

# First Amendment in our Schools

**The First Amendment protects freedom of speech and freedom of the press along with other freedoms. Yet, there has always been a conflict between freedom of speech and freedom of the press and our educational system.**

For example, does freedom of speech allow a student to say whatever he or she wants to say in class and disrupt that class? Does freedom of the press allow a student to pass out handbills in the classroom denigrating the teacher and the teacher's message? Does the school newspaper have the right to criticize the administration of that school?

ing her and supporting the teacher. After that, Evans removed the page.

Because of this transgression, Ms. Evans was suspended for three days although she had been an honor student. Her behavior was classified as disruptive. She was also removed from her advance placement classes and put

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On one hand freedom of speech would dictate the right of the student or the student newspaper to challenge those in power and to point out the failings of the teacher or the administration. On the other hand orderly conduct and cohesiveness are essential to the public education system. As to what goes on, on campus, the courts have routinely sided the mandate of the educational system to provide education over the rights of the dissenting students to dissent on campus and in school related media. There are always some exceptions.

However, a few years ago a high school student in the State of Florida set up her facebook page with criticisms of one of her teachers. Because of those criticisms, she was suspended from school. The offending language on her facebook page was simply “Ms. Sarah Phelps is the worst teacher I ever met”. She further provided on that facebook page “those select students who have had the displeasure of having Ms. Sarah Phelps, or simply knowing her and her insane antics: here is the place to express your feelings of hatred.”

Apparently Ms. Phelps was not as unpopular as the student Katherine Evans thought. Three people responded to her facebook page criticiz-

in regular classes. Being put in regular classes instead of advanced placement classes would have affected her GRADE POINT AVERAGE along with making her credentials less attractive to colleges. This could have had a profound effect on her future.

Last month, U.S. Magistrate Barry Garber ruled that Ms. Evans' First Amendment constitutional rights had been violated by the school and has allowed her lawsuit against the school to move forward. The ruling was based upon the fact that Ms. Evans' conduct was outside of the classroom, did not disrupt the activities of the classroom and was not dangerous conduct. Ms. Evans is not seeking substantial damages but only to have her name cleared, her suspension removed from her file and to have her rights vindicated.

This case points out that just because one is a student that student does not lose their constitutional rights. It further points out that the arm of the school or the jurisdiction of the school does not always follow that student home. In this case, this was a student using a social networking system to express her views. It was not done on school time and only stated the student's opinion. Even students have the right

to have an opinion about those that teach them.

If Ms. Evans' conduct was not constitutionally protected, would then a student talking to another student about their beliefs in the inadequacies or the unfairness of the teacher subject that student to school sanctions? Wouldn't it create a society where all students had to say that their teachers were the best or say nothing at all? In our society we value opinions and the right to voice them as much as any value that we have. Schools that are in the business of opening minds should not be in the business of taking away that same openness if they do not like what is said or heard.

On a larger scale, this opinion protects conversations by students off campus. It separates when a student is a student with limitations to when a student is entitled to all their constitutional rights.

On another note, by the time you have read this, Daniel Aaronson will have given his presentation in San Antonio, Texas at the First Amendment Lawyers' Association meeting. Along with Allen Rubin from Michigan, Mr. Aaronson will discuss sex trafficking; harboring, human trafficking and other forced labor issues as they relate to adult entertainment.

In addition, to the topic above, there will be presentations on zoning and licensing of adult establishments, obscenity prosecutions; 2257 requirements; and a whole host of other First Amendment and adult entertainment related topics. In our next article, we will bring you up to date on the current trends in these areas and inform you of the cutting edge law in these realms.

## **Benjamin & Aaronson**



**Benjamin & Aaronson represent many adult businesses both locally and nationally. They can be reached at (954) 779-1700 for a consultation. If you are an attorney or business owner and would like to contribute information to this column please call.**