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ABSTRACT

A study investigated whether scholastic journalism educators agree on definitions of prior review and prior restraint. A total of 83 officers or directors of local, state, or national scholastic journalism organizations, including the membership list of the Scholastic Journalism Division of the Association for Education in Journalism and Mass Communication, completed surveys regarding prior review and prior restraint. Consensus definitions of prior review and prior restraint based upon responses to the survey emerged--prior review is reading newspaper copy before publication by a school employee; and prior restraint is any prohibition against publication made by the adviser, the principal, or any other school employee. Results also indicated that: (1) advisers should correct misspellings and factual errors in copy but should not stop negative stories about the school or stories that may be harmful but not libelous, obscene, or disruptive; (2) advisers should not change the wording of controversial articles or remove them from the newspaper; and (3) respondents felt that the adviser was not ultimately responsible for the content of the newspaper. Findings suggest that the respondents seemed to support the Supreme Court's goal for high standards (as reflected in the "Hazelwood v. Kuhlmeier" decision), but they felt the Court went too far in "Hazelwood" in the type of restrictions that would be allowed on a variety of constitutionally protected speech. Findings also suggest that journalism educators should attempt to think of the adviser's role as one that transcends school official, managing editor, and teacher. (Contains 15 references and 5 notes.) (RS)

Knight's Paradigm and Scholastic Press Freedom

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Washington, D.C.

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Knight's Paradigm and Scholastic Press Freedom

> Let's be honest about this one. For almost 20 years, we would not say the teacher was acting as publisher or -- heaven forbid -- editor. We evaded the intriguing question in the public school setting: Who is publisher if the agents of the state cannot control content? -- Robert P. Knight (Knight, 1988, p. 43)

What prompted Knight's question was the *Hazelwood v. Kuhlmeier* ruling released earlier that year allowing censorship of the Hazelwood East *Spectrum* because the newspaper was not a public forum. Knight provided an answer to his question about who was publisher before *Hazelwood* when he wrote in the same article: "We now realize that the adviser shifted over to being *de facto* publisher, although none would have perceived it before *Hazelwood*" (Knight, 1988, p. 43).

The Court said in *Hazelwood* that a public forum exists in a public school if "by policy or by practice" the school opens the newspaper for "indiscriminate use by the general public, or by some segment of the public, such as student organizations," something the Court did not think had been done in the case of the *Spectrum*. Knight noted that "*Hazelwood* is permissive as regards control" because the ruling "permits schools to declare their newspapers as open forums -- free to all expression -- if they wish or to restrict quite severely what may be published. Or do something in between" (p. 43).

"Knight's Paradigm for the *Hazelwood* Era" provides a post-*Hazelwood* continuum of control of the high school press from restrictive to permissive. At the restrictive end (from a First Amendment perspective) of Knight's Paradigm is what Justice Byron White in *Hazelwood* called the "nontraditional" (i.e., nonpublic) forum. White's majority opinion stated that limits to freedom of the press can be put on student publications at schools that have not by policy or practice opened the publication to more than "limited discourse." At schools with such nontraditional public forum newspapers, the Court stated, an administrator may use "reasonable" measures to restrict student speech if the restriction is related to

"legitimate pedagogical concerns" or for a "valid educational purpose."

At the opposite end of the continuum described by Knight is the "limited" or "designated" (Buss, 1989, p. 510) public forum, which is open to a particular group or groups but not to everyone. Limits on publication content is minimal for those groups for whom the forum is designated. This end of the continuum, according to Knight, represents the position taken by Justice Brennan in his minority opinion in *Hazelwood*.

Brennan's standard is similar to the majority position in *Tinker v. Des Moines Independent Community School District* (393 U.S. 503, 1969), in which the Court stated that restrictions can be put on student speech only if there is a likely danger of "substantial disruption of or material interference with school activities." Before *Hazelwood*, the Court had not determined that prior restraint for other types of material was permissible (SPLC, 1985, p. 23), however. As noted by Buss (1989), the designation as a limited public forum, as well as a traditional public forum, is dependent upon state action (p. 523).

Under *Tinker*, prior restraint could be used only if adequate procedures were in place to protect students' First Amendment rights. Though it did not discuss the forum theory in its *Tinker* decision, Buss notes, the Court wrote as if the school buildings and grounds were open for student expression (p. 516).

Knight concluded that the principal is publisher anywhere along the *Hazelwood* continuum, from Justice White's majority position to Justice Brennan's more-relaxed minority position. Though Brennan's position would severely limit the school's control, he agreed with the *Hazelwood* majority that an educator may, under *Tinker*, constitutionally censor material that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced" (*Hazelwood* at 576) because to reward such expression would "'materially disrupt' the newspaper's curricular purpose."

