CENSORSHIP OF STUDENT EXPRESSION ON THE INTERNET AND THE FIRST AMENDMENT

Rhoda J. Yen

I. INTRODUCTION

[1]As the number of children and young adults who use the Internet increases, more web sites authored by students will populate the World Wide Web. Current estimates suggest that one third of all personal web pages are posted by students, many of whom are minors.(1) The increasing number of students who create and access web pages gives rise to some difficult free speech issues. This paper addresses one such issue: May a school censor web pages created by its students? If so, under what circumstances?

[2]Although courts have yet to decide a case involving censorship of a student's web page, the history of free speech in the classroom is instructive. Moreover, examination of the problem from a free speech perspective is appropriate: If the First Amendment were to apply differently to the Internet than to other media, its significance as a source of protection for individual rights would be undermined.(2) Accordingly, this paper applies traditional First Amendment principles in the analysis of such cases. As an introduction, Part II presents examples of current cases addressing the issue of the censorship of student web sites by schools.

[3]Part III presents a property-rights approach to censoring web sites. In particular, web sites created on private servers using privately-owned equipment should be afforded greater protection from censorship than sites created on school-owned servers. School servers should be considered limited public forums. Thus, schools should be limited by the rules applicable to

traditional public forums when sanctioning students for web sites created on those servers. Additionally, schools should be able to censor sites created in conjunction with official school-sponsored classes or activities, even if those sites are not created on school servers. Such classes or activities should not be considered limited public forums, and schools should retain considerable discretion in regulating those sites.

[4]Part IV argues that even if a school holds no definable property interest in a site, it may still enjoy a limited right of censorship if the content of the site creates a substantial disturbance in the school. However, this right should be carefully exercised only where there is a strong possibility that a site's continued presence on the Internet will severely undermine classroom instruction and order. Also, schools should be lenient on students who do not actively promote awareness of their sites.

[5]Finally, Part V argues that web pages authored by college students should be afforded greater protection than pages authored by younger students. The age of majority, the liberal campus atmosphere, and the interest of schools to educate younger students in civility and tolerance all provide justification that web pages should be distinguished according to the educational level of the author. Part VI concludes by emphasizing the importance of censoring sites only in the most egregious cases, in order to preserve and promote democratic participation of our future leaders.

II. GENERAL BACKGROUND

[6]To familiarize the reader with the problem at issue in this paper, this section offers an overview of the current cases on student web pages. Subsection A suggests that there is a wide spectrum of web page content, and that educators should allocate their resources to regulate only

those web sites which contain strongly offensive or harmful content. Subsection B describes the variety of disciplinary measures which have been employed by educators to address the problem of inappropriate student web sites.

A. THE CONTENT SPECTRUM: CURRENT EXAMPLES

[7]Undoubtedly, most web pages authored by students are products of normal, creative expression. For example, student web pages commonly display information on popular celebrities, household pets, sports, and other recreational interests. Among the sites which concern educators, there is a wide variety of content, ranging from the merely sophomoric to the truly disturbing. However, the majority of student web pages which arouse concern probably fall on the relatively harmless, albeit juvenile, end of the spectrum.

[8]In Washington, for example, 17-year old Paul Kim received punishment for lampooning his student body as obsessed with sex and drinking on his "Unofficial Newport High School Home Page." High school officials revoked their recommendation of Kim for National Merit Scholarships and college admissions, but later settled after Kim sued the school for violating his free speech rights.(3) Similarly, 16-year old Brandon Beussink was suspended for creating a web site which ridiculed his high school's official home page and encouraged people to e-mail school officials with their criticisms. Beussink's case attracted the support of the American Civil Liberties Union, which recently filed suit against the school on his behalf.(4)

[9]In another recent case, a Texas middle school disciplined 13-year Aaron Smith for creating a "Chihuahua Haters of the World" web page as a running joke among his friends at school.(5) The site contained a graphic resembling a dead chihuahua and welcomed suggestions on how chihuahuas could be killed. At the bottom of the page, Smith included a statement

indicating that the idea for the site originated "in the Dowell Middle School computer lab in McKinney, Texas." After a Texas chihuahua breeder contacted the school in protest, Smith volunteered to remove the reference to the school. Although the web page enraged animal rights activists, many critics of the school's actions have instead compared Smith's site to popular black humor books such as 100 THINGS TO DO WITH A DEAD CAT, which have been tolerated for years.

[10]On the other end of the content spectrum, the University of Michigan suspended 20-year old Jake Baker for posting a detailed, sadistic story about raping, torturing, and murdering a woman bearing the same name as a female classmate. Although Baker insisted that he merely chose the young woman's name because it contained a sexual pun, his story included a suspiciously detailed description of her dormitory room and physical appearance. Although he was not officially expelled, Baker succumbed to pressure from school officials and eventually transferred out of the university. Federal authorities declined to prosecute Baker for the posting, but charged him with sending threatening e-mail messages. Baker was consequently exonerated when a federal court ruled that the messages did not constitute a threatening communication.(6)

[11]In another case, a Pennsylvania middle school expelled 14-year old Justin Swidler for creating an inappropriate web page.(7) The page featured musings on what it would be like to kill his math teacher, a computer-generated photo of the teacher as Adolf Hitler, a list of reasons why the teacher should die, and a solicitation for money to hire a hit man to kill the teacher. Swidler's web page, created on a Geocities account, also featured a morbid video of an execution-style killing and abundant use of profanity. After the school moved forward with plans to expel Swidler, he retained a local attorney to oppose the expulsion.

[12]Between these extremes is a myriad of sites which, while not overly troublesome, warrant serious concern among educators. For example, a Pennsylvania high school recently reprimanded a student for posting racist remarks on his web page.(8) At a California middle school, administrators requested a private server to shut down an anonymous site, apparently created by a student, which posted attractiveness ratings and descriptions, many of which were derogatory, for over one hundred female students.(9) Finally, an Ohio high school suspended 17-year old Sean O'Brien for posting insults and threats against his band teacher on his web page.(10)

[13]Educators should refrain from disciplining students for web pages which fall on the relatively benign end of the spectrum. A school's role in educating young minds should not infringe upon the rights of parents to impart their own standards of morality to their children and to chastise their children as they deem appropriate. Thus, schools should be particularly careful not to tread upon the parental prerogative of punishing students for web pages which, despite their unpleasant content, pose few serious risks of harm. However, schools should be allowed to regulate sites which are strongly offensive or harmful. For example, sites which threaten violence to a specific student or faculty member should fall under the category of web pages which a school can appropriately regulate.

