The Schoolhouse Gate:

The Education, Evolution and Experience of Student Press Law

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According to U.S. Department of Education and others, more than 20,000 public schools provide education to America's youth (High School Facts at a Glance, 2014; Mathews, 2011). These students receive instruction in numerous areas of academia. Some subjects fall into the category of mandatory, such as English, math, and science classes. Other classes fit into the classification of being electives, which means the students get to choose to take the classes. These can include offerings such as weightlifting, creative writing, or even art. Journalism courses also exist as elective courses. Central to the study of journalism is the understanding of the rights afforded by the First Amendment, which include freedom of the press, of speech, of religion, of assembly, and to petition the government (Hopkins, 2015).

Of course, all students, not just those studying journalism, live with those rights, even if the journalism students contain a deeper understanding. Such a grasp of these rights is crucial for journalism students to conduct their work as scholastic journalists. They must know their rights in order to protect them. After all, "campus media outlets provide the training grounds for the nation's next generation of journalists" (Zalaznick, 2016, n.p.). Unlike their professional counterparts, though, student journalists often lack legal protections. This was due to centuries of students being "presumed to have few constitutional rights of any kind. They were regarded as junior or second-class people and were told it was better to be seen and not heard" (Pember & Calvert, 2007, p. 101).

Times are changing though. Therefore, one must focus special emphasis on considering how scholastic press law is taught to journalism students. This can be accomplished by looking at how scholastic press rights evolve, based upon the experiences of student journalists when their rights come up against resistance by various authorities. It is important for students to know what it means for them and their rights when they pass through the proverbial schoolhouse gates

by seeing the exact location of such a threshold and understanding the situation of those who have passed through before them.

Historic Backdrop of Student Expression and Scholastic Press Law

One student rights case stands out as being the cornerstone for increased rights and more constitutional recognition. It stems from an act of protest during the social upheaval of the 1960s and the Vietnam War. On Dec. 16, 1966, Mary Beth Tinker and Christopher Eckhardt walked into their high school in the Des Moines Independent Community School District wearing home-made, black armbands to demonstrate their opposition to the war raging in Vietnam (Tinker v. Des Moines Independent Community School District, n.d.). John Tinker, Mary Beth's brother, followed suit the next day, and all three were suspended after refusing school administration's requests to remove the armbands (Pember & Calvert, 2007). The school officials took such a step in response to the students' silent protest thanks to a hastily crafting a policy banning the wearing of armbands on Dec. 14, 1965, after they had caught wind of the students' plan (Tinker v. Des Moines Independent Community School District, n.d.).

Acting on behalf of their children, the parents sued the school district. Eventually, the case landed in the Supreme Court. On Feb. 24, 1969, in a 7-2 majority, the Court found in favor of the students (Tinker v. Des Moines Independent Community School District, n.d.). Going counter to the school district's assertion the armbands could incite violence due to the overwhelming support of the war by the other students, Justice Abe Fortas ruled students had a First Amendment right to express their opinions, even when those opinions concerned controversial subjects, so long as it is done "without materially and substantially interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others" (as cited in Member & Calvert, 2007, p. 102). The fear of possible

violence did not mean the students' rights were suspended. In the seminal statement on the case, Justice Fortas said, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (as cited in LoMonte, Goldstein, & Hiestand, 2013, p. 24). Such a statement established an atmosphere of deference toward student expression, which allowed student newspapers to function with less fear or oppressive oversight because student journalists are exercising their First Amendment rights.

The Tinker decision established itself as a protection for student rights. However, its lasting impact was quickly called into question. In 1986, Bethel School District v. Fraser chipped away at Tinker's protection by ruling against student Matthew Fraser, who made a speech the school deemed inappropriate due to sexual innuendo (Balter-Reitz, 2009). According to Dukes (2008), "Chief Justice Warren Burger wrote that freedom of speech must be balanced with the interest of 'teaching students the boundaries of socially appropriate behavior'" (p. 20). This damaged student press rights by allowing an educator or administrator to define socially appropriate behavior, which can be translated into what is socially acceptable to publish in student media. This set the stage for another case that sprang up in the midwest where student expression was curtailed and has become the primary example of anti-Tinker sentiments.