Knight considered the two polar positions -- total press control and total press freedom (which he called *Hazelwood*'s Pariah and Brennan's Pariah) -- as being untenable positions beyond his continuum. He concluded that "(w)e should assume that both Pariahs are impossible, that none among

us could even conjure up the kind of material they would print" (p. 45). It is somewhat difficult, however, to reconcile that position with his statement quoted above that "Hazelwood permits schools to declare their newspapers as open forums -- free to all expression" (Knight, p. 43).

Arguably, a school could establish a closed-forum newspaper primarily without student input (SPLC, 1985, p. 15; Buss, 1989, p. 524). It also could establish a closed-forum newspaper primarily with student input but provided solely for classroom distribution (SPLC, 1994, p. 238) or even for a broader distribution or for the purpose of presenting the school's own viewpoint (Buss, p. 524). It also could be argued that a school newspaper could operate as an open public forum under guidelines established by *Fujishima v. Board of Education* (460 F.2nd 1355, 7th Circuit, 1972), which stated that a student newspaper could have no restrictions on content other than what could be restricted in the nonschool press. In fact, both positions are represented in "Version 2" of the Student Press Law Center's Model Legislation to Protect Student Free Expression Rights, which states:

> All school-sponsored publications and news media produced primarily by students at a public school, except for those intended for distribution or transmission only in the classroom in which they are produced, shall be public forums for expression by student reporters and editors at such school (SPLC, 1994, p. 238).

Research on the Effects of *Hazelwood*

All reported national studies following the *Hazelwood* ruling[1] have found that the ruling did not lead to a significant increase in prior restraint of student newspapers. The studies also have tended to confirm Knight's conclusion that the adviser was the *de facto* publisher at many schools even before the *Hazelwood* ruling.

Prepublication Review. In their last pre-*Hazelwood* national study of public high schools, Click and Kopenhaver (1988) reported that 97 percent of principals and 89 percent of advisers agreed moderately or strongly[2] that "student newspaper advisers should review all copy before it is printed" (p.

50). Following the *Hazelwood* ruling, Click and Kopenhaver (1990) found no change in attitudes of principals and little change in attitudes of advisers.[3] As many principals (96%) and slightly fewer advisers (82%) agreed moderately or strongly that advisers should review all copy.[4]

Likewise, in a study of state scholastic press association directors, Lyle Olson, Roger Van Ommeren and Marshel Rossow (1993) found that just over three-fourths of the directors also thought that the adviser should review all copy before it is published.

Click and Kopenhaver (1988) also found that 56 percent of principals and 70 percent of advisers agreed moderately or strongly before *Hazelwood* that it was a form of censorship for school administrators to read student newspaper copy before publication. (They did not report responses to that question in their 1990 study, however.) Click and Kopenhaver (1990) remarked that "(i)t is possible, but unlikely, to review copy without censoring" (p. 8).

Results by Dickson (1990) from a random sample of U.S. public high schools after *Hazelwood* were similar to those of Click and Kopenhaver. Ninety-five percent of both editors and advisers in his study reported that the adviser fairly often, quite often or always read the newspaper before it was published. Advisers were somewhat more likely than editors (89% vs. 82%) to state that they always read the newspaper before publication. On the other hand, Dickson found that nearly two-thirds of both advisers and editors stated that the principal never read copy before publication. Only 17% of editors and 14% of advisers said the principal read the newspaper before publication fairly often, quite often or always.

Fixing Copy. Click and Kopenhaver (1988) found that four-fifths of principals and two-thirds of advisers before *Hazelwood* agreed that the adviser should correct spelling errors even if the student couldn't be contacted. Click and Kopenhaver (1990) found following *Hazelwood* that slightly fewer principals (74%) and considerably fewer advisers (53%) agreed moderately or strongly that the adviser should correct student misspellings.

Click and Kopenhaver found that 66% of principals and 71% of advisers before *Hazelwood* agreed that the adviser should fix factual errors before publication even if the students involved couldn't be consulted. After *Hazelwood*, they found that the same percent of principals (67%) but fewer advisers (57%) agreed moderately or strongly that the adviser should fix factual errors. Click and Kopenhaver also concluded, as did Knight, that advisers "see themselves as editors who must review copy and correct misspellings and inaccuracies but not necessarily remove entire stories that will hurt the school's reputation" (1990, p. 9). The two researchers noted about the two practices: "It concerns us that advisers believe they should correct misspelling and factual errors in students' work" (Click and Kopenhaver, 1993, p. 69).

The Adviser: School Official, Editor or Both?

As noted above, Knight answered his question of "Who is publisher if the agents of the state cannot control content?" by stating that the principal is publisher all along the *Hazelwood* continuum. Knight also might have asked another related question, which can be called Knight's Conundrum. It can be stated as follows: "When advisers read and edit copy, are they acting as an agent of the state or as a member of the staff or both?"

The issue of whether the adviser is an agent of the state was addressed by Dvorak and Dilts (1991), who wrote:

> Teachers and publications advisers are clearly included in the Court's understanding of the administrative role of a school relating to student rights when it said in *Hazelwood* that
>
> > ... **educators** (emphasis added) 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.

