

## UVA LAW | Students' Free Speech Rights 50 Years After Tinker

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KIMBERLY ROBINSON: Welcome to Is Tinker Good Law. It's our first panel of the day. My name is Kimberly Robinson, and I'm a professor here at the University of Virginia School of Law, and I teach a variety of education law courses. So I'm really excited about the conference today. So I'm going to introduce our distinguished panel, and then we're going to start off with some questions about how the law has evolved since the Tinker opinion.

So first, to my right, I have Tim Zick, who is the John Marshall Professor of Government and Citizenship at William and Mary Law School. He's the author of four University Press books on the First Amendment, so a national expert-- *Speech Out of Doors: Preserving First Amendment Liberties in Public Places*, *The Cosmopolitan First Amendment: Protecting Transborder Expressive and Religious Liberties*, *The Dynamic Free Speech Clause: Free Speech and Its Relation to Other Constitutional Rights*, and *The First Amendment in the Trump Era*. He's also published an array of law review articles on free speech, press, and assembly and is a frequent commentator in local, national, and international media. In 2012, he testified before US House of Representatives subcommittee regarding the First Amendment rights of Occupy Wall Street protesters.

Next to him is professor Emily Gold Waldman who joined the faculty of the Elisabeth Haub School of Law at Pace University, in 2006, after clerking for the honorable Robert Katzmann on the Second Circuit. She teaches Constitutional Law, Law and Education, Employment Law Survey, and Civil Procedure and has written a wide array of articles on student speech. She also wrote a chapter on school jurisdiction over students' online speech for the Oxford Handbook of the United States K-12 education law, and she's the author of the Students Speech chapter in the casebook I use in my class, *Education Law: Equality, Fairness, and Reform*.

Next to her is Mary-Rose Papandrea. She's the Associate Dean for Academic Affairs in Samuel Ashe Distinguished Professor of Constitutional Law at the University of North Carolina School of Law. She clerked for US Supreme Court Justice David Souter and worked as an associate at Williams and Connolly in Washington DC, where she specialized in First Amendment and Media Law Litigation. Professor Papandrea's the co-author of the casebook *Media and the Law*.

And last but not least, we have our own Manal Cheema who is a third-year UVA law student. She's on the editorial board of the Virginia Law Review and is a submission to review editor for the *Virginia Journal of International Law*. Her academic interests include First Amendment, national security, and constitutional law issues. So we have a distinguished panel today.

All right. So let's jump into talking about Tinker and what it means today. So Tinker talks about in the opinion how school officials can reasonably believe that speech will cause a material and substantial interference with schoolwork or discipline and are permitted to regulate speech, if they reasonably believe this. So I'm particularly interested in panelists' comments on how have the lower courts interpreted this material and substantial interference, and are they giving too little, too much deference, just about the right amount of deference? How our courts handling this interference, because that is at the heart of the Tinker language.

**MANAL CHEEMA:** If I may, I'll start. First of all, I just want to thank the Law Review, especially Laura Toulme, Mika Carlin, and Maggie Booz for giving me the opportunity to sit on this panel with these esteemed faculty. And I also would like to thank so many friends here in this room and beyond for working through these issues with me.

So as it's clear, I'm not the professor on this panel, but I have read Tinker. And I think there are three different ways Tinker could have been understood, and there is one way in which the lower courts have decided to take it. Justin Driver, who's published a recent book, *The Schoolhouse Gate*, and Professor Papandrea discussed this in their pieces. But Tinker, as Professor Robinson said, is currently understood to apply the standard of reasonable, foreseeable, in the school officials mindsets, as to leading to material or substantial disruption, but there are two different ways Tinker could have been understood.

It could have been understood as leading to actual interference by-- so when the students speaks, whether or not their actions lead to actual interference of the school environment. And that can either be understood as actual interference by other students, such as a student's speech may unduly agitate other students leading to a substantial disruption, or that the speaker's own actual actions are substantially interfering the school environment, and two latter situations are the path the courts have not taken.

They have primarily focused on the reasonable, foreseeable standard, which I think we can debate and discuss. And the rest of this panel asked whether or not that's a really good idea and whether or not it's speech protective of students. And I would argue, it's probably the most speech restrictive standard that courts have taken. So Tinker promised, or suggested, it could have become more speech protective, but that, unfortunately, has not happened.

**MARY-ROSE** I'll follow up, since you mentioned me, and it's an honor to be here with you. It's so exciting to  
**PAPANDREA:** see the next generation coming, and this is going to be a long and beautiful friendship. So I

think you're exactly right to focus on the deference that Tinker opens up. I don't know-- as I write in my little piece-- I am not sure that that's what the justices had in mind, when they wrote that speech could be curtailed, when there was a reasonable prediction.

There clearly wasn't a problem in Tinker. Like, the facts of Tinker so clearly demonstrated, there was not going to be a substantial disruption. So it's hard to know exactly what the court meant in Tinker, when it said about this basically prediction.

But what we've seen is the lower courts really defer to the predictions of school officials. And this is something we see in other areas as well with government employees and national security, where the courts feel like these are special areas. They don't have expertise to know exactly what's going on in schools, and why not-- prison wardens too also get deference.

Like, let's defer to people who are on the ground and actually can see what's going on. And it's just so different-- as Professor Schauer's outlining in his talk-- it's so different from what we see in other contexts in the First Amendment, where this idea that you would defer so extraordinarily to government officials-- these are government actors-- to me is bananas, but that's what we see the lower courts do.

**EMILY GOLD  
WALDMAN:**

I agree, and I think, especially when you have speech that has any component that could be seen as threatening or violent, that's where the deference is really at its height, especially post Columbine. Right? You see Columbine invoked in so many lower court speech cases where you have any student saying something. Even the student says it was a joke, but something about I want to kill this person. I might bring a bomb.