In May 1983, principal Robert E. Reynolds of Hazelwood East High School, located near St. Louis, Missouri, forced student newspaper, The Spectrum, to withhold two pages of content due to concerns about the appropriateness of the content (Hazelwood School District v. Kuhlmeier, n.d.). The pages in question contained articles about teen pregnancy and how children are impacted when their parents divorce (Pember & Calvert, 2007). The censorship of the stories derived from fears of privacy. Reynolds seemingly ignored the fact names had been

changed in the story to protect the identities of the students. He expressed concerns about the divorced parents not being able to share their views and fear the students would end up being identified, especially the three female students who discussed their pregnancies (Pember & Calvert, 2007). Student editor Cathy Kuhlmeier sued on grounds of censorship, thinking she had the backing of Tinker. Like its predecessor, the case ultimately came up before the Supreme Court. In a 5-3 decision on Jan. 13, 1988, the Court ruled in favor of the school, stripping the promise of Tinker away and giving schools the license to curtail student speech and censor the scholastic press as long as the censorship "reasonably related to legitimate pedagogical concerns" (Hazelwood School District v. Kuhlmeier, n.d., n.p.). This means the crux of the case concerned the fact the student newspaper existed as part of the school's curriculum (Tinker summary, 2009). The ruling directly attacked student press rights and allowed for censorship based upon administrative opinions of student-produced content.

In going against Tinker, the Hazelwood ruling delineated between student expression that occurs on school grounds and school-sponsored publications (Pember & Calvert, 2007). The Hazelwood decision seemed to move counter to previous rulings in which student publications were considered public forums of free expression either via policy or practice and therefore existed under the protective umbrella of the Tinker decision (LoMonte, Goldstein, & Hiestand, 2013). It would seem, though, the student newspaper in Hazelwood had invited scrutiny beyond considerations of being a public forum by allowing prior review in the form of showing the administration proofs of the pages before they were published (Pember & Calvert, 2007). This resulted in the Hazelwood decision having a chilling affect on student press rights. Due to Justice Byron White's assertion that censorship was allowed when there was a "valid educational purpose," which is ambiguous and has led to increased censorship of the student press (Pember

& Calvert, 2007, p. 106).

Following Tinker came the 2007 ruling against student expression via Morse v. Frederick, in which high school senior Joseph Frederick showed a banner off campus that proclaimed “BONG HiTS 4 JESUS” during an Olympic torch parade (Balter-Reitz, 2009). As Dukes (2008) pointed out in this case, “The court decided that Frederick was attending a school event and that the message on the banner was a reference to illegal drugs, which violated the school district's anti-drug policy. The government, the high court said, had a ‘compelling interest’ in preventing and deterring drug use” (p. 21). Student rights granted by Tinker were eroded greatly due to such rulings. The balance between students’ rights and administrative control had tipped completely in favor of the administration (Balter-Reitz, 2009). Therefore, student publications face possible reprimands for covering important stories administrators do not want the public to know about or feel the readership cannot handle. As LoMonte (2016) points out, student journalist are most likely to be the only reporters covering schools because the number of professional journalists has been reduced thanks to layoffs and other economic influences of the media business.

Evolution of the Law

Reaction to rulings such as Tinker and Hazelwood have been varied. Most notably, journalists, journalism advisers, and student journalists have been vocal proponents of measures to grant scholastic press operations more freedom. This has resulted in legislation in several states giving student journalists explicit rights, preventing Hazelwood from negatively impacting their work. These laws say “students will be allowed to express themselves freely in school unless school officials can demonstrate their expression is libelous, obscene or will create substantial disruption of school activities” (Goodman, 2001, p. 48). What’s more, these laws

bolster the Tinker standard, requiring schools to "reasonably forecast a substantial disruption of the educational environment" (Sternberg, 2014, p. 3). As of 2008, seven states had laws on the books granting student journalists greater protection (LoMonte, Goldstein, & Hiestand, 2013), and more laws have been passed since.