> But a substantial portion of advisers will probably take offense at this clouded reasoning (pp. 7-8).

Dvorak and Diits also noted, "In *Hazelwood*, the Court tacitly included the publications adviser as an agent of the school board's authority when it addressed the board's power to control *Spectrum* newspaper content" (p. 28).

If the adviser is a state employee, can the adviser also take the role of editor anywhere along the *Hazelwood* continuum? To answer that question, it must be determined whether a school newspaper can be an open forum (either a traditional or a designated public forum) when it is produced as a curricular exercise. Because the adviser is a state official, the adviser would be allowed only light-handed control of content if the newspaper were an open forum. Dvorak and Dilts (1991, p. 21) stated about that issue:

> The Court in *Hazelwood* seemed to suggest that the school newspaper, as part of the curriculum, could not concurrently be a public forum. The Court said the school had not intended "to expand" the rights of student writers and editors on the school paper by "converting a curricular newspaper into a public forum."

Buss (1989) noted that the court did not answer the question of whether a curricular newspaper could be a designated (limited) forum, however. He wrote:

> Although the Court did not state flatly that a school newspaper that is part of the curriculum cannot be a designated public forum, the majority opinion strongly suggested that the two are inherently incompatible. This suggestion, however, is clearly wrong. As a matter of educational policy a school could make participation in the publication of a school newspaper part of a course of study and, at the same time, give students the authority to decide what should be published. Giving students this authority would enable them to apply what they have learned in the course. Under such an educational policy, the newspaper would be both a part of the curriculum and

a designated public forum for student expression (p. 510).

If the newspaper were a designated forum, arguably, the adviser could not act as editor except to the extent that any state official is allowed to control such a forum.

Defining Prior Review and Prior Restraint

If the adviser normally acts as editor, reading copy as well as sometimes fixing spelling and factual errors, where along the continuum envisioned by Knight's Paradigm are such activities constitutionally acceptable behavior? In other words, are such actions always "official" prior review and prior restraint?

An answer to that question is made more difficult in that researchers have used a variety of definitions of such terms as censorship (or prior restraint) and prior review in attempting to determine how much public high school press freedom exists, and other researchers have left such terms undefined.

One definition of censorship used by scholastic journalism researchers is "any **official** (emphasis added) interference with student control of the newspaper." Another definition used is "any **official** (emphasis added) interference by intimidation or coercion with student control of the newspaper." Yet another definition used is "specific incidents of cutting controversial material and any policy or atmosphere of intimidation that causes students to refrain from printing certain materials in the student newspaper." Those definitions, however, do not answer the question of whether actions by the adviser are "official" acts, and they do not state whether prior review is censorship if prior restraint or coercion are not involved.

Whereas prepublication review by administrators normally is seen to be prior review, prepublication review by advisers is not always seen as prior review. For example, neither the policy of the Student Press Law Center (SPLC) nor the Journalism Education Association (JEA) on prior review considers prepublication review by advisers to be "prior review."[5]

The SPLC's "Prior Restraint" policy in its "Guidelines for Student Publications" discusses both

prior review and prior restraint by school administrators. It states: "No student publication, whether nonschool-sponsored or official, will be reviewed by schoo **administrators** (emphasis added) prior to distribution or withheld from distribution" (SPLC, 1994, p. 232). The SPLC's "Model Legislation to Protect Student Free Expression Rights" states: "No student publication, whether school-sponsored or non-school-sponsored, will be subject to prior review by school **administrators** (emphasis added)."

Neither of the two policy statements condemns prepublication review by advisers or prior restraint by administrators that does not involve withholding the student publication from distribution.

The SPLC's model legislation notes that "(i)t shall be the responsibility of the journalism adviser or advisers of student publications within each school to supervise the production of the school-sponsored publication and maintain the provisions of this chapter" (SPLC, 1994, p. 237) without stating if supervision includes prepublication review.

The "Journalism Education Association's Policy on Prior Review," adopted in 1990, expresses agreement with the SPLC prior review policy. It also states: "Prior review is but a tool in the arsenal of censorship, and the Journalism Education Association opposes its use in America's schools" (SPLC, 1994, p. 228). The policy, however, allows prepublication review by advisers, but not by other teachers or by administrators. It states: "Prior review by **administrators or other school officials, including teachers outside those who advise publications or activities staffs** (emphasis added), is journalistically inappropriate, educationally unsound and practically illogical" (SPLC, p. 227). The previous JEA policy stated:

> A journalism teacher working with students involves advising, counseling **and editing** (emphasis added). Such internal discussions do not involve prior review, in our opinion, so long as protected speech is not tampered with and students make final decisions on content (SPLC, 1995, p. 227).

The revised JEA policy, approved March 31, 1990, changed "and editing" to "and supervises the editing

process" (JEA, 1990).

