ISSUE BOOKLET

2007 Florida High School

Appellate Program

A collaborative project of

The Florida Law Related Education Association, Inc.

funded in part by
The Florida Bar Young Lawyers Division
The Florida Bar Foundation

Case materials authored by
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FLORIDA HIGH SCHOOL
APPELLATE COMPETITION
2007 REGISTRATION FORM

_____ Yes, we would like to submit a brief for the Appellate Competition. Teams are limited to two students per brief. Briefs must be received in Tallahassee by March 16th, 2007.

I. Student's Name: _____
School:_____
Address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Phone: _____ Fax: _____

II. Student's Name: _____
School:_____
Address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Phone: _____ Fax: _____

III. Teacher's Name: _____
School:_____
Address: _____
City: _____ State: _____ Zip: _____
E-mail: _____ Phone: _____ Fax: _____

IV. Attorney Coach's Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Firm Name: _____
E-mail: _____ Phone: _____ Fax: _____

Brief submitted on behalf of: (Circle One)

Appellant/Petitioner or Appellee/Respondent

Return 3 copies of this form and 3 copies of the brief to the address listed below.

The Florida Law Related Education Association, Inc.
2874 Remington Green Circle, Suite A
Tallahassee, Florida 32308
Phone: (850) 386-8223
Fax: (850) 386-8292

Rules and Guidelines

Introduction

An appeal from a trial court to an appellate court normally involves two components: a written brief and an oral argument. In this exercise, you will prepare a brief as if you would use it as the basis of an oral argument. The top brief writers in each Appellate District will compete in oral arguments at the district level, with the district finalists having the opportunity to argue before appellate court judges in each District Court of Appeal. The winner of each district will proceed in the competition to the state level, with the statewide finalists having the opportunity to argue before the justices of the Florida Supreme Court in Tallahassee on May 12th, 2007, expenses to be covered. In determining which side you choose, you should read and analyze the cases cited in the case materials.

A. Rule 1: Teams

1. Teams may consist of only two students.

2. Each team will submit only one brief for either the appellant/petitioner or appellee/respondent.

3. Teams will need to prepare oral arguments for the party they wrote a brief supporting.

4. Teams may use attorney coaches and teachers as advisors to guide them through the process of preparing the brief and oral arguments; however, the writing of the briefs must be the sole work of the students. Attorneys and teachers are strictly prohibited from writing any portion of the brief.

5. Team Roster

   Team rosters should be completed and submitted to the competition coordinator before the date of the competition. At registration, teams should be identified only by code.

6. Roll Call

   Before a round of competition begins, the students should submit their roll call sheets, found in the packet, to the judges. No information identifying the team, beyond the students' names and team code, should appear on the form.

Rules and Guidelines

B. Rule 2: The Packet

1. Students should assume the packet is complete and factual. Briefs which challenge the validity of issues beyond the scope of the issues questioned in the packet will not be entertained.

2. Students may only utilize the case law referenced in the packet. Any deviation is a rules violation.

3. Students may not construct additional facts not found in the packet. Any information utilized that cannot be fairly inferred from the information packet will be considered beyond the scope and therefore a rules violation.

C. Rule 3: Competition Format

1. This competition is comprised of two phases: (1) the brief-writing phase; and (2) the oral argument phase.

D. Rule 4: The Brief

1. Three copies of the students' brief must be submitted to The Florida Law Related Education Association by March 16, 2007.

2. Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 15 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Appellant/Petitioner" or "Brief for Appellee/Respondent" and list the participants' names, school, address, telephone numbers, and email addresses.

3. Pursuant to Rule 2, briefs may not include any case law beyond what is presented in the packet and may not include any manufactured or researched facts beyond what is found in the packet.

4. Legal citation is not required, but is encouraged. Information on legal citations can be found in the appendices of the packet.

E. Rule 5: The Oral Argument

1. Only <u>two</u> students may participate for a team per round.

Rules and Guidelines

2. Each team is given 20 minutes to present their case. Speech time is outlined below:

Speaker	**Time Limit**
Petitioner	*15 minutes*
Attorney - Question 1	7 minutes 30 seconds
Attorney - Question 2	7 minutes 30 seconds
Respondent	*20 minutes*
Attorney - Question 1	10 minutes
Attorney - Question 2	10 minutes
Petitioner - Rebuttal	*5 minutes*

3. Rounds will start on time. If a team, or a portion of the team, fails to appear within ten minutes of the time indicated, the team will compete with an incomplete team. If no student from a team appears within that time limit, the team will be judged to have forfeited the round, and bye round scoring will apply to the other team.

4. Two students will present during any one round of competition. Each student will address one of the two questions presented in the brief. Both students must speak during the oral argument. If the second student does not speak during the course of the oral argument, that student will receive a score of zero (0).

5. No communication should occur between students participating in the round and other team members, coaches, or anyone else in the audience outside the bar. Any communication with anyone outside of the partner student during that round will constitute a rules violation.

6. Students should display dignity and respect to the judges, staff, and other competition personnel.

7. Along with respecting the court, teams should respect each other. By the time of competition, everyone will have worked very hard to get into competition. Respect should extend to all competitors.

8. Dress should be professional, courtroom attire.

9. During oral arguments, students will be scored based on the criteria found on the score sheet in the packet.

10. Scores and winners will not be disclosed after a round, but verbal critiques will be given.

F. Rule 6: Videotaping/Photography

1. Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.**

2. When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

G. Rule 7: Viewing an Argument

1. Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a team, except those authorized by the State Advisory Committee, are not allowed to view other teams in competition so long as their team remains in the competition.

2. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

H. Rule 8: Decisions

1. All decisions of the judges are final.

I. Rule 9: Team Advancement

1. Teams will be scored on their written briefs and their oral argument presentations.

2. During the scoring of the written briefs, the panel of evaluators will give each brief a numerical score consistent with the score sheet located in the case packet. The scores from each of the judges in the panel will be added together to determine the top two to four briefs. The top two to four teams in each district will be given the opportunity to come to the district competition. The top team will be awarded the "Brief ballot."

3. During the oral argument competition, judges will score student performances in each round. The team that receives the higher score from that judge will be awarded that judge's ballot.

4. At the end of the competition, all the ballots will be calculated and the team with the highest number of ballots will advance to the state competition.

5. In the event of a tie, all teams' point scores will be calculated with the highest cumulative points winning. If that results in a tie, the teams' point averages will be found.

