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.Issues of Editorial Control, Prior Restraint, and Prior Review Facing Student Newspapers on Public University Campuses in Ohio: Administrative, Faculty, and Student Perspectives (with David M. Lucas)

Terry L. Hapney Jr.
Marshall University, hapney@marshall.edu

David Lucas

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ISSUES OF EDITORIAL CONTROL, PRIOR RESTRAINT, AND PRIOR REVIEW FACING STUDENT NEWSPAPERS ON PUBLIC UNIVERSITY CAMPUSES IN OHIO: ADMINISTRATIVE, FACULTY AND STUDENT PERSPECTIVES

By Terry L. Hapney, Jr., Marshall University, and David M. Lucas, Ohio University

Introduction

Recent headlines illustrate that the struggle continues between student journalists and administrators on public university campuses nationwide. The back and forth centers on student journalists' objective of reporting on the activities occurring on the campuses and administrators' hesitance to provide the necessary information to ensure the students can do their jobs, as charged by the student newspapers for which they work. Examples of headlines include: "UCLA adopts policy limiting access to faculty work" (Santus, 2014, para. 1); "Purdue Exponent photographer detained by police while covering campus shooting" (McDermott, 2014, para. 1); "Appalachian editor calls for open chancellor search in front-page editorial" (McDermott, 2014, para. 1); "Oregon State adviser resigns over public records dispute with university" (Santus, 2014, para. 1). Journalism administrators, in particular, are working in environments in which they may find themselves at odds with university administrators from other disciplines or those more senior to them. This is an issue they should consider as they deal with these other entities and develop strategies for evolving their own academic programs.

This article examines issues of editorial control, prior restraint, and prior review on public university campuses in an important state in America's heartland — Ohio. It provides a review of necessary literature; the method of the study; specific instances of issues of the struggle over editorial control, prior restraint, and prior review on public university campuses in the state; and concludes with final thoughts on what continues as a real problem for student newspapers throughout the United States.

Review of the Literature

Litigation and literature reveal an ongoing conflict between university and student newspaper personnel. It is important for administrators in higher education who "do not understand the role of the student press or the basic tenets of press freedom" to gain an understanding about to whom student newspapers report and the policies governing them on public campuses (Kanigel, 2006, p. 8).

Administrators having a better understanding of the role of student media and freedom of the press would aid in setting policies related to student newspapers, deciding funding for the publications, creating better working relationships between administrators and student journalists, and, in most cases, allow both administrators and student journalists to avoid litigation against one another. Much of the problem with higher education student media, as reflected in the litigation and literature, is the result of higher education administrators' interpretation of *Hazelwood*.

Consistent with the First Amendment, public high school teachers and administrators may exercise "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" (*Hazelwood v. Kublmeier*, 1988, p. 260).

In most cases, the courts have permitted limitations on university student newspapers only when the content is copyrighted, libelous, obscene, or when administrators prove that a significant and imminent physical disruption

on the university campus will occur as result of the content of the newspaper (Applegate, 2005).

Applegate added that there are intrinsic differences between high school and university student journalists, with the most basic being the apparent age difference. Further, high school students do not usually reach the age of 18 until their final year in high school; university students are nearly all 18 or older, lending, hopefully, to the difference in maturity level (Applegate, 2005).

The more than 60 federal and state court cases that dealt with student newspapers at public colleges and universities were nearly unanimous that First Amendment rights apply in higher education just as they do elsewhere in journalism (*Channing Club v. Board of Regents of Texas Tech University*, 1970; *Dickey v. Alabama State Board of Education*, 1967; *Hays Co. Guardian v. Supple*, 1992; *Lueth v. St. Clair County Community College*, 1990; *Miami Student v. Miami University*, 1997; *Milliner v. Turner*, 1983; *New Times v. Arizona Board of Regents*, 1974; SPLC, 2009; Reed, 1985). With this in mind, recent years have seen the circuits split on whether *Hazelwood* applies in higher education. The result is permitting the attitudes of who is sitting on the bench to define both student journalists' First Amendment rights and university administrators' ability to control college/university-sponsored speech at public institutions (Hapney & Lucas, in press; Hapney & Russo, 2013; *Hosty v. Carter*, 2006; Ng, 2008; *United States v. Miami University*, 2002). Applegate (2005) contended that the Supreme Court's inaction in addressing whether university student newspapers are empowered with the same freedoms of the press as mainstream newspapers or designated restrictions imposed on them by administrators is causing dispute in the lower courts and uncertainty as to what standard should apply to university student newspapers. As these lower-court decisions are not binding in all circuits, uncertainty remains until the Supreme Court rules on this issue.

