COURTSIDE

MySpace?

BY PERRY A. ZIRKEL

On January 2, 2003, the Connecticut Technical High School system hired Jeffrey Spanierman as an English teacher for its program in Ansonia, Connecticut.

During his second and third years in the position, he was responsive to students who asked him to look at their MySpace pages. The MySpace web site allows users to create their own profile page, including photographs. One of the features is that the owner of a profile can post blogs and allow other MySpace users to post comments.

By the summer of 2005, Spanierman had opened his own MySpace account, creating several different profiles. One was called "Mr. Spiderman." He used the account to communicate with students about homework and also to conduct nonschool-related discussions.

In the fall of 2005, one or more students complained to guidance counselor Elizabeth Michaud about Spanierman's MySpace communications. Another colleague of Spanierman, Francesca Ford, told Michaud how to access his "Mr. Spiderman" MySpace profile. Michaud was disturbed by its contents, including a photo of Spanierman from 10 years earlier accompanied by recent photos of students and, off to one side, pictures of naked men with what she considered "inappropriate comments." The blogs on the page were also disturbing to her, seeming "very peer-to-peer like," including personal issues and casual comments about the happenings at students' weekend parties.

Michaud told Spanierman that she considered some of the pictures and the nonschool-related communications to be inappropriate, suggesting that he use the school's e-mail system for outside communications with students. As a result, Spanierman deactivated his "Mr. Spiderman" profile page.

However, on October 14, 2005, he created a new MySpace profile, called "Apollo68." Ford subsequently discovered his new page and informed Michaud. According to Michaud, some students had already complained about it. Ford and Michaud separately viewed the new page, and each concluded that its contents were nearly identical to those of the "Mr. Spiderman" profile.

In November, Michaud reported what she had found to the director of guidance, who directed her to tell the principal and to make sure that Spanierman had representation from the teachers' union. Soon thereafter, the principal met with Spanierman and his union representative, explaining that there would be an administrative investigation and placing him on leave with pay.

The administrative specialist who investigated the matter obtained a list of "friends" identified on the "Apollo68" profile and matched several of them with students at the school. She also copied Spanierman's comments and blog entries on his MySpace page.

On January 13, 2006, the investigating administrator met with Spanierman, his union representative, and the principal to share her findings and to give him the opportunity to provide his side of the story.

On March 30, the principal sent Spanierman a letter informing him that he had exercised poor judgment as a teacher. The assistant superintendent immediately followed with a written notice that his contract would not be renewed. Spanierman requested and received a hearing with the superintendent. The superintendent agreed with the nonrenewal decision, and Spanierman's contract expired at the end of the 2005-06 school year.

On July 31, Spanierman filed suit in federal court, claiming the school system had violated his Fourteenth Amendment rights of procedural due process, substantive due process, and equal protection and his First Amendment freedoms of expression and association.

Court's Decision

On September 16, 2008, the federal district court in Connecticut granted the district defendants' motion for summary judgment.[1] First, the court rather readily disposed of Spanierman's due process claims, concluding that he, as a nontenured teacher, did not have a property interest in continued employment at the end of his contract. He did not claim a liberty interest, and his reliance on the state statute pertaining to nontenured teachers was unavailing because the school system had complied with the pertinent notice and hearing requirements of both the statute and the collective bargaining agreement. Even if the plaintiff had established a right to substantive due process, the court concluded that the defendant's nonrenewal decision

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was not malicious or otherwise outrageously arbitrary and conscience-shocking.

Second, the court rejected Spanierman's equal protection claim, observing that the Supreme Court had recently ruled that the "class-of-one" equal protection theory, i.e., in the absence of a protected classification or fundamental right, does not apply in the public employment context.[2]

Third, the court similarly disposed of Spanierman's First Amendment free speech claim because he was not under any obligation to make his MySpace communications as a teacher. The First Amendment did not provide protection, because 1) "almost none of the contents of the Plaintiff's profile page touched matters of public concern"; 2) the only exception, his error-filled poem about the Iraq war, obviously had no causal connection to the nonrenewal decision; and 3) even if it had the requisite connection, the evidence was preponderant that the school system would have taken the same action based on the disruptive effect of his MySpace communications as a whole. Quoting two examples of his juvenile-joking exchanges with students that respectively threatened them with discipline and discussed "getting any" sex, the court concluded that it was "reasonable for the Defendants to expect the Plaintiff, a teacher with supervisory authority over students, to maintain a professional, respectful association with students."

Finally, the court made short shrift of his freedom of association claim, concluding that 1) it is questionable whether MySpace is an organization for purposes of First Amendment association; 2) it is even more questionable that he demonstrated that his association with MySpace involved a matter of public concern; and 3) in any event, as with his First Amendment free speech claim, he had failed to show the requisite causal connection.

Concluding Comments

Spanierman's attorney, John R. Williams, sees the lesson of this case as worrisome, contending that "the federal court effectively reversed the burden of proof in such teacher web site-communication cases, which is wrong as a matter of individual fairness and public policy." In contrast, assistant attorney general Margaret Q. Chapple, who represented the school, argued in her brief to the court that "Spanierman was not disciplined for using MySpace.com, he was disciplined for exercising poor judgment because he: exposed students to curse words, exposed them to a naked picture, demonstrated poor boundaries with students, and made inappropriate comments to students."

In this electronic age and culture, it is not surprising that teachers, like students,[3] would get ensnared in the web of new technological issues.[4] Indeed, similar problems for teachers often are reported in the news media.[5] However, at a time when the Supreme Court and the rest of the judiciary is leaning away from individual rights under the Constitution, including the cited First and Fourteenth Amendment decisions in the public employment context, the new technologies — including but not limited to e-mail, MySpace, Facebook, YouTube, and electronic surveillance tools — present traps for the unwary. The problem of establishing an effective relationship with students, which is close enough for internal trust but distant enough for external trust, is an age-old problem that is as tricky as distinguishing between the pertinent definitions of "confidence." Spanierman's lesson is that technology further blurs the boundaries between in-school and out-of-school business and between school-related and nonschool-related communications. This lesson is not limited to nontenured teachers, as evidenced by the court's final conclusion about reasonable expectations. Thus, for Spanierman and other teachers who use the Internet to establish rapport with students, beware: MySpace is not your space. ◼

NOTES

1. *Spanierman* v. *Hughes*, 576 F. Supp. 2d 292 (D. Conn. 2008). Because the judge granted the defendants' motion for summary judgment, i.e., without a trial, the "facts" summarized herein are merely allegations interpreted in the light most favorable to the plaintiff-teacher. I obtained supplementary information via e-mail interviews in early November 2008 with attorneys John R. Williams and Margaret Q. Chapple, who represented the plaintiff-teacher and the district defendants, respectively.

2. *Enqquist* v. *Oregon Dep't of Agriculture*, 128 S. Ct. 2146 (2008).

3. See, for example, Perry A. Zirkel, "Calling Off Cell Phones," *Phi Delta Kappan*, February 2008, pp. 464-465; idem, "Technological Tools — or Weapons?" *Phi Delta Kappan*, November 2006, pp. 255-256; idem, "A Web of Disruption," *Phi Delta Kappan* 82 (May 2001): 717-718.

4. For a transition, see idem, "Taping Teachers," *Phi Delta Kappan* 90 (November 2008): 227-228.

5. See, for example, Ann Doss Helms, "Teachers Disciplined for Facebook Postings," *Raleigh News & Observer*, November 12, 2008, www.newsobserver.com/news/education/story/1291477.html.