[14]Sites featuring insults such as O'Brien's laments against his band teacher, however, do not reach the level of harmfulness or offensiveness which warrant censorship by schools. O'Brien's web page included a photo of Raymond Walczuk, describing him as "an overweight middle-age man who doesn't like to get haircuts," and "likes to involve himself in everything you do." Schools should refrain from censoring sites such as O'Brien's, which, while bothersome, do not rise to the level of being strongly offensive or harmful. After school officials suspended O'Brien and threatened expulsion if he did not remove the page, O'Brien and his parents sued the

school district for violating his free speech rights. The school district, admitting that they technically violated O'Brien's constitutional rights, eventually settled.(11)

B. CURRENT RESPONSES TO STUDENT WEB PAGES

[15]***Internal Disciplinary Actions.*** Schools have responded to troublesome web pages created by their students by employing a variety of internal disciplinary actions. Most officials do not conduct hearings before administering punishment, although some schools have protective procedures in place. Common disciplinary measures include suspension, expulsion, failing, and loss of student privileges. For example, in response to Smith's anti-chihuahua site, Dowell Middle School promptly suspended him, transferred him out of his computer class, revoked his position as computer aide, and required him to remove the site and post an apology.(12)

[16]***Acceptable Use Policies.*** Moreover, many schools have adopted acceptable use policies under which a future violation may warrant more severe sanctions. To date, the majority of acceptable use policies have focused on the content of sites which students are allowed to access on school computers, rather than the content of web pages created by students. However, a few schools have attempted to regulate student web pages created on school accounts.

[17]For example, Northeastern University recently drafted an acceptable use policy which prohibits "transmitting or making accessible offensive . . . material."(13) An Oregon public school district also implemented a policy which allows schools to cancel Internet accounts of students who "[place] on the Internet or other information systems material which is confidential, illegal, obscene or unrelated to the educational objective for which access is granted."(14) Finally, another Oregon secondary school district executed a policy which provides that users "shall not

submit, publish or display on the district's system any knowingly inaccurate and/or objectionable material."(15)

[18]***Criminal Prosecution.*** A number of schools have resorted to the assistance of the criminal justice system by filing charges under statutes which apply to the type of content on the web page. For example, Pennsylvania recently charged a high school student under a threat statute for posting on his web page instructions on how to make a homemade bomb and a list of people that he thought should be killed.(16) In Washington, school officials threatened to file charges under a harassment statute against six students who created a web page listing more than three hundred high school students and specific methods on how each could die.(17) Finally, in a case originating outside of the United States, a 19-year old college student faced prosecution under an obscenity statute for posting nearly 150 pornographic photos and a lurid story on his web page.(18)

[19]Some states have drafted legislation criminalizing certain types of web pages and other Internet communications. For example, Pennsylvania passed a bill in response to the middle school student who used his web page to solicit money to hire a hit man to kill his teacher.(19) If approved, the Pennsylvania law would make it a first-degree misdemeanor to threaten anyone "electronically, including . . . electronic mail and communications via the Internet" without requiring the state to prove traditional intent to terrorize.(20) Thus, as long as a web page "causes annoyance or alarm to the other person," the author could be prosecuted under the new law.(21) The law, which may raise constitutional concerns, currently awaits final ratification.

III. PROPERTY RIGHTS IN WEB SITES

[20]The framework proposed in this paper is intended to provide a step-by-step mechanism for schools to determine their censorship authority. As a general rule, schools should strongly refrain from regulating student web sites. Schools are important institutions in a democratic society and should be held to a high standard of protecting constitutional freedoms. Because schools are the primary vehicle through which the government enlightens its citizens on their rights and privileges, administrators must be particularly careful to uphold the same constitutional provisions they teach. Therefore, schools should not abridge a student's First Amendment right to free speech unless the circumstances meet the criteria proposed in this paper.

[21]This section begins by arguing that a school which holds no definable property right in a student's web site should refrain, as a default rule, from regulating that site. Sites created on private servers using privately owned computers at home deserve a high degree of protection against censorship. However, schools should retain discretion in regulating web pages which are created on school property using school accounts and computers. Also, schools should retain some authority to regulate sites which, although created at home on private servers, are related to official school-funded activities. Similarly, schools should be allowed to discipline students who deface an official school home page, even if the authorship occurs on a private computer at home, because the page itself is school property.

A. SITES CREATED ON PRIVATE SERVERS

[22]Most of the cases cited in this paper involve personal web pages created by students at home using private servers such as Geocities or America Online. Such Internet providers often

require that users accept their unfettered right to delete any and all web pages without notice to the author. Regardless of whether students pay subscription fees to the Internet provider, the equipment required to upload and edit web pages belongs to the private company. Thus, the web page should be considered private property (with ownership rights apportioned between the student author and the private server), deserving substantial protection under the First Amendment.

[23]In line with this reasoning, a federal district court held in *Cyber Promotions, Inc. v. America Online, Inc.*[(22)] that America Online ("AOL") could not be considered a public actor subject to First Amendment prohibitions against monitoring unsolicited e-mail messages. The court allowed AOL to censor mass e-mails sent by another private company on the ground that the e-mail servers constituted private property belonging to AOL. In so holding, the court recognized that the Internet is not a public network. Rather, "the constituent parts of the Internet . . . are owned and managed by private entities and persons, corporations, educational institutions and government entities."[(23)] In a footnote, the court elaborated on America Online's role as owner of private property:

> [24]AOL's private system is akin to a private resort swimming pool that has a "channel" leading to the "ocean" that is the Internet. AOL has permitted persons swimming in its "pool" to transmit messages to and receive messages from the Internet ocean. . . . At no time has AOL contended that it controls communications over the Internet ocean, but only that it controls its own private channel.[(24)]

[25]Similarly, the Supreme Court in *Turner Broadcasting System, Inc. v. Federal*

Communications Commission(25) also recognized the private property rights of cable service providers. The question before the Court was whether a federal statute requiring cable companies to carry local television programming violated the First Amendment. Although the court ultimately found an important governmental interest to justify the regulation, it acknowledged that the cable service provider enjoyed substantial property rights by virtue of it owning the channels of transmission.(26)

[26]Likewise, a private Internet service provider should enjoy substantial property rights in the web pages it helps to display by virtue of its ownership of the servers on which these pages are authored. Accordingly, schools have no property interests in these sites which would otherwise justify regulation.

[27]In line with this reasoning, several schools have conceded that they cannot censor web pages which have been created at home using private Internet providers. For example, school officials in Pennsylvania stated that although all students signed an agreement regarding appropriate uses of the Internet in school, students may be allowed to post racist remarks about fellow students on personal web pages in their own homes.(27) In addition, the district superintendent stated that the author of a racist web page, created on a private server, could not be legally forced to terminate the page.(28)

[28]Some schools, however, have attempted to censor sites on the ground that school resources are expended when students upload a fellow student's page on a school computer. This argument, however, is overbroad. If schools enjoyed a property right in student web sites created at home on private servers merely because its resources were minimally depleted when the site was accessed on school property, then schools could regulate all sites which were accessed on school computers.

B. SITES CREATED ON SCHOOL SERVERS

[29]In contrast, schools should enjoy certain property-related rights in sites created on school property using school accounts. Of course, schools do not enjoy an absolute right to censor all pages created on their servers. Rather, schools must still adhere to the principles of the First Amendment. This section proposes that, among other requirements, schools must own the server on which a web site is created in order to regulate that site.