As reflected in the litigation, students and newspaper advisers do not always experience freedom of press because administrators may not be respecting that right. One-half of the desired public university newspaper scenario is one in which students are practicing responsible journalism that comprises fair, accurate, and balanced reporting in exercising their freedom of press rights. The other half consists of higher education administrators respecting student journalists' rights without intimidating, bullying, and stifling student journalists and their advisers, as has been the situation in many of the court cases on this subject. Administrators, faculty members, and students need

to understand their roles in relation to student newspapers on public university campuses.

Method

The research documented in this paper is one part of a much larger study on student newspaper governance on public university campuses in Ohio (Hapney, 2012). This article deals specifically with issues of editorial control, prior restraint, and prior review facing student newspapers on public university campuses in Ohio. It outlines the perspectives of administrators, faculty members, and students.

The original study that garnered the bulk of the data presented in this article utilized a mixed-methods research design that was predominantly qualitative (Ridenour & Newman, 2008). The researcher used a survey questionnaire to gauge the attitudes of administrators, faculty, and students regarding student newspapers on Ohio's public university campuses. Then, the researcher visited any university campus that had experienced litigation, as indicated in the responses in the survey, between student journalists and administrators. He conducted qualitative research via interviews and focus groups on those campuses to discover the specifics of what issues student journalists, faculty members, and administrators faced at those institutions relating to student newspapers.

The study included 11 universities: University of Akron, Bowling Green State University, University of Cincinnati, Ohio University, The Ohio State University, University of Toledo, Kent State University, Miami University, Cleveland State University, Wright State University, and Youngstown State University. Three additional state universities were eliminated from the study for various reasons affecting rigor. Of the 11 participating universities, four had instances of litigation. Interviews and focus groups provided the data for the study and were all conducted in the informants' natural, professional/academic environments.

The principal investigator traveled to the four university locations, interviewing Student Journalists (SJ), Student Affairs Administrators (SAA), Journalism Faculty Members (JFM), Student Newspaper Advisory Board Members (SNABM), and administrative Legal Team Members (LTM). This article provides examples of specific problems facing the student newspapers in the areas of editorial control, prior restraint, and prior review on these campuses.

Issues of Editorial Control, Prior Restraint, and Prior Review Facing Student Newspapers on Select Public University Campuses in Ohio: Administrative, Faculty, and Student Perspectives

Editorial Control/Prior Restraint/Prior Review—Hillcrest University (HU)

Administrator.

The SAA pointed out that the biggest issues have been related to wrong facts in the student newspaper at HU versus the editorial content itself or even the nature of the story. There has been no litigation between the student newspaper and the university during the time the SAA has been at the institution. "But I think there may have been before that," she acknowledged. The SAA has never witnessed a time when any attempt was made to censor, engage in prior restraint, or engage in prior review of the student newspaper. She did say that a former HU communications administrator would sit down at the beginning of each academic year and talk to the student journalists about the importance of accuracy, the importance of researching stories, and about knowing facts. "It was more an educational approach than a control approach," the SAA stated.

Student.

Problems between administrators at the university and the student newspaper do occur, according to the SJ. University administrators tell the student staff members when administrators feel they have made a mistake. The administrators do not try to change anything in the paper's stories except to say the information was wrong. The SJ pointed out that he's never had to deal with prior review or prior restraint at HU. The paper, after the fact, gets complaints sometimes. The student editors have the final say if an issue arises. They seldom even call their adviser. When they do call the adviser it is for advice on legal issues. The SJ sees the newspaper as operating in an environment in which it is free to publish and be a newspaper. Specifically, it is a watchdog and an instructional activity, according to the SJ.

Faculty.

The JFM said she sees her job, in part, as educating the university community about how the student newspaper works. "The university here pretty much gets it," she indicated. "I mean, there've been a few cases where I've had to (deal with administrators). But, overall, they pretty much get the facts that these are kids learning and we need to let them learn." Most HU administrators will call the editor, not the adviser, when there are problems,

the JFM maintained. She said there are a few people at HU who, if they do not get satisfaction, will call her. But, most of the time the JFM is not that involved in the day-to-day operations of the newspaper. "They're very good about letting us know when we make mistakes . . . but, generally (there is) no strong-arming," she remarked. The JFM stated that so far there have been some pretty strong advocates for freedom of the press at HU.

