



## **Case Study: Student Speech in the Arts**

### **The Facts:**

Grady and Tori Wilbur are a brother and sister playwriting team in the small town of Aileena, Illinois. Yet their most recent script, “An American in Iraq,” attracted nationwide attention – some would say for all the wrong reasons – when the principal of their high school shut down the play before it was ever performed.

According to Grady, a seventeen-year-old junior, the idea for the play came from “the growing numbers of Aileena High School graduates who were joining the military and going off to fight. It seemed like our town was sending so many people over there,” Grady explained, “and yet no one was really talking about whether or not it was a good idea.”

To try and spark some conversation, Grady and Tori read through the blogs of soldiers, interviewed their friends and neighbors, and pulled quotations from leading politicians. They then took these different pieces and stitched them together to produce a 60-minute play in which actors read monologues that explored everything from the meaning of patriotism to what it feels like to lose a leg. “Our goal was definitely not to spew propaganda – it was to spark dialogue and debate,” said Tori, as her brother nodded in agreement. “And I think we wrote a play that could have done that – but we never got the chance.”

That’s because the play’s scheduled performances were all canceled by Aileena High School principal Elizabeth Johnstone after she received complaints from a concerned group of students, several of whom had brothers and sisters serving in Iraq. “This play,” explained student group spokesperson Bob Pfeiffer, “despite what the Wilbur siblings believed, did not present a balanced portrayal of the war.”

Upon closer inspection, Johnstone agreed. “As a school,” she told reporters, “we have a responsibility to ensure that the Iraq war, the lives lost and the sacrifices made by soldiers are presented in an educational context with

appropriate support and guidance. In its present form, the play does not meet those standards.”

The Wilbur siblings are now deciding what to do next. “We’re trying to decide if we should stage the play somewhere else in the community,” said Grady, “or if we should revise it to the satisfaction of our principal and the others, or, to be honest, if we should sue the school for violating our First Amendment rights.”

**Legal Questions:**

1. May public school officials legally censor a student-produced piece of writing, such as an article in a school newspaper or the script of a play?
  
2. What is a public forum?

**What Should Grady and Tori Do?**

**What Should Principal Johnstone Do?**

### **Answers to legal questions:**

**1.** Maybe. In short, how much school officials may censor school-sponsored productions depends, in part, on whether the school has created an open public forum.

For years, students were protected by a high standard of freedom of expression based on the Supreme Court's historic 1969 ruling in the *Tinker* case, in which the Court ruled that school officials couldn't prevent students from expressing their opinions on school grounds, as long as they didn't (a) cause a material or substantial disruption of the school environment, or (b) intrude on the rights of others.

After the *Tinker* ruling, most courts supported the notion of granting students a high degree of protection under the First Amendment. That changed in 1988, when the U.S. Supreme Court, in a narrow 5-3 vote, ruled that the principal of Hazelwood East High School was justified in censoring a series of controversial articles in his school's newspaper, *The Spectrum*.

In the ruling of *Hazelwood v. Kuhlmeier*, the Court established a new standard of protection for student expression by ruling that schools may limit the personal expression of students if their speech can be perceived to bear the imprimatur of the school. Writing for the majority, Justice Byron White said "censorship of school-sponsored student expression is permissible when school officials can show that it is reasonably related to legitimate pedagogical concerns."

Although the *Hazelwood* case is primarily associated with student publications like a newspaper, there is explicit language that links it to theatrical productions as well. As the Court writes, the *Hazelwood* opinion "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."

Explaining further, the Court says that "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."

What this means is that since the *Hazelwood* ruling administrators have a great deal of leeway in determining what is and isn't acceptable material in school-sponsored publications and events, but only if their school has not established a public forum.

**2.** A public forum is a place that has, by tradition or practice, been held out for general use by the public for speech-related purposes.

To determine which of the standards of student expression applies in a given case, many courts first conduct a "public forum analysis." The public forum analysis determines whether individuals may have access to places for communicative purposes.

There are three types of public forums:

I. A "traditional", or "open, public forum" is a place with a long tradition of freedom of expression, such as a public park or a street corner. The government can normally impose only content-neutral time, place, and manner restrictions on speech in a public forum. Restrictions on speech in a public forum that are based on content will be struck down, unless the government can show the restriction is necessary to further a compelling governmental interest.

II. A "limited public forum" or "designated public forum" is a place with a more limited history of expressive activity, usually only for certain groups or topics. Examples of a limited public forum would include a university meeting hall or a city-owned theater. The government can limit access to certain types of speakers in a limited public forum, or limit the use of such facilities for certain subjects. Despite these more proscriptive guidelines, however, a governmental institution may still not restrict expression at a limited forum unless that restriction serves a "compelling interest."

III. A "closed public forum" is a place that, traditionally, has not been open to public expression, such as a jail or a military base. Governmental restrictions on access to a closed public forum will be upheld as long as they are reasonable and not based on a desire to suppress a particular viewpoint. This standard is far more deferential to government officials.

In *Hazelwood*, the U.S. Supreme Court determined that a high school newspaper produced as part of a journalism class was not a public forum. The Court wrote: "Hence, school facilities may be deemed to be public forums only if school authorities have 'by policy or practice' opened those facilities for 'indiscriminate use by the general public,' or by some segment of the public, such as student organizations." The majority in *Hazelwood* also reasoned that because the production of the newspaper was "part of the educational curriculum and a regular classroom activity," it was not an open public forum.

Since the *Hazelwood* decision, many courts have continued to defer to the

judgment of school officials. As a result, many forms of censorship that had previously been unacceptable under the *Tinker* standard of expression have been upheld.

If, however, a school declares itself an open forum for ideas (you should be able to find out in the school handbook), then the *Tinker* standard applies, and students receive greater protection under the First Amendment.