

TROUBLE RIGHT HERE IN DIGITAL CITY: CENSORSHIP OF ONLINE STUDENT  
SPEECH

Julie L. Rowse

A Thesis

Submitted to the Graduate College of Bowling Green  
State University in partial fulfillment of  
the requirements for the degree of

MASTER OF ARTS

May 2008

Committee:

Dr. Montana Miller, Advisor

Dr. Esther Clinton

## ABSTRACT

Dr. Montana Miller, Advisor

The Internet is the most recent cultural site of resistance and struggle, blurring boundaries between public and private space. A specific area of contestation is the ever-fluid boundary that separates students' personal lives from their school lives. Public school administrators are finding that the accessibility and archival nature of the Internet provide opportunities for students to be disciplined at school for expressive speech that occurred after school hours, off school grounds. Empowered by several Supreme Court decisions that limit student expression on school grounds, these administrators feel justified in applying those cases to online speech. However, questions remain regarding whether on-campus punishment for off-campus speech is appropriate. This thesis addresses questions relative to the power dynamic between students and administrators.

Drawing on the works of Michel Foucault, Henry Giroux, and Dick Hebdige, this thesis explores issues of power, repressive environments, the role of public education in culture, and surveillance. These issues are present in the online spaces of personal websites and social networking websites such as MySpace and Facebook—all of which are addressed in this thesis. Additionally, this thesis raises questions surrounding issues of public versus private space; how the boundary between on- and off-campus speech is becoming less visible; and what it means to represent a school via participation in activities.

For my students: past, present, and future.

## ACKNOWLEDGMENTS

As I reflect on the past year that I have spent writing this thesis, I am filled with gratitude to many people. Dr. Montana Miller, my advisor, always went above and beyond the role of advisor. Her meticulous editing and revising helped me to craft a document I can be proud of, and her constant encouragement reassured me that this was not an insurmountable task. Dr. Esther Clinton also was invaluable as a sounding board and inspiration. My peers in the Popular Culture Department at Bowling Green State University were a great support, whether they were reading my drafts, talking me through what I really wanted to say in my thesis, or making sure I knew of news stories directly related to my work.

Aside from the educational aid I received through my contacts at the University, the emotional support I received from my family and friends was immense. Mom, Dad, Deanne, Jennie, and Brent: thank you so much. Additionally, I would not have been as successful during my graduate school experience without the advice and love from Kirsty, Aaron, Amy, Nathan, Peggy, Craig, Carol and Bill. They were each instrumental in keeping my perspective grounded when I started to get lost in the myopic environment of academia. Lastly, Linda Beckstead and Susan Baird shaped much of my interest in student press rights. It is because of their guidance in my first years of teaching high school that I pursued a degree in Popular Culture, and it is because of them that I found peace in being an educator.

## TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
CHAPTER I. A PRIMER ON STUDENT PRESS LAW .....	13
CHAPTER II. SPEECH THAT CRITICIZES.....	28
CHAPTER III. SPEECH THAT PARODIES .....	45
CHAPTER IV. SPEECH THAT DISCLOSES ILLEGAL ACTIVITIES .....	58
CHAPTER V. CONCLUSIONS .....	76
REFERENCES .....	81

## INTRODUCTION

In Meredith Willson's *The Music Man*, Professor Harold Hill unites the citizens of River City by insisting the simple act of playing a game of pool will eventually lead their sons to a life of smoking, drinking, dancing with women of ill repute, and lying about their whereabouts to facilitate this collection of unsavory activities. Willson's musical takes place just prior to the Roaring Twenties (even though he wrote it during the 1950s) yet the hysteria Harold Hill created would not have been unfamiliar to a 1912 town in eastern Iowa. The subtext of the song "Trouble" is that something new can be harmful to American youth. "Trouble" could have been sung by Anthony Comstock in the 1850s, as he tried to steer American youth away from dime novels. It could have been an anthem for Catholic women in Kansas from 1920-1950 who felt censoring films was the best way to preserve the innocence of Midwestern youth. In fact, it appears that a period of frenzy in which a passionate few attempt to impose their values and ideologies on the public at large accompanies most technological advances and the expression those advances allow. Often, this hysteria ensues in the name of protecting the children.

The most recent technological creation to cause Harold Hill-esque hysteria is the Internet. In fact, the Internet had only recently been available to the public when the federal government, in 1996, attempted to attach broad censorship powers to a legislative bill called the Communications Decency Act. Because of its widespread availability and appeal to youth, the Internet is the latest in a long string of media innovations that some believe will strip away any decency or innocence from American youth. A 2008 episode of the PBS series *Frontline* claimed the Internet has created "the greatest generation gap since the advent of Rock 'n' Roll." In addition to those believers, conservative judges have felt that youth do not deserve (or cannot handle) full First Amendment protection in school. The current climate of what is permissible

Internet use at high schools and universities is inconsistent. This inconsistency stems from a struggle between students and administrators over defining “appropriate speech” and “appropriate spaces.” This power dynamic often leads to censorship of online student speech. While some may argue that this is a topic best suited for journalism or communication studies programs rather than cultural studies, I offer the following explanation. The Internet and its endless proliferation of websites are very much part of the popular culture landscape. In an age where TV ratings are down due to the availability of TV shows on iTunes or network websites, and where people appear to have more cyber-friends than three-dimensional friends, studying the impact of student Internet activities has great value from a cultural studies point of view.

As a former high school journalism teacher and newspaper adviser, I am no stranger to censorship in high school publications. A principal once told me that the Supreme Court gave him the right to censor any content in the school newspaper with which he did not agree. As a former high school speech coach, I had to enforce on-campus discipline for off-campus behaviors. Each year that I coached speech, I had to bench students who had been caught smoking or drinking by other teachers or administrators on the weekends. However, the past several years have seen a rash of administrative censorship of online student expression. Students who keep MySpace pages may be disciplined for comments written or pictures posted on their pages. Students, who create videos making fun of teachers or peers, then post the videos on websites like YouTube, have been suspended and expelled. Students who create their own websites off-campus with their own equipment have been disciplined, because school administrators disagreed with the content, or felt it disrupted the educational process. Many students seem to be subject to “three separate justice systems—criminal/juvenile, civil, and school...[administrators] seem unwilling to leave problems of off-campus expression to off-

campus methods of redress” (Calvert 251). These administrators often justify disciplining these students by citing one of two main Supreme Court cases—*Bethel v. Fraser* and *Hazelwood v. Kuhlmeier*, even though those cases related specifically to speech spoken or written on school grounds. A third Supreme Court decision, *Frederick v. Morse*, decided in 2007, may be added to the administrative arsenal, especially since the case deals with off-campus speech.

### **Censorship: A Working Definition and History**

At this point, it may be helpful to offer a definition of censorship. The Oxford English Dictionary’s definition of censorship is “the office or function of a censor,” which calls for a closer look at what, historically, a censor’s role in a democratic society has been. Early censorship was state-sponsored, even in Greek and Roman societies. The Greeks, who are often credited with inspiring the current American democratic process, were fervent censors. Protagoras, Plato, Socrates, and Aristotle were all victims of censorship (Jansen 36). Roman government assigned the role of censor to the office of the census-keeper, and the censor essentially regulated the conduct of Roman senators (Hull 44). Francis Couvares complains that part of the problem with censorship in general is that there is no standard definition of censorship, mainly because the idea of censorship has been applied to “relate by quite different practices” (518). Therefore, he tries to narrow down two possible working definitions of censorship. The first is censorship in the historical sense. He cites the Oxford English Dictionary entry for ‘censor’: “an official in some countries whose duty it is to inspect all books, journals, dramatic pieces, etc. before publication, to secure that they shall contain nothing immoral, heretical, or offensive to the government” (Couvares 518). Most interesting about this particular definition is that even national security issues are not included in this definition; a censor makes moral judgment calls on behalf of the government, but only when the government



is the subject being vilified. Harkening back to The Red Scare of the 1950s and Edward R. Murrow's criticisms of Joseph McCarthy, Murrow's oft-paraphrased statement "dissent does not mean disloyalty" would not hold water in a censor's office, according to the OED definition. Dissent equals heresy, and heresy of the government is not allowed. However, according to this definition of censorship, obscenity or "patently offensive" general speech would have fallen outside the arm of the censor's office, so long as it was speech unrelated to the government.

As early as 1231, the Church assumed censoring responsibilities, and obscene speech did not necessarily mean sexual in nature. Much church-sponsored censorship dealt more with heresy (questioning doctrine) than with issues of obscenity. After all, as Foucault points out, by instituting confession the Church was very much interested in the sexual behaviors of its members (*History of Sexuality* 19). In the days since Martin Luther's Ninety-Five Theses, nailed to the door of the Wittenburg Church in 1546, religious officials have taken a more active role in censoring obscene material. After the Enlightenment, censorship moved from a government office to the private sector, most notably, churches and their congregants. From Martin Luther's Ninety-Five Theses to Galileo's discovery of how the solar system was truly constructed, The Church censored texts and speech they felt questioned their ultimate authority. This church-inspired censorship continues to exist in the modern age. For example, in the early 1980s, conservative Christian groups were responsible for censoring everything from music to public school textbooks. Texas residents Mel and Norma Gabler "felt that textbooks should reinforce the beliefs of conservative Christians," and soon joined forces with Tim and Beverly LaHaye, of California (West 86). Through the LaHayes, the Concerned Women for America was formed, and the organization included "immoral textbooks" in their list of things to fight. But conservative Christians were not the only people clamoring for a change in textbook standards.

In 1966, the Council on Interracial Books for Children (CIBC) was formed, with the goal of seeking out material in public schools they considered to be examples of “racism, sexism, ageism, as well as a variety of other –isms” (Ravitch 82). Diane Ravitch’s 2003 book *The Language Police* chronicles the history of interest group censorships in public schools, and it comes from both the Right and the Left, and is often motivated by private interests.

This private sector censorship follows what Couvares offers as a second definition of censorship, also found in the OED. But this time, the word censor is a noun: “one who judges or criticizes...one who censors or blames; an adverse critic; one given to fault-finding” (519). Couvares also notes that communities establish boundaries to ensure that speech or expression is compatible with a given community’s interests. So, “the question then, becomes not *whether* but *which* censorship; that of the court or the Church? That of the bourgeoisie or the proletariat? That of the oligopolized marketplace or of democratic movements?” (Couvares 519). In a high school, the question has become when will the principal, teacher, or district censor?

In a similar vein, Sue Curry Jansen also quotes the OED as establishing a starting point for a definition of censorship, but does so in a much more historical context. Jansen traces the long history of censorship in Western civilization (ignoring any accounts of censorship in other civilizations), beginning with what she calls the Enlightenment’s “Good Lie”—the lie being that censorship ended with the ideologies of the Age of Reason. Again, Jansen contends that the Enlightenment simply transferred the office and responsibilities of censors from the government to corporations (16). This trend continues today, although through government offices like the Federal Communications Commission (FCC), often both the government and corporations are involved in issues of censorship. After all, it was the FCC which imposed massive fines on CBS after the 2004 Super Bowl, where Janet Jackson had a “wardrobe malfunction” that exposed her

nipple. Since that time, other networks, fearing similar heavy fines, place many of their live programming on seven-second delays to allow producers the opportunity to censor language or gestures that might result in FCC reprimands. Couvares raised the question before: it's not whether or not we are censored daily; it is which censorship are we subject to—George W. Bush's, or AOL/Time-Warner's? But while Couvares applies the question of "which censorship" to the film industry, Jansen poses a similar hypothesis and sees it as an opportunity to educate. To understand the motivation of the censors provides "a mechanism for asserting some control over our controllers" (Jansen 9). In fact, Jansen's entire book seems to take its underlying philosophy from Sun Tzu's *Art of War*: "if you know the enemy and know yourself, you need not fear the result of a hundred battles" (Tzu 18).

In looking at the history of censorship, Mary Hull and Jansen have the most comprehensive and accessible information. Hull's is admittedly simplistic, as her book is for a younger audience. But using Hull's general chronology with Jansen's more detailed account gives a rather comprehensive look at how censorship has always been part of the civilized order, and had been practiced by the most revered of governmental institutions. Dating as far back as 443 B.C., censorship was widespread in ancient Rome and Greece, which many consider to be the cradle of democracy (Hull 43). As the Greeks and Romans regularly censored controversial material, so did other governments. The *Edict of Worms*, issued in 1521 by Charles V, was a unified effort by the Catholic Church and the German government to "suppress heresy, reformation, and treason" (Jansen 52). This coalition was formed primarily in response to Martin Luther's attempt at reforming the Catholic Church. In the nearly 500 years since Charles V's edict, government and churches are less concerned with heresy and reformation censorship and are instead more concerned with censoring perceived obscenity. In 2007, the Federal

Communications Commission threatened legal action and fines against any PBS affiliate airing Ken Burns' 2007 documentary "The War." Burns' interviews with World War II veterans and the subsequent narration included three "f-words" over the course of the 15 hour film.

Ultimately, no legal action resulted, but the threat was made, and Burns did provide a censored version of his documentary to PBS affiliates who felt more comfortable with a clean version. In an interview with *The Sacramento Bee*, PBS president Paula Kerger made it clear that she was not in favor of censoring Burns' documentary. Noting that every television is equipped with an off-button and reiterating the importance of a free society, Kerger explained that "everything that relates to these indecency situations is all about context...I would certainly not want to see the FCC come down on a position and say 'These words, absolutely not' because I don't think that's where we should be" (Kushman). There are several cases where people have fought censorship in a variety of media, especially as technology has improved. In 2008, the Internet is the current site of censorship issues.

Administrative censoring of online student speech began almost concurrently as the technology evolved. For nearly a decade, most cases of students punished for online activity involved personal websites, most of which were created after school and off-school grounds. However, starting in 2005, with social networking sites becoming increasingly ubiquitous, administrators have been accessing MySpace and Facebook pages with greater frequency. Consequently, the more recent cases of online censorship happen in response to social networking websites. Often, these administrative searches are conducted with the goal of ferreting out student speech or activities deemed inappropriate.

## Different Types of Censored Online Student Speech

Throughout my research, I have isolated four types of content students publish online that have resulted in punishment: criticizing school policies, creating false web pages or parodies of teachers and administrators, illegal activities, and threatening words. For the purposes of this thesis, students who post threatening words in online forums are not explored for two reasons: first, even adults often are not protected when threats are expressed, and second, an increasing number of school districts are creating policies that deal specifically with cyber-bullying and threats. A trend of schools implementing these policies may be due to a March 2007 New Jersey State Supreme Court decision which “ruled that public schools can be held responsible for stopping severe instances of student-on-student harassment” (Taylor). Essentially, the court’s decision holds schools liable for harassment that occurs, on or off school grounds, if the administrators knew about it and did nothing to stop it. This decision, while well-meaning, gives school administrators increasing leeway to censor online student speech. The Arkansas State Legislature passed a law in February 2007 that prohibits cyber-bullying regardless of where the speech originated (Fitzgerald). In the winter of 2008, Maryland, Rhode Island, Florida, Kentucky, and Missouri were considering similar anti-cyber-bullying bills in their respective state legislatures.

The key language in the student press law case *Tinker v. Des Moines* affirmed that student speech is protected, so long as it does not cause disruption or interfere with pedagogy. This language, when accompanied by language from *Hazelwood v. Kuhlmeier*, another defining student press law case, has been interpreted by many to give blanket permission to censor, because it *just might* cause problems at school. Consequently, the 2007 New Jersey decision and state laws empower administrators to troll Facebook, MySpace, and other websites looking for

content that might interfere with the learning process. As the courts and states become more involved in cyber-bullying and threats, essentially criminalizing such speech, I have chosen not to address that type of speech in this thesis. Instead, I will explore speech that criticizes policies, speech that is considered parody, and photos of underage drinking posted online.

Chapter 1 will include a brief history of student censorship as the courts have defined it, as well as how those cases have since been used to justify administrative censorship across a variety of media. Those cases include *Bethel v. Fraser* and *Hazelwood v. Kuhlmeier*, although the 2007 decision *Frederick v. Morse* might soon be added to the cases administrators use to justify censoring student speech. This chapter will also include the landmark student expression case *Tinker v. Des Moines*, as it is often the linchpin lower courts use to protect controversial student speech.

Chapter 2 will examine two parodies of teachers and administrators, and will also present a look at America's propensity for shielding children from obscenity. Mark West's *Children, Controversy and Culture* is a useful source, as West moves technologically through time; with each technological advance comes yet another way America's children need to be protected. West includes radio programs, comic books, film, rock music, and school textbooks. In the final chapter of his book, he opines about how ludicrous many of the late 19<sup>th</sup> and early 20<sup>th</sup> century censorship attempts were. West blames the "New Right"—leaders in the censorship business—for creating a hyper-nostalgic picture of children from the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Jim McGuigan, in *Culture and the Public Sphere*, suggests this type of censorship is motivated by a "pervasive historical amnesia."