Both the revised and previous JEA policies, therefore, state that prepublication review by the adviser is not prior review as long as students have the final say on content. Unlike the earlier JEA policy, however, the present policy states that the adviser does not actually edit, but only supervises the editing process.

The JEA's Student Press Rights Position, revised in 1988, seems to reject prepublication review by the adviser as well as censorship, however, if not justified. It states:

> Student media shall not be subjected to prior restraints, **review** (emphasis added) or censorship by **faculty advisers** (emphasis added), school administrators, faculty, school boards or any other individual outside the student editorial board, **except as, and only when these individuals can demonstrate legally defined justification** (emphasis added). In addition, student journalists have the right to determine the content of their media (JEA, 1988).

Restrictions on Newspaper Content

Not only are definitions and guidelines concerning prior review and prior restraint somewhat vague, but they also do not differentiate between schools based upon the amount of press freedom actually granted by the school. They seem to suggest that school newspapers are either public forums or they are censored. Knight's Paradigm, however, suggests that *Hazelwood* actually allows light- or heavy-handed treatment, depending upon the school's policy or practice.

Whereas administrators at schools with newspapers at the least-restrictive end of Knight's continuum (Brennan's minority position) can use prior restraint only when student expression would "'materially disrupt' the newspaper's curricular purpose," administrators at newspapers at the most-restrictive end (White's position) would be able to use prior restraint in response to "legitimate pedagogical concerns."

Whether one accepts Knight's conclusion that the principal is publisher everywhere along the *Hazelwood* continuum, prepublication review by the adviser arguably would be necessary if only to determine whether publication would cause disruption to occur. That seems to be the position taken by the prior review policies discussed above. That also is written into most state legislation.

The Kansas law authorizes prior review by state officials and states that suggesting that students change copy is not censorship. It states:

> Review of material prepared by student publications and encouragement of the expression of such material in a manner that is consistent with high standards of English and journalism shall not be deemed to be or construed as a restraint on publication of the material or an abridgment of the right to freedom of expression in student publications (SPLC, 1994, p. 235).

The Iowa law seems to authorize prepublication review, correcting copy and outright prior restraint by advisers. It states:

> Journalism advisers of student producing official student publications shall supervise the production of the student staff, to maintain professional standards of English and journalism, and to comply with this section [which states what material shall not be published] (SPLC, 1994, p. 235).

The Colorado law has similar restrictions. It states:

> Student editors of school sponsored student publications shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of the publications adviser to supervise the production of such publications and to teach and encourage free and responsible expression and professional standards for English and journalism (SPLC, p. 234).

Whereas the California law allows prior restraint, it does not give the adviser a role in ensuring professional standards. Instead, it requires each school district and county board of education to establish publications codes. The Massachusetts law allows no restrictions except for disruption or disorder and does not give the adviser an oversight role.

The SPLC's "Model Guidelines for Student Publications" states that the "final decision of whether the material is to be published will be left to the student editor or student editorial staff" (SPLC, 1994, p. 231), but the guidelines allow punishment for publication of constitutional unprotected speech. They do not allow prior review by administrators.

The SPLC's "Model Legislation to Protect Student Free Expression Rights" (SPLC, p. 237) puts no restrictions on freedom of the press and states only that the law does not authorize students to publish material that is obscene, libelous, invades privacy or incites disruption. The adviser is given authority to uphold the law and, thus, promote instead of deny press freedom. Because no restrictions are allowed, the model legislation presumably is beyond Brennan's end of the *Hazelwood* continuum toward the area Knight called Brennan's Pariah.

Both the California and Iowa laws prohibit material that is obscene, libelous and slanderous as well as material that may be disruptive or incite students to violate laws or school regulations, and the Kansas law notes merely that such material is not protected by the act. The Colorado act not only allows prior restraint for obscenity, defamation and material that may cause disruption, but also for material that violates the right to privacy and false material concerning a non-public figure. (SPLC, 1994, pp. 233-236).

The California, Colorado, Kansas and Iowa laws, then, appear to restrict content well beyond what would be allowed under SPLC's model legislation. All four laws, in fact, likely would be located well toward White's end of the *Hazelwood* continuum. However, the other state freedom of expression law, that of Massachusetts, appears to be anchored at Brennan's and *Tinker*'s end of the continuum. It

allows prior restraint only for material that would cause "disruption or disorder within the school" (SPLC, 1994, p. 236). Thus, the state legislation can be placed along the *Hazelwood* continuum with the SPLC legislation lying beyond Brennan, Massachusetts' law resting at the *Tinker* position, and the other state laws lying somewhere close to White's restrictive position.

