



## Case Study II: Student Publications

### **The Facts:**

Roger Williams High School, located in the largely Jewish community of Skokie, Illinois, has just released its much-anticipated yearbook – and unleashed a public relations nightmare in the process.

Apparently, two high school seniors chose quotes from Hitler’s infamous book, *Mein Kampf*, to appear under their yearbook pictures. Stew Pidd Kidd chose “Strength lies not in defense, but in attack,” while John “Rabble” Rouser chose “The great masses of people...will more easily fall victims to a big lie than to a small one.”

When contacted by the local media, Principal Rhonda Help-Menow called inclusion of the quotes “a grave mistake on our part.” School officials planned to send a written apology to parents and may reprint the yearbook.

Asked whether the students’ First Amendment rights were breached, school attorney Denise Polanco said no. “Because the school is responsible for the yearbook,” Polanco announced at a packed press conference, “any content contained therein can be seen as a reflection on the school itself. And let me be clear, Roger Williams High School stands for everything Adolf Hitler was opposed to.”

Community activist Sam Fox agreed, pointing out a recent spike in anti-Semitic incidents. “I’m not sure,” Fox said, “whether these recent acts are anything more than a random confluence of events. But we would be blind not to notice an increase in anti-Semitic incidents. There’s an increasing sense of tolerance of anti-Jewish, anti-Semitic statements and activities. It’s almost like the sense of shame from the Holocaust has worn off.”

**Legal Questions:**

1. Is it constitutional for school officials to censor a school-sponsored publication, such as a newspaper or a yearbook?

**Other key issues to Consider:**

2. What other ways might the school have resolved this conflict?

**What would you do?**

## **Answers to legal questions:**

1. How much school officials may censor school-sponsored student publications depends on whether the school has created an open public forum.

For years, students were protected by a high standard of freedom of expression based on the Supreme Court's historic 1969 ruling in the *Tinker* case, in which the Court ruled that school officials couldn't prevent students from expressing their opinions on school grounds, as long as they didn't (a) cause a material or substantial disruption of the school environment, or (b) intrude on the rights of others.

For years, most courts supported the notion of granting students a high degree of protection under the First Amendment. That changed in 1988.

In January 1988 the Supreme Court, in a narrow 5-3 vote, ruled that the principal of Hazelwood East High School was justified in censoring a series of controversial articles in his school's newspaper, *The Spectrum*.<sup>1</sup>

In the ruling of *Hazelwood v. Kuhlmeier*, the Supreme Court established a new standard of protection for student expression, by ruling that schools may limit the personal expression of students if their speech can be perceived to bear the imprimatur of the school.<sup>2</sup> Writing for the majority, Justice Byron White said "censorship of school-sponsored student expression is permissible when school officials can show that it is reasonably related to legitimate pedagogical concerns."

As a result, administrators now have a great deal of leeway in determining what is and isn't acceptable material in school-sponsored publications and events, but *only if* their school has not established a public forum.

In other words, if the school has an official policy of prior review in place, or can clearly establish a history of prior review, the *Hazelwood* standard applies and a greater degree of censorship is allowed. If, however, the school declares itself an open forum for ideas, then the *Tinker* standard applies.

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### **Notes**

<sup>1</sup> The students had prepared a two-page center spread that featured stories on teenage pregnancy, divorce, and runaways. They learned that the pages had been omitted when the paper returned from the printers. Almost immediately, three of the student journalists filed suit.

<sup>2</sup> With regard to school newspapers, the Supreme Court suggested that any publication that is supervised by a faculty member and created by the school to offer a particular set of skills is curricular, and would bear the school's imprimatur. By extension, that also means that the *Hazelwood* ruling can apply to school yearbooks, school plays, literary magazines, or any other form of school-sponsored speech that fulfills the given criteria.