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Kuhlmeier v. Hazelwood School District: The First amendment rights of Public High School Students

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KUHLMEIER v. HAZELWOOD SCHOOL DISTRICT: THE FIRST AMENDMENT RIGHTS OF PUBLIC HIGH SCHOOL STUDENTS

INTRODUCTION

The first amendment to the Constitution guarantees freedom of speech and press to everyone under United States jurisdiction.[1] This amendment is the most important of the first ten amendments in maintaining an ordered government because it allows people to express opposing viewpoints openly. The Supreme Court has held that the guarantees of the first amendment naturally extend to students in a public high school setting.[2] The education process requires scrupulous protection of children's constitutional freedoms.[3]

In *Kuhlmeier v. Hazelwood School District*, the Supreme Court held that high school students' first amendment rights were not violated when their principal deleted articles from the school newspaper.[4] The Court stated that the school newspaper was not a "public forum" for expression which normally receives full first amendment protection.[5] The Court further held that the school principal did not violate students' first amendment rights when he restricted the printing of articles due to the effect that they could have on other students.[6]

The Supreme Court's decision will undoubtedly curtail students' rights to free speech and press. This casenote will first present a brief history of the first amendment as it applies to public schools. An analysis of the *Kuhlmeier* decision will follow, demonstrating why the *Kuhlmeier* holding represents a major step backwards for both first amendment freedom and the American educational process.

BACKGROUND

The Constitution places a duty upon the Supreme Court to protect free speech.[7] The Court has recognized that speech may be restricted in certain situa-

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[1]U.S. CONST. amend. I. "Congress shall make no law . . . abridging the freedom of speech or of the press . . . ." *Id.*

[2]Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503, 511 (1969).

[3]West Va. Bd. of Educ. v. Barnette, 319 U.S. 624, 637 (1943).

[4]Hazelwood School District v. Kuhlmeier, 108 S. Ct. 562 (1988).

[5]*Id.* at 564. The term public forum includes traditional public places like streets and parks. If speech occurs in a public forum, it can only be regulated in a narrow manner which is necessary to serve significant governmental interests. A non-public forum may be subject to greater governmental regulation.

[6]*Id.* at 571.

[7]U.S. CONST. art. III, § 1: "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Similarly, Article III, § 2, cl. 1 of the Constitution states in part: "The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . ." (For the purposes of this casenote "speech" also refers to freedom of the press).

tions.[8] The Court has indicated that restrictions on speech should be minute, and carved out of the first amendment only when absolutely necessary to protect others who may be harmed.[9] The Supreme Court's methods for limiting the protection of the first amendment can be placed into three categories:[10] (1) content based regulations,[11] (2) non-content based regulations,[12] and (3) prior restraint.[13]

Content based regulations arise either because of the ideas or information within the speech, or because of the general subject matter of the speech.[14] Content based regulations have been upheld when speech presents a "clear and present danger" of illegal behavior,[15] contains "fighting words,"[16] is "obscene,"[17] would involve a defamation suit,[18] contains false or misleading commercial speech,[19] or contains child pornography.[20]

The state may also regulate speech for reasons independent of its content.[21] Such restrictions focus on the time,[22] location,[23] or physical manner[24] of the

[8]Goeking, *Kuhlmeier v. Hazelwood School District: Application of the Prior Restraint and Public Forum Doctrines to the Free Expression Rights of High School Students*, 14 HASTINGS CONST. L.Q. 889 (1987) (citing Schenck v. United States, 249 U.S. 47, 52 (1919)).

[9]*See, e.g.*, Elrod v. Burns, 427 U.S. 347, 360 (1976) (dismissals from public employment due to partisan political affiliation or nonaffiliation infringes upon first amendment rights).

[10]Goeking, *supra* note 8, at 894-900.

[11]*See, e.g.*, Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) (well defined and narrowly limited expression where content is of such slight social value that it can be restricted without violating the first amendment).

[12]*See, e.g.*, United States v. Grave, 462 U.S. 171 (1983) (statute preventing any demonstration on sidewalk in front of the Supreme Court's building was in violation of the first amendment).

[13]*See, e.g.*, New York Times Co. v. United States, 403 U.S. 713 (1971) (per curiam) (the Court held that any attempts at prior restraint must bear a heavy presumption of unconstitutionality).

