, 2006).
>
> "Thus does a high school prank become a federal case" (Milbank, *The Washington Post*, March 20, 2007).
>
> "the case invited a certain amount of reefer madness" (Milbank, *The Washington Post*, March 20, 2007).
>
> "How did something so daffy get to be a constitutional crisis?" (Staff, *The Austin American-Statesman*, March 20, 2007).
>
> "It's rare that arguments about something as stupid as a banner declaring 'Bong Hits 4 Jesus' make their way to the U.S. Supreme Court" (Staff, *The Austin American-Statesman*, March 20, 2007).
>
> "Yesterday at the Supreme Court was a day for rebels from the old frontier" (Barnes, *The Washington Post*, March 20, 2007).
>
> "eccentric story line" (Staff, *The New York Times*, March 20, 2007).
>
> "strange saga" (Zimmerman, *Christian Science Monitor*, March 22, 2007).

Two editorial or opinion articles framed the case as one that actually merited judicial review, calling the case:

> "a classic conflict" (Barnes, *The Washington Post*, March 13, 2007).
>
> "an epic Supreme Court battle" (Barnes, *The Washington Post*, March 13, 2007).
>
> "one that, classically, pits official authority against student dissent" (Greenhouse, *The New York Times*, March 18, 2007).

Two other editorials framed the court case as one worthy of judicial attention because of the unique nature of the case:

> "The ruling miscast the case before the court as about drugs. But it was about a student's right to speech" (*Seattle Times* Staff, *Juneau Empire*, June 27, 2007).
>
> "Terms such as 'police state' come to mind" (Staff, *Juneau Empire*, March 19, 2007).

Interestingly, straight news stories were more convinced about the significance of the case and joined a handful of opinion and editorial pieces that highlighted the case's precedence. More than 20 articles used language that suggested the case was significant for students and schools alike, not for its uniqueness but for its potential for legal precedence.

> "has become a significant legal test of students' speech rights—and of how far school officials can go in limiting such rights to try to maintain order in schools" (Biskupic, *USA Today*, March 7, 2007).
>
> "the court's decisions could provide lasting and far-reaching consequences" (Barnes, *The Washington Post*, March 20, 2007).
>
> "The Supreme Court should now begin to settle the choppy seas of speech, and the case of Frederick v. Morse is an appropriate place to begin this difficult task" (Calvert & Richards, *The Washington Times*, October 6, 2006).
>
> "Justices to Hear Landmark Free-Speech Case; Defiant Message Spurs Most Significant Student 1st Amendment Test in Decades" (Barnes, *The Washington Post*, March 13, 2007).
>
> "Under the school's theory, meanwhile, educators could censor any speech that contradicted their goals or ideas. And that might be the scariest idea of all" (Zimmerman, *Christian Science Monitor*, March 22, 2007).
>
> "In its most significant ruling on student speech in almost two decades" (Lane, *The Washington Post*, June 26, 2007).
>
> "Whenever the nation's highest court hears a case that could ultimately restrict free speech, the nation should hold its breath" (Staff, *The (Springfield, Mass.) Republican*, March 23, 2007).
>
> "It's kind of nuts, but Morse v. Frederick is an important speech issue, and First Amendment rights must be regularly redefined. All of our constitutional rights are decided one case – in this case, one silly prank – at a time" (Staff, *The Austin American-Statesman*, March 20, 2007).
>
> "Case called most important student free speech debate since Vietnam War" (Morrison, *Juneau Empire*, March 18, 2007).

After discussing the significance of the case, some articles speculated on the potential impact a pro-student or pro-school ruling would have on a multitude of issues, including classroom lessons, student rights, administrative authority, and the judicial process.

> "By suing for his rights and winning, Frederick, now a student at the University of Idaho, made himself into a civics lesson for current and future Juneau-Douglas students. By asking the Supreme Court to step in, the board and the district risk making him a civil liberties chapter in history books coast-to-coast" (Staff, *Juneau Empire*, May 7, 2006).

> "Furthermore, it's not much of a civics example for young citizens, though in this case it did turn out to be a lesson" (Staff, *Juneau Empire*, March 19, 2006).

> "One hopes there were some thoughtful debates in the school's civics classes that year – and again this month – because of the case" (Staff, *Juneau Empire*, March 19, 2006).

> "School should be a place where teachers and administrators educate students on the importance of the First Amendment and the role of freedom of speech in American society, Collins said. If the court rules against Frederick, it could have the opposite effect" (Morrison, *Juneau Empire*, March 18, 2007).

> "On the other side are free-speech advocates who worry that a Supreme Court endorsement of the principal's approach would open the door to widespread censorship of students" (Richey, *Christian Science Monitor*, March 19, 2007).

> "which would let administrators censor criticism of any kind" (Zimmerman, *Christian Science Monitor*, March 22, 2007).

> "Ruling in Alaska banner case tightens limits on students' speech rights" (Staff*, USA Today*, June 26, 2007).

> "A ruling against Frederick and his 'Bong Hits 4 Jesus' banner would undermine the rights of others who might want to express opinions that school officials find detrimental to their educational mission" (Staff, *The (Springfield, Mass.) Republican*, March 23, 2007).

> "But if schools can limit speech on any subject deemed to be important, students could soon be punished for talking about the war on terror or the war in Iraq because the government also considers those subjects important" (Staff, *The New York Times*, March 20, 2007).

> "If Starr and the administration prevail, students might lose any semblance of free expression. If the other side wins, teachers might lose any semblance of order in the classroom" (Milbank, *The Washington Post*, March 20, 2007).

> " 'Up to this point, we thought that a principal enforcing an anti-drug policy was safe to do so,' she says. 'Now school administrators are walking on eggshells'" (Biskupic, *USA Today*, March 7, 2007).

> "The case is being closely watched by school administrators and anti-drug officials who are concerned that a ruling upholding the appeals court could undercut school efforts to foster a drug-free atmosphere" (Richey, *Christian Science Monitor,* March 19, 2007).

> "Somewhere, a teenager with an abnormal interest in the court and a normal zest for mischief might be thinking: Cool idea, Justice Stevens – I'll create a banner to test whether banning 'Wine Sips 4 Jesus' would infringe my religious freedom. Endless distinctions can – actually, must – be drawn once a subject becomes a matter of constitutional litigation" (Will, *The Washington Post*, July 1, 2007).

> "His case illustrated how the multiplication and extension of rights leads to the proliferation of litigation. It also illustrated something agreeable in a disagreeably angry era—how nine intelligent, conscientious justices can civilly come to a strikingly different conclusion about undisputed facts" (Will, *The Washington Post*, July 1, 2007).

As the case progressed, a growing consensus emerged from the articles: journalists sensed that however the court ruled, the judgment's impact would be significant, even if the Bong Hits banner, itself, was not.

2. Providing Legal Context

To provide a legal frame of reference in which to examine student free expression rights, most journalists cited *Tinker*, or some combination of *Tinker, Hazelwood,* and *Bethel v. Fraser*. Among opinion, editorial and straight news pieces, more than 11 articles specifically referenced the *Tinker* ruling as the standard for student free speech rights, while eight articles referenced a combination of the three. Three articles referenced *Hazelwood* only. Those that did reference *Tinker* explicitly cited the oft-referenced quote from the ruling:

> "The court said that students do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate'" (Will, *The Washington Post*, July 1, 2007).

> "Their standard is a landmark 1969 Supreme Court ruling that allowed students to wear black arm bands to protest the Vietnam War, because students didn't give up their free speech rights 'at the schoolhouse gate' unless their actions significantly disrupted or interfered with school activities" (Richey, *Christian Science Monitor,* March 19, 2007).

