

Students Silenced: The Limits of Free Speech in High School Newspapers

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Part I: Introduction

In 1988, the case of *Hazelwood East High School versus Kuhlmeier* landed on the United States Supreme Court's docket. This case addresses the issue of freedom of speech, particularly for high school students, many of whom are not yet considered legal adults. Because of their standing as minors and as pupils in a school setting, debates exist as to whether these students should receive the full privileges of the First Amendment to the extent of adults, especially in an educational environment.

Students should be concerned with the *Hazelwood v. Kuhlmeier* decision because they may very well be affected by it, seeing as students are often given inferior rights in comparison to adults. In this case, the Supreme Court viewed students as partial citizens with claims to only certain rights, specifically, limited free speech in school newspapers. Writers, in addition to students, are influenced by the Supreme Court's decisions on freedom of expression in the press. The language and law of students were key components to this case, as the argument centered on the legality of the students' speech in a school arena, and because they are immediate concerns to both writers and students. This case study will report on the Supreme Court's decision, analyze the significance of the case, and relay the importance of the decision on future policies and deliberations.

Part II: Case Summary

Hazelwood East High School, located in Missouri, produced a student-written newspaper called *The Spectrum*, which was published every few weeks throughout the year and distributed to the school community. As part of a journalism course offered at the school, the newspaper was

overseen by a faculty member, but was still mostly composed of student work. After the newspaper was edited and approved by the faculty overseer, it was passed on to the principal of the school to be vetted again. Principal Robert Reynolds decided to omit two stories after reading an issue of the May 1983 newspaper.

One of the two articles that was removed was about teen pregnancy. Reynolds feared that some of the content about birth control and sex was not age-appropriate for all audiences of the school. Secondly, “Reynolds thought there were enough details in the article to make it easy for other students to determine the identities of the pregnant teens. He was concerned about the privacy of those students” (“Hazelwood”).

The second article expunged from the student newspaper focused on divorce. This article also featured personal statements from students about their own experiences with divorced parents. The negativity of some of these comments worried Reynolds, especially a few made by a student that targeted her father. The student made claims that her father was always arguing with her mother and was never around the family, preferring instead to spend time with his guy friends. According to a summary by the Supreme Court Historical Society, “Reynolds was troubled by the fact that the father had not been given a chance to defend himself by responding to his daughter’s comments” (“Hazelwood”). In addition, Reynolds defended his decision to delete the stories by claiming that, had he given the articles back to the students to revise, the paper would have missed its deadline and not been published by the end of the year. He also claimed to have the backing of his superiors on the school board.

The students were frustrated by their principal’s actions after having dedicated much work to the stories. Believing the principal had violated the First Amendment in his actions, the students turned to the courts a few months later in 1984. The students who filed suit included the

paper's student editor, Cathy Kuhlmeier, and two other student journalists by the names of Leslie Smart and Leanne Tippett. The case made its first appearance in the United States court system at the District Court for the Eastern District of Missouri.

This court ruled in favor of Hazelwood East High School, agreeing with the principal's actions. In regards to Reynolds' arguments, the court agreed, "With respect to the personal accounts of three (3) pregnant students, Mr. Reynolds' concern that the students' anonymity could be lost was legitimate and reasonable. It was based on objective facts..." (Kuhlmeier 1985). In addition, the court concurred with Reynolds' concern about a student's father not being able to defend his actions during his divorce. In his written opinion for the court, the judge said, "There is no indication...that her parents, especially her father, were given any opportunity to respond or rebut to her allegations. Thus, there is serious doubt that the article...complied with the rules of fairness which are standard in the field of journalism..." (Kuhlmeier 1985). The court upheld the principal's decision and ruled in favor of the defendant.

However, the students were not satisfied with this ruling and moved to appeal. The case transferred to the United States Court of Appeals for the Eighth Circuit, which handed down a reverse ruling in 1986. The Courts of Appeals wrote in its opinion, "It was a public forum established to give students an opportunity to express their views while gaining an appreciation...of their rights and responsibilities under the First Amendment to the United States Constitution and their state constitutions" (Kuhlmeier 1986). Thus, the previous decision was overturned. The Court of Appeals' belief of the newspaper as a public forum for free expression led to this reverse ruling.