Almost total deference to the school, and you see that general idea repeated, that schools don't have to wait for the disruption to occur. They have to be able to step in, once they think a disruption might occur. So there's a lot of deference, and I don't think there's really any division among the lower courts on the idea that you might have to wait for actual disruption. They all cite each other in saying, you don't have to wait for that. The question is whether the forecast is reasonable.

**TIMOTHY ZICK:**

I think, in some sense, it'd be surprising if it were otherwise. Disruption is a really slippery concept to begin with, and although Americans talk a lot about freedom of speech and freedom of expression and their tolerance of disruption, it really isn't so. Most of my work is not about student speech. It's about protest and public speech, and there are quotes you can grab from Supreme Court precedents about the high purposes of disruptive speech.

But the reality is, in America, we still like our protests orderly. We'd prefer not to be disrupted. You can protest civil rights, but don't kneel. Also, don't be too loud. So it would shock me if this disruption standard had turned into some really protective free speech standard, especially in the school context, where then you're now layering in the deference that courts would likely show anyway to school administrators and educators.

So that's not to say that I think Tinker's a bad case or that it's bad law. Normatively, I think it's a really good thing, but in the hands of courts, I'm not shocked at all that it's become a tool of deference for educators.

**KIMBERLY  
ROBINSON:**

And I just wanted to mention, so I'm going to ask a series of questions, but I hope that the audience also, after I've done with Q&A, that you all will also have some questions. So I just hope you'll be thinking about what your questions are.

So it sounds like the lower courts are in agreement about allowing substantial deference to anticipate when there will be a disruption. Are there any circuit splits in the lower court regarding how Tinker should be applied, particularly as it intersects with Hazelwood and Morse v. Frederick. Can we talk about how the lower courts are, perhaps, disagreeing about Tinker, or is everyone singing on the same song sheet?

**MARY-ROSE  
PAPANDREA:**

Emily, she looked at you. I think you'd be the best person to tackle that first.

**EMILY GOLD  
WALDMAN:**

So on the issue of whether you have to wait for disruption, I don't think there's a split. One place where I do see some splits under the surface is when you get into exactly how Tinker applies to students' online speech, their off-campus speech. So here too, like big picture, I think there's a pretty strong consensus among the lower courts to use Tinker, and in particular Tinker, not Fraser but Tinker, as the test for whether schools can restrict students' off-campus speech. But they say, if the speech is likely to reach the school and cause a substantial disruption there, that's both the jurisdictional hook and the substantive hook for schools to be able to regulate it.

I think there's a bit of a split, in terms of what circuits think amounts to a substantial disruption. The particular split I'm thinking of is between the Second Circuit and the Third Circuit. There is a case that you might be familiar with in the Second Circuit, Doninger versus Niehoff, where you had this girl on student council who refers to administrators as douchebags and tells

people to contact the administrators. And the Second Circuit thought that did amount to substantial disruption, at least in terms of telling the student she couldn't be on student council.

The Third Circuit had a case, J.S. versus Blue Mountain School District, where you had speech that was really targeting an administrator in a much harsher way, making up this fake profile, saying that the student-- all sorts of sexual things about the teacher, being a pervert. Things like that, that didn't seem at all based in reality, and the Third Circuit actually said that didn't amount to a substantial disruption. I think there's a little bit of a split there.

I think you have a situation where speech that wasn't as disruptive the Second Circuit thought was disruptive, and you have speech that was arguably more disruptive, where the Third Circuit said it didn't meet that. So I think you have circuits saying the same standard, but then under the surface, there's some divergence in what they think rises to the level of a disruption.

**MARY-ROSE PAPANDEA:** And you do highlight, quite appropriately Emily, although you went through it pretty quickly, that the courts, lower courts, don't seem to apply *Bethel* to online.

**EMILY GOLD WALDMAN:** Yes. They agree on that.

**MARY-ROSE PAPANDEA:** Thank god for high school students, because this would mean any lewd speech or swear words or anything. They'd all be expelled. So it's a good thing, but the Tinker test, there's some concurring opinions descending opinions out there that call into question whether even Tinker should wholesale be imported to the online context.

This is where common law just gets so fun, where things change, and the early cases-- although some of the pre-internet cases were dealing with underground student newspapers and that sort of thing, we certainly had a whole bunch of off-campus speech. When you start talking about online speech, the geographic boundaries, it becomes a lot less-- makes a lot less sense to talk in terms of those kinds of things. But there might be something to be said about it, but it really challenges the framework, and so what counts as a substantial disruption is really challenging.

Because a lot of speech can get people angry, and in fact, sometimes, the very best speech gets people upset and jams the phone lines at school and causes school administrators to have to react. Is that going to be enough for a substantial disruption? And again, I just hearken back to traditional First Amendment doctrine.

The Heckler's veto is still considered a problem, that we don't try to punish speakers when an audience disagrees with them. But in the school context, we do see this disagreement about whether that sort of reaction from the audience is sufficient to count as a disruption. And maybe it is, because it's a school, but it's just it is attention.

**MANAL CHEEMA:** Right, and just to tease out the two points that professor Waldman and professor Papandrea made, there's a jurisdictional issue here, so what counts as in the schoolhouse gate. So when one of you posts something on Instagram or Twitter that may involve a school issue, whether it's making a comment that's not so nice about a superintendent or making a comment about one of your peers that is racially-motivated, does the reaction that is caused by that count as material and substantial disruption? Even though that was on a private platform, that you may have posted in the privacy of your own home.

I think that's a real question that courts are going to have to figure out. And the second thing is what Professor Papandrea brought up, the concept of a Heckler's veto. Should your speech rights be curtailed because your speech elicited a negative reaction from someone else?