6. Briefs will be rescored at each level of competition and a "Brief Ballot" awarded consistent with the practice in Section 3.

7. The state finals will incorporate three rounds of competition in which each team will argue twice. The top two teams will be determined by the total number of ballots received by the team. These two teams will meet in the final round of competition. The team receiving the most ballots in the final round will win the competition.

J. Rule 10: Effect of a Bye Round

1. A "bye" becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round will be given a win and the number of ballots and points equal to the average of all winning team's ballots and points of that same round.

K. Rule 11: Eligibility

1. All students on a team must be enrolled in the same public or private school in the district for which they are competing.

2. Students must be enrolled in a Florida high school in order to be eligible.

Note: All questions should be submitted in writing to ABPflreaED@aol.com

Sources of Legal Research

The cases you will be using as your source of research and for purposes of citing to the Court as authority are included in the case materials.

You may also read articles and cases from other jurisdictions to get ideas and arguments for your brief, but any other cases may only be used to get ideas or to enhance your understanding of the legal issues. They may not be cited as authority in this contest. Your Attorney Coach may wish to suggest reading material. While you are encouraged to explore other sources, there is no requirement that you do so.

Information on research using primary and secondary sources is enclosed in the Appendices for your review.

Additionally, you can utilize on-line research through a variety of sources. You should be able to find most of the cited cases at **www.findlaw.com**, under Laws: Cases and Codes. From the Findlaw "Cases and Codes" page, scroll down and click on the U.S. Supreme Court link and pull all cases with (i.e. 123 U.S. 456). For all Circuit Court cases a ___F.2d, F.3d or F.Supp., click on the applicable Circuit Court link. For example, *Doe v. v. Dept. of Pub. Safety*, 271 F.3d 38, 60 (2d Cir. 2001) would be found under the **Second Circuit**.

Remember that in preparing your brief, you can only use the cases cited in these materials. You can research other cases but you should only use cases cited in these materials in preparing your briefs and arguments.

Controlling Authority

1) Relevant Caselaw

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
New Jersey v. T.L.O., 469 U.S. 325 (1985)
Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986)
Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)
Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995)
Thomas v. Granville Central School District, 607 F.2d 1043 (2d Cir. 1979)
Saxe v. State College Area School District, 240 F.3d 200 (3rd Cir. 2001)
United States v. Simons, 206 F.3d 392 (4th Cir. 2000)
Milligan v. City of Slidell, 226 F.3d 652 (5th Cir. 2000)
United States v. Lincoln, 462 F.2d 1368 (6th Cir. 1972)
Boucher v. School Board of the School District of Greenfield, 134 F.3d 821 (7th Cir. 1998)
T.J. v. State, 538 So.2d 1320 (Fla. 2d DCA 1989)
State v N.G.B., 806 So. 2d 567 (Fla. 2d DCA 2002)
S.V.J. v. State, 891 So.2d 1221 (Fla. 2d DCA 2005)
State v. J.A., 679 So.2d 316 (Fla. 3d DCA 1996)
M.C. v. State, 695 So. 2d 477 (Fla. 3d DCA 1997)
A.N.H. v State, 832 So. 2d 170 (Fla. 3rd DCA 2002)
A.W. v. State, 928 So.2d 1243 (Fla. 4th DCA 2006)
A.H. v State, 846 So. 2d 1215 (Fla. 5th DCA 2003)
C.N.H. v. State, 927 So.2d 1 (Fla. 5th DCA 2006)

2) Constitutional Provisions

United States Constitution – 1st and 4th Amendments
Florida Constitution – Article I, Sections 4 and 23

3) Any other cases cited in the case materials.

Format of the Brief

Each brief should follow the format of the enclosed brief outline. Failure to adhere to the format may lead to disqualification. The entire brief must be no longer than 15 pages, letter-sized 8 ½" x 11." Format the text by allowing one-inch margins. All briefs must be typed and double-spaced. The type style should be Times New Roman 12 point font and each paragraph should be indented. Page numbers should appear centered at the bottom of each page. A cover page should identify "Brief for Appellant/Petitioner" or "Brief for Appellee/Respondent" and list the participants' names, school, addresses, telephone numbers, and email addresses.

Do not be overly concerned with legal citation; mistakes will not hurt your score. You may even choose not to use legal citation, so long as you make it clear what case you are referencing.

If you do try to use legal citation, here are some pointers - you may want to use the ***Blue Book, a Uniform System of Citation*****,** (17th ed., 2000), which should be available at any local law library for reference. However, you may simply follow the form of citation used in the sample brief.
When first citing a U.S. Supreme Court case, you should cite to the U.S. Reporter. For example, on page 6 of the sample brief, the petitioner cites to "*Jones v. United States*, 463 U.S. 354, 364 (1983)." The number 463 is the volume number, "U.S." stands for the U.S. Reporter, the books in which the Supreme Court cases are published, 354 is the first page of the cited case, and 364 is the exact page in the case upon which either the quoted language or the referenced portion of the case appears. *All subsequent cites* to the same case, immediately following that full cite, should be "*See id*." cites. However, if the referenced portion of the case is on a different page, your cite should appear as "*See id*. at _____" (that specific page on which the quote or reference is located).

If a case has been previously cited but not immediately previously cited, then a shortened cite form should be used. For example, in the sample brief, *Jones v. United States*, is cited on page 6, followed by a "*See id*." cite. Then on page 7, the *United States v. Ward* case is cited in its entirety. The petitioner then must again cite to *Jones v. United States*. If the petition were to use a "*See id*." cite there would be confusion because the reader would assume that the petitioner was referring to the *Ward* case, the immediately preceding case. Therefore, the petitioner abbreviated the case name and simply lists the volume number of the U.S. Reporter, 463 and only the specific page in the case on which the reference appears after the word "at." If the petitioner went on to cite to the *Jones* case again, he or she could once again use a simple "*See id*. at _____" cite.

Again, it is not necessary that you follow the exact legal citation form used in the sample brief. Do the best you can. We are more concerned with the arguments you choose to make.

You will note that on the cover page of the sample brief, in the lower right hand corner, the petitioner's attorney has only identified himself or herself as counsel for petitioner. **You should include your full name, followed by the names and address of your high**

school, telephone numbers, and email addresses where you can be reached both at school and home.

