

When Creative Writing Becomes Criminal Content

Case: *Nick Emmett v. Kent School District* (2000)

Act: creating an unofficial school home page with fake obituaries for students

Charge: harassment, intimidation, and disruption of school's educational process

The Unofficial Kentlake
High Home Page

Vote for who will be
the next to die

Nick Emmett was an 18-year-old senior at Kentlake High School in Washington. He was the co-captain of the varsity basketball team and an honor student with a 3.95 GPA. He had no disciplinary record at school. As a junior, he had taken a creative writing class in which students were asked to write their own obituaries. With this in mind, Nick created “The Unofficial Kentlake High Home Page” and his father helped with the graphics. He posted mock obituaries of his friends and asked viewers to vote on who would die next—that is, who would be the subject of the next fake death notice. He included a statement that the site was for entertainment only and was not sponsored or endorsed by the school. Nick even praised some of the teachers and administrators who in turn commended Nick on his Web site. Some students asked to have their obituaries written and added to the site.

Nick never used the words “hit list” but a television news story about the site mistakenly characterized it as such. That night, Nick removed the site from the Internet. The next day the school placed him on emergency expulsion for harassment, intimidation, and disrupting the school’s educational process. This was modified to a five-day suspension that included basketball practice and a play-off game.

No evidence suggested that Nick intended to intimidate or threaten anyone or that any student felt threatened by his Web site. Nick filed a complaint with the court asking for immediate relief from the school’s action. He explained that he “went to court to fight for my rights because I don’t think administrators should be able to make unfair punishments. I care about school and want to go to class.”

HOW WOULD YOU DECIDE THIS CASE?

Do you think posting fake death notices of your friends constitutes a “hit list”? When a television reporter called it a “hit list,” did it in fact become one? Why or why not? If no one felt threatened by the obituaries, should Nick have been punished for his writings? Did he cross the line of acceptable expression and create a potentially disruptive situation at school? If so, how?





WHAT THE COURT DECIDED

After considering *Tinker*, *Fraser*, and *Hazelwood* (see pages 11–14), the court found that Nick’s speech was entirely beyond the school’s supervision or control. The court recognized that “Web sites can be an early indication of a student’s violent inclinations and can spread those beliefs quickly to like-minded or susceptible people.” But in this case, Nick’s writings were not intended to threaten anyone, did not pose any actual threats or manifest any violent tendencies. Nick’s speech was not directed to a school assembly as in *Fraser*, nor was it in a school-sponsored format such as the *Hazelwood* newspaper. Consequently, the court ordered the school to lift the suspension, permitting Nick to return to school. The school also agreed to pay Nick nominal damages of \$1.00 and his legal fees of \$6,000. Nick commented that he “felt good that the judge understood my rights as a student.”

HOW DOES THIS DECISION AFFECT YOU?

As you can see, even something written tongue-in-cheek can backfire. Although Nick won his case and had his school record cleared, he and his family had to put their lives on hold to deal with the school and legal issues. What began as a humorous project went seriously astray. In weighing student speech, on or off campus, both content and intent are vital in determining whether the speech is protected or not.

The bottom line: Whether you’re writing a poem, essay, or screenplay, or creating a poster, diagram, or any other form of art, consider your audience and possible consequences. A good rule of thumb may be to expect the unexpected.

WHAT IS NICK DOING NOW?

Nick ended up serving one day of the suspension before the court intervened. He graduated with his class and went on to college.

RELATED CASES

Murakowski v. University of Delaware (Delaware, 2008)

Maciej Murakowski was a 19-year-old sophomore at the University of Delaware. In 2005, he created a Web site on the university's servers that included violent and sexually graphic material. He wrote fake movie reviews and satirical essays ranging from "How to Skin a Cat" to "Maciej's Official Guide to Sex." His postings were online for months before anyone complained.

When the school discovered the site, Maciej was suspended for one semester. He was prohibited from living in the residence hall until evaluated by a psychiatrist. He sued the university for violating his free speech and won in September 2008. The court called his essays "immature, crude, and highly offensive" but not a serious expression of intent to inflict harm. The judge denied his claim for actual damages but awarded him \$10.00 in nominal damages.

Anthony Latour v. Riverside Beaver School District (Pennsylvania, 2005)

Anthony was a 14-year-old rapper who attended Riverside Beaver Middle School. For several years he had been writing and recording his own music at home. Some of his titles included "Murder, He Wrote," and "Massacre." His songs made reference to staff and students at his school even though he did not have a history of violence. There was no evidence that anyone felt threatened by Anthony's "battle raps" or that he communicated messages directly to anyone named in the songs. Still, the police considered his songs "terroristic threats" because they described acts of violence, and Anthony was arrested and taken from school in handcuffs. He was expelled for the following year.

Anthony sued the school district, and the court determined that no true threats were made against anyone and that the school had not been disrupted. He was allowed to return to school. A settlement was reached with the school district for \$90,000, and with the police department for \$60,000, for an alleged false arrest.

In the Matter of Singh (Wisconsin, 2003)

It wasn't the rap song that Sashwat Singh used when he campaigned for class treasurer that got him suspended. Instead, it was the honor student's 14-track CD that came to the attention of Brookfield High School's principal. One of the songs warned the principal that if he didn't leave the school, Singh would, "beat your ass down." The CD also contained a few sexually explicit slurs about Singh's classmates. He was suspended for five days. Since no evidence existed that he planned to act on his lyrics, the school board decided not to expel him. Sashwat did agree to see a counselor.

Imel v. Charles A. Beard School (Indiana, 2006)

"The Teddy Bear Master" was an off-campus movie made in 2006 by four Knightstown High School sophomores in Indiana. It was about an evil teddy bear that orders other stuffed animals to kill a named middle school math teacher. Apparently, the teacher had embarrassed one of the boys. The prosecutor's office reviewed the movie and declined to file any charges. However, since the 78-minute movie contained offensive language and threatened a teacher, the boys were expelled. Three of them challenged the decision in court. A settlement was reached in 2007. The expulsions were cleared from the boys' records, and they received \$69,000 to split among themselves. They also wrote a letter of apology to the teacher and his wife.

THINGS TO THINK ABOUT

The Columbine High School killings of 1999 (see page 124) have focused attention on any threat of violence at school—even *hints* of violence. If you include a warning in your creative work or use such words as "unofficial" or "for entertainment only," will this protect you from being disciplined at school? Could someone still misinterpret your message and feel threatened? What is the difference between creative expression in an essay, song, or movie, and a threat to do someone harm?