Hazelwood East High School decided to appeal that court's ruling, leading to a submission of the case to the Supreme Court, which agreed to hear it. After much deliberation,

the Supreme Court arrived at the conclusion that the privacy of the pregnant students would not have been protected, as teachers and students could have successfully guessed their identities from the anonymous information in the articles. Moreover, it concluded that the article on divorce did not comply with, “journalistic fairness,” since the father mentioned did not have the opportunity to defend himself. Thus, the Supreme Court agreed with the first District Court’s ruling and overturned the previous decision in favor of the defendant, Hazelwood East High School.

However, in addition to these deliberations, the Supreme Court discussed the entitlement of the school to inhibit First Amendment rights of students. The court debated the extent to which a school is allowed to infringe upon students’ free expression, coming to this conclusion:

We hold 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 (Kuhlmeier 1988).

This decision will be of primary concern in analyzing this case study, and in concluding whether the Supreme Court did, in fact, make a justifiable decision on students’ First Amendment rights.

Part III: Analysis

The Supreme Court went through three main steps in its arguments to determine the entitlement of students to free expression in their student newspaper. The steps included determining if the newspaper was considered a public forum, if the decision in *Tinker v. Des Moines* applied to this case, and finally if Principal Reynolds’ actions were justifiable in light of the first two steps. This analysis will explain the Supreme Court’s process and argument through each step, as well as contribute dissenting opinions in order to reach a conclusion about the extent of students’ rights to free speech.

The first stage of deciding whether the student newspaper, *The Spectrum*, was indeed a public forum required the court to review the three possible categories of expression that the student newspaper could fall into, namely, “private” expression, “school-sponsored” expression, or public forum. The newspaper was quickly discerned as not being a form of private expression since it was a part of the school curriculum and thus associated with the school. The court then determined if the newspaper was a public forum or a “school-sponsored” form of expression. The court decided the it did not constitute a public forum: “School facilities may be deemed to be public forums only if school authorities have ‘by policy or by practice’ opened those facilities ‘for indiscriminate use by the general public’ or by some segment of the public, such as student organizations” (Smith 853). *The Spectrum*, not being open to any segment of use by the public, was therefore declared as “school-sponsored” expression.

With this distinction, the court made its first unreasonable decision. Jeffrey Smith asserted in the *Virginia Law Review* that, “The public forum doctrine is a flawed analytical tool that focuses on a court’s attention on classification of the place involved in a first amendment dispute rather than on the constitutional rights, values, and interests at stake” (Smith 856). Smith makes an interesting point, in that the case should have focused on the people more than the place. Surely, the First Amendment was not written to take into consideration the location of free speech. Rather, it guarantees free expression in general, not free expression depending on the location. Accordingly, the Supreme Court may have made an error in focusing too much on the *place* where expression may be allowed and not on the *rights* of the students making the expression.

Returning to the court’s decision to designate the paper as a “school-sponsored” form of expression, the next question is then exactly how “free” this form of expression is compared to a

“public forum.” A difference must exist if the court would go as far to separate these two categories of expression. And so, the court decided to explain just exactly what that difference is. A previous case, *Nicholson v. Board of Education*, ruled that a principal could reasonably edit a school newspaper’s content for educational purposes. The Supreme Court based part of its decision on that notion, stating, “The court noted that publication of the newspaper was part of a class in which students were taught journalistic skills and that the school had a substantial educational interest in ensuring that its students were taught the necessity of accuracy and fairness” (Smith 848). As a result, principals have rights to review school-sponsored expressive forms, especially newspapers, for teaching purposes.