Liability

According to the "Responsibilities of Student Journalists" section of the SPLC's "Model Guidelines," "(s)tudents who work on official student publications determine the content of those publications and are responsible for that content" (SPLC, p. 229). Based upon the Student Press Law Center's definition of liability, however, the school likely does have liability if the adviser reads copy before publication as suggested by the policies and state laws mentioned above -- particularly if it is the adviser's policy to make changes. The SPLC notes about liability:

> The general principle behind legal liability is that any person who **could and should have prevented** (emphasis added) an injury from occurring can be held responsible for it. ... In the words of one court, "Everyone who takes a responsible part in the publication is liable for the defamation" (SPLC, 1994, p. 159).

Though a school at the *Tinker* position on the continuum does not likely have liability for publication of constitutionally unprotected speech under the SPLC's definition of liability if there is no prepublication review, some liability apparently exists according to that definition when the adviser reads copy of a designated-forum newspaper. If the school has created a designated-forum newspaper, an adviser who uses prepublication review still might be seen as having liability under the SPLC definition.

Toward White's end of the *Hazelwood* continuum, where it is assumed that restraint could be used for a variety of reasons, then, it would not be difficult to suggest that the adviser "could and should have prevented" certain injuries. The practice of prepublication review by the adviser might cause liability for a school whose publication rests anywhere along the *Hazelwood* continuum because liability comes

with control of content.

The SPLC's model legislation for a Freedom of Expression law states that "no school officials or school district" shall be held responsible in any civil or criminal action for any expression made or published by students unless school officials have interfered with or altered the content of the student expression" (SPLC, 1994, p. 237). It does not state whether the adviser is considered a "school official," though, as discussed elsewhere, the adviser most likely would be.

All five state freedom of expression laws attempt to limit the school's legal liability for content. The Colorado and Kansas laws specifically exempt the school district and all school employees from liability for student expression. The Iowa law limits the liability of school "employees and officials" to the extent that they have "interfered with or altered the content of the student speech or expression." A conflict seems to be present, however, in these laws to the extent to which the adviser is made responsible for ensuring that non-protected speech is not published.

The California law doesn't mention liability specifically, but it does give all responsibility for the newspaper to student editors and, thus, apparently eliminates the school's liability except as provided for by school district policies. The Massachusetts law exempts all school officials from liability. It defines a school official as "any member or employee of the local school committee" (SPLC, 1994, p. 236).

Method for the Current Study

Research has shown that most advisers are reading copy and editing, both correcting misspellings and factual errors in copy. Scholars also suggest that such action can be seen as official state action. Because of *Hazelwood*, however, those actions may be unconstitutional only outside the *Hazelwood* continuum toward Brennan's Pariah. But is such action acceptable conduct for an adviser? The current study is an attempt to find out if people who are most knowledgeable about scholastic journalism education agree on whether reading copy and making changes to newspaper content are prior review and prior restraint and whether they agree on a definition of prior review and prior restraint.

The first research question guiding the study was: "Do people knowledgeable about scholastic journalism education define prior review and prior restraint as censorship in all contexts?" The second research question was: "Do scholastic journalism experts agree on what advisers should do when faced with questions of prepublication review and making changes in copy?

A questionnaire was sent in April 1994 to 263 people whose names were compiled from a list of officers or directors of local, state, or national scholastic journalism organizations, including the membership list of the Scholastic Journalism Division of the Association for Education in Journalism and Mass Communication. A total of 130 responses were received (49.4%). Of that number 47 people stated that they were not then involved in scholastic journalism or with a scholastic journalism organization or were not knowledgeable enough to respond. A total of 83 people returned completed surveys.

Respondents were asked questions about their definition of prior review and prior restraint and several questions that Click and Kopenhaver (1990) had asked advisers and principals about prior review and prior restraint.

Results of the Study

Defining Prior Review. About four-tenths of respondents (40%) stated that it was not prior review for an adviser to read newspaper copy before publication, and about the same number (41%) stated that it depended upon the reason the adviser was reading the copy. Nearly one-fifth of the respondents (19%) stated that it is prior review when the high school newspaper adviser reads newspaper copy before publication no matter what the reason.

The experts were in greater agreement over whether it is prior review when the principal reads student copy. Three-fourths of respondents (75%) said it is prior review when the principal reads copy, and one-fifth (20%) said it depends upon the reason the principal was reading the copy. The remaining 5% said it is not prior review.

Defining Prior Restraint. About six of seven respondents (86%) said it is not censorship if the

adviser reads the newspaper before publication, and one in seven (13%) said it depended upon the reason the adviser was reading the copy. Only one respondent stated that such a practice is censorship.

Respondents were split over whether it is censorship if the principal reads copy before publication. Somewhat over one-third of respondents (37%) said it is not censorship. Nearly three in 10 respondents (29%) said it depends upon whether the adviser had asked the principal to read the copy, and slightly over one-third of respondents (34%) stated that it is censorship no matter what the reason.

Nearly three-fourths of the respondents (73%) stated that it is not censorship if the adviser suggests that the editor change the wording in a story without actually telling the editor to do it. Nearly one-fourth (24%) said it depends upon what the adviser wanted changed. Only 2% said that the practice was censorship.

