

Hazelwood v. Kuhlmeier (1983)

Overview:

The high school paper was published as part of a journalism class. The principal at Hazelwood, Robert Reynolds, usually reviewed the school paper before it was published. In this case he deleted two pages that had been written for the next edition of the school paper because he believed it was inappropriate for school.

One of the deleted articles covered the issue of student/teen pregnancy and included interviews with three students who had become pregnant while attending school. To keep the students' identity secret, the staff used pseudonyms instead of the students' names. The principal said he felt the anonymity of the students was not sufficiently protected and that the girls' discussion of their use or non-use of birth control was inappropriate for some of the younger students. The other deleted article was about a student whose parents had been divorced. This student's name was included in the article. The principal said he felt it was unfair to the student's parents because they had been given no opportunity to respond or warning that the article was being published.

The students, including Cathy Kuhlmeier, are arguing that their first amendment rights to free speech have been violated.

Relevant Laws & Policies

Spectrum Statement of Policy

Spectrum, as a student-press publication, accepts all rights implied by the First Amendment. . . . Only speech that "materially and substantially interferes with the requirements of appropriate discipline" can be found unacceptable and therefore prohibited.

Hazelwood School Board Policy

School-sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism."

from the 1st Amendment to the Bill of Rights

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

from precedent-setting Brown vs. The Board of Education

The public school conveys to our young the information and tools required not merely to survive in, but to contribute to, civilized society. It also inculcates in tomorrow's leaders the fundamental values necessary to the maintenance of a democratic political system.

Witness for the Prosecution: Cathy Kuhlmeier, student editor of the Spectrum

Testimony:

Hello, my name is Cathy Kuhlmeier, and I'm a student at Hazelwood East High School. I've been an editor for the Spectrum for a couple of years. Our last issue of the '82-'83 school year was censored by Principal Reynolds because of two articles that he claims would have disrupted the school. I didn't write either article, but I was there for some of the interviews and I helped to edit them.

For the pregnancy article, we interviewed three girls. I was there for one of the interviews. The girl asked us not to include her name in the article, and we assured her that we wouldn't. I know that the other girls were told that they'd be kept anonymous as well. When we put the article together, we took out any details they gave in the interview that might identify them. If I hadn't seen those details, I'm sure I wouldn't have known who they were.

The divorce article perhaps should have been anonymous as well. But it would have been a really easy change to make. All we had to do was go in and edit out his name. Anyone could have done it. Any of us would have been happy to take five minutes and make the changes. But we weren't asked. We just found out when the paper was distributed next week in school that a whole third of the issue was missing.

I was really upset. I put a lot of effort into those articles. I don't think it's fair for the school to censor us. If students can get pregnant, they should be able to read about pregnancy. What's better than the school newspaper for us to really talk about the issues that affect our lives? If the Spectrum just published stories about soccer games and who's going to be prom queen, I wouldn't bother with it.

I called up the old journalism teacher and asked him what he thought. He suggested that I contact the ACLU. I'm glad I did. Just because I'm a kid doesn't mean I don't have the same civil rights as anyone else.

Witness for the Defense: Robert Reynolds, Principal

Testimony:

My name is Robert Reynolds and I'm the president of Hazelwood East High School. Our school's newspaper is called the Spectrum. We usually publish an issue every three weeks or so. The Board of Education pays for printing the Spectrum, usually around \$5,000 a year. The other costs associated with the newspaper-u8209 such as supplies, textbooks, and a portion of the journalism teacher's salary-u8209 are paid for entirely by the Board.

Before each issue gets printed, the journalism teacher gives me a copy to go over. On May 10, 1983, the journalism teacher Howard Emerson gave me a copy of the Spectrum. There were two articles that really bothered me. One of the stories described three Hazelwood East students' experiences with pregnancy; the other discussed the impact of divorce on students at the school.

I had a couple of concerns. Although the pregnancy story used false names to keep the identity of these girls a secret, I thought they might still be identifiable. I also thought the references to sex and birth control were inappropriate for some of the younger students at the school. The divorce story, on the other hand... there was a student identified by name, quoted as saying her father "wasn't spending enough time with my mom, my sister and I" prior to the divorce, "was always out of town on business or out late playing cards with the guys," and "always argued about everything" with her mother. I didn't think this was fair to the parents, to have this published without having a chance to respond.