However, the court’s claim that Principal Reynolds was entitled to censor the newspaper for educational reasons did not align with the principal’s actions. Principal Reynolds may have omitted the articles for educational purposes, but he failed to return to the student writers and explain his choices. Therefore, they did not, in reality, learn anything at all. Reynolds did not relay his concerns for privacy and fairness to the students. In a journal article in the *Virginia Law Review*, Jeffrey Smith highlights this hypocrisy, writing, “When the principal finally discussed the deletions with the students, he did so only in generalities and never explained his decision in terms of journalistic responsibility and fairness” (Smith 859). Reynolds’ actions contradicted his assertion that the deletions were for educational reasons. Therefore, this claim should not have been upheld in court.

The second stage of deliberation for the Supreme Court involved comparing the case to the decision made in *Tinker v. Des Moines*. In the case of *Tinker*, students were allowed to wear armbands in protest of the Vietnam War because the protest did not cause immediate disruption to the learning environment or rights of others. However, the court stated that the students in

Tinker were practicing a private form of expression that must be tolerated by the school. In *Hazelwood v. Kuhlmeier*, the newspaper was already noted as not being a form of private expression. Therefore, the school did not have to tolerate expression that was against its mission, since the newspaper was identified with the school and used school resources.

The dissenters of the Supreme Court's decision, Justices Brennan, Marshall, and Blackmun, based their disagreements mainly on the court's misunderstanding of *Tinker*. *Tinker* was established in order to make schools tolerate private student speech, not provide an excuse to inhibit public student speech. Nowhere in *Tinker* was there a decision made about prohibiting expression in school-sponsored arenas. These justices argued that the school's, "mandate to inculcate moral and political values is not a warrant to act as 'thought police' stifling discussion of all but state-approved topics..." (Smith 856). In other words, just because an article went against the school's personal mission does not mean the school has a right to banish student speech that opposes the school's view, as long as it is conducted in a respectable and orderly manner. In addition, the dissenters of the decision, as well as Smith, pointed out that the school could have easily disassociated itself from the article with a disclaimer, therefore not promoting the subject content at all.

Lastly, the Supreme Court deliberated Reynolds' reasons for the censorship in the third step of its deliberations, after assuring that his actions were constitutional in regard to the first two steps. Reynolds provided three reasons for eliminating the articles. First, he argued that the privacy of pregnant students was not ensured in the article, since other students could easily guess their identities from information in the story. He also maintained that some of the content in the article was not age-appropriate for all audiences of the readership because it referred to sex and birth control. And third, he believed the article on divorce did not comply with journalistic

fairness standards because the father figure in the article was not given the chance to defend himself. The Supreme Court found all of his decisions to be reasonable and accordingly ruled in his favor.

Smith, again, made some persuasive rebuttals to Reynolds' defenses. In his argument in the *Virginia Law Review*, Smith says that students, "had previously been permitted to publish articles dealing with student use of drugs and alcohol, desegregation, runaways, and teenage dating" (Smith 858). Surely, these topics do not correlate with the school's mission, which was one of the arguments for removing the articles. Smith noticed this contradiction in the school's publications and believed that the school's own precedents should have been taken into consideration when arguing in court about the appropriateness of subject matter. The school had already set up a newspaper in which different controversial topics were allowed, so its sudden change in policy did not seem fair.

Moreover, Smith analyzed statements made by the school board: "The school board had issued policy statements providing that, 'students are entitled to express in writing personal opinions,' and that, 'school sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism'" (Smith 857). Here, the school board advocated free expression in its publications, so arguing the articles' omission based on content is illegitimate. The only reasonable parts of Reynolds' argument was his privacy concern and his distress that the father had not been presented with the opportunity to defend himself, both of which could have been remediated through further editing revisions.

Though the principal had two valid justifications for wanting to revise the articles, the matter of student First Amendment rights was not properly determined in this case. Despite being a school-sponsored forum, students have rights to report on content that is not directly in

line with the school's values, as the dissenting judges argued. The argument should not have been centered on the location of the article in the school paper, but rather on the right of students to express content that is not disruptive to the school's mission. Ultimately, the Supreme Court did a disservice to the students of Hazelwood East High School by suppressing their voices.

