

What's happened to
FREE SPEECH?



ACLU
MICHIGAN

*Congress shall make no law...
abridging the freedom of speech, or of
the press, or of the people peaceable to
assemble, and to petition the Government
for a redress of grievances.*

What's happened to **FREE SPEECH?**

Published September 2003
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Design by Alpha 21 Graphics Center

The ACLU of Michigan works daily in the courts,
legislature and communities to defend and preserve
the individual rights and freedoms of all.

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It is probably not an accident that the First Amendment in the Bill of Rights begins with freedom of speech. It is this amendment that most affects each of our lives on a daily basis. The hallmark of a democratic society is, after all, the right of its citizens to freely question, debate and express themselves.

The ACLU is often criticized for defending unpopular groups and, therefore, unpopular views. It is to the credit of those who founded our country that they recognized that even the most offensive and controversial speech needs protection. But the issues that arise are not always offensive to all and, without freedom of speech, who is to decide which words, thoughts, or opinions are permissible? For those who may be offended, it is important to remember that the right to free speech offers the opportunity for debate and discussion and inevitably a means to persuade. As has been proven over time, the best way to counter obnoxious or offensive speech is with more speech.

But historically, especially in times of crisis, First Amendment rights come under enormous pressure. During the Red Scare of the early 1920s, thousands were deported for their political views. During the McCarthy Era, the infamous blacklist ruined lives and careers. Today, in the attempt to silence the voices of dissenters, the words of Attorney General John Ashcroft have given rise to the notion that those who speak their mind in opposition to the leanings of the government are in some way unpatriotic. "To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies and pause to America's friends." Tomorrow, there will likely be others who will express similar sentiments.

As we look at the events that have come to the attention of the ACLU of Michigan, we are compelled to ask, "What's happened to free speech?" While there has been a rise in concern about political speech that has been exacerbated by the war on terrorism, it appears that the efforts to place limits on the freedom of speech are on-going and far-reaching.

In fighting for their First Amendment rights, the lives of the people you will read about have been changed. We hope that you will come to admire their courage to speak out as we do. But more importantly, we hope that you will appreciate that our First Amendment rights are in jeopardy if we are afraid to come forward and stand up for this most important freedom.

KAREN MILLER violated a Michigan law by wearing a mask during a protest demonstration.



The right to protest is a fundamental constitutional right. When people feel compelled to take to the streets to voice their opposition about pressing social issues, the limits of our democracy are tested. We know that we have passed that test only when we can hear – in the press, on the streets, in our city council chambers – the many different voices that make up this nation.

When twenty people peacefully protested against the environmental and labor policies of the Organization of the American States (OAS) in June 2000, the City of Detroit did what they could to squelch the protesters' free speech rights. Thirteen were charged under an antiquated Michigan anti-mask law for wearing Lone Ranger masks during the demonstrations. Their protest concerning the quality of the air we breathe was effectively strangled.

"The City did everything it could to intimidate peaceful protestors during the OAS demonstrations," said Karen Miller, then a graduate student at the University of Michigan and a plaintiff in the case, now a union organizer and adjunct professor at Hunter College in New York. "The police used the antiquated anti-mask law as an excuse to jail us and prevent us from speaking out."

"They were looking for a law to use against us and control what gets said and what kind of citizen you're allowed to be because there are certain things that can't be said and certain statements that can't be made. Our speech was about a lack of public transportation and air pollution. It was so interesting that the only arrests they made were of our group riding our bicycles."

The law that turned the First Amendment on its head by giving political speech less protection than entertainment, made it a 90-day misdemeanor for people to conceal part of their faces in public during an assembly, march or parade. Though it made exceptions for people wearing masks at minstrel shows or during Halloween and historical gatherings, it contained no exception for political speech. It made no difference whether the mask was worn as an expression of a political message alone or was worn with the intent to commit an illegal act, criminalizing either type of conduct.

In the end, the State agreed to revise the law to narrow the circumstances under which the law could be used so that anonymous protest is lawful. The new law makes it clear that, in the absence of imminent risk of a real crime, it is not criminal to speak out.

Tamara French, a Detroit attorney and protester at the demonstration said, "We wouldn't have gone forward with wearing the masks if we didn't have the support of the ACLU. Unfortunately, in this day and age, you have to have a lawyer in arms reach to exercise any of these rights. Having the ACLU behind us empowered us to stand up for the civil rights that people struggled so hard for in the 60's – we have to ensure that they'll be there in the future."