Brief should conform to the following outline:

I. Cover Page

II. Table of Authorities

III. Opinion Below

IV. Constitutional and Policy Provisions Involved

V. Questions Presented

VI. Statement of the Case

VII. Summary of the Arguments

VIII. Argument

a. Question I

b. Question II

IX. Conclusion

Sections of the Brief

Cover Page

Follow the guidelines and see sample cover page.

Table of Authorities

- List cases you used in your arguments to support your position.
- List relevant constitutional and policy provisions.

Opinion Below

Include a short statement of the proceedings in the lower court/court below and the ruling or judgment of the trial court which is being appealed from.

Constitutional and Policy Provisions Involved

Spell out the relevant provisions in the U.S. Constitution and policy provisions involved in the case from either the perspective of the petitioner or respondent.

Questions Presented

Recite the two constitutional questions or issues on appeal before this Court.

Statement of the Case

This will encompass a statement of the important issues and facts before the Court from either Petitioner's or Respondent's perspective. This section should incorporate (1) a concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief; (2) a short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed from; (3) a concise statement of the issues before the Court on appeal from the Petitioner's or Respondent's perspective; and (4) a concise statement of the important facts. This section should be presented in a light favorable to your side and contentions in your case.

Summary of Argument

Include three or four paragraphs highlighting a summary of your arguments supporting either the Petitioner's or Respondent's position. Essentially this is a short synopsis of your arguments which will follow. See below.

Arguments

This portion of the brief should discuss your position on the facts, arguments, and legal authorities (statutes and case law) which support your position on the questions presented. If the case law is favorable to your side, show how the prior cases are applicable to the facts or analysis of that case from the present case. You may wish to select the cases which most strongly support your arguments.

Conclusion

This part is a short summary of your answers to the issues on appeal (the questions presented) and should consist of only a few sentences. It is a very concise statement of why you want the appellate court to agree with you. The conclusion should also state what specific relief is being requested.

Note: The terms Appellant and Petitioner and the terms Appellee and Respondent are used interchangeably.

Submitting Brief

Briefs should be submitted in the required format to The Florida Law Related Education Association, Inc. and should be **received by March 16, 2007**. The winning brief writers will be notified for dates of the local oral arguments.

Submit all briefs to the following address.

The Florida Law Related Education Association, Inc.
2874 Remington Green Circle, Suite A
Tallahassee, Florida 32308
850-386-8223
Fax 850-386-8292
Toll Free 1-877-826-8167

IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT IN AND FOR GATES COUNTY, STATE OF FLORIDA

SAL LANTRO,

Plaintiff,

v. Case No.: 06-CA 1966

GATES COUNTY SCHOOL DISTRICT, and **ED U. CATION**, in his official capacity as Principal of Gates High School,

Defendants.
_____/

FINDINGS OF FACT

Gates High School ("Gates High" or "GHS") is a small public high school located in Dell City, Gates County, Florida. Approximately 80,000 people reside in Gates County, and Gates High has 2,040 students currently enrolled. GHS includes grades nine through twelve and has between 400 and 600 students in each grade. Gates High has a distinguished reputation throughout the state for having a superior academic program and is known specifically for its math, science and computer classes. Each year, its graduating class ranks among the top schools in the state for its number of admissions to Ivy League schools and Engineering undergraduate programs. GHS' campus includes four large academic buildings and three additional complexes, which house the art, music and athletic programs. However, Gates High's technology center, called the Murray Technology Lab, is what attracts many students and parents.

The Murray Technology Lab was built in June 2002, and was upgraded during the summer of 2005. The Lab now contains 150 state-of-the-art computers, ten color scanners and 50 laser printers. For the first time, Gates High also decided to purchase 40

brand new laptops which the students may "check out" for use during class, lunch or study times. Although Gates High allows students to bring their own laptops to school, only the school's laptops and computers may access the Gates High network. The school feared that if students were to use their personal laptops to access the Internet, the school network would become susceptible to various computer viruses.

Limiting student misuse of the Internet had been a hot topic among Gates High officials before the technology lab was upgraded. GHS administration wanted to ensure that students on campus would have access to Internet sites that would assist the students in completing their assignments (e.g., on-line encyclopedias, reference materials, news providers); at the same time GHS officials were anxious to prevent access to lewd or inappropriate Web sites that were inconsistent with educational purposes. GHS considered implementing filtering software to prevent access to inappropriate Web sites. Following the discussion, the administration concluded that such software would be too difficult to implement, given the endlessly changing Internet content. Additionally, the software might have the unintended effect of restricting access to legitimate, educational Web sites. Therefore, Gates High concluded it would not use filtering software but would instead require enrolling students to sign the Gates High Internet and Network Use Policy ("Internet Policy"), implemented on district-wide level by the School Board of Gates County. The Internet Policy sets forth guidelines as to what types of Web sites are appropriate for access on school property and with school computers. It states in pertinent part:

> Legitimate use of the Internet is specifically for educational purposes only. . . . Technology administrators may review student files and communications made over the school's system to maintain system integrity and ensure that users are using the school's system responsibly.

Each student is assigned a username and password in order to log on to any school computer and a school email address that may be used throughout his/her time at Gates High. Additionally, GHS introduced a new Laptop Check-Out Program, whereby each time a student checks out an individual laptop, he must hand in a written permission form signed by a teacher, and he must sign a Laptop Agreement that reiterates his original agreement to abide by the school's Internet Policy. Gates High decided that it would implement a sliding scale to determine punishment for violations of either the Internet Policy or the Laptop Agreement: the more egregious the action (e.g., stealing a school laptop), the harsher the punishment (e.g., suspension or expulsion). Although no specific chart of appropriate punishment was ever devised, most violations of the Internet Policy were addressed by detentions, restricted computer privileges or required study halls. No previous violation received more than two days' suspension.

Gates High employs three Technology Administrators who offer technical assistance and support for all student computers. These administrators also monitor use of the student network through the central server, which allows the technology department to view every student computer and laptop individually. Student-owned laptops cannot be monitored by the Gates High Technology Department because such computers cannot access the school network.

The monitoring process at Gates High is very similar to that used by most colleges and universities around the country. Through the server each Technology Administrator can access the programs, files, and screen views of every computer that is logged on to Gates High's network. The administrators conduct random searches throughout the day of student computer usage and student email accounts. However, Gates High also developed a more extensive monitoring system for those students who it believed were "problem students." Soon after the computers were installed in the

technology lab, Gates High officials drew up a list of those students who: 1) were involved in previous bad acts at Gates High, 2) had gotten into some trouble with the police, or 3) were suspected troublemakers due to their poor attitude or performance in school. The Technology Administrators monitor each of these students by watching the student's screen view throughout their computer session, and by reading every email that the student sends or receives through their school email account.

