

Reaching To Stifle Students
How Can Schools Strip Teens' Rights Outside Classroom?

By FRANK D. LOMONTE

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Let's start with an unremarkable proposition: teenagers have constitutional rights.

If they're charged with a crime, they have the right to legal counsel and trial by jury. They can't be stopped by the police and searched without justification. The government can't force them to give up their religion, or tell them what they can and can't say.

Or can it?

When the Founding Fathers wanted to reserve constitutional privileges for certain age groups (e.g., you can't be a U.S. senator until you're 30), they said so. And they didn't put any qualifiers on the Bill of Rights.

Yet some school administrators are pressing the radical new notion that students don't have the full benefit of the First Amendment right to free speech. Anywhere. Any time.

Everyone accepts that, during class time, unlimited free speech must yield to good order; you can wear your campaign T-shirt in class, but you can't stage a campaign rally. But until recently, everyone also accepted that, when the bell rang, students turned back into full-fledged citizens.

That assumption is being challenged in a handful of recent court cases.

School administrators in Pennsylvania and Connecticut, for example, are asking courts to declare that a high school student has no First Amendment right to speak or write about the school — even off school property and on personal time — if the student can anticipate that the speech will provoke controversy at the school.

The doorway through which these school officials wish to charge was cracked open a year ago by the Supreme Court in *Morse v. Frederick*. In *Morse*, a slender majority of the court decided that a school could punish a student, Joseph Frederick, for holding up a banner that, in the court's view, was reasonably interpreted as urging students to use illegal drugs ("Bong Hits 4 Jesus").

Frederick displayed the message off-campus on a school holiday, but because of the unique setting — Frederick was standing across the street from the school, at a school-organized function supervised by teachers — the court decided that Frederick was effectively on campus.

Morse has emboldened a few wrongheaded school administrators who obviously have too much time on their hands. Having taken the hillside across from campus, these expansionists now will not stop until their authority reaches everywhere — even into cyberspace.

In one recent case, lawyers for Connecticut's Region 10 school district, serving Burlington and Harwinton, actually convinced the Second Circuit U.S. Court of Appeals that Avery Doninger, then a Lewis S. Mills High School junior, could be punished for using a blog — created on a home computer on personal time — to encourage the public to lobby school administrators to overturn a decision that threatened a student-organized concert. Although the student regrettably used a coarse word to refer to the administrators, it was not the mild expletive that decided her fate; it was the fact that, in the court's view, Doninger "disrupted" school by escalating the concert dispute to involve the public.

What a miserable civics lesson for a 17-year-old who, as even the school conceded, was an otherwise exemplary student. Asking public officials to take precious time out of their day to actually answer calls and e-mails from parents who question their management of the school is such a "disruption" that it justifies suspending the First Amendment. In what country?

Thankfully, this bizarre and frightening view of our Constitution remains an aberration.

A U.S. District Court in Pennsylvania recently rejected the same argument that prevailed in Connecticut, wisely observing that — if students misbehave online in ways that violate the rights of others — that's a private matter with private remedies.

Why should we be concerned for the "rights" of a student to call the principal a bad name? Because court decisions can live on forever, and they can be misapplied in mischievous ways.

What about the student who learns that the coach has been molesting female students — a scandal that undoubtedly would provoke a "disruptive" level of discussion at school? Many principals refuse to let students publish such "adult" matter in the school newspaper — and now, if the radical expansionists get their way, the principal can constitutionally add: "If I catch you talking to anyone about this — anywhere, any time — you're expelled."

In a landmark 1963 case, the Supreme Court said elegantly that "First Amendment freedoms need breathing space to survive." Today, thanks to decisions like *Morse*, too many courts are affording the breathing space to the censor — especially when that censor is a school. They're willing to let schools punish innocent conduct for fear of second-guessing the principal's authority.

Well, principals who abuse their disciplinary authority need second-guessing. And if schools want to put court-approved muzzles on our kids, then we'd better speak for them — loud and clear.

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