"There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest."

*Elie Wiesel
(1928-) Writer,
Nobel Peace Prize winner 1986*

“The very reason for the First Amendment is to make the people of this country free to think, speak, write and worship as they wish, not as the Government commands.”

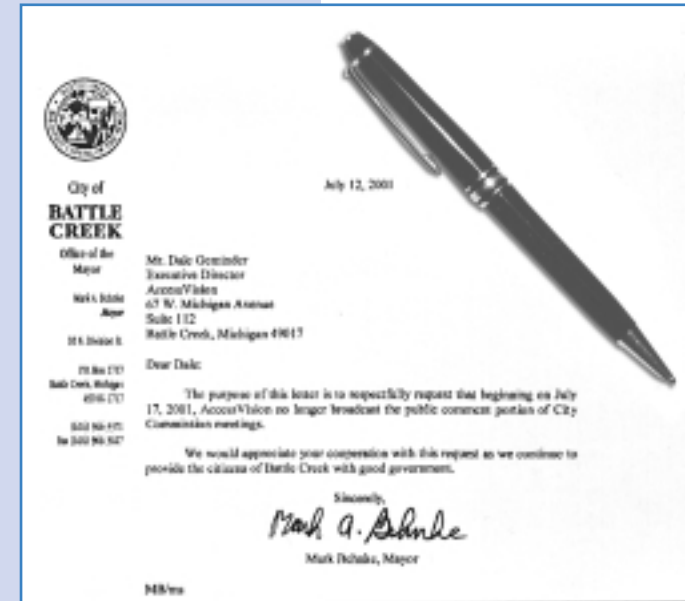
*Justice William O. Douglas
(1898-1980) U.S. Supreme Court Justice*

Even before 9/11, the Mayor of the City of Battle Creek was ostensibly fearful that citizens were making “terrorizing” remarks during the public comment portion of the City Commission meetings. Because of this fear, he made a unilateral decision to terminate the public broadcasts of that portion of the meetings. He said that the meetings had become a place where city officials were being verbally attacked. But no one was ever hurt, or even threatened. And while there was harm done, it was not to city officials, but to the critically important and longstanding tradition of broadcasting all of the Battle Creek City Commission meetings, public comments and all.

Unfortunately, many do not have an interest in attending commission meetings. But for those who do, cable access broadcasts of these meetings are literally the only realistic means by which citizens can participate in local government, and be included in the ongoing debate regarding the City’s direction.

Jim Rodbard, a member of the ACLU Southwest Michigan Branch, said, “There are certainly other means to deal with rude behavior rather than by eliminating the speech itself. They could simply have said ‘behave yourselves.’ The problem wasn’t that city officials were disturbed by the tone or the volume, it was that they really didn’t like what the people were saying and made it sound as if they were being threatened – which never really happened. In a letter to the Mayor, Jim wrote that “by cutting off the public comment, you have figuratively taken a sledgehammer to a gnat of a problem.”

The ACLU recognizes the importance of free speech, knowing that the accuracy or inaccuracy of public comment will rise or fall on its merit. Like the Commissioners, citizens exercising their rights to speak about public matters during the public comment portion of the meeting should be heard by all of the public, including the audience of cable access.



***The BATTLE CREEK
CITY COMMISSION tried to
terminate “public comment”
broadcasts.***

The ACLU engaged the Mayor and Commission, and provided a detailed rationale why the decision to cut off the broadcast of public comment was a bad idea, and why the use of common sense and much less restrictive means could protect everyone’s interests in a full and robust debate safely. Rodbard assured the Mayor that “if your constituents’ ideas are bad ideas, no one will listen to them . . .” In the end, the ACLU did not have to go to court or even threaten a lawsuit. This was a case where a written request led to a favorable decision, and where channel surfers could be turned on by public debate, rather than turned off by censorship.

“Freedom to speak... can be maintained only by promoting debate.”

*Walter Lippman
1955
American journalist
(1889-1974)*

When Bretton Barber left for school on February 17, 2003, he could never have imagined that he would begin an emotional rollercoaster ride that would change his life forever.

