

Can kids learn basic rights denied them?

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By James H. Smith

IF school principals can punish students for what they write at home, it's time to ask if kids will grow up understanding basic American rights, like free speech.

Lewis Mills High School junior class secretary Avery Doninger sued in 2007 after she was prevented from running for election as senior class secretary because she wrote, on her home computer, that the Burlington school administrators were douche bags.

State Sen. Gary LeBeau, D-3, is not sure the punishment fit the "crime." A retired schoolteacher from East Hartford, he has introduced a bill to protect the First Amendment rights of students. If passed, it would "prohibit school authorities from punishing students for the content of electronic correspondence transmitted outside of school facilities ... provided such content is not a threat to students, personnel or the school."

In striking down Doninger's plea to preserve her right to free speech, U.S. District Court Judge Mark Kravitz ruled, based on new evidence, that she can have a trial on one narrow aspect of her case — that students weren't allowed to wear "Team Avery" T-shirts on the high school's election day.

Kravitz ruled there is evidence that "would permit a reasonable jury to conclude that Ms. Doninger's speech was chilled" and scheduled a trial for June 9.

Doninger was in charge of organizing "Jamfest," a battle of the bands. She was angry because she thought school officials canceled the event. She criticized "the douche bags in central office" on her livejournal.com blog and urged others to contact Paula Schwartz, the superintendent then, to "piss her off more." Upon reading the post, school Principal Karissa Niehoff barred Doninger from running for office.

Doninger, now graduated and an Americorps volunteer, said she intends to appeal to the U.S. Supreme Court. It has never ruled that students can be punished for off-campus speech. In fact, it has said the opposite.

But today, "Off-campus speech can become on-campus speech with the click of a mouse," wrote Kravitz in his Jan. 15 ruling. He described lower courts in "complete disarray" on the issue and called for guidance in the Internet age.

A question we all need to keep in mind: Who is responsible for what teenagers write at home, school principals or parents?

Doninger's mother has acknowledged her daughter needed some discipline for the language she used, but said banning her from running for school secretary was too harsh and violated her rights.

But the 2nd Circuit Court of Appeals in New York called the student's words "plainly offensive" and "foreseeably created a risk of substantial disruption within the school environment." It affirmed Kravitz's initial ruling.

Why would anyone think that school would be substantially disrupted because of an intemperate Internet posting? Administrators didn't even discover the offending blog entry until weeks after "Jamfest" was rescheduled.

The U.S. Supreme Court, in 1969, ruled that high school students had the right to protest the Vietnam War by wearing black armbands in school. Nineteen years later, the high court permitted a school principal to censor articles in the school newspaper on divorce and teen pregnancy. But, it also held that "similar speech outside the school" could not be censored.

We should worry about any erosion of our rights. How do you learn that we are "endowed by (our) Creator with certain unalienable rights" if someone keeps taking them away?

Former Chief Justice William H. Rehnquist wrote in 1988 that "the sort of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office." He quoted Justice Felix Frankfurter that "one of the prerogatives of American citizenship is the right to criticize public men and measures (with even) vehement, caustic and sometimes unpleasantly sharp attacks."

The 2nd Circuit judges concluded that "Avery, by all reports, is a respected and accomplished student. ... We are sympathetic to her disappointment at being disqualified for running for senior class secretary and acknowledge her belief that in this case 'the punishment didn't fit the crime.'"

The irony here is that the kids knew better than the adults. They wrote in Doninger's name and she won the election. But still, school administrators wouldn't allow her to serve.

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