Bicentennial Reflections on the Media and the First Amendment

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Bruce C. Hafen

The general theory underlying the First Amendment to the Constitution draws on the same wellsprings of thought that give rise to the central place of free agency in the restored gospel. I wish to sketch briefly some of those common ideas, remembering President Marion G. Romney's counsel that the law school at BYU should explore the laws of man in light of the laws of God.[1] With that basic perspective in place, I would then like to consider a few recent examples drawn from the context of today's media-oriented world to illustrate the role played by self-restraint in nurturing the values of free expression.

The Constitution as originally drafted contained none of the protections for individual liberties now embodied in the first ten amendments as the Bill of Rights. The framers at the Constitutional Convention believed it unnecessary to mention personal rights in the text because they viewed the federal government as having only the powers spelled out in the Constitution—which automatically left all other rights and powers in the people who created the government. Indeed, some felt that if certain personal rights were given explicit protection the rights they did not think to mention might be left unprotected.[2] But in order to help win ratification in the state conventions, the Bill of Rights amendments were added, modeled after existing state charters and drawing on the inspired writings of European natural rights philosophers.

I consider it no accident that the very first of these amendments boldly guaranteed religious freedom and free expression. The First Amendment is "first" for reasons so important as to be at the very heart of why I believe the Constitution was inspired of God. Among the most glorious of all ideas is the truth that each personality is unique, free, and eternal. Thus the Doctrine and Covenants declares that "human law . . . should restrain crime, but never control conscience; should punish guilt, but never suppress the freedom of the soul" (134:4). The "just and holy principles" maintained by the Constitution are, said the Lord, 172 "according to the moral agency which I have given unto [every man]" (D&C 101:77–78). This freedom of the intellect and freedom of conscience form the common root from which grow both religious freedom and freedom of expression.

The fundamental right of each person to define the meaning of his or her own life within the light of available truth was made fully meaningful

by the restoration of the gospel and the organization of the Church, actions that would not have been possible without the protections of the First Amendment and the constitutional form of American government. No other nation had laws that would have allowed the Restoration. This land was kept hidden from the postapostasy world to become the host nation in the fulness of times—the strong, free foundation from which the kingdom of God would be taken to all the world.

No one was more grateful for the Constitution than Joseph Smith, who said, "I am the greatest advocate of the Constitution of the United States there is on earth. In my feelings, I am always ready to die for the protection of the weak and oppressed in their just rights."[3] Yet the Prophet had learned firsthand about the denial of First Amendment liberties at the hands of state governments in Missouri and elsewhere. When he went to President Van Buren to ask for federal protection, he was told that although his cause was just, the President could do nothing for him. In addition to political concerns he may have had, Van Buren was obviously expressing the weakness of the federal government in attempting to enforce civil rights against the states. The Constitution's concept of personal rights was not binding on the states until after the Civil War. Indeed, that war began over the issue of states' rights.

Joseph Smith saw the same weakness in the Constitution that Abraham Lincoln later saw. Said the Prophet, "The only fault I find with the Constitution is . . . it provides no means of enforcing [its sentiments]."[4] This very issue was central to his decision to run for president of the United States in 1844. He was convinced the other candidates were wrong on the issue of federal supremacy. I believe Joseph Smith would have voted for the post–Civil War amendments to the Constitution. I also believe he would have favored the process by which the Supreme Court made the First Amendment binding on the states, even though that action did not take place until well into the twentieth century. These developments solved the problem he had identified. They were possible because the Constitution was designed with the flexibility to repair over time its own limitations. Just as continuous revelation is essential to the governance of the Church, so I believe this nation, when it is worthy, may receive continuous inspiration to apply the Constitution to new problems. Our courts, our national leaders, and our people may not draw often on that inspiration, but the possibility exists for them to do so.

The First Amendment insures freedom of expression by declaring, "Congress shall make no law . . . abridging the freedom of speech, or of the press." These twin freedoms rest on theoretical foundations that had been only recently formulated when the Bill of Rights was drafted. Democracy was such a stunning new idea that legally protected free expression had few

direct legal antecedents. In England, Parliament had adopted the idea of free speech for its own members to protect them from attack by those outside the parliamentary body. However, English citizens, including the private press, long required a governmentally approved license before issuing any publication. The first objective of a free press guarantee in the American nation, then, was to eliminate this form of prior restraint and censorship.