[14]*See* Cohen v. California, 403 U.S. 15 (1971) (statute could not constitutionally make the display of a four-letter expletive a criminal offense).

[15]Brandenburg v. Ohio, 395 U.S. 444 (1969) (The Court extended Justice Holmes' "clear and present danger" test to include speech which is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action").

[16]*Chaplinsky*, 315 U.S. at 572 (calling another a "damned Facist" and a "damned racketeer" may be viewed as likely to provoke the average person to retaliation, and thereby cause a breach of the peace).

[17]*See* Paris Adult Theatre v. Slaton, 413 U.S. 49, 54 (1973) (state statute prohibiting the commercial use of obscene material held valid); Miller v. California, 413 U.S. 15, 23 (1973) (obscene material is unprotected by the first amendment).

[18]*See* Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (private individuals are not subject to the same standard in defamation suit as a public official or public figure); New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (a public official or public figure must prove that defamatory statements were published with knowledge of their falsity of reckless disregard of the truth).

[19]*See* Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557, 563-66 (1980) (misleading commercial speech is unprotected by the first amendment).

[20]*See* New York v. Ferber, 458 U.S. 747 (1982) (state statute prohibiting the sale of child pornography does not violate the first amendment because it bears heavily on the welfare of children).

[21]Goeking, *supra* note 8, at 896.

[22]*See, e.g.*, Grayned v. City of Rockford, 408 U.S. 104 (1972) (upholding an ordinance restricting excessive activity on property adjacent to a school during school hours).

[23]*See, e.g.*, Heffron v. International Society of Krishna Consciousness, 452 U.S. 640 (1981) (state law requiring that solicitation of funds by religious groups be conducted from booths found to be a reasonable time, place, and manner regulation).

[24]*See, e.g.*, Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984) (National Park Service regula-

speech. These restrictions must be narrowly tailored to prevent a specific activity.[25]

Time, place, and manner restrictions at particular public places fall within the realm of the public forum doctrine.[26] The Supreme court has created three types of public property to aid in analysis. In descending order of protectiveness, they are: the traditional public forum, the designated public forum, and the non-public forum.[27] The court looks at the intent of the government in creating the forum.[28] The Court also looks at the nature of the property or medium of expression, and its compatibility with expressive activity.[29]

One of the founding fathers' most feared means of restriction was prior restraint.[30] Prior restraint laws censor the speaker by requiring government approval before the material is disseminated to the public.[31] The Supreme Court felt that the primary aim of the first amendment was to prevent pre-publication restraints.[32] The most celebrated case dealing with prior restraint, *New York Times Co. v. United States*,[33] prompted nine separate opinions. Not only did the Court hold that the government carries a heavy burden in justifying prior restraint, but two of the justices also argued that the press could never be subjected to prior restraint.[34]

The discussion of the first amendment to this point has dealt generally with restrictions on adults. The state derives its authority for restriction of children's expression from the child's need for parental direction, and the state's interest in educating future citizens.[35] In *FCC v. Pacifica Foundation*, the Supreme Court held that vulgar language could be restricted when the broadcast was at a time of day when children may be in the audience.[36] In *Ginsberg v. New York*, the Supreme Court upheld a state statute prohibiting the sale of "obscene" material to minors under seventeen, even though the material could not be withheld from

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tion prohibiting sleeping in park in connection with a demonstration upheld as a reasonable restriction on the manner in which a demonstration could be carried out).

[25]United States v. Grace, 461 U.S. 171, 177 (1983).

[26]*See, e.g.*, City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984).

[27]Perry Educ. Ass'n v. Perry Local Educator's Ass'n, 460 U.S. 37, 45-6 (1983).

[28]Cornelius v. NAACP Legal Defense and Educ. Fund, 473 U.S. 788, 802 (1985).

[29]*Id.* The federal government created a pamphlet with various charitable organizations in it. The pamphlet was circulated to employees so they could contribute if they wished. Organizations which sought to influence public policy or elections through lobbying and other methods were not permitted in the pamphlet. The NAACP Legal Defense Fund and other similar groups were not permitted to participate. They challenged, contending the federal pamphlet was a public forum. The Supreme Court held that the government had not intended to create a public forum and could thus choose not to allow some organizations to be printed in the pamphlet.