Idealizing the "good old days" when children lived in a society free from the influence of the evil media spurs current hysteria that we must protect our children today from all reaches of

media. Either the “New Right” is unaware of the history of rampant censorship targeting what today might be considered tame forms of juvenile entertainment, or they simply choose to ignore the fact that with every technological advance comes initial shrieking of do-gooders who are positive that the children must, at all costs, be protected from the content. West’s book is nearly 20 years old, yet his chronology sets up a sequel for the many censorship efforts on behalf of protecting children that have taken place since. Additional resources used in this chapter include Mark Godwin’s *Cyber Rights*, written at the same time the Supreme Court was deciding *Reno v. ACLU*—a case which nearly stripped adults of online expression rights.

Chapter 3 will address speech that is critical of school policies. In this chapter, I will present specific case studies of students who have been sued, suspended, or expelled due to content they have published online. In analyzing these cases, I will use Michel Foucault’s work, including *The History of Sexuality* and *Discipline and Punish*, to explore how students assert power, especially at a time in life when power is rarely afforded them. This chapter will explore possible reasons for why administrators feel it is within their rights to punish students for online content that is published off campus, after school hours. Furthermore, I will explore the power relationships between administrators and students. While most of the scholarship on power and censorship explores the relationship between corporations and censorship, it is not outlandish to propose that universities and high schools operate in a similar way to media oligopolies. Foucault’s work will lend support to that proposition. In addition to Foucault, I will draw from Sue Curry Jansen’s book *Censorship: The Knot That Binds Power and Knowledge*. For Foucault, censorship, knowledge, and power are all connected—a link that Jansen examines at length in her book.

Chapter 4 will approach the question of where students might be going with posting content online. This chapter will explore cases in which students were punished for posting photos or text that showed they were engaging in illegal activities—most often, drinking alcoholic beverages. Dick Hebdige’s analysis of subcultural surveillance will prove useful in this chapter, as well as Foucault. In *The History of Sexuality*, Foucault suggests that silence is a form of censorship. This may be where student online content is headed—that they begin to self-censor what they post online for fear of punishment at school. Throughout the chapters that explore student online content, Henry Giroux’s work serves as a bridge between issues in popular culture and education—two fields of study that will intersect in this thesis. Through thorough exploration of the censorship of online student speech from a cultural studies perspective, I hope to discover possible reasons for such censorship, and to add to the scholarship of student rights and new media.

The court cases and controversies examined in this thesis were gathered through searches of Lexis-Nexis Academic and Lexis-Nexis Legal Research. I also searched the online law library at the Student Press Law Center’s website. Additionally, I received daily news briefs from the SPLC, which tracks censorship issues at the high school and university level, and collected briefs that focused on Internet cases. I limited my research to archived documents.

I chose not to do interviews because in reading news reports, it became clear that several of the students and administrators involved were difficult to contact. Even journalists relied on testimony given in trials, district spokespeople, and attorneys. Furthermore, one case was so recent that it was still under litigation during my research, which would have made talking to the involved parties especially problematic. I consulted posted district policies regarding student



expression when such policies were available. I also consulted district policies from school districts with which I was familiar prior to my graduate studies.

There are many available examples of students who have been punished for online content. As I read through cases and determined the three types of content on which I would focus, I still was faced with deciding which cases would be most useful in this thesis. For teacher parodies and criticisms of school policies, I chose one example of a personal website and one example of a social networking site. This method also highlighted the advances in technology over a short period of time, as personal websites were more common in the late 1990s. By 2008, student content was almost entirely on social networking sites. I also included brief supporting examples to reinforce the issues at hand. The third type of content, illegal activities, did not get much attention prior to the availability of social networking sites. I did not find examples of illegal acts posted on personal websites that resulted in punishment at school; these examples are exclusively drawn from postings on the social networking websites MySpace and Facebook.

The goal of this thesis is not to take sides in a power struggle between students and administrators. Rather, the goal of this thesis is to explore certain case studies of students who were punished at school for expressing their opinions off school grounds in the emerging and ill-defined arena of extra-curricular activity. Examining the power dynamics between students and administrators through a cultural studies lens as opposed to a legal or pedagogical lens will add to the growing scholarship of this timely issue.

## CHAPTER 1: A STUDENT PRESS LAW PRIMER

This thesis is written as part of a cultural studies curriculum. However, for this particular topic, a brief primer on student press law may shed light on the current ideologies of public school administrators across the United States. Three Supreme Court cases, written over the past 20 years, have slowly chipped away at students' right to free expression: *Bethel v. Fraser*, *Hazelwood v. Kuhlmeier*, and *Frederick v. Morse*. But before those three cases, a more liberal Supreme Court saw the importance of giving students expression rights, and *Tinker v. Des Moines* was the landmark case in this area.

### Political Speech on School Grounds: Disruption or Expression?

During the Christmas holidays in 1965, three Des Moines, Iowa students, John F. Tinker, Mary Beth Tinker, and Christopher Eckhardt, decided to silently protest the Vietnam War by fasting and wearing black armbands to their public school. The students were told they could not be at school while wearing the armbands and were sent home. Since their protest was planned for several days, the students did not return to school until after the holiday break, as the armbands were grounds for suspension. Citing the First and Fourteenth Amendments, John and Mary Beth's father sued the Des Moines Independent Community School District to expunge the disciplinary action, and for minor damages. Consequently, the first legal definition of student expression rights was born. How do these students' experience relate to cultural studies? I propose that clothing—in this case specifically—can be analyzed through semiotics.

Semiotics is a method employed first by French scholar Roland Barthes as a way to interpret and analyze messages sent to consumers through the media. This method involves looking at two elements of media messages. First, there is the actual object, typically void of meaning. Second, and this is what Barthes suggests is most important, there is the myth that

accompanies the object, or the meaning that lends weight to that object. In *Tinker*, the issue at hand is black armbands. On the most basic level, the students were just wearing black pieces of cloth around their arms. It is only by applying the myth, or meaning, to those armbands that controversy occurred. The color black signifies death or mourning to many, and black clothing is commonly worn by many on days of mourning or at funerals. The students in *Tinker* applied the myth of protest to those armbands, and in attaching the word “protest” to the black armbands, they created a semiotically loaded piece of clothing that resulted in their suspension.

Justice Abe Fortas, in the decision on *Tinker v. Des Moines*, wrote that “state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students.” Administrators after the *Tinker* decision had to prove student speech would cause a “substantial disruption of school activities” before censoring a student’s speech (Learning). As Fortas noted in his decision, out of the 18,000 students in the district, only a few students wore the armbands, and even fewer were actually punished for wearing them. While the sound bite most frequently cited from *Tinker* is “students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” Fortas’ analysis of the First Amendment is particularly applicable in examining the tendencies of 21<sup>st</sup> century administrators to punish students for online content:

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. Certainly where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the

operation of the school,' the prohibition cannot be sustained. (*Tinker v. Des Moines*)

Fortas' comment suggests a two-fold test for administrators to apply to questionable speech, print, or expression. First, is the administrator punishing the student because he or she thinks the expressed viewpoint is unpopular? Second, does the expression interfere with day-to-day school operations? Fortas' opinion maintains that if the answer to the first question is yes, and the answer to the second question is no, then the student should not be punished. Put another way, "Does it *ever* make sense to pass a law limiting a kind of speech on the *assumption* that such speech will be harmful" (Godwin 151)?

We first saw this phrase, "disrupting the educational process" in *Tinker*. The school district could not completely predict that if those students had worn the armbands in school, it would have disrupted the educational process. Part of the problem with this phrase is its subjective nature. What is disruptive to one administrator may not be disruptive to another—even within the same school district. Because it is open to a wide interpretation, it is difficult to pin down how this phrase is currently used to justify censoring online student speech. From my research, there have been no written reports of how online student speech, created off school grounds and after school hours, has disrupted the educational process. In many cases, it seems the reactions of the administrators and the ensuing media attention actually create the disruption, not the speech itself.

The "educational process" involves keeping order during the school day so that students may learn the curriculum they are required to learn. Part of the educational process includes the bell system, making sure that each class starts and ends on time, giving each subject equal time. Within the confines of a classroom, the educational process may involve lecture, class

discussion, small group work, trips to the library or computer lab, and testing. Anything during the school day that contributes to a student's learning and mastery of the curriculum at hand is part of the educational process. So, what disrupts the educational process? Teachers deal with all kinds of disruptions, varying in degrees. A request from the office calling a student to see the principal in the middle of a class, or a parent coming to pick up a student for a doctor's appointment disrupts a class. A rowdy student or "class clown" disrupts the educational process. Some students are adept at initiating discussion intended to keep a teacher off the day's curriculum, by talking about current events, entertainment, or perhaps rumor and conjecture based on online speech. A loud class walking through the hallway, a student making faces through a classroom window behind the teacher's back, field trips, pep rallies, athletic contests for state championships, fire drills, tornado drills—all these things disrupt the educational process, for they all take time away from students who are trying to learn and master the curriculum. From my high school teaching experience, I can hypothesize possible behaviors relative to online speech that would qualify as "disruptive to the educational process." Most commonly, the disruption would come in the form of students wanting to talk about the content during instruction time. I do not see this as solely the result of the online content and student-generated discussion in a classroom, though. I see this as a teacher's inability to effectively demand student attention. Perhaps another feared disruption would be fights in between classes. I do not see this happening, though, as the content I describe in this thesis is not directed at students, but at teachers. I have a hard time imagining a band of students initiating a fight with another student because of a parody of a teacher or criticism of school policies.

An article in *American Secondary Education* addressed this question of disruption and offers little clarification to the question of how to define disruption in the educational process. The author suggests that “school leaders are held accountable for maintaining a peaceful school environment free of significant disruption” (Essex 43). He goes on to explain that disruption essentially means anything that interferes with teaching and learning. Most often, the type of online speech that disrupts teaching and learning is defamatory or mocking people based on race or gender. Throughout the article, the author offers ten administrative reactions that would “invite lawsuits.” Three of the ten reactions use the terms “substantial disruption” and “significant disruption,” but fail to elaborate on what a disruption is. For this author, behavior that “affects order and discipline...[or] impedes the teaching and learning process” is a substantial disruption (Essex 45). Yet, I refer to the list of in-school disruptions above. (Disruption can be caused by factors other than online speech.) The author further muddies the issue by explaining that “minor disruptions might accompany an unpopular view expressed by a student” and that administrators should tolerate those minor disruptions (Essex 46). The difference between minor and substantial is not explored, but perhaps this offers administrators a way to allow students some free expression without completely censoring everything they want to say.

The difficult aspect of the *Tinker* standard is that it places administrators in the precarious position of having to guess whether speech—be it written, spoken, or posted online—is going to cause a disruption. In 2007, a group of students at Bellevue West High School in Bellevue, NE, decided to protest the Iraq War by wearing T-shirts with upside down flags on them. They had researched what an upside-down flag meant: a distress signal. This was their opinion, that because of the war, the country was in distress. The principal of the school, despite objections

from students and parents, allowed the protest to occur. Bellevue is a predominantly military town; Offutt Air Force Base sits at its southern edge. Currently, Offutt is the headquarters for Strategic Command, and employs thousands of military personnel; about 40% of the students in the Bellevue Public School District come from military families (Zagursky). Many students attending Bellevue West had parents deployed to Iraq, so understandably, there was a sensitivity issue that many felt was being ignored. Those students responded with t-shirts they designed with “You’d make Hitler proud” and “America Rocks” on them. Students on both sides expressed their disagreement with the other side, although students who disagreed with the upside-down flags thought they should be banned. However, the students thought they should be banned because they found them disrespectful, not because it was causing a disturbance at the school. The principal of the high school, Kevin Rohlf, said “not everybody agrees with how these...kids feel, but I’ve got to create an environment where everybody is free to express their opinion with a certain degree” (Zagursky).

At any other given high school in the country, this story might have quite a different outcome. Because of the dialogue the t-shirt protest started, some administrators might see it as disruptive to the educational process. This particular administrator did not, instead opting to provide his school as a forum for expressing opinions about serious issues, much like Mary Beth and John Tinker were trying to do in 1969. As Rohlf was unable to predict whether or not the t-shirts would be a catalyst for school-wide disruption, he allowed both protests to occur. Often, disruption on school grounds happens after the speech occurs, which may be part of the reason why administrators are empowered to censor online content. Online content can be accessed over and over again. Even if a student deletes online content if it proves disruptive, it can appear again just as easily as it disappeared.

## **Content Not Suitable For Children: Events under the Auspices of the School Subject to Censorship**

A mere fifteen years after the *Tinker* decision, Supreme Court decisions began to weaken the freedom granted to students in *Tinker*. The ruling in *Bethel v. Fraser* began this erosion. Matthew Fraser, a student at Bethel High School in Washington State, gave a speech laced with sexual innuendo at a school-wide assembly. The assembly was an opportunity for students to nominate and support students who wished to serve in student government. It was not a mandatory assembly, as students who did not want to attend could instead go to study hall. It was estimated that 600 students attended the assembly where Matthew Fraser gave a speech to nominate a friend for a student government office. Administrators found the speech offensive and disruptive, and they suspended Fraser for three days. Additionally, Fraser was prohibited from auditioning to be the school's commencement speaker. When the Ninth Circuit Court of Appeals ruled in favor of Fraser, they explicitly cited *Tinker* in their written decision. However, when the school district appealed to the Supreme Court, the Court found for the school district, turning the issue from free speech to defining obscenity. The Court, chipping away at student expression rights granted in *Tinker*, felt that the students in *Tinker* were making a political statement, while Matthew Fraser was being a smart-aleck teenager seeing how far he could stretch the idea of free speech in a high school setting. Consequently, administrators could now randomly censor spoken speech they deemed obscene—a problematic term, even for the courts.

In the decision, written by Justice Burger, much ado is made of a school's responsibility to educate students not only in prescribed subjects such as English and math, but also in "the shared values of a civilized social order" (*Fraser*). Burger repeatedly emphasized that Fraser's



speech was lewd and inappropriate and not at all political. Since Fraser's speech was ruled by administrators and the courts as lewd and obscene, it did not enjoy First Amendment protection. Expressing the importance of an administrator's power, Burger cites Justice Black's dissent from *Tinker*: "I wish, therefore...to disclaim any purpose...to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students" (qtd. in *Fraser*). This decision paved the way for further erosion of student press rights. Interestingly, Matthew Fraser's speech occurred just one month before the student newspaper editors at Hazelwood East High School in St. Louis, Missouri would also face a student expression issue.

The newspaper stories submitted for publication launched the five-year legal battle at Hazelwood East High School covered the effects of teen pregnancy and divorce on Hazelwood students. Both of these topics are sensitive, especially when individuals can be identified, which is why the student reporters of *Spectrum*, the school's paper, concealed the identities of their sources. *Spectrum's* journalism adviser had submitted copies of stories for administrative approval. However, Robert Reynolds, principal of Hazelwood East High School, objected to the stories on divorce and teen pregnancy for two reasons. First, he felt the "anonymous" student sources in the stories could be identified, and second, he felt the information relative to the pregnancy stories was inappropriate for the younger students at the high school. As this was the final issue of the school paper for the year, Reynolds was faced with a decision: pull the offending pages and publish in time for seniors to read the issue, or delay publication of the paper, making it difficult for graduating seniors to access the last issue. Reynolds made a snap decision to pull the pages. As a result, *Spectrum* staff members, led by student editor Kathy Kuhlmeier, sued the school. The district court found for the school, causing the students to

appeal. The appellate court then found for the students, prompting the school district to appeal to the Supreme Court, which agreed that Principal Reynolds was within his rights as an administrator to pull the questionable pages.

Part of the Court's decision relied on the justices' determination that Hazelwood East's paper was not a forum for public expression. Justice White, writing the majority opinion, made several points establishing that the school newspaper was actually part of the educational curriculum and therefore subject to district policies. First, the school district funded publication of the newspaper. Second, students worked on the paper throughout the school day as part of a class, receiving school credit for their work. Third, the paper had a faculty adviser, who worked for the district. Fourth, the principal ultimately acted as publisher of the paper, as he reviewed all the paper's content. All of these criteria, according to White, characterized the paper as part of the school curriculum, and therefore not protected by the First Amendment. White cites the *Fraser* decision, written two years earlier: "[w]e have nonetheless recognized that the First Amendment rights of students in public schools 'are not automatically coextensive with the rights of adults in other settings'" (*Hazelwood*). In the years since *Hazelwood*, school boards often supply a clear expectation of the role of student publications. The school board policy of the Bellevue Public School District in Bellevue, Nebraska, last revised in 1999, declares the school board to be the publisher of any student publication—newspaper, yearbook, or literary magazine. The policy itself weakly admits a need for students to enjoy a right to free expression by stating that the board "[wishes] to allow for a maximum of free expression in student publications" (Policy). While this district's policy does not employ language from *Hazelwood* in describing the purpose of school publication, the accompanying administrative regulation ends

with the dictum, “Principals have the right and responsibility to represent the publisher and regulate the content of school publications” (Regulation).

