

Think First

JEA  
press rights  
commission

Free expression  
through  
responsible  
journalism

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## Advertising, Free Speech, and a sound Editorial Policy in scholastic publications

### Overview and Rationale

Student journalists need to understand the implications of the *Yeo v Town of Lexington* decision and how it applies to their own practices in their publications.

### Goals for Understanding

#### + Essential Questions

o When a scholastic publication practices as a public forum and follows the guidelines of its sound editorial policies, the law often finds in favor of the students.

#### + Critical Engagement Questions

o What is a public forum?

o What was the reason given by both publications for refusing Yeo's ad?

o What are some important precedents regarding scholastic press rights?

### Overviews and Timeline

Activity 1 (One half of a 90-minute class (45 minutes))

+ The students will listen to the podcast: *Issues in Scholastic Media: Advertising, Free Speech, and a sound Editorial Policy in scholastic publications.*

+ Take notes.

+ In pairs, the students will brainstorm where the case could have gone the "other way." Specifically, what would have changed the outcome?

Activity 2 (One half of a 90-minute class (45 minutes))

+ The students will access the links below:

+ Court refuses to hear advertiser [http://www.splc.org/report\\_detail.asp?id=304&edition=10](http://www.splc.org/report_detail.asp?id=304&edition=10)

+ SPLC article:

<http://www.splc.org/newsflash.asp?id=47&year=1997>

+ *Yeo v Lexington*

<http://lw.bna.com/lw/19980106/961623.htm>

+ Findlaw report <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=1st&navby=c&no=961623v3&exact=1>

# Think First

Materials were produced for this Web site by the Journalism Education Association (<http://jeapressrights.org>) and the Center for Scholastic Journalism (<http://jmc.kent.edu/csj>).

## Free expression through responsible journalism

• The safety, security and sanctuary by Douglas Yeo <http://www.yeodoug.com/articles/text/livefree.html>

• School overreaches in banning yearbook photo <http://www.yeodoug.com/articles/text/livefree.html>

• In pairs, the students will list all the places where reference is made to the rights of the students.

Activity 3/Assesment (One half of a 90-minute class (45 minutes))

• In groups of 5, the students will examine their staff's own editorial policy. They will identify holes in their policy and write up suggestions to complete the policy. At the end of the allotted time, each group will present out with one student acting as scribe for the large group.

• As a staff, the students will determine what changes need to be made to their own editorial policy. Finish the lesson with a revision and a vote to implement the changes.

For Reference:

Full legal citation for Yeo:

Yeo v. Town of Lexington, 131 F.3d 241, 254 (1997)

Full transcript of the Yeo Podcast:

Yo Podcast:

Hi. My name is Carrie Faust. I am the yearbook and newspaper adviser at Smoky Hill High School in Aurora, Colorado. I am also the president of the Colorado High School Press Association and a member of JEA's Scholastic Press Rights Commission.

Welcome to my Podcast, Issues in Scholastic Media.

Episodes in this series will be updated whenever the learning of Smoky Hill High school journalism students dictates or when current national scholastic press issues creates a new opportunity for discussion.

Today's podcast topic is titled: Advertising, Free Speech, and a sound Editorial Policy in scholastic publications. This episode contains information from the text of the Yo v Town of Lexington case found on findlaw.com.

Let's explore the 1997 decision in Yo v Town of Lexington and its implications for the First Amendment rights of scholastic journalists.

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# Free expression through responsible journalism

In 1993, the student staff of the Lexington High School Yearbook received an ad from Douglas Yo, a parent, town resident, and founder of the Lexington Parents Information Network or LEXNET, a group which he created to “distribute information about public education to parents via newsletters and meetings.”

Ads from parents and community members were not unusual for the Yearbook staff who had made a practice of soliciting congratulatory ads from community businesses, non-profits, and parents to the current graduating class.

The tone, however, of Yo’s ad was unusual for the publication. The ad read, “We know you can do it! ABSTINENCE: The healthy choice.”

Background information for this ad is that Lexington High had begun making condoms available to students without parent permission. In reaction to the decision, Yo formed a group opposed to condom distribution and other “safe sex” policies called “Lexington Citizens for Responsible School Policy.”

The ad was received by the Yearbook’s adviser, Karen Mecham. She followed usual procedures for the ad, stripping the \$200 check from the contract and placing the content into the “ads drawer” for the student staff to work with as the deadlines dictated.

The Yearbook’s co-editor-in-chief, Natalie Berger, questioned the content of the ad during the layout process feeling that it was “out-of-context” with the rest of the ad section, but submitted the ad and delayed discussion of it until it was returned on proof from the yearbook printing company.