When the 2005 school year began at Gates High, students were anxious to use the new computer lab and laptops. The Laptop Check-Out Program became increasingly popular and soon the Technology Administrators had to enforce time limits on student usage in order to ensure a fair distribution of the laptops. Even though the lab was consistently full and each laptop was always checked out, the Technology Administrators managed to monitor each student's computer usage, and continued with the random checks of student email accounts and computer screen views.

On October 3, 2005, Sal Lantro checked out a laptop during his lunch break so that he could research an extra credit assignment for English class. Lantro was an eighteen-year-old senior at Gates High and had been involved in a school vandalism prank the previous year. However, Lantro maintained a clean record and a steady 3.4 GPA throughout the rest of his junior year. Lantro was a basketball player for the Gates High Eagles and very popular on and off the basketball court. Notwithstanding the fact that the vandalism incident seemed to be an aberration on his record, Lantro still remained on the list of "problem" students who required extra monitoring. Therefore, whenever he used a school laptop or computer, one of the Technology Administrators would watch his computer screen remotely throughout the entire session and would read through any and all files on the computer once it was returned.

On this particular day, after he had finished researching the extra credit assignment, Lantro decided to check his Hotmail account. Lantro emailed a friend, Chris Marks, about a personal Web site he had made over the weekend. The email to Marks stated in full, "i created a Web site this weekend, and after what we talked about in class, i thought you would find it funny. i'm so twisted. lol. check it out at www.slantro.net." The Web site address in the email was an active hyperlink.

Francis Godwin, the Technology Administrator watching Lantro's screen at the time, read over the email and printed out the screen view. Godwin then followed the link that was provided in the email and found Lantro's site. The title of the Web site was "Deliciously Demented," and there were dated journal entries written for the previous three days. The entry for October 2nd read:

> Gates High is a prison. I can't do anything and the teachers treat us like criminals. Everyone there is so lame and I can't believe that the government has let the school stand this long. I hope it burns to the ground. The students shouldn't stand for this mistreatment anymore. And for those psycho teachers reading this, find something better to do with your time. No this is not a threat, you losers.

The entry went on to express further critical views of the school and faculty and included vulgar language, which will not be repeated here. At the bottom of the Web site was a link to another webpage created by Lantro that was titled "Late Breaking News: Gates High Blows Up. Students Don't Care." That link led to a mock news story depicting how the school was blown up in a "suspicious" bombing. There was a picture of Gates High at the top of the page, and at the end of the story was a line that read, "For you idiots out there that didn't catch on, this story is obviously NOT true" (capitalization in original). There were also various links on that page which led to Web sites about bomb preparation, and one link was to a page titled, "How to create a bomb." There is no

indication that Lantro had any involvement in the creation or maintenance of any of those linked Web sites.

Once Lantro returned the laptop, Godwin searched through Lantro's computer log from the beginning of the school year, but did not find any evidence that he had accessed his personal Web site from any school computer. Godwin printed out a copy of Lantro's homepage and the mock news story and took all the documentation to the principal, Ed U. Cation. Cation called Lantro into his office, told Lantro that he knew of the email to Marks and the personal Web site, and warned Lantro that he would be appropriately disciplined. Cation also told Lantro, "You better clean up your Web site or take it down if you don't want to be punished even more than what I have in mind right now." Lantro removed his Web site from the Internet that same night. In a letter dated October 10, 2005, Cation informed Lantro's parents that he would be suspended for a week for violating the Internet Policy because he accessed personal email from a school computer. The letter further stated that Lantro would no longer be able to check out personal laptops and he would not be allowed to use the Internet at school for the rest of the year. Also, a suspension on his record was reported to every college to which he had applied, including those that were scouting him for their basketball programs. In late November, Lantro's first choice college accepted him for early admission, but refused to offer him any athletic scholarship money because of the recent "indiscretion."

Lantro filed a lawsuit against Gates County School District, contending that Gates High School's monitoring policy, which includes reading personal emails, constituted an unreasonable search and violated his Fourth Amendment right to privacy. His lawsuit further alleged the one-week suspension from school for violating the Internet Policy infringed upon his First Amendment right to free speech. Lantro sought a declaratory

judgment declaring the monitoring policy unconstitutional and an injunction expunging the suspension from his school record.

DISCUSSION

I. THE GATES HIGH COMPUTER MONITORING POLICY DID NOT VIOLATE LANTRO'S FOURTH AMENDMENT RIGHTS.

Plaintiff Lantro contends that Gates High's monitoring policy, which includes reading personal emails, constituted an invasion of privacy and violated his Fourth Amendment rights. He seeks to have the policy declared unconstitutional. For the following reasons, Plaintiff's request is DENIED.

This is a case of first impression in the Twenty-first Circuit. The particular area of privacy involving student use of school computers has not been developed fully. Regardless, this Court holds that Lantro had no reasonable expectation of privacy while using school computers and Gates High's Internet monitoring policy is constitutional.

A. Students retain limited privacy rights on school grounds.

Students have a constitutional right under the Fourth Amendment to be free from unreasonable searches and seizures while on school premises. New Jersey v. T.L.O., 469 U.S. 325, 334-37 (1985). A search or seizure, in order to pass constitutional muster, must be "justified at its inception" and must be "reasonably related in scope to the circumstances which justified the interference in the first place." Id. at 341 (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)) (internal quotation marks omitted). Under ordinary circumstances, a school official's search of a student will be justified "at its inception" when there are reasonable grounds for suspecting that the search will lead to evidence that the student has violated, or is violating, either the law or the rules of the school. See S.V.J. v. State, 891 So. 2d 1221, 1223 (Fla. 2nd DCA 2005). Such a search will be permissible in its scope when the measures adopted are reasonably related to the

objectives of the search, and not excessively intrusive in light of the age and sex of the student and the nature of the infraction. T.L.O., 469 U.S. at 341-42.

1. Gates High's monitoring of Lantro's computer use and reading of Lantro's email were justified on the basis that Gates High had a compelling interest and reasonable grounds to conduct such a search.

