Handout 5

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1988.

Three high school students were in a journalism class where they served as staff members for the school newspaper, *Spectrum*. The newspaper was distributed to students, school personnel, and members of the community. It was funded primarily by the Board of Education.

Before publishing an issue, the journalism teacher had to submit a draft to the principal, Mr. Reynolds, for his review. In the spring of 1983, the journalism teacher submitted a draft as usual, but the principal objected to two of the articles. One described three students' experiences with teen pregnancy, and the other discussed the impact of divorce on students at the school.

The pregnancy story used false names to keep the girls' identities secret, but the principal worried that the girls might still be identifiable from details within the story itself. He also believed the divorce story was inappropriate because in it, a named student made specific complaints about bad things her father did. Mr. Reynolds thought that, as a matter of journalistic fairness and integrity, the writers should have given the parents a chance to respond to these remarks, or at least obtained their consent before the article was published.

Because there was not enough time to make the edits before the end of the school year and the publishing deadline, the principal decided to delete the two pages with the articles.

The dispute

- The students said: The school violated our First Amendment free speech rights by deleting two pages of articles from the school newspaper based on what the articles said.
- The school officials said: The school should get to control what kinds of things are published in a newspaper that is school-sponsored.

Opinion

Justice WHITE delivered the opinion of the Court.

The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*[1]—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school.[2] These activities may be fairly characterized as part of the school

[1] Remember, *Tinker* held that the school can't punish students for wearing black armbands, as long as they weren't causing a substantial disruption within the school.

[2] *Imprimatur of the school* - the school's official approval

curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression[3] to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously[4] attributed to the school… A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order, or to associate the school with any position other than neutrality on matters of political controversy…

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination[5] of student expression. Instead, 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[6] concerns…

It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so directly and sharply implicated[7], as to require judicial intervention…

We also conclude that Principal Reynolds acted reasonably …

The initial paragraph of the pregnancy article declared that "[a]ll names have been changed to keep the identity of these girls a secret." The principal concluded that the students' anonymity was not adequately protected, however, given the other identifying information in the article and the small number of pregnant students at the school… In addition, he could reasonably have been concerned that the article was not sufficiently sensitive to the privacy interests of the students' boyfriends and parents, who were discussed in the article but who were given no opportunity to consent to its publication or to offer a response…

The student who was quoted by name in the … divorce article … made comments sharply critical of her father. The principal could reasonably have concluded that an individual publicly identified as an inattentive parent … was entitled to an opportunity to defend himself as a matter of journalistic fairness…

[3] Expression that is part of the school curriculum

[4] *Erroneously* - incorrectly

[5] *Dissemination* - spread; circulation

[6] *Pedagogical* - related to teaching

[7] *Implicated* - involved; violated

Here, the Court lists some of Principal Reynold's legitimate pedagogical concerns – that is, concerns about the speech that are related to education.

[The Principal] could reasonably have concluded that the students who had written and edited these articles had not sufficiently mastered those portions of the Journalism II curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose most intimate concerns are to be revealed in the newspaper, and "the legal, moral, and ethical restrictions imposed upon journalists within [a] school community" that includes adolescent subjects and readers… Accordingly, no violation of First Amendment rights occurred.

Handout 6

Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1986.

At a school assembly, Matthew Fraser gave a speech to nominate a fellow student for student council. Students were required to either attend the assembly or go to study hall. The assembly was part of a school-sponsored educational program in self-government.

During his entire speech, Fraser referred to his candidate in terms of an elaborate sexual metaphor:

> "I know a man who is firm. He's firm in his pants, he's firm in his shirt, his character is firm. But most … of all, his belief in you, the students of Bethel, is firm. [He] is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts. He drives hard, pushing and pushing until finally he succeeds. [He] is a man who will go to the very end–even the climax–for each and every one of you… He'll never come between you and the best our high school can be."

Fraser had discussed this speech with two teachers beforehand, and both teachers told him that his speech was inappropriate and that he should probably not deliver it.

During the speech, some students hooted and yelled, some made sexual gestures, and some seemed bewildered and embarrassed. One teacher reported that the next day, she had to interrupt her lesson plan in order to discuss the speech with the class.

The school had a rule that prohibited the use of obscene, profane language or gestures. When confronted by the Assistant Principal, Fraser admitted that he deliberately used sexual innuendo in the speech. As punishment, the school declared that he would be suspended for three days, and his name would be removed from the list of candidates to be a speaker at graduation.

The dispute

- The student said: Suspending me for my speech was a violation of my First Amendment right to freedom of speech.
- The school officials said: The school may choose to punish speech that is lewd, indecent, or disruptive to the educational process.

Opinion

Chief Justice BURGER delivered the opinion of the Court.

[P]ublic education must prepare pupils for citizenship in the Republic. ... It must inculcate[1] the habits and manners of civility…

These fundamental values … must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these fundamental values must also take into account consideration of the sensibilities[2] of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse[3] in a democratic society requires consideration for the personal sensibilities of the other participants and audiences…

[T]he constitutional rights of students in public school are not automatically coextensive[4] with the rights of adults in other settings…

Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the fundamental values necessary to the maintenance of a democratic political system disfavor the use of terms of debate highly offensive or highly threatening to others. … The inculcation of these values is truly the work of the schools. The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers—and indeed the older students—demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment[5] in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd,[6] indecent, or offensive speech…

This Court's First Amendment jurisprudence[7] has acknowledged limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children… These cases recognize the obvious concern on the part of parents, and school authorities acting *in loco parentis*,[8] to protect children -- especially a captive audience -- from exposure to sexually explicit, indecent, or lewd speech…

[1] *Inculcate* - instil; persistently teach

[2] *Sensibilities* - emotional responses

[3] *Discourse* - spoken or written conversations or debates

[4] *Coextensive* - to the same extent or amount; equal

[5] *Deportment* - behavior

[6] *Lewd* - crude and offensive in a sexual way

[7] *Jurisprudence* - way of thinking about the law about the law

[8] *In loco parentis* - in place of the parents

We hold that [the] School District acted entirely within its permissible authority in imposing sanctions[9] upon Fraser in response to his offensively lewd and indecent speech. Unlike the sanctions imposed on the students wearing armbands in *Tinker,* the penalties imposed in this case were unrelated to any political viewpoint. The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent's[10] would undermine the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students. Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education.

[9] *Sanctions* - penalties

[10] *Respondent* - in this case, the Court is referring to Fraser, the student.