At the time, the impending war against Iraq weighed heavily on the mind of the 16-year old high school junior. He had followed all of the news reports, reading the *New York Times* daily. He wanted to talk about his feelings and what was happening in this country, so when he saw a t-shirt on an Internet site that depicted President George W. Bush with the words “International Terrorist,” he knew that wearing it to school would undoubtedly evoke the debate and discussion he was hoping for.

What he had not anticipated was that his school principal would suspend him from school. Though most students are barely aware of the ACLU, Brett had been interested in civil liberties for several years and was keenly aware of the organization. When asked by the principal if he knew about *Tinker v. Des Moines*, a case where school officials disciplined Iowa students for wearing black armbands to protest the Vietnam War, much to her surprise, Brett was able to quote from the decision and knew that he had the right to wear the shirt.

Brett had, in fact, worn the shirt that day for three hours, without any disruption, when school authorities demanded he turn the shirt inside out or go home. He chose to leave school for the day and then called the ACLU for help.

Cases like this have cropped up in other schools around the country. In Lake Braddock, Virginia another student wore the same t-shirt with similar results. While the principal there said that they adhere to the *Tinker* decision, he determined that the t-shirt caused a “substantial disruption” after receiving complaints from two teachers.

Attempts to resolve Brett’s situation with the school district unfortunately failed and Brett’s case is now in court. The Virginia student has yet to decide how far to press the issue. Neither student has worn the t-shirt again.

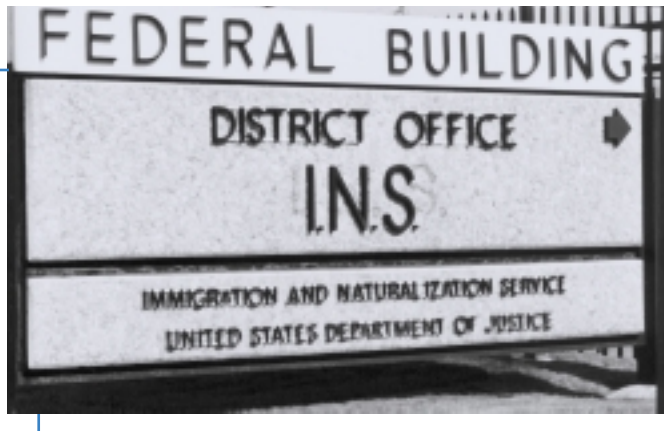
Even so, Brett has been able to look at the experience in a positive light. “Since the whole incident happened, I have interacted with people that I never would have otherwise. I have made new friends, gotten closer to old ones, and have had amazing experiences as a result of being told to take off a t-shirt.”

Brett has learned first hand about the Bill of Rights. “It is a shame that in the 21st century we are still having to feud over things that were established more than 200 years ago. I am so thankful for an organization like the ACLU that continues to fight to preserve virtues so important to every American.”

But the case begs the question, was there really a disruption or did those in the school simply disagree with the message? There is no safer place for debate and discussion than in a classroom where a teacher is able to monitor the activity. Bringing ideas, thoughts, and feelings to school should not be considered disruptive. To the contrary, this is an integral part of education.



BRETTON BARBER
was suspended for wearing a protest t-shirt to school.



The IMMIGRATION COURTS attempted to close immigration hearings.

The First Amendment, through a free press, protects the people's right to know that their government acts fairly, lawfully, and accurately in deportation proceedings. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation. —DETROIT NEWS v ASHCROFT

These words, written in a decision handed down by the Sixth Circuit U.S. Court of Appeals in a case about whether or not the public has the right of access to deportation hearings, eloquently describe the importance of the right to a free press.

The case at hand involved Rabih Haddad, a Muslim community leader from Ann Arbor who co-founded an Islamic charity, suspected of supporting terrorist activities. At Mr. Haddad's first deportation hearing, hundreds of people, including family, friends, the press and a member of Congress, were turned away from the Immigration Court after a memo, by order of Attorney General John Ashcroft, was sent from the Chief Immigration Judge to close the hearings.

The lawsuit, *Detroit News, Inc., et al v. Ashcroft et al*, was filed by the national and state offices of the ACLU on behalf of Representative John Conyers Jr., the *Detroit News*, and the *MetroTimes*.

