

Free Speech in Education

Our courts have long sought to define the limits to free speech. In *Schenck v. United States* (1919), the Supreme Court unanimously indicted Charles Schenck for distributing pamphlets likening conscripts to convicts in service of a powerful few, encouraging young men to dodge the draft. Even though they only promoted peaceful resistance, Justice Holmes declared that during a time of war, these pamphlets created the possibility of a “clear and present danger” by attempting to hinder the enlistment process.¹ Ninety-five years later and in quite different circumstances, the 5th Circuit Court ruled in favor of the Itawamba County School Board after they disciplined Taylor Bell for posting an explicit rap calling out two teachers for inappropriate and predatory behavior towards female students, such as “telling students that they sexy” and “looking down girls shirts”. Because Bell used violent language, the court ruled that his rap did not constitute free speech because it dangerously interrupted school functions and interfered with the teachers’ classroom interactions.² Ideally, of course, Bell would not have used such violent lyrics. However, his intentions were substantially not to threaten the teachers, but to draw attention to the real victims: his fellow students who had been ignored by the school despite filing affidavits against the coaches. Although these two cases occurred in different contexts, both rulings inevitably enforce law and order at the expense of constitutional rights, appeasing those in power rather than protecting individuals who dare to critique them. This begs the question: why should schools be allowed to behave like a government in a time of war? There are no battles to be won besides the struggle for our education, and no lives at risk besides our own futures. Academic officials everywhere must grapple with the question of where to draw the line between fostering a safe learning environment and unjustly silencing students, for ideal

¹ *Schenck v. United States*, 249 U.S. 47 (1919)

² *Taylor Bell, et al v. Itawamba County School Board*, No. 12-60264 (5th Cir. 2015)

freedom of speech in schools means protecting student expression, except when it deliberately incites violence.

Most rulings concerning student speech find their basis in *Tinker v. Des Moines*. In 1969, the Supreme Court decided that John and Mary Tinker, along with Christopher Eckhardt, were within their rights to wear armbands protesting the Vietnam war to school. Here, the Supreme Court defined the Tinker Test, stating that student speech could be limited if it could reasonably interfere with the schools' functions.³ Although the Tinker case took a substantial step in protecting students' rights, the case of Taylor Bell shows that it was not sufficient to create an environment where students can learn not just to follow, but to *think* and advocate for themselves and their wellbeing, even if it may disrupt school.

There is something to be said, of course, about the importance of creating a safe learning environment. There is a nuanced but clear difference between what Bell did in his rap, utilizing explicit language to get an urgent point across, and making a direct threat to the safety of students and teachers. It would be dangerous, for example, to allow students to send bomb threats, even as a joke, with the prevalent trend of campus violence across the United States.⁴ But all too often, schools and courts alike overreach when policing student speech. In *Morse v. Frederick* (2007), Chief Justice Roberts declared that it was constitutional for a student to be disciplined after unfurling a banner that read "BONG HiTS 4 JESUS" at a school event to gain the attention of television cameras. A central argument in the case was that school officials sought to protect students from exposure to a message, as nonsensical as it might be, about illegal drug use.⁵ However, in an age of mass media, it is simply unrealistic to censor inappropriate speech, especially when many students have access to the internet - which, as

³ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

⁴ *State v. Jacob J.B.* (2001)

⁵ *Morse v. Frederick*, 551 U.S. 393 (2007)

anyone who has been online can confirm, is quite crude at times. School officials can no longer hide behind the excuse of protecting their students' innocence. By censoring a message based on its contents, schools decide what their students can say or consume based on their own biases. Rather than suspending students, these officials should attempt to educate or advocate for their own opinions, teaching students to filter through information and think for themselves. While reading a sign that says "BONG HiTS 4 JESUS" is unlikely to encourage a student to start using marijuana, despite the impressive eloquence of the message, access to information about the risks of drugs is much more likely to deter drug abuse. More often than not, by disciplining students who speak out, schools inadvertently choose to create a generation of young adults who cannot critically sift through information to form their own opinions. We have seen the consequences of silencing students in an age of mass misinformation, especially during a global pandemic in which spreading information is key to preventing deaths. One MIT study found that falsehoods were 70% more likely to be spread on Twitter than the truth.⁶ In an attempt to "protect" students, officials often leave them sorely prepared for the real world, for censorship in education only breeds ignorance.

For student journalists in particular, perhaps the most egregious violation of student speech is found in the case of *Hazelwood School District v. Kuhlmeier*. The Supreme Court decided that the Tinker standard did not apply to this case, as it concerned a publication utilizing the school district's name and resources. Thus, the court ruled that the school principal could delete articles from publication because they discussed teenage sex, birth control, and divorce.⁷ Not only did the court declare that the student journalists could be censored simply because they were at odds with the principal's own beliefs, but it violated its precedent set in *Tinker v. Des*

⁶ Vosoughi, S., Roy, D., Aral, S.: The spread of true and false news online. *Science* 359(6380), (2018)

⁷ *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)

Moines by policing student speech that had no potential to cause a school disturbance. As Justice William Brennan wrote in his dissent, the Hazelwood case allowed “school officials (and courts)” to “camouflage viewpoint discrimination as the ‘mere’ protection of students from sensitive topics”.⁸ Hazelwood School District, upon censoring student journalists who highlighted an important issue, chose to inflict a totalitarian-esque crackdown on free speech simply because it may have not been compatible with their own message. Schools are responsible for nurturing capable citizens, and when they censor what students can say, their students learn only to survive, not to contribute, to society.

Thus, students must not forfeit their rights to free speech upon entering a school campus, as long as their message does not create an unsafe environment. While academic officials usually seek to protect the sanctity of their student bodies’ learning environment, they fail to recognize that true learning comes from dissent and discussion. Though it would be hard to fault a teacher for disciplining a rowdy student disrupting class, it would be more effective and ideal for schools to recognize that the best form of learning occurs when students are allowed to freely express their opinions. Universally, education has long been characterized not only by the accumulation of knowledge but a steadfast reflection upon the information based on one's morals. In Greek philosophy, Plato’s allegory of the cave aptly describes how students who are trapped within a cave and see only shadows from authority figures cannot understand the painfully real but true nature of life.⁹ If schools seek to prepare their students for the realities adulthood, they must be allowed to freely discuss issues and advocate for themselves, whether or not this fits within the lens of the messages school officials wish to cast.

⁸ Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)

⁹ Plato, *Republic* 514a-517c