References to *Bethel* and *Hazelwood* were less uniform, with some articles emphasizing the "vulgar, lewd, and offensive speech" prohibited in *Bethel* (Morrison, *Juneau Empire*, March 18, 2007) and others describing restricted speech as those "messages deemed harmful" (Barnes, *The Washington Post*, March 13, 2007). One article described *Bethel* as permission to "ban sexually explicit student speech" (Lane, *The Washington Post,* June 26, 2007), even though the speech in *Bethel* was actually sexual innuendo, and did not depict a graphic sexual act.

As another means of context, one article mentioned increased tensions between authority and rights in a post-Columbine world. This reference emphasized a perceived link between taboo topics and violent or harmful acts by students:

> "Such policies—many inspired by the slayings of a dozen students and a teacher by two outcasts at Colorado's Columbine High School in 1999 – have banned students from wearing clothing or posting signs that focus on drugs, guns or incendiary topics such as homosexuality, abortion and religion" (Biskupic, *USA Today*, March 7, 2007).

This same article was the only one to also demonstrate further research into contemporary student rights cases. The author gives brief descriptions of two other instances that occurred after the year 2000 in which students felt their First Amendment rights had been violated.

3. Characterizing the Student and His Speech

Claims made by both Frederick and Morse in initiating the lawsuit were largely uncontested—in other words, Morse did not deny tearing down the banner, nor did Frederick deny using the banner as a nonsensical way to get on television. Therefore, articles described the claims in relatively neutral terms that need not be repeated here. What was more telling were the characterizations used to introduce the reader to both

the litigant and the defendant. Described by one newspaper editorial as "the protagonist in a case" (Staff, *The Washington Post*, March 21, 2007), Frederick was generally characterized as a truant, attention-hungry youth in most of the editorial, opinion, and straight news coverage. In fact, no one seems to accept his argument that he was asserting his right to say anything at all. Additionally, Frederick's reputation outside of the case was repeatedly brought into focus, a practice that drew attention away from Frederick's First Amendment claim. By contrast, Morse's reputation beyond the case was never investigated.

> "It's hard to believe that Frederick was really asserting his constitutional rights that day, as he claimed, and not just being a nutty teen craving attention. (We can suppose that here because we have freedom of expression" (Staff, *Juneau Empire*, March 19, 2006).
>
> "Rebellious high school senior Joseph Frederick" (Staff, *The Austin American-Statesman*, March 20, 2007).
>
> "In January 2002, in Juneau, Alaska, Joseph Frederick had the sort of idea that makes a teenager seem like one of nature's mistakes" (Will, *The Washington Post,* July 1, 2007).
>
> "A defiant high school student named Joseph Frederick" (Barnes, *The Washington Post*, March 13, 2007).
>
> "Frederick, a high school rebel who at the time was fond of quoting Thoreau and Voltaire" (Barnes, *The Washington Post*, March 13, 2007).
>
> "a second-semester senior impatient to move on in the world" (Barnes, *The Washington Post*, March 13, 2007).
>
> "though he was not a particularly happy student at Juneau-Douglas High School. One day, he refused a vice principal's order to leave a student commons area where he was reading Albert Camus, and the police were called. The next day, he remained in his seat while others stood for the Pledge of Allegiance and was sent to the principal's office" (Barnes, *The Washington Post*, March 13, 2007).
>
> "The creator of the banner, now living in China, was arrested for distributing marijuana while in college" (Milbank, *USA Today*, March 20, 2007).
>
> "Joseph Frederick was arrested while attending college in Texas for distributing marijuana" (Barnes, *The Washington Post*, March 13, 2007).
>
> "a high school senior who pulled a sophomoric stunt to get on TV" (Staff, *The (Springfield, Mass.) Republican,* March 23, 2007).
>
> "Frederick subsequently was arrested in Texas for marijuana possession" (Staff, *The Austin American-Statesman*, March 20, 2007).

> "Joseph Frederick, who has been teaching and studying in China, pleaded guilty in 2004 to a misdemeanor charge of selling marijuana at Stephen F. Austin State University in Nacogdoches, Texas, according to court records" (Skinner, *Juneau Empire,* June 26, 2007).
>
> "Frederick and his father say through their attorney that they are the victims of abuse by people who oppose their lawsuit. They sit in Asia in a form of exile, and they wait" (Morris, *Juneau Empire*, January 28, 2007).
>
> "Joseph Frederick is teaching high school English and studying Mandarin in China. He will not say exactly where, the better to protect his solitude" (Associated Press, *Juneau Empire*, March 5, 2007).

Descriptions of Frederick's speech were equally unflattering; reporters wrote that his sign was "pointless" (Staff, *Juneau Empire*, May 7, 2006) and called it a "teenager's attempt at humor" (Richey, *Christian Science Monitor*, March 19, 2007). Opinion and news articles alike found little value in Frederick's speech itself.

> "Frederick's bong-hits banner may be childish and inane" (Calvert & Richards*, The Washington Times*, October 6, 2006)
>
> "somewhat absurd, vaguely offensive, mostly nonsensical message of protest" (Barnes, *The Washington Post*, March 13, 2007).
>
> "The banner was a foolish vulgarity, unworthy of court-affirmed protection" (Zimmerman, *Christian Science Monitor,* March 22, 2007).
>
> "his juvenile banner" (Zimmerman, *Christian Science Monitor,* March 22, 2007).
>
> "wacky teen prank" (Staff, *The Austin American-Statesman*, March 20, 2007).

4. Characterizing the Principal and Her Actions

In their characterizations of the principal, opinion, editorial and straight news coverage distinguished between the woman as a person and her actions as an authority figure. On the whole, Morse's characterizations were generally less frequent and less harsh—and at times even sympathetic—than those referring to Frederick.

> "This is a story about a principal who overreacted" (Staff, *The (Springfield, Mass.) Republican,* March 23, 2007).
>
> "Morse's appalling argument" (Zimmerman, *Christian Science Monitor*, March 22, 2007).
>
> "a disciplinarian principal" (Staff, *The Austin American-Statesman*, March 20, 2007).

> "his frazzled principal trying to maintain order" (Barnes, *The Washington Post*, March 13, 2007).
>
> "disciplinarian principal, Deborah Morse" (Barnes, *The Washington Post*, March 13, 2007).
>
> "Principal Morse reasonably determined" (Starr, *USA Today*, March 21, 2007).

Only two articles—one an editorial and one an opinion column—suggested Morse should have responded differently:

> "Morse should have recognized Frederick's banner for the harmless prank it was. She should have clucked in dismay and walked away from a confrontation" (Staff, *The Austin American-Statesman*, March 20, 2007).
>
> "The case would not have reached the U.S. Supreme Court if the principal had quietly shared some history with Frederick by reciting for him a quote by Hubert H. Humphrey, 'The right to be heard does not automatically include the right to be taken seriously'" (Staff, *The (Springfield, Mass.) Republican,* March 23, 2007).

