

HAZELWOOD v. KUHLMEIER

Facts

Spectrum was written and edited by the Journalism II class at Hazelwood East High School. Policies controlling its function, and the rights and responsibilities of the student journalists, were defined three ways. The Hazelwood School Board Policy declared that “school sponsored student publications will not restrict free expression or diverse viewpoints within the rules of responsible journalism. [Such publications are] developed withing the adopted curriculum and its educational implications in regular classroom activities.”

The High School’s curriculum guide described the Journalism II course as “a laboratory situation in which the students publish the school newspaper, applying skills they have learned in Journalism I.”

Finally, at the beginning of the school year, *Spectrum* itself published a statement which read, “*Spectrum*... 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.”¹

Student Cathy Kuhlmeier became copy editor of the paper in 1982. She says that her goal was to try “to make a change with the school paper and not just write about the school proms, football games and piddly stuff.” She and two other staff members decide to produce a feature issue towards the end of the school year investigating various types of real teenage problems.

Reporters submitted their feature stories at the beginning of May. The most controversial articles dealt with teenage pregnancy and the impact of divorce on the lives of students.

“Sixteen year old Sue had it all,” one article began, “good looks, good grades, a loving family and a cute boyfriend. She also had a seven pound baby boy.” The writer then gave statistics on the rate of teenage pregnancy and on teenage sexual activity. The article quoted counselors on teenagers’ ignorance or disinterest in using birth control. “It’s as if being prepared makes one immoral,” says one woman. “These girls believe that if you plan for sex, you’re fast or bad. So it’s the good girls who get pregnant.” The article also discussed the rise in teenage abortions, the neglect of sex education by parents and the “alarming” consequences of teenage pregnancy for the girl and child. The story ended: “Millions of teens get pregnant each year and millions will in years to come. Could one of them be you?”

A side story interviewed three Hazelwood East High School students who became pregnant, using false names to protect their identity. All three girls declared that they had never felt pressured into having sex. The first girl, five months pregnant, stated she is “very excited

¹The language is, of course, adapted from the *Tinker* decision.

about having a baby.” She has married her boyfriend, and her parents are no longer upset. The second girl has had her baby. She discussed how she was initially upset and says, “If I could go back to last year, I would not get pregnant, but I have no regrets. We love our baby more than anything in the world (my boyfriend and I) because we created him!” The third girl also described her original reaction as “shocked,” but has also learned to cope with having a child. She and her boyfriend will marry when they are financially ready.

“Divorce’s Impact on Kids May have Lifelong Effect” was the headline of a short piece for which 25 students were interviewed. One freshman girl quoted by name states, “My dad wasn’t spending enough time” with the family but was often “out late playing cards with the guys.” An anonymous junior related that he and his mom couldn’t stand his father’s drunkenness. The writer apparently did not interview any parents and quoted only one adult, a teacher, who speculated on the overall effect of divorce on teenagers.

The other articles featured teenage runaways, teenage marriages, and the “squeal law” requiring notification of parents when minors receive free birth control from federally-funded clinics.

When the newspaper was ready for the printer, the journalism advisor reviewed it and, as required, submitted the page proofs to the school principal, Robert E. Reynolds, for final approval. Reynolds directed the journalism advisor to delete the two pages containing the five feature stories. He objected only to the interview with the pregnant girls and the story on the impact of divorce but did not believe there was time to reformat the paper or to revise the articles in question. As a result, he ordered that the whole feature be cut. He did not give the journalism advisor any reasons for the deletions.

Later Reynolds would testify that he ordered the deletions to protect people’s privacy, guard the school’s educational environment, and uphold journalistic standards. He believed that the interview with the pregnant girls did not sufficiently disguise their identities in spite of the false names used in the story. Furthermore, he believed the girls’ discussions of their sexual activity was unsuitable for a high school audience. He objected to the divorce article because quoted students were named, possibly invading their parents’ privacy.² From a journalistic standpoint, he claimed, the article lacked “fairness and balance,” because the father had not been given the chance to reply to the charges against him.