Justice Brennan, in his dissenting opinion on *Hazelwood*, called into question how Reynolds could reasonably assume the content of the paper would have caused major disruptions in school. However, Brennan is careful to draw the distinction between Matthew Fraser’s speech and content in a school newspaper, by positing that a school newspaper should be a learning opportunity for responsible journalism and civic activism. Despite the initial appearance that *Hazelwood* relegated student newspapers to the status of merely a public relations tool, the language of the decision still leaves room for advisers and student journalists to write about sensitive topics. The Court decided “that educators do not offend the First Amendment by exercising editorial control over...student speech...*so long as their actions are reasonably related to legitimate pedagogical concerns*” (italics added, Learning). These pedagogical concerns include “speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences” (*Hazelwood*). Therefore, this language does not imply that controversial topics are verboten, so long as they are written in a manner that meets the standard set forth in the decision.

However, the subjective nature of determining what is vulgar, profane, or unsuitable for immature audiences sometimes gives administrators the idea that they have *carte blanche* in censoring content in student newspapers. Jeremy Learning, in an article for the Freedom Forum, noted that before *Hazelwood*, administrators “had to prove a substantial disruption of school activities was imminent before they could legally muzzle student speech. In the wake of *Hazelwood*, however, public school officials merely have to show a legitimate educational excuse before suppressing student speech” (Learning). The *Hazelwood* decision included the

language that administrators “could regulate the paper in any reasonable manner.”

Consequently, administrators tend to interpret *Hazelwood* as blanket permission to remove from a publication any story, graphic, or design they simply don’t like.

### **Broad Applications of the *Hazelwood* Standard**

*Hazelwood*’s intent was to limit high school speech in school-produced publications, and in the years since, the decision has been applied to a number of cases that are neither high schools nor school publications. One such case is *Kincaid v. Gibson*. While this case does involve a school publication, it is in a university setting. The age of university students alone should grant greater expression rights than are available in a high school. In *Kincaid*, the Sixth Circuit Court of Appeals’ decision hinged on *Hazelwood*. Charles Kincaid sued Betty Gibson, Vice-President for Student Affairs at Kentucky State University, for First Amendment violations when she seized the yearbooks because she “was disturbed by the yearbook’s purple cover (not the school’s colors), its vague theme and title ‘Destination Unknown,’ the inclusion of pictures of current events and public figured unrelated to KSU...and the fact that many of the pictures lacked captions” (*Kincaid*). Gibson also reassigned the faculty adviser, Laura Cullen. When Cullen appealed the job change and was reinstated, Gibson sent her “specific expectations” of a faculty adviser’s role. These roles included “more positive news to be published...the paper must be reviewed by the Student Publications Board before going to print...[and the adviser must] clearly monitor the content [of the publication]” (*Kincaid*).

The Court of Appeals applied *Hazelwood*’s test of establishing a publication as a public forum to *Kincaid*, stating that “[Kincaid had] offered evidence insufficient as a matter of law to prove that KSU administration intended [the yearbook] to serve as a public forum.” Public forum is the key language here when determining the purpose of a student publication.

*Hazelwood's* caveat regarding student journalism was that if a publication was “a forum for public expression...opened...for indiscriminate use by the general public,” then students deserved full First Amendment protection (*Hazelwood*). By invoking *Hazelwood* in the *Kincaid* decision, the court stated that it was acceptable for KSU's publications to maintain an image appealing to potential students, the community, and alumni, and that not allowing the university to regulate student publications might compromise that image.

Another example, similar to *Fraser*, is *Poling v Murphy*, decided in 1989. Dean Poling was to deliver a speech for student council at a mandatory school-wide assembly. His speech had to be approved by a faculty adviser, who suggested Poling omit a reference to the school administration's ‘iron grip.’ Poling complied, but “added a comment about the stuttering of Mr. Davidson, an assistant principal at the high school” (Harpaz). Ellis Murphy, the school's principal, found Poling's speech to be disruptive and ruled Poling ineligible to run for student council office. The Sixth Circuit Court quickly dismissed the relevance of *Tinker*, since the assembly was mandatory and was school-sponsored. Thus, their decision rested on the precedent set by *Hazelwood*, specifically, whether or not the principal had “legitimate pedagogical concerns.” The court's decision, which was not unanimous, ultimately ruled that “the art of stating one's views without indulging in personalities and without unnecessarily hurting the feelings of others surely has a legitimate place in any high school curriculum” (qtd. in Harpaz). This broad interpretation regarding what constitutes a high school curriculum offers an administrator at any time the chance to punish a student for any type of speech. Again, *Kincaid* and *Poling* are just two of several cases in which administrators and the Court, citing *Hazelwood*, approve censoring student speech. This trend continued in June 2007.

## Off-Campus Speech, On-Campus Consequences

The two tests established in *Hazelwood* included first, whether or not the publication functioned as a public forum and second, whether the speech took place on high school grounds. Yet increasingly, administrators censor student speech off school grounds as well. Recent courts considering such cases cite *Hazelwood*, which is interesting in light of Justice White's observation in the majority opinion that "[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*" (*Hazelwood*, italics added). However, as will be discussed in later chapters, administrators cite *Hazelwood* as justification for censoring off-campus speech created and posted online. As of 2008, no student Internet cases have reached the Supreme Court. However, the Court handed down a decision in June 2007 that may bolster administrators' successful attempts to stifle online speech. Joseph Frederick was a student at Juneau-Douglas High School in Alaska. When the 2002 Olympic Torch relay passed through Juneau, Principal Deborah Morse allowed the students of Juneau-Douglas High School to watch and cheer on the torch runners during the school day. During this activity, Frederick displayed a banner reading "Bong Hits 4 Jesus" across the street from the school. The principal, Deborah Morse, left school grounds and approached Frederick, demanding that he drop the banner. Frederick asked about his right to free speech, at which point she grabbed the banner from his hands and sent him to her office.

Morse suspended Frederick for five days. In response, "he quoted Thomas Jefferson on civil liberty to her, whereupon she increased the suspension to ten days" (ACLU Files Lawsuit). A series of hearings later, Frederick's suspension was reduced to eight days, yet the ACLU argued that his right to free speech was violated, as well as his right to a public education. Morse

was successful in censoring speech that occurred off school grounds. When the Ninth Circuit court ruled that Morse had indeed violated Frederick's First Amendment rights, Morse appealed to the Supreme Court, which heard the case in March 2007 and delivered its decision in June 2007.

Chief Justice John Roberts delivered the majority opinion, which reversed the Ninth Circuit Court's decision. Yet this decision differs from *Tinker*, *Fraser*, and *Hazelwood* in that several justices wrote separate opinions: Justices Thomas and Alito wrote concurring opinions, Justice Breyer wrote an opinion in which he partially concurred and partially dissented, and Justice Stevens dissented. This speaks to the Court's realization of this particular case's significance. In this first paragraph of the decision, Roberts cited *Tinker*, *Fraser*, and *Hazelwood*. And while the bulk of the opinion focuses on Frederick's banner as an endorsement of illegal drug use, even Roberts acknowledges that Frederick's intent was murky at best: "[the message] is no doubt offensive to some, perhaps amusing to others. To others it probably means nothing at all" (*Morse* 9). None of the Justices condones advocating drug use to minors, but Justice Stevens' dissent notes that the majority opinion "invites stark viewpoint discrimination" (*Morse* 49). Stevens notes that Morse "unabashedly acknowledged" that upon interpreting Frederick's banner as pro-drug use, she seized it because she disagrees with that viewpoint. Stevens continues, "the Court's holding in this case strikes 'at the heart of the First Amendment' because it upholds a punishment meted out on the basis of a listener's disagreement with her understanding (or, more likely, misunderstanding) of the speaker's viewpoint" (*Morse* 49).

In a Washington Post article written shortly after the *Morse* decision was released to the public, a warning regarding possible effects of *Morse* on student speech was implied. First, the article pointed out that the decision marked "the first time the court has said that schools can

prohibit a student expression that was neither obscene nor published under the school's auspices" (Lane). If this observation holds true, *Morse* will be added to the canon of student press law that administrators scour for justification in censoring student speech—particularly online student speech that is not published using any school resources. Matthew Fraser was censored on obscenity grounds, the *Spectrum* stories were censored because the school was the publisher of the paper. *Morse* sets a precedent that neither obscenity nor direct school control is a condition in censoring student speech. The article also noted the variety of groups who disagree with the decision, from both ends of the political spectrum. Gay alliance organization Lambda Legal expressed a concern that principals may use *Morse* as a way to discourage gay and lesbian students from "openly declaring their gay, lesbian, or bisexual orientation" (Lane). Similarly, Christian organizations feared disciplinary action against students who express opposition to homosexuality on religious grounds, especially in school districts which explicitly require tolerance of alternative lifestyles.

*Bethel v. Fraser* and *Hazelwood v. Kuhlmeier* have given administrators a sense that they are permitted to censor any type of student content, regardless of where the speech originated, where it was heard or where it was accessed. While *Tinker* once assured students that they had a voice, that voice has now been reduced to an administrator's interpretation of political speech. Even though *Hazelwood* does not forbid possibly controversial topics in a school-sponsored publication, the decision has been used to censor qualities as innocuous as color schemes. The Supreme Court tried to narrow the *Morse* decision to apply only to illegal drug-promoting speech, but this look at how *Tinker*, *Fraser*, and *Hazelwood* have been frequently misapplied is a harbinger of things to come. While in 2008 we await the possible effects of *Morse*, history is not an optimistic indicator of where this decision may lead.



## CHAPTER 2: SPEECH THAT CRITICIZES

I spent six years teaching in public high schools prior to my graduate studies. Students are constantly under control, from the time they enter the school building until the time they choose to leave. I have been part of conversations in which teachers claimed not enough control was exerted over the students—I can remember a department chair meeting where the major topic of conversation was whether or not water bottles should be allowed in classrooms. Students are given minimal time in between classes (the school I last taught in allowed five minutes to get to the locker, next class, and restroom if needed). They are told when to eat, when not to eat. They are told how to behave, and how to dress, and there are consequences for not meeting behavior and dress standards. With so many restrictions and prescribed behaviors, one of the most repressive apparatus of youth socialization is the public school. Foucault goes so far as to compare schools to prisons in *Discipline and Punish* by asking, “is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons” (228)? Now, I am not suggesting that these rules and expectations are unnecessary, but the rigorous oversight of American teenagers in a public high school might prove enlightening when examining their online behaviors. Criticizing policies, disciplinary actions, even the physical environment of a school through a creative online outlet may be one way students assert what little power they have.

### **The Value of Cultural Studies Theory in the Education Field**

Henry Giroux’s *Fugitive Cultures* was published in 1996, at a moment of newly widespread Internet availability. While his book focuses on issues of race and violence in the mass culture of film, television, and music, his observations are equally applicable to adolescent Internet use. Throughout his career, Giroux has consistently criticized the culture of public

schools and the lack of attention educators give to cultural influences. In the introduction to *Fugitive Cultures*, Giroux, quoting Raymond Williams, establishes a link between pedagogy and culture: “pedagogy is an act of cultural production, a process through which power regulates bodies and behaviors as ‘they move through space and time’” (*Fugitive* 20). The string of restrictions mentioned at the beginning of this chapter is part of how those in power at public schools regulate teenage bodies. Further restrictions, such as seating charts that dictate where a student must sit in class in an effort to control a student’s environment, is one way teachers attempt to regulate bodies and behaviors. Additionally, if a student chooses to participate in extra-curricular activities such as athletics, drama, and music, many school districts add regulations on student behaviors that are enforced beyond the school day. This concept is addressed more fully in Chapter 4, but I mention it here because it serves as yet another example of how Giroux views the public school culture, specifically the relationship between teachers and students. In *Pedagogy and the Politics of Hope*, Giroux notes that educators react to student resistance by “maintaining order and control” instead of actually teaching (123).

Resistance to this regulating power could be one reason why students post critical content in online spaces. Online spaces typically allow a student to express anger or frustration with the regulating forces she is subject to during the school day without fear of discipline. Giroux’s notion of “border pedagogy” contends that students navigate a variety of cultural sites in their lives: identity, personal experience, entertainment, politics, language. Each of these cultural sites is accompanied by a code which students must learn to read if they are to successfully cross cultural borders that intersect in their lives. Teachers also navigate many of these borders, but have been doing so longer, and as people who exercise power over a subordinate group (students), they have a responsibility to help their students understand the “relational nature of

one's own politics and personal investments" (*Pedagogy* 158). Much of Giroux's work calls for educators to utilize cultural sites of resistance as teaching tools in the classroom, and student postings on the Internet would be an effective tool in encouraging students to think critically about their experiences. Giroux explains, "[t]he different stories that students from all groups bring to class...need to be understood as more than simply a myriad of different stories. They have to be recognized as being forged in relations of opposition to the dominant structures of power" (*Pedagogy* 159). These dominant structures of power are not limited to teachers and administrators, but include other cultural influences such as family, church, even content they see on television or hear on the radio. Thus, exploring student-generated Internet content for clues as to why they are posting subversive material could begin a valuable teacher/administrator-student discourse that could give students the tools to be meta-cognitively aware of how they cross their own cultural borders. However, for many teachers and administrators the path of least resistance seems to lead in the direction of censoring online content.

Giroux's observations in *Fugitive Cultures* underline the value of my thesis, particularly the value in exploring the power dynamic between students and administrators: "youth...is less an element to be controlled than a complex social formation to be analyzed, interpreted, and engaged within the largely repressive apparatuses of youth socialization" (15). Again, Giroux suggests that youth sites of resistance should be understood rather than controlled, and that to use only education theory in attempting to understand youth is short-sighted. Cultural studies theories must also be employed to conduct a thorough analysis of youth. Youth bring with them to school the influences of television, music, movies, and the Internet, and it would benefit teachers and administrators to examine the cultural implications of those media forms as opposed to completely discounting them. This also echoes Jansen's suggestion that "to expand the

boundaries of human freedom, we must first identify [the boundaries]” (Jansen 25).

Furthermore, Giroux notes that “culture studies focus on the critical relationship among culture, knowledge, and power” (Giroux 17). This proposed use of cultural studies is particularly interesting in discussing the role of public schools, as knowledge is often waved about as the purpose of a public education, which Giroux already determined to be repressive. Giroux here is suggesting that educators need to take a cue from cultural studies scholars and view their own world as an intersection of culture, knowledge, and power. Instead, many teachers and administrators ignore the impact of culture on their students. While *Fugitive Cultures* largely focuses on the impact of popular culture on youth, his chapter titled “Public Intellectuals and Postmodern Youth” examines the power dynamic between students and teachers in public schools. Giroux suggests that “[s]haped within unequal relations of power and diasporic in its constant struggle for narrative space, culture becomes the site where youth make sense of themselves and others” (*Fugitive* 15). Film, music, news, television—all these encompass cultural sites where students look for meaning to explain themselves and the world around them.

### **“Voicing My Opinion”: Brandon Beussink’s Website**

The Internet is also one of the many cultural sites where youth try to make sense of the world, and Brandon Beussink was one of those youth. Beussink became a poster-child for student Internet rights as a result of his experience, considered by some to be “the first reported [court] decision to involve discipline of a student for Internet speech” (Harpaz). When Beussink was a junior at Woodland High School in 1998, he created a website at his home that allowed him to express his opinions on a variety of subjects. He criticized Congressional Republicans and the Clinton administration (1998 being the height of the Monica Lewinsky scandal). Additionally, he was critical of his principal, a teacher, and the school district’s official website

(Carney). Beussink's website used "crude and vulgar" language in talking about the school's principal and teachers. According to the St. Louis Post-Dispatch, Beussink's website "also urge[d] visitors to send email to the principal and inform a teacher that the Web site [was] bad" (Bryant). Beussink showed the website to friends at his home, and never accessed the website at school. However, according to the District Court decision, one of Beussink's friends became angry with him and showed the website to a teacher at school, who passed the site along to the principal. Beussink testified that "he just wanted to voice his opinion" (*Beussink*). As he was off school grounds, and he did not think that the site would be accessed at the school, he assumed his speech was protected. When the principal saw the website, he suspended the already academically at-risk Beussink for ten days, which ultimately resulted in Beussink failing the school year and delaying his graduation. Additionally, part of the punishment was for Beussink to "clean up" his homepage. Beussink did more than sanitize his website; he took his website down, without argument. Yet he was still suspended from school.

