

Professor makes legal case for schools to challenge cyberbullies

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Benjamin Holden, a U. of I. journalism professor who teaches media law, wants to balance the First Amendment rights of children with the need to keep students safe from cyberbullies. Credit: L. Brian Stauffer, University of Illinois News Bureau

Student bullying on the internet could be headed for a showdown with a

50-year-old U.S. Supreme Court case that granted expansive

First Amendment rights to kids in [public school](#).

When it does, University of Illinois journalism professor Benjamin Holden, through a two-part legal study, is ready to make the case for challenging the offenders.

Part one of Holden's study, published this week by the [Fordham Intellectual Property, Media & Sports Law Journal](#), argues for new standards under which K-12 public [school](#) officials can punish cyberbullying.

Part two, published last November by the [Akron Law Review](#), uses case law from around the country to suggest a new legal rule for when an anonymous cyberbully, preying on a public school victim, can be legally "unmasked" by a [court](#).

The articles were published out of order due to the publishing schedules of the two independent journals.

The new standards are needed, Holden argues, because the 1969 Supreme Court ruling that currently applies, *Tinker v. Des Moines*, came years before the internet.

"Social media has taken over the lives of these kids," Holden said, and online bullying often disrupts schooling and students' academic success. "Whether a teacher or a school district can manage the cruel cyberbullying of kids in their classes is really the most pressing issue in the area of student discipline in American education."

Holden's Fordham article, or part one of his study, addresses "The Wisniewski problem," coined for the 2007 2nd U.S. Circuit Court of

Appeals case *Wisniewski v. Board of Education*. The problem refers to the dilemma faced by courts and schools when a student's online bullying speech contains "elements of parody cloaked in violence," Holden writes.

His argument for unmasking, presented in his Akron article, may be more controversial, but he still thinks it is important. "Some very high percentage of really foul bullying online is anonymous," he said.

Holden is a professor of journalism who teaches media law. He's also an attorney and a former journalist. As such, his legal research and suggested solutions attempt to balance the First Amendment speech rights of kids with the duty of schools to keep students safe, which he knows can be a challenge.

"Given the toxic mix of immature bravado, anti-establishment machismo and plain juvenile silliness found in the cases, it is often difficult to separate potentially dangerous student cyberspeech from that which is merely stupid," he writes.

Holden brings added perspective to the issue as the founder of a Columbus, Georgia, nonprofit that provides mentoring and funding for low-income kids seeking to attend college. That puts him in contact with many teenagers, and he has seen the pervasive influence of social media and the corrosive effects of cyberbullying.

Courts have disagreed for decades on Tinker's application to out-of-school speech, he said. The internet and the rapid development of phone apps have further complicated the issue.

Determining how and when school officials can address such off-campus speech is "one of the biggest unanswered questions left sort of festering by the Supreme Court," Holden said.

The question has actually been addressed by half of the country's 12 federal circuit courts, but by applying inconsistent legal standards, he said. "It's not that there's no decision, it's that there are conflicting decisions." And the other six circuit courts have been silent.

"The Supreme Court has a responsibility to resolve the conflicts among the courts on the question of when 'off-campus speech' such as hateful Facebook posts, phony caricature websites or bullying Twitter messages can be punished by public schools," Holden said. The First Amendment, like the U.S. Constitution generally, does not limit the ability of private schools to discipline students, he noted.

Holden hopes the Supreme Court eventually sees the need to update the Tinker ruling "to extrapolate or extend its reasoning or its logic into the [social media](#) era" - giving [school officials](#) and schoolchildren a single standard for dealing with bullies online.

Provided by University of Illinois at Urbana-Champaign

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