[30]*New York Times Co.*, 376 U.S. at 716-18.

[31]*See* Near v. Minnesota, 283 U.S. 697, 713-14 (1931) (Prior restraint laws traditionally required the speaker to obtain a license from the government in order to publish the material).

[32]*Id.* at 713.

[33]403 U.S. 713 (1971) (per curium).

[34]*Id.* at 714.

[35]Garvey, *Children and The First Amendment*, 57 TEX. L. REV. 321, 333 (1979).

[36]FCC v. Pacifica Foundation, 438 U.S. 762, 749-50 (1978).

adults.[37] The Court upheld the law largely because it was structured to accommodate parental authority.[38]

First amendment restrictions on children generally are in the form of protecting children from vulgar or obscene material.[39] However, a different problem is presented when it is a minor who is creating the material subject to restriction. This situation usually arises in a public high school.[40]

An analysis of the first amendment in public high schools must begin with *Tinker v. Des Moines Indep. School Dist.*[41] In *Tinker*, the Supreme Court recognized that high school students maintain their constitutional rights inside the schoolhouse.[42] The Court also acknowledged the need to allow the state's local authorities and school officials to determine conduct and control curriculum in the schools.[43] The *Tinker* court held that school officials may not disregard the first amendment when implementing policy.[44] However, the Court recognized that school officials may prevent student speech which interferes with the educational process.[45] Consequently, the Court held that undifferentiated fear of disturbance is not enough to allow the violation of one's right to freedom of expression.[46] The Court adopted the standard that the students' conduct must substantially and materially interfere with the educational process before it may be restricted.[47]

Since *Tinker*, the Courts have decided several cases dealing with high school students' first amendment rights. The fourth circuit held that a school newspaper was established and operated as a conduit for student expression and, as a result, should be considered a public forum.[48] The seventh circuit upheld students' first amendment rights, holding that prior restraint of publication is unconstitutional in a high school setting.[49] The second circuit allowed school officials to prohibit a student questionnaire and require prior submission of student publications for approval.[50] In *Board of Education v. Pico*,[51] the Supreme Court reiterated its stance

[37]Ginsberg v. New York, 390 U.S. 629, 635-43 (1968).

[38]*Id.* at 639.

[39]*See* FCC v. Pacifica, 438 U.S. 762 (1978); Ginsberg v. New York, 390 U.S. 629 (1968).

[40]*Kuhlmeier*, 108 S. Ct. 562 (1988).

[41]393 U.S. 503 (1969).

[42]*Id.* at 506 ("It can hardly be argued that . . . students . . . shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

[43]*Id.* at 507 (citing *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

[44]*Id.*

[45]*Id.*

[46]*Id.* at 508.

[47]*Id.* at 509.

[48]Gambino v. Fairfax County School Board, 429 F. Supp. 731 (E.D. Va.), *aff'd*, 564 F.2d 157 (4th Cir. 1977).

[49]Fujishima v. Board of Educ., 460 F.2d. 1355 (7th Cir. 1972).

[50]*See* Tractman v. Anker, 563 F.2d 512 (2d. Cir. 1977) (the Court allowed the school's prohibition of student sponsored survey of student sexual attitudes and experiences because school psychologists feared harm to some students); Eisner v. Stanford Bd. of Educ., 440 F.2d 803 (2d. Cir. 1971) (responsible and fair regulations for prior submission held not always unconstitutional).

[51]457 U.S. 853 (1982).

that although school officials have broad power to institute community standards, they may not disregard the first amendment. In another recent case, the Supreme Court held that school authorities may sanction a student for the use of offensively lewd and indecent speech in a school sponsored assembly.[52] The Court stated that school authorities may employ such sanctions in exercise of their "in loco parentis" authority.[53] Thus far, the law allows high school students to enjoy their first amendment rights, provided they do not disrupt the educational process or use vulgar or lewd speech in exercising their rights.[54]

FACTS

Three students from East Hazelwood High School brought suit for violation of their first amendment rights when the principal deleted articles from the school newspaper before publication.[55] The students were members of a journalism class which printed the school newspaper, *Spectrum*.[56] The class was designed to give the students first hand experience with the skills needed to publish a newspaper.[57] The Board of Education provided most of the funding for the printing costs.[58] As a matter of procedure, the paper was given to the school principal for approval before it was printed.[59]

