

# Are Adventist Students Entitled to Freedom of Speech?

By Mitchell A. Tyner

You are the faculty advisor for the campus newspaper. The editor wants to run a story on how three students dealt with unplanned pregnancy and a second story on the emotional effects of parental divorce on a student. You veto publication and the student editor files suit against you, claiming a violation of his constitutionally protected right of free speech.

Who wins? In the actual case (*Kuhlmeier v. Hazelwood School District*, 795 Fed 1368), the students did. A federal appellate court held that the paper was a public forum in which students were encouraged to express their opinions. In such a forum, the courts said, a student's freedom of expression may be limited only when necessary to avoid a material and substantial interference with either schoolwork or the rights of others—invasion of privacy, in this instance. Since evidence of neither was shown, the school administration could not suppress an article simply because it was personally objectionable to them.

Had the incident occurred at XYZ Adventist Academy, might the result have been different? Yes. Decisions such as *Kuhlmeier* make denominationally employed teachers unduly nervous. They miss a key point: the students alleged violations of a *constitutionally* protected right. Such rights are guarantees to the individual against action by the state, not action by another individual or private group.

To illustrate: the due-process clause of the Fourteenth Amendment to the United States Constitution provides that no state instrumentality shall deprive any person of life, liberty, or property without the procedural safeguards of due process. Public schools are state instrumentalities, and therefore are bound by the due-process clause. Public schools may not discipline or discharge students without following due-process procedures. Such procedures typically include an evidentiary hearing, an impartial arbiter, the right to confront opposing witnesses and the opportunity to present evidence. *But private schools are not state instrumentalities and are not subject to due-process restrictions.*

Many other constitutional limitations are imposed on state instrumentalities. Virtually the entire Bill of Rights has been judicially incorporated into the due-process

concept. As a result public schools may not impair such rights as speech, press, assembly, association, and freedom from unreasonable search and seizure without following proper procedure.

Could a private institution become a state instrumentality? Yes. In rare cases private schools have been judicially characterized as arms of the state. In one such instance the state had a right to appoint a substantial portion of the governing board, the school received a large share of its operating budget from public funds, and in general was indistinguishable from a state school.

While it is theoretically possible, it is extremely unlikely that a pervasively religious campus, such as an Adventist college or university, would be so characterized. And such an action toward a religious secondary or elementary school under present circumstances appears virtually impossible.

But if most religious schools are beyond the reach of the kinds of constitutional provisions described above, that is not to say that such schools—and their teachers, as individuals—are immune from all legal actions. Indeed, classroom teachers are being sued in record numbers.

Such suits usually fall into one of three categories. First, and most numerous, are tort actions. The tort (a violation of a private duty owed to the plaintiff) most commonly alleged is negligence. If a student is injured on the playground, on a field trip, or using school equipment, parents may charge negligence in supervision.

Second, suits are brought based on a contract. In the absence of a written document, a contract may be implied, such as the implied contract to provide quality instruction.

Third, suits may allege the violation of a specific statute. Such statutes range from state laws regulating private schools through antidiscrimination laws to local zoning and health regulations.

Each of these three categories of cases will be treated in detail in future columns. □

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