

No real resolution as school discipline, free speech collide



JACK GREINER

Strictly Legal

Jack Greiner is a lawyer with the Graydon Head law firm in Cincinnati and represents Enquirer Media in First Amendment and media issues.

So who wins when two very important interests collide? In a recent case from a federal court in Mississippi, the First Amendment came out on top of school discipline.

The broad scenario has happened frequently over the last several years. A student takes to social media to criticize and/or ridicule a teacher or school administrator. The school disciplines the student. The student and/or his overprotective parents go to court, and a judge ultimately weighs in.

The case of Taylor Bell fits the pattern. Bell heard two male coaches at his school in Itawamba County, Mississippi, were allegedly engaged in inappropriate touching and making sexually charged comments to female students. Bell wrote a rap song and posted it on Facebook. The song's lyrics included a line, "Going

to get a pistol down your mouth."

One of the coaches heard about the song and reported it to the school. The school suspended Bell, contending that the song's lyrics violated school policy against harassment and intimidation. Bell and his mother filed a federal lawsuit, arguing the school violated Bell's First Amendment right of free speech.

The federal trial court ruled in favor of the school. Bell and his mother appealed to the Fifth Circuit Court of Appeals. They had better luck there.

The First Amendment protects people from "state action." A public school is considered a "state actor" and subject to the First Amendment. Had Bell attended a private school, he would have had no case.

But while public school students have First Amendment rights, those rights are a little more limited than the average citizen's. That is simply because a school has to maintain discipline. And occasionally that may mean limiting student speech to preserve order and discipline.

The United States Supreme Court adopted a test more than 40 years ago that recognizes this balance.

In a case arising from an Iowa public school where students wore



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black arm bands to protest the Vietnam War, the Supreme Court ruled that the First Amendment does not protect speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."

In Bell's case, the federal appellate court found no evidence to establish a substantial disruption or any reasonable prospect of one.

That aspect of the case is interesting. In many school cases from recent years, courts have tended to rule in favor of the students when the speech ridiculed or made fun of the teacher or administrator. But usually, when there has been even a hint of violence, the courts have tended to side with the school. The fact this speech discussed gun violence and was still deemed protected

separates it from the pack.

There is one other issue the court did not decide – does the Supreme Court test apply at all to speech off campus?

While several federal appellate courts have applied the test to off-campus speech, there is some sentiment for the notion that when students speak off campus, they should be held to the standard typically applied to non-students. In Bell's case, since the court found the speech was non-disruptive, it didn't need to consider the on-campus/off-campus question.

Given the proliferation of social media platforms (not to mention the proliferation of helicopter parents), look for this issue to rise again.