The passage of these laws represents a movement spreading across the country. The movement is part of the New Voices USA project, which is modeled after North Dakota's 2015 John Wall New Voices Act and "is working with advocates in education, law, and journalism to push for state legislation that would give young people clearer rights to gather and share information about matters of public concern — without undue interference from school officials" (Peters, 2016, n.p.). New Voices sprang up as a response to various offenses of student journalists' rights. Not all states where such legislation is being pushed have seen legal entanglements, but instead student journalists have experienced forms of censorship and chilling of First Amendment rights, such as defunding, facing penalties for coverage, or being denied access to public information, to name a few (McNeil, 2016).

As technology changes, the target of a free scholastic press continues to move. The definition of the schoolhouse gate has been called into question, as was evident in the Morse case where off-campus expressions were ruled against. Student journalists face opposition when it comes to establishing news website accessible beyond the school campus, even though those same students might be granted autonomy to make content decisions in a printed product (Goodman, 2001). In most cases, the courts rule such off-campus speech cannot not be censored if its production does not involve school resources (Pember & Calvert, 2007). This provides students the ability to practice journalism independently. However, it requires financial means to do so, which, in essence, can result in the limiting of students' expression for those who cannot

afford to strike out on their own, and it opens the door for administrations to use Internet-filtering software to prevent an independent news site from being viewed on the school's network (Goodman, 2001). This extends to social media as well. In more than one instance, a student has been suspended, for reasons of disruption to normal school functionality, from school for posting something online, on a personal account, and while off campus (Kowalski, 2016). Balter-Reitz (2009) sums the current issues faced by students by suggesting "[d]iscipline takes precedence over critical inquiry; any deviation from the norm is viewed as threatening" (p. 52). For student journalists, this can result in major issues as creating a website isn't enough because, for a journalist in this day and age to be successful, social media must play an important role in the distribution of the journalism produced (Zalaznick, 2016).

So where does a school's reach and ability to punish student expression end? The Morse case suggests the schoolhouse gate is wide as it extends to be the entrance to any school-sponsored activity, even if off the school grounds, giving school administration a larger domain (Sternberg, 2014). As a precursor to the Hazelwood decision, Langvardt (1980) suggests such extension of administrative oversight and revocation of First Amendment rights is necessary for schools to function, but the students' rights still dictate protection from every whim of a school official. Even so, the courts have ruled in favor of student speech taking place off campus in cases involving a student flipping the bird to a teacher, violent drawings accidentally brought to school by a younger sibling, and the wearing of silicone breast cancer awareness bracelets inscribed with, "I (heart) Boobies," but when it comes to the possibility of violence, rulings differ (Sternberg, 2014). Even when it happens online, such speech seems to fall under the jurisdiction of the schools (Kaspar, 2014). In such instances, the speech "is almost always reacted to harshly and with almost universal deference to the school district" (Sternberg, 2014, p.

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Though at its heart, Tinker aims to protect most speech, there seems to be a different standard when online speech enters the arena of cyberbullying (Kaspar, 2012). If the speech is violent or threatening and presents a true threat, a school administrator has the right to intervene (Sternberg, 2014). This is because of the speech's "negative impact on both the school environment and on the victims themselves" (Kaspar, 2012, p. 208). Preventing violence is one thing, but if an administrator is overly sensitive to potential cyberbullying speech and reacts as such without proof of an actual threat, it can cause issues for students. It creates a surveillance state when administrators are allowed to monitor a student's online activities even if the student is not suspected of taking part in any negative activities (Suski, 2014). The result of such administrative actions can have negative implications for student journalists. Students might not feel they can publish sensitive or controversial stories without fear of reprimand. The question then arises of whether or not student journalists can cover such happenings in their coverage area without being censored for reporting what was said online. Langvardt (1980) suggests giving too much deference to administrators "to venture into the general community" can "chill the exercise of protected rights of expression" (p. 807).