Jeremy Voas, editor of the *MetroTimes*, said recently, "It was important to be involved because our job is to inform the community, and in this case we weren't getting access and neither was anybody else. We always advocate for

transparency in government, but taking the extra step of participating in this lawsuit was out of the norm for us. There was no question but that it was the right thing to do. It is important to remain independent and an observer, but there are times when you do feel compelled to step forward and become a participant in what becomes a news story. It was actually the only time in my 24 years as a news editor that I've signed on as a litigant in a law suit, though I've been asked many times. This was a case where we wanted to be involved and we were glad we were. We won and, best of all, the First Amendment prevailed."

While the Court ruled that certain portions of an immigration hearing can be closed when national security is at risk, a conclusion that the ACLU did not challenge, it struck down the government's blanket policy of conducting secret deportation hearings in post-9/11 cases on the basis that it violated the First Amendment.

Not only did the government attempt to keep the public from the hearings, they fought to keep the transcripts sealed, though they ended up admitting that the release of the transcripts "will not cause irreparable harm" to national security.

No criminal charges were ever brought against Mr. Haddad and he and his family were eventually deported because of a visa violation. Guilty or innocent, the Court's message was clear when Judge Damon Keith wrote, "Democracies die behind closed doors."

"Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people."

*Justice Hugo L. Black
American jurist (1870-1938)*

On the afternoon of April 14, 2002, a march and rally was held in Dearborn, Michigan to protest events in the Middle East, including the reported Israeli government's movements into the Jenin refugee camp which had occurred a few days earlier.

Many residents of Dearborn, home to the largest Middle Eastern population outside of the Middle East, had heard about the rally through advertisements on the Arab language satellite channel, Al Manar. According to the ads, similar protests were being held in England, France, Germany and other countries, as well.

By 4 p.m. that day, nearly 200 people had assembled at a major street corner in Dearborn. No one seemed to really be in charge, so at the request of people who knew him, Imad Chammout was asked to lead the march as they headed to City Hall for the rally.

Imad participated in marches before and had always obtained a permit, but in this case, he was unaware that a permit hadn't been obtained by the unidentified organizers. Nor did he suspect that he would be identified from his previous activist experience and charged with protesting without a permit, a charge that came with a \$500 fine. A week after the rally, Imad was notified by mail that he was being charged and that, in addition, he was being assessed \$3,700 to reimburse the city for the costs related to providing "protection and traffic safety."

To Imad Chammout, a U.S. citizen, his First Amendment right to express his political viewpoints is as American as apple pie and, in the past, a protection under the Bill of Rights of which he was assured. He

"The privilege of a citizen of the United States to use the streets and parks for communication... must not, in the guise of regulation, be abridged or denied."

*U.S. Supreme Court
Hague v. CIO (1939)*

***IMAD CHAMMOUT was charged
for failing to obtain a permit
30 days before a rally.***



understands that for hundreds or thousands of people to convey the same message has a much greater impact than standing alone and that coming together enables even a person of modest means to capitalize on the strength of such support or opposition through the force of sheer numbers.

"It was important to me to be able to speak out about what was happening," says Imad. "Now I want to make sure that others have the right to do that without the fear of being arrested or jailed."

The Dearborn ordinance that makes it a crime to protest unless a permit is obtained at least 30 days before the event threatens the First Amendment rights of its residents who wish to speak or assemble in a public forum. The impact of such governmental limitations can be extraordinary in silencing opposing political points of view.

Representing Imad and the American-Arab Anti-Discrimination Committee (ADC), a national civil rights organization with offices in Dearborn that promotes civic participation, the ACLU filed a lawsuit in federal court in January 2003. Since that time, the City of Dearborn has re-interpreted the ordinance to confine charges only to those who march in the street.

NOTE: A rally and march in April 2003, on the day that a statue of Saddam Hussein was brought down in the heart of Baghdad, brought Iraqi's living in the Detroit area to Dearborn in celebration. Those at the rally poured into the City's streets without even one arrest. More recently, over a thousand people marched in the streets to mourn the death of the Ayatollah who was killed in a mosque bombing in Iraq. It would have been impossible in both of these instances to apply for a permit before having such a spontaneous show of grief.

Bob Gerlach has been a firefighter for 14 years. When he chose this profession he was well aware that his job could be dangerous. But he was confident that his supervisors and Township officials would never do anything that would deliberately put him in harm's way or ignore his concerns about safety issues.

