



SHORT PAPER 2

High School Speech



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Students in high school are generally considered too young to understand things like politics, law, and ethics by adults. Most adults make important governmental decisions for young people without consideration for teenager's opinions or how it will have an effect on young adults when they turn 18. Historic court cases *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) and *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (8th Circuit 1988) were turning points that showed the United States that high school students have more to say than parents, teachers, or government officials might have thought. These cases opened the population's eyes to reconsider how younger generations are affected and how they will be affected in the future, in the eyes of the law. Both *Tinker* and *Hazelwood* are still regularly used in court today as references when dealing with high school students and their first amendment rights being threatened by educational institutions. In the given scene a high school student has had her First Amendment rights restricted by the school over the cancellation of a special edition of the newspaper, a students' suspension after social media posts of the restricted content, the suspension of students for the social media posts, and the cancellation of the newspaper. *Tinker* and *Hazelwood* would be referenced, along with a court case like *Doninger v. Niehoff*, 527 F. 3d 41 (2nd Circuit 2008) that deals with high school students and personal social media web pages.

The presented high school speech scenario is a perfect example of restricted speech of high school students in the present day. The student in the given storyline is a journalist for the high school newspaper. In this issue of the paper, the student planned to release an investigative story about a local environmental disaster. The student followed proper journalism standards and figured out that the principal's husband was one of the main the reasons that the refinery spill was not controlled as effectively as it should have because he was committing unfaithful acts

against his wife. This paper also aligned with the environmental club's open discussion panel. The principal decided to cancel the panel and demanded that the paper not be published, or the editors would be suspended and the school newspaper club will be dropped. The principal's claim that the publication of this article would inflate her husband's legal exposure and leave her more exposed to ridicule, therefore negatively affecting her position as principal was supported by the school district superintendent. That same night with support from the paper's executive board, Mary Beth, editor-in-chief, published the article on her Facebook page, then tweeted and posted on YouTube about the principal's threat. The next day Mary Beth and the board were suspended and the school paper was canceled. If this case was considered in a court of law court cases Tinker and Hazelwood would be essential in deciding the court opinion. The question at stake is: Because Mary Beth believed that hers and the student newspaper journalists First Amendment rights were being restricted by the school, should she be able to outwardly express the information inside the newspaper to her personal social media pages, without being reprimanded by the school?

Often times schools limit young people's speech as they advance through school. Tinker is arguably the most important court case in U.S. history that defends the restriction of high school student speech from academic institutions. John and Mary Beth Tinker were two students in Des Moines Iowa who lead a group of peers in wearing black armbands on their sleeves symbolizing their views against the Vietnam War to school. During this time the Vietnam War was a controversial topic. The draft forced young people to fight in the war, many straight after high school graduation. The sibling's school requested the armbands be taken off due to a violation of student dress code, the students obliged but their fathers took the school district to court. The court had to consider the First Amendment rights of students, a school's ability, or

lack of ability to limit student freedoms and the fact that the students were protesting the war. In 1969 the justices came to the conclusion that students maintain their right to freedom of expression within an academic institution. This quote is crucial to the outcome of the court case. The statement made it clear to school districts around the country that they are to consider the first amendment rights of their students before they act, it gave power to students who feel they are restricted by school policy, and importantly, it still defends students (and teachers) freedom of speech and expression to this day.

Hazelwood is another pivotal court case in student free speech history. Student newspaper journalists wrote articles about teen pregnancy, birth control, and divorce, that contained interviews and quotes from students who had been personally affected by these social issues. The paper was regularly reviewed by the principal before publication, the controversial content in this specific newspaper issue concerned the principal of the interviewed student's safety. In Hazelwood The principal was worried that there was not enough time for students to reconsider their articles, so he decided to pull the two pages from the paper altogether. The students appealed their case to the Court of Appeals for the Eighth Circuit claiming that the school's principal stripped them from their First Amendment freedoms. With Tinker in mind, the justices determined that the school had the right to take away the articles to protect other students from harm.

If the court were to make their decision considering only the outcome of Tinker, the students would win the court case. Their freedom of speech is being restrained which is unconstitutional because according to the majority of the Tinker case, "[neither] students [nor] teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" 393 U.S. 503. Contrarily, if this case was invested solely based off of Hazelwood he school

district would win. Although the First Amendment rights of the students are being invaded by the school, when the majority of Hazelwood is decided that:

Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns. 484 U.S. 270, 273.

Due to the contrast in these two court opinions, the case would need a more in-depth consideration. The would need to also consider court cases that deal with students and the internet.

Another that could be used as a resource in determining the court opinion is *Doninger v Niehoff*. A student, Doninger, and four members of the student council was displeased in the way the school was handling the scheduling and rescheduling of an event for the students. She used mas-email and blog posts to voice her opinion. The email caused an outcry from the community flooding the school's phone and email with messages from parents. The blog posts contained offensive wording and untrue statements against the school. As a result of her actions, Niehoff (the principal) decided to restrict Doninger from running for Senior Class Secretary. When this case was brought to court Doninger claimed that her first amendment rights were being hampered by the school not allowing her to run for the student government position. The conclusion states that the United States public school system heavily relies on its school's administrations for judgment in these cases and therefore the court cannot take control of the situation unless there is a specific violation of student rights. There is a difference between this case and the one presented. This case was a student taking advantage of social media to get what she wanted rather than using social media to bring awareness to a local disaster.

After looking into different court cases and deeply considering the conclusions of Tinker, Hazelwood, and Doninger, the students in this scenario would win if this case was presented to the court. The importance of Tinker v Des Moines is still present. It protects the expression rights of students within high schools around the country and would continue to do so with this case. Similarly to Tinker, Mary Beth in the presented case followed instruction from the school of not publishing the news article in the school newspaper, just like the Tinker siblings took off their armbands when asked. The cancellation and suspension of the students in the journalism club is taking away their freedom of expression in the future. Hazelwood's important stance on student journalism and school newspaper publication were also followed. The students obliged to the school's order and did not publish the article in the school newspaper. The students did not disregard the principal's ability to override any suggestive content being released inside the school paper causing no pedagogical concerns. The argument that Mary Beth posting her information on her personal social media pages is subject to the same response as the student in the Doninger case is unfair. Both cases are similar in that each student took to their own means in relaying information to the public, but the reasons why either student did so are different. Doninger used her internet and social media platforms to manipulate the situation she was in, while Mary Beth simply posted her story that followed the ethics of journalism properly, then informed the community of the newspaper's executive board's undeserving suspension and cancellation of the school newspaper.

If Mary Beth's case was brought to the court's attention today, the court conclusion would be a significant addition to the history of student free speech. This court case would be a crucial reference for future cases dealing with not only First Amendment rights of high school students but any case that social media use is mentioned in relation to school administration. It is

important that the court would rule in favor of Mary Beth and the newspaper executive board. If they did rule in favor of Mary Beth the court opinion would show the United States public school education system and U.S. population that high school students have valid opinions about current events. As social media platforms grow students are gaining more ways to express their viewpoints there is no question that academia and social media will overlap. This case encourages adults and public officials to consider younger generations opinions and actions when it comes to making lawful decisions. It will be interesting to one day see how the court will use past court cases like Tinker, Hazelwood, and Doninger to come to their decision when a case like this is presented to a court.

Cases

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

Doninger v. Niehoff, 527 F. 3d 41 (2nd Circuit 2008)

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