The principal's main objection to the website was the criticism and the language. He testified in court that his rationale for disciplining Beussink was "because he was upset by the content of the homepage" (*Beussink*). Even before Justice Stevens wrote his dissent in *Frederick v. Morse* suggesting that administrative censorship would "invite viewpoint discrimination," it was happening. The principal made no indication that Beussink's website had caused a disruption at school, which is many administrators' first line of attack. Instead, the principal made it a personal issue, perhaps a value-oriented issue, as vulgar language is not usually tolerated in formal school settings. Yet Beussink's website was not a formal school setting, it was a space where he should have been able to freely express his opinions on politics, both at the

national and the school level. Because the content was critical of the school, and because the language was “vulgar”—a subjective term in itself—the principal punished Brandon Beussink.

Foucault’s theory of power can be successfully applied to most examples of online student speech and the resulting punishment. Foucault writes that power is not hierarchical, but is web-like, with all players resisting and exercising power at some point. Many Internet censorship cases involve students resisting the power and control constantly exercised over them by restrictive school policies. In Beussink’s case, he was exercising the power that comes with a society’s value of free speech by criticizing his school and teachers. The principal then exercised his power as an administrator to discipline Beussink, who in turn used the power of the American legal system to resist that administrative power. Just as Foucault noted in *History of Sexuality*, power should not be viewed as emanating from a fixed point. Instead, power emanated from all involved parties.

The most applicable part of Foucault’s theory to this struggle between students and administrators is the Rule of the Tactical Polyvalence of Discourse, which states that discourse transmits and produces power, reinforces power but also undermines and exposes it. In most student online speech cases, this is exactly what is happening. Student discourse, especially in online spaces, is a show of power over the repressive apparatus of the public school environment. In some cases, this power is seen as undermining the power of the controlling administrators, and as administrators are not supposed to be 24-hour sites of discipline, the illusion of the administrator as ultimate authority figure is exposed. Furthermore, Foucault notes that there is no power exercised without a series of aims and objectives, a theory that is clearly visible in this case. Any legal action has the aim and objective of defense and vindication. Beussink stated in court that his objective was to express his opinion. The principal, offended by

the online content, stated that his objective was to punish Beussink for the opinion. These conflicting objectives further illustrate Foucault's theory of power. Beussink would not be allowed to express his criticism of the school during the school day, especially using the language he did, without being punished. To prevent punishment, he utilized a different space. However, in an effort to extend his power beyond the brick and mortar school environment, the principal still punished Beussink.

There are few ways to keep the effects of Internet speech out of the school building. Many students have cell phones with text messaging and Internet capabilities. While some schools enforce the policy that phones are not to be used during classes, students can still use them during hall passing times, lunch, and before and after school. These capabilities bring Internet content inside the school, even if the content was originally created off-school grounds and intended to be viewed off-school grounds. Furthermore, student discussions of what they viewed online are easily brought to school. Students in my classroom were fascinated with the website ebaumsworld.com, which was somewhat of a predecessor to YouTube. Ebaumsworld.com was blocked via the district Internet filter, yet I knew all about the website and its content from the extensive list of videos my students told me I "just had to see." For some students, finding ways around a school's Internet filter is child's play, and they are able to access restricted websites and email servers with ease. All of these ways contribute to the erosion of a clearly marked school boundary, which in turn contributes to the erosion of an eight-hour school day.

*Beussink v. Woodland* was never heard by the Supreme Court. However, the District Court established a four-prong test for determining whether Internet speech was indeed actionable, and cited *Tinker* as the basis for ruling in Beussink's favor. The test established in

*Beussink* includes the following elements: “threat of irreparable harm to the movant (*Beussink*) if relief is not granted; the balance between this harm and the harm to the non-movant (*Woodland School District*) if the injunction is granted; the movant’s likelihood of success on the merits; and the public interest” (*Beussink*). The court determined that the academic harm to *Beussink* outweighed any harm to the school or its administrators. In fact, the court determined that the content of *Beussink*’s website was not harmful to the school or the administrator, which undermined and exposed the school district’s power, or lack of power since they lost the lawsuit.

In establishing the four-prong test, the court acknowledged the tenuous nature of the power dynamics present between an administrator and a public school student. It is not within a school district’s rights to punish a student—to the point of ‘irreparable harm’—based on content posted on the Internet. In establishing the last two prongs of the test, the court also acknowledged the importance of not setting a precedent giving administrators carte blanche in censoring online content. On First Amendment merits alone, *Beussink* was within his rights. Censoring his website by asking him to remove the offending content was a violation of those rights. Furthermore, to find for the school district would not have benefited the public interest at all. As the district court judge wrote in his decision, “it is provocative and challenging speech, like *Beussink*’s, which is most in need of the First Amendment. Popular speech is not likely to provoke censure...it is unpopular speech which needs the protection of the First Amendment...” (*Beussink*).

In the past 10 years, *Beussink v. Woodland* has become an influential piece of case law in determining student online speech rights, but its influence does not always end up protecting students whose speech has been censored. Despite the *Beussink* decision, courts continue to be split on whether or not Internet speech should be protected. While many of the cases I



researched cited the *Tinker* standard for proving speech caused a disruption at school, just as many cases cite *Beussink*. However, the most common component of *Beussink* applied to cases that followed deal with establishing whether the speech occurred off school grounds. If the only issue at hand is the location of where the speech was made and intended to be accessed, *Beussink* carries the day. However, if an administrator is at all able to prove that the speech caused a disruption at school, *Beussink* hardly informs the decision.

Administrators contend that while *Hazelwood* and *Fraser* specifically refer to student content on school grounds, the availability of the Internet at school brings those off-campus postings into the school building. Yet the *Beussink* decision implied that “what happened [online] is no different than if he wrote a story critical of the school in his room at home and that story was taken from his room by a fellow student without his permission and shown to the school principal” (Harpaz). What would be an administrative reaction to that situation? Does a story written at home carry the same punishment as material available on a web page? *Beussink* suggests no. Furthermore, the decision “does not create a new law of the Internet...[however] it appears to allow the attributes of the Internet...to break down the barriers between speech at school and speech at home” (Harpaz). Due to the interminable availability of the Internet, and the archival nature of Internet postings, administrators are finding content and actions to punish outside the confines of the school building and school day. Those barriers that once existed have begun to crack, making it possible for students to be under potentially constant supervision.

### **MySpace Can Also be Your Space: Finding Critical Speech, Pushing Private Boundaries**

Beussink’s case is an example of censored content that was created independently, rather than within a larger framework such as the now popular social networking sites. Since 2003, many teenagers have created profiles on a social networking site called MySpace. MySpace bills

itself as “an online community that lets you meet your friends’ friends” (about us). Attempting to appeal to the entire public, the founders of MySpace consider it to be a venue for everyone, from the casual Internet user who wants to meet friends or even date, to businesspeople looking for a fresh approach to networking and sales. By 2005, MySpace had 27 million registered users (Williams). MySpace provided an easier way to create a homepage. No longer did a student need advanced knowledge of computer programming languages or web space allotted them through an Internet Service Provider as Brandon Beussink needed. All a student needed to create a homepage (also called a profile, the term I will use throughout this thesis) was creativity and an Internet connection.

One of the founders of MySpace, Tom Anderson, explained that his vision for MySpace was to create a mix of the most popular Internet communication features and offer them in one package. So MySpace offered “the instant-message capabilities of America Online, the classifieds of Craigslist, the invitation service of Evite, and the come-hither dating profiles of match.com” (Williams). What has resulted in the years since its inception is an online site of struggle for students choosing to parody teachers, post photos that some might deem incriminating, or express opinions.

It was a dress code issue that infuriated A.B., an Indiana junior high student, and prompted her to utilize MySpace to express that frustration. Her junior high school prohibited excessive body piercings. In February 2006, she posted a comment on a MySpace profile that had been created in the name of her school’s principal, Shawn Gobert:

Hey you piece of greencastle shit

What the fuck do you think of me [now] that you can[’t] control me? Huh?

Ha ha ha guess what I'll wear my fucking piercings all day long and to school and you can[']t do shit about it! Ha ha fucking ha! Stupid bastard! Oh and kudos to whomever made this ([I'm] pretty sure I know who).

The State, on behalf of the principal, filed suit against A.B., alleging that had her comments been posted by an adult, it “would have constituted identity deception” which is a felony, and would also be considered harassment, a misdemeanor (Indiana). At trial court, A.B. was put on probation and classified as a juvenile delinquent. Upon appeal, however, the court analyzed A.B.'s posting according to constitutional law.

Now, few people enjoy being labeled a “piece of shit” or a “stupid bastard,” but the principal's accusations of identity deception in A.B.'s speech is unclear. She did not create the MySpace profile; she posted a comment on a profile created by another student at the school. When Gobert learned of the MySpace profile, he had to “remove restrictions on his school computer that [normally would have] prevented him access to the site” (Indiana). An increasing number of schools use filters on school computers to block web email servers such as Hotmail and controversial websites, including MySpace. So the fact that Gobert had to find a way around the school filter to look at the fake profile speaks to the lengths some administrators go to discover wrong-doing by their students and therefore attempt to control them. Once he had access to MySpace, he learned the profile was set to “private,” meaning that only invited MySpace members could access the profile. However, Gobert became aware that A.B. had created a public MySpace group titled “Fuck Mr. Gobert and GC Schools” and he discovered A.B.'s comment via the public group. Between the comment and the public group, A.B. became the target of Gobert's wrath, who insisted she had committed identity theft, even though she had not created the initial MySpace profile.

A.B. maintained that “her message, made in a public forum, and criticizing Gobert, a state actor, in implementing a school policy proscribing decorative piercings is a legitimate communication envisioned within the bounds of protected political speech” (Indiana). A.B., upset with the body piercing policy at her school, chose to exert power in speech form, in a public forum, off campus, after school hours. And while there is no evidence that A.B. was punished at school via demerits, suspension, expulsion, etc., Gobert attempted to sue her on misdemeanor and felony charges, charges that were all ultimately dismissed. Had A.B. spoken those words to a friend in a hall, would Gobert’s reaction have been the same? Perhaps she would have been disciplined according to the student handbook requirements on vulgar language, but she probably would not have been sued. I contend that A.B. made those comments in an online forum precisely because she knew the consequences for expressing such speech at school. A.B. probably felt secure in the protection of the First Amendment, that criticizing her school’s policy via the MySpace profile would not result in any direct consequences. I also contend that the archival quality of online speech empower administrators to wield their disciplinary power outside the parameters of the school day.

The hope found in *A.B. v. Indiana* for future cases is that the court ruled that A.B. “was speaking out against her principal and his policies rather than causing actual harm” (Maxcer). This places her speech squarely in the category of political speech, which under *Tinker* is protected. But there is still a growing concern over how the next case might be decided, whatever that case may be. David Hudson, Jr. is a research attorney for the First Amendment Center, and his concern is the number of incidents where students are censored for online content:

We keep seeing issues cropping up all the time—it seems like every week there’s a new incident...There’s some chance that the Supreme Court may delineate the line between what is exactly on-campus and off-campus speech, and how far the disciplinary arm of the school reaches, but right now it’s a fairly muddled legal landscape as to how much principals have jurisdiction over this (Maxcer).

The Supreme Court, in writing the *Frederick v. Morse* decision, could have addressed the issue of on-campus versus off-campus speech. Instead, the Court hinged their opinion on the implication of Joseph Frederick’s supposed endorsement of illegal drugs. However, the Court’s neglect in addressing the importance of where Frederick’s speech took place gives students posting content online some breathing room, as the issue of space in the *Morse* decision cannot be applied to Internet content.

### **Students Punished Without Disrupting the School Day**

Bryan Lopez was a junior at Littleton High School in Littleton, Colorado when he posted commentary about his school on his MySpace page. Comments ranged from the run-down condition of the high school to “the perceived racial biases of teachers and administrators, and the poor quality of resources available to students” (After ACLU). Lopez’s profile could not be accessed at school, as the school utilized a filter to block access to MySpace. Furthermore, Lopez had password-protected his MySpace page, so that only those who knew him could view photos and comments. What Lopez could not control was what his friends might decide to do with the comments posted on his profile. One classmate copied Lopez’s comments and pasted them to a separate website, one that was more readily available to the public. Administrators were made aware of the comments and suspended Lopez for violating “a school policy that forbids students from engaging in conduct, either on or off-campus, ‘that is detrimental to the

welfare or safety of other students or district employees” (After ACLU). Initially, Lopez was suspended for five days, but the district-level administration added ten days to his suspension as they wanted to review his case to determine whether or not to expel him. Lopez returned to school after six days, and the case was eventually settled without legal action, although the American Civil Liberties Union was prepared to file a lawsuit against the school for violating his First Amendment rights. As one of the lawyers on the case noted, “school authorities do not have the right to impose discipline for statements that students make off campus, especially when...those statements do not cause any material disruption of the educational process” (After ACLU). Again we see that tricky language of “disruption” with little explanation as to what merits an actual disruption of educational process, but I contend that it is more about controlling what students say than actually trying to determine whether or not certain speech will cause—or has caused—a substantial disruption.

Students in the 21<sup>st</sup> century use a variety of online media to criticize school administrators or policies. While MySpace has a blog component to its interface, some students prefer blogging sites as their outlet. Avery Doninger published a blog on LiveJournal.com. After a number of setbacks that resulted in the imminent cancellation of a music festival at her high school, Doninger requested meetings with the principal to reinstate the festival. When those requests were not met, Doninger tried rallying support for the festival via a LiveJournal blog entry which labeled the school administration as “douche bags.” As a result, the school denied Doninger the opportunity to run for Senior Class Secretary. When Doninger and her mother sued the district and lost, their attorney noted, “This decision allows wholesale censorship by school officials, reaching into the private lives of students” (Beach). However, the judge writing the decision, even noting that there was no school disruption from Doninger’s actions, wrote,

“teaching students the values of civility and respect for the dignity of others is a legitimate school objective” (Beach). One superintendent maintained that “if student posting violates the district’s Internet use policy and causes a disruption of the educational climate, there should be consequences” (Beach). The New Haven Register article cites the New Haven Internet use policy as “prohibiting language that is impolite, profane, rude, vulgar, or disrespectful.” The article is unclear as to where, geographically, that policy applies, which is part of the issue for students like Doninger.

While the American Civil Liberties Union has been involved in the actual litigation of cases dealing with censorship, the Student Press Law Center (SPLC) is a non-profit organization dedicated to educating and fighting for students faced with First Amendment issues. Founded in 1974, the SPLC acts as a resource for students, both high school and collegiate, who need answers to questions regarding their rights to free expression. The SPLC covers a variety of topics, from basic student press rights to privacy issues to cyberlaw. In a 2004 guide to Internet press law, the SPLC wrote:

While courts generally have ruled in favor of students' First Amendment rights on the Internet, the sad fact remains that no matter how careful students are, or how much the law is on their side, some school officials refuse to accept the idea that they cannot control or punish off-campus student behavior. It can be little consolation to students that academic sanctions and disciplinary punishments doled out by overzealous and misinformed administrators are often overturned or settled months or years later... (Guide to Off-Campus Websites).

It is important to note here that this particular guide provided by the SPLC was written as a guide for online content. Other off-campus behaviors such as drinking, theft, or assault carry civil

punishment, not usually school punishment as well. The football player who receives a minor in possession of alcohol citation on Saturday night is not suspended from school Monday morning. But the student who uses vulgar language to mock the football team on her MySpace page over the weekend could be suspended Monday morning.

As of 2008, the legal system is inconsistent at best in determining whether or not administrative jurisdiction extends to a student's home, and whether or not Internet websites and MySpace profiles are protected speech. However, some recognize that there is a delicate balance. On one hand, public schools are part of the government, "and preserving the ability of citizens to communicate dissatisfaction with the government is a significant purpose of the First Amendment" (Graca 128). On the other hand, often it is the overreaction of administrators that leads to student content being ruled "protected speech." In a bulletin for the National Association of Secondary School Principals, Thomas Graca and David Stader issue this call to all high school principals: "a proactive approach by school boards and educational leaders can not only help to avoid the distraction and expense of court cases but will also give better guidance to students and parents about appropriate use of the electronic media" (Graca 128). Graca's proactive approach involves creating specific school policies that regulate online student content, regardless of where it is created or accessed. Graca is not calling for an all-out stifling of student speech, but is asking administrators to have a plan in place that equally protects students and administrators or teachers. However, that is a rather tall order to fill. Admittedly, Graca is preaching to the principal choir here, but his suggestion of being proactive is vague and chilling. Perhaps the next battles of online student speech will be over attempts to implement school policies that govern at-home behaviors. Much like conflicts over school uniforms at



public schools, attempts to regulate online content created by public school students is problematic within the confines of the First Amendment.

