STUDENT JOURNALISTS AND THE REPORTER'S PRIVILEGE

Most courts seem to treat student journalists like their non-student counterparts in reporters' privilege cases unless the specific wording of a state shield law indicates the student is not entitled to protection.

CAN *SCHOOL OFFICIALS* FORCE A STUDENT TO REVEAL INFORMATION?

Unless school officials seek the information through formal legal channels, it can be strongly argued that they simply lack the authority to force student journalists to reveal confidential information. Without a court-issued subpoena ordering disclosure, student reporters can claim that they are both protected by the First Amendment or state law from having to disclose such information and that they are under no obligation to respond to the demands of school officials. This argument would not apply to private school officials because they are not limited by the First Amendment. Students at private schools would have to rely on other legal protections and against censorship and public pressure. Also note that faculty advisers may have a more difficult time refusing the demands of their employers and may, for example, even have a legal obligation to reveal information about criminal activity or other wrongdoing on school grounds of which they are aware.

NEWSROOM SEARCHES

Federal law prohibits both federal and state officers and employees -- including public school officials -- from searching or seizing journalists' "work product" or "documentary materials" in their possession even when the present a search warrant. The Privacy Protection Act of 1980 has some limited exceptions. A newsroom search may be allowed when the government is searching for: (1) certain types of national security information, (2) child pornography, (3) evidence that the journalists themselves have committed a crime, or (4) materials that must be immediately seized to prevent death or serious bodily injury. In addition, "documentary materials" may also be seized if there is reason to believe that they would be destroyed in the time it took to obtain them using a subpoena, or if a court has ordered disclosure, the news organization has refused and all other remedies have been exhausted.

Even though the Privacy Protection Act applies to both federal and state law enforcement officers, eight states -- California, Connecticut, Illinois, Nebraska, New Jersey, Oregon, Texas and Washington -- have their own statutes providing similar or even greater protection.

For more information and specific cases dealing with court-recognized privileges see:

- Student Media Guide to Protecting Sources and Information (includes a state-by-state guide)
- Reporter's Privilege:A complete compendium of information on the reporter's privilege — the right not to be compelled to testify or disclose sources and information in court — in each state and federal circuit. (A publication of the Reporters' Committee For Freedom Of The Press)

Prior review vs. prior restraint

Terms often used interchangeably, but distinctions are important
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By Mike Hiestand, Student Press Law Center

It's time to set the record straight. Prior review vs. prior restraint. The practices are related, but the terms are not interchangeable. Both can be loosely grouped together under the broad category of censorship. Both hinder the existence of a free and independent press. And one frequently leads to the other. But they are not the same.

Prior Review

Prior review means reading only.

More specifically for student media, the term refers to the practice of school officials - or anyone in a position of authority outside the editorial staff - demanding that they be allowed to read (or preview) copy prior to publication and/or distribution.

While there exists fairly strong case law holding that prior review is unconstitutional at the public college level, there is no similar legal authority that flatly prohibits the practice in high schools. Indeed at least one federal appellate court has stated clearly that, "Writers on a high school newspaper do not have an unfettered constitutional right to be free from pre-publication review," and the Supreme Court, while not quite as blunt, has said that school officials can exercise "prepublication control" over school-sponsored high school media, even absent written guidelines. (Non-school-sponsored, or underground, high school student media are in a much stronger legal position to contest prior review.) While some individual schools or school districts (for example, Dade County in Florida) have enacted their own policies that prohibit administrative prior review and while legal arguments might be made in specific situations, there is no federal or statewide authority that provides a clear shield.

A better course is probably to argue why prior review, even if permitted by law, is simply a bad practice.

For example, most journalism education groups in the country have condemned the practice of administrative prior review as both educationally and journalistically unsound. Among them, the Journalism Education Association, which has issued a Statement on Prior Review that can be downloaded at: http://www.jea.org/news/jobspolicy.html.

For another take, see Dianne Smith's list of "Advantages to Ending Prior Review and Censorship," which is part of "The Voice of Freedom" article by Alan Weintraub and Harry Proudfoot available at: http://www.splc.org/mediaadvisers.asp.

And last but not least, school officials that screen student work and essentially give or withhold from their student media an official "stamp of approval" may be creating financial liability for their school district that they might otherwise avoid. For more information, see the SPLC's Student Media Liability Guide, available at: http://www.splc.org/legalresearch.asp?id=30.

Keep in mind that no law anywhere requires administrative prior review.

Prior Restraint

Prior restraint, on the other hand, occurs when an administrator - often after he or she has read material (prior review) -- actually does something to inhibit, ban or restrain its publication.

Unlike prior review, prior restraint of high school student media is limited by the First Amendment and state laws in Arkansas, California, Colorado, Iowa, Kansas and Massachusetts (and state regulations in Pennsylvania and Washington) (all of which can be found at: http://www.splc.org/law_library.asp), and various local school and school district policies.

The legal protection from prior restraint that is available to high school student media can vary depending on where they are located and/or the nature of the media. For example, in California (whose law is similar to most of the other state laws and many student media policies found elsewhere), an adviser - and probably other school officials - can probably insist on reading a student newspaper before it goes to the printer. However, he or she can only stop it from being published if they find content that is either unlawful (libelous, legally obscene, invasive of privacy as defined by law, etc.) or seriously disruptive of the school. If school officials don't find material that falls into one of those categories, they must allow it to be published no matter how much they might personally object.

Practically, prior review often eventually leads to prior restraint, which is why student media should fight prior review tooth and nail. To wage that fight, however, it's essential to have a clear sense of both the enemy and your defenses.

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