The Supreme Court has recognized that close supervision of school children is necessary in order to maintain a suitable educational environment. T.L.O., 469 U.S. at 341. Moreover, the Court allows, in a school setting, "the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." Id. Gates High has a compelling interest in deterring violent conduct, and therefore, its decision to monitor students' computer usage was appropriate. See Milligan v. City of Slidell, 226 F.3d 652, 655 (5th Cir. 2000) (noting that protecting students and deterring violent acts are "compelling government interests").

Furthermore, Gates High had reasonable grounds to conduct its search of Lantro's personal email. If students have been ill-behaved in the past, it is reasonable to believe that they will act in a similar manner in the future. The list of suspected students who would be more closely monitored was therefore justified. Schools must not simply sit back and wait for tragedies to occur. If public school authorities reasonably believe that a student is a threat to the school, or to the other students, then that school has a sufficient basis to monitor those students more closely and search through those documents which the student makes accessible on campus.

2. The search was reasonable in scope and not overly intrusive.

Monitoring a student's computer use is neither overly broad, nor overly intrusive. Unlike searches of personal property, there is no inherent physical aspect to searching through computer files or emails. Therefore, any search of computer documents is even

less intrusive than a search of a locker, a book bag or pockets because there is no invasion of physical space.

Additionally, Gates High's search of Lantro's email was narrow in scope. There is no indication that Gates High searched through any emails in Lantro's Hotmail account, which were not readily apparent on his screen. Moreover, Gates High's extended search into Lantro's personal Web site was justified by the suspicious language used in his email to Marks. Not only did Lantro mention the school in his email, but his use of the word "twisted" gave Godwin a reasonable belief that something was amiss. The powerful interest of promoting school safety justified the minimal scope of the search in this case. See Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 661 (1995) (when assessing the scope of school searches, the relevant inquiry is whether the interest being protected is "important enough to justify the particular search at hand"). This Court holds that Gates High had a legitimate interest in monitoring student emails for the purpose of school safety and such monitoring was not overly broad or overly intrusive.

B. Students have no reasonable expectation of privacy when using school computers.

To receive the protection of the Fourth Amendment, an expectation of privacy must be reasonable and must be one that society is "prepared to recognize as legitimate." Hudson v. Palmer, 468 U.S. 517, 526 (1984). Lantro could not have reasonably expected privacy when emailing over school computers. By signing the Internet Policy, Lantro acknowledged that he was aware of Gates High's monitoring program. Additionally, recent court decisions such as Smyth v. Pillsbury Co. demonstrate that society is unprepared to recognize a legitimate right of email privacy. 914 F.Supp. 97 (E.D. Pa. 1996). This is especially true when the individual formally acknowledges that those who own the computers reserve the right to search those computers. See United States v.

Cormier, 220 F.3d 1103, 1108 (9th Cir. 2000) ("[A] person does not have a reasonable expectation of privacy in an item in which he has no possessory or ownership interest[.]"); United States v. Bailey, 272 F.Supp.2d 822 (D. Neb. 2003) (finding that the defendant did not have any expectation of privacy because each time he accessed his work computer, he gave consent for his employer to search that computer). In the instant case, Lantro signed a waiver at the beginning of the school year and each time he checked out a laptop, acknowledging that Gates High reserved the right to monitor his use and search through files he accessed. He should not and could not reasonably expect any privacy when using a school-issued computer.

II. LANTRO'S SUSPENSION DID NOT VIOLATE HIS FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH.

Lantro contends that his suspension violated his freedom of speech because his personal Web site was protected speech under the First Amendment. He seeks a declaratory judgment that the disciplinary action is void as a violation of his First Amendment rights and seeks an injunction ordering the expungement of the incident from his record. Plaintiff's request is DENIED.

Gates High did not violate Lantro's First Amendment rights because he was punished based on his violation of the Internet Policy, not for the content of his personal Web site. This Court, however, will address the First Amendment issue in order to alleviate any concerns.

The Supreme Court has long recognized that students in public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969). However, such rights are "not automatically co-extensive with the rights of adults in other settings." Bethel School District No. 403 v. Fraser, 478 U.S. 675, 682

(1986). A student's speech may be limited if authorities reasonably fear that such speech will be disruptive to the operation of the school or will materially interfere with school activities. Tinker, 393 U.S. at 509. Furthermore, it is clear that public school officials have the right to regulate speech when the speech is inconsistent with the school's "basic educational mission." Fraser, 478 U.S. at 683. Courts must analyze any expression by a public school student in light of that school environment's special characteristics. Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 266 (1988).

A. School authorities can regulate off-campus student speech as long as it is accessible to students on campus.

A student's First Amendment rights are substantially limited on school grounds and even more so when school facilities are used for student speech. See Hazelwood, 484 U.S. at 267. In Hazelwood, the Court held that a high school could restrict student speech when the mode of communicating that speech was not a "public forum." Id. School facilities may be deemed to be public only if school authorities have by policy or by practice opened those facilities for use by the general public. Id. If the school facilities have been set aside for other purposes, communicative or otherwise, then no public forum has been created, and school officials may impose reasonable restrictions on student speech. Id. Certainly here, Gates High's technology lab and computers were bought and maintained for the specific purpose of furthering the school's educational goals. Because use of the school computers is not open to the general public, there is no context in which the computer facilities could be deemed a public forum. Therefore, Gates High may reasonably restrict student speech on those computers.

Lantro argues that because he did not create or access his Web site on school grounds or through school computers, the school is not entitled to regulate or restrict his speech. However, the Seventh Circuit held that as long as material was distributed on

campus, it would be considered student speech and thus susceptible to school regulation speech. Boucher v. School Board of the School District of Greenfield, 134 F.3d 821, 829 (7th Cir. 1998). The Boucher court held that a student newspaper article explaining how to hack into school computers was speech subject to greater limitations because the article advocated on-campus activity and was distributed to students on school grounds. Id. The students in that case had not created the article using any school facilities, and the newspaper in which it appeared was not school sponsored. Id. Similarly, Lantro did not create the Web site on campus, but it was accessible to all students, teachers and administrators on school grounds via school computers. Further, the Web site itself promoted on-campus activity by inciting students to rebel against the school. The court in Boucher held that school regulation of student speech is proper when the speech advocates on-campus activity which may be detrimental to the school. Id. Therefore, because Lantro's Web site is accessible to students on campus and it promotes on-campus activity which could potentially harm Gates High, it is subject to reasonable restrictions by school officials.