5. Talking Up the Competition

One of the most unique aspects of the coverage of *Morse v. Frederick* was the space devoted to covering the school's counsel, Kenneth Starr. As former litigator in the Monica Lewinsky scandal, Starr's celebrity-status did not go unnoticed in the news media coverage. When Starr was retained for counsel as the case progressed to the Supreme Court, the focus on his actions and words was a significant portion of the coverage. He even had his own opinion column published, while attorneys for Frederick had no such opportunity. At least seven articles, opinions and editorials focused some of their space on discussing Starr and his approach to the case:

> "Adding flair to the quixotic mission, the district enlisted attorney Kenneth Starr (yes, that Kenneth Starr, investigator of President Clinton's shenanigans), who knows a thing or two about jousting at windmills" ((Staff, *Juneau Empire*, May 7, 2006).
>
> "Famed attorney Kenneth Starr" (Morrison, *Juneau Empire*, August 29, 2006).
>
> "But Mr. Starr, by contrast, was happy to talk about the case and the alignment against him of many of his old allies" (Greenhouse*, The New York Times*, March 18, 2007).
>
> "This was Mr. Starr's third argument in a high profile Supreme Court case since the last chapter of his public career, as the independent counsel in the various investigations of President Bill Clinton. He appeared before the court in the 2003 case that challenged the

> McCain-Feingold campaign finance law and the next year in a case on the recitation of the phrase "under God" in the Pledge of Allegiance" (Greenhouse, *The New York Times*, March 20, 2007).
>
> "The Juneau School District has enlisted some big-name help in hopes of overturning the ruling that could potentially cost it money" (Morrison, *Juneau Empire*, May 3, 2006).
>
> "School Board secures former Clinton investigator Kenneth Starr as pro bono attorney in attempt to reverse ruling in First Amendment banner case" (Morrison, *Juneau Empire*, May 3, 2006).
>
> "Carlson said Starr, whose investigation led to the impeachment of President Clinton by the U.S. House of Representatives, has the reputation and qualifications to take the case" (Morrison, *Juneau Empire*, May 3, 2006).

6. Analyzing and Describing the Court's Opinion

Coverage of the court's ruling was divided among use of direct quotes from the opinion, descriptions of the ruling and its applications or limitations, and discussion of the dissenting opinion. Most coverage highlighted, in one way or another, the discontent felt among the judges in issuing the opinion with the judges holding such differing rationales for the majority decision:

> "There were additional shades of opinion within the chief justice's majority" (Greenhouse, *The New York Times*, June 26, 2007).
>
> "Chief Justice John G. Roberts Jr. spoke, at least nominally, for five of the six" (Greenhouse, *The New York Times*, June 26, 2007).
>
> "Two members of the majority, Justices Samuel A. Alito Jr. and Anthony M. Kennedy, made it clear that they gave Roberts the fourth and fifth votes he needed on the understanding that yesterday's ruling applied only to advocacy of illegal drug use" (Lane, *The Washington Post,* June 26, 2007).
>
> "Justice Stephen Breyer, while siding with the majority, asserts that Frederick and his bong-hits banner make for an inadequate foundation on which to limit students' right political speech" (*Seattle Times* Staff, *Juneau Empire*, June 27, 2007).
>
> "The Supreme Court fractured on a case involving student speech rights this week" (Staff, *The Washington Post*, June 2, 2007).

Significant coverage was given to the debate held inside the Supreme Court during oral testimony and before its ruling in the summer of 2007. Much of the coverage reported the justices' questioning of the lawyers and their arguments and suggested

the outcome of the ruling was already apparent given certain circumstances. Perhaps for reporters like Linda Greenhouse, a Yale Law School graduate; Joan Biskupic, a Georgetown Law graduate; and Fred Barnes, a seasoned legal reporter, the case outcome was more readily discernable given their deep understanding of the Supreme Court's practices and personalities.

> "A majority of the court seemed willing to create what would amount to a drug exception to students' First Amendment rights" (Greenhouse, *The New York Times*, March 20, 2007).
>
> "But some justices seem uneasy about labeling as protected free speech what Justice Anthony M. Kennedy called Frederick's 'sophomoric' message" (Barnes, *The Washington Post*, March 20, 2007).
>
> "Mr. Starr's biggest ally on the court was the man who once worked as his deputy in the solicitor general's office, Chief Justice John G. Roberts, Jr. The chief justice intervened frequently throughout both sides of the argument, making it clear his view that schools need not tolerate student expression that undermines what they define as their educational mission. 'Why is it that the classroom ought to be a forum for political debate simply because the students want to put that on their agenda?' Chief Justice Roberts asked Mr. Starr" (Greenhouse, *The New York Times*, March 20, 2007).
>
> "When the case was argued Monday before the Supreme Court, the justices bantered about what other banners would or wouldn't be permissible: 'Vote Republican'? 'Smoke Pot, It's Fun'? 'Rape is Fun'? 'Extortion is Profitable'?" (Staff, *USA Today*, March 21, 2007).
>
> "Justice Samuel Alito[…]seemed more concerned by the administration's broad argument in favor of schools than did his fellow conservatives. 'I find that a very, a very disturbing argument,' Alito told Justice Department lawyer Edwin Kneedler, 'because schools have…defined their educational mission so broadly that they can suppress all sorts of political speech and speech expressing fundamental values of the students, under the banner of getting rid of speech that's inconsistent with educational missions'" (Sherman, *Juneau Empire*, March 20, 2007).

By reporting the heated debate held within the Supreme Court courtroom that day, readers received a glimpse of how the justices would approach their ruling.

> " 'So if the sign had been 'Bong Stinks for Jesus,' that would be…a protected right?' asked Ruth Bader Ginsberg" (Milbank, *USA Today*, March 20, 2007).
>
> "Justice David Souter was among the few justices questioning even that basic premise. 'I can understand if they unfurled the banner in a classroom that it would be disruptive,' Souter said, 'but what did it disrupt on the sidewalk?'" (Biskupic, *USA Today*, March 20, 2007).

Interestingly, the most comprehensive account of the exchange of dialogue among justices during the case was found in an opinion column—written by Dana Milbank, a

journalist with significant legal reporting experience—and was highly critical of the Court's approach. A section of that opinion (Milbank, *USA Today*, March 20, 2007) is here:

> "All that was missing in the chamber yesterday was black light and Bob Marley. And to think Douglas Ginsburg withdrew his nomination to the high court because he had used marijuana.
>
> "If the justices sounded as if they were doin' the doobies yesterday morning, the case invited a certain amount of reefer madness."
>
> "The justices seemed frustrated with both sides. Starr got only 90 words into his argument before being interrupted by Kennedy, then Souter, each demanding to know how the banner had been disruptive. 'I'm missing the argument,' Souter told the former Whitewater prosecutor."
>
> "Mertz, arguing for the student, fared even worse than Starr and Kneedler. HE got out only one sentence – 'This is a case about free speech; it is not a case about drugs'—before Roberts interrupted" (Milbank, *USA Today*, March 20, 2007).

Once the Court's ruling was released, opinions of the dissenting judges received much less play in both straight news and opinion or editorial columns. Reporters often just listed the names of dissenting judges and a short summary or quote from their argument. This approach gave short shrift to the concurring, partially dissenting and dissenting opinions that were filed, which in essence limited the majority ruling in critical ways and disagreed with much of the majority ruling's understanding of the case's precedence.

For instance, Judge Clarence Thomas' concurring opinion was written simply to make known his opinion that "the standard set forth in *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503 (1969), is without basis in the Constitution" (*Morse v. Frederick, Thomas concurring).* Essentially, Thomas used his concurring opinion as an opportunity to dismantle the arguments made in *Tinker*. If news media are the marketplace of ideas, then Justice Thomas' opinion should have

been given time or space in that market alongside the majority opinion. This way, citizens could have evaluated the argument's many facets, including some of Thomas' extreme opinions. For example, at one point, Thomas stated that Morse should have won because, as originally understood, the Constitution does not extend First Amendment rights to students[4].

The concurring opinions of Justices Samuel Alito and Anthony Kennedy took the opposite approach from Black by strictly limiting the Court's prohibition against student free speech rights to that speech which advocates illegal drug use. This limitation is critical because it "correctly reaffirms the recognition in *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 506 (1969), of the fundamental principle that students do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate'" (*Morse v. Frederick*, Alito and Kennedy *concurring*). Furthermore, the Justices cautioned against the notion that schools could censor speech that interferes with the educational mission, since such a goal could be defined so broadly and subject to manipulation. This interpretation echoed sentiments found in *Tinker* and is an imperative distinction that must be made in order for education officials and average citizens alike to understand the scope of the ruling. In short, for the news media to fulfill its role as the fourth estate, people in the U.S. must know for what those in positions of power will stand, especially Supreme Court justices.