The JFM has seen instances of problems arising between the HU administration and the student newspaper staff. Most of these instances, according to the JFM, have related to "stupid" things the students have put in the paper. The JFM declared that the students produced "this horrible issue" that contained racist, sexist, and other inappropriate language: ". . . [T]here (were lots of) problems with that . . . But most of it was dealt with pretty well within . . . the (student affairs dean) got involved in that. And we had a few sessions to talk about why some of these things weren't appropriate."

There have been no cases of censorship, prior restraint, or prior review during the JFM's time at HU. "(The administration) just (tries) to teach people," the JFM reported. "Like a parent. 'You really shouldn't be doing that!'"

Editorial Control/Prior Restraint/Prior Review—University of Tomorrow (UOT)

Administrator.

The SAA recognized that the student newspaper is independent of UOT. The paper had financial ties to the university prior to her arrival at UOT. It also became independent prior to her time at the university. "It's my understanding that the whole basis for the paper leaving and becoming independent had to do with a disagreement with administration," she commented.

Student.

The SJ commented that the student newspaper is an independently run operation. "Our job is still to serve the university (community)," she added. "So, we do have to work with . . . university administration and officials to receive information for stories that (are) relevant." As far as content decisions are concerned, it is always the section editor's decision, but then after they make the decision to include a particular story, the editor-in-chief has the final say in what runs in the student newspaper.

The SJ indicated that there had been times when controversial topics student journalists were covering caused the university administration to push back at them. There

were no reports of direct censorship attempts, but there were other attempts to hamstring the student press, such as by making access to information difficult. Student journalists were able to thwart these attempts by relying on the open-records law. The staff has been disappointed by instances when administration refused comment on issues.

Faculty.

The JFM maintained that the paper's independent status came about as the result of a former university president engaging in censorship. This presidency lasted for just a year-and-a-half. "There was a dissatisfaction among the faculty and unrest over the paper because of the censorship," he noted. The change to independent status took place in the late 1990s.

The SNABM pointed out that a number of issues led to the newspaper's independent status. There was a dispute between the university president at that time and the student newspaper. Rumors and reports in the local metro daily newspaper stated that there were allegations of attempted censorship by the president. He had threatened to withhold the paper's funding and withdraw student journalists' stipends if they did not change their reporting method on a particular story. "That was the straw that broke the camel's back, so to speak," the SNABM remarked. The president was gone after 17 months.

The SNABM commented that he has always taken a "very cautious" approach to ensuring the students know he is there to provide guidance. "We're not here to tell them what to do, what to write or anything like that," he explained. He indicated "facts are facts" and if an administrator has messed up, he/she needs to "take (his/her) lumps." "If (he/she) did not, 99 percent of the time it is going to explain itself."

Editorial Control/Prior Restraint/Prior Review— Taylor White University (TWU)

Administrator.

The SAA described the relationship between the university's administration and the independent student newspaper as "very good." The SAA said that the role of the student press on campus is understood and appreciated. This was not the case upon the SAA's arrival.

The SAA recounted:

Right as I came here ... The student life committee of the faculty senate, some member of the faculty wanted to have greater oversight (laughter) . . . With the help of the adviser we kinda resisted,

advocated for the students and I think the problem . . . wasn't with any of the content. It had to do with how the students were selected to be in charge of the paper. And, I think the faculty member's perception was that the students picked their friends and not people who . . . were best for the job. And so, we kinda tweaked the selection process and that concern went away.

He said he has not heard anymore about this issue in three years.

The LTM noted the administration at TWU has had to weigh in on items that have been published in the two student newspapers in the past. She offered that one such instance happened many years ago when she first arrived at the university. There was a lawsuit against the lab newspaper attached to the curriculum. It involved a faculty member who was the subject of an article; the faculty member claimed that the paper had published misstatements and engaged in libel. During that process the relationship between the university and the student newspaper was clarified with the understanding that newspaper content was independent of university control. To the best of her recollection the suit was dropped.

The LTM indicated she does not believe there have been cases of prior restraint and prior review in relation to the student newspapers at TWU since her arrival in 1990. With regard to the resolution of a major problem between the administration and the student journalists who work for either student newspaper, the LTM is unsure who would have the final say in such a scenario. The LTM stated in the case of the lab newspaper, she thinks there would be an effort to work it out, and in that sense, the administration would, ultimately, come to bear on the decision, again, because it is tied to the curriculum. "I don't think the same would be true with the (independent student newspaper at TWU)," she said. It is not attached to the university's curriculum.

Student.

The SJ explained that there have been no problems between the TWU administration and the lab paper. "No one has ever in my time, even Dr. (JFM), mentioned, I don't think anyone has ever stopped and said, 'No, you can't do it.'" The SJ offered that he has had prior review offered to him "politely," which he declined.

Faculty.