It was the last issue of the school year, and we were scheduled to send the paper to the printer right away. I thought there was no time to change the articles. Mr. Emerson is new and didn't realize that the printing could be delayed. So I just had the pages with the articles removed. That meant a few other articles were removed as well - articles on teenage marriage, runaways, and juvenile delinquents, as well as a general article on teenage pregnancy. I didn't have a problem with those articles, they just happened to be on the pages with the offending articles.

I think I was right to remove the articles. I showed the pregnancy article to a teacher at the school, and she said she could identify at least one of the girls, possibly all three. The students would know their classmates even better, and be even more likely to identify them. I was also worried that the articles were not very sensitive to the girls' parents and boyfriends, who are mentioned. The parents and boyfriends were not consulted or given a chance to respond. Also, the girls talk about their sexual histories in a way that I found inappropriate for the younger students. I was also worried that students would bring the paper home to be read by even younger brothers and sisters.

I want the students to publish a paper they can be proud of. I have no desire to censor them.

But my first responsibility is to protect the students in this school from harm, and to make sure school proceeds without disruption. I feel like I did that here.

To Do:

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Tinker v. Des Moines (1969)

Overview:

In December 1965, Des Moines, Iowa residents John F. Tinker (15 years old), John's younger sister Mary Beth Tinker, (13 years old) and their friend Christopher Eckhardt (16 years old) decided to wear black armbands showing peace symbols on them to their schools (high school for John and Christopher, junior high for Mary Beth) in protest of the Vietnam War and supporting the Christmas Truce called for by Senator Robert F. Kennedy. The school board heard rumor of this and chose to pass a policy banning the wearing of armbands to school. Violating students would be suspended and allowed to return to school after agreeing to comply with the policy. Mary Beth Tinker and Christopher Eckhardt chose to violate this policy, and the next day John Tinker also did so. All were suspended from school until after January 1, 1966, when their protest had been scheduled to end.

Relevant Laws and Policies

from the 14th amendment to the Constitution of the U.S.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

from the 1st Amendment to the Bill of Rights

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

from the precedent-setting Cox v. Louisiana, 379 U.S. 536, 554 (1965)

The Court has clearly stated that the rights of free speech and assembly do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.

more facts:

Out of the school system's 18,000 pupils, 7 wore armbands. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Another student

who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case.

Witness for the Prosecution: Chris Eckhard, Student

I was suspended on December 16th for wearing a simple, black piece of cloth on my arm. Of course, it wasn't just a piece of cloth. It was me exercising my first amendment rights.

The armbands were supposed to be a peaceful expression of people's opposition to the war in Vietnam. They were to be worn from December 16th until January 1st. My father wore his to a meeting that day with then Iowa Governor Harold Hughes, later to become a U.S. Senator from Iowa. Dad never got suspended, or fired, or disciplined.

An article had appeared earlier in the week in The Des Moines Register about the armbands, and the school made a rule to keep people from wearing one. A student had written an article for my school paper about the armbands prior to the Register article, which was not allowed to be published in our school newspaper, but that was how the administrators had learned of it.

On the 16th, a few classes into the day, I was talking with Ted Kehoe, an older friend when some young Republican thugs walked over to us and asked Ted if he was going to be wearing a black armband the next day. Ted said he wasn't, to which one jock said, "It's a good thing, or you'd find my fist in your mouth."

In the keeping of civil disobedience, as practiced by Jesus, Thoreau, Ghandi, and King, I had decided to turn myself in. Don and I started walking to the principals office. Don was walking to my left, as I heard a male voice to my left say to his friend, "Go ahead, do what you said you were going to do if you saw anyone wearing an armband." Students turned to stare, voices grew quieter, as whispers of, "Look, there's a guy with an armband on." Being just a sophomore, in a school with 2,000 students, I was a stranger to most. Between us and the principal's office, in the front foyer, was the football team. It was their turf, and their morning hangout place. As we started toward the office, the captain of the football team approached me, and attempted to rip off my armband. As it was safety pinned to my jacket, it just wouldn't easily slip off. Bruce intervened and said, "He's turning himself in to the principal's office, leave him alone." The captain said, "Well alright, just make sure you take it off in there." We had now safely made it to the office.