It was less clear whether the First Amendment protected the people or the press in publicly criticizing the government in a more general sense. However, experience resolved that question resoundingly in favor of public criticism on the grounds that the people were themselves the source of the government's authority. The Declaration of Independence, the theory of which was expressly embodied in the Constitution, had turned some traditional ideas about governmental authority on their heads. The Constitution's theory began with the premise that the people were endowed by their Creator with natural rights, predating the creation of the government. The people then entered into a social contract among themselves to create a government to which they delegated only the power necessary to govern. Note the direct contrast between this idea and the long prevailing idea of the European royalty that kings received their divine rights from God, and the people enjoyed only the rights given them by the king. Freedom of expression thus embodied the accountability of the nation's leaders to the people who elected them. As stated by the Supreme Court in 1971, "The Government's power to censor the press was abolished so that the press would remain forever free to censure the government."[5]

Another way of describing our attitude toward free expression is captured in the metaphor of the marketplace of ideas. In the words of Justice Holmes, "The best test of truth is the power of the thought to get itself accepted in the competition of the market."[6] The marketplace theory assumes that even false or dangerous ideas should be given wide latitude in the competition for truth, both to avoid excluding important new ideas and to sharpen thought about the ideas the public does select. This marketplace idea drew heavily on the convictions of the European Enlightenment about the ultimate value of human reason, not only as the source of the best society but as the highest aspiration of individual life.

I find strong similarities between this commitment to intellectual freedom and the concern of the gospel with freedom of conscience. The teachings of the scriptures and the prophets make clear that "God will force no man to heav'n."[7] When God rejected Satan's plan to remove individual agency and guarantee our return, I believe the rejection came not only because Satan *shouldn't* deliver on his promise, but because he *couldn't* deliver. His promise was, as his promises usually are, a lie. The liberty and fulfillment made possible by the gospel cannot be ours unless we participate freely in

the process of growth and internalization embodied in the very idea of increasing our understanding and our skill. The spirit of dogmatism and the Inquisition are wrong, then, not only because they may seem offensive, but because they don't work. No student can learn to read a book, play the piano, or understand mathematics without voluntary involvement of some important degree. You can lead a child to a book, but you can't make him read it. Even less can you make him understand it, if that is against his will.

At the same time, a certain amount of leadership, and even pressure, must often be involved in the educational processes that prepare children to participate in the marketplace of ideas as adults. John Stuart Mill, one of the leading philosophers of personal liberty and free expression, wrote that his doctrine of autonomous liberty and independent participation in the political and intellectual marketplace

> is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury. . . . But as soon as [they] have attained the capacity of being guided to their own improvement . . . compulsion . . . is justifiable only for the security of others.[8]

Mill's statement suggests the need for boundaries around the marketplace of ideas. Only those should be admitted who have previously developed rational capacities. Otherwise, they may injure themselves or impair the functions of the market itself. The most obvious response to this need in our society is our commitment to public education, the process by which the young are prepared for responsible citizenship. I will return to this theme shortly to consider illustrations of our need for limits in our approach to free expression.

Most of the Supreme Court's applications of First Amendment principles have occurred in our own century. The first cases arose after World War I when free speech guarantees were invoked to protect anarchists and socialists, whose views were unpopular at a time of heightened American nationalism. After World War II, a similar situation arose in which free expression and its concomitant right of free association were extended to protect Americans accused of involvement with communism. The right of associational expression was also called upon to protect the political activities of some involved in the civil rights movement. In general, these cases relied on the First Amendment to protect political minorities by including them in the marketplace of legitimate political expression, often against the will of majorities in particular states or cities.

In the 1960s and 1970s, new uses were found for free expression theory as it became a source to protect those who challenged governmental actions

and, eventually, those who also challenged our cultural and social orthodoxies. As the range of protected expression widened, it came to have greater political significance. For example, public protests against President Johnson's conduct of the war in Vietnam probably played the determinative role in terminating American involvement in the war. Moreover, without the firmly established independence of the national media and the sense of public duty involved in the emerging field of investigative reporting, it is likely that the abuses of the Watergate era would have remained uncovered. During this same era, the Supreme Court also clarified and strengthened the right of the media to constitutional protection against suits for defamation by public figures, citing our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open."[9]

It is worth noting that all of these free-expression theories—the idea of political sovereignty in the people, the marketplace of ideas, and the idea of checking governmental abuse through informing the public—are based largely on the public interest, even though they also protect the personal civil liberty of individuals. This distinction between social and individual interests is important in considering the matter of limits on expression. It also helps us understand both what is behind and what is at stake in the significant role the media have come to play in the constitutional and democratic structure in this age of the megasociety.