So it came as a surprise to Bob, a Frenchtown Township firefighter, when the public safety issues he and other Union members raised fell on deaf ears at a Frenchtown Charter Township Board meeting.

Bob expressed concern that low staffing levels and command procedures contributed to four fatalities at a recent fire. This followed a 2001 report by the Michigan Department of Consumer & Industry Services General Industry Safety Division which found the Frenchtown Fire Department to be in violation of MIOSHA rules applicable to fire departments, including three violations, characterized as "serious," for inadequate training, an inadequate incident command system and inadequate organizational structure.

Instead of acting on the concerns of the firefighters, the Board passed an ordinance making it a crime for firefighters to speak to the media about any "fire department matters." To do so, the firefighters would face discipline and/or criminal prosecution.

History has demonstrated that when speech is chilled, citizens are deprived of necessary information to ensure that public officials are acting responsibly, especially on matters of public concern. On behalf of Bob and his fellow firefighters, the ACLU filed a lawsuit in federal court in July 2002.

***BOB GERLACH,
Frenchtown Firefighter, was
prevented from speaking
out on department issues.***



***“If liberty means anything at all, it means
the right to tell people what they do not
want to hear.”***

*George Orwell
(1903-1950) British author*

“Firefighters don’t lose their speech rights when they become government employees,” said David R. Radtke, the ACLU cooperating attorney who argued the case before the court. “Men and women who give so much to their community deserve far better from their government.”

On January 29, 2003, Judge Marianne O. Battani ruled that the Township’s ordinance was unconstitutional and that the gag order had to be removed. In her ruling, Judge Battani wrote, “Plaintiffs are correct that speech dealing generally with ‘the policies, procedures, practices and/or operation of the fire department,’ or ‘the business or policy affairs of the fire department,’ covers topics of public concern. Cases from the various circuit courts confirm that the performance of public works and agencies, including the fire department specifically, is of public importance.”

“We’re now going to meetings and we’re able to voice our concerns – something we couldn’t do before our township supervisor took that away from us in 2001. We’re allowed to get the word out to the public now. Before the lawsuit, one of our firefighters actually had to withdraw his name from running for a county commission seat because he wasn’t allowed to talk about the fire department. He had every right in the world to run for that position and the right to be a leader for the community he lives in and this was taken away from him. Now that the lawsuit’s been settled, if he chooses to run again, he’ll have that opportunity and I know he’ll hear the concerns of the people he lives and works with.”

Bob wants to continue in his profession and is happy that he took on this battle. He says, “I’ll do my job, but don’t infringe on my constitutional rights.”

***“The function of free speech...
may best serve its high purpose when
it invites a condition of unrest...
or even stirs people to anger.”***

*Justice William O. Douglas
(1898-1980)
U.S. Supreme Court Justice*



***The ZEELAND PUBLIC SCHOOLS
wanted to ban Harry Potter from
their bookshelves.***

It certainly caused an uproar when the fifth Harry Potter book was released in June 2003. Bookstores held parties, the publisher likely cracked open a bottle of champagne, and many parents got out their checkbooks.

So who would dream that the most popular literary character in recent history is thought of as part of the occult or even as Satan himself? Evidently, some people did and believed it strongly enough to pressure school administrators in Zeeland, Michigan to ban the Harry Potter book series from the Zeeland elementary schools.

A June 2000 memo from the District Superintendent ignored a school policy that calls for parents, teachers and community members to jointly consider complaints about any book that is challenged as inappropriate reading material. Contrary to the policy, he mandated a total ban of any Harry Potter book for children in fourth grade and below and that children in grades 5-8 must obtain parental permission to take the book out of the school library. It could also not be used in classrooms for read-a-loud purposes or as part of the regular curriculum. And, making matters even worse, no future books in the series could be purchased by the schools.

Several parents and teachers questioned the decision of the superintendent to restrict the reading of the Harry Potter series. They understood how essential it is that children be allowed to read, question, and criticize – all necessary and fundamental aspects of maintaining a democracy.

A petition effort to get the Harry Potter books back on the school library shelves was started by a group who called themselves “Muggles for Harry Potter.” The petition read in part, “If books are restricted on the basis of a few anonymous complaints, it is only natural that next time the complainers will have every reason to believe that all they need to do is whisper in the right ear and the books, as if by magic, will disappear.”

