3-16-2009

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Boston College Law School

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3/16/09—Boston College Law School professor Mary-Rose Papandrea was a featured speaker at a conference hosted by Yale Law School on February 13th and 14th titled "The Future of Internet Speech: What Are We Teaching the Facebook Generation?" The unique two-day conference, organized by Yale’s Law and Media Program, brought First Amendment scholars like Papandrea together with high school students, teachers, and administrators in order to address the free speech dilemmas that have emerged from students' use of wildly popular websites like Facebook and MySpace.

With group discussions titled "What Interests Do We Share? Where Can We Agree?" and "How Might We Work Together," the conference struck a conciliatory and practical tone. Participants discussed how to best reconcile the rights of students with the school's need to maintain an orderly learning environment. "I personally enjoyed having the opportunity to speak to school administrators and teachers who may not have appreciated the importance of student speech rights," said Papandrea.

Papandrea's speech, titled "Can We Teach Shared Values?" argued that early Supreme Court decisions gave minors robust free speech protections, and that granting schools broad authority to restrict online student expression endangers these rights. School administrators should leave punishment to parents, Papandrea argued, and instead focus on teaching students to use the Internet responsibly.

With that in mind, participants in the conference began drafting an actual school curriculum that educates students on the pros and cons of social networking and blogging technology. "Rather than simply have legal arguments all day long about what schools should be able to do, we recognized that the law is very unclear in this area, and that regardless of how it is resolved, schools should be taking a more active role in educating their students about how to use the Internet with civility," said Papandrea.

Next month, some of the conferees will reconvene to discuss how to implement the curriculum they have drafted at secondary schools nationwide.

Papandrea, a former First Amendment litigator at the law firm of Williams & Connolly, has written and lectured extensively on the intersection of the First Amendment and the Internet since joining the BC Law faculty in 2004. In 2008, frustrated by a string of lower court decisions that were "all over the place on this issue," and a Supreme Court decision, Morse v. Frederick, that did little to clarify, she dedicated herself to the issue of student speech rights.

In the December 2008 Florida Law Review, Papandrea surveyed the status of the law in this evolving area. In her article, "Student Speech Rights in the Digital Age," she argues that the tests the courts have developed for determining whether a school may control student speech give schools far too much authority.

For instance, some courts, in determining the crucial question of whether the student speech at issue can be considered on-campus or off-campus, ask whether the digital speech was directed to campus or whether it was reasonably foreseeable that the speech would come to attention
of school authorities. Because of the inherently pervasive nature of digital speech (it is "both everywhere and nowhere," wrote Papandrea) and because online student speech frequently touches on topics related to school, such an approach grants schools authority over the vast majority of online student expression, argued Papandrea.

Similarly, some courts use what Papandrea calls the "materially disruptive" test - a standard based on the idea that schools can sanction speech that distracts students from the task at hand. Such a standard makes sense in classroom context, Papandrea argues, but "is ill-suited to speech in the digital age." In an age of unlimited online distractions, such a test, even applied strictly, would quickly allow schools to become "cultural censors."