Reynolds did not inform the *Spectrum* staff members of his decision. Only after the finished paper appeared did the students realize their stories had been deleted. They promptly asked for a meeting with the principal, who stated that the stories had been removed because they were “inappropriate, personal, sensitive and unsuitable for the newspaper.” After the meeting, the staff members photocopied the censored articles and passed them out to fellow students. The entire matter was on its way to becoming a much larger dispute.

²Actually, the students had already removed all names from that article on the advice of the advisor. The advisor, however, did not mention this in his conversations with the principal, and the principal did not ask whether such changes were still possible.

Decision

The Supreme Court announced its decision in January 1988, four and a half years after the Hazelwood principal censored the students' controversial feature stories. Cathy Kuhlmeier was now a senior in college. The *Spectrum* had a new journalism advisor.

The Majority Opinion

The decision was 5 to 3 in favor of the principal and the school board, with Justices White, O'Connor, Rehnquist, Scalia, and Stevens in the majority.³ Justice Byron White wrote the majority opinion. His arguments can be summarized as follows:

1. *Spectrum* is not a public forum.

- A. Forums for public expression are places like streets and parks that have traditionally been used by citizens for purposes of assembly and discussing public questions. School facilities only become public forums if the school authorities have opened those facilities for *indiscriminate use by the public*.
- B. The Hazelwood authorities never opened up the student newspaper for such indiscriminate use.

2. Because *Spectrum* is sponsored by the school, the school authorities may exercise editorial control over its style and content so long as their actions are "reasonably related to legitimate" educational concerns.

- A. The *Tinker* decision states only that the First Amendment requires a school to *tolerate* particular speech.
- B. The First Amendment does not require a school affirmatively to *promote* particular student speech.

3. It was reasonable, from an educational standpoint, for the principal to have censored the articles.

- A.
 - He could reasonably have feared for the privacy of the pregnant girls.
 - It was reasonable to "have concluded that such frank talk was inappropriate in a school sponsored publication distributed to 14-year-old freshmen and presumably taken home to be read by students' even younger brothers and sisters."
 -

The school must be able to disassociate itself from views it does not support.

³Only eight Justices took part in the *Hazelwood* decision, because Justice Powell had recently retired, and the new Justice (Kennedy) had not yet started work.

- B. The principal believed that there was not time to make the necessary changes in the articles and still print the paper before school was out.
- C. He was teaching the students a lesson in good journalism.

The Dissent

Justices Brennan, Marshall, and Blackmun dissented in the decision. Justice Brennan wrote the dissenting opinion.

1. The First Amendment protects student free expression whether or not the forum is school sponsored.

- A. Neither the *Tinker* decision nor any other precedent ever made a distinction between personal and “school sponsored” student expression such as the Majority declares (#2 on previous page).
- B. Through the written school board policy and the school’s implicit acceptance of the newspaper’s own statement of policy, the Hazelwood authorities had promised the students that *Spectrum* would be an open forum for the expression of student viewpoints.

2. The truly relevant standard here is the Tinker standard: Did the students’ speech “materially disrupt classwork or involve substantial disorder or invasion of the rights of others?”

- A. To allow state educators to remove news articles simply because they are *potentially sensitive* is to create an unacceptable “vaporous” standard for censorship. Such a standard would allow educators to act as “thought police,” stifling discussion of any topics or viewpoints which are not “state-approved.”
- B. The school’s need to disassociate itself from student views of which it does not approve can be addressed by published disclaimers rather than censorship.

3. The principal’s censorship was not reasonable from an educational standpoint.

- A. He did not consult the students before censoring the work and later explained his reasons “only in the broadest of generalities.”
- B. “He did not so much as inquire into obvious alternatives [to censorship] such as precise deletions or additions, rearranging the layout, or delaying publication.”
- C. Schools are entrusted with the task of teaching “the cherished democratic liberties that our Constitution guarantees.” The principal’s “brutal” censorship, and the Court’s approval of it, teaches the young men and women of Hazelwood East a bad civics lesson.