And you could think about it in this way. So if some a student wore a very politically-charged T-shirt to school, and the school believed that that would lead to a material, substantial disruption, could you prevent that student from wearing that shirt? And we have a very close geographic example of that.

In the Albemarle County High School, they banned students from wearing apparel that had a Confederate flag on it. And there was a student who wore a P cap with a Confederate flag on it, and he was appropriately punished for that. Because the school factored in the context of how Virginia has been resistant to anti-slavery efforts or segregation efforts, and because of that context, they said it was reasonably foreseeable that wearing a Confederate flag at a school would lead to disruption. For some people, that's a really great thing, but we can think about a lot of other instances in which we may not like the consequences of that.

**MARY-ROSE**  
**PAPANDREA:** I'm sorry I'm going out of order, but if I could just jump in on that. I do think there's also some tensions about trying to figure out whether the forecast is reasonable, and the Confederate cases are great. The Confederate flag cases are a great example.

There's the Fourth Circuit decision which allowed the district to consider several decades of history involving turmoil around the Confederate flag and not more current history which is

very interesting to me. Because you can always find some-- if you're in the South, and I'm coming from Chapel Hill, so well, we have some really recent history. But so you can always find, in the last 50, 60 years, will find that there's been conflict, and it also, particularly, if you say it doesn't have to just be conflict in the school. It can be just conflict in the area, then you just give a lot more deference to the school officials.

Now, again, I think a lot of people, the majority of people-- I don't know. I think that's safe to say-- are a fan of these bans. I testified before an Orange County School board, and they were considering a similar ban. There is no evidence in Orange County that there had been any incidences involving the Confederate flag. I'm not even sure anyone had worn the Confederate flag to school, but nevertheless, this is about two or three years ago, and I think there was a concern about making a statement.

Like the school board wants to make a statement about equality, and that this is not going to be tolerated. And we may all applaud that statement, but it's really getting far afield from the Tinker requirement that there be some substantial disruption. Because there hadn't been any evidence of substantial disruption that they could point to, even with that loser Fourth Circuit standard, but they passed that anyway. And it may never be challenged, because nobody's doing it. But it's there, and it is a statement, which I thought was very interesting.

**TIMOTHY ZICK:** Yeah. It's interesting that people are talking a lot about T-shirts and apparel, and you could actually hang out a shingle and have a practice devoted to student T-shirt and other apparel issues and the First Amendment area. You make a lot of money doing that, but these cases arise all the time. So does the student who wears an American flag T-shirt on Cinco de Mayo cause disruption in the schools. LGBTQ, a positive and negative speech on T-shirts, pro-life and pro-choice speech on T-shirts.

And one of the things that the disruption standard might do is it pushes school officials to impose content bans. That's just the safest thing to do, but of course, that rules out lots of political speech and things you would probably want students to be debating, matters of public concern. So I do notice a lot-- I follow a lot of the news and the cases, and a lot of them seem to be about something as seemingly insignificant as what's on a T-shirt. And it seems like the default position of most school administrators is to nip that in the bud, to say, you have to turn that inside out or change your shirt, or you're going to be suspended.

So it's an interesting contextual matter to think about what these cases are all about. On one

hand, they're about very serious matters of political speech. On the other, they may be, as Professor Schauer was mentioning, sophomoric antics. It's very hard to tell the difference in some of these cases.

**KIMBERLY**

So just thinking about those cases a bit, and then I want to return to the social media point. But in thinking about those cases, I wonder, are we losing in our schools the ability to teach students to engage across difference, when we allow schools to take these positions to ban anything controversial? Are we failing to enable and equip students to say, I disagree with you, and here's why?

Where do we draw the line between-- where should courts draw the line, and schools draw the line, between-- and this is not a legal question but more of a policy question-- between allowing students to express themselves and teaching students to express a disagreement with that. Or crossing the line to say, no, this T-shirt or this hat or this other thing goes so far that it's going to cause perhaps fights to break out or things like that? How can educators draw that line and, how should courts help guide educators in drawing that line?

**MANAL CHEEMA:**

So I think Hazelwood answers that question for you. So Hazelwood was a case that follows Tinker, and it focused specifically on school-sponsored speech, so what happens in the classroom or in relation to classroom activities. And there, the court decided that, as long as it is reasonably related to a legitimate pedagogical purpose or goal, the school officials may restrict student speech or, as my paper which deals on religious curriculum, may compel students to speak on a particular matter.

So courts have, I think, generally accepted the fact that it is all right for professors to have students argue, just like Justice Scalia, even if they disagree with his opinions vehemently, as they can ask a student to argue like Justice Ginsburg. The way a legitimate pedagogical goal is thought of as promoting those goals as pluralism, learning how to think, and viewpoints that are contrary to your own. And in that classroom setting, or in relation to those classroom or school-sponsored exercises, even down to a school-sponsored newspaper, I think that's where even more deference is granted towards the school officials to achieve exactly what Professor Robinson's question was asking.

**EMILY GOLD**

I think it's a really important question, because I do think that is not something schools should give up on. I don't think they should say, well, you can't talk about that. That's going to be too controversial. I think it's really important for them to leave space for students to do that.

**WALDMAN:**



I do think a distinction can be drawn, and it gets fuzzy between speech that's like personally attacking a particular student and speech that's more generally commenting on a social or political issue, even if that speech might be hurtful to a student. I think that distinction is something that's really important for schools to emphasize, and that they need to make room for the latter the discussion, even if it can be controversial. But still making sure that they're protecting individual students from being singled out for personal attack.

When I was getting ready for this conference, I was looking at, well, what has happened with Tinker in the past year? And I saw this case that really shocked me coming out of Alabama, where you had a school district, after the 2016 election, they said, students were really upset. It was very controversial, and so the school administrators told the students they couldn't talk about the results of the election, except in history class.