I walked into the office, and up to the counter. "My name is Chris Eckhardt, and I'm turning myself in," I said to the lady seated there. The lady at the counter looked up, saw the armband and said, "Sit over there," pointing to a chair by the wall. I complied, as she knocked on the principal's door. She entered his office, and closed the door. I sat about 5 minutes, and the vice-principal walked out of the principal's office, approached me, and said, "Come with me." We walked into his outer office, and he told me to sit in another chair against the wall. He walked into his inner office and closed the door.

Vice Principal Donald Blackman took his seat and told me to sit down in one of the two chairs.

"Which teacher sent you to the office?" he asked. "No one sent me here, sir, I'm turning myself in." I replied. "I see, well in that case, why are you wearing that black armband?" he asked. "To mourn the dead in Vietnam, and to urge for the acceptance of Senator Robert F. Kennedy's proposal for a Christmas cease-fire, sir," I responded. "Well, young man, you need to take that thing off. It is against official school policy," he informed me, as if I didn't already know that. "I refuse to do that, sir," I answered emphatically.

He asked, "Did your parents make you do this, because you're too young to have these opinions on your own." I informed her that they were my own opinions, and that I had a right to express my opinions through the wearing of the black armband. He said: "When you're on suspension, you can just look for another school to attend, because we don't want you back here." Finally, he asked, "Do you want a busted nose?" A tear fell from my eye. He saw what he had done and tried to cover his overt threat with, "Well there are a lot of senior boys here who aren't going to like what you're doing, and your suspension is going to look like a busted nose on your record."

Mr. Blackman filled out a pink pass, necessary to walk the halls legitimately while classes were in session, which had my name on it, and signed by him. It simply stated that I was suspended for failure to follow school rules. It was my first and only suspension from school. I guess I was a bad boy, but I didn't feel like one. I walked to my locker, put on my coat and walked home. Later that day, Mary Beth Tinker got suspended from Harding Junior High School for also also wearing a black armband. She had worn hers to classes without problems, and was suspended later in the day. John Tinker wore a black armband to North High School the next day, and was also suspended. We had taken our stand, and now it's up to the lawyers to take their stand in court.

Witness for the Defense: Donald Blackmun, Vice Principal

Testimony:

My name is Donald Blackman and I'm a vice principal at Des Moines high school. It's my job to make sure that our school runs smoothly and that children are focused on learning. When I suspended Christopher Eckhart and John Tinker, I was just doing my job.

A week or so before the incident, I saw on the news that people around the country were planning to wear black arm bands as a gesture that they were against the Vietnam war. I won't lie, that sort of thing really upsets me. I fought in World War II and what got me through the tough nights was knowing I had the support of my family and community and country back home. I think it's disrespectful to our soldiers not to support them when we've sent them so far away to risk their lives. I know that a lot of students have friends and family members who are over in Vietnam right now. In fact, there was a student who graduated from our school last year, who was recently killed in Vietnam. Some of his friends still attend our school. The armbands would be especially upsetting for them. How can they focus on learning when they're that upset?

Anyway, I saw in the paper that a bunch of folks - led by Chris Eckhard's parents - were planning on wearing these armbands from December 16th until January 1st. I knew it would cause a whole lot of trouble at the school, so the other principals and I met to discuss what to do about it. We decided to ban people from wearing armbands to school. We made sure everybody knew about the rule, and the consequence: suspension until January 1st.

In the days leading up to December 16th, I had a lot of students and teachers come visit me in my office. "You're not going to let anyone get away with wearing armbands, are you?" they asked, and I assured them I wouldn't. I also overheard some students talking about the armbands in the hall. "I'm going to beat up anyone wearing an armband," one student said. I disciplined that student, but I was worried that there were others who'd resort to violence.

Tensions were high on December 16th, although there were no major incidents I was aware of. Towards the middle of the day, my secretary came in and told me Chris Eckhard was waiting to see me. I asked him if he'd been sent to see me by a teacher, and he said he was turning himself in. I asked him to take the armband off and he refused, so I warned him off the consequences. When he refused again, I told him I would have to suspend him. I wrote him a note saying he was suspended, and sent him home. A few hours later, Eckhard's friend John Tinker turned himself in as well. I did the same thing with Tinker.

I have no regrets about my decision. If we hadn't suspended Tinker and Eckhard, the students would have been in an uproar. No one would have been able to concentrate on learning, which is after all what school is for. I'm sorry that Tinker and Eckhard missed classes and have marks on their records, but they were warned. I gave them every chance to stop, and they chose to go

ahead anyway. They got what they deserved.