One parent, in a letter to the superintendent, wrote, “I have read all three of the books and find that they represent a classic example of the fight between good and evil in which good prevails.” Thankfully, that’s precisely what happened and the Harry Potter books are now being read in the Zeeland Public Schools.



ERIC BASSEY was one of the ten plaintiffs in the Internet case.

The fight over free speech on the Internet in Michigan started in 1999 and it's not over yet. After the legislature made it a crime to disseminate or display "sexually explicit matter" to minors, the ACLU filed a complaint in federal court and the legal fight began in earnest. The law would have criminalized a wide array of valuable speech in cyberspace ranging from advice about safe sex and AIDS prevention to art and literature.

The very nature of cyberspace made the law impossible to comply with because virtually every communication on the Internet entails a "substantial risk" that a minor may be the recipient without the sender even knowing it.

Communications that include obscenity, child pornography, the luring of minors into inappropriate activity, or harassment are already illegal under current Michigan law.

Like the federal law that was struck down by the U.S. Supreme Court (*ACLU v. Reno*), the Michigan law would reduce the level of discourse on the Internet to that which is appropriate to a seven year old.

The ACLU represented ten Internet firms who expressed concern that the law would prohibit them – putting them at risk of jail or fines – from communicating valuable information on a wide range of topics, including art, literature, sex education, safe sex, gay and lesbian issues, and free speech.

Eric Bassey, former Chair of Cyberspace Communications, fully understood the far-reaching implications for the ten clients. These companies provide an open forum for communication and discussion and would be placed in the untenable position of acting as a censor or shutting down.

"The *Cyberspace v. Engler* case was one of those essential fine-line cases which clearly distinguishes between constitutionally protected and unprotected activities,

and benefits citizens who would suffer injustice at the hands of legislators and law enforcers who are clearly playing to the ignorant among their voting constituencies.

"I was, and still am, proud to tell people about how the Michigan ACLU represented cyberspace.org and other worthy organizations against those who would sell out our national legacy for their short-term popularity in the polls."

At the time of the lawsuit, a licensed marriage and family therapist, with a Ph.D. in human sexuality, living in California, ran a free website called SexEd.org that featured a question-and-answer forum. The therapist feared that Michigan's law would prevent him from educating the public about the value of healthy sexual expression and practices.

Similarly, Web Del Sol existing only in cyberspace, would be subject to Michigan's law. Founded as a literature and arts forum for Internet users, Web Del Sol is run on a volunteer basis and does not operate out of any one facility.

Another group, the AIDS Partnership of Michigan's website contains sexually explicit material which some communities may consider to be "harmful to minors."

What many do not realize is that the law could not accomplish its aim of shielding minors from inappropriate content, because at least 40 percent of internet content originates outside the United States and could never be enforced.

The Internet serves as a uniquely democratic mode of communication where online users can engage in uninhibited, open and robust freedom of expression.

Judge Arthur Tarnow agreed when he struck down the law as unconstitutional. In his decision, Judge Tarnow wrote, "The Internet is an international free flow of ideas and information. Enforcement of this Act would stifle one of the cornerstones of American Society – what Thomas Jefferson called "the marketplace of ideas."

And though this case was won in Michigan, language from the law has re-surfaced in yet another Michigan bill and we may again be in court sometime soon.

"To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker."

*Frederick Douglass
In a plea for free speech in Boston, 1860
(1817-1895) American abolitionist,
author, orator*

“We have a natural right to make use of our pens as of our tongue, at our peril, risk and hazard.”

*Voltaire
(1694-1778)*

When Josh Woodcock and Dan Schaefer decided to start an underground newspaper at their high school in South Lyon, Michigan they never thought they would raise such a storm.

“I didn’t see anything that was wrong with it...we’re speaking for the kids,” Josh said. “They can’t suspend us for using our freedom of speech.” But the two were in fact suspended immediately when they tried to distribute their newspaper, *The First Amendment*.

Josh, dissatisfied with the opportunities students had for expression, came up with the idea. He wanted to have an independent voice for students to publish “poems or anything else,” including criticisms of school administration.

According to school administrators, it was the way the paper was distributed that made it unacceptable, not its content. However, at a student sit-in to support the paper, the principal reportedly stated that a newspaper about a topic as harmless as baking or weather would not have been confiscated.