[30]In *Lamb's Chapel v. Center Moriches Union Free School District*,[(29)] the Supreme Court declared that "[t]here is no question that the [school district], like the private owner of property, may legally preserve the property under its control for the use to which it is dedicated."[(30)] At issue in*Lamb's Chapel* was a school's denial of a church's request to use the school building to host a Christian family film series for the community. The same analysis applies to school-owned property other than a physical building. For example, in *Rosenberger v. Rector and Visitors of the University of Virginia*,[(31)] the Supreme Court declared that although a fund created to subsidize the printing costs of publications of student organizations was "a forum more in a metaphysical than in a spatial or geographic sense," it was still subject to the same First Amendment principles applicable to a physical building.[(32)]

[31]Most colleges and universities currently provide free web space and computer access to its students during their duration in school. The costs of Internet use is generally factored into a student's tuition and fees, so students enjoy access much like paying subscribers to private Internet providers. Many colleges and universities revoke Internet privileges when school is not in session, e.g., during summer vacations and upon graduation. Therefore, web pages created on school-owned servers may be considered school property, subject to regulation.

[32]In the future, the majority of secondary and elementary schools will probably also provide school Internet accounts to their students. Currently, nearly 80% of all public schools provide Internet use, but few provide students with their own accounts with which to create web pages.(33) Once this trend is complete, all schools should employ a property rights approach to regulating student web pages.

[33]Several schools have justified recent disciplinary actions on the basis of private property rights. For example, a Utah high school instituted a temporary schoolwide shutdown of its Internet system when it discovered a student using school computers to create a sexually-oriented site.(34)Although the school did not delete the web page, it denied students in-school Internet access using school-owned computers for a limited time, in order to demonstrate the import of its acceptable use policy. Administrators framed the case as concerning the issue of appropriate uses of school-owned equipment, rather than censorship of ideas.

[34]In another recent case, officials at the University of Missouri deleted web pages created by three students on the school server in their dormitory rooms, which featured sexually explicit photos of human genitalia, deviant intercourse, and mutilation.(35) In discussing the Missouri case, Michael Godwin, counsel for a computer communications civil liberties group, conceded: "I don't think anyone disputes the right of a university to make rules about how its equipment is used."(36) Thus, a property-rights approach may provide justification for disciplinary actions such as these taken by the Utah high school and Missouri university. Because the schools owned the equipment and system resources, they should enjoy the right to either shut down inappropriate web sites which drain those resources or deny school-provided Internet access to reinforce acceptable use policies.

[35]However, schools may not censor any and all web pages created on its server. In particular, if a school opens up its building or other property to the public for expressive activity, then it is considered a "limited public forum" and may not impose a content-based restriction on speech unless it serves a "compelling state interest" and is "narrowly tailored" to that end.(37) In other words, a school may not exclude speech where the gains are not "reasonable in light of the purpose served by the forum."(38) Moreover, a school may not discriminate against speech on the basis of its viewpoint, where its content would otherwise be permissible within the forum.(39)

[36]In the *Lamb's Chapel* and *Rosenberger* cases, the Court ultimately concluded that the physical building and printing fund, respectively, were limited public forums, and that the schools had violated the First Amendment by denying use of these forums to religious groups. An Internet server, by analogy, may also be considered a limited public forum. Like the fund, use of the server is theoretically available for all students to create web pages on which to express opinions to the public. However, an acceptable use policy, like that of the University of Missouri, which prohibits use of the server to post obscene images, serves the compelling state interest of complying with anti-obscenity laws. Moreover, the policy is narrowly tailored to that end, as the University of Missouri did not seek to delete all pages containing sexually explicit images, but only those which it considered obscene. Finally, the university did not engage in viewpoint discrimination, because an anti-pornography web site which featured such images as examples of offensive images would most likely not be tolerated under the policy either. Therefore, such a policy constitutes acceptable regulatory action by a school over a site created on its server.

C. SITES CREATED FOR OFFICIAL SCHOOL-RELATED ACTIVITIES

[37]Many secondary schools across the country have recently introduced classes on HTML or Java programming as part of their official curriculum. Students are often required to create web pages on particular subjects as graded class assignments. While some classes provide students with school-funded accounts, others allow students to sign up with private servers. Many schools have also launched afterschool clubs for creating on-line newsletters and home pages for the school, as an alternative or replacement to traditional student newspaper or magazine clubs. Like web programming classes, these clubs usually involve faculty oversight and school funding. In addition, schools may allow students to work on these projects at home using their own computers.

[38]In general, student newspapers which are created as part of a school's official curriculum are subject to school censorship.(40) In *Hazelwood School District v. Kuhlmeier*,(41) the Supreme Court observed that the Board of Education funded the majority of the costs of printing the newspaper, paying the journalism teacher's salary, and providing for textbooks and supplies associated with the newspaper. Moreover, the newspaper was substantially overseen by the journalism teacher and principal, who together selected its editors and publication dates, and reviewed all story ideas and quotations.

[39]Given its status as a "regular classroom activity" intimately connected to the school's official curriculum, the newspaper did not constitute a public forum deserving broad protection against censorship.(42) Accordingly, the court held that educators "do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."(43)

[40]In applying *Hazelwood*, then, schools should enjoy some regulatory authority over web sites created as part of an official classroom assignment or school-sponsored activity. Even if authorship takes place at home or on a private server, the school has endorsed these sites by funding the salary of the teacher involved in the activity, purchasing textbooks and materials, and overseeing the process of web authorship. Therefore, the school holds some definable property interest in such web sites and should be afforded discretion in censoring content which is not reasonably related to the class or activity.

[41]Philip T.K. Daniel suggests that *Hazelwood* has broad application to school-sponsored Internet speech.(44) Daniel argues that all student speech, which is created via computers as part of the curriculum, is school-sponsored. Speech which is not created as part of the curriculum, but rather is "communicated over the school's computer facilities or on school time" and which bears the "imprimatur of the school," is also school-sponsored. Thus, Daniel contends that the content of a message, sent from a school e-mail address by a student to someone outside of the school, can be censored under *Hazelwood.*

[42]Furthermore, where schools assign students the work of creating web pages about the school and its programs, the school is considered the speaker. Accordingly, the school is viewed as having merely enlisted private persons to convey its own message.(45) Therefore, it retains the authority to make content-based censorship decisions. Thus, officials should, for example, be allowed to ensure that a student assigned to create an official site about the school's Health Education program does not post sexually explicit photos in its section on sex education classes.

[43]Accordingly, a few schools have begun to draft regulations for web pages created in conjunction with official school-sponsored activities. In Maryland, a county school district recently implemented a policy prohibiting the use of students' last names and photographs for

official on-line newspapers and home pages, as a protective safeguard against communications initiated by pedophiles.(46) Another Maryland school prohibits placement of external links to e-mail addresses and personal home pages on its official school site for the same reasons.(47)

[44]Schools should also be allowed to discipline students for tampering with a school's official web site. For example, nine students, aged 15 to 23, were recently arrested for breaking into the University of California Irvine's official web site and creating fake chat rooms and accounts.(48) Even if the tampering occurs at home using privately owned computers, the official web site itself should be considered school property. Such behavior is analogous to vandalizing a school building with graffiti.(49) Thus, schools should retain a property right to punish students who "vandalize" their official sites.