The media now act as something of a mediating institution in our urbanized culture, playing a role that was less necessary in rural nineteenth-century America. This mediation occurs between the government and the people, moving both ways, as government officials regard the media as a barometer of public opinion and as the public regards the media as a window upon not only the nature, but the meaning, of governmental action. Today's media even facilitates a good deal of mediation between branches and levels of government, as the contemporary complexities make it less likely that the left hand of government knows what the right hand is doing.

Ironically, this development has occurred at a time when some observers believe the public is becoming increasingly passive and at times even cynical about its role as the ultimate political sovereign. Some of the public's cynicism about its place in the modern democratic structure may be traced to implicit doubts that the marketplace of ideas is really functioning when media appeal and marketing strategies seem to outweigh the importance of really substantive ideas. The public may also be less open-minded than our First Amendment theories suggest about the need for a broad and robust marketplace. Perhaps there is a need for ways to protect the public interest against its own short term views of itself.[10] Both the media and the courts have come to play a helpful role in this regard.

The media and the concept of free expression are now so important to the democratic structure that it is appropriate to consider how our constitutional doctrines of limited power and checks and balances apply to the way we think about the First Amendment. Our system disperses power among many significant entities, often with accountability systems that are difficult to enforce. The judicial branch of government, for instance, has come to wield enormous power, but federal judges are appointed for life and are thus not in fact very accountable to the people or to any other branch of government. The concept of judicial restraint is therefore very important, even if only as a self-imposed limit. Rex Lee once remarked that the highest manifestation of respect for power is the willingness of those who possess the power to refrain on certain occasions from using it. Although it may not be possible ultimately to enforce judicial restraint of this kind, there is a form of accountability awaiting judges who undermine public confidence in the legitimacy of the judicial process; namely, their realization that public trust is essential to the continued power of the rule of law.

The same sense of restraint applies to the executive branch of government, as illustrated by recent events relating to the Iran-Contra investigations. The public realizes that much of the business of the American presidency must be conducted under conditions of confidentiality and, at times, secrecy. We have known the value of nonpublic deliberations ever since the Constitutional Convention itself met in secret. That group feared that the task of writing a new constitution would be impossible if their deliberations were subject to ongoing public scrutiny while the necessary but fragile national consensus was being forged. Their official charge was to rewrite the Articles of Confederation, but they soon saw the need for far bolder—yet secretly determined—measures, until their product was ready to be unveiled.

The ability of the modern presidency to sustain the public's confidence in the need for and the legitimacy of governmental secrecy is currently being tested. I genuinely hope for a restoration of confidence, not just for the sake of the current President, but for the sake of the presidency as a crucial American institution. If sufficient doubts are raised about the ability of the executive branch to discipline itself, outside forces will find ways to impose the discipline from without—even if that means a reduction in the power of the presidency to serve the nation.

This is not the time for a complete exposition, but I wish now to mention briefly three recent developments affecting our understanding of First Amendment theory. Each illustrates the need for a sense of restraint on expression in the public media as an important means of sustaining the conditions that foster the underlying values of free expression over the long term. I will consider the debate over student expression in the public schools, advocacy journalism, and obscenity.

Sometime during its 1987–88 term, the Supreme Court will issue its first opinion regarding the constitutional right of public school students to control the content of an official high school newspaper.[11] Almost twenty years ago, in the celebrated case of *Tinker vs. Des Moines School District,* the Court upheld the basic concept of constitutionally protected student expression; however, the limits and purposes of that protection have remained relatively unclear.[12] The students in the *Tinker* case wore black arm bands to school in a peaceful protest against the government's conduct of the war in Vietnam. The Court held that school officials may not prevent such expression unless it would cause a serious disruption or harm the rights of others.

The lower courts have had a difficult time applying this standard to arguments about the right of administrators or faculty to determine the content of such extracurricular media channels as student newspapers, assemblies, and school plays. Some courts have believed that student expression in these channels can be limited only when there is a serious threat of disorder. Other courts have read the *Tinker* standard more narrowly, holding that extracurricular activities are part of a school's mission and therefore the same educational policies that allow administrators and school boards to control the public school curriculum should give them control of the extracurriculum.