Pages four and five of the May 13, 1983, edition of the *Spectrum* contained articles dealing with teenage pregnancy, runaways, juvenile delinquents, and the effects of divorce on children.[60] Three articles dealt with pregnancy.[61] The headlines above the articles were "Pressure Describes It All For Today's Teenagers," and "Pregnancy Affects Many Teens Each Year."[62] The principle objected to the third article under this heading which consisted of personal accounts of three students.[63] In the articles, each student discussed her reaction to becoming pregnant, her plans for the future, her relationship with the father, the reaction of her parents, details about her sex life, and her use or non-use of birth control methods.[64] The articles on divorce contained statements by two students explaining the reasons for their parents' divorce.[65]

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[52]Bethel School Dist. No. 403 v. Fraser, 106 S. Ct. 3159 (1986).

[53]*Id.* at 3165. In loco parentis authority allows school officials to act in lieu of children's parents to protect the children.

[54]Slaff, *Silencing Student Speech!, Bethel School District No. 403 v. Fraser*, 37 AM. U.L. REV. 203 (1987).

[55]*Kuhlmeier*, 108 S. Ct. 562 (1988).

[56]*Id.* at 565.

[57]*Id.*

[58]*Id.*

[59]*Id.*

[60]*Id.*

[61]*Id.*

[62]607 F. Supp. 1450, 1457 (1985).

[63]*Id.*

[64]*Id.*

[65]*Id.* One student, identified as "a junior," was quoted as saying, "My dad didn't make any money, so my

The principal objected to the article on pregnancy because of its frank discussion of sex and birth control.[66] The principal felt the younger students in the school should not be subjected to such material.[67] The principal was also concerned that the identity of the pregnant girls had not been protected properly.[68] The divorce articles concerned the principal because the parents of the students interviewed were identified, but not given an opportunity to respond.[69]

The district court determined that the *Spectrum* was a school-sponsored activity which subjected it to greater scrutiny by the school.[70] The Court held that under this determination, the principal was justified in preventing the pregnancy article based on its mention of sex and birth control methods.[71] The Court further sided with the principal, agreeing with his determination that the pregnant girls were subjected to an invasion of their rights because their identity was not sufficiently protected.[72] The Court found the same problem of invasion of privacy existed regarding the divorce articles because the parents were not given an opportunity to respond.[73]

The Eighth Circuit Court of Appeals reversed the district court's decision for three reasons: (1) the *Spectrum* was a "student publication and a public forum because it was intended to be, and operated as, a conduit for student viewpoint;"[74] (2) censorship was not justified because the principal could not have reasonably predicted that the articles would have materially disrupted classwork or caused substantial disorder;[75] and (3) no tort action could have been maintained against the high school because the girls involved agreed to be subjects of a newspaper story, and the divorce article did not reveal any details of parents' lives or of the fathers' identities to bring it within the realm of invasion of rights under the *Tinker* test.[76] The circuit court's analysis applied the *Tinker* "invasion of rights" test in the same manner as the tort liability test for invasion of privacy.[77]

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mother divorced him. My father was an alcoholic, and he always came home drunk, and my mom really couldn't stand it any longer." *Id.* Another student, identified as "Diana Herbert," gave the following quote: "My dad wasn't spending enough time with my mom, my sister, and I. He was always out of town on business or out late playing cards with the guys. My parents always argued about everything. In the beginning, I thought I caused the problem, but not I realized it wasn't me." *Id.* at 1457-58.

[66] *Id.* at 1459.

[67] *Id.*

[68] *Id.* at 1460.

[69] *Id.*

[70] *Id.* at 1462-65.

[71] *Id.* at 1466.

[72] *Id.* (citing *Tinker v. Des Moines Indep. School Dist.*, 393 U.S. 503, 513 (1969)).

[73] *Id.* at 1466-67.

[74] *Id.* 795 F.2d. 1368, 1372 (8th Cir. 1986).

[75] *Id.* at 1375.

[76] *Id.* Under *Tinker*, school officials are justified in suppressing student speech only if students' actions materially disrupt the teaching process and the speech would result in the invasion of another's privacy.

[77] *Id.* The court borrowed the idea of using tort liability as a measure of the invasion of the rights of others from a Michigan Law Review article. Note, *Administrative Regulation of the High School Press*, 83 MICH. L. REV. 625, 640 (1984).