[45]Schools, however, should be careful to distinguish between sites created for official and unofficial school activities. For example, an unofficial club for students to discuss their sexuality should be allowed to post a web page about issues facing gay and lesbian teenagers on the Internet without fear of school regulation. Web sites created from casual associations among students require no faculty supervision or funding. Moreover, such student groups and their publications, by their informal nature, do not implicate an appearance of school endorsement of their views. Therefore, there are no property interests to justify regulation by schools; instead, such sites should be considered as sites created on private servers, as described in Subsection A.

IV. SUBSTANTIAL DISTURBANCE IN SCHOOL CAUSED BY THE PRESENCE OF A WEB SITE CREATED OUTSIDE SCHOOL

[46]Even if a school holds no property interest in a student's web site, it should be allowed a limited amount of regulatory authority if the site creates a substantial disturbance in

the classroom. That is, a school should be allowed to censor a site if other students are reasonably likely to know of the site, and as a result, students undermine classroom order and instruction through widespread tardiness, absences, rioting, or other disruptive behavior. Students need not have accessed a site on campus for a substantial disturbance to occur; it is sufficient that students react to a privately created site on campus. For example, a school should be allowed to require a student to shut down a private site containing inflammatory threats against African Americans if off-campus awareness of the site incites on-campus racial violence.

[47]In *Tinker v. Des Moines Independent Community School District*,(50) the Supreme Court declared that schools enjoy broad authority to "prescribe and control conduct in the schools."(51) Thus, students can be punished for expressing their personal views on school property, as long as school authorities have reasonable grounds to believe that the students' expression will " interfere with the work of the school or impinge upon the rights of other students."(52) However, the Court added that schools may not impose regulations based on "undifferentiated fear or apprehension of disturbance" or "mere desire to avoid the discomfort and unpleasantness [of] an unpopular viewpoint."(53) Rather, the expression must "materially and substantially" undermine the order necessary to operate the school.(54) In *Tinker*, the court ultimately held that the school had violated the First Amendment rights of several students who wore black armbands to protest the Vietnam War, as the school failed to carry its burden of showing that the students' expression amounted to a "substantial interference" with the operation of the school.

[48]In *Slotterback By and Through Slotterback v. Interboro School District*,(55) a federal court held that a high school violated the First Amendment by banning students in advance from distributing Christian tracts in the school hallways and cafeteria. There, the district court

observed that the distribution of tracts created disruptions for teachers and administrators. For example, the tracts provoked in-class conversations, tardiness, hostility between students, and crowding in the hallways. The court stated that unless the content is related to the school curriculum, a student's expression cannot be restricted on campus "without a ***strong showing*** of interference with school activities or with the rights of other students."(56) However, the court remanded to determine whether school officials could reasonably anticipate a substantial interference with classroom instruction if distribution of the Christian tracts resumed.

[49]Daniel argues that *Tinker* could be applied to a hypothetical case involving a student who sends antiwar e-mail messages to his classmates.(57) Daniel suggests that if the student sends messages on a daily basis, this type of behavior could be sufficiently disruptive and burdensome to justify a prohibition against the messages. Moreover, if the student sends the messages using school-owned computers, and an acceptable use policy either explicitly prohibits or indirectly discourages such use, the school would be justified in censoring the messages under *Tinker*.

[50]Applying *Tinker* and *Slotterback* in a similar fashion to cases involving web sites, it is reasonable that students would discuss a particularly disturbing site, such as Baker's rape story, in their classes during instructional time. These conversations would undoubtedly lead to commotions and distract students from focusing on the official curriculum. In addition, students might protest a fellow student's web site either by refusing to go to classes in which the author is enrolled, staging brash demonstrations on campus, or expressing their support or disapproval in various other disruptive methods. In Baker's case, several women on campus stopped attending classes out of fear and emotional disturbance arising from awareness of the posting. All of these activities would reasonably create a substantial disturbance in the school and interfere with the school's educational mission.

[51]As another example, a substantial percentage of students in Washington were aware of the existence of the site on which their names were posted and death methods were suggested. A copy of the list circulated among students and caused schoolwide debate over who had authored the site. It is conceivable that some students may have been so distracted and fearful as a result of the web page that classroom attendance and discipline suffered substantially.

[52]In such cases, a school should be allowed censorship authority. However, this authority is limited and should be carefully exercised. *Tinker* prescribes that schools can invoke their disciplinary power only if allowing the expression would materially and substantially interfere with classroom instruction. *Slotterback* adds that a school carries a strong burden of showing that school order would be undermined. Thus, a school should be allowed to censor a web site only if there is a strong probability that classroom instruction will be seriously impaired by the site's presence on the Internet.

[53]***Student's Role in Disseminating Information about Web Site.*** Related to the concern that a web site will create a substantial disturbance in the classroom, a school should consider whether the author actively advertised the site. A student who takes an aggressive role in ensuring that the content of his or her web page is disseminated to the student body, thereby causing disturbance in the school, should be judged more harshly than a student who only passively posts a site on the Internet. The following cases present an inconsistent view on how to treat students whose role in dissemination is minimal. Although the courts have not articulated a clear rule of law in this area, the ensuing discussion proposes that a student's passivity in publicizing a site should mitigate punishment.

[54]In *Boucher v. School Board of the School District of Greenfield*,[(58)] the court held that a high school student was not entitled to a preliminary injunction preventing his expulsion after

he wrote an article offering instructions on how to hack into the school's computer system at home. The article, which contained detailed instructions on how to enter the system, view private files, and discover passwords, was subsequently published in an underground newsletter. The newsletter was later distributed in the school's bathrooms, lockers, and cafeteria by persons other than the author.

[55]The Seventh Circuit accepted the school's argument that even if Boucher did not intend for the newsletter to be distributed at school, the article constituted a serious enough threat to school property to justify disciplinary action against him.(59) In addition, the court noted that the school would suffer significant harm by allowing Boucher to attend classes because the school could reasonably believe that Boucher's presence as a self-proclaimed hacker would create disruptions.(60) In reaching its holding, the court announced that the appropriate test to apply was whether school authorities had a reasonable belief that the student expression would be disruptive to school operation.

[56]*Boucher* also considered the applicability of its holding to cases involving underground newsletters distributed off school property. In *Thomas v. Board of Education, Granville Central School District*,(61) high school students created, published, and distributed an underground newspaper outside of the school. The Second Circuit held that school officials violated the students' First Amendment rights by suspending them for their allegedly morally offensive, indecent, and obscene tabloid. The *Thomas* court noted that school officials may not censor publications on the grounds that in-school distribution is reasonably foreseeable.(62) The court viewed such a standard as both overbroad and unworkable, because it could effectively ban all publications sold near school property. Rather, the court suggested that all off-campus expression should be immune from school regulation. In so holding, the court gave weight to the

fact that the students had "diligently labored" to ensure that the newsletter would not be distributed on school property.(63)

[57]The *Boucher* and *Thomas* cases present a troubling inconsistency. While *Thomas* seems to protect students who make substantial efforts to prevent access to their web sites from school computers, *Boucher* appears to allow schools to censor sites so long as it is reasonably foreseeable that the sites will create in-school disruptions. The *Boucher* court attempted to distinguish *Thomas* on the ground that it involved off-campus distribution. Moreover, while the newspaper in *Thomas* bore no direct relevance to the school, the subject matter of the article in *Boucher* was related to on-campus activity.