The Supreme Court sided with school administrators in a 1986 case, *Bethel School District vs. Fraser,* allowing them to discipline a student for making a vulgar (but not legally obscene) speech in a student assembly.[13] In the *Fraser* case, the Court stressed the schools' obligation to teach principles of courtesy and decency—traditional forms of restraint—as prerequisites to responsible participation in matters of public debate. The rationale for the Court's opinion was not entirely clear, however. One might view *Fraser* as a simple vulgarity case because the Court has upheld in other cases the public interest in protecting underage children from hearing vulgar language in the public media. Yet *Fraser* could also mean that the educational function of extracurricular activities dictates that student expression in such official school channels can be controlled for the purpose of teaching young people how to express themselves in a broader sense.

The high school newspaper case is likely to clarify how *Fraser and Tinker* should be interpreted, which could also clarify the authority of school administrators and teachers in dealing with the expression of their students in school media channels. This case, *Kuhlmeier vs. Hazelwood School District,* arose when a school principal pulled from the school newspaper two stories dealing with teenage pregnancy and divorce in ways that seemed to him inappropriate and possibly harmful.[14] The student authors filed suit in federal court and eventually won on appeal, the appellate court holding that administrators must defer to the publication decisions of student editors

unless the publication would materially disrupt the school or subject it to damage suits.

I believe the Supreme Court should overrule the appellate court in *Kuhlmeier* and sustain the school's control over the student newspaper because that outcome represents a better long-range view about the best way to develop the underlying values of the First Amendment for the benefit of students in American schools.

"Freedom of expression" has two meanings: (1) freedom *from* restraints upon expression, and (2) freedom *for* expression—that is, having the capacity for self-expression. Public schools are especially concerned with the second meaning, interacting with their students in ways unique among all interaction between individuals and the state. As I noted above in discussing the ideas of John Stuart Mill, adolescents (both those who write for school papers and those who read them) lack the rational capacity that is prerequisite to all free expression theory. The First Amendment interests of young people should thus assure them of the constitutional right to be taught the skills necessary to develop their *freedom for* expression in preparation for entering the adult marketplace. Toward that end, public education seeks affirmatively to mediate between ignorance and educated expression. This process invites intrusion, requires paternalism, and depends upon the exercise of a teacher's discretion. Some students may need the temporary repression of discipline to develop their capacity, while others should be left free (perhaps even pushed to break free) to try their creative wings. Such decisions involve pedagogical judgments more than they involve constitutional law. Of course students need legal protection at the extremes against the abuse of this flexibility, but without a basic commitment to the value of adult teaching authority we place our children in an educational vacuum, essentially abandoning them to their "fights."

Traditional First Amendment jurisprudence was never designed to deal with the subtle and affirmative process of education. That jurisprudence originated in cases involving adults and was concerned only with when to limit governmental action, not with how to encourage it toward such complex ends as educational development. It is precisely because children are unable to judge the meaning of expression in the school marketplace that important constitutional rules against the establishment of religion (also guaranteed by the First Amendment) prohibit formal prayer in public schools while allowing formal prayer in the meetings of a state legislature. Yet the lower court that ruled for the students in the *Kuhlmeier* case thought it relevant that the school paper included a statement each year that the paper did not necessarily reflect the views of the administration or faculty. Would that same reasoning allow group prayer or the posting of the Ten Commandments on high school walls (both practices that have been forbidden

by other Supreme Court cases) so long as something like a footnote explains that the school does not necessarily endorse religion? Of course not—because school-age young people lack the capacity to know when public prayer (or the school paper) does or does not carry official endorsement.

A child who desires to enjoy "freedom of expression" at the piano must submit to the discipline of the authoritarian rules of music and the demanding expectations of a music teacher over many years. If his teacher's role consists primarily in not restraining him, his freedom to express himself will be little more than idle noise-making. It is the place of education to find the right balance between too much direction and not enough in this developmental process, according to each student's needs. It is the place of constitutional interpretation to avoid actual harm at the utter extremes of that process.

Much of what has happened in the American educational system since the 1960s has violated this common-sense proposition as the removal of authority and restraint became ultimate goals. The empirical studies of James Coleman and others have now documented, however, that the antiauthoritarianism of the past generation is clearly linked to the widespread declines in academic achievement that were documented in such studies as *A Nation at Risk*. Diane Ravitch's history of American education since 1945 also documents in persuasive detail how the "guiding principle" since the 1960s—"to give the students what they wanted"—led to the consequences described in these recent calls for educational reform.[15]

Just as the 1960s asked for reassurance that students are people too, the 1980s ask for reassurance that public schools can be more seriously devoted to meaningful education in the curricular and extracurricular dimensions of the learning environment. Twenty years of treating schools as if they were adult public forums has to some degree undermined what could be the most fundamental interest of young people in the values of the First Amendment—the right to receive a serious education as part of their *freedom for* expression. As this experience in our recent educational history illustrates, certain forms of restraint and discipline are essential prerequisites in developing and maintaining a complete system of freedom of expression over the long term.