[4] Extending Thomas' reasoning on this subject would likely cause some to wonder how he would then justify the right for women to vote or blacks to be free from slavery, since a strict interpretation of the Constitution also prohibited these things.

7. Describing Community and Expert Response

Only four articles contained any significant survey of responses to the ruling from students, teachers, or community members. Six articles included some type of expert testimony from someone not directly related to the plaintiff or defense. For the most part, community sentiment sided with Frederick, as students and parents struggled to understand why the school reacted as harshly as it did.

> " 'Certainly from a moral perspective I understand and support the district, but from a legal perspective I think Mr. Frederick was in the right,' she said" (Morrison, *Juneau Empire*, May 7, 2007).
>
> "I think the true cost is probably quite heavy, and we'll probably never know what it is,' he said. 'What they did to this kid is unpardonable,' he said. 'This is the kind of thing they did in Russia'" (Morris, *Juneau Empire*, Jan. 28, 2007).
>
> " 'Something like that is something that all students wish they could do but don't actually have the guts to do it,' said Lesley Kalbrener, an editor for the JDHS student newspaper, The Ego. 'It actually kind of makes him a hero'" (Morrison, *Juneau Empire*, May 7, 2007).

Experts surveyed included the executive director of the Association of Alaska School Boards, Alaska executive director of the America Civil Liberties, general counsel from the National School Boards Association, president of a civil liberties organization, a scholar from a First Amendment advocacy group, a director for the American Association of School Administrators, the ACLU national legal director, and a lawyer with the National Coalition against Censorship. Among the stories as a whole, there was a relative balance between experts cited on behalf of Frederick and those cited on behalf of Morse. However, within each story, such balance was not always present.

8. Establishing Editorial and Opinion Positions

In total, eight editorials and six opinion columns were analyzed. The columns ranged from offering full support to Morse to unequivocally backing Frederick, although many were more ambivalent about the cause. Some even expressed extreme frustration at the very existence of the case.

> "This legal tit for tat must end. Let's drop the bong hits case once and for all" (Staff, *Juneau Empire*, March 19, 2006).
>
> "Enough already; drop the bongs hits issue" (Staff, *Juneau Empire*, January 25, 2008).
>
> "Issues of drug use and drug policy are matters of serious contention. High school students must be able to debate them frankly—and that might even involve students taking the position that bong hits are not that bad" (Staff, *The Washington Post,* June 27, 2007).
>
> "In particular, the case should be considered not simply to resolve the question about pro-drug speech in public schools but perhaps more importantly to resuscitate the high court's moribund and muddled jurisprudence of student free-expression rights" (Calvert & Richards, *The Washington Times*, October 6, 2006).
>
> "But in this case, both sides are wrong[…]so the Supreme Court should dismiss" (Zimmerman, *Christian Science Monitor*, March 22, 2007).
>
> "Bong Hits 4 Jesus? I have a better idea: Schools 4 Free Thinkers. Now there's a slogan we should all display" (Zimmerman, *Christian Science Monitor*, March 22, 2007).
>
> "Protect student speech—even 'unwise' bong banner" (Staff, *USA Today*, March 21, 2007).
>
> "The court should use this case to reaffirm Tinker's famous pronouncement that students do not shed their right to free speech 'at the schoolhouse gate'" (Staff, *The New York Times*, March 20, 2007).
>
> "The court should ensure that administrators cannot define a school's basic educational mission so broadly[…]that they have the power to suppress any meaningful speech with which they, or their school boards, disagree" (Staff, *The Washington Post,* March 21, 2007).
>
> "I disagree with 'Bong Hits 4 Jesus,' but I will defend to the death your right to display it on a banner" (Staff, *Juneau Empire*, March 19, 2006).
>
> "But whether he set out to save civil liberties, to impress his friends, or even seriously to advocate dope for the Lord, he was on a street in America. That means that as long as he wasn't harassing anyone or creating a hazard, he can make his point" (Staff, *Juneau Empire*, March 19, 2006).
>
> "no one in this country was free to shut him up" ((Staff, *Juneau Empire*, May 7, 2006).
>
> "The court should make this a banner year for free speech by ruling in favor of the student" (Staff, *The (Springfield, Mass.) Republican,* March 23, 2007).
>
> "The majority worries that illegal drugs are a serious danger in schools. This argument gets some sympathy but not enough to trample on the First Amendment" (*Seattle Times* Staff, *Juneau Empire*, June 27, 2007).

In making their case for or against Frederick, journalists in a handful of editorial and opinion pieces engaged in a discussion over the role of freedom of speech in schools and the role of the government in limiting speech. Overall, the tendency was to urge on the side of caution before restricting First Amendment rights:

> "Neither has the power to forbid people of any age from mentioning drugs or anything else in a public place" (Staff, *Juneau Empire*, May 7, 2006).
>
> "Indeed, the idea of someone – or even everyone – deciding what is right to say is the very oppression that the Constitution's drafters sought to prevent" (Staff, *Juneau Empire*, March 19, 2006).
>
> "Free speech is the bedrock upon which American freedoms grow. The concept, enshrined in the Constitution, protects written and spoken ideas and messages, regardless of how popular, right, or stupid they may be" (Staff, *Juneau Empire*, March 19, 2006).
>
> "Students do not enjoy the same free-speech rights in school that adults enjoy. Schools legitimately can restrict student speech that disrupts the educational process, for instance. On the other hand, schools can't tell students to shut up just because the faculty doesn't like what a kids has to say" (Staff, *Richmond Times,* March 29, 2007).
>
> "But the line around protected speech is appropriately wide, even when it's subversive or sophomoric. The student's attorney was on target when he told the justices that this sort of expression is 'the kind of speech we must tolerate, no matter how unwise it is" (Staff, *USA Today*, March 21, 2007).
>
> "Yet both sides of this dispute have lost sight of schools' true educational purpose: to foster critical and independent thought" (Zimmerman, *Christian Science Monitor*, March 22, 2007).
>
> "If we really want schools to teach democracy, we must not insulate them from democratic dissent" (Zimmerman, *Christian Science Monitor*, March 22, 2007).

Journalists generally avoided comparing their own First Amendment rights to the freedom of speech that Frederick was fighting for. Instead, they kept the discussion largely confined to the idea that all citizens have the right to express unpopular and even bizarre ideas so long as they do not hurt, or in the case of school, disrupt the educational prerogative. However, by not taking the opportunity to show the similarities between the two situations—Frederick's right to say something inane and

the journalists right to document it—journalists failed on some level to provide a real demonstration on the value of First Amendment rights in our society. The conflicting institutional attitudes in the editorials and commentaries demonstrated that, in fact, many journalists see *no* similarities between their profession and Frederick's claim.

Coverage of *Morse v. Frederick* was distinct from the seven other cases analyzed in a significant way: journalists seemed to take more liberties in word choice, characterizations and overall story framing. These liberties were rarely to the student's benefit, and did nothing to aid in understanding the case. Frederick was consistently framed as the instigator of an immature prank. Because the case began under such unique—albeit even comical—circumstances, the tone with which many journalists and commentators wrote erred on the side of levity and at times even sarcasm. Such an approach diminished the significance and legal weight of the case—it was almost as if journalists' viewed the court case as a bigger joke than Frederick's sign. The job of journalists, and perhaps especially when reporting on legal matters, is not to write with preconceived notions of right or wrong, worthy or unworthy, but to let the facts speak for themselves. When journalists' disdain or irritation at a story seeps into the article, and they write about the events and subjects in obviously loaded ways, they do an injustice to the story and to their readers.