B. School officials can regulate lewd and vulgar student speech because it is not protected by the First Amendment.

In Tinker, the Supreme Court held that a public school's suspension of students who had violated school policy by wearing armbands to protest the Vietnam War violated those students' First Amendment rights. 393 U.S. at 513. Unlike Tinker, however, there is no "pure speech" at issue in this case. Lantro's Web site was not created for any political purpose, so his speech cannot be compared to that of the students in Tinker. The speech in question is more analogous to that in Fraser. 478 U.S. at 675 . In Fraser, the Supreme Court held that a school district acted within its authority in disciplining a student who gave an offensive and indecent speech at a school assembly. Id. at 685. The

Court distinguished Tinker by noting there was a significant difference between the political message of the armbands in Tinker and the lewd content of Fraser's assembly speech. Id. at 680 . The Court's holding in Fraser allows schools to "categorically prohibit lewd, vulgar or profane language." Saxe v. State College Area School District, 240 F.3d 200, 214 (3rd Cir. 2001). Therefore, it was well within Gates High's authority to punish Lantro for his use of lewd and vulgar language on his Web site. Lantro was not trying to convey a political message and the vulgarity present throughout the Web site is only further evidence that such speech is unprotected by the First Amendment.

The Court in Fraser found that a school was entitled to "disassociate itself" from the speech in order to demonstrate to students that such speech is inconsistent with its educational values. 478 U.S. at 685-86; see also Hazelwood, 484 U.S. at 266-67. Lantro's Web site repeatedly names Gates High and even shows a picture of the school. However, the Web site is poorly written, makes numerous spelling and grammatical mistakes and further uses extreme vulgarity throughout the page. Certainly, anyone searching for information on Gates High would come across Lantro's Web site. Therefore, the school has a right to regulate lewd speech in order to ensure that others know that the school does not support, endorse or encourage that Web site. The only way for Gates High to "disassociate itself" from Lantro's speech was to restrict the contents of the Web site and to punish Lantro accordingly. Punishment was proper because other students must be aware that Gates High will not condone speech that conflicts with its educational values and goals.

C. School officials may discipline students for speech if such speech constitutes a true threat that substantially interferes with the educational mission or operation of the school.

School administrators are allowed to discipline students for conduct or expression, in class or out, that materially disrupts class work or involves substantial

disorder. Tinker, 393 U.S. at 513. School officials may discipline student conduct that occurs off school premises where it is established that the conduct materially and substantially interferes with the educational process. M.C. v. State, 695 So. 2d 477 (Fla. 3rd DCA 1997). School authorities should not be required to wait until conduct or speech reaches the point of interfering with the work of the school or the rights of other students. The relevant test here is whether school authorities "have reason to believe" that the student expression will be disruptive. See Hazelwood, 484 U.S. at 266; see also Tinker, 393 U.S. at 514. In this case, the Gates High officials were reasonable in their belief that Lantro's Web site would be disruptive.

Moreover, the Supreme Court has made clear in cases such as NAACP v. Claiborne Hardware Co., that threats are not expression protected by the First Amendment. 458 U.S. 886 (1982). Courts should take even more responsibility when faced with threats to the peace and security of others within the school context. Such threats do not merit constitutional protection.

Gates High officials had reason to believe that Lantro's Web site constituted a threat to the safety of the school. Although Lantro stated that his views were "not a threat," they surely were. Student Web sites, such as Lantro's, are an early indication of a student's violent inclinations that can easily spread to like-minded or susceptible people, such as the other student Lantro emailed. These factors provided Gates High with sufficient basis to believe that Lantro's Web site would be disruptive.

Schools have the inherent responsibility of ensuring the safety of their students, while also ensuring that students are immersed in an environment where learning and education are the top priorities at all times. Distractions to students or disruptions to either of these goals can severely impact the operation of a school and the dynamic that a school has with its students.

CONCLUSION

For the above reasons, this Court holds that the Defendant did not violate the Plaintiff's Fourth or First Amendment rights, and therefore this case is DISMISSED.

IT IS SO ORDERED.

Dated: October ___, 2006

_____
KAUFMAN, Jerry
Circuit Court Judge

IN THE DISTRICT COURT OF APPEAL
SIXTH DISTRICT, STATE OF FLORIDA

SAL LANTRO,

Appellant,

v.

CASE NO.: 6D06-3731
Lower Case No.: 06-CA 1966

GATES COUNTY SCHOOL DISTRICT, and **ED U. CATION**, in his official capacity as Principal of Gates High School,

Appellees.

_____/

Opinion filed April ____, 2007.

An appeal from the Circuit Court for Gates County.
Jerry Kaufman, Judge.

GLIMARTIN, C.J.

This is an appeal from an order by the Twenty-first Judicial Circuit Court, Kaufman, J., upholding the constitutionality of the Gates High computer monitoring policy under the Fourth Amendment and upholding the constitutionality of Lantro's suspension as not violating his First Amendment right to freedom of speech. For the reasons set forth below, we now REVERSE both holdings of the lower court.

FINDINGS OF FACT

The Findings of Fact are set forth in Judge Kaufman's lower court opinion. We need not repeat them here.

DISCUSSION

I. GATES HIGH OFFICIALS VIOLATED THE PLAINTIFF'S FOURTH AMENDMENT PRIVACY RIGHTS BY READING THE CONTENTS OF HIS PERSONAL EMAIL.

As the circuit court noted, the question of student privacy rights concerning school computers is one of first impression for this circuit. Because little precedent exists on which to base this decision, it is critical that this Court conduct a thorough analysis of the issues. Although students' privacy rights on school grounds are limited, Lantro did have a reasonable expectation of privacy in accessing his personal Hotmail account. Gates High thereby violated Lantro's privacy rights by reading the content of his email. Accordingly, the circuit court decision is REVERSED.

A. There is a reasonable expectation of privacy when using personal email.

The Fourth Amendment guarantees "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. An unreasonable search or seizure can only occur if there is a legitimate expectation of privacy. Therefore, this Court must determine whether it is reasonable for a person who sends or receives an email via a personal email provider using the Internet to legitimately expect the message to remain private.

In Katz v. United States, Justice Harlan's concurring opinion articulated the present day test to determine whether a Fourth Amendment violation has occurred. 389 U.S. 347, 361 (1967) (Harlan, J., concurring). The test asks: 1) whether the person exhibited an actual, or a subjective expectation of privacy, and 2) whether that expectation is one that society is prepared to recognize as reasonable. Id.