Respondents were fairly well split over whether it is censorship if the adviser edits a story for spelling and/or factual errors without telling the editor or writer. Whereas 47% said he is censorship, 52% said it is not (and 1% wrote in that it depends upon the situation).

A majority (56%) of respondents, however, said that it is censorship if the adviser forbids publication of an article, and 38% said it depends upon the reason the adviser is forbidding publication. The remaining 6% said that it is not censorship.

Responsibilities of the Adviser. More than seven-tenths (71%) of respondents with an opinion stated that the adviser should review all copy before it is printed. Nearly six-tenths (58%) stated that the adviser should correct misspellings that students make in their copy, and just over half (53%) stated that the adviser should correct factual inaccuracies even if it is not possible to confer with the students involved.

When asked what the adviser should do if he/she determines before publication that information in a story is inaccurate, a majority of the scholastic journalism experts (52%) stated that the adviser should tell the editor about the situation if the adviser found that information to be inaccurate, 23% stated

that adviser should ask the reporter to fix it, and 22% suggested some other option. None of the respondents suggested the adviser should fix the error without necessarily notifying anyone, and three (4%) said the adviser shouldn't have read the story in the first place.

Somewhat under half (45%) of the experts said that the adviser should tell the editor about misspelled words in copy before publication, and 28% suggested asking the reporter to fix them. A fifth (20%) proposed some other solution. Three (4%) suggesting the adviser fix the error without necessarily notifying anyone, and three said the adviser shouldn't have read the story.

Nearly all respondents (99%) stated that advisers who know that the newspaper is going to publish something that will put the school in a bad light have no professional obligation to see that the item is removed. Almost as many respondents (95%) stated that high school administrators should not have the right to prohibit publication of articles they think are harmful though not libelous, obscene or disruptive.

Nearly two-thirds of the experts (65%) said the adviser should talk with the editor if the editor wanted to print something that was constitutionally protected speech but was not fair and balanced or attacked someone but that the adviser should not change the wording. About one-sixth (16%) suggested changing the wording or removing the article if the editor doesn't fix the problem, 2% suggested asking the principal what to do, and 15% suggested other options. Two percent said the adviser shouldn't have read the story.

Nearly three-fourths of the experts (72%) said the adviser should talk with the editor if he/she wanted to print something that was constitutionally protected speech but was controversial at the school but should not change the wording or remove the article from the paper. Only one respondent would have changed the wording or removed the story. The others gave a variety of different responses.

Nearly six in 10 respondents (58%), however, stated that the adviser should remove an article that is libelous or obscene or otherwise not constitutionally protected if the editor doesn't fix it. One in

six (17%) said the adviser should talk with the editor but not change the wording or remove it, and the remaining 24% gave other suggestions.

Six-tenths (61%) of respondents, however, stated that the adviser was not ultimately responsible for the content of the student newspaper, and two-thirds (66%) stated that advisers who do not read copy before publication should not be held personally responsible for complaints about the newspaper.

Eight percent of respondents agreed with the *Hazelwood* ruling, 11% disagreed with it somewhat, and 81 disagreed with it strongly.

Comparisons with Advisers and Principals.

Scholastic journalism experts in this study were somewhat but not significantly less likely than advisers in Click and Kopenhaver's 1990 study to think the adviser was ultimately responsible for the newspaper's content (51% vs. 39%, chi square = 3.48, p>.05, V=.091). Advisers in Click and Kopenhaver's 1990 study were significantly less likely than principal to think that the adviser was ultimately responsible for the content of the student newspaper rather than student editors (81% vs. 51%, chi square = 51.0, p<.001, V=.303),

Scholastic journalism experts also were significantly less likely than advisers in Click in Kopenhaver's study to hold the opinion that advisers who do not read copy before publication should be held personally responsible for complaints about the newspaper (72% vs. 34%, chi square = 41.3, p<.001, V=.314). Advisers were significantly less likely than principals in Click and Kopenhaver's study to think that such advisers should be held responsible for complaints (92% vs. 72%, chi square = 32.75, p<.001, V=.243).

Advisers also were significantly more likely that the experts to think that the adviser has a professional obligation to see that the newspaper doesn't publish something that will put the school in a bad light (13% vs. 1%, chi square = 9.71, <.01, V=.153). Principals were significantly more likely than advisers to state that position, however (38% vs. 13%, chi square = 45.03, p<.001, V=.290).

The experts were significantly more likely than advisers to think that the school administrators should not have the right to prohibit publication of articles they thought were harmful, but not necessarily libelous, obscene or disruptive (95% vs. 86%, chi square = 5.29, V=.111). Advisers, on the other hand, were significantly more likely than principals to think school administrators should not have the right to prohibit publication of such articles (86% vs. 29%, chi square = 181.62, p<.001, V=.574).