It's one thing to say, you're not going to talk about it in math class, but they said, there's no talking about it in general, and that was actually upheld by a district judge. What had happened was then a student wrote Trump 2016 on like a whiteboard of a teacher, and that's a different thing. You can say, don't write on the whiteboard. But the idea that it was OK to tell them, well, this election was very controversial, so now people can't talk about it.

**MARY-ROSE** Is that in appeal?

**PAPANDREA:**

**EMILY GOLD** I think it must be. I haven't looked, but I was shocked that they upheld it, and to add insult to  
**WALDMAN:** injury, we're not talking about it within the punishment. They have corporal punishment in the school.

**MARY-ROSE** Oh, jeez.

**PAPANDREA:**

**EMILY GOLD** The kid actually had two licks for having written Trump 2016, but I was fascinated by the idea  
**WALDMAN:** of that policy. They said, well, they forecast substantial disruption, because there was a lot of unrest after the election, and that's crazy. Students have to be able to talk about those things, certainly on their own time, in hallways, in the cafeteria, things like that. This just happened like a few months ago. So I don't know what's happening.

**MARY-ROSE** Oh, yeah. Right. It's hard to know.

**PAPANDREA:**

**EMILY GOLD**

Yeah. But I was shocked.

**WALDMAN:**

**MARY-ROSE**

I do think that schools could, more often, see things as a teaching moment rather than a

**PAPANDREA:**

moment to punish. That's how I took your question, and I'm a big fan of counter speech. And not just because I'm a blind adherent to the marketplace of ideas, although, maybe I could be accused of that.

But I just think that you're dealing with students. Especially K through 12, but in perhaps even more so in the university setting, where it's about learning and learning why this speech is hurtful, why is that speech harmful? Rather than simply expelling someone or punishing them, hitting them, actually talking about it, having some community opportunities, community discussions.

These kinds of things could be much more beneficial, because it could be that it's just sophomoric speech, and it's just immaturity, like the Bong Hits 4 Jesus case. I don't even know what you're talking about. Like don't talk about nonsense.

But in the cases that involve the more serious equality concerns, like Nazi speech or Confederate flags and that sort of thing, some people may not realize why they're being so hurtful. They're young. They may just be imitating grownups, and it's a really great opportunity to teach them, for the whole community to come together and talk about what's going on.

**TIMOTHY ZICK:**

Yeah. A couple of points, the *Kuhlmeier* standards always bothered me. Reasonably related to legitimate pedagogical concerns sounds an awful lot like the prison standard of reasonably related to legitimate penological concerns. And so for that reason alone, the optics of that standard have always bothered me.

Of course, the schools have authority over curricular matters, as they should. I'm not sure it should be some kind of rational basis standard that applies. And *Tinker*, we often think of *Tinker* as a student speech case, and it is, but the court also mentions teachers.

It says, neither students nor teachers shed their rights at the schoolhouse gate. And so one sort of unclear aspect of this conversation is to what extent do principles of academic freedom apply in the K through 12 context and on campus as well. It's uncertain to some extent there too. So teachers clearly do have, in the curricular context, the right to express themselves, the right to develop curriculum, and part of that should be educating students about how to talk to

one another about difficult subjects.

And my final point that there's a link between the Tinker context and the K through 12 context and obviously campus speech, college campuses I'm thinking of now, universities and colleges. And I'm the co-chair of an Ad Hoc Committee on First Amendment Rights on Campus. It's a really long title for a very important committee, I think, and what we're trying to figure out at William and Mary is whether our policies are consistent with the First Amendment, but more than that. So whether they're consistent with the educational mission of the school, whether they're consistent with principles of inclusion for a diverse student body, and all of those things.

And one of the problems we've had at our school, and I know at other schools, is invited speakers who are disrupted, who come to talk to students. Infamously on my campus, the ACOU came to talk to students post Charlottesville about freedom of speech and were shut down by a group of students who not just yelled and disrupted but actually moved toward the stage and engaged in conduct as well. So I think this is a critically important issue, really complicated one.

How do you get students to tolerate a disruption, to tolerate difference? It's too late, in my view, on college campuses to be teaching that. We have to be teaching that to much younger students.

**KIMBERLY  
ROBINSON:**

And if we continue to keep these keep key controversial messages out, then we definitely lose out on that opportunity. So Manal, I wanted to follow up on your comment about Hazelwood and compelled speech. So you write about this in your piece in the law review. Can you tell us about why you think Hazelwood is appropriate for that?

We just heard a criticism of Hazelwood, of this idea of being reasonably related to legitimate pedagogical concerns. So that's a very loose standard, very lenient, and so that could certainly, if you apply it to compelled speech, really can require students to participate in having to say things as part of a lesson that they may vehemently disagree with. Why do you think that that's the appropriate standard, given that?

**MANAL CHEEMA:** Right. So just to give everyone a brief background of what inspired this piece, there was a case in the Fourth Circuit, Wood versus Arnold, where a student, Miss Wood, she was in 11th grade, was given an assignment. It was a fill in the blank exercise and it was during her World

Religions curriculum. So the fill in the blank exercise was on Islam.

In particular, Miss Wood had to fill in the blanks of the Shahadah which is the Muslim declaration of faith. It's said during every prayer, it's a very important declaration, and it's one of the five pillars of Islam. So she had to fill in-- so it translates to there is no God but Allah, and Muhammad is the messenger of Allah.

So she had to fill in the first Allah and then messenger, so two words, and her father and Miss Wood herself found it problematic that she was being compelled to speak, in her mind, in favor of Islam in this exercise. So she brought the case in the Fourth Circuit. The Fourth Circuit denied it on summary judgment, and my entire piece is trying to figure out what is the standard that should apply to this particular case, compelled speech?