The Supreme Court reversed the appellate court's decision and held that: (1) the *Spectrum* did not qualify as a "public forum," therefore school officials could impose reasonable restrictions; and (2) the principal's decision to delete two pages on grounds that the article infringed on privacy rights of pregnant students did not violate students' first amendment rights.[78] The Court reasoned that the school had sponsored the newspaper and thus, did not have to promote speech which it found objectionable.[79] The Court stated that the standard for determining when a school may restrict student expression on school grounds, and the standard for determining when a school may refuse to lend its name to publication, are substantially different.[80]

ANALYSIS

Naturally school officials have some control over the educational process and choice of curriculum. "The constitutional rights of students in public school do not run parallel with the rights of adults in other settings."[81] However, "[i]t can hardly be argued that either public high school students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[82] The *Kuhlmeier* Court seems to have disregarded this statement in reaching its decision.

The Educational System Requires Adherence to the First Amendment

High school students' constitutional rights serve to safeguard the liberties of future adults rather than to preserve children's personal autonomy.[83] The state's interest in its future citizens is more apparent when it affirms the existence of children's first amendment rights than when the rights are denied.[84] Although the state has a compelling interest in the development of its future citizens, it does not have the right to control students' input and output of ideas according to standards that it perceives to be the most desirable.[85] In *West Virginia State Bd. of Education v. Barnette*, the Supreme Court advanced the idea that the proper formation of citizens is best assured not by a forced feeding of ideas, but by allowing students to experience first hand the freedoms they would later enjoy.[86] Because the educational process educates the young for citizenship, courts must protect students' constitutional freedoms "if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere

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[78] *Kuhlmeier*, 108 S. Ct. at 563, 568-69, 571-72 (1988).

[79] *Id.* at 570.

[80] *Id.*

[81] *Bethel School Dist. No. 403*, 106 S. Ct. at 3164.

[82] *Tinker*, 393 U.S. at 506.

[83] Slaff, *supra* note 54, at 214.

[84] Garvey, *supra* note 35, at 336-37.

[85] *Id.* at 337.

[86] 319 U.S. 624, 637 (1983).

platitudes."[87] The *Tinker* Court recognized the danger that arguments may arise when differing opinions are discussed in school.[88] However, the Court realized that the Constitution accepts the risk, and our history embraces this hazardous freedom as the hallmark of our national strength.[89] Thus, throughout the years, the Court has indicated that educators should not hide the first amendment from students, but should encourage them to exercise those rights.[90] When students attempt to speak out about societal realities, as the students of East Hazelwood High did, school officials and the Court should lend a guiding hand, not a censoring ax.

The Tinker Court Established Sound Precedent

In reaching its decision, the *Tinker* Court explained that before school officials may prohibit a particular expression, they must show that the prohibition is not motivated by a mere desire to avoid the discomfort that accompanies an unpopular viewpoint.[91] The *Tinker* Court held that a student may express his views during any hour of the school day if he does so without materially interfering with the requirements of discipline, and without colliding with the rights of others.[92] Of course, the first amendment does not protect a student who materially disrupts classwork or invades the rights of others.[93] The Supreme Court's decision in *Tinker* established a workable standard for dealing with high school students' exercise of their first amendment rights. Good educational systems teach students to take in new information and express it properly. So long as a student does not materially disrupt the school community or invade the rights of others, the student should be free to express himself or herself.

The Supreme Court applied *Tinker* in its analysis of *Bethel School District No. 403 v. Fraser.*[94] The Court distinguished the sexual content of the *Bethel* student's speech from the *Tinker* students' armbands.[95] In *Bethel,* the Court relied on earlier decisions which recognized school officials' "in loco parentis" authority to protect children from sexual or vulgar language."[96] Justice Marshall dissented because he believed the school district failed to demonstrate that the remarks were disruptive.[97] Justice Marshall commended the lower courts for applying the *Tinker*

[87] *Id.*

[88] *Tinker*, 393 U.S. at 737-38.

[89] *Id.* at 738.

[90] *See supra* notes 86-88.

[91] *Tinker*, 393 U.S. at 738.

[92] *Id.* (citing *Burnside v. Byars*, 363 F.2d. 744, 749 (1966)).