[58]These distinctions are unsatisfying. Whether a publication is distributed on or off school grounds is not particularly relevant to whether its content will create substantial disruptions in the classroom. For example, an article advocating the lynching of all Asian American students in a particular high school, which is published in a local paper and delivered to private homes, would likely create serious disturbances in that school. Similarly, an article which does not directly implicate a school can still create in-school commotion. For example, an article advocating the lynching of all Asian American teenagers in a particular town would probably create substantial commotions in local high schools with sizeable Asian American populations.

[59]Therefore, the *Thomas* court neglected to appreciate the potential consequences off-campus distribution could have in the classroom. Rather than treating the fact that the publication was distributed on campus as dispositive, the *Thomas* court should have considered whether student awareness of the publication would reasonably create substantial disturbances in the school, as set out in the *Tinker* and *Slotterback* line of cases. The *Boucher* court correctly

pondered the issue of whether the underground newsletter in that case would reasonably disrupt classroom order and instruction. However, an ideal decision would have included the mitigation provision suggested in *Thomas*. That is, the *Boucher* court should have allowed the student's lack of active on-campus distribution of his underground publication to mitigate the punishment.

[60]Of course, it is more difficult for students to "diligently labor" to prevent access to their sites than to forego distribution of a physical newsletter on school property. Web sites in particular are not "distributed" in the traditional sense. Rather, they are merely posted on the Internet and remain invisible until an individual accesses the site. As the Supreme Court noted in *Reno v. ACLU*, exposure to a web site requires "a series of affirmative steps" which are "deliberate and directed" by the individual accessing the site, and not the author.(64) However, this reasoning would not apply where a student actively promoted his or her site by giving out the URL to classmates or showing classmates the site in a school computer lab.

V. COLLEGE STUDENTS VERSUS SECONDARY AND ELEMENTARY STUDENTS

[61]Finally, web sites created by college students versus those authored by secondary and elementary school students should be distinguished. Although colleges and universities may be able to regulate a student's web site which was created on a school server and/or which officials reasonably believe will cause a substantial disturbance in the classroom, college and university officials should exercise their discretion cautiously so as to respect the autonomy of their more mature and free-thinking students. The following sections offer three justifications for affording greater rights to older students.

A. AGE OF MAJORITY

[62]First, most college students are legal adults and should be afforded greater discretion in expressing their views. The age of majority traditionally ushers in new rights and freedoms. For example, persons reaching the age of eighteen years are allowed to vote, hold a full-time job, bring a lawsuit, have consensual sexual intercourse without fear of statutory rape laws, and make important decisions about marriage and childbirth. Accordingly, students reaching the age of majority should also be allowed to have greater rights in expressing their views about themselves and others on the Internet. For example, because adults enjoy the right to perform sexual *acts*, they should certainly be allowed to express sexual *thoughts* on their web pages. It would be absurd to allow schools to censor the thoughts of their adult students when those students can legally act on those thoughts without fear of regulation.

[63]Accordingly, courts have increasingly suggested that colleges and universities should use utmost care not to interfere with the rights and freedoms of their adult students. For example, in *Bradshaw v. Rawlings*,[(65)] a case involving a student who was injured by a drunk driver at a school-sponsored event, the Third Circuit recognized that upon reaching the age of majority, students deserve "expanded rights of privacy in their college life":

> [64]College administrators no longer control the broad arena of general morals. At one time, exercising their rights and duties in loco parentis, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives. Especially have they demanded and received satisfaction of their interest in self-assertion in both physical and mental activities, and have vindicated what may be called the interest in freedom of the individual will.[(66)]

[65]Two years later in Baldwin v. Zoradi,(67) a California court similarly declined to hold a college liable for injuries suffered by a student at a drinking party held in a dormitory. The court cited to language in Bradshaw indicating that the traditional "in loco parentis" role of colleges and universities has long been abrogated, given the fact that society increasingly affirms the expanding rights and privileges of adult students. Moreover, the court added that conveying responsibility from authoritarian administrators to individual students is beneficial:

> [66]The transfer of prerogatives and rights from college administrators to the students is salubrious when seen in the context of a proper goal of post-secondary education the maturation of the students. Only by giving them responsibilities can students grow into responsible adulthood. Although the alleged lack of supervision had a disastrous result to this plaintiff, the overall policy of stimulating student growth is in the public interest.(68)

[67]Although these cases involved tort liability of schools which failed to enforce underage drinking regulations, the language of both opinions suggests that colleges and universities should afford great latitude of freedom to their adult students in all areas of moral conduct. Therefore, it is inappropriate for colleges to act as vigilant watchdogs over adult students' web pages in order to ensure compliance with all imaginable laws and regulations. Rather, Bradshaw and Baldwin stress the importance of allowing adult students to exercise freedoms and accept responsibilities without school interference.

[68]Of course, the age of majority should not be viewed as a bright line, as the Supreme Court articulated in *Planned Parenthood of Central Missouri v. Danforth.*(69) Rather, students

mature on a continuum and should be gradually afforded greater freedoms as they grow into adults. In*Danforth*, the court rejected a state's blanket parental consent requirement for abortions imposed on minor women, suggesting instead in its dicta that some minors would be sufficiently mature to make intelligent and informed reproductive decisions.(70) Likewise, students should not be stripped of their First Amendment freedoms until the magic age of eighteen. Instead, schools should adjust their regulatory authority to account for gradations in the maturity of their students. Plainly, high school seniors should be less closely regulated than impressionable kindergarten students. Therefore, secondary schools should enjoy less discretion in censoring student web pages compared to elementary schools. Schools may also choose to develop different standards for smaller categories of students, such as groupings based on grade levels.

B. LIBERAL ATMOSPHERE OF COLLEGE CAMPUSES

[69]Second, colleges and universities historically are places of independent thinking; students are expected and even encouraged to develop their own ideas about their identity and the society around them. Controversial views should be tolerated for the basic educational goal of fostering exchange of knowledge and individual growth. Accordingly, the Supreme Court duly recognized this idea in *Healy v. James*,(71) when it stated that the college campus should be protected as a free "marketplace of ideas."(72) In *Rosenberger v. Rector and Visitors of the University of Virginia*, the court also cautioned that universities should be particularly vigilant in preventing the "chilling of individual thought and expression:"(73)

> [70][The] danger [to free speech] is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the

> center of our intellectual and philosophic tradition. In ancient Athens, and, as Europe entered into a new period of intellectual awakening, in places like Bologna, Oxford, and Paris, universities began as voluntary and spontaneous assemblages or concourses for students to speak and to write and to learn. The quality and creative power of student intellectual life to this day remains a vital measure of a school's influence and attainment. For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the nation's intellectual life, its college and university campuses.(74)

[71]Similarly, Richard Delgado argues that rules against hate speech on campus "run counter to the ideal of the university as a bastion of free thought."(75) Rather, colleges and universities should remain the "the locus of the freest expression to be found anywhere where the unpopular truth may be pursued and imparted with impunity."(76) Valerie L. Brown also contends that jurisprudence regarding the censorship prerogatives of secondary schools is irrelevant to higher education "because of the traditional role colleges and universities play in providing an atmosphere for the free exchange of ideas among adults."(77) Accordingly, colleges should promote individual autonomy of their students in order to "safeguard society's interest in the development of unbridled dissemination of ideas -- activity at the core of First Amendment freedoms."(78)

[72]Thus, the liberal college atmosphere should remain more tolerant of the content of web pages authored by their students as compared to secondary and elementary schools. In order to encourage the free exchange of ideas, colleges and universities should grant significant freedom to their students to post controversial and unpopular views on their personal web pages.