Although the students never actually distributed the paper, they were charged with “interfering with the operation of a school building.” They were also suspended for attempting to distribute materials before obtaining prior approval from the principal – even though this rule was not published in the student handbook and the students had no notice of such a rule. Finally, the students were charged with violating a catchall provision of the Student Code of Conduct stating that corrective measures would be taken “should any student act in such a matter that is detrimental to himself.”

Ten months after filing the case, the school district settled the lawsuit by rescinding the student suspensions and expunging them from the student’s records. In addition, the school’s regulations will be revised so that students may distribute approved materials during lunch from a pre-determined commons area. The term “offensive” used in the school policy’s “Content-Based Restrictions” will also be revised to “grossly offensive to a reasonable person.”

Before this incident, Dan and Josh hadn’t thought all that much about their civil liberties and didn’t know much about the ACLU. In fact, they had almost taken their rights for granted. But having their own civil liberties violated heightened their awareness of the need to continually fight for them. Dan says, “In the future, I’ll be more supportive of...civil liberties. Before, I might not have cared. But now, I know how they apply to me in real life.”

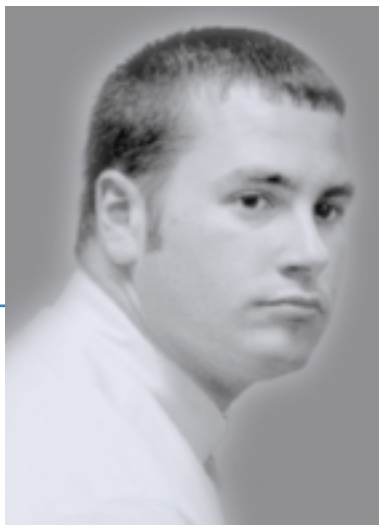


***JOSH WOODCOCK &
DAN SCHAEFER published
an underground newspaper.***

Dan was impressed “that [the ACLU] support[s] causes that may seem small, recognizing that every case does matter.”

Despite the trouble it got them into, the two hope that their story will inspire others. According to Josh, “If nothing else, we at least made some people think... you don’t always have to be afraid to do something new.”

“We’re citizens...why wouldn’t [the freedom of speech] apply to us? Just ‘cause we’re not 18?”



TIMOTHY BOOMER was convicted for swearing in front of women and children

Paddling down a river on a warm summer day, Timothy Boomer never suspected that something he was about to do would lead to a change in Michigan law. Through the two years that it took for that to happen, most people did not remember his name, but Tim Boomer was famous, sometimes known as the “cussing canoeist.”

Tim was convicted in August 1998 for yelling a stream of profanities in earshot of a woman and her two children after he fell out of a canoe on the Rifle River. The 1897 law that he allegedly violated prohibited using indecent, immoral, vulgar or insulting language in the presence or hearing of women or children.

Whether we like it or not, unpleasant language is heard every day – on the streets, on radio and television, in sports stadiums and many other places. It is simply one of the costs of living in a free society. Though some may have found his language offensive, there are laws to deal with conduct issues such as disturbing the peace, disorderly conduct and noise and, should someone act in an illegal manner, those laws can certainly be enforced.

But thankfully, most speech in this country is protected and Tim’s was no exception. Michigan Court of Appeals Justice William B.

“The First Amendment was designed to protect offensive speech, because nobody ever tries to ban the other kind.”

*Mike Godwin,
Staff Counsel,
Electronic Freedom Foundation*

Murphy wrote, “Allowing a prosecution where one utters ‘insulting’ language could possibly subject a vast percentage of the populace to a misdemeanor conviction.”

Still not convinced that the 1897 law was out of date, the Arenac County prosecutor appealed the case to the Michigan Supreme Court who refused to hear it. The case is finally over.

Tim says that the case impacted his life enormously. “I wasn’t that familiar with free speech rights and I’m very aware of them now. It made me more aware of people’s speech and acts in public – also more aware of the ACLU and what a great role they have in defending the freedom of speech and the Constitution.”

“I had fifteen minutes of fame and now I’m known as the ‘cussing canoeist.’ It was stressful on me and my family – my parents had to deal with having a kid who was portrayed so negatively during the trial. My character was defined so negatively and I’m not that kind of person.”