During the proof process, the student editors of the Yearbook decided that the ad was a political advocacy statement and, again, out-of-context with the rest of the ads. The Yearbook’s unwritten policy on ads was to include “[b]aby pictures, group photos taken in the setting of your choice, [or] pictures of meaningful people and/or places.” Additionally, the policy was to not accept ads of a political nature or advocacy advertising, including those from candidates for student government. The staff, however, did decide that Yo could rewrite the ad to fit the “congratulatory nature” of the rest of the section and resubmit it.

Mecham, the adviser, was asked to contact Yo with the staff’s decision. Yo’s response was that he would not rewrite the ad and would sue the Yearbook unless his ad was published.

After the students again discussed Yo’s ad, they decided to stand with their original decision and sent a refund check for the \$200 ad fee. Yo refused to cash the check and wrote back, “Should you not reverse your decision, we will avail ourselves of every possible avenue open to us in order to protect our rights as advertisers.”

Yo then contacted the staff of the Musket, Lexington High’s student newspaper and once again submitted the “abstinence” ad.

The ad was rejected by the staff of the Musket stating, "If we were to accept a politically aligned advertisement, we at the Musket would feel obligated to accept other political statements that might come our way. We do not wish to put ourselves in such position."

The next week, Principal David Wilson informed the faculty adviser, Samuel Kafrissen, that Yo's lawyer had contacted the Lexington Town Counsel, Norman Cohen, threatening to sue the town and school authorities if his ad was not run. Norman suggested that it would be worth it to run the ad to avoid a lawsuit.

Even though some of the students on the Musket staff were pro-abstinence, the staff decided that they were not in favor of being bullied into publishing an ad. As a compromise, they suggested that Yo write a letter to the editor expressing his views.

Yo declined the offer stating that his First Amendment rights were being violated by the staffs' refusal to print the ad and further, that he had suspected this would be the case when he submitted the ad. His letter concluded by stating, "You don't have to agree with it. You don't even have to like it. You just have to print it. Touché."

After receipt of this letter, the students contacted the Student Press Law Center, the SPLC, and the American Civil Liberties Union, the ACLU. Both organizations informed the students that the law was, indeed, on their side and that the students alone had editorial control over the content of their publications.

Very soon thereafter, the Musket was approached by a group of students who had caught wind of the ad Yo wished to submit. They wanted to run a counter-ad formatted exactly like the Yo ad, but with wording that read "Safe Sex: The Healthy Choice." The Musket staff rejected this ad for the same reasons it had rejected Yo's ad.

Over the next two months, the student staffs met repeatedly regarding the ad, both alone as an editorial staff and with the Superintendent. Every time, both staffs stood firm on their decision to reject the ad and the Superintendent told them he would support their decision.

Yo brought suit against the Lexington High School students and school officials.

Five years after the ad was originally submitted, the court found in favor of the students.

There are a couple of important precedents that this decision set in scholastic journalism.

The first is that when a school publication is, either in policy or in practice, a public forum for free expression, the government or its agent, ie. a school official, cannot suppress the right to freedom of editorial decision making by the students. What this means is that when a publication has been run as a public forum, the students alone are responsible for the editorial content of the publication. Whether that means to include all advertising or exclude all advertising or to set standards which include some and exclude some, the decision is entirely up to the student editorial board. In the case of both the Yearbook and the Musket, the students on the publication staff had historically made all of those decisions. The court found that they

could continue to do so as they had in the decision on Yo's ad.

The second important outcome of this case is that it affirmed that when school officials stayed out of the content decision-making process, they could not be held liable for the content of the publication. If publication of material – or for that matter, non-publication of material – results in litigation, the students alone can be held responsible for that litigation as long as the administration stays out of it.

Student journalists should realize the incredible responsibility they shoulder in sound editorial practices and administrators everywhere should rejoice in the freedom from litigation this decision allows them.

Well, that about sums up the significance of the Yo decision.

However, in light of this, it is important for publication staffs to have sound and thorough editorial policies. These policies should be constructed by the student staff and revised yearly with the introduction of new student leadership.

After you've listened to this podcast, I encourage you to take a few class periods to review your editorial policies. Do they cover advertising? Do they cover content? Do they outline the process for this decision-making? Who does your editorial board consist of? Are your policies sound? Have you addressed deaths? Advertising? Letters-to-the-editor? What is your policy lacking?

A resource for your staff is available on the Journalism Education Association's Scholastic Press Rights Commission's website at [www.jea.org/resources/pressrights](http://www.jea.org/resources/pressrights)

Thanks so much for taking the time to listen and learn today. Remember, a free student press is the right of all scholastic journalists. And, it is the responsibility of those same scholastic journalists to use those rights fairly and objectively to ensure the future of scholastic journalism. Good luck with all your journalistic pursuits.