So as I described earlier, Hazelwood gives school officials the authority to restrict student speech on its back. So in that particular case, a principal was allowed to cut out two pages of a student newspaper that discussed teen pregnancy and divorce. And the court adopted this standard in that particular case that Professor Zick does not love the wording for.

So my particular situation was how do I answer this question. What is the standard that courts should adopt, and so there are two options in this case that the circuits are trying to figure out. The first one is under a case that proceeded Tinker, Barnette, which some of you may have read in your religious liberties class or First Amendment class, and it's about no student should be compelled to recite, to speak, on a particular idea.

So there are two Jehovah witnesses-- this is a lot of background-- but there are two Jehovah's Witnesses who are asked to recite the Pledge of Allegiance, and they take issue with that. So the court decided that it's fine to sit out of that. So Barnette is one standard for a Tinker, and Hazelwood is a next standard about reasonable related to legitimate pedagogical concerns, and I understand that it's a very loose rational basis standard. But there is a way to interpret reasonably related, and there is a way to interpret legitimate pedagogical concerns, in light of Barnette, in this particular, in these particular situations, that I think can be protective of student speech rights and also balance the school's need to control its curriculum.

There's, as many of these First Amendment cases, show there is a balancing act between those two interests, but the courts have to figure out. Because as any professors should be able to control what they're teaching in class, and you don't want students to be able to veto every single lesson plan for whatever grievance they have against it. Because then I don't

think you get exposed to controversial viewpoints. I don't think we have the Miss Woods of the world learn about minority religions that do not have a favored place in this country.

On the other hand, students and parents do have expectations, when they go to school and when they send their children to school, that needs to be respected. So I look at a few scholars, Professor Seana Shiffrin, Professor James Ryan, who's currently the president of UVA, to interpret Hazelwood standard in a way that I think is protective of student speech rights but also deferential to schools.

**KIMBERLY ROBINSON:** So I'm interested in the other panelists' thoughts about compelled speech, requiring students, as part of their education, to speak and perhaps say things that contradict what their core beliefs are. Do you think that Manal has adopted the appropriate standard, or do you think there should be a different standard applied to that?

**EMILY GOLD WALDMAN:** Well, it's interesting too with religious speech sometimes you have other clauses coming into play. Like sometimes, you can have a free exercise issue, where someone says, I feel like my exercise of my religion is being infringed, because my religion prevents me from saying this other thing. What's interesting to me too it often feels in those sorts of cases that there's so much that the school could do to just sort of ameliorate the issue. Right?

And so I don't know how that particular exercise was phrased. But so if the teacher, rather than having the student just say like I believe this, but say it like, in the five pillars of Islam, Muslims believe this, something so that the student doesn't feel in any way that she personally is being asked to affirm something that she doesn't believe. It feels like there are easy ways to respond to those sorts of concerns.

**MANAL CHEEMA:** Right. So it's how things are phrased, of course, but I think that the courts-- so there's a particular case, *Brinsdon*, where students were required, as part of a language exercise, to stand up and recite the Mexican pledge of allegiance and salute the Mexican flag. And that was considered, under the *Hazelwood* standard, appropriate as a classroom learning exercise, and the *Brinsdon* court found it particularly important that it was a singular event, that it was for educational value, and no one was asked to actually affirm Mexican nationalism. And so the courts are doing this really tough balancing exercise, and then to your first point about other constitutional rights playing in, Professor Zick has two great books about this.

So I'm going to let him talk about it, but it's a concept of hybrid rights, and courts really struggle with this. So if you have like an untenable first free exercise right and an untenable

--  
free speech right do them combined together equal a tenable case? Some courts say, no. Professor Schwartzman would also say, no.

**TIMOTHY ZICK:** I won't go into length about-- just one book. Right? In an article about rights dynamism, is what I call it just to give it a label, and in context like this case, free exercise and free speech combined. They combined in Barnette too. Barnette was actually a religion case and a free speech case. It's just better known today as a freedom of speech precedent.

I too am critical of the hybrid rights, two rights are better than one theory. That came out of Employment Division versus Smith which is a free exercise case, and long story short, it was done I think to preserve precedents that couldn't otherwise be preserved under the rule of Smith. So it doesn't get you very far.

In the context of compelled speech though, you have to have a dictated message. It has to be associated with the person who's claiming to be compelled. There has to be a likelihood that that's how an audience would see it, and there has to be no opportunity to disassociate yourself from the speech in question. I think that compelled speech standard works pretty well in the case you're talking about and in others.

There's an interesting case that was recently filed in the Commonwealth that raises a similar compelled speech issue, and this complaint arises from the compelled wearing of a school uniform that has as its mascot the rebel. And the school has a long history of adopting that from not Jim Crow but segregation era history, and the complaint alleges that forcing students to wear that uniform, that symbol-- African-American students are their claimants-- violates their right not to be compelled to support what's, in essence or at least for them, a racist symbol. I don't know.

I thought it was so good, I used it on an exam. It raises an interesting issue. I don't think that claim succeeds, right, for reasons I'm happy to talk about, but I think it's another indication that the compelled speech doctrine is making its way into these student speech cases, and the courts are going to have to reckon with it.

**MARY-ROSE**  
**PAPANDREA:** Well, it was like that cheerleader case, where-- you remember the one on the Fifth Circuit, where she had to cheer, even though one of the players was her accused rapist, I think. Do you remember this? I feel like you wrote-- you didn't write about it? OK. Sorry. I think I was a student that might have wrote about it.