The answer to the first part of the first research question (namely, do people knowledgeable about scholastic journalism education define prior review as censorship in all contexts?) is that most scholastic journalism education experts think that it is or might be prior review in some cases for the adviser to read newspaper copy before publication but that it is always prior review for the principal to read copy before publication.

The answer to the second part of the research question (namely, is prior restraint censorship in all contexts?) is that most of the experts think that it is not censorship for the adviser to read the newspaper before publication but that it either is censorship or might be censorship if the principal reads newspaper copy before publication. It is not censorship, according to most respondents, when the adviser makes suggestions to the editor about changing content, but it is censorship in all cases when the adviser forbids publication.

Discussion

A consensus definition of prior review based upon responses to this survey would be as follows: Reading of newspaper copy before publication by a school employee -- whether it be the adviser, the principal or other employee. Prior restraint would be defined this way: Any prohibition against publication made by the adviser, the principal or other school employee. Respondents were split over whether it was censorship for the adviser to fix spelling or factual errors, but they agreed that a suggestion that material be changed is not censorship.

The second research question was: "Do scholastic journalism experts agree on what advisers

should do when faced with questions of prepublication review and making changes in copy? The answer is "yes, to a large extent." Most experts agree that the adviser should correct misspellings and factual errors in copy but that they should not stop negative stories about the school or stories that may be harmful but not libelous, obscene or disruptive. Most experts also agree that students should be responsible for fixing mistakes in copy and that students should be responsible for making changes to stories that are not fair and balanced. They also agreed that advisers should not change the wording of controversial articles or remove them from the paper. On the other hand, most experts agreed that the adviser should remove articles that are libelous or not constitutionally protected if the editor does not want to do anything about them.

In spite of the degree of oversight of newspaper content that respondents thought the adviser should have, most experts stated that the adviser was not ultimately responsible for the content of the newspaper, whether he/she read the newspaper before publication or not, and most disagreed with the *Hazelwood* ruling.

Rather than taking a strict First Amendment position on the issues of prior review and prior restrain, most experts in this study seemed to be taking the position on the *Hazelwood* continuum somewhere between the two extremes. The tended to disagree with the position of the Journalism Education Association and Student Press Law Center that adviser prepublication review is not prior review, but they tended to be toward the *Hazelwood* end of the continuum concerning making changes in copy for some constitutionally protected speech. The majority appear to be somewhere close the positions taken by the California, Colorado, Iowa and Kansas freedom of expression laws -- which allow prior restraint for libel as well as obscenity and potential disruption, but not for material that is controversial or not up to journalistic standards of fairness and balance -- rather than the more-permissive Massachusetts law.

The educators seem to support the Supreme Court's goal for high standards, but they indicate that

the Court went too far in *Hazelwood* in the type of restrictions that would be allowed on a variety of constitutionally protected speech. They would allow students to print controversial and even unfair material, but they saw the adviser's role to tell editors what journalistic standards would be in those situations.

Conclusions

In answer to Knight's question of who is publisher if the agents of the state cannot control content, *Hazelwood* provided the Supreme Court's answer when the newspaper is a nontraditional forum: The school is publisher until school officials by policy or by practice give up that responsibility to the students. As noted above, Knight argued that the school is publisher not only when the newspaper is a nontraditional forum, but also anywhere along the *Hazelwood* continuum. School officials, however, do not have all the powers of a nonschool publisher at any position along the continuum. *Hazelwood* is permissive, but it also is limiting: Prior restraint must be based on pedagogical concerns. Any definition of school official as publisher even at White's restrictive end of the continuum must take the protection that *Hazelwood* gives the student press into account.

In answer to Knight's Conundrum ("When advisers read and edit copy, are they acting as an agent of the state or as a member of the staff or both?"), the scholastic journalism educators in this study seem to be suggesting that the adviser must make decisions both as an agent of the state and as a member of the staff -- much as a managing editor represents the publisher but also is part of the editorial staff. The adviser also is a teacher of journalistic principles, however, and that role might conflict with either or both of the other two.

Conflict is built into such a scenario. As a teacher, the adviser has a responsibility to see that journalistic lessons are learned, but as an agent of the state it is prior review for the adviser to read copy. As a teacher, the adviser also would feel an obligation to see that libelous and obscene or otherwise not constitutionally protected material not be printed or that misspellings and factual errors in students' copy

are corrected. If the adviser acts as editor and takes some control over content, the adviser may be ultimately responsible for newspaper content. But as an agent of the state, it is prior restraint for the adviser to change copy.

The traditional definition of an adviser is one who gives advice -- not one who edits. Research has shown, however, that advisers were editors even before the *Hazelwood* decision -- with the approval of some journalism educators. The *Hazelwood* decision now gives the imprimatur of the Supreme Court on a wide range of content controls if the newspaper is not an open forum, and nearly all state Freedom of Expression laws seem to require the adviser to see that certain material is not published.