The first element of Katz is satisfied because Lantro used his personal Hotmail account rather than his school email account, thereby exhibiting an expectation that his message would remain private. Third-party email accounts (e.g., Hotmail, Yahoo!,

Gmail, etc.) require a username and password barring access by anyone other than the individual accountholder. Furthermore, the message itself was directed and addressed to only one party. These factors prove that Lantro had an actual expectation of privacy, satisfying the first prong of Katz.

To satisfy the second element of Katz, whether there is an objectively reasonable expectation in an email, this Court will look to recent case law. In Dunlap v. County of Inyo, the Ninth Circuit stated in dicta that there exists a reasonable expectation of privacy in email messages. 121 F.3d 715 *3 (1997) (unpublished table opinion). The court held that even when a police department routinely recorded conversations over one of its telephone lines, employees had a reasonable expectation of privacy. Id. The court stated "[t]he capability of monitoring does not create implied consent to any monitoring that occurs. Cellular telephones and electronic mail are both technologies of questionable privacy, but we nonetheless reasonably expect privacy in our cell phone calls and e-mail messages." Id. This court agrees with the reasoning in Dunlap and thus applies it to this case.

In United States v. Simons, the Fourth Circuit held that a public employer's remote, warrantless search of an employee's office computer did not violate his Fourth Amendment rights because, in light of the employer's Internet policy, the employee lacked a legitimate expectation of privacy in his Internet activity . 206 F.3d 392, 398-399 (4th Cir. 2000). In Simons, the employer's Internet policy clearly stated that the employer would "audit, inspect, and/or monitor" employees' use of the Internet, including all file transfers, all Web sites visited and all email messages. Id. The Gates High Internet Policy, however, is far vaguer and did not reasonably put Lantro on notice that Gates High would read his private Hotmail account. The Internet Policy simply states an unacceptable use of the Internet is to use email for a non-educational purpose. However,

the policy does not specifically prohibit use of personal email accounts. He could reasonably expect that at least his Hotmail account would be private. Furthermore, our stance might be different had Lantro sent his email message to a public forum such as a bulletin board or chat room, but he merely sent it to one person.

Although the circuit court points to three cases to support its contention that there is no legitimate expectation of privacy in email, none of those cases are applicable here because the facts are significantly different from Lantro's case. For example, in Smyth v. Pillsbury, the court found that an individual cannot reasonably expect a right to privacy when using the company-owned email network . 914 F. Supp. 97 (E.D. Pa. 1996). Smyth is not persuasive because Hotmail is not owned, operated or maintained by Gates High. Moreover, Lantro's email to Marks did not contain child pornography, obscenity or other illegal Internet content. The circuit court relies on cases that involve far more serious activity than merely checking a personal Hotmail account.

In light of growing identity theft and fraud concerns, this court is ready and willing to recognize an individual's privacy rights in a personal email from that individual to another. This court holds that Lantro had a reasonable expectation of privacy in his email to Marks, and that Gates High's monitoring of Lantro and subsequent reading of his personal email constituted a search which must be scrutinized under the Fourth Amendment.

B. The search was not reasonable under the circumstances.

In New Jersey v. T.L.O., the Court held that "the legality of a search of a student shall depend simply on the reasonableness, under all the circumstances, of the search." 469 U.S. 325, 341 (1985). Given the circumstances of this case, Gates High's search of Lantro's email and its monitoring policy were unreasonable. There is no indication in the record that Lantro had ever given Gates High officials reason to believe that he was using

the school computers or the Internet improperly. Lantro's only prior indiscretion at the school was one minor vandalism prank that did not involve the Internet or school computers. If Gates High's "watch list" had been comprised of students who had violated the Internet Policy in the past, this Court might be more persuaded that a reasonable suspicion existed. However, no such basis exists in this case, and therefore, this Court holds that Gates High's monitoring policy was unreasonable.

As the Ninth Circuit held in Dunlap "the capability of monitoring does not create implied consent to any monitoring that occurs." 121 F.3d 715. Although Lantro signed an Internet Policy and was aware of the possibility that he would be monitored, it is reasonable to believe that Lantro did not know or consent to a technology administrator reading his personal email sent via a private email account. Generally, in an office or school setting, there is an expectation that the institution will randomly monitor the office or school supported email. It is unreasonable to believe, however, that anyone who accesses a third-party email system, such as Hotmail, would consent to the monitoring of that email by anyone other than the company that supports it.

C. The search was not reasonable in scope.

Lantro's initial email did not create a reasonable basis to justify Gates High's further search of Lantro's Web site. Gates High only knew of Lantro's site and its contents because it unlawfully read Lantro's personal email to Marks. Nothing in the email indicated the Web site might contain derogatory, lewd or threatening material. The circuit court claims that Gates High's desire to guard the safety of its students justified reading through Lantro's emails. However, even if this were true, once the email was read, nothing within it warranted a further search by clicking on the link in the email and reading Lantro's personal Web site. A plain reading of the email shows Lantro merely

meant to say "check out this funny Web site." The email did not contain any material that a reasonable person would view as a threat to the safety of Gates High or its students.

Without a threat in the email, there is no justification for extending the search beyond Lantro's screen view. In Vernonia School District 47J v. Acton, the Court held that the nature and immediacy of the school's concern for deterring drug use in athletes favored a finding of reasonableness. 515 U.S. 646, 661 (1995). Even if the nature of the concern in this case—protecting students and the school—could be considered compelling, there was no immediacy. Lantro's email did not present any reason for a technology administrator to be concerned enough to continue searching through the contents of Lantro's email and follow the link to his personal Web site. Use of the term "twisted" does not support a reasonable belief that the content of Lantro's Web site contained a threat to the school. Thus, Gates High's search was not only initially unjustified inasmuch as the school read Lantro's personal email, but the search was also unjustified in further reading his personal Web site. Lantro had a reasonable expectation of privacy in his personal email, and Gates High's illegal search violated his Fourth Amendment rights.

II. GATES HIGH VIOLATED THE PLAINTIFF'S FIRST AMENDMENT RIGHTS WHEN IT SUSPENDED HIM FOR THE CONTENT OF HIS PERSONAL WEB SITE.