Tim is now an electrical engineer and says that though the case gets brought up, talked about and discussed, he’s definitely moved on.

“The greatest threat to freedom is the absence of criticism.”

*Wole Soyinka (1934-)
Nigerian playwright, poet,
novelist, and political activist*

Katherine Dean graduated from Utica High School in June 2003. Katy, as she’s known to her family and friends, learned a valuable lesson about the First Amendment and freedom of the press while working on the school newspaper, *The Arrow*, for two years. It was a lesson that isn’t generally taught in school and one that she isn’t likely to soon forget.

Initially, not too many people knew what had happened, but, according to Katy, even those people had mixed feelings. As Katy relates, “It was disappointing, but to be considered a journalist, you should, above all else, have a willingness to defend your First Amendment rights.”

In her junior year, Katy wrote an article for the paper about a lawsuit filed against Utica Community Schools by a Shelby Township resident. The resident lived next to the school district’s bus garage, and complained that diesel fumes from idling busses had caused him to become ill.

After getting the subject approved by a faculty advisor and the principal, Katy carefully researched her news story. Along with another student who worked as a photographer, she spent several hours interviewing the resident. Though she tried to talk to a number of school district and township officials, they did not want to comment on the matter. Katy went so far as to use the Internet to gather information on scientific studies done on the health effects of diesel fumes.

“I wrote a good, thoroughly researched article and tried to present both sides of the story,” said Katy. “When school officials wouldn’t talk about the case, I didn’t think it meant that they wouldn’t let me talk about it.”

Even though the story was approved by the faculty advisor, one day before the paper was to go to print, the principal ordered that the story be stricken from the publication and *The Arrow* went to press without it.



***KATY DEAN
wrote an article
that was
censored in
the student
newspaper.***

In 1988, the Supreme Court ruled in *Hazelwood School District v. Kuhlmeier* that school officials may censor articles in school-sponsored newspapers only if they have a “legitimate pedagogical reason.”

But it appears that the only reason Katy’s article was censored was that it would embarrass the school district. It wasn’t routine for the principal to review a student’s writing for the newspaper and there was no legitimate educational reason for the censorship.

Though Katy’s article never appeared in *The Arrow*, the *Macomb Daily*, a local paper, published Katy’s work as part of its coverage of the censorship.

Win or lose, Katy Dean learned the value of the First Amendment first hand.

As Katy says, “To be an 18 year old and have something this serious happen in your life, gives a great meaning to your life – to know that I’m fighting for something so noble as the First Amendment. It’s rewarding to know that my case could potentially open doors for others.”

In an impressive display of recognition, Katy recently won the national Courage in Student Journalism award, sponsored by the Freedom Forum Foundation, Newseum and Student Press Law Center.

“If there is any principle of the constitution that more imperatively calls for attachment than any other it is the principle of free thought – not free thought for those who agree with us but freedom for the thought that we hate.”

Justice Oliver Wendell Holmes



***MIDDLE EAST conflict
spills onto the
U of M campus.***

The conflict in the Middle East spilled onto the University of Michigan campus when a pro-Palestinian group organized a conference in October 2002. Its organizers oppose Israel's policies toward Palestinians and want U-M and other U.S. universities to divest any interests they have in companies doing business with Israel.

Two students attending the University tried to stop the conference from taking place by filing a complaint against the University of Michigan, claiming that the organizers sought to promote terrorism and anti-Semitism.

Educational institutions hold a unique place in our society where freedom of thought and opinion are cherished as almost nowhere else and, while the situation in the Middle East certainly raises many emotions, a university may not prohibit certain speech even if it disagrees with the ideas or messages of the groups that request its use. Universities and colleges provide a forum where strong opinions can, and should be, voiced.

Recognizing the importance of the First Amendment, the University of Michigan refused to stop the conference, saying it would have been “unlawful as well as a violation of the university's policies on freedom of speech and expression” to do so.

The conference proceeded, as did a rally protesting it. In fact, there were almost as many protesters as attendees. The ACLU provided legal observers to ensure that no one's civil rights were violated.

Kary Moss, ACLU of Michigan Executive Director, speaking about the dispute said, “This case strikes at the heart of freedom of speech. We may not agree with what all people have to say, but we need to defend their right to say it.”



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