Chapter 6: Conclusion

This chapter reexamines the study's key findings presented in Chapter Five to draw larger conclusions about the nature of news media coverage of student First Amendment issues. Based on the findings of the previous chapter, the conclusion focuses on the four most common frames found throughout the coverage of all eight cases. These frames reflect:

1. Loaded characterizations of students and their claims, including frames of:
    a. Everything But "Censorship";
    b. Student as aggressor/student as instigator;

2. Conflicting institutional attitudes established via editorials and opinions, including frames of:
    a. Students as wards of the state;
    b. Students as citizens-in-training;

3. Inadequate attention to detail; and

4. Superficial legal context.

Within each of these four most common approaches to news coverage as developed in Chapter Five, the more specific frames address nuances in articles, editorials and opinion columns. Each approach is discussed in depth in this chapter, including the specific frames the articles employed. In addition, this conclusion addresses potential explanations for the quality and quantity of news media coverage in these cases.

Finally, this conclusion argues that U.S. newspapers cover student First Amendment issues in ways that minimize the students' claims and their significance, thereby

limiting the public's ability to understand the repercussions and the larger place of student First Amendment rights in society.

Loaded Characterizations of Students and Their Claims

Journalists' rhetorical choices can have a significant impact on how the public perceive and internalize news stories. As media author Denis McQuail (2005) notes, journalists interpret and link discrete facts to tell a story. In doing so, many journalists "depart from pure 'objectivity' and […] introduce some (unintended) bias" (p. 379). This bias—unintended or not—is evident in the words journalists choose to describe the actions of each actor involved in the court cases, including the school or administrator and the students.

Everything But "Censorship"

This study revealed that U.S. newspapers do a very poor job of covering student First Amendment cases. But of all the failures in their reporting, the most significant failure was journalists' avoidance of the word "censorship" or the legal phrase "prior review" to describe school or administrator actions against a student. In fact, in most cases, journalists consistently used everything but the word "censorship" to describe the school's actions against the students.

Reporters and commentators repeatedly—and almost to a fault—resorted to euphemisms such as: "halted," "blocked," "seized," "removed, without consulting," or "ordered deleted." Such euphemisms worked to lessen the gravity of the administrators' actions and turned what the courts termed "censorship" into an act of

discipline—an educational prerogative and not a Constitutional infringement. Why did journalists select terms that, on the surface, were so patronizing given the legal severity of the situations? Was it a balanced and thoughtful attempt to imply a lesser degree of interference by the school or administrator? Was it merely a result of varying word choice to keep the story interesting? These are questions this study cannot answer, but to use descriptors like the ones above instead of the legally recognized terms for each action minimized the students' claims. To say a story was "pulled" gives an entirely different perspective than to say it was "censored" or subject to "prior review." Since the latter terms reflect the actual legal claims students presented to the courts, it was inappropriate and marginalizing for journalists to refrain from characterizing the administrators' actions as censorship and prior review, regardless of the journalists' reasons for doing so.

Journalists have an obligation to choose words that accurately reflect the legal charge. One would not characterize a bank robbery as a "situation wherein people took money that did not belong to them." Readers should expect clear and accurate use of language especially in reporting on a conflicting legal case. Language and word choice matter, and journalists owe rhetorical care and precision to every story—and every person—they cover. In this way, perhaps journalists should use both the legal terminology and action descriptors to frame not only what happened, but also the legal ramifications of the schools' or administrators' actions. For instance, the phrase "a story was censored when a principal deleted it from the student newspaper" might be the fairest approach because it allows journalists to describe the actual action an

administrator took ("deleted") while still conveying a serious legal charge ("a story was censored").

Student as Aggressor/Student as Instigator

Many of the descriptors journalists used to characterize the students' actions or claims were hardly neutral. What's more, they were not usually flattering for the student. Instead of letting the students' actions and claims speak for themselves, journalists too often used loaded words. These loaded words more often than not framed the students in a negative light, marking the students as aggressors and instigators instead of as simply students or plaintiffs.

Coverage of *Morse v. Frederick* is an excellent example of poor word choice and the "student as aggressor" frame many reporters used. Negative, positive, or otherwise loaded characterizations are par for the course in editorial and opinion pieces, but journalists are expected to show greater selectivity in straight news coverage. That was not the case in *Morse v. Frederick*. Articles describing Frederick as rebellious and defiant set the tone for stories that largely discredited the student and his claims. Journalists also did not hold back in using negatively charged words to describe his speech: rebellious, juvenile, wacky, absurd, foolish, childish, inane were the words *du jour* in much of the coverage. Certainly readers would be likely to come to the conclusion that yes, Frederick's banner was ridiculous and nonsensical, but it is not the journalist's responsibility to lead them there. If the pen is mightier than the sword, Frederick would indeed have been fighting a losing battle as journalists continually took up verbal arms against him. Simply put, journalists overstepped

their boundaries as purveyors of fact and instead took on the role of moral arbiter, stealthily usurping that role from readers.

When students were not being framed as aggressors in some way, they were often described as instigators even when it was the schools' acts of censorship that precipitated the students' legal action. In *Dean v. Utica*, student Katy Dean at times appeared solely responsible for creating the problem. The phrases "Dean decided to fight," "Dean battled," and Dean "resolved not to be silenced" conveyed a level of determination that framed Dean as the instigator in the legal battle. To truly describe how the lawsuit started, journalists just as easily could have used phrases like "the school decided to censor" or "the principal resolved to keep the story from print."

The preoccupation with Barbara Papish's anti-authority behavior in *Papish v. Board of Curators* also illustrates the "student as instigator" frame, conveying Papish as a student looking to pick a fight with whomever was willing to indulge her. Likewise, the students in *Kincaid v. Gibson* were also framed as instigators, with the suggestion being that their poor color choice for the yearbook—and not the administrations' refusal to distribute them—was the instigating act. In fact, coverage of many of these cases demonstrated a similar cart-before-horse problem, wherein the context of what actually initiated the censorship claim was misconstrued.

Conflicting Institutional Attitudes

Editorials and opinion columns are the ideal and expected place for journalists to voice their opinions. However, the editorial and opinion coverage of the eight cases analyzed showed no clear consensus on the extent of student First Amendment rights. Instead, the editorials and commentaries reflected a divide among professional journalists on whether students should actually enjoy significant First Amendment protections in high school and college. Though it would be inappropriate to say journalists were clearly for or against such protections, analysis revealed a slight shift in favor of student rights.

Wards of the State v. Citizens in Training

Editorials and commentators justified these conflicting attitudes through two approaches: characterizing students as either "wards of the state" or as "citizens in training." Journalists who viewed students as "wards of the state" were less likely to support student First Amendment rights and suggested education's sole purpose is to act in the parent's stead and inculcate socially accepted behaviors and values. This frame was evident in the editorial and opinion coverage of *Hazelwood*, *Kincaid*, *Tinker* and at times, *Morse.* Editorials and commentaries covering these cases generally reflected a conservative approach to student rights and tended to favor (though not overwhelmingly so) the schools' prerogatives to maintain order over students' claims for free speech or press. *Hazelwood* commentary, for instance, was relatively muted. Though a few voices seemed disenchanted by the ruling, more editorials and commentaries viewed it as a necessary check to prevent schools from

turning into chaotic daycare centers where no real education takes place because students run amuck. In *Kincaid*, editorials and an opinion column were split between viewing the school's censorship as ridiculous and believing the case was not really about censorship but rather the school's right to oversee activities it funds.

Editorial and opinion coverage of *Morse* expressed hesitancy on some journalists' part to support student speech that in any way related to illegal drugs. Had Frederick advocated something other than illegal "Bong Hits" for Jesus, it would have been easier for journalists' to support his speech. Still, there was a strong contingent of opinion voices that did not support the student's right to speak as he did under almost any circumstance. On the other hand, journalists' editorials and commentaries advocated in a more general way broad First Amendment protections for speech that is juvenile or even offensive.