My second concern is with advocacy journalism, a subject I am not qualified to develop fully, but I do have an impression about it. The Watergate era gave birth to an approach to media reporting that was simply different from what had occurred before. The interest of reporters became focused not just on investigation but on the injection of personal views and causes into the reporting process. The expression of personal opinion began to spill from the editorial pages into the news stories, in everything from sports to national news and life-style pages.

I said earlier that our national urbanization has cast the media into the role of mediator between the public and agencies of government. This framework places a heavy responsibility on the media to convey information and ideas without themselves becoming too much of a party in the political process. To the extent that the media act as just another player on the political stage, they develop conflicts of interest that are bound to be perceived by the public. When that happens, they lose credibility as mediators, and the public's ability to rely on media sources is undermined.

There are other reasons why the advocacy model does not fit the public media very well. For one thing, an advocacy approach to truth assumes the presence of advocates on the opposing side who have comparable access to information channels in dealing with the public (since it is presumably the public that is to decide the truth between competing positions of advocacy). This is our approach to the solution of disputes through an advocacy-based legal system. But when a media source takes an adversary role, where is the recourse by those having opposing views who have no ongoing access to the same public forum? Letters to the editor are no match for the full power of the press. I think also of the cartoon showing a masked man wearing a burglar cap, seated eagerly in front of a TV microphone holding his script as the announcer says, "And now a response to last night's law and order editorial."

These observations are by no means intended to question the importance of the editorial function by which a media source acting as an institution plays the time-honored and significant role of taking a forthright and rational stand on matters of public significance. It is in part to strengthen public confidence in that needed role that we should discourage the blurring of lines between editorial and reporting functions. I recall a conversation with a friend who was the publisher of an established and important regional newspaper in another state. He said, telling me that the newspaper business isn't as satisfying as it used to be because his cub reporters all come to him these days trained in what they call advocacy journalism. And when he tries to discourage them from blurring the line between editorial and reporting functions, they object that he is treading on their First Amendment rights. At that point he said, "Who do they think pays the bills, anyway?"

Media institutions as institutions should enjoy their own forms of First Amendment protection within which the expression rights of associated individuals are likely to function better, not worse. The declining influence of private and public institutions of all kinds in this day of anti-institutionalism is detrimental to the stable development of First Amendment theory.

Now, finally, a word about obscenity. Ever since the first fist was raised just twenty-three years ago in an obscene gesture at Berkeley, we have been

confused about the proper relationship between free expression and vulgarity. The Supreme Court has actually had less trouble than other groups in deciding that obscene expression is not entitled to constitutional protection under the First Amendment or elsewhere. In fact, the Court's treatment of this problem instructively illuminates our understanding of free expression theory. In 1973 the Court defined obscenity as sexually-related expression so offensive, so appealing to prurient interests, and so lacking in social value that it is beyond the purpose of the First Amendment. Said the Court, "to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom."[16] And in the words of Justice Stevens in another case, "Few of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theatre of our choice."[17] Thus, to say, as the Court once did, that obscenity "is utterly without redeeming social importance"[18] is not only a way of defining obscenity; it is also a way of saying that constitutional freedoms promote matters having value to society as well as promoting individual liberty.

These and other cases make clear that different kinds of speech have different levels of protection. Most protected is speech related to political and other public issues. Academic or intellectual freedom is also at the top of the scale because of its connection to the search for truth described earlier as central to the marketplace metaphor. Commercial speech, such as that contained in advertising, is less protected because business interests are less important in our hierarchy of constitutional values. Well down the line is indecent or vulgar expression, which under certain circumstances may be prohibited in the public schools. Then, totally beyond the reach of the First Amendment, is obscenity, which receives no protection—not because it isn't speech, but because it is speech beyond the purpose of the constitutional guarantee.