Gates High posits that it suspended Lantro for "violating the Internet Policy." This is a mere veiling of its true intent. GHS imposed a punishment more severe than necessary based upon the anti-Gates High content of Lantro's Web site. There is no indication that Gates High had imposed any other week-long suspensions to students who improperly used the Internet at school. Most violations of the Policy resulted in detentions and mandatory study halls. Additionally, there is no evidence that Gates High would have been aware of the Web site had it not been for its invasion of Lantro's

privacy. This punishment and Cation's requirement of Lantro to "clean up" his Web site were drastic violations of Lantro's First Amendment rights. This Court holds the suspension should be expunged from Lantro's record immediately. Accordingly, the decision of the circuit court is REVERSED.

A. The First Amendment protects off-campus student speech that is not sponsored by the school.

As the circuit court noted, students retain their constitutional rights in a school setting, but those rights are limited in the school environment. See Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506-09 (1969); see also Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 270-71 (1988). However, the circuit court has incorrectly applied the holding of Hazelwood because school authorities do not have broad discretion to regulate all student speech off campus. In Hazelwood, the Court held that educators can control the content and style of student speech, but only if such speech is school-sponsored and as long as the educator's actions were "reasonably related to legitimate pedagogical concerns." 484 U.S. at 273. The Court held the school authorities in Hazelwood retained complete control over the forum in which the speech was to be disseminated. Id. at 268. Although the computer lab at Gates High is not a public forum, the Internet is. The Internet is accessible on campus, but Lantro did not use a school-sponsored forum to create or disseminate the content of his Web site. Furthermore, the Supreme Court's holding in Bethel School District No. 403 v. Fraser is inapplicable to this case because Fraser involved on-campus speech directed at 600 students. 478 U.S. 675 (1986). There is no indication that Lantro promoted his Web site to more than one friend.

The concerns raised in Fraser and Hazelwood are not present in this case. Lantro was not speaking to a captive audience, and the school neither sanctioned his expression

nor provided materials to support it. See Coy v. Board of Education of the North Canton City Schools, 205 F.Supp.2d 791 (N.D. Ohio 2002) (finding that school officials violated a student's First Amendment rights by disciplining him for accessing his personal Web site using school computers). Moreover, although the Web site was accessible to students on campus, the reasoning in Boucher v. School Board of the School District of Greenfield is misplaced. 134 F.3d 821 (7th Cir. 1998). A better understanding of what is within a school's authority is that found in Thomas v. Board of Education, Granville Central School District, 607 F.2d 1043 (2nd Cir. 1979). In Thomas, the Second Circuit stated school officials possess "substantial autonomy within their academic domain," and that this power "rests in part on the confinement of that power within the metes and bounds of the school itself." Id. at 1052. Therefore, Gates High cannot limit Lantro's Web site, which was neither created on campus, nor sponsored by the school.

B. Lantro's Web site did not constitute a true threat.

The circuit court held the Web site constituted a true threat, and therefore was not subject to First Amendment protection. However, the analysis of a true threat should be based on the Sixth Circuit precedent of United States v. Lincoln, 462 F.2d 1368 (6th Cir. 1972). The Lincoln court defined true threat as:

> a statement, written or oral, [made] in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of an intention to inflict bodily harm upon or take the life of [the target].

Id. at 1369; c.f. Rogers v. United States, 422 U.S. 35 (1975) (concurring opinion).

There is no evidence that Lantro communicated or intended to communicate the Web site address to anyone other than one friend, Chris Marks. Additionally, nothing on the Web site named any student or teacher individually or made any specific threat

against an individual. Notably, the Web site contained the statement, "No this is not a threat." In a similar case, Mahaffrey v. Aldrich, the circuit court concluded that a student's personal Web site, with a listing of names under the title "People I wish were dead," did not constitute a true threat. 236 F.Supp.2d 779, 786 (E.D. Mich. 2002). The court held that a reasonable person in the student's place would not foresee that the statements would be interpreted as a serious expression of intent to harm. Id. In this Court's opinion, the Plaintiff's position was analogous to Mahaffrey's.

C. There is no evidence that Lantro's Web site caused or would cause a disruption at Gates High.

While schools may limit speech for fear of disruption, that fear must be "reasonable" and not an "undifferentiated fear" of a disturbance. Tinker, 393 U.S. at 508-09. Mere dislike of the content of a student's speech is not an acceptable justification for restricting such speech. Beussink v. Woodland R-IV School District, 30 F.Supp.2d 1175, 1180 (E.D. Mo. 1998). The circuit court in Beussink found that the school district did violate a student's First Amendment rights by disciplining him for his personal Web site containing material derogatory to the school and its officials. There was no indication in Beussink that the school punished the student because of a fear of disruption. Id. Similarly, there is no evidence that Gates High feared disruption at the time they punished Lantro. Furthermore, the circuit court relies heavily on Boucher for determining that mere access to speech could cause a disruption. 134 F.3d at 826. Boucher is inapplicable, however, because the court in that case found evidence of past disruption and evidence of potential future disruption due to the article. Id. at 827. No such evidence is available in this case.

If Gates High truly feared access to the site would cause a disruption to its students, then the appropriate course of action would be to install a filtering system.

Violations of an individual's First Amendment rights will not be tolerated, especially when there are less restrictive means available to avoid any potential harm.

CONCLUSION

Accordingly, this Court holds that Gates High violated Lantro's First and Fourth Amendment rights by reading email in his personal Hotmail account, and by punishing him for the content of his personal Web site. The decision of the circuit court is reversed.

REVERSED.

MADDEN and DELANEY, JJ., CONCUR.

Supreme Court of Florida

Case No.: SC06-331
Lower Tribunal No.: 6D06-3731

GATES COUNTY SCHOOL DISTRICT, and **ED U. CATION**,
in his official capacity as Principal of Gates High School,
Petitioners,

vs.

SAL LANTRO,
Respondent.

ON CONSIDERATION of the PETITION FOR A WRIT OF CERTIORARI herein to the Supreme Court of Florida, No. 6D06-3731.

IT IS SO ORDERED by this Court that the said Petition be, and the same is hereby granted, in order that this Court may consider the following questions raised by the parties:

1. Whether Petitioners' monitoring of Respondent's personal email was unreasonable and violated Respondent's right to privacy; and

2. Whether the disciplinary action imposed upon Respondent by Petitioner unconstitutionally impinged upon Respondent's right to freedom of speech.

Dated: March ____, 2007

/s/
Timothy Hall
Clerk, Supreme Court