**EMILY GOLD** It's interesting.

**WALDMAN:**

**MARY-ROSE** And she lost before the Fifth Circuit, and they said, if she wanted to be a cheerleader, she had to cheer, all the time, for all the players. And she couldn't opt out, and for her, obviously, it was personally very upsetting. But I'm wondering, Tim, do you think it's because, in a lot of these cases, there actually isn't compelled speech, given the definition that you listed of--

**TIMOTHY ZICK:** Yeah. Given the standard, I think it'd be hard to argue the uniform compels or dictates a message in the same way that, say, the license plate "Live free or die" did or the compulsory flag salute. In part, it's not likely to be associated with the individual student. It's the mascot of the school, and in that case, the school emblazoned its buildings and other things with its mascot.

So it's likely not to be associated with the student. There is no real opportunity to disassociate. I'm assuming, you can't just wear a blank shirt and go on the field and play or stand on the sidelines and scream your dissent. So in that sense, it's a little bit tricky, but I thought it was close enough to generate some good answers, and it served that purpose.

**MANAL CHEEMA:** Professor Zick, that's kind of why I don't rely solely on the compelled speech standard. So my argument is that, if you just rely on the compelled speech standard, if you just rely on Barnette and the analysis ends, then you can end up in situations like this. Where it's very clear that the student isn't being forced to say-- the view is not associated with them, but then by applying Hazelwood to hold teachers to account by just making them take the extra step of defending their decision to do this as a legitimate pedagogical concern.

And I know that's a very vague, vague standard, and I know that it's been interpreted to include a plethora of things that may not immediately count as pedagogical. I think by taking that extra step, we can push the standard to be more protective of student rights, and there are folks who disagree with me, but that's the position I take in my paper.

**TIMOTHY ZICK:** And I think that makes a lot of good sense too. Right? For purposes of our classroom exercises, I don't know about the other panelists, but I make a point of saying, you don't have to agree with the argument you're going to make. I'm assigning you to make it. Right? I'm going to make clear that you can't go after this student for making the argument that's about to be presented, because it's not hers.

It's a matter of the pedagogical exercise of getting all the arguments on the table. So I think that actually makes good sense. I don't like the standard because of how it can be applied in other contexts.

**MANAL CHEEMA:** Right. I agree.

**TIMOTHY ZICK:** Right? Including the one that says, school administrators can completely excise articles on divorce and teen pregnancy, not limit them or address the concerns that people might have had about privacy or the rights of parents to respond what's being written about them. That would have been an appropriate response, in my view. Provide them that opportunity, instead of giving the administrators carte blanche to just say, you're not going to have this subject, which both of them are extremely important to students of that age. Right? Addressed in your school newspaper.

**EMILY GOLD WALDMAN:** I agree, and I've always thought that it's not so much a problem with the Hazelwood standard itself, but how it's applied. Like that really, what happened there was not reasonably related to legitimate pedagogical concerns.

**MARY-ROSE PAPANDREA:** And I was just thinking here, this is probably not that brilliant of thought, but because I'm academic dean, I have to deal with accommodation issues. And we often have to think about whether requiring attendance in school, for example, in classes. In law school, we do require attendance. Does that serve as a pedagogical purpose? And my understanding is there's a lot of very close scrutiny of the asserted pedagogical need for certain types of requirements, in a way that there clearly isn't. So under the Hazelwood standard was just a total very deferential--

**EMILY GOLD WALDMAN:** Yeah. There should be more.

**MARY-ROSE PAPANDREA:** Deference to the school.

**KIMBERLY ROBINSON:** Let's talk a little bit about the Fraser case. So this case involved a student giving an offensive speech to a large group of students who were required to be in attendance. And so the court there said that school officials could definitely impose sanctions or punishments in response to offensively lewd and indecent speech. And so they also said that the court can regulate speech, if its going to undermine the school's educational mission.

So here, again, you see the trend after Tinker is a lot of deference to school officials. And you,



Professor Papandrea, write about that this deference is more appropriate in the classroom than it is on the playground or cafeteria or with respect to his speech online. Can you talk a little bit about why you think that's--

**MARY-ROSE**

Well, what I was highlighting in my piece is that we often hear those who are in favor of giving more deference to schools say, well, of course the normal rules of the First Amendment don't apply to schools, including universities. They have to make all sorts of content-based decisions, all the time-- what books to assign, what courses to have, what books to assign, what assignments to have the students do, their content-based determinations routinely-- hiring, is something worthy of tenure-- all the time. And I agree that that is true, but it only goes so far.

What I push back on is that there aren't the same kinds of necessarily content-based decisions, once you get outside of the classroom setting, and that's where I get really worried. And Fraser itself was a student election forum, where a student-- talk about sophomoric humor, I mean classic-- where he uses some sexual-- like I'm going to push it to the wall, until there's a-- I don't know. It's like, very sophomoric, not obscene, just sophomoric and sexually suggestive. And the court allows the school to prohibit and punish the student for that speech, and I don't see that-- just because you allow schools to make decisions about the courses and the professors and what's assigned, I just don't think it needs to bleed over and say that, therefore, every single thing relating to students they get to control.

**KIMBERLY**

Yeah, and that-- did you want to comment?

**ROBINSON:**

**TIMOTHY ZICK:**

Yeah. I've been the panel curmudgeon so far. I haven't liked any standards or cases or anything.

**MARY-ROSE**

It's good to counter though.

**PAPANDREA:**

**KIMBERLY**

We need one.

**ROBINSON:**

**TIMOTHY ZICK:**

I actually see a silver lining in the Bong Hits 4 Jesus case, in this regard. So if you read it closely, putting aside that the speech seems to say nothing at all-- I agree it was nonsense-- but maybe it suggested Jesus would do bong hits. I don't know. Should that be proscribable?