The JFM remarked that there have been no problems between the TWU administration and the lab newspaper.

However, he reported there was once a problem between the faculty and this paper. He stated that faculty members have not liked what the newspaper has written or they feel the criticism of certain topics is unfair. "Sometimes it is fair criticism, but the faculty members have not gone to the administration and said, 'Well, we need to bring these people in.' So that has not happened. They have been upset by it," the JFM declared. There have been no instances of censorship, prior restraint, or prior review in relation to the lab newspaper at TWU, according to the JFM.

If a problem arises between the university administration and the student journalists who write for the lab newspaper, the adviser, the director (of the journalism division), and the dean of the college would resolve the issue. This is the case due to the fact that it is a lab newspaper, a class that is taught by the adviser. "Let's say (the student journalists) wanted to do a story and I didn't allow them to do it then they can always approach the (director or dean)," he recognized. Again, such a structure would likely place the university in the realm of liability should a case go to court, given the way the courts are trending. There have been no instances of litigation between the student journalists working for the lab newspaper and the TWU administration, according to the JFM.

The JFM said the lab newspaper is different from most independent college newspapers because it is a class and grading is involved in it. Despite all the effort he tries to give students to ensure they have as much freedom to run the newspaper, they still have to work within boundaries of a lab newspaper environment. The JFM commented that students do have decision-making power in terms of content and decide in what section of the paper content goes.

Editorial Control/Prior Restraint/Prior Review— Buckeye State University (BSU)

Administrator.

The SAA describes the relationship between the administration and student newspaper at BSU as "fairly good," stating there have been no high-profile issues of problems between the administration and student journalists. She attributes the smooth, collegial relationship to a director in her administrative office sitting on the student media committee trying ". . . to have an open communication between that office, between this office, and the student media manager for sure, and anyone else we need to have open communication with," she remarked. The SAA stated that there have been no issues with re-

gard to censorship, prior restraint, or prior review as related to the student newspaper. The only issues related to these factors have been in the form of public records requests for information the administration has been hesitant to provide. "Generally, our resistance has been that we felt it identified educational records or other information of students," she declared.

In terms of the final say with regard to a resolution if the editors of the student newspaper and the administration were at odds about something, the SAA reported it would depend on the issue. "If it got into the realm of legal interpretation then our legal counsel would be involved in giving advice on that, to both . . . sides of the coin . . . if it was a funding issue, then a vice president might be involved in being the final say on how the funding could or could not be used," she acknowledged. The SAA indicated that she was unaware of any cases of litigation between the paper and the administration.

Student.

The SJ's who were interviewed by the researcher reported that there have been problems between the university administration and student media at BSU. There is strong evidence of integration among all student media at BSU, including the student newspaper, radio station, television station, and online media. The student television journalists stated they have problems regularly simply because they are a television station. They stated that the university president refuses to go on camera. "He'll talk, but he won't go on camera," an SJ said. "As a television station, we need sound; we need pictures." The students commented that when they are doing stories about the campus recreation center or about something happening in dorms that administrators do not permit them to film in those areas. "We're not allowed to talk to the RA's. And that's all their policies. It's tough to talk to authoritative figures for sure."

The student newspaper journalists have a difficult time speaking with BSU's president, too. "Whenever we interview him we have to send our questions ahead of time, so that he, like, reads them over and that gives him an opportunity to give very diplomatic answers," a BSU SJ offered. The student feels the newspaper is not getting a real answer when this occurs. The student newspaper journalists pointed out that this is a new occurrence on the BSU campus. "It's typically been that we set up these interviews and it happens," one SJ remarked.

The only time during a recent academic year that the television journalists recorded the BSU president without

him knowing ahead of time was at a football game. "It was the homecoming game against (another university). He was there and was trying to look like the 'I hang out with students' type of president . . . Our general manager was filming . . . the game and he asked him a couple of questions right away." The broadcast journalism student reported that the president's answers were not anything good, but that was the only time they had access to him.

The SJ's stated that administrators at BSU are trying to keep things from them. "Something's said in a public meeting and they try to make sure that we can't publish it." One SJ was told that he could not report what was said in a public meeting after it had already been said. The students took the information to press anyway.

The students summed up the relationship between the administration and the student media with descriptors such as "Shaky," "Tense," "Rough," "Very rough," and "Hard." Administrators, according to the SJ's, call the student newspaper a derogatory name among themselves and in public meetings. They have heard it and the president told them this in a meeting once. The students agreed that administrators have never really said the students cannot publish or broadcast material in the student media, but they have tried to convince them not to do so. Administrators will say, "it's off the record" and "you shouldn't write that."