When it comes to online speech, Kaspar (2012) points out the heart of the matter is a student's assumption he "could be punished for statements made on the Internet from the comfort of his home" (p. 187). Suski (2014) argues cyberbullying "laws expand the proverbial schoolhouse gates to such a degree that, in many cases, schools' authority to conduct surveillance of students [. . .] nearly without bounds" (p. 68). This effectively curbs expression rights by way of fear of retribution. Student journalists might censor themselves from reporting on important stories without realizing it. Regulation of off-campus speech by school

administrators sets a “dangerous precedent" (Sternberg, 2014, p. 10). Without definite rulings on such matters, the door seems to be left open for an administrator to determine an act of journalism is a form of cyberbullying in order to censor speech the school decides it does not like or portrays the district in a less-than-positive light. “Administrators should look to campus journalists to help identify and solve problems, rather than worry about bad publicity” because “campus newspapers remain a valuable source of information” (Zalaznick, 2016, n.p.).

Educating About Student Rights To Protect Student Rights

Outside of explicit legislation guaranteeing students’ rights, the most effective means of protecting student expression is education. “School, after all, is where students are taught the difference between right and wrong, where students learn about the freedoms Americans enjoy under their Constitution” (Pember & Calvert, 2007, p. 101). It is reasonable to think journalism advisers have a base understanding of student rights due to the nature of their work. Research points to this being fairly accurate, but Trager & Dickerson (1980) make the case that “advisers with academic or professional backgrounds in journalism seem to be willing to give students more freedom than those without such experience” (p. 138). Furthermore, administrators, backed by laws such as Hazelwood, probably have a skewed sense of what rights students have.

Surveys by the Knight Foundation suggest as few as a quarter of administrators believe journalism students should be able to publish freely and without oversight (Mitchell, 2008). Communities also factor into the administration’s willingness to allow unimpeded scholastic journalism. Trager & Dickerson (1980) suggest the “atmosphere seems to be less restrictive in the larger schools in larger communities, more restrictive in smaller schools and communities” (p. 138). To combat this, several journalism-orientated entities, including some universities, offer courses and workshops aimed at educating administrators about student rights (Mitchell, 2008).

If an administrator is unwilling to attend such educational opportunities concerning scholastic press rights, journalism advisers should take steps to help their local administration gain a deeper understanding.

One method suggests working with school officials to create a framework for dealing with any issues because “educators can assist in, or initiate, the development of guidelines for the student press, defining the rights of all concerned with the publication process” (Kopenhaver, 1984, p. 41). This could entail simply opening the eyes of an administrator by allowing him or her to “rule” on scholastic press court cases in an exercise aimed at highlighting the facts of the students’ rights and what, if any, gaps in such knowledge exist (Broussard & Blackmon, 1978). It would also be worth explaining to administrators that through censorship and oversight the school would “be as liable as a private publisher if they routinely review and regulate publication content” (Hopkins, 2015, p. 152). Therefore, it is in a district’s best interest to respect student press rights and keep themselves safe from potential legal issues.

Of course, taking on such a task can seem daunting when going up against one’s superior. Finding allies in the community can help. In many instances, there is probably a professional news outlet advisers could turn to for help in convincing the administration of the importance of protecting scholastic press freedoms. After all, high school journalism advisers feel more support from the professional media would be helpful in stemming the flow of censorship student journalists face. As Goodman (2001) wrote, “If we care about the future of journalism, we have to show student journalists that we care about them, too” (p. 49). With such backing, a feasible way of ensure student press rights would be to establish all student publications as public forums of free expression (Hopkins, 2015).