I think that case is more about drugs than speech, and I think the Fraser case is more about sex than freedom of speech. There are just certain things that trigger Supreme Court justices and make them issue decisions that maybe they shouldn't have. But here's what the court said in Morse versus Frederick about the Fraser standard, because the argument was made that all offensive speech should be regulable. Right?

And here's what the court said. Petitioners urge us to adopt a broader rule that Frederick's speech is proscribable because it is plainly offensive, as the term is used in Fraser. We think this stretches Fraser too far. That case should not be read to encompass any speech that could fit under some definition of offensive. After all, much political and religious speech might be perceived as offensive to some.

The concern here is not that Frederick's speech was offensive, but that it was reasonably viewed as promoting illegal drug use. And then the court went on, seemingly, to reject the government's argument, the United States' argument, which was you should allow schools to regulate based on, quote, educational mission. If it impacts the school's educational mission, the speech can be regulated and may be proscribed.

Justice Alito in his concurrence said this. The opinion of the court does not endorse the broad argument advanced by petitioners in the United States that the First Amendment permits public school officials to censor any student speech that interferes with a school's educational mission. And I think his particular concern would be, well, if that's true, then schools can inculcate from the left. Right? And we don't want that, and you also don't want them to inculcate ideas from the right. You don't want them suppressing speech to serve some political ends.

So I see Morse as a positive case in both of those regards, because those are arguments that school officials and government officials are likely to make. Offensive speech should be out, and speech that interrupts with, or interferes with, our educational mission should be regulated.

**EMILY GOLD**

I agree. I think Morse was very narrow, and I actually am not as concerned by Fraser either. If it had applied to a student who was just talking out at lunch or in the cafeteria or something like that, I would be concerned that the school is getting so involved in the weeds of what students are saying to each other on their off time, when they're just communicating.

**WALDMAN:**

Here, it was a school assembly that all of the other students were required to sit through, and I do think there I'm sympathetic to the school wanting to have more oversight in what is said. And I do see how there were a lot of students apparently like hooting and howling, and they thought it was all great and funny. But I'm sure there were a lot of students who also felt really uncomfortable that you have someone up there talking about vote for this guy, because he's going to nail it against the wall, and he won't stop till there's a climax.

I think schools do have a role to play there in saying, you know what, not at a school assembly that everybody has to be at. That's not really appropriate. It wasn't a case where they were trying to suppress a message that was critical of the school or some real dissent. So that one doesn't bother me as much as I think it bothers you.

**MARY-ROSE PAPANDEA:** Well, my major point though was simply that, just because schools obviously have the need to make content-based decisions in the classroom, it should not be that they have this carte blanche to make content-base decisions elsewhere. Yeah. I really also agree. We agree, which is a relief. Yeah. Sometimes. Let's have more disagreement-- that Morse was important. Doesn't-- is Roberts writing for the majority? Doesn't he actually say like, we're not exactly sure what the rationale with Fraser was. I thought that was pretty remarkable.

**TIMOTHY ZICK:** Right.

**MARY-ROSE PAPANDEA:** Because there was some debate about whether Fraser was an application of the substantial disruption test. Right? Because there was some reaction to the speech, and it made people feel uncomfortable. But it also didn't really feel like an application of that test. It seemed like a standalone test, and Roberts like, we're not exactly sure what we meant when we said that. Which I thought was a pretty remarkable admission.

**MANAL CHEEMA:** One comment I'd like to make about Fraser is that it was political speech. He was speaking in favor of nominating another student for student council, and I think that, to me, seems a little bit more problematic for a school to regulate because of how we put political speech on a pedestal in other circumstances. So that was my concern with Fraser.

**EMILY GOLD WALDMAN:** I think it's a fair point, but they weren't really. He wasn't really giving a political message. The person was running for office, but when he was punished for it was not saying anything political.

**MANAL CHEEMA:** But I think the context, like if the school can regulate how a student nominates another

student, I think-- like, I don't disagree with you professor Waldman. I think that it's not as problematic as other circumstances, but I do think that it does open up like a conversation, if not a slight slippery slope, into diminishing student rights and how they are like being activists and how they choose to represent their messages. Because what the student did was quite creative.

He very deliberately used a sexual innuendo the entire time without ever using vulgar language beforehand. So he was intentional and every single word of that one-minute speech, and there was a lot of pushback afterwards. And I think the fact that Chief Justice Roberts, in an anomalous fashion, did admit critically of a prior Supreme Court decision that we don't know what standard was actually used I think is quite remarkable.

**MARY-ROSE** Yeah, and just to support my new best friend here, Cohen versus California, it protects "Fuck  
**PAPANDREA:** the Draft," and he didn't even say the word fuck. Right? I don't think.

**MANAL CHEEMA:** He did not.

**MARY-ROSE** Yeah. So and that the court very much said because-- and that's political speech, and it can  
**PAPANDREA:** be nasty. And like we need to protect it, so just support you.

**EMILY GOLD** No, and I think that's actually part of why Roberts in Morse used the language that you  
**WALDMAN:** mentioned, really trying to narrow Fraser. Like that was about stuff that was lewd, and it shouldn't be read as endorsing some broader principle, that schools can just suppress anything that they think is contrary to their educational mission or anything that's broadly speaking offensive. They're trying to really narrow it to that more like sexual context.

**KIMBERLY** All right. So I'm going to throw out one last question, and then I'm going to open up to the  
**ROBINSON:** audience for questions. So professor Papandrea, you wrote in your essay that the court has not been very clear about whether children have First Amendment expressive rights or what any such rights look like. So I'd like to hear from all the panelists.

What should those rights look like? How should courts be interpreting them? What line should be drawn for student speech rights inside the schoolhouse gate? And then, are lower courts striking the right balance?