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Board of Education v. Earls (2002)

Overview:

In the fall of 1998, the School District of Tecumseh, Oklahoma, in an effort to fight the use of illegal drugs by students, adopted the Student Activities Drug Testing Policy ("Drug Testing Policy"), which requires all students who participate in any extracurricular activity, including the Academic Team and the Future Farmers of America, to submit to drug testing. The Drug Testing Policy requires students to take drug tests (through urine samples) before starting an extracurricular activity, submit to random testing during participation in that activity and submit to tests at any time upon reasonable suspicion. Lindsay Earls, a student at Tecumseh High School, participated in several extracurricular activities that the Drug Testing Policy covered, including the marching band and the National Honor Society. She claims that the policy violates her fourth amendment rights.

Relevant Laws and Policies:

4th amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Drug Tests

False positives (results that mistakenly say a person has used drugs) occur between 4% and 50% of the time. Substances that can cause false positives include advil and other pain-killers, nasal spray, common cold remedies and diet aides, and several natural conditions like kidney disease.

from the precedent-setting Acton v Board of Education

The public schools have an obligation to supervise and control the students under their care. A proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult.

Witness for the Prosecution: Lindsay Earls, Student

Testimony:

My name is Lindsay Earls and I'm a student at Tecumseh High School. For the past several years I've been a member of the Tecumseh Chorus, an extracurricular group. I've never used drugs in my life. I have nothing to be worried about from the drug tests. But I have a problem with the mandatory drug testing. I think it violates my fourth amendment rights.

I think it's really embarrassing to have to pee in a cup. I've never done it before and I don't want to. And there's no reason I should have to - there's no reason to believe I do drugs. I've never been caught with drugs, I'm not friends with anyone whose known to do drugs, I'm a straight A student. Why should I have to undergo a drug test, then? I know a lot of other students who don't want to pee in a cup either, and it's not because they do drugs. They just think it's embarrassing and invasive. Tecumseh is nothing like Vernonia. We don't have a drug problem here. I haven't heard of anyone getting caught using drugs, ever. And even if a test came back positive, what if it was a mistake? It would ruin that student's life.

When I refused to do the drug test, I was kicked out of chorus. I was really sad - going to chorus after school is my favorite part of the day. I'm hoping to get a college scholarship from my chorus participation. I know I don't have to participate in chorus, but I have a right to - without having to give up my fourth amendment rights in exchange.

Besides, it's not like this policy decreases drug use. It just takes away the other things in drug users' lives that make them happy: chorus, band, shop, sports. What are they going to do with their free time, huh? Congratulations, school board. You're increasing drug use, not decreasing it.

I'm not trying to cause trouble. And like I said, I'm not a druggie. I've done nothing wrong. So why do I have to pee in a cup?

Witness for the Defense: Dean Rogers, President of the School Board

Testimony:

My name is Dean Rogers, and I'm the President of the school board of the Tecumseh School district. Over the past several years, drug use has become more and more of a problem in our schools. A nearby town, Vernonia, has huge problems with drug use. When they started doing drug testing, they found that one out of every fifty students they tested was using drugs. I have children in the Tecumseh School district. I don't want things to get as bad here as they have in Vernonia.

About ten months ago, my son came back from a party and told me that some kids there had been smoking marijuana. A few weeks later, my daughter told me that a boy on the school bus had offered her some pills. They'd told me stories like this before, but hearing them one after the other like that really upset me. It made me wonder what I, as school board President, could do to protect them. I met with the school board and we discussed options. We knew Vernonia had started randomly testing student athletes and had discovered a lot of drug users this way. We decided to adopt a similar policy. Instead of testing just athletes, though, we decided to test anyone involved in an extracurricular activity.

So far we have tested about 600 students. Only three have tested positive, but I believe others may have decided to stop using drugs out of fear of testing positive.

I don't think the drug tests are too much to ask. All you have to do is pee into a cup. Maybe it's a little embarrassing, but the student can do it privately in the bathroom and then it's over. It takes five minutes at most. And if it really bothers you that much, you don't have to do it. No one is being forced to participate in soccer or chorus.

It's my job as president of the school board to protect the students in our schools. Drugs are dangerous to the individuals who use them, and they distract students from learning. I think we need to do our best to keep drugs out of our schools, and a simple drug test is the best way to do it.

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