Those editorial and opinion voices that more explicitly supported student speech and press tended to justify their stances by framing students as "citizens in training." The journalists who used this approach concluded that students should learn to practice and value civil liberties so they may better participate in adult democratic life. Editorial and opinion coverage of *Dean* and *Hosty* used this frame extensively, noting the high stakes involved, including issues of academic freedom, the liberty of the nation, and the cultivation of youth as independent thinkers.

The single editorial voice in *Papish* similarly sided with the student, though not necessarily because the writers viewed students as "citizens in training." Instead, the editorial writers criticized the school for stomping on the marketplace of ideas rather than encouraging diverse, if at times unpopular, discourse. This was the same rationale consistently used in editorials and commentaries that were supportive of Frederick in *Morse v. Frederick*.

Taken in total, the editorial and opinion columns in all the cases represented a significant dichotomy among journalists. There were those who believed strongly in scholastic journalism and student free speech as a training ground for professional journalism and as a hands-on lesson in civics and democracy, and there were those who saw student press and speech as expression to be tolerated (or not) by school officials for the good of the school and the educational environment. Indeed, this same split is evident among the courts themselves. The eight cases analyzed represented five rulings in favor of student speech and press rights and three rulings against such rights, and the trend among editorials and commentaries toward equivocating on student First Amendment rights reflected similar hesitation among the courts.

Inadequate Attention to Detail

Analysis of what is *included* in a story provides great insight into how the story was constructed and the inferences readers can make. Equally telling is what is left o*ut*—or sins of omission, as some may call it. In that respect, one of the most surprising

aspects of all case coverage was how little student voice was present. Journalists generally thrive on first-hand accounts and interview material, but it was evident in the majority of the coverage that students were not interviewed for the stories. Not only did journalists fail to obtain first-person reports from students involved in the legal case, but they also rarely took general student perspective into account at all. In other words, journalists usually did not even ask students at the school or university involved how they felt about the case or how the potential outcomes would affect education or student life.

Because many of the stories within the coverage of the same court case contained similar responses from the lawyers involved, it is likely these quotations or paraphrased accounts were pulled directly from a written statement provided by the attorneys for each side. Understandably, it can be difficult to obtain personal interviews with parties involved in a legal suit, but from analyzing most of the coverage, it is evident that most journalists did not even try. Had they attempted such contact, readers would expect to see phrases like "the student refused to comment" or "the principal could not be reached for comment." However, these phrases were rare in the coverage, implying few attempts were made to obtain first-hand interviews on the matter.

The case of *Healy v. James* is a unique instance of this "sin of omission." Not only was there no student voice, there were no stories *at all*. Coverage of this case in the databases used was nonexistent. Save for a few sentences that recorded the court's

activity, it was as if this case never happened. The historical perspective on this case in Chapter Five gives significant insight into why this may have occurred. Nonetheless, the lack of coverage is an indictment against journalism when a case involving a significant claim for freedom of speech can reach the highest court in the nation and receive no news media coverage. It demonstrates that such issues are such a low priority for journalists that when faced with other significant events, they are actually not a priority at all.

Judges' dissenting opinions also received little attention in the coverage. Coverage of the dissenting cases in only two cases (*Tinker* and *Hazelwood*) was extensive enough to warrant discussion in the findings section. When legal cases reach a level of precedence significant enough to attract news media attention, the resulting coverage often provides the public with their only access to the legal debate. In not providing both sides of the argument, or the judges' perspectives, readers are left ignorant to the possibility that there were other positions on the case besides the position that won. Though cliché, it is no understatement to suggest that the news media, like courts, tries cases in the "court of public opinion." In doing so, readers should expect the responsible journalist to report all aspects of the "trial"—in other words, not just the prevailing opinion. To leave out significant discussion of dissenting arguments and opinions is to essentially equally truncate public debate of the cases; the public's participation in this "court of public opinion" will only go so far as the media's report of what happened inside the real courtroom. Otherwise, the public has little information on which to proceed.

Superficial Legal Context

Journalists repeatedly attempted to provide legal context in their stories by citing previous cases and established legal credit. In fact, almost every story cited another case or paraphrased the legal context of student freedom of expression laws. For this, some credit is due. However, the legal context reported most often relied heavily on journalists listing a variety of cases, including *Tinker* and *Hazelwood*, without actually differentiating between the two or fully explaining the precedent involved in each. Such little understanding of the two cases and their significant differences was reported that the legal context provided was actually hardly contextual at all. From a legal perspective, it is important to remember that both *Tinker* and *Hazelwood*, while being Supreme Court cases, are legal suits in which two discrete questions were asked of the court: Respectively, do students have First Amendment rights in school, and was the *Spectrum* a limited public forum for student discussion?

Conflicting standards for student speech and press rights exist because these two cases set up simultaneously significant yet conflicting standards. However, by reading each case ruling, and by consulting legal texts and media law professionals, one reaches the understanding that the two are, essentially, mutually exclusive. Most legal context of the two cases diluted the rulings so much as to suggest the court ruled the opposite way on the same question nearly two decades apart. This is simply not the case, and the obvious lack of understanding on the journalists' part skewed their report of this legal context in such a way as to render the context misleading and

potentially useless. Therefore, the reader was left with little real context to aid in understanding the state of student speech and press rights.

As mentioned above, the lack of coverage and analysis devoted to dissents in each case represents a blatantly unbalanced approach to these cases. Not only is this an issue of attention to detail, but it also creates problems for journalists who should provide useful legal context. Journalists, in their "fourth estate" and "watchdog" functions, are tasked with approaching stories with balance, fairness, and objectivity. These approaches demand the inclusion of all relevant facts and contexts, so dissenting opinions should be addressed. Especially given that later court rulings were based in part on dissents in earlier cases, the general absence of significant dissent coverage was irresponsible and made it next to impossible to have a clear understanding of the legal importance of each case.

It must be noted that journalists are not expected to be experts in every field on which they report. However, the public—and the First Amendment itself—has tasked journalists with reporting accurately, fairly, and completely on issues that are in the public interest. This expectation was repeatedly unmet in coverage of these eight cases.

This study found that news media coverage of these eight cases failed to adequately cover and present the legal issues. The four dominate frames—loaded characterizations of students and their claims, conflicting institutional attitudes**,**

inadequate attention to detail and superficial legal context—marginalized the students' positions and made it all but impossible for readers to develop a full, contextual understanding of each case. But so what? Simply put, if the news media are not properly covering student speech and press cases, then the public's reliance on them for information is misguided and ill-advised. What's more, the public is not likely to receive an accurate perception of these cases, their significance, and their context in a comprehensive understanding of student freedoms.

This failure to adequately cover student First Amendment rights strikes at the heart of a larger question: if the news media, and in turn the public, habitually downplay the significance of students' speech and press rights, are those rights to be considered important at all? And if they are not, then what student rights, if any, are important? And, finally, and perhaps most importantly, how should this attitude be reconciled with the public perception that education should foster values of democracy? The answers to these questions no doubt define what it means to live in a democratic country and illustrate the true meaning of the phrase "with liberty and justice for all."

Perhaps it is not enough to insist high school students be treated as adults in training; they must be treated as democratic leaders in training. Doing so could have myriad effects, some likely positive, other perhaps less desirable. The result may be a greater appreciation for the Constitutional rights of our country, or it may simply be a greater tendency to "rock the boat" for students just learning to flex their independent thinking muscles. In the long run of the educational system—and in the ongoing

fight for democracy—that outcome may not be so undesirable. As Inglehart (1985), a longtime advocate of student press rights, would suggest:

> Perhaps quietude, dignity, and respectful acceptance are hallmarks of virtue to some educators, but most educators are even more delighted with rollicking, contentious, demanding students who won't allow ideas and concepts and knowledge to languish in the library but instead transfer the distillates from seminar settings to the rowdy speech of campus or even to the startling columns of the student newspaper, yearbook, magazine or pamphlet. The frontier of freedom of expression may well be in the commitment to wide-open and vigorous debate on the campuses of the nation. (p. 210-211)

The Missing News Media

The research presented here describes a phenomenon: the way news media frame student freedom of speech and press issues. It does not address *why* news media coverage was framed or constructed in the ways analyzed here. However, some discussion of what might guide the nature of news media coverage is appropriate because it speaks to the considerable research still to be done in this area.