Graca's approach would fall in line with a Foucauldian concept of punishment, as Foucault suggests punishments and policies should not be thought of as fitting a crime, but that punishments should be seen as ways to prevent others from repeating a similar crime. In Foucault's words, "one must take into account not the past offence, but the future disorder. Things must be so arranged that the malefactor can have neither any desire to repeat his offence, nor any possibility of having imitators" (*Discipline* 93). If schools begin to craft restrictive policies regarding Internet content, they will be used to prevent any future disorder. As of 2008, there is little deterrent to posting opinions online that are critical of teachers, administrators, or district policies. Most public school districts do not have policies regulating online speech that is created off school grounds. So far, the courts have been rather clear that those opinions qualify as political speech.

### CHAPTER 3: SPEECH THAT PARODIES

People in power—especially those considered to be public figures—are often parodied. One needs only to tune in to Saturday Night Live to see the scope of public figures available for parody. When such sketches are performed within the context of a humorous sketch comedy show, disciplinary actions such as lawsuits are rarely concerns. Teachers and administrators, as people in positions of power, are commonly targeted for ridicule. In my own high school teaching experience, I overheard student impressions (or parodies) of teachers, both favorable and unfavorable. When I advised a student newspaper, one of my student columnists wrote a column that parodied my unintelligible handwriting and the content of my comments on rough drafts of articles. Often, the function of parody is “to ridicule or criticize” (Kreutz 102). Furthermore, someone who creates a parody usually knows the target of the parody well—whether through a personal relationship or because the person is considered to be a public figure. Because the purpose of parody is to criticize, it is understandable that targets of parody often end up feeling hurt by the parody. In some cases, parody targets are so incensed that they take legal action. In 1988, the Supreme Court ruled that parody was indeed protected speech. *Hustler* publisher Larry Flynt ran a cartoon that suggested the Reverend Jerry Falwell’s “first time” was in an outhouse with his mother. Falwell sued Flynt for libel and emotional distress. Yet the Court found that the cartoon (which was labeled “Ad and Personality Parody”) was protected by the First Amendment. In the opinion, Justice Rehnquist held that “outrageousness” was not grounds for censoring speech and, calling upon another landmark First Amendment decision involving comedian George Carlin, affirmed that “the fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker’s opinion that gives offense, that consequence is a reason for according it constitutional protection” (*Hustler*. In

determining that terms such as “outrageous” were highly subjective, the Supreme Court offered protection to parodies.

A recent article in the *Christian Science Monitor* suggests that teachers, as public figures, are becoming increasingly intolerant of student-generated parodies. Citing a National School Boards Association study, the article states that “one-third of American teens regularly post inappropriate language or manipulated images on the web...[with] 26 percent of teachers and principals being targeted” (Johnsson). Even in the nascent stages of Internet access, software-conversant students found it easy to establish websites for a variety of purposes. Prior to social networking sites like MySpace, some teachers and principals considered student-created websites obscene whereas some courts considered them to be parodies. Parody of teachers and principals by students is often censored by administrators, who punish students with suspension or expulsion from school, and often pursue legal action as well. Often, the issue with parodies is perceived obscenity, and disciplinary action is motivated by a variety of factors: chastising a student for using such obscenity, a belief that other students need to be protected from such content (as was also insinuated in the *Fraser* case), and an imposition of an administrator’s values on the student.

### **Crusaders Against Obscenity: Protecting Children from Culture**

Protecting children from obscene content has a long history in the United States, and appears to be a major motivating factor in censoring student content, especially online. Michel Foucault’s analysis of 18<sup>th</sup> century secondary schools’ approach to sex points to the logical fallacy that several public school administrators still champion today: if we don’t talk about something, then the kids won’t know about it. This censorship of silence will be addressed in more detail in the next chapter, but it is worth mentioning here in the context of protecting

children from perceived obscenity. Controlling the physical environment and creating rules that govern nearly every possible behavioral deviance still exist as tactics of current public school administrations.

In many discussions of what motivates censorship of art, speech, or ideas, there is little mention of protecting children. After all, for years censorship targeted not obscenity, but heresy and criticisms of the government. Yet Mary Hull offers what may be an early example of protecting children as an impetus for censorship. In 1807, Thomas Bowdler's *The Family Shakespeare* made its first appearance. Bowdler's edition was scrubbed clean of references he felt were inappropriate for families with young children (Hull 2000). Further research into Thomas Bowdler's life reveals a man who took his religion quite seriously, to the point where biblical references in Shakespeare's plays were edited out because "Holy Writ was holy" (Jellinek). He saw no value in reading *Othello*, and suggested it be hidden from families entirely. Bowdler also edited anything remotely alluding to sex. One example of the most brazen censorship in Bowdler's collection is from *Romeo and Juliet*:

In *Romeo and Juliet*, 'the bawdy hand of the dial is now upon the prick of noon,' becomes 'the hand of the dial is now upon the point of noon.' Much of the sexual banter of the nurse...is left out...'Tis true, and therefore women being the weaker vessel are ever thrust to the wall' is omitted, as is much poetry which features in standard books of quotations, such as Romeo's 'not ope her legs to saint-seducing gold' (Jellinek).

Coincidentally, the verb "bowdlerize" means "to expurgate (a book or writing) by omitting or modifying words or passages considered indelicate or offensive." The word's etymology is traced directly to Bowdler's *The Family Shakespeare* (OED). Thomas Bowdler was on a one-

man crusade to sanitize Shakespeare so children could safely consume it. Nearly a century later, Anthony Comstock took it upon himself to save American youth from questionable material.

Anthony Comstock was interested in religion beginning in his teen years, motivated by a desire to know how his sins might be forgiven. This preoccupation with receiving forgiveness led to his self-motivated mission of resisting sin. In 1868, Comstock successfully lobbied Congress to pass a bill that “prohibited producers of obscene materials from using the postal system to distribute their wares” (West 11). This success empowered Comstock to work with government and church organizations to protect children from all obscenity, and ultimately decided that dime novels were a gateway to crime and a life of morally questionable actions. Librarians soon agreed with Comstock, suggesting that the violence in the novels caused children to emulate the violent acts they read about in the novels. In fact, they purported that reading those novels caused a young boy to shoot himself, an interesting connection to read from a post-Columbine perspective, as music and video games bore some of the blame in that tragedy. Comstock and the forces he had galvanized believed that eliminating dime novels would reduce delinquent behavior and restore childhood innocence. Comstock passed the torch to children’s librarians, who considered children’s literature to be mediocre at best and claimed it prevented children from learning. They argued that it gave children a false sense of reality and was too escapist. Comstock is just one of many examples of censoring cultural products for children. In Mark West’s book *Children, Culture, and Controversy*, West explores several examples of childhood censorship, from the mid-1800s to the 1980s.

Books were not the only medium to receive criticism. In the 1920s, radio programming and films were highly criticized, leading to calls from conservative interest groups to censor the material found in those media. In the 1950s, comic books were targeted, followed by rock music

and finally, television. With each innovation came a need to protect children. The strength of West's book is in his final chapter, as he recognizes the tendency to idealize the "good old days" of the later 19<sup>th</sup> and early 20<sup>th</sup> century as a Lake Wobegon-esque utopia, where children frolicked about untouched by filthy media intrusion. The reality is, as West explains, chapter after chapter, that rarely did American youth experience a time when their cultural interests were readily accepted by adults. Instead, a truthful look at the history of American culture seems to send the message to children that cultural artifacts of years past are less obscene than the current cultural offerings—when in fact, adults in times past fought just as hard against culture. Ronald Cohen, professor of history at Indiana University Northwest suggested that the motivation many adults have for controlling and censoring the media intake of children is fueled by two main concerns: "to shield the young from certain perceived pernicious influences and to encourage a national cultural uniformity/conformity heavily motivated by Christian morality..." (Cohen 251). These concerns definitely fueled Comstock, and today they fuel many administrative attempts to censor student-generated online content.

However, some adults recognize the constructed historical memory that fueled Bowdler and Comstock, and instead fight to keep free speech alive. One such adult is Mike Godwin, a lawyer and computer enthusiast who found himself in the middle of the *Reno v. ACLU* case that nearly ended First Amendment protection in the United States. In this case, the federal government included, as part of a larger telecommunications bill that eventually allowed for media oligopolies as we now know them, an amendment that called for Internet censorship in the name of protecting minors from "indecent and patently offensive communications on the Internet" (*Reno*). The executive and legislative branches of government felt a duty to protect children from pornographic content online, as the amendment was introduced by Senator Jim

Exon and the bill signed into law by President Clinton. However, the amendment was written so vaguely that adult speech would have been compromised, criminalizing certain adult Internet activities. Godwin's bias in favor of complete freedom of speech is clear throughout his book, *Cyber Rights: Defending Free Speech on the Digital Age*, but he makes valid observations about why censoring online speech seems to be so easy and widespread. While even his "revised and updated" edition does not address social networking websites like MySpace and Facebook—two hotly contested websites in the student-administrator power dynamic—the core principle is the same: "[s]ure, some people use computers or the Net to do bad things (just as people have used telephones or the printing press to do bad things), but that doesn't invariably mean there's a crisis to be handled or a new law that needs to be passed" (Godwin 4-5). The U.S. government's goal in *Reno* was to protect children from content deemed inappropriate. My question is this: who was defining inappropriate, and why was it the government's job to make those determinations by limiting access to the content? The Supreme Court apparently wanted the U.S. government to stay out of the business of policing content in lieu of parental discretion, as they found in favor of the ACLU. The Court's decisions in both *Reno* and *Hustler* reinforce the fact that determining what is obscene or patently offensive varies from person to person. Obscenity is subjective, which is part of what makes parody difficult to navigate. Yet attempts in defining what obscenity looks like are precisely what administrators attempt to do when censoring online parodies.

### **Extending the School Day: The 24-Hour Punishment Cycle**

Karl Beidler was one of the first students to be taken to court over his parody website of a teacher. Karl Beidler was a junior at Timberline High School in Washington State in 1999, when he created a website that parodied the assistant principal, Dave Lehnis. The website included

doctored images of Lehnis at a “Nazi book burning, drinking beer, and spray painting graffiti on a wall” (Freedomforum.org). Other reports state that Beidler’s website “placed the image of the assistant principal in a Viagra commercial...and on the body of a cartoon character having sex” (Gavin). These images and words, intended as a parody, were considered by the school’s administration to be obscene. Robert Gavin, a reporter for the Seattle Post-Intelligencer, included in his report of Beidler’s suspension that “[c]ourts have ruled that written material published off-campus enjoys the protection of the First Amendment, and schools have no power to sanction students if they find the publications punishable.” After all, this was the assumption in *Hazelwood*, affirmed by *Beussink*. As Beidler was one of the first students to fight his punishment for online speech, Gavin’s observation was relevant at that time. However, in the eight years since Beidler first went to court, observations like Gavin’s are not found as often in journalistic stories of students who are punished for online content. In the news stories I read concerning MySpace and Facebook, there was only one mention of speech in those spaces *not* being punishable by administrators. This particular quote was given by a privacy and security lawyer in New Jersey who stated that “the courts have been very clear that the school’s authority ends at the geographic boundaries of the school, unless it’s a school-sanctioned activity or using school equipment” (Pardington). However, those geographic boundaries are continually tested in the courts, and it does not always end up in favor of the student’s right to free speech.

Another interesting comment in Gavin’s article is when a North Thurston County School District spokesperson compared website parodies to “the electronic equivalent of following teachers after school and harassing them” (Gavin). What is interesting about this comparison is the school district punishing a student for online content created off-campus, not during school hours, could be considered the equivalent of following *students* twenty-four hours a day. The



major complaint about Beidler's content was that it was "inappropriate," as the Principal of the high school testified. The content may have been in poor taste, and the language may have been inappropriate, but the larger question is: why would a student create a parody of a teacher?

Public high schools, in some ways, mirror Foucault's assessment of Middle Ages monarchies: "agencies of regulation, arbitration, and demarcation, as a way of introducing order" (*Sexuality* 86). School boards arbitrate policies that prescribe regulations on the students who attend their schools. Teachers and principals are executors of these regulations, and as public figures in positions of power, become targets of parodic websites. The "demarcation" element of Foucault's observation is compelling when examining students who are disciplined for Internet content. Demarcation often implies a geography, such as a line not to be crossed, or for the purposes of this thesis, a school building. Many students understand the rules of crossing into school grounds—dress code, no smoking, and respecting authority are all expected behaviors. Violations of these behaviors carry consequences. Yet Beidler and others are punished for behaviors that occur beyond the school grounds, which begs the question: what is the demarcation of the Internet? The idea of geographical demarcation becomes murky in that site of struggle, as the Internet is not a physical location, nor is its access limited by operating hours. For Karl Beidler and other students punished for online expression, public school administrators exercise a power similar to the monarchies Foucault analyzed. In being subject to such regulation, students feeling frustrated by the constant regulations imposed on them at school or witnessing administrative incompetence sometimes turn to parodies as a source of comic relief and as an expression of resistance to the administrator's perceived power. These parodies often bear similarities to Saturday Night Live parodies of every U.S. president since 1975 by exaggerating character flaws or idiosyncrasies.

### **Administrators Retaliate, Suspend then Sue**

As with websites expressing content critical of policies, parody profiles seemed to increase with the advent on MySpace, perhaps because of the ease in using the software and its status with teen culture. In 2005, Justin Layshock, while at his grandmother's house, created a MySpace profile for his principal, Eric Trosch. The profile focused mostly on Trosch's weight, suggesting he took steroids and also suggesting he smoked marijuana. The profile also claimed Trosch was "too drunk to remember" what had happened on his previous birthday. Furthermore, Layshock "used terms like 'big faggot and big steroid freak to describe [Trosch]'" (Simonich). The school district deemed these phrases defamatory, and as such, not protected speech. Unlike A.B. from Indiana who merely posted comments on a MySpace profile, Layshock actually created a profile using Trosch's name and other identifying factors, such as where Trosch lived and worked. Not long after Layshock created the profile, three other students also created MySpace profiles parodying Trosch, yet it was almost a year later before the identities of those students were discovered. I did not find specific information as to why the other three students' identities were so well concealed, nor did I find specific information as to how Trosch discovered Layshock was responsible for one of the profiles. One report acknowledged that school officials eventually received the names of the offending students from the local police department, although there is no information regarding how the police discovered their identities.

Apparently, Trosch learned of the profile from his daughter, who at the time was a freshman at the school. She was upset by the content, and showed it to her father. After Trosch viewed the profile, Layshock was suspended and reassigned to the district's alternative school, despite Layshock's apology and admission to Trosch that he was responsible for the website (as opposed to the other profile creators who did not make themselves known). Justin Layshock

claimed that there was no power play in creating a profile for Trosch. In the federal trial, Layshock testified that he was bored and had no malicious intent. As one news report printed, “he was trying to be funny,” as is the purpose of most parodies (Pinchot).

Layshock’s lawyer compared the MySpace profile to Hustler Magazine’s parody of Reverend Jerry Falwell, which was ultimately found to be protected speech. However, this comparison is problematic. Hustler, as a print media outlet, goes through an editorial process. Additionally, Hustler is available for a limited audience, as the United States restricts the purchase of pornography to those over 18. MySpace operates by an entirely different set of rules. MySpace is a social networking site that allows people to connect by setting up profiles. There are privacy settings on profiles, and the terms of use agreement states “your MySpace.com profile may not include the following items: telephone numbers, street addresses, last names, and photographs containing nudity, or obscene, lewd, excessively violent, harassing, sexually explicit or otherwise objectionable subject matter” (MySpace terms). Yet the terms of use agreement recognizes that the company cannot police every profile, and provides a disclaimer that some people may choose to provide objectionable material in their profiles anyway. Furthermore, while the terms of use agreement offers a partial list of behaviors the company deems inappropriate, there is no specific language that prohibits creating proxy profiles.

Trosch’s reaction has garnered more attention than the initial profile did. After suspending Layshock, Trosch petitioned MySpace to shut down the remaining profiles, a request which was granted. He called a staff meeting about the profiles, and according to several reports, Trosch became so emotional about the profiles’ content that he had to leave the school building. He shut down the school’s computers, stating in a deposition that “we have a responsibility to protect our students from any offensive, obscene, vulgar, threatening profiles

that could be out there” (Simonich). Much like Anthony Comstock in the 1880s, Trosch felt a need to take it upon himself to protect students from inappropriate content. Trosch claimed that Layshock, in creating the parody profile, was responsible for disrupting the educational process. This is a common finding of school administrators, but it does not come without criticism. In Ontario, California, five high school students used vulgar language when criticizing a teacher online, and the students were suspended for “creating an ‘unharmonious school atmosphere’” (Leung). Words like “unharmonious” and even “disruption” are rather subjective terms, and it begs the question: does punishing the student for online content create more of a disruption than the actual speech does? A federal judge ruled in July 2007 that Layshock’s First Amendment rights were indeed violated. In part, the judge’s ruling stated that “the mere fact that the Internet may be accessed at school does not authorize school officials to become censors of the World Wide Web” (Santanam).