Exposure to unpleasant ideas ultimately spurs on critical thinking and teaches students to test their beliefs. Such learning should be encouraged by institutions which purport to support the expansion of knowledge.

C. INTEREST OF SECONDARY AND ELEMENTARY SCHOOLS TO EDUCATE MINORS IN CIVILITY AND TOLERANCE

[73]Secondary and elementary schools have a stronger interest in protecting minors from harmful speech and in teaching youth the democratic values of civility, tolerance, and cooperation. As the Supreme Court suggested in *Bethel School District No. 3 v. Fraser*,[(79)]a case involving a student's campaign speech delivered at a middle school assembly, educators enjoy the right to protect minors from exposure to vulgarity and obscenity.[(80)] Moreover, the *Fraser* court elaborated by stating that censorship of the speech furthered the school's "basic educational mission" of teaching youth the "habits and manners of civility."[(81)] Two years later, the Supreme Court held in *Hazelwood* that school officials enjoy broad authority to define and supervise the education of their students, including the power to censor student publications. The Court continued by stating that schools need not tolerate speech which undermines education's role as "'a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.'"[(82)]

[74]The language in both *Fraser* and *Hazelwood* demonstrates that secondary and elementary schools have the unique and weighty responsibility of educating minors to become mature, competent participants in a democratic society. The school's interest in shaping a responsible citizenry is of greater moment than the interest of individual students to express any and all opinions. Accordingly, some have argued that "in the realm of formal education, the

government should have broad leeway to treat certain values as essential and others as unreasonable, and to enforce these judgments through coercive regulation."[(83)]

[75]Bruce C. Hafen argues that by definition, education necessarily involves imposing some restraints on free speech. However, proper education also paradoxically furthers free speech by teaching students the requisite skills of healthy social interaction and enlightened, well-tempered expression.[(84)] Therefore, a complete lack of discipline and regulation undermines the value of free speech. In contrast, an education which furthers democratic expression requires certain constraints:

> [76]Public education seeks affirmatively to teach the capacity to enjoy first amendment values -- to mediate between ignorance and educated expression. It is a process that invites intrusion, requires authoritarian paternalism, and depends upon the exercise of unsupervisable discretion. There must be legal protection against clearly harmful abuse of this flexibility, but without some strong influence from those apparent enemies of personal autonomy in the educational process, little serious education is possible . . . In schools, as in other contexts primarily involving the young, children have a very special place in life which law should reflect.[(85)]

[77]However, a school's censorship authority should be narrowly confined to its role in preparing students for democratic participation. Just as a school is allowed to discipline students who beat up gay students during lunch, it could be allowed to discipline students who create sites which advocate anti-gay violence. Such discipline teaches students that discrimination and violence against minorities is unacceptable in a democratic society. However, a school should

not use its censorship authority to mask advocacy of certain moral or religious views. For example, a school may not censor a site created by a gay or lesbian student on the pretext that homosexuality is a deviant lifestyle, because the expression of alternative views and lifestyles is foundational to democracy.

[78]Schools must be careful not to usurp the parents' role as moral educators of their children. Educators and lawyers alike have questioned the school's appropriateness and effectiveness in teaching students morals. John Kleining, for example, argues that schools are unable to teach morals because moral education can only occur "through immersion in and reflection upon relationships of an intimate kind, and in this respect schools have been seriously deficient."(86) Louis E. Raths argues that, even if it were possible, schools have no right to teach morals because morality by definition should be personally determined.(87)

[79]Taking a moderate stance, Kenneth A. Strike argues that schools have an important duty to promote citizenship and should therefore teach general moral principles such as fairness, justice, equality, and respect for others.(88) However, schools should limit their role to preparing students for future employment. Therefore, while schools should teach students how to work well with others, they should be careful not to interfere with the development of students' personal values.(89)

[80]Strike's view appropriately recognizes that the educational realm should not completely exclude moral concepts and values, because proper education involves promulgating general values, particularly in the realm of healthy human relationships. Thus, the view espoused by Raths regarding a total abandonment of moral education in schools is extreme and unrealistic. However, Strike also appreciates the importance of students to develop their own personal values and cautions schools not to tread upon the parental role in teaching morals. As an example of

Strike's philosophy, Jeffrey LaBarge contends that schools would be justified in disciplining students for sexually harassing other students because such behavior impedes educational instruction and would not be tolerated in the workplace.(90)

[81]Similarly, to prepare students for entry into an increasingly multicultural and pluralistic work environment, schools should teach minors tolerance and respect for other races, ethnicities, genders, and sexual preferences. In addition, schools should also enjoy broad discretion in discouraging anti-social behavior such as fixation on murder, rape, or other socially harmful acts. Accordingly, a school should enjoy discretion to censor web pages on which students perpetuate hateful views against minorities. In addition, educators should be allowed to discipline students for maintaining anti-social web sites which advocate killings or sexual crimes against their classmates or teachers.

[82]In conclusion, secondary and elementary schools have a greater interest than colleges and universities in raising students to become mature, socially adjusted adults who are able to interact civilly with others and participate in meaningful democratic expression. Accordingly, educators of younger students should enjoy discretion in regulating particular web sites which undermine the values of tolerance and civility. It is of the utmost importance, however, that schools not use censorship to advocate moral or religious views, but only to discourage behaviors which are inconsistent with a democratic society.

VI. CONCLUSION

[83]In summary, schools should apply the preceding tests to determine whether it can legitimately censor the web sites of its students. The sections above are intended to act as a filter for schools, by systematically eliminating the types of web sites which can be reached by a

school's censorship authority. On the first level, schools should refrain from censoring sites which do not implicate definable property rights. Therefore, schools should not, as a general rule, censor web pages created on private servers using privately owned computers at home, even if the page is a product of an unofficial school-related activity. Only if a school has a property interest in a web site, as when the site was created on a school server or is connected to an official school activity, should it be allowed censorship authority. Where the site is created on a school server, the school may only censor its content if regulation furthers a compelling state interest and censorship is narrowly tailored to that end.

[84]Second, a school may censor a web page created on a private server only if it is reasonably foreseeable that the web page's continued presence is likely to create a substantial disturbance in the classroom. However, this authority is limited and should only be exercised in the most pressing situations, such as when schoolwide absences or violence is reasonably likely to occur. Even in such cases, a school should allow a student's lack of active promotion of the site to mitigate punishment.