A Misguided Watchdog

As mentioned in the introduction, students in the U.S. lack quantifiable political agency until they are of age to vote, and even then, the average 18-year old is usually not considered a major player in world and country affairs (though en masse, young people are often the target of political and social campaigns). Because of this reality, for journalists, "adult" issues often eclipse student issues as priorities for coverage, even when the latter are considered by the courts to be of grave importance. In this sense, the concept of "watchdog" as indoctrinated into the news media and professional journalists actually runs counterintuitive at times because the

"watchdog" construct demands a focus on government and related power plays; situations that come across as less subversive or in which a power grab is less ubiquitous may not trigger an immediate alarm.

In this way, students, who are not policy makers and who have little to offer in games of political bait and switch, may not be considered part of the "public" journalists and news media serve, especially since newspapers make little attempt to draw a young audience.[5] Adults, through the right to vote, work, form unions, donate funds, run for office, and receive other legal entitlements, form a "marketplace" that, because of its size and collective power, maintains a level of importance over smaller marketplaces, like those formed by students or minority groups. In this sense, the "watchdog" construct may very well perpetuate the marginalization of students and student issues in the news media. While the "watchdog" concept encourages journalists to commit to a single point of focus—the government—it does not similarly pressure journalists to consider other focuses. Perhaps the term "watchdog" as a metaphor perpetuates this inadequacy, while a term like "neighborhood watch" might encourage more evenhanded scrutiny of all aspects of society and politics.

A Misunderstanding of Significance

Another explanation for limited news media coverage of student First Amendment issues could be journalists' (and the public's) misunderstanding of the significance of student First Amendment rights. Regardless of the philosophical and educational reasons to be aware of these issues, there remains a larger, perhaps more compelling

[5] A 2005 Carnegie Corp. survey found the average age of newspaper readers was 55.

issue: what becomes law for one, becomes law for us all. When the Supreme Court, or even a district court, rules on an issue of student freedom of speech, it does not just affect that student in that school. It affects an entire community, a state, or the country as whole. Court rulings are not socially exclusive, and when a new precedent is entered into the books, it alters the course of future rulings indefinitely. However, as demonstrated in Chapter Five, the real impact of these court rulings are often left entirely unexplored, perhaps because journalists and the news media view them as discrete circumstances. And while the legal question presented in courts during these First Amendment cases may be discrete, the long-term affects of precedent are not. This reason alone demands the news media rethink their approach to covering student speech and press issues.

But perhaps a simpler, more compelling reason news media should consider how they cover student First Amendment issues is this: A core, if not paramount value in the U.S. is that public education is the essential means by which core values of democracy are fostered in future generations. So, for future democracy to succeed, ignorance of what happens in the corridors of public schools is not an option.

Suggestions for Further Research

In designing and undertaking this study, many other interesting approaches came to mind. First, one of the cases in this study, *Morse v. Frederick*, generated considerable international coverage. Newspapers from England to Korea to Australia wrote about the case, and, interestingly, also wrote about the United States' education

and court systems. A content or textual analysis of this coverage would likely yield interesting results on international attitudes towards these institutions.

Initial designs of this study planned to include analysis of coverage of two other data sets: trade press coverage of these cases and newspaper coverage of state student freedom of expression laws. Because of this study's scope and the desire to maintain a cohesive focus on the central data set, these data sets were ultimately eliminated. However, preliminary review of each set indicates there still exists a need for in-depth analysis. Trade coverage of these cases, such as that in academic and professional journals, was relatively minimal, but expanding an analysis to include trade coverage of student press issues in comparison with the same types of issues professional media face could prove fruitful. Analysis of newspaper coverage of the state of student freedom of expression laws could build on the findings presented here by examining proposed and actual legislation that would affect every student and school.

While not prolific enough to consider a frame, expert testimony used throughout the coverage in this study suggests a small, finite group of experts in the area of student freedom of expression. Further research into these experts and their advocacy roles could develop a better understanding of the fight for student freedom of expression and how it compares to similar fights waged by other groups who are legally marginalized or a represent a societal minority.

An Invitation

This study provides the missing foundation for research into scholastic speech and press freedoms. Such little scholarly attention has been given to this area of research, and yet more and more scholars are beginning to recognize its importance: AEJMC recently added a scholastic journalism division, and the American Journalism Historian's Association at its 2009 conference awarded this researcher's scholastic press-focused paper top honors.

This study is not an end to understanding the complex relationships between the media, education, student freedoms, and democracy. No doubt, there is a link, but it will take concerted effort by scholars and journalists alike before additional significant connections and understandings are made. Happily, this research ends with an invitation to three communities. This research is in essence an invitation to First Amendment scholars to consider students as part of the "big picture." It constitutes an invitation to media scholars to consider scholastic journalism as essential to understanding the larger machine of professional journalism. It proffers an invitation to education scholars to consider the role of schools in nurturing democracy, and the outlet of student press and speech as factors in the vibrancy of that democracy. And finally this research presents an invitation to professional journalists, who guide public concern through news media coverage, to consider for whom they write, and to what end.

Appendix A:

Tinker v. Des Moines Newspaper Sources

1. Graham, F. (1969, March 2). Freedom of Speech, But Not License. *The New York Times*, opinion.
2. Graham, F. (1696, February 25). High Court Upholds A Student Protest. *The New York Times*, pp. A1, A25.

Appendix B:

Papish v. Board of Curators Newspaper Sources

1. Papish case to Supreme Court (1972, September 20). *Columbia (MO) Daily Tribune*, pp. 12, news.
2. Papish appeal to be filed soon with Supreme Court (1972, November 13). *Columbia (MO) Daily Tribune*, page unknown.
3. Vandiver, Trish (1972, December 2). Supreme Court gets Papish case appeal. *Columbia (MO) Daily Tribune*, pp. 14, news.
4. Noblin, Mark (1973, March 19). U.S. High Court rules against MU: Backs Papish free speech case. *Columbia (MO) Daily Tribune*, pp. A1, news.
5. Noblin, Mark (1973, March 20). MU dean upset by decision. *Columbia (MO) Daily Tribune*, pp. 12, news.
6. Staff (1973, March 20). The Papish Case: A First Amendment Victory. *Columbia (MO) Daily Tribune,* pp. 16, editorial.
7. Noblin, Mark (1973, April 6). MU to seek rehearing in Papish case. *Columbia (MO) Daily Tribune*, pp. A1, news.
8. Staff (1973, April 14). MU petition asks Papish rehearing. *Columbia (MO) Daily Tribune*, pp. 14.
9. Staff (date unknown). Court rejects hearing on Papish. *Columbia (MO) Daily Tribune*.
10. Weaver, Warren (1973, March 20). Court Bars Ouster Over Obscenity in Press. *The New York Times*, pp. 83, news.