I realize that obscenity is difficult to define objectively, but the Court's refusal as a matter of principle to protect obscene material reaffirms an extremely important fact about First Amendment theory: some forms of censorship are deemed desirable to sustain the rational climate of the free marketplace and the democratic system. For this reason I am troubled by the insistence of commercial interests who have exploited the moral momentum of the individual-rights movement to claim that society has no interest in limiting the range of publicly viewed material. These claims do not accurately represent the Supreme Court's First Amendment jurisprudence. But they have influenced the perceptions considered topical in the media, giving the public an inaccurate impression not only of what the law allows, but also of what the First Amendment is all about. Thus, in a large

sense, these impressions undermine the nature and expectations of public discourse in the free marketplace of ideas, implying that vulgar self-gratification enjoys the same noble purpose as the search for political, scientific, or religious meaning.

Despite the claims of obscenity advocates that unrestrained expression is a cardinal principle in the quest for knowledge, our culture has an older, more distinguished tradition. The ancient Greeks believed that the peculiar weakness of man was his propensity to exceed limits. To the Greeks the worst crime of all was "hubris," which originally meant "unlimited appetite."[19] Thus, the Greek pursuit of knowledge sought to be guided by some moderating concept of limits. The writers of the Renaissance and the Enlightenment had a similar fear of man's unrestrained curiosity, symbolized by Faust, who refused to check his intellectual appetite,[20] and later by Frankenstein, the doctor whose unbounded thirst for knowledge created a monster that later destroyed him. "Are you mad, my friend," warns Dr. Frankenstein at the end of his story, "Or whither does your senseless curiosity lead you?"[21] The justices of the Supreme Court have understood what the ancients understood: some sense of restraint is essential to maintaining a free, democratic society over the long term. In that sense, the concept of limits is the friend, not the enemy, of individual liberty.

But despite these and a few other isolated areas of potential abuse, the First Amendment towers over our intellectual and political landscape today as it did two hundred years ago, when James Madison described it as "one of the greatest bulwarks of liberty." I salute Madison and his inspired associates as we celebrate the beginning of the third century under the First Amendment.

Bruce C. Hafen is a professor of law and dean of the J. Reuben Clark Law School, Brigham Young University.

[1]Marion G. Romney, untitled address in "Addresses at the Ceremony Opening the J. Reuben Clark Law School, 27 August 1973" (Provo: Brigham Young University Press, 1973), 20.

[2]See Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston: Little, Brown, and Co., 1966), 245.

[3]*History of the Church* 6:5–57.

[4]Ibid.

[5]New York Times vs. United States, 403 U.S. 713, 717.

[6]Abrams vs. United States, 250 U.S. 630 (1919).

[7]"Know This That Every Soul Is Free," in *Hymns of The Church of Jesus Christ of Latter-day Saints* (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1985), no. 240; see also Helaman. 14:30–31, 2 Nephi. 10:23–24.

[8]John Stuart Mill, *On Liberty* [1859] (New York: Liberal Arts Press, 1956), 13–14.

[9]New York Times vs. Sullivan, 376 U.S. 254, 270 (1964).

[10]See Frederick Schauer, "The Role of the People in First Amendment Theory," *California Law Review* 74 (May 1986): 761.

[11]After this issue of *Brigham Young University Studies* was into the production process, the Supreme Court decided the case discussed in the text. The Court upheld the right of school officials to regulate the content of all "school sponsored expressive activities." For a discussion of the Court's opinion, see Brace C. Hafen, "*Commentary—Hazelwood* Reaffirms First Amendment Values," *Education Week* 7 (13 April 1988), 36, which is based on a more complete article that will be printed in the summer 1988 issue of *Duke Law Journal.*

[12]393 U.S. 503 (1969).

[13]106 S. Ct. 3159 (1986).

[14]795 F. 2d 1368 (8th Cir. 1986), *cert. granted,* 107 S. Ct. 926 (1987).

[15]I cite the work of Coleman and Ravitch as part of an extended discussion of the application of the First Amendment to public school students in my article, "Developing Student Expression through Institutional Authority: Public Schools as Mediating Institutions," *Ohio State Law Journal* 48 (1987): 663.

[16]Miller vs. California, 413 U.S. 15, 34–35 (1973).

[17]Young vs. American Mini Theatres, 427 U.S. 50, 70 (1976).

[18]Roth vs. United States, 354 U.S. 476, 484 (1957).

[19]See Alston Chase, "Is Intelligence Evil?" *BYU Today* 39 (August 1985): 31.

[20]Ibid., 32.

[21]Ibid., 39.