[85]Finally, colleges and universities should not, as a general rule, censor the web pages created by their students. However, they may exercise their disciplinary authority in only the most exceptional cases. Secondary and elementary schools, on the other hand, should enjoy broader authority to regulate web pages, in order to further the weightier goal of raising socially mature, tolerant, and civil democratic actors.

[86]As mentioned in the beginning of Section III of this paper, schools must be held to a high standard of protecting the First Amendment because of their crucial role as communicators of constitutional rights and privileges. The guarantees of free speech are foundational to a democratic society and should not be infringed unless there are substantially weightier concerns

involved. Promoting values of tolerance and civility or preventing violence in schools may justify some censorship of web pages. However, even in such situations, educators should respect the import of the First Amendment's guarantee of free speech and exercise their disciplinary authority in only the most egregious cases. Such restraint ultimately encourages children and young adults to become more efficacious participants in their future democratic society. As ACLU defender Nadine Strossen contends:

> [87]One of the great concerns of our time is that our young people, disillusioned by our political processes, are disengaging from political participation. It is most important that our young become convinced that our Constitution is a living reality, not parchment preserved under glass. These are very timely words, especially in light of all the recent evidence that young people are not particularly interested or involved in the political process--indeed, that many are alienated from it.(91)

[88]Therefore, in order to foster confidence in the constitutional promises on which the nation was established, schools should approach censorship with unpretentious reverence to the First Amendment. As the Supreme Court recognized, "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."(92) The future of civil democratic society, in which the ideas of the minority are not swallowed up by those of the majority and where full participation by the citizenry can lead to meaningful human progress, depends upon it.

ENDNOTES

1. *See, e.g., GVU's 8th WWW User Survey* <http://www.gvu.gatech.edu/user_surveys/survey-1997-10>. For a general discussion on the number of students who use the Internet, see,e.g.,Mark D. Preston, *Marketers on the Net Target Kids for Data*, TELEGRAM & GAZETTE (WORCESTER), Sept. 29, 1998, at A1 (citing 1997 study showing that 16 million children (14% of minors in the United States) frequently surf the Internet, with 6 million being under the age of 12). *See also* Rene Menezes, *Towards a Family Friendly Internet*, New Straits Times (Malaysia), July 26, 1998, at 30 (indicating that 12-19 year olds comprise 65% of web surfers globally); Center for Media Education, *Computers in the Nation's Schools* <http://www.epn.org/cme/usstat2.html> (citing 1997 study by Jupiter Communications showing that 11.3% of all children aged 2-17 in the United States used the Internet and 1997 study by the U.S. Census Bureau projecting that 50.2% of all U.S. children will be on-line by 2002).

2. *But see, e.g.*, Frederick Schauer, *Principles, Institutions, and the First Amendment*, 112 HARV. L. REV. 84 (1998) (arguing for institution-specific free speech doctrines).

3. *See, e.g., Teen-Ager Settles with School in Internet Free Speech Case*, CHARLESTON GAZETTE (W.VA.), Dec. 25, 1995, at P5B.

4. *See, e.g.*, Robyn Blumner, *Censorship Goes Beyond the Gates*, DENV. ROCKY MTN. NEWS, Sept. 18, 1998, at 49A.

5. *See* Evelyn Theiss & Kevin Harter, *Access to Web Lifts Lid from Student Expression*, PLAIN DEALER, Mar. 21, 1998.

6. United States v. Baker, 890 F. Supp. 1375 (E.D. Mich. 1995), *aff'd sub nom.* United States v. Alkhabaz, 104 F.3d 1492 (6th Cir. 1997).

7. *See, e.g.*, Kathleen Parrish, *Students Face Expulsion for Computer Threats*, ALLENTOWN MORNING CALL, July 30, 1998 at A1.

8. *See* Julie Nash, *Eastern Addresses Remarks*, YORK DAILY REC., Mar. 12, 1998, at C1; Julie Nash, *Eastern Faces Down Racism*, YORK DAILY REC., Mar. 5, 1998, at C01. The web page, intended to provide information about the school basketball team, included a chat room on which other students posted racist comments. The author volunteered to shut down his web page after school officials asked him to remove the school district's name.

9. *See* Ross Kerber, *Kids Say the Darnedest Things: Student Web Sites Present Schools with Difficult Free Speech Issues*, WALL ST. J., Nov. 17, 1997, at R12. The web page included descriptions of each girl, using labels such as "scary, big chick" or "sexually confused." The private server, Geocities, agreed to shut down the site but declined to divulge the name of the site's creator. The school dropped the matter after discovering that the site was not created on a school computer.

10. *See, e.g.*, Terry McManus, *Censored, Censored, Censored*, FT. WORTH STAR-TELEGRAM, Aug. 27, 1998, at 3.

11. *See* Blumner, *supra* note 4.

12. *See* Tamar Lewin, *Schools Challenge Students' Internet Talk*, N.Y. TIMES, Mar. 8, 1998, at 16.

13. *See* Nathan Cobb, *Cyberspace on Campus: New Access and Excess*, BOSTON GLOBE, Apr. 16, 1995, at 1.

14. *See* Henry Stern, *Web Sites Great Tool, New World for Schools*, PORTLAND OREGONIAN, Aug. 27, 1998, at 01.

15. *Id.*

16. *See, e.g.*, Lawrence C. Hall, *Internet Threats Punished*, ALLENTOWN MORNING CALL, Sept. 11, 1998, at B01. The 15-year old student was charged with two counts of making terroristic threats for his web page entitled "Please Shoot these People." Included on his list of people he wanted dead were famous personalities such as President Clinton, Hanson, Mariah Carey, and Puff Daddy.

17. *See, e.g.*, *School Officials Aren't Laughing Over Morbid Internet Web Page*, THE COLUMBIAN VANCOUVER, WA., Apr. 5, 1998, at B8. The anonymous site was posted on Geocities and included methods of death related to drug/alcohol abuse and sexual activity. However, officials later declined to suspend the students and required them to submit essays on appropriate Internet use instead. *See also* Deb Riechmann, *Classroom Hackers Abound; Schools Struggle to Stem Always Creative Students*, Ariz. Republic, Sept. 21, 1998, at E1.

18. *See* Yulanda Chung, *E-mail Tip Led to Web Porn Arrest*, S. CHINA MORNING POST, Sept. 3, 1998, at 6.

19. *See, e.g.*, Megan O'Matz, *Internet Threats are Banned in Bill Passed by State House*, ALLENTOWN MORNING CALL, Sept. 30, 1998, at B01.

20. *Id.*

21. *Id.*

22. 948 F. Supp. 436 (E.D. Pa. 1996).

23. *Id.* at 441.

24. *Id.* at 455 n.7.

25. 512 U.S. 622 (1994).

26. *Id.* at 656 ("[T]he physical connection between the television set and the cable network gives the cable operator bottleneck, or gatekeeper, control over most (if not all) of the television programming that is channeled into the subscriber's home. Hence, simply by virtue of its ownership of the essential pathway for cable speech, a cable operator can prevent its subscribers from obtaining access to programming it chooses to exclude.").