Appendix C:

Hazelwood v. Kuhlmeier Newspaper Sources

1. Achorn, A. (1988, April 4). Ruling on newspapers is a bitter lesson for students. *The (Harrisburg, PA) Patriot-News*, pp. C3.
2. Watson, A. and Aaron Epstein. (1988, January 14). High schools may censor student papers, justices say. *San Jose (CA) Mercury News*, pp. 1A.
3. Taylor, S. (1988, January 14). Court, 5-3, widens power of schools to act as censors. *The New York Times*.
4. Staff (1988, January 15). First Amendment Lessons. *The New York Times,* editorial.
5. Goldstein, G. (1988, May 29). Westchester opinion: Realism enters student publishing. *The New York Times.*
6. Taylor, S. (1987, October 14). Court hears censorship case. *The New York Times*.
7. Hechinger, F. (1987, October 27). About Education: Limits on student press. *The New York Times*, opinion.
8. Hechinger, F. (1987, March 3). About Education; Students as journalists. *The New York Times*, opinion.
9. Hechinger, F. (1988, January 17). Ideas & Trends; High court gives a civics lesson. *The New York Times*, opinion.
10. Kamen, Al (1988, January 14). Schools' Power to Censor Student Publications Widened; 'Basic Educational Mission' Takes Precedent. *The Washington Post,* news.

Appendix D:

Kincaid v. Gibson Newspaper Sources

1. Robert, L. (2000, June 4). In the land of the free, censors win too many. *Springfield (Missouri) News-Leader*, pp. 10A, editorial.
2. Cheves, J. (1998, August 2). KSU lawsuit could affect students' speech rights. *Lexington (KY) Herald-Leader*, pp. A1, news.
3. Nolan, J. (2000, May 31). KSU violated rights by holding onto yearbook, judges are told. *Lexington (KY) Herald-Leader*, pp. B1, city and region.
4. Staff (1999, September 12). Decision is hardly a threat to the First Amendment. *Daily News*, editorial.
5. Riley, J. (1999, September 10). Censorship Cry. *Daily News (KY) Online*, web.
6. Associated Press (2001, January 7). Yearbook quash unconstitutional, appeals court says. *Daily News (KY)*.
7. Staff (2001, January 11). Defending the offensive. *Courier-Journal (Louisville, KY)*, pp. 8A, editorial.
8. Yetter, D. (2001, January 6). Federal court strikes down KSU's seizure of yearbooks. *Courier-Journal (Louisville, KY),* pp 1A, news.
9. Nolan, J. (1999, March 19). Appeals court mulls issue over student publications. *Associated Press*.
10. Court rejects appeal by former Kentucky State students over publications (1999, Sept. 8). *Associated Press.*
11. KSU yearbook suit may affect college students' speech rights (1998, August 2). *Associated Press*.
12. Newton, Chris (1999, Sept. 10). Texas Tech Paper Protests KSU case. *Lexington (KY) Herald-Leader*, pp. B4, news.

Appendix E:

Dean v. Utica Newspaper Sources

1. Staff (2002, July 1). Utica Solves Bus Garage Problems. *The Detroit (MI) News*, pp. 6A, editorial.
2. Vandenabeele, J. (2002, March 31). More schools challenge students' free speech: Metro high schoolers feel sting of censors. *The Detroit (MI) News*, pp. 1B.
3. Carroll, J. (2004, October 4). UCS grad wins lawsuit against district. *Shelby-Utica (MI) News*, feature.
4. Trela, N. (2004, October 13). Federal judge sides with former high school journalist. *Detroit (MI) Free Press*, pp. 8B, news.
5. Sampson, C. (2005, March 27). Student gets First Amendment lesson up close. *The Indianapolis (IN) Star*, pp. J6, features.

Appendix F:

Hosty v. Carter Newspaper Sources

1. Lukianoff, G. (2005, September 3). Wronging student rights. *The Boston Globe*, pp. A17, op-ed.
2. Cohen, J.S. (2006, February 22). Censorship ruling upheld: high court rejects college paper's case. *Chicago Tribune*.
3. Olsen, N. (2005, June 27). Ruling allows administrators final say in newspaper content. *Fort Collins (CO) Coloradoan*, pp. B1, B3.
4. Staff (2006, March 1). Stifling student press. *The Journal Gazette (Fort Wayne, IN)*, 4A, editorial.
5. Staff (2006, January 6). Madigan, courts threaten to muzzle young journalists. *The News-Gazette (Champaign-Urbana, IL)*, pp. A6, editorial.
6. Banchero, P. (2005, July 2). College newspapers now face censors. *Anchorage (AK) Daily News*, pp. B6, commentary.
7. Tuck, R. C. (2005, July 10). Unfree Press: Ruling against student paper is alarming. *The Pilot (Southern Pines, NC)*, news opinion.
8. Staff (2005, July 6). Decision erodes freedom of expression on campus. *The Indianapolis (IN) Star*, pp. A11, editorial.
9. O'Brien, Rachel (2005, October 12). Students object to circuit court ruling. *Suffolk Life (Suffolk, NY) Newspapers*, top stories.
10. Holland, Gina (2006, February 21). Supreme Court refuses to weigh in on newspaper case. *Associated Press*, news.
11. Staff (2005, June 28). Pressure on the press. (East Valley-Scottsdale, AZ) *Tribune*, editorial.

Appendix G:

Morse v. Frederick Newspaper Sources

1. Biskupic, J. (2007, March 7). High court case tests limits of student speech rights; key question: have efforts to keep order in schools gone too far? *USA Today*, pp. 1A, news.
2. Starr, K. (2007, March 21). Policy reflects common sense. *USA Today*, pp. 10A, news commentary.
3. Will, G. (2007, July 1). Quandaries 4 Justices. *The Washington Post*, pp. B7, editorial.
4. Richey, W. (2007, March 19). Student free speech vs. school drug policy. *Christian Science Monitor*, pp. 3, news.
5. Barnes, R. (2007, March 20). Justices consider rights issues; decisions on speech, property limits could be far-reaching. *The Washington Post*, pp. A3, news.
6. Calvert, C. and Robert D. Richards (2006, October 6). Freedom of expression; t-shirt case is ripe for review. *The Washington Times*, pp. A19, op-ed.
7. Barnes, R. (2007, March 13). Justices to hear landmark free-speech case; defiant message spurs most significant student 1st Amendment test in decades. *The Washington Post*, pp. A3, news.
8. Zimmerman, J. (2007, March 22). Schools 4 free thinkers. *Christian Science Monitor*, pp. 9, opinion.
9. Staff (2007, June 26). Ruling in Alaska banner case tightens limits on students' speech rights. *USA Today*, pp. 2A, 12A news.
10. Lane, C. (2007, June 26). Court backs school on speech curbs; 5-4 majority cites perils of illegal drugs in case of the 'Bong Hits 4 Jesus' banner. *The Washington Post*, pp. A6, news.
11. Milbank, D. (2007, March 20). Up in smoke in the High Court. *The Washington Post*, pp. a2.
12. Staff (2007, March 21). Protect student speech—even 'unwise' bong banner. *USA Today*, pp. 10A, news.
13. Staff (2007, March 21). Precedent 4 student speech; an unusual First Amendment case. *The Washington Post*, pp. A14, editorial.
14. Staff briefs (2006, December 2). Supreme Court takes 'bong hits 4 Jesus' case. *St. Petersburg Times (FL)*, pp. 8A, national.
15. Henig, S. (2008, December). Bong hits 4 Jesus dude. *Newsweek*, pp. 10, periscope.
16. Staff (2007, June 27). A less-than-banner ruling' of bong hits and First Amendment freedoms. *The Washington Post*, pp. A18, editorial.
17. Biskupic, J. (2007, March 20). Justices debate student's suspension for banner; was off campus when 'Bong Hits 4 Jesus' sign torn down. *USA Today*, pp. 3A, news.
18. Staff (2007, March 24). Of banners and bongs; free speech in schools. *The Economist*.

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22. Morris, W. (2007, January 28). Bong Hits saga enters year five: Suit carried all the way to U.S. Supreme Court, to be heard March 19. *Juneau (AK)Empire.*
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30. Staff (2006, May 07). Editorial: A silly banner and a stupid court appeal. *Juneau (AK) Empire*, editorial.
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