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One's right to free speech is not absolute. Throughout American history, courts have supported restrictions upon time, place, and type of speech to be protected. When "student free speech" is queried on Google, the results page comes slathered in reports of battles over religious iconography, student journalism, social media posts, and online harassment.

In short, controversy.

Yet, these are issues that Mary Beth Tinker was hardly thinking about when she wore a black armband to school to protest the Vietnam War, and issues that her court case never touched.

*Tinker v. Des Moines* is the textbook students' rights victory. It established that students do not "shed their constitutional rights... at the schoolhouse gate<sup>[8]</sup>" and created the Tinker Standard, a test which can be administered to student speech cases to ascertain whether their speech is protected under the First Amendment. As with many cases turned precedents, *Tinker* is not a one-size-fits-all solution. It has been challenged over the years in the increasingly complicated realm of students' voices and the ways they are heard. In that sense, the *Tinker* decision is very much alive and evolving, moving backwards and forwards in the scope of its protections, piloting new cultural obstacles, and maneuvering through new territory as time marches forward.

Subsequent cases *Bethel v. Fraser* (1986) and *Hazelwood v. Kuhlmeier* (1988) are viewed as steps backwards from *Tinker*, allowing schools broader jurisdiction over what students can say. The first held that administrators could prevent students from giving 'vulgar' or 'lewd' speeches that were "inconsistent with the 'fundamental values of public-school education.'<sup>[2]</sup>" The second allowed school officials more leeway in censoring school-sponsored newspapers. In both cases, the *Tinker* ruling did not force schools to protect certain kinds of speech.

Following *Hazelwood* came tragedies like the Columbine and Parkland shootings, after which schools were presented with another complicated layer of student speech: protecting their students from violence by peers. Following the cultural fallout of the Columbine shooting in 1999, the school (and others) expanded zero-tolerance policies pertaining to drugs and weapons to include "*controversial student expression in poetry, songs, and art, especially if such expression appear[s] to be tied in any way to potential acts of violence.*<sup>[7]</sup>" In the law, those are dangerous words. They have incredible potential for abuse in their ambiguity.

The heavy peals of Columbine's warning bells can be heard in several cases fought in its wake. In *LaVine v. Blaine School District* (9<sup>th</sup> Cir. 2001), a student argued that he was wrongfully expelled after writing a poem examining the mindset of a hypothetical school shooter. Applying the Tinker Standard, the Court ruled in favor of administrators. The case had to be deliberated considering the current environment: "Taken together and given the backdrop of actual school shootings ... these circumstances were sufficient to have led school authorities reasonably to forecast substantial disruption."<sup>[5]</sup>

Similar in tone was *Emmet v. Kent School District #415* (2000), in which a student was suspended after a website was found with tongue-in-cheek "obituaries" of students, and a poll

which allowed visitors to vote on who would "die" next (whose would be the next mock obituary). Noting the minor resemblances to the website Eric Harris had maintained prior to his killing spree <sup>[1]</sup>, a reporter called the website a "hit list" and the student was promptly suspended for "intimidation, harassment, [and] disruption to the educational process."<sup>[3]</sup> The court ruled in favor of the student despite the alarmist characterization by the media, as there was not enough evidence to prove the student was intending do harm and the website did not meet the Tinker Standard.

Uniquely modern dangers like cyberbullying force *Tinker* into a corner: if speech is made outside the "schoolhouse gate," can schools suppress it? A new area of law developing at breakneck pace, social media prosecutions are only just beginning, and *Tinker*'s interpretation is being reworked to fit the newest set of criteria.

In 2015, Reid Sagehorn sued his school for suspending him over a tweet made about a teacher outside of school hours and grounds. A Minnesota judge in *Sagehorn v. Independent School District #728* ruled that school officials could not suspend students over such posts unless they "are true threats or are reasonably calculated to reach the school environment *and* are so egregious as to pose a serious safety risk or other substantial disruption."<sup>[10]</sup> It set an incredibly high bar for schools to prove that posts cause disruptions in line with the Tinker Standard. The case also established that schools can only use *Fraser*'s allowance to define 'vulgar' speech as they see fit when it is made on-campus, regardless of whether it is digital. The verdict at once expanded and limited *Tinker*'s initial protections.

Conversely, there are cases like *Bell v. Itawamba County School Board* which arose the same year. In this case, the Fifth Circuit court found it acceptable for administrators to suspend a student for posting a rap song to YouTube that harassed and intimidated teachers. The majority opinion was that teachers "reasonably could find Bell's rap recording threatened, harassed, and intimidated [them]; and a substantial disruption reasonably could have been forecast."<sup>[4]</sup> In other words, it passed the Tinker Test. Echoing *LaVine*, the judges cited increased school violence as a factor in their verdict.

Democracy and our society are constantly in a period of change; its institutions consistently evolve to meet new challengers and solve modern problems. Free speech is a work in progress. Our vast tome of laws is a work in progress. *Tinker* has undergone quite the makeover in response to innovations and changes in culture and thinking, but its heart has remained true. A landmark Supreme Court case, its precedent that students will never be required to "shed their constitutional rights... at the schoolhouse gate <sup>[8]</sup>" is the undercurrent which has carried all subsequent lawsuits for and against students over their speech, from symbolic armbands to Twitter posts to unfurled banners reading "Bong Hits 4 Jesus<sup>[6]</sup>" and a memorial to our founding principles of freedom and liberty.

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