Part IV: Future Implications

The Supreme Court's decision could have wide-reaching effects on student expression in schools. The decision gave a great amount of power to schools to decide whether student opinions parallel the school's mission or not. Smith states, "The court's sweeping language has placed students at the mercy of school officials, who may now determine the precise scope of the *Hazelwood* decision according to their own whims and prejudices" (Smith 861). By not creating guidelines on the content allowed in student expression, but rather by affirming that schools may have editorial power, the Supreme Court has set no boundaries for these revisions by school officials. Schools could now take advantage of the court's permission to make editorial decisions and twist its mission in any direction to censor student expression. In other words, according to Smith, "The court's general pronouncements provide no guidance as to what may constitute a school's 'basic educational mission,' its, 'legitimate pedagogical concerns,' or, 'inappropriate' speech" (Smith 861).

In addition, the decision of the court does not adequately prepare students for their role in the United States as a citizen with free speech. If student expression is stifled by a governing body's whim, then those students will not have the practice or knowledge to respectfully exercise their free speech, or dissent, to another governing body later in life. Smith mentions the case *Keyishian v. Board of Regents* in which the court declared that the, "classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends on leaders trained through wide exposure to

that robust exchange of ideas that discovers truth ‘out of a multitude of tongues, rather than through any kind of authoritative selection’” (Smith 860). The Supreme Court should have realized its implications of going against this important pronouncement, suggesting that schools are not actually a marketplace of ideas meant to train future leaders.

Moreover, by smothering student expression in school, educators are indirectly fostering intolerance for others’ opinions. Examples of acceptance by our leaders subsequently teach the importance of acceptance to others. By refusing to allow students to remark on subjects in opposition to school beliefs, the school is not teaching tolerance or acceptance. Smith writes, “...The Court in *Hazelwood* overlooked the fact that public schools should inculcate in students a ‘tolerance of divergent political and religious views, even when the views expressed may be unpopular’” (Smith 860). As a consequence, students may not value freedom of speech from others when denied it themselves.

Finally, the court’s decision has permeated areas of student expression that it did not originally mean to affect. For example, the Supreme Court specifically mentioned in the notes of the opinion that this decision was not to be applied to university student newspapers. However, universities have since pointed at the *Hazelwood* decision as a legitimate rationale for editing their student newspapers, an unfortunate side effect that the court did not foresee.

Part V: Conclusion

The 1988 Supreme Court case *Hazelwood v. Kuhlmeier* has serious implications for student journalists. The court effectively took away the freedom of expression for high school student journalists, giving the power to school authorities. The decision has additionally affected student newspapers at the university level.

The lack of First Amendment rights for students could have harrowing future effects in the field of journalism, including fostering student journalists who never learned to voice dissenting opinions respectfully, tolerate other opinions, or even use their own imagination to question authority. All of these elements are crucial to journalists at all levels, students included. Time will reveal the full extent of the effects of the *Hazelwood* decision, and whether the Supreme Court will ever reverse its own precedent in similar cases to come by favoring student rights for free expression.

Appendix

Case 1: *Hazelwood School District et al. v. Kuhlmeier et al.*

No. 86-836

SUPREME COURT OF THE UNITED STATES

484 US 260; 108 S. Ct. 562; 1988 US LEXIS 310

Case 2: *Kuhlmeier v. Hazelwood School District*

No. 85-1614

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

795 F.2d 1368; 1986 US App. LEXIS 26780

Case 3: *Kuhlmeier v. Hazelwood School District*

No. 83-2039C(1)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MISSOURI, EASTERN DIVISION

607 F. Supp. 1450; 1985 US Dist. LEXIS 19962

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Smith, Jeffrey D. "High School Newspapers and the Public Forum Doctrine: Hazelwood School District v. Kuhlmeier." *Virginia Law Review* 74.4 (1988): 843-62. *JSTOR.org*. Web. 2 Oct. 2013.