Trosch did not appeal the federal ruling, opting instead to file a defamation lawsuit against Layshock and the other students, claiming the parody profiles “damaged his reputation—possibly permanently—humiliated him and impaired his earning capacity” (Pinchot). That case is currently pending, surrounded by a swirl of appeals and counter-lawsuits that promise no swift ending for Eric Trosch or the four students he is suing. Trosch is not the first administrator to take civil action after an appellate court ruled in favor of a student’s right to free expression. In fact, prior to MySpace, civil suits were the retaliation of choice for many teachers and administrators who felt wronged by student parody websites. In 2000, a Pennsylvania middle school teacher sued a student for “defamation, interference with contractual relations, invasion of privacy, and loss of consortium” related to comments that the student posted on a homemade website. Additionally, the principal of the middle school sued the same student for similar

reasons. The Pennsylvania Supreme Court, citing both *Tinker* and *Beussink*, ruled in favor of the school, because the accused student had accessed the website at school, and in so doing, the speech occurred on school grounds. Furthermore, the content of the website caused the teacher extreme emotional distress, to the point where she had to take time away from school. This time away was considered to be a disruption to the educational process, thus rendering the online content unprotected under the *Tinker* standard.

In 2005, Dimitri Arethas found a manipulated photo that parodied his principal as the fictional character Robo-Cop on another student's website. Arethas found it to be funny, despite the racial slur that was incorporated into the photo. When Arethas posted the photo to his MySpace page, several students also found it to be funny, but one student found it to be offensive and alerted the principal of its existence. Arethas was suspended for ten days, but quickly enlisted the help of the American Civil Liberties Union. He realized in hindsight that the photo was in poor taste, and removed it from his MySpace profile. However, Arethas also noted the absence of a place for him and his classmates to express their opinions or entertain creative outlets: "I had every right to express myself. I just chose to do it as a picture, instead of rambling down the hallways yelling, 'Man! This school sucks'" (Koppelman)! Undoubtedly, had Arethas run through the hallways yelling his opinions, a suspension would have held up in a court of law, as it would have disrupted the educational process. But in the reports I found regarding Arethas' suspension, no mention was even made of disrupting the school day.

Just as with criticizing school policies, parodies on the Internet are not limited to personal websites and MySpace. Another Internet site where students have recently been reprimanded is YouTube. YouTube allows users to upload videos to share with friends and family. Perhaps originally intended as a way to keep in touch or for budding film directors and actors to gain

exposure, YouTube has been at the center of several controversies. Users with access to video editing software create “mash-ups” of copyrighted material. Several television production studios felt users who posted clips of television programs were violating copyright. As a result, several television networks offer clips or even entire programs on their own websites. YouTube has also been an outlet for teens to create parodies of teachers and administrators. Gregory Requa secretly made a video in class which mocked his teacher’s hygiene and sexuality. After making the video, he posted it to YouTube. It is unclear how the administrators at Kentridge High School in Washington State became aware of the video, but when they did, they suspended Requa for 40 days. Requa sued the district, and lost. The court in this case, as with *Avery Doninger*’s, noted that the content “cannot be denominated as anything other than lewd and offensive and devoid of political or critical content” (Wang).

Parody speech differs from speech that criticizes mostly in its intent. While speech that criticizes has an underlying goal of effecting change, the goal of speech that parodies is to make people laugh—often at the expense of hurting the feelings of the person who is parodied. Trosch and other principals who, understandably, feel personally slighted at the content of student websites might do well to follow Mike Godwin’s advice: “[w]e have to learn as a society what we learned as children: words do hurt, but learning to cope with those words rationally and without fear is part of what it means to reach maturity” (Godwin 142). However, with online parodies, the larger issue is determining how far the arm of school law should reach, and how disruptive online parodies truly are to the hour-to-hour operations of the school day.

## CHAPTER 4: SPEECH THAT DISCLOSES ILLEGAL ACTIVITIES

The previous two chapters have examined court cases in which students have been punished for online content they have posted. Administrators, typically citing the Supreme Court decisions in *Bethel v. Fraser* or *Hazelwood v. Kuhlmeier*, feel it is within their rights to censor online student speech. The final broad area of online expression addressed in this thesis that often results in punishment for public school students involves what I term “illegal activities.” Most cases I found in my research involved underage drinking. My first exposure to this was while I was teaching in Nebraska. In 2006, seven basketball players at Lincoln East High School, a large, prominent public school in Nebraska, were suspended after a teacher at the school found photos on MySpace of the athletes drinking alcohol. According to one news report, the teacher “stumbled across a MySpace post that mentioned the [players] drinking alcohol in violation of team, school and state policies” (Hansen). As a coach of an extra-curricular activity at a different school at the time, this report spawned a discussion with my speech team regarding what they posted on the Internet, because as members of a team, they were held to a higher standard than the students who were not involved in extra-curricular activities. In fact, in addition to the aforementioned basketball players, the other examples of students punished for posting descriptions of illegal acts online contained one stark difference from the examples of speech that is critical of school policies or parodies of teachers: based on my research, students punished for illegal acts are almost exclusively athletes or students who, by participating in other activities, represent the school. Furthermore, many of these cases involve suspension only from the activity, not from school.

Many school districts create a policy that sets a higher standard of conduct for its representatives than for the student body at large. Lincoln East High School has an Athletic

Code of Conduct that states “student-athletes may not: possess or use tobacco products; use, possess, consume, dispense, or be under the influence of alcoholic beverages; use, possess, consume, dispense, or be under the influence of any illegal drug not prescribed by a physician or available over the counter” (ehs.lps.org). This code of conduct, according to the handbook, is not applicable to students participating in other extra-curricular activities, a disparity which I will address later. Lincoln East includes its own definition of what it means to be under the influence of something, acknowledging that the school’s definition varies greatly from the criminal justice’s definition of “under the influence.” When it comes to their athletes, Lincoln East officials need only to smell alcohol on a student’s breath. A first-time offender is immediately suspended for 14 days, a second offense results in 28 days’ suspension (which can carry over to the next school year if the sport is nearing the end of its season), and a third offense warrants complete suspension from the sport that year, as well as a hearing to determine whether or not the student should be allowed to participate in years to come. Nowhere in the code of conduct does it suggest an athlete be suspended from school for violations, only suspension from the activity. Furthermore, there is no policy regarding online content posted off school grounds, but it is clear that photos and online comments might fall under officials’ liberal interpretation of perceiving students who are “under the influence.”

The example of the Lincoln East basketball players yielded some telling comments from administrators after news of the suspension became public. Lincoln East’s athletic director, Wendy Heinrichs, said, “this is a new arena for us. In the 70s or 80s...people would say those things. Today they write them. The difference is putting it in print, basically documented proof of what’s been said. I don’t know if kids understand that” (Hansen). Heinrichs makes an astute observation concerning the age of new media and how students navigate that media. Prior to the



advent of the Internet and social networking websites, students could pass notes (and then destroy them), or talk about events in the halls of school or at the mall, where words dissipated into the ether. Yet posting comments and photos online makes the speech accessible and archivable. The “virtual” part of virtual reality as applied to some Internet activities does not apply to comments and photos. But perhaps there is an assumption by many teenagers that adults do not know how to access social networking sites, or do not have the time to troll them. As Heinrichs noted, the athletes “may have gotten off scot-free if not for the student who pointed [the teacher] toward MySpace on an entirely unrelated matter” (Hansen).

The last comment that Heinrichs made regarding the seven suspended basketball players alluded to where I think the future of online student expression is headed: self-censorship, or censorship of silence. Recognizing that many teenagers in Lincoln utilized MySpace, Heinrichs hypothesized that when news of the basketball suspensions broke, “a lot of kids were dumping things off the Web site that afternoon” (Hansen). I tend to agree with Hansen, and in the realm of student publications, precedent shows that engaging in a censorship of silence has long been a self-preservation tool for many teenagers. After the *Tinker* case shed light on the status of students’ First Amendment Rights, The Robert F. Kennedy Memorial commissioned an Inquiry into High School Journalism in 1974. The Commission found widespread censorship in high school journalism programs—long before the *Hazelwood* decision empowered administrators to censor at will. According to the report, “censorship is a matter of policy, stated or implied, in all areas of the country” (Learning). Other concerns included the fact that off-campus publications were censored with as much vigor as school-sponsored publications; censorship was accepted as routine; and the increasing amount of self-censorship employed by students “created passivity among students and made them cynical about the guarantees of a free press” (Learning). The

report was published in 1974, five years after the *Tinker* decision, a decision that should have bolstered student confidence in writing both on- and off-campus. Yet according to the report students routinely censored themselves. As the boundaries between on-campus and off-campus continue to blur, this self-censorship may soon be evident in online spaces typically inhabited by teenagers.

In *The History of Sexuality*, Michel Foucault traces the impact of 17<sup>th</sup> century bourgeois value systems on sexuality, and he also addresses the link between power and imposing said values. For Foucault, silence and censorship were nearly the same thing. In delineating “principal features” of the power-censorship link, Foucault describes “the cycle of prohibition: Thou shalt not go near, thou shalt not touch, thou shalt not consume, thou shalt not experience pleasure, thou shalt not speak, thou shalt not show thyself; ultimately thou shalt not exist, except in darkness and secrecy” (*Sexuality* 84). These “thou shalt nots” certainly mirror aspects of the current discipline model in many public schools, but the Internet is hardly darkness and secrecy. To function in such secrecy, then, demands self-censorship.

Many schools have dress codes and codes of conduct to keep order so educators can go about the business of educating their students. Returning to Lincoln East High School’s student handbook, some of the codes of conduct include the following:

Respond courteously and respectfully to staff members...Be in the place designated on their daily schedule...leave the building after their last class...consume food and beverages in the designated areas only...avoid behaviors that are disruptive to instruction, such as the use of CD/MP3 players or telephones in classrooms and hallways...

These guidelines for student behavior are not uncommon, but qualify public schools as repressive environments. Foucault speaks to repressive environments in *Discipline and Punish*. Examining the link between surveillance and repression in society, Foucault arrives at this conclusion: “the least-favoured strata of the population did not have, in principle, any privileges...” (*Discipline* 82). As the least-favoured strata began asserting power in places they did have privileges, governments began creating laws against those assertions by “determining what was an intolerable offence” (*Discipline* 86). Teenagers, subject to limitations and expectations, comprise part of the “least-favored” members of society, and as they assert their power online—where they assume they have freedom of expression—they find an increasing number of policies and laws restricting that power. As Henry Giroux observes, “[c]hildren can’t vote, but they can be demonized, deprived of basic rights...” (*Fugitive* 119).

As was mentioned in the Introduction, schools districts across the United States are negotiating policies and laws restricting certain types of online speech, regardless of whether or not the speech originated or was accessed on school grounds. In 2006, Community High School District 128 outside of Chicago considered an amendment to their student conduct codes that “would make evidence of illegal or inappropriate behavior posted on [MySpace or Facebook] grounds for disciplinary action” (Wang). Echoing Wendy Heinrich’s observation about the accessibility and archivability of online content, the Associate Superintendent of the District 128 said that “posting a photo of bad behavior on a Web site is the same as if a student dropped the picture on his desk” (Wang). However, some disagree with the superintendent’s assertion of power in making such a comparison. In a blog response from the Vernon Township Republicans, Don Castella, the editor of the blog, makes this observation:

“District 128 [sets itself up] as the final arbiter of student speech and behavior...seek[ing] to extend authority to itself for the enforcement of behavior standards that control and affect students’ lives 24/7. By what authority does the school district seek to set such standards that would restrict student expression and control recreational and social behavior? How does the district propose to enforce such rules in an even-handed and meaningful way?”

Searching the student handbook from the two high schools in District 128, I could not find an explicit policy that resulted from Wang’s story in the Chicago Tribune. However, the questions asked in the blogger’s response are valid. What authority does the school district possess that allows them to monitor student behaviors around the clock? School districts across the country have determined what “intolerable offenses” are, from inappropriate use of language to behavior to attendance expectations. Furthermore, public schools students are under increasing amounts of surveillance. Security cameras in hallways and parking lots, a limited number of minutes to get from one classroom to another, teachers patrolling cafeterias during lunch time, and now principals trolling the Internet after hours, surveying the activities and opinions of their students.

### **A History of Surveillance: Public Schools in Britain and the U.S.**

Dick Hebdige is known primarily for his analysis of subcultural groups, specifically the British punk subculture of the late 1970s. Yet his research, stemming from the history of the creation of “youth” as a group, and early examples of surveillance, is pertinent to a study of how administrators become aware of online content with which they might disagree. Hebdige suggests it is necessary to understand the social construction of youth as a sub-section of society, because by establishing a separate category of youth society finds them easier to control, especially through surveillance. Hebdige’s history almost parallels with the examples of Thomas

Bowdler and Anthony Comstock, even though Hebdige examines the topic from a British perspective. Foucault's work, specifically his theory of power and discourse also examines the same time frame of the mid- to late- 19<sup>th</sup> century. In Britain, the role of Anthony Comstock as purveyor of all things chaste in the name of saving children was played by Mary Carpenter.

According to Hebdige, Carpenter saw the effects of industrialization on British youth, and "lobbied for the establishment of government-funded programs devoted to the education and reform of juvenile offenders" (397). Upon observing behaviors of working-class youth, Carpenter proposed that every young person could be assigned to one of three categories: attendance at the Ragged Schools, attendance at the industrial schools, and assignment to a reformatory. The Ragged Schools were open to all youth, while the industrial schools were intended to save children from morally questionable parents by teaching them "factory time-discipline and orderly behavior, and to give young people an opportunity of learning a useful trade" (397). The reformatories were for those youth deemed beyond salvation, destined for adult prisons. The United States took a similar approach in establishing public schools as we now know them.

Sue Curry Jansen contends that public schools were instituted as a way of maintaining hegemonic control over industry. Seeing the effects of industrialization in the United States, wealthy owners of companies wanted to "civilize the children of the laboring classes" and saw public schooling as the way to ensure order and control (Jansen 156). Furthermore, Jansen's account of how the schools functioned and what children were taught closely echo Carpenter's portrayal of Britain's *modus operandi* during that era:

The early urban schools resembled prisons and were surrounded by high walls to keep their inmates from escaping. The clock dictated the routines of the school

day...schooling was made compulsory in the cities because many lower-class parents refused to send their children to public schools...complain[ing] that the schools were being used to teach their children ‘alien’ (WASP) social, economic, and religious values (Jansen 156).

This inculcation of the dominant class’ values on working class children continues to be a complaint of current public school philosophy; this is evident in the questions posed by Don Castella, suspicious of how districts assert authority to govern off-campus activities.

### **Photography, New Technologies as Surveillance Tools**

Absent from Jansen’s account of public schooling in the mid-1800s in the United States is the issue of photography as surveillance. One way that Mary Carpenter’s program determined where a young person was assigned was by using photographs. Hebdige observes that “photography seemed to make the dream of complete surveillance possible” (398). This view of photography’s purpose is especially cogent in light of how photography today (and video cameras) is a vital part of student resistance against adult authority. Hebdige’s words are worth repeating here: “The technology was adaptable. It translated to new contexts of control...These relations, this set of positions—Us and Them, us as concerned and voyeuristic subjects, them as brutalized and wayward objects—have persisted in documentary photographs of contemporary victims...”(398). The Internet has become a new context of control, creating new positions of Us and Them. As Shawn Gobert manipulated the school’s Internet filter in order to access the MySpace page that criticized him, he was using this new, adaptable technology in an attempt to regulate the opinions of one of his students. The idea that online spaces are within the arm of public school law gives a “new context of control” to administrators, and often turns the “us” of administrators into voyeurs. What is their concern with the posted comments and photos in these

online spaces? Perhaps the accessibility and broadcasting nature of the Internet makes some administrators feel that a little extra control is necessary. Often, administrators do not bother themselves with rumored party behavior or spoken criticisms of teachers in the hallways. Sometimes understanding the technology can be intimidating; “sometimes the use of the technology itself is what scares the powers that be” (Godwin 73). Why look at these parody profiles or photos of students engaging in illegal activities? What is the objective? Hebdige offers a possible explanation, even though his analysis specifically relates to mid-19<sup>th</sup> century photographs. In looking at photographs, “[w]e can gawp, indulge our curiosity from the safety of our positions out here” (400). However, administrators tread on thin ice when simply indulging curiosity turns to punishing students for behaviors engaged in off-campus and after school hours.

This issue of imposing values is currently under litigation in Pennsylvania, although the case differs in that it involves a 26-year-old university student. However, possible implications of how the case is decided could reach into the halls of high schools across the country, especially if the case is found to be values-based. Stacy Snyder was a college senior completing her student teaching in Pennsylvania. She was set to receive her degree in Education from Millersville University, when a photo taken at a 2005 Halloween party was posted on MySpace. In the photo, Snyder is dressed as a pirate, holding a plastic cup that says “Mr. Goodbar.” The photo caused university officials and high school administrators at the building where she student taught question her dedication to teaching. Snyder was of legal drinking age at the time, and the photo is actually rather innocuous. There is no evidence, other than the caption of the photo—“Drunken Pirate”—that Snyder was drinking. It is unclear what, if any, laws she was breaking, as a legal adult.

