

Beyond Tinker

Purpose:

After students have studied the outcome of the *Tinker* case, they will examine cases decided after that famous case that indicate that the Court has changed its position on student's rights. Students will then apply the standard of "reasonableness" to a hypothetical case about expression at school. They will again need to examine the need to balance students' rights to free expression with the school's responsibility to maintain a safe learning environment.

Procedure:

1. Use this lesson after the lesson titled *At the Schoolhouse Gate* that deals with the *Tinker v. Des Moines School District* case. Tell students that since 1985, there have been changes in the Court's position on student rights. Distribute the handout *Expression at School*. Have students read the facts of the two cases and have them answer the questions.
2. Debrief the cases by telling students the results of the two cases.
 - In the case of *Bethel v. Fraser* (1986), the Supreme Court ruled (7 to 2) that school officials could punish high school senior Matthew Fraser for giving a speech before the student assembly that contained lewd references. In court Fraser argued that a speech nominating another classmate for a student elective office was entitled to as much protection as the black armbands in *Tinker*. The Supreme Court disagreed, distinguishing his "vulgar" speech during a school-sponsored event from the pure "political" speech in the *Tinker* decision. In its opinion, the Court majority stated "the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings." Instead the Court set up a balancing test: "the freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Surely, it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."
 - Many First Amendment experts believe that the Supreme Court went too far in limiting the *Tinker* standard by its ruling in *Bethel*. The Court went even further, however, in its 1988 opinion (5 to 3) in *Hazelwood School District v. Kuhlmeier*. In *Hazelwood*, the Court ruled that students' First Amendment rights were not violated when a school principal censored two student articles on controversial topics – pregnancy and divorce – in the school newspaper, *The Spectrum*. The Court held that schools must be able to set high standards for student speech disseminated under their auspices, and

that schools retained the right to refuse to sponsor speech that was "inconsistent with 'the shared values of a civilized social order.'" Educators did not offend the First Amendment by exercising editorial control over the content of student speech so long as their actions were "reasonably related to legitimate pedagogical concerns." The actions of principal Reynolds, the Court held, met this test.

3. Divide students into small groups and give each group a copy of the case study *Student Speech in Public Schools*. Ask them to read the case study and then answer the questions based on their opinions and the precedents set in *Tinker*, *Bethel* and *Hazelwood*. Have each group share their decisions with the rest of the class.

Possible answers to the two questions include:

1. Students might decide that Smith's freedom of speech was violated based on *Tinker*, but they also might decide that it was not violated based on *Hazelwood* and the school administrator's concerns about disruption to the learning environment.
2. Schools probably cannot prohibit students from wearing clothing with messages unless they are vulgar or disruptive. In fact, if a t-shirt, armband or button could be shown to have created a substantial disruption, then school officials could prohibit such material under the *Tinker* standard. More recently, a federal judge in Tennessee ruled that students had a First Amendment right to wear buttons protesting the adoption of a school uniform policy, finding that "the wearing of the protest logos in this case embodies exactly the kind of speech that is entitled to First Amendment protection." Other recent cases have upheld the right of students to wear armbands to protest certain school policies.

Enrichment/Extension:

1. If your school has a school newspaper, students might interview the editor and faculty sponsor regarding the impact of *Hazelwood* on the paper. Have there been instances of censorship since the case was decided? If so, what was the reasoning used to support the school's action?

2. Students might research other school censorship cases and report their findings to the class.

Expression at School

Case 1

At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. As part of its disciplinary code, Bethel High School enforced a rule prohibiting conduct that "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Fraser was suspended from school for two days.

Question

Does the First Amendment prevent a school district from disciplining a high school student for giving a lewd speech at a high school assembly?

Case 2

The Spectrum, the school-sponsored newspaper of Hazelwood East High School, was written and edited by students. In May 1983, Robert E. Reynolds, the school principal, received the page proofs for the May 13 issue. Reynolds found two of the articles in the issue to be inappropriate, and ordered that the pages on which the articles appeared be withheld from publication. Cathy Kuhlmeier and two other former Hazelwood East students brought the case to court.

Question

Did the principal's deletion of the articles violate the students' rights under the First Amendment?

Student Speech in Public Schools

In 2007, the American war in Iraq had been going on for four years and the President proposed a U.S. troop surge to try to bring more security to the area. John Smith, a high school junior, was angry about it.

Frustrated with the direction of U.S. foreign policy, the seventeen-year-old felt he had only one choice. "It was time to speak up." He received his opening when his social studies teacher assigned a compare and contrast current events essay. Smith decided to compare President George W. Bush with Osama bin Laden, militant leader of Al-Qaeda, a terrorist organization. "Bush has already 'killed' over 3,000 American soldiers in Iraq," he later told a reporter. "That's terrorism in itself."

It was a strong stance, especially since Smith's school district contained many students who had family members serving in the U.S. armed services. But Smith would not be deterred. He even decided that when he presented his essay to the class, he would wear a t-shirt with a picture of President Bush and the words, "International Terrorist."

School officials told him to take the t-shirt off, turn it inside out or go home. He went home and was suspended for three days. Later, he filed a law suit against the school district, claiming that his First Amendment right to free speech had been violated, and that he should be allowed to wear the provocative shirt to school.

The principal conceded that students have the right to freedom of speech and expression but educators must be sensitive to tensions caused by the conflict with Iraq. "It was felt that emotions were running very high and the shirt posed a potential disruption to the learning environment at the school. The school administration's number one obligation is to make sure we have a safe learning environment for all of our students."

Questions:

1. Was John Smith's First Amendment right to free speech violated by the school when he was told to take off the t-shirt? Use previous cases such as *Tinker*, *Bethel* and *Hazelwood* to answer the question.
2. May schools prohibit students from wearing clothing that contains a political and/or religious message?