The students remarked that they have also had cases in which once they have written something the individuals they interviewed asked them to send them a copy of what was written so they could proofread it first. The students tell their sources, "No, we don't do that."

Leaders in a student organization told the SJ's they were not permitted to attend a meeting. "We did anyways," one SJ offered. "It was a public meeting that was publicized." The SJ's explained that they were covering the meeting and they did get the story. "But they acted as though we were trying to attack them," an SJ remarked. "We were just reporting on what was happening." Another SJ stated this mentality is widespread on campus. "It is frightening, because, you know, I mean we're paying for everything around here. It's a public university," the SJ said.

Faculty.

The SNABM describes the relationship between the student paper and the university administration as "fairly typical." "I think . . . the president . . . himself, has been known to make somewhat snarky comments about the

(student newspaper) . . . in public events," he recognized. The SNABM said it is usually with faculty and staff members. "But, it, nonetheless, rubs people the wrong way," he added. The SNABM commented that this type of dialogue is inappropriate on the university president's part. "He should know better. I think it's a reflection of a failure on his part that that happens." This explained, the SNABM indicated that there are open lines of communication and the administration, in general, has been very supportive of the independence of the publication.

The SNABM reported that the hardest issues center on issues of taste, when university administrators say some material is inappropriate. The SNABM said the administration also shows annoyance when students have demanded records that the university really does not want to give them. In these circumstances, the university, according to the SNABM, is "stonewalling." "It's not so much active . . . interference or threats, but it's just like well, you know, good luck, you're not gonna get this easily from us," he noted.

It is a constant battle, according to the JFM. "They use embargos here incredibly loosely. They'll tell a student, well, you can't report on that yet. We're not ready to talk about it." The student media leaders, according to the JFM, proceed with reporting it if they know about it. "They tried to withdraw an announcement in a public committee meeting for the board of trustees a couple of weeks ago. They announced it and then said, well, this is embargoed so media can't talk about it. That's not how it works, you guys. That's basically what we told them. I don't think they get it."

The SNABM offered that there have been no explicit instances of censorship, prior restraint, or prior review since his arrival on the BSU campus. In terms of complaints, very rarely does the administration go directly to the student journalists, according to the SNABM. Instead, they complain to the dean of the college or the director of the journalism program. They expect them to do something. "Their response, historically, has very consistently been 'that's not our role; when it comes to content, the students make the decisions,'" the SNABM declared.

The JFM offered that in the student media bylaws they are making it clearer that BSU cannot influence content in publications. If an issue between the administration and the student media could not be resolved she would invite the administrators involved to sit down with key

student leaders, the advisers, and possibly the director. The JFM's goal is for the student journalists to solve the problems with whomever they may have conflict. The JFM indicated that she thinks it is very important that student journalists have editorial independence so they can make their own decisions. She says it helps having an advising structure because students do not always know what to do.

Conclusion

The research efforts reveal that a natural tension exists between administrators and students from the universities studied. This tension pits the administration against the student journalists in the sense that administrators feel they must reign in the student newspaper staff to prevent legal entanglements, public relations problems, or academic disruptions. The administrators, for the most part, avoid censorship but instead engage in pre-emptive messages, serious warnings, or various attempts at review. Sometimes the administrators expressed distrust, lack of respect, or some contempt for the activities of the paper but no serious attempt at censorship was detected.

Student newspaper staff members, on the other hand, envision their task as serving as a watchdog over university activities and actions. Most express little concern over the control attempts of administrators. Students seem to take their jobs as journalists very seriously and want to

publish the facts, whatever they may be and wherever they may lead.

The data reveal that students and newspaper advisers do not always experience freedom of press because administrators wish to control the message. The students seek to practice responsible journalism that comprises fair, accurate, and balanced reporting in exercising their freedom of press rights. The administrators seek to respect the student journalists' rights, but sometimes end up intimidating, bullying, and stifling student journalists and their advisers. Administrators, faculty members, and students need to understand their roles in relation to student newspapers on public university campuses and the tension that naturally exists among the three.

More structured, collaborative communication between the university administration and student journalists would tend to ease the tension and allow better message flow on a regular basis. An administrators' message or guest editorial to explain issues on campus might also help. In the end, the research reveals that a better understanding of roles, mission, and responsibilities for both university administrators and students would provide a more successful and fulfilling experience for everyone involved.

Dr. Terry L. Hapney, Jr., is an associate professor in the W. Page Pitt School of Journalism and Mass Communications at Marshall University. Dr. David M. Lucas is an associate professor at Ohio University.

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