According to university and high school officials, Snyder was found to be “promoting underage drinking through her...photo” (Lovelace). All the documentation surrounding Snyder’s punishment seems to be based in value judgments. Her student teaching observation evaluations found her to be superior or competent in all areas except for professionalism. The unsatisfactory rating in professionalism was justified by stating Snyder had “errors in judgment that relate to Pennsylvania’s Code of Professional Practice and Conduct for Educators” (Lovelace). The school district where Snyder completed her student teaching informed Millersville University that if they did not discipline Snyder, the district would no longer accept student teachers from the university. So on the day before graduation, the college told Snyder about the allegations and informed her of their decision to grant her a Bachelor of Arts degree in English, instead of a Bachelor of Science degree in Education. Snyder has since sued the university, but that case is still pending.

### **Values and Privacy as Sites of Contestation**

Two main issues emerge in Stacy Snyder’s case: first, who is deciding what values are most important in a community, and second, do teachers and students have any right to a private life? As a student teacher, Snyder was in a particularly liminal stage of life—she was still a student at the university, but was also a teacher with responsibilities to her students. Are there different expectations of what students do with their private lives compared with what teachers do with their private lives? What are those expectations, beyond student codes of conduct and teacher professional codes of ethics? Who decides those expectations? Again, I cite Foucault’s analysis of sexual discourse beginning with the 1800s: at issue is “an effort to gain control...an attempt to regulate it” (Sexuality 105). Are attempts at controlling and regulating an adult’s



actions problematic because of age? Or do we hold certain professions to a higher standard of behavior than others?

The issue of private life is starting to seep into the halls of school buildings across the country, and it is starting to not only affect athletes and other representatives of the school. In January 2008 at Eden Prairie High School in Eden Prairie, Minnesota, forty-two students were questioned regarding photos on the social networking site Facebook. While only thirteen students were eventually suspended from extra-curricular activities, some of the students questioned were not involved in extra-curricular activities. The Eden Prairie incident incorporates many of the issues raised in this thesis. One student acknowledged the lack of understanding regarding public and private space by expressing his belief that he did not consider the way the photos fell into the hands of the administrators (an anonymous note attached to a disc full of photos taken from the Facebook website) to be an invasion of privacy, although he did think it was “creepy” (Relerford).

A second issue in the Eden Prairie case is self-censorship. One student “said some students deleted their Facebook page or photos from their profile because of the suspensions” (Relerford). Whether or not this is a trend that continues remains to be seen, but the same student commented that he doubted the suspensions would stop teen drinking, but he suggested students would be “smarter about what they post” (Relerford). A third issue is the disruption caused by the photos, resulting in the suspensions. This case is particularly enlightening; it appears that the disruption caused at school did not occur because of the photos, but rather because of the suspensions. One student noted that an entire class was spent discussing the suspensions and students planned and executed a walk-out in protest. But Eden Prairie is just

one of several examples of administrators using social networking sites to punish students at school for off-school behaviors.

In January 2007, eighteen students from Boonville High School in Boonville, Missouri were suspended from all extra-curricular activities for two weeks after administrators saw photos of the students consuming alcohol. According to the superintendent, a citizen of Boonville saw the photos online and contacted the police department. While the police could not punish the students based on photos alone, they did inform the school district of the photos, and the district punished the students. For an increasing number of schools, drinking alcohol is an infraction of school policy that has the specific consequence of suspension from extra-curricular activities. The Missouri State High School Activities Association, as well as other state associations, has a code of conduct that includes citizenship, and part of citizenship is obeying the law. Prior to the Internet, students had to be caught in the act of illegal activity to be suspended from the team. In an online world, however, the boundaries are increasingly blurred. Even an athletic director from Columbia Public Schools in Missouri agreed that “citizenship guidelines are vague...[there are] no policies specifically dealing with online photographs” (Heavin).

This generation gap has existed for years, and Hebdige suggests that even the use of the word ‘teenager’ serves as a “wedge” between youth and adults, specifically as it relates to consumer culture. One possible explanation for why students have been so brazen in posting photographs of their illegal activities online could be that “youths immersed in style and the culture of consumption seek to impose systematic control over the narrow domain which is ‘theirs’ and within which they see their ‘real’ selves invested” (Hebdige 401). The idea of online space as a “narrow domain” has been expressed by teen Internet users; for example, in the 2008 Frontline documentary “Growing Up Online,” one young woman explained, “At school people

see me as this happy-go-lucky person. And then I have the real me. When I'm online, I'm the real person. I'm completely 100% me...because I know they won't judge me." Several teens interviewed for the documentary echoed this student's sentiments, with one young woman creating an entirely separate identity for herself on MySpace. The documentary noted that "ninety percent of teens are online" and that the Internet is an "outlet for self-expression." Additionally, danah boyd commented that being online "is a continuation of [teens'] existence."

Jessica Hunter never fit in with her community, claiming to feel like "an alien" in her middle class town. To counter that lack of belonging, she created a persona online of Autumn Edows, a Goth model. Posting photos of herself on MySpace in lingerie and extravagant makeup, she suddenly found acceptance, admiration, and compliments that she never had received before. A parent at Hunter's school discovered the MySpace profile of Autumn Edows, and alerted the principal, who deemed it inappropriate and offensive. The principal called Hunter's parents, who demanded that she delete the profile. During her interview, Hunter became emotional when discussing how she felt about having to erase her MySpace content: "if you have something that that's meaningful to you, to have it taken away is like your worst nightmare" (*Frontline*).

This documentary also addressed the various types of content students post online. In one segment, a large group of students from Chatham High School in New Jersey went to a concert in Madison Square Gardens. Several students were drinking, some to such excess that they required medical attention. The next day, photos and video clips of the excursion were posted online. One concerned parent contacted the PTO president of the high school, Evan Skinner, who in turn shared the information with other parents. Skinner's son Cam was one of the concert attendees, and was furious with his mother's actions, calling them "so out of line,"

especially as the shared information resulted in punishments for many of his friends. Cam's interpretation of this perceived egregious invasion of privacy highlights the generation gap. According to Cam, his mother "decided it was her civic duty" to alert parents of the events following the concert. He continued, "so when parents are reading this email, they read, 'if your son or daughter went to the concert, there are graphic pictures of them drinking on the Internet,' signed, Evan Skinner" (*Frontline*). Cam's interpretation of the email was misleading enough that Evan Skinner, in *Frontline*'s online forum for discussing the episode, posted the text of the email she sent to parents:

Hundreds of Chatham teens attended the OAR concert on Saturday night at Madison Square Gardens. We have heard numerous reports of widespread underage drinking and understand that a number of children from the area were hospitalized for alcohol poisoning. Many of you may not be aware of this behavior on the trains to and from as well as at the concert, and may want to have a conversation with your child on this topic (Skinner).

Skinner's email contained no mention of Internet photos, no mention of YouTube postings. In the weeks and months immediately following the incident, both Evan and Cam Skinner acknowledged the strain in their relationship resulting from what Cam saw as a complete violation of his private space. Evan Skinner noted, "He has pretty much cut off his family being involved in his life...he doesn't share, he doesn't talk about what he does. He actually said that we had ruined his high school years."

### **Informers: Anonymous and Otherwise**

While Skinner's email went out to parents only, the episode made no mention of whether school administrators also were aware of the photos and punished students accordingly. Yet

across the country, photos are landing in the hands of administrators. How are administrators receiving these incriminating photographs? In Burlington, Vermont, the police department runs sting operations of sorts. According to a 2008 report, School Resource Officer Tonya Lawyer creates fake profiles of her own on Facebook, hoping to be “friended” by a student at the high school. Once she has one friend, the others follow, opening their worlds to a school resource officer, who then prints photographs of illegal activities and passes them along to administrators who dole out punishments. My research did not mention whether or not police officers issue citations for minors possessing alcohol, only that they inform the administrators of the behavior. But the principal of a Burlington, Vermont high school acknowledges that tips come from other sources as well: “a phone call from a parent, a student stopping into the office, a teacher passing along a hallway rumor” (Walsh). A high school principal in Florida discovered MySpace when a parent called him, and as a result his district now trolls MySpace “to [tip] us off more to who might be dealing with drugs” (Ruger).

An anonymous note resulted in the suspension of Greendale High School students in Wisconsin in 2005. The associate principal of Greendale High School received a note “suggesting that he view the sites that contained the photographs of students” (Abdul-Alim). The photos were on MySpace profiles, and when the associate principal and the principal accessed the student profiles, they found pictures of students consuming a variety of alcoholic beverages. Some students were wearing uniforms or had other paraphernalia identifying them as Greendale students. As some of the students were involved in extra-curricular activities, they were suspended from those activities. However, the students who were not affiliated with teams or clubs were not punished. The available reports do not specify whether all students were issued citations from police for having alcohol in the first place. But only the students involved

in extra-curricular activities suffered consequences at schools. So the issue at hand becomes the expansion of what qualifies as representing the school, and extra-curricular activities.

### **The Complication of Extra-Curricular Activities**

Traditionally, athletes have been held to a higher standard. In some school districts, only athletes are subject to random drug testing, under the guise of administrators' concern for their safety and well-being. And while that may be true, it sends a message to the student body at large that the administration is not as concerned for non-athletes' safety and well-being. Perhaps in an attempt to cast a wider net in fighting drug and alcohol use at high schools, the definition of what extra-curricular means is expanding. In some school districts, "extra-curricular" can involve any activity which takes place outside of the school day. Therefore, a student caught drinking via photos on the Internet will not usually be suspended from school, allowing him to attend choir class, but will be suspended from performing with the choir, as performances happen after official school hours. However, this solution is equally problematic, as some music programs require concert performances as part of the grading. Applying part of the test established in *Beussink v. Woodland* should prevent this type of punishment from occurring, as missing concerts does cause eventual academic harm to the student. As the definition of extra-curricular continues to expand, students involved in Newspaper, Band, Chess Club, Academic Decathlon, Future Business Leaders of America, and National Honor Society may soon be subject to the same punishments traditionally reserved for athletes.

Further complicating the issue of what constitutes an extra-curricular activity is the issue of representation. As the students in Greendale, Wisconsin discovered, their punishment was received partly because they could be identified as students from that high school. But were they officially representing the high school? What factors determine whether a student is simply

wearing a letter jacket as opposed to representing the school? Beyond clothing, if a student attends a parade wearing clothing associating himself with his school, is he representing the school? Can a student include the name of the school she attends on her MySpace page, or in so doing does she inadvertently represent the school? These instances of controversy over online content rarely result in litigation. Students and their parents must assume they have little legal grounding, especially if minors are consuming alcohol. In Chicago, some school districts require only students involved in extra- or co-curricular activities to sign a document “agreeing that blog and Web site postings with such material [illegal and inappropriate] will be grounds for disciplinary action” (Hooker).

These examples of students suffering two punishments—legal and academic, not to mention any punishment they might be subject to from their parents—very well might lead to students being more judicious in what they post online. And while learning what is appropriate and inappropriate to post online is a valuable life lesson, it may come with an unforeseen cost. As Mark Goodman, former Executive Director of the Student Press Law Center has said:

What I would hate to see happen...is students deciding they can't publish unpopular or controversial viewpoints on their MySpace page or an independent website because they're afraid school officials will punish them for it. That, I think, is very disturbing, and those are the young people who, as adults, are going to believe the government should be regulating what the public says. It has very troubling implications for their appreciation of the First Amendment in the world outside of school (Koppelman).

While Goodman is referring to speech that criticizes or speech that parodies, his comment can also be extended to methods used by administrators and law enforcement to discover illegal

activities such as drinking at parties. If it has not started already, students may develop a deeper distrust of authority, viewing those methods as invasive and sneaky.

I want to be clear that I in no way condone underage drinking or using illegal drugs. However, the spaces where students are allowed to express themselves are becoming narrower. Laws prohibiting teen loitering at parks, malls, and stores forced teens into their homes, and with widespread Internet availability, that virtual space became a place where teens could socialize and express opinions. Now that space is being more closely monitored, I wonder where their next space will be.



## CONCLUSIONS

The precedent set in *Tinker v. Des Moines* initially allowed for students to freely express themselves, even on school grounds, so long as no disruption was caused to the educational process. The subsequent Supreme Court decisions *Bethel v. Fraser* and *Hazelwood v. Kuhlmeier* regarding spoken and written speech were not as supportive of offering students full First Amendment protections. When the Supreme Court failed to address the issue of location where student speech originated to grant First Amendment protections in *Frederick v. Morse*, members from all points of the political spectrum began to worry that the decision would allow administrators to censor student speech and activity in any venue with which they disagreed. However, the Court's narrow interpretation of the case, focusing more on the issue of illegal drug use than the location where the speech was expressed, offers a glimmer of hope that students will enjoy First Amendment protections off-school grounds.

However, the inconsistency of the lower courts where many of the online speech cases are taking place does little to assuage any fears that administrators will continue to exercise their authority beyond the school building and school day. While many lower court decisions acknowledge a student's right to free expression on the Internet, the courts also are applying the *Tinker* standard of disruption to these cases, which often ends up supporting the administrators more than the students. From my research, speech that criticizes is the most protected type of online speech, as most courts find it to be political. In labeling that particular type of speech as political, most judges are hesitant to support its censorship for the precedent this might set. Speech that parodies is somewhat less protected, as courts are finding it easier to establish that a disruption occurs within the school building once the parody is seen by members of the student body and staff. Photos of underage children drinking have not been tested in a court of law as

often, but this may be a new frontier, as these images and access to these images become more widespread.

This type of student generated online content crosses several boundaries that deserve further exploration. First, the issue of public versus private life is continually being tested in online waters. If a MySpace profile employs all the privacy settings available, but photos find their way into hands of administrators, is it an invasion of privacy? Or does the accessibility of the Internet leave nothing private anymore, making every online forum—even emails—public information? Second, the issue of imposing administrative values on a public school population is problematic. What happens if photos of underage drinking are taken in a home where parents allow their children to drink? Does the authority of the school have the right to supersede the authority of the parents? Third, the issue of the type of students being punished for these photos deserves more attention. Why is it that a student athlete or the lead in the school play caught drinking can be suspended from the extra-curricular activity, but the student who clocks an even eight hour school day with no other involvement in school would suffer no punishment at all for the same type of photo? And at what point will schools stop defining activities as “extra-curricular” or creating situations in which students could be determined as representing the school? When exactly does the school day end, for both administrators and students?

Finally, the question of whether an extra-curricular activity is a right or a privilege must be addressed. Some might argue that because athletes, actors, and musicians have to compete to be part of a team or production, those activities are privileges. After all, there is no state or federal testing on athleticism or musicianship. However, others might argue that being involved in extra-curricular activities is integral to a student’s high school experience, not to mention the socialization and benefits when applying to college. This point of view places extra-curricular

activities squarely in the category of being a right. Determining whether these activities are privileges or rights could impact the frequency with which students are suspended from these activities.

While this thesis relied heavily on case law from all levels of the judiciary, culture's "fingerprints" were visible on every case. The semiotics of the black armbands, the double entendre of Matthew Fraser's speech, and the timely topics of teen pregnancy and divorce all carried cultural impact at that time, and continue to do so today. For the students in Des Moines, the black armbands represented a statement against a war with which they disagreed. The t-shirts with the upside-down flags expressed a similar sentiment, and while those t-shirts were seen by some as in poor taste, they were protected speech because of the *Tinker* decision. Matthew Fraser's student assembly speech echoed some of the same concerns of Thomas Bowdler and Anthony Comstock—what exactly is appropriate for children to see and hear? The stories that were never published in *Spectrum* also breached the concerns of what constituted appropriate content for children, as well as began a dialogue in student journalism circles over what the purpose of a high school journalism program is. Each court case dealing with online student speech has in common the site of the speech—the Internet. As one student in the *Frontline* documentary noted, being online "is like currency. Everyone uses it." Students who do not use the Internet are left out of cultural exposures found on MySpace, Facebook, and YouTube. When those cases are applied to the site of resistance, every court case employed in this thesis had cultural studies implications.

Is there private space anymore? Students cannot ever really leave school in their constantly wired world. In years prior to cell phones and the Internet, homes were often places students could go to escape the drama of school. Of course, telephone calls and visits with

friends were ways to stay connected, but as several adults in “Growing Up Online” expressed it students today get little down time from their school and social troubles in such a technology driven society. Not understanding this technological generation gap may be part of the reason why administrators continue to find new ways to monitor student behavior. If the technology is there, they might as well use it, right?