Responses to the survey suggest that another continuum besides Knight's *Hazelwood* continuum exists. The experts seem to see advisers using light- to heavy-handed control of the publication at various times. Sometimes the experts prefer that the adviser suggests that changes be made. At other times, the experts suggest that the editor use a heavy-handed touch by removing obscene or libelous material or fixing errors.

The results of this study suggest that educators who train future advisers should look at what they are teaching about the role of the adviser. If the adviser is school official, managing editor and teacher, the job of adviser is a complex one. Perhaps journalism educators should attempt to think of the role of adviser as something that transcends the three roles.

Such a job is made more difficult because of the nature of the *Hazelwood* ruling. It is permissive from the school's viewpoint because it allows a considerable range of options for the newspaper -- according to Knight's Paradigm, from nontraditional forum to designated public forum. Yet to be determined is whether it allows the *Hazelwood* Pariah (a closed forum) or Brennan's Pariah (a traditional public forum).

Journalism educators might consider promoting a new Freedom of Expression Paradigm that would allow something that may seem shocking -- an adviser who is basically just an adviser and not

surrogate publisher and editor. An adviser who just advises would not use prior review unless asked by the student and would not fix errors in copy or use prior restraint for constitutionally protected material. Such an adviser also would not have liability for content.

The new paradigm suggests a post-*Hazelwood* continuum in which school policy or state law states that student-produced newspapers that are distributed outside the classroom are by definition open forums -- either designated forums or traditional forums. In such a scenario, a publications board rather than an agent of the state would be publisher. Such a paradigm seems necessary not only if *Hazelwood* did change the preexisting situation, but also if, as Buss concluded, the *Hazelwood* ruling left "the preexisting balance between the state's power to control messages received by students in public schools and the student's right to communicate rival messages largely where it was" (p. 542).

A continuum based upon such a paradigm could be anchored at one end at *Tinker* (restrictions are allowed only for material that would cause "disruption or disorder within the school"), Brennan's more-restrictive interpretation of *Tinker* in his minority opinion in *Hazelwood* (that disruption to the educational process includes material that is "ungrammatical, poorly written, inadequately researched, biased or prejudiced"), or at a point even more restrictive, such as the Colorado Freedom of Expression Law (that restrictions are allowed not only for possible disruption but for obscenity, defamation, invasion of privacy and false material concerning a non-public figure). The other end of the Freedom of Expression continuum would be well into Brennan's Pariah. It would be anchored by the position taken in the *Fujushima* ruling, that no restrictions are allowed beyond those allowed for the nonstudent press.

In addition to Knight's original question of "Who is publisher if agents of the state cannot control content?," journalism educators have evaded another intriguing questions since the *Hazelwood* ruling: Who is publisher in the college setting if the agents of the state cannot control content? Phrased another way: Does the *Hazelwood* continuum apply to the college press? The question of whether a public college can create a press that is not designated a public forum presents another conundrum: "Are paid editors as well

as college journalism faculty and advisers acting as agents of the state or as members of the staff or both if they use prior review and prior restraint?"

The Court evaded answering the issue of the college press. Educators have assumed (or hoped) that *Hazelwood* does not apply because college students are of the age of maturity. Age and maturity was a question in *Hazelwood*, but it was not a key issue. The key point, instead, was "to what extent can state officials put restrictions on the student press if they have not been made open forums?"

The issue of the extension of *Hazelwood* aside, the question that journalism educators should try to answer now is: Can the appropriate balance between a responsible press and a free press be found on the existing *Hazelwood* continuum, or is it beyond that continuum toward Brennan's Pariah. Moreover, if the newspaper is a designated forum, to whom would access be limited? Educators also might ask whether the student press is adequately protected by existing state Freedom of Expression laws.

Whether, as Buss suggested, *Hazelwood* did not shift the balance between the state's power and student rights or whether it indeed did shift that balance, arguably it achieved some positive things from a First Amendment perspective. It caused journalism educators to rethink the role of the adviser. It also caused enough alarm that some states put restrictions upon their agents' control of the student press. It also could lead to a new paradigm of student press freedom that expands Knight's Paradigm to include more protection for student expression.

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Footnotes

[1]For example, Click and Kopenhaver, 1993; Dickson, 1990; Dickson, 1994; Dvorak, 1992; Dvorak, Lain and Dickson, 1994; and Lain, 1992.

[2]Click and Kopenhaver omitted neutral, slightly agree and slightly disagree responses. Specific percents were not noted for some answers for the 1988 study.

[3]The two samples were not identical, however. The earlier study had been based upon a random sample of all schools. The later study was of members of the Columbia Scholastic Press Association.

[4]Click and Kopenhaver omitted neutral, slightly agree and slightly disagree responses.

[5]The SPLC "Model Guidelines" are printed on pp. 229-232 of the Student Press Law Center's "Law of the Student Press," 1994. The JEA pre-*Hazelwood* "Policy on Prior Review" is listed on pp. 227-228 (though it is called the post-*Hazelwood* policy). The current policy is available from JEA.