27. *See* Nash, *Eastern Faces Down Racism*, *supra* note 7.

28. *Id.*

29. 508 U.S. 384 (1993).

30. *Id.* at 390.

31. 515 U.S. 819 (1995).

32. *Id.* at 830.

33. *See* Riechmann, *supra* note 16.

34. *See, e.g.*, Marjorie Cortez, *East High Web Page Nets a Suspension*, DESERET NEWS, May 22, 1996, at B3.

35. *See* Cobb, *supra* note 12.

36. *Id.* Students facing disciplinary actions for web pages created on school accounts have also conceded that a property-rights approach to censorship is valid. For example, college sophomore Andrew Purtell remarked after being disciplined for posting pornographic photos on his web page: "If there was a policy that said, 'No porn,' I'd have adhered to it. If I'd been using my own computer and my own Internet access and they tried to stop me, I'd have cried 'Freedom of

expression!' But I was using their resources. Adhering to their guidelines would have been like obeying the rules of the road." *Id.*

37. *See, e.g.*, Widmar v. Vincent, 454 U.S. 263, 270 (1981).

38. Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 819, 829 (1995) (quoting Cornelius v. NAACP Legal Defense & Ed. Fund, Inc., 473 U.S. 788, 804-06 (1985)).

39. *See id.* at 829-30.

40. *See* Hazelwood Sch. Dist. v. Kuhlmeier,484 U.S. 260, 268-69 (1988).

41. *Id.*

42. *Id.* at 270.

43. *Id.* at 261.

44. *See* Philip T.K. Daniel, *The Electronic Media and Student Rights to the Information Highway*, 121 EDU. L. REV. 1 (West's) (Nov. 1997).

45. *See* Rosenberger v. Rector and Visitors of the Univ. of Va., 515 U.S. 819, 833 (1995).

46. *See* Howard Libit, *Web Work by Students Has Its Limits*, BALTIMORE SUN, Oct. 31, 1997, at 1A.

47. *See* Andrea F. Siegel, *Schools Bar Internet Links for Children*, BALTIMORE SUN, Mar. 30, 1997, at 1B.

48. *See* Raoul Le Blond and Yeow Pei Lin, *Programs for Hacking Found Readily on Net*, Straits Times (Sing.), May 30, 1997.In a similar case, 18-year old Richard Hottelet was charged with knowingly transmitting without authority to a protected computer across state lines when he hacked into a local township's official site and posted soft porn, profanity, and angry epithets. *See* Jim Bodor, *Student Accused of Defacing Web Site*, TELEGRAM & GAZETTE (WORCESTER), May 24, 1997, at A1.

49. For a general discussion on web pages being analogous to graffiti, see Kathleen Parrish, *Web Debate: Threat or Self-Expression?*, ALLENTOWN MORNING CALL, Sept. 20, 1998, at B1.

50. 393 U.S. 503 (1969).

51. *Id.* at 507.

52. *Id.* at 509.

53. *Id.* at 508.

54. *Id.* at 511.

55. 766 F. Supp. 280 (E.D. Pa. 1991).

56. *Id.* at 293 (emphasis added).

57. *See* Daniel, *supra* note 43.

58. 134 F.3d 821 (7th Cir. 1998).

59. *Id.* at 827.

60. *Id.*

61. 607 F.2d 1043 (2d Cir. 1979).

62. *Id.* at 1053 n.18.

63. *Id.* at 1050.

64. 521 U.S. 844, 854 (1997) ("[T]he 'odds are slim' that a user would enter a sexually explicit site by accident. . . . 'A child requires some sophistication and some ability to read to retrieve material and thereby to use the Internet unattended.'") (quoting ACLU v. Reno, 929 F. Supp. 824, 845 (1996)).

65. 612 F.2d 135 (3d Cir. 1979).

66. *Id.* at 140.

67. 123 Cal.App.3d 275 (Cal. Ct. App. 1981).

68. *Id.* at 290.

69. 428 U.S. 52, 74 (1976) ("[C]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority . . . .").

70. *Id.*

71. 408 U.S. 169 (1972).

72. *Id.* at 180.

73. Rosenberger v. Rector and Visitors of the Univ. of Va., 515 U.S. 819, 835 (1995).

74. *Id.*

75. Richard Delgado, *Campus Anti Racism Rules: Constitutional Narratives in Collision*, 85 Nw. U. L. REV. 343, 359 (1991).

76. *Id.*

77. Valerie L. Brown, *Hate Speech in Colleges and Universities: The Aftermath of R.A.V. v. City of St. Paul, Minnesota*, 79 Educ. L. Rep. 697, 706 (West's) (Mar. 1993).

78. Valerie L. Brown, *A Comparative Analysis of College Autonomy in Selected States*, 60 EDU. L. REP. 299 (West's) (1990).

79. 478 U.S. 675 (1986).

80. *Id.* at 685.

81. *Id.* at 681.

82. 484 U.S. 260, 272 (1988) (quoting Brown v. Board of Education, 347 U.S. 483, 493 (1954)).

83. Stephen G. Gilles, *On Educating Children: A Parentalist Manifesto*, 63 U. CHI. L. REV. 937, 939 (1996).

84. Bruce C. Hafen, *Developing Student Expression Through Institutional Authority: Public Schools as Mediating Structures*, 48 OHIO ST. L.J. 663, 666 (1987) ("Indeed, a strong

educational tradition is a crucial prerequisite to maintaining a strong tradition of individual rights. Excessive student autonomy can impair the most fundamental learning processes, which are finally the lifeblood of responsible democratic participation. For example, if free speech is to be meaningful, a citizen must have something worth saying, together with the maturity and the skill needed to say it. Indeed, 'freedom of expression' has two meanings: (1) freedom from restraints upon expression and (2) freedom for expression--that is, having the capacity for self-expression. Schools must be especially concerned with the second meaning, interacting with students in ways unique among all interaction between the individual and the state. They educate to enable expression, thus affirmatively nurturing the values of the first amendment.").

85. *Id.* at 669-70.

86. JOHN KLEINING, PHILOSOPHICAL ISSUES IN EDUCATION 253 (1982).

87. *See* LOUIS E. RATHS ET AL., VALUES AND TEACHING: WORKING WITH VALUES IN THE CLASSROOM 36-37 (1966) ("[Teachers] may be authorities in those areas that deal with truth and falsity. In areas involving aspirations, purposes, attitudes, interests, beliefs, etc., we may raise questions, but we cannot 'lay down the law' about what a child's values should be. By definition and by social right, then, values are personal things.").

88. KENNETH A. STRIKE, EDUCATIONAL POLICY AND THE JUST SOCIETY 127 (1982).

89. *Id.* at 165-67.

90. *See* Jeffrey LaBarge, *Express Notice as the Threshold Requirement for School Liability Under 20 U.S.C. § 1681 (Title IX) for Student-on-Student Sexual Harassment*, 29 RUTGERS L.J. 401, 438 (1998).

91. Nadine Strossen, *Students' Rights and How They are Wronged*, 32 U. RICH. L. REV. 457, 461 (1998).

92. Shelton v. Tucker, 364 U.S. 479, 487 (1960).

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