Student journalists should also be educated so they can be self-advocates. One proposed

method of instilling the desire to stand up for themselves is using the Socratic Method, which is a cooperative argumentative debate between individuals exercising critical thinking skills, in classroom discussions tackling issues of law and ethics (Schwarzlose, 1978). However, the students need a base knowledge first. Alexander (1994) suggests replacing textbooks with readings concerning legal issues not containing much information of the laws themselves and then providing case law information during lectures, which results in a focus on case studies as a way to become more familiar with legal rulings and verbiage used in litigation. Having students cover legal proceedings could also be beneficial because "anyone who wants to understand how law works in society has to watch law working in society" (Dilts, 1986, p. 46).

This would not work well for the vast majority of scholastic journalism programs. Instead, the focus of educating students should be on readings and lectures. The case studies method presents an interesting opportunity to give pupils guided experience in the law. Alexander (1994) proposes, "a landmark ruling is neither necessary nor desired" in a case study setting (p. 36). Again, though, the landmark rulings are where scholastic journalists need to begin so they have the base knowledge necessary. The Student Press Law Center and the Journalism Education Association both provide detailed lesson plans and a plethora of resources to help educators teach such topics with knowledge. Specifically, the Student Press Law Center provides case studies, which supports research promoting the use of such materials. However, empirical data supporting the effectiveness of case studies as a way to teach law is lacking (Alexander, 1994).

Discussion and Directions for Future Research

Scholastic press rights and the larger issue of student expression rights are shrouded in ambiguity. "Policymakers say they want civically aware students who graduate ready for

meaningful participation in their government. But Hazelwood censorship undermines civic learning, by teaching young people that the government gets to decide how and when it may be criticized" (LoMonte, 2016, n.p.). Too many individuals in positions of power over the lives of students have adopted a view consistent with the Hazelwood ruling, even if they are not specifically familiar with the case. A lack of clear legal rules and unified standards of protection imperils students' ability to become effective members of a democracy. Students need to be able to clearly identify when they have walked out of the schoolhouse gate, but this threshold seems to be continually moving. Without a definitive legal ruling, students will not be able to experiment with who they are as a member of a democracy.

Of course, it may not take a ruling from the courts. An atmosphere conducive to student expression and scholastic journalism could be achieved if more states adopted legislation to grant protection of the students' rights. Individuals of all stations of life need to keep in mind the "critical role the press plays in a free society amplifies the need for competent and trained journalists to watch how public business is conducted, even in today's modern digital and socially electronic world" (Shemberger, 2017, p. 83). It starts with student journalists, and those students should be afforded the same rights as their professional counterparts, as well as the same level of constitutional protection as any citizen who is the age of majority.

Journalism education needs to put more emphasis on students' rights. This could take the shape of various pedagogical alterations. It could entail the addition of more specific topics such as shield laws, especially if the aim of the education is to produce journalists who can function in the industry (Shemberger, 2017). To take it one step further, perhaps shield laws should be extended to student journalists either by way of state statues or a federal law (Slakin, 2011). However, even if students are granted such protections, it will require educators to become more

knowledgeable in order to teach such concepts (Shemberger, 2017).

Keeping up with journalism education is an ongoing process, but it must start at the schoolhouse gate. That is where younger citizens first encounter and experience their rights. To date, courts have largely viewed students as less-than citizens. With proper education of looking how scholastic press rights evolve based upon the experiences of student journalists when their rights come up against resistance, student rights can be properly supported and protected. However, further research is needed to gain a more complete accounting of instances where student rights have been infringed. This will entail looking at lower level court cases. Also, student rights at private institutions must be researched. There is not clear answer of where private schoolhouse gates begin and end. Several arguments exist for the possibility that private school students do not have the same rights as their public school peers (LoMonte, Goldstein, & Hiestand, 2013). Hopkins (2015) suggests "First Amendment protection extends to private school students only when those who operate schools and colleges allow it or a state constitution provides it" (p. 134). However, in order to protect the rights of all citizens, focused investigation into what rights students at a private school have and do not have must be conducted through research of a variety of private institutions. As Haynes, Chaltain, Ferguson, Hudson, & Thomas (2003) propose, the First Amendment must be promoted and sustained not only for journalism, but basic civil liberties, to survive.

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