I plan on returning to the world of high school to teach English and possibly journalism, and after researching the court cases, I am convinced that my perspective (combining legal and cultural) is essential to an administration faced with issues of questionable online content. Cultural studies scholarship has neglected the topic of online student speech, which will become more important as these cases, applied mostly to high school students, will begin to impact American colleges and universities as well. Just as the Sixth Circuit Court of Appeals applied *Hazelwood*—a case that clearly dealt with high school student press rights—to a university yearbook in *Kincaid v. Gibson*, university administrators censor university student speech. Stacy Snyder’s photo that denied her a degree in Education was not an isolated incident. The Foundation for Individual Rights in Education’s mission is “to defend and sustain individual rights at America’s colleges and universities” (About FIRE). Just as the Student Press Law Organization champions (mostly) high school First Amendment causes, FIRE works to educate the public on university censorship. In January 2008, FIRE reprinted part of an article from The Chronicle of Higher Education that explained new software for university athletic departments. The software is called YouDiligence, and its purpose is to monitor student activity on Facebook and MySpace. The program is being marketed primarily to athletic departments to aid them in keeping tabs on their student-athletes. In part, the promotional materials state, “EVERY program at EVERY school in EVERY division needs to be vigilant about what material their

student-athletes are posting” (Creely). Again, where are the boundaries, even for college students? Is there private space online? And is participation in a collegiate sport a right or a privilege? Why is this software being peddled to athletic departments alone and not to more general student affairs offices?

In addition to these relatively untested issues of university censorship, future research must explore what motivates students to post content online, whether it is critical speech, parody speech, or possible incriminating photographs. As more reports of students being punished for online content surface, it may be important also to study the issue of self-censorship, whether it is through setting profiles to private, by cleaning up profiles, or by forgoing the online experience altogether.

## WORKS CITED

- A.B. v. State of Indiana. No. 67A01-0609-JV-372. Ct. of Appeals of Indiana. 9 Apr. 2007. Google. 18 Jan. 2008. <<http://www.state.in.us/judiciary/opinions>>.
- Abdul-Alim, Jamaal. "Greendale Suspends Students From Activities." Milwaukee Journal Sentinel. 19 Sep. 2005. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Jan. 2008. <<http://www.lexisnexus.com>>.
- "About FIRE." TheFire.org. 11 Mar. 2008. <<http://www.thefire.org>>.
- "ACLU Files Lawsuit Challenging Alaska School District's Censorship of Student's Off-Campus Speech." ACLU.org. 25 Apr. 2002. 7 Feb. 2004. <<http://www.aclu.org/studentsrights/expression.html>>.
- "After ACLU of Colorado Intervention, High School Student Suspended for Off-Campus Internet Posting is Back in School." ACLU.org. 21 Feb. 2006. 9 Mar. 2008. <<http://www.aclu.org/freespeech/youth.html>>.
- Barthes, Roland. "Myth Today." Mythologies. New York: Hilland Wang, 1972. 109-159.
- Beach, Randall. "Student Blogger to Appeal Fed Ruling." New Haven Register. 10 Sep. 2007. Google News. 14 Sep. 2007. <<http://www.nhregister.com>>.
- Bethel School District No. 403 v. Fraser. No. 84-1667. Supreme Ct. of US. 7 July 1986. Student Press Law Center. 18 Jan. 2008. <<http://www.splc.org>>.
- Beussink v. Woodland R-IV School. No. 1:98CV00093 RWS. US District Ct. for the Eastern District of Missouri. 28 Dec. 1998. Google. 18 Jan. 2008. <[http://people.hofstra.edu/peter\\_j\\_spiro/beussink.htm](http://people.hofstra.edu/peter_j_spiro/beussink.htm)>.
- Bryant, Tim. "ACLU, Student File Suit Against School District for Suspension Over Website." St. Louis Post-Dispatch. 29 Aug. 1998. Lexis-Nexis. Bowling Green

- State University, Bowling Green, OH. 28 Jan. 2008. <<http://www.lexisnexis.com>>.
- Calvert, Clay. "Off-Campus Speech, On-Campus Punishment: Censorship of the Emerging Internet Underground." Boston University Journal of Science and Technology Law. (2001): 243-287. Google Scholar. 6 Sept. 2007. <<http://web.bu.edu/law>>.
- Carney, Christopher J. "Caught In A Web of Censorship." Ford Marrin Esposito Witmeyer and Gleser L.L.P. Oct. 1998. 14 Sept. 2007. <<http://www.fmew.com/archive/web>>.
- Castenella, Don. "Chicago Tribune Story: 'District Takes Aim At Teens' Web Posts.'" Vernon Township Republicans. 18 May 2006. Google News. 25 Feb. 2008. <<http://weblog.vernongop.org>>.
- Cohen, Ronald D. "The Delinquents: Censorship and Youth Culture in Recent U.S. History." History of Education Quarterly 37.3 (Autumn 1997): 251-270. Jstor. Bowling Green State University, Bowling Green, OH. 23 Mar. 2007. <<http://www.jstor.org>>.
- "Controversial Issues." Bellevue Public Schools Board Policies. 8 Mar. 2008. <<http://www.bellevuepublicschools.org/bps.index>>.
- Couvares, Francis G. "Introduction: Hollywood, Censorship, and American Culture." American Quarterly 44.4 (Dec. 1992): 509-524. JStor. Bowling Green State University, Bowling Green, OH. 24 Mar. 2007 <<http://www.jstor.org>>.
- Creely, William. "New Facebook Monitoring Software Raises Troubling Questions." FIRE's The Torch. 14 Jan. 2008. TheFIRE.org. 11 Mar. 2008 <<http://www.thefire.org>>.
- Essex, Nathan L. "Gay Issues and Students' Freedom of Expression—Is There A Lawsuit

in Your Future?" 34.1 American Secondary Education (Fall 2005): 40-47.

Academic Search Complete. EBSCO. Bowling Green State University, Bowling Green, OH. 8 Mar. 2008. <<http://www.ebscohost.com>>.

Fitzgerald, Kathleen. "Bills to Curb Cyber-Bullying Raise Free-Speech Concerns."

SPLC.org. 4 Feb. 2008. <<http://www.splc.org>>.

Foucault, Michel. Discipline and Punish: The Birth of the Prison. Trans. Alan Sheridan.

New York: Random House, 1995.

---. The History of Sexuality: An Introduction, Volume 1. Trans. Robert Hurley. New York: Random House, 1990.

Gavin, Robert. "A Case of Free Speech vs. School Discipline: Judge Will Decide if Student's Vulgar Website Warranted Penalty." Seattle Post-Intelligencer. 13 May 2000. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 5 Feb. 2008. <<http://www.lexis-nexis.com>>.

Giroux, Henry A. Fugitive Cultures: Race, Violence and Youth. New York: Routledge, 1996

---. Pedagogy and the Politics of Hope: Theory, Culture, and Schooling. Boulder: Westview Press, 1997.

Godwin, Mike. Cyber Rights: Defending Free Speech in the Digital Age. Cambridge: The MIT Press, 2003.

Graca, Thomas J. and David L. Stader. "Student Speech and the Internet: A Legal Analysis. NASSP Bulletin 91.2 (2 June 2007): 121-129. ERIC. Bowling Green State University, Bowling Green, OH. 22 Aug 2007. <<http://www.journals.ohiolink.edu/maurice.bgsu.edu>>.



“Growing Up Online.” Narr. Will Lyman. Frontline. Public Broadcasting System.

WGTE, Toledo. 22 Jan 2008.

Hansen, Matthew. “East Ballers Find MySpace Trouble.” Lincoln Journal-Star. 27 Jan.

2006. JournalStar.Com. 25 Feb. 2008. <<http://journalstar.com>>.

Harpaz, Leora. “Internet Speech and the First Amendment Rights of Public School Students.” Brigham Young University Education and Law Journal. 2000.1.

Academic Search Premier. Bowling Green State University, Bowling Green, OH.

4 Mar. 2007. <<http://www.ebscohost.com>>.

Hazelwood School District v. Kuhlmeier. No. 86-836. Supreme Ct. of the US. 31 Jan.

1988. Freedom of Speech in the United States. 7 Feb 2004.

<[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech](http://www.bc.edu/bc_org/avp/cas/comm/free_speech)>.

Heavin, Janese. “Web Photos Result in 18 Suspensions.” Columbia Daily Tribune. 26

Jan. 2007. Google News. 27 Jan. 2008. <<http://www.columbiatribune.com>>.

Hebdige, Dick. “Posing...Threats, Striking...Poses: Youth, Surveillance, and Display.”

The Subcultures Reader. Ed. Ken Gelder and Sarah Thornton. New York:

Routledge, 1997. 393-405.

Hooker, Sara. “Blogging Penalties Without Policies.” Chicago Daily Herald. 26 May

2006. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Jan.

2008. <<http://www.lexisnexis.com>>.

Hudson, David. “Censorship of Internet Student Speech.” Censorship Internet Speech

2 Feb 2007. <<http://www.freedomforum.org>>.

Hull, Mary. Censorship in America: A Reference Handbook. Santa Barbara, CA: ABC-CLIO,

1999.

Hustler Magazine v. Falwell. No. 86-1278. Supreme Ct. of the US. 24 Feb. 1988.

Findlaw.com. 25 Feb. 2008. <<http://caselaw.lp.findlaw.com>>.

Jansen, Sue Curry. Censorship: The Knot that Binds Power and Knowledge. New York: Oxford UP, 1991.

Jellinet, E.H. "Thomas Bowdler: Censor, Philanthropist, and Doctor." Lancet 358 (29 Sept. 2001). Academic Search Complete. Bowling Green State University, Bowling Green, OH. 16 Feb. 2008. <<http://www.ebscohost.com>>.

Jonsson, Patrik. "Teachers Strike Back at Students' Online Pranks." Christian Science Monitor. 25 Feb. 2008. Google News. 8 Mar. 2008. <<http://www.csmonitor.com>>.

Kincaid v. Gibson. No. 98-5385. Sixth Circuit Ct. of Appeals. 5 Jan. 2001. Student Press Law Center. 18 Jan. 2008. <<http://www.splc.org>>.

Koppleman, Alex. "MySpace or OurSpace?" Salon.com. 8 June 2006. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 9 Mar. 2008. <<http://www.lexisnexus.com>>.

Kreuz, Roger J. and Richard M. Roberts. "On Satire and Parody: The Importance of Being Ironic." Metaphor & Symbolic Activity 8.2 (1993): 97. Academic Search Complete. EBSCO. Bowling Green State University, Bowling Green, OH. 8 Mar. 2008. <<http://www.ebscohost.com>>.

Kushman, Rick. "Fighting the Good Fight; In Trying to Get Valuable Shows Aired, PBS Goes at it with the FCC." The Sacramento Bee 17 Sept 2006. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 3 Mar. 2008. <<http://www.lexisnexus.com>>.

Lane, Charles. "Court Backs School on Speech Curbs: A 5-4 Majority Cites Perils of

- Illegal Drugs in Case of the 'Bong Hits 4 Jesus.'" The Washington Post 26 June 2007. Lexis-Nexis. Bowling Green State University, Bowling Green, OH 16 Feb. 2008. <<http://www.lexisnexus.com>>.
- Learning, Jeremy. "Analysis of Hazelwood's Impact on the Student Press." The Freedom Forum. 13 Jan. 1998. 10 Mar. 2004. <<http://www.freedomforum.org>>.
- Lincoln East High School Student Handbook and Activities Planner. 2007-2008. <<http://ehs.lps.org/news/publications>>.
- Leung, Wendy. "Lack of Legal Precedent Poses Major Problem For Schools." Inland Valley Daily Bulletin. 21 May 2006. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Feb. 2008. <<http://www.lexisnexus.com>>.
- Lovelace, Brett. "Web Photo Haunts Graduate; MU Sued For Denying Degree." Intelligencer Journal (Lancaster). 27 Apr. 2007. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 25 Feb. 2008. <<http://www.lexisnexus.com>>.
- Maxcer, Chris. "Student's MySpace Rant is Protected Speech, Says Court." Technology News 11 Apr. 2007. 14 Sept. 2007. <<http://www.technewsworld.com/story/56814.html>>.
- McGuigan, Jim. Culture and the Public Sphere. New York: Routledge, 1996.
- Morse v. Frederick. No.06-278. Supreme Ct. of the US. 25 June 2007. Supreme Court of the United States. 28 Jan. 2008. <<http://www.supremecourtus.gov>>.
- Pardington, Suzanne. "Is Your Little Angel Raising Hell Online?" The Sunday Oregonian. 27 Nov. 2005. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Jan. 2008. <<http://www.lexisnexus.com>>.

- Pinchot, Joe. "Principal Sues 4 Ex-Students Over Profiles on MySpace." The Herald, Sharon, PA. 4 Apr. 2007. 5 Feb. 2008. <<http://www.sharon-herald.com>>.
- Ravitch, Diane. The Language Police: How Pressure Groups Restrict What Students Learn. New York: Vintage Books, 2004.
- Relford, Patrice, Chao Xiong, Michael Rand and Curt Brown. "42 Students Questioned, 13 Disciplined." Minneapolis Star Tribune. 10 Jan. 2008. 11 Mar. 2008. <<http://www.startribune.com>>.
- Reno v. ACLU. No. 76-511. Supreme Ct. of the US. 26 June 1997. Freedom of Speech in the United States. 24 Mar. 2007. <[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech](http://www.bc.edu/bc_org/avp/cas/comm/free_speech)>.
- Ruger, Todd. "MySpace Creeping Into School Space." Sarasota Herald-Tribune. 5 April 2006. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Jan. 2008. <<http://www.lexis-nexis.com>>.
- Santanam, Ramesh. "Judge: District Violated Student's Rights for Parodying Principal." Associated Press. 12 July 2007. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Jan. 2008. <<http://www.lexisnexis.com>>.
- "School Publications." Bellevue Public Schools Board Policies. 8 Mar. 2008. <<http://www.bellevuepublicschools.org/bps.index>>.
- Simonich, Milan. "Discipline Over Parody Sparks Suit." Pittsburgh Post-Gazette. 25 Feb. 2007. Lexis-Nexis. Bowling Green State University, Bowling Green, OH. 27 Jan. 2008. <<http://www.lexisnexis.com>>.
- Skinner, Evan. Frontline: Growing Up Online: Join the Discussion. 11 Mar. 2008. <<http://www.pbs.org/wgbh/pages/frontline/kidsonline/talk>>.

“SPLC Guide to Off-Campus Websites.” SPLC.org. 2004. 8 Mar. 2008.

<<http://splc.org/legalresearch.asp?id=74>>.

Taylor, Jared. “New Jersey Supreme Court Decision Could Allow Student Media Censorship, Advocates Say.” SPLC.org. 9 Mar. 2007. 10 Mar. 2007.

<<http://www.splc.org/newsflash/archives>>.

“Terms and Conditions.” MySpace.com. 28 Feb. 2008.

<<http://www.myspace.com/index.cfm?useaction=misc.terms>>.

Tinker v. Des Moines Independent Community School District. No. 393 U.S. 503.

Supreme Ct. of US. 24 Feb. 1969. Student Press Law Center. 18 Jan. 2008.

<<http://www.splc.org>>.

Tzu, Sun. The Art of War. Ed. James Clavell. New York: Dell Publishing, 1983.

Walsh, Molly. “Facebook Snooping Nets Second Athlete.” Burlington Free Press. 13 Jan. 2008. Google News. 9 Feb. 2008. <<http://www.burlingtonfreepress.com>>.

Wang, Andrew. “District Takes Aim At Teens’ Web Posts.” Chicago Tribune. 18 May 2006. Vernon Township Republicans. 25 Feb. 2008.

<<http://weblog.vernongop.org>>.

Wang, Judy. “Judge Will Not End High Schooler’s 40-Day Suspension for YouTube Video.” Student Press Law Center. 31 May 2007. 8 Mar. 2008.

<<http://www.splc.org>>.

Ward, Paula Reed. “Punished for Parody, Student Sues School.” Pittsburgh Post-Gazette. 28 Jan. 2006. Lexis-Nexis. Bowling Green State University, Bowling Green, OH.

5 Feb. 2008. <<http://www.lexisnexis.com>>.

---. “Schools Perceive Threat to Authority in Student Internet Postings.” Pittsburgh Post-

Gazette. 5 Feb. 2006. Google News. 17 Feb. 2008.

<<http://www.post-gazette.com>>.

West, Mark. Children, Culture, and Controversy. Hamden, Conn.: Shoe String Press.  
1988.

Williams, Alex. "Do You MySpace?" The New York Times. 28 August 2005. Google  
News. 16 Feb. 2008.< <http://www.nytimes.com>>.

Zagurski, Kristin. "Silent Protests: What They Wear Speaks Volumes." Omaha World-  
Herald. 22 Apr. 2007. Lexis-Nexis. Bowling Green State University, Bowling  
Green, OH. 8 Mar. 2008. <<http://www.lexisnexus.com>>.