[93] *Id.* (citing *Blackwell v. Issaquena County Bd. of Educ.*, 363 F.2d 749 (C.A. 5th Cir. (1966)).

[94] *Bethel School Dist. No. 403*, 106 S. Ct. at 3163.

[95] *Id.*

[96] *See* Ginsberg v. New York, 390 U.S. 629 (1968) (state statute prohibiting the sale of "obscene" material to minors under seventeen upheld even though same material could not be withheld from adults); Board of Educ. v. Pico, 457 U.S. 853 (1982) (while school officials having broad power to institute community standards may not disregard the first amendment).

[97] Bethel, 106 S. Ct. at 3163. The student in *Bethel* gave the following speech:

I know a man who is firm — he's firm in his pants, he's firm in his shirt, his character is firm — but

test and concurred in their finding.[98] Justice Stevens, in his *Bethel* dissent, indicated that the student who gave the speech was in a better position to determine whether an audience of his peers would be offended by his sexual metaphor than a group of judges who are at least two generations and 3,000 miles away.[99] Justice Stevens makes sense.

Similarly, the students in *Kuhlmeier* were probably in the best position to know if the articles in question would disrupt the school. Justice Brennan dissented in *Kuhlmeier*, indicating that the Court distinguished *Tinker* because it could not find any precedent which fit its point of view.[100]

Application of Tinker

Rather than apply the *Tinker* test, the *Kuhlmeier* court created a distinction which would enable it to suppress material which the judges found personally objectionable.[101] For support, the Court offered three excuses for allowing the educators greater control over school-sponsored speech than the *Tinker* test would allow.[102] Justice Brennan enumerated these excuses as: (1) the public educator's prerogative to control curriculum; (2) the educational interest in protecting students from objectionable viewpoints; (3) and the school's need to disassociate itself from student expression.[103] Precisely because educators control curriculum, the Court should apply the *Tinker* test rather than abandon it.[104] *Tinker* would allow the suppression of speech in a curriculum forum only if it materially disrupted the educational process.[105]

The school's pedagogical interest is not an excuse to suppress viewpoints or material that it does not agree with. In *Board of Education v. Pico*,[106] the Court held that school officials may not remove books from school library shelves because the books offend the officials' social, political, and moral tastes.[107] Thus, the Court's second excuse has no merit.

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most of all, his belief in you, the students of Bethel, is firm.

Jeff Kuhlman 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.

Jeff is a man who will go to the very end even — the climax, for each and every one of you."

So vote for Jeff for A.S.B. Vice-President — he'll never come between you and the best our high school can be.

[98] *Id.*

[99] *Id.* at 3169.

[100] *Kuhlmeier*, 108 S. Ct. at 575.

[101] *See id.* and accompanying text.

[102] *Kuhlmeier*, 108 S. Ct. at 576.

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] 457 U.S. 852 (1982).

[107] *Id.* at 858.

The Court emphasized the fact that the *Spectrum* was school sponsored.[108] The Court applied a different standard because the views of the paper could have been erroneously attributed to the school.[109] In his dissent, Justice Brennan wisely points out that other means, short of censorship, could have been used to disassociate the school from the paper.[110] The school could have required the students to attach a disclaimer indicating that the views of the students did not reflect those of the school. Alternatively, the school could have issued a response explaining its position, and indicating why it believed the students were wrong.[111]

CONCLUSION

The *Kunlmeier* Court missed a golden opportunity to explain and clarify the standards established in *Tinker.* Instead, the Court increased the confusion over where the line should be drawn between students' first amendment rights, and the state's interest in restricting student speech. The Court abandoned sound precedent. Apparently, the court chose to distinguish *Tinker* solely because of the justices' own values.

School officials must deter conduct which is inconsistent with the school's purpose of effective education. However, school officials must recognize that students enjoy first amendment rights, with only a few exceptions. Students, as future citizens, must learn to express their views in a proper manner. The *Kuhlmeier* school officials prevented *student* speech, on topics that pertained to *students*, in a *student* newspaper. The Supreme Court's and school authorities' subjective values must not dictate the scope of students' first amendment rights.

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[108] *Kuhlmeier*, 108 S. Ct. at 570.

[109] *Id.*

[110] *Id.* at 579.

[111] *Id.*