We've heard a lot about deference throughout this discussion, and that is definitely how many of the subsequent cases to Tinker have been interpreted. So I'm interested in your thoughts on that, and then I'll open it up for questions.

**MARY-ROSE**

Yeah, just to flesh out a little bit of what I said. The year before Tinker was decided, the court decided Ginsberg versus New York, where it said, whatever First Amendment rights children have, they were not the same as adults, and then there was no reconciliation of that in Tinker. So even though Tinker has some very soaring language about the importance of free speech, and course it's in the context of minors, it comes right after that statement.

**PAPANDREA:**

And there have been other, if you look at other cases involving minors, very often, the cases look like they're protecting minors from being exposed to speech of others and protecting the rights of parents to control the upbringing of their kids. And it's a lot less, and often never, about the rights of the students themselves, and so that was what I was highlighting. That without a really robust foundation for appreciating what the rights of students are outside the schoolhouse gates, then what does it mean to say that they have rights inside?

That's exactly what Professor Schauer was saying in his opening remarks. It sounds awesome to say like, they do not shed their First Amendment rights. Well, if they don't have any before they walk in there, then it's not super meaningful.

So I think-- especially with Greta, the environmental activist-- students have a loud, strong, and super influential voice. They are the future. They have a lot to say. I would give them full First Amendment rights.

That doesn't mean that they always get to say whatever they want, whenever they want, just like adults don't get to say what they want, wherever and whatever they want. But to recognize them as full-fledged participants in the Constitution and to get full constitutional rights, that's the stand I would take. But my article was pointing out, we just haven't really seen that clear message from the court.

**MANAL CHEEMA:**

I would largely agree with my new best friend. I definitely think that the courts have been struggling on these super complex, controversial issues. As students have been struggling with these issues on how to deal with them in their classrooms, on social media platforms, and with true authority figures, and I think courts need to be careful in how they're applying these standards.

I think that they have been definitely over-promising, in terms of their language, saying students don't shed their rights when they enter the schoolhouse gates. Students are the future. The opinions are ripe with that language, but when push comes to shove, and when

they actually have to decide, cases are largely deferential to school officials. And I think, when it comes to the classroom, I argue that that can be a very good thing, but at the end of the day, you are giving great latitude to school officials in that situation.

And by way of analogy, the reason why I wrote this speech on this particular case is that I'm Muslim, and I definitely, when I was in high school, I would definitely walk in, realize that we were doing a curriculum on a song. And my stomach would drop, because I wasn't sure how the school, how my teacher, would instruct on my own religion, and how my classmates would react to my own religion, and that was a very scary thing to not have control over. So I think that students should be incorporated in the conversation a lot more.

**EMILY GOLD  
WALDMAN:**

So I think that there are two really important principles that schools need to keep in mind, and they point a little bit in different directions, and it's some of the same stuff that higher education is dealing with too. That on the one hand, schools really do need to be more intentional about leaving space for students to express their political views. Right? So there was that extreme example that I gave, that was a real case, where they said, you can't talk about the election.

But that just more generally, that when you have students speech that's expressing some sort of viewpoint about things that are political or social or religious, that there really needs to be room for students to do that in the classroom. Both because it's important for them to be able to express it and for other students to learn how to deal with that, that this is a training ground for going out into the world. So that's one thing, and to the extent that one of the threads through the cases has been that it's really important whether there's some political aspect to the speech, as in Tinker.

I think that's really important, and at the same time, I do think schools need to be mindful of making sure that individual students don't feel harassed or attacked, and that's just a problem that seems to keep getting worse and worse. And some of it is social media, and maybe some of it is just our society right now. But I'm not a free speech absolutist, because I do feel like students have to go to school. They're stuck together in close quarters. Right? They're all exposed to each other in a way that adults aren't always.

And so schools have to be in there kind of policing and making sure that things aren't going over the line. Where there's a particular student feel so harassed that it really interferes with his or her education and willingness to go to school and that can happen even from off-campus speech. And so it's a constant, I think, balance that schools have to strike, leaving

room for political speech, leaving room for dissent, but then also making sure it doesn't hit the point where a student, an individual student, feels victimized.

**TIMOTHY ZICK:** Yeah. You could adopt one of the two polls with regard to student speech. You say, they should have all the rights that people have in say a public park to express themselves. That's not a workable standard.

You could adopt Justice Thomas's view as an originalist. He says, students should be seen and not heard, that they have no free speech rights under principles of *in loco parentis*. Neither of those is attractive, and so I think the middle, balancing is inevitable here. And I'm critical of the disruption is standard in part because of how courts apply it. Right? And not just courts, how school administrators apply it, and I think I think part of the problem, a big part of the problem, rests there.

So I'll just share briefly one of the T-shirt vignettes that I mentioned early, one of my favorites. A kid named Bretton Barber, who is a high school junior in Dearborn Heights, Michigan, wore a T-shirt to his school with a picture of President Bush-- this was back in 2003-- and the words "international terrorist," and he was told that he could not do it. He was sent home from school for wearing that T-shirts.

So what did he do? First, he called the ACLU, but it being Washington's birthday, no one answered. Next, he went on the internet to reread a Supreme Court case, from 1969, *Tinker vs. Des Moines*, that supported students freedom of expression. Then, he called the Dearborn high school principal to talk about his constitutional rights, and then he called the news media, and he said I wore this to express my anti-war sentiment.

So later on in the day, he talks with his principal, Judith Coble, and their discussion revolves around the *Tinker* case. And she immediately asked him if he was familiar with the Supreme Court case, and he said, yes, I was. I was very familiar with it. She said, it happened in 1969, and I said, no, it happened in 1965, but it got decided in 1969.

Then, she quoted directly from the dissenting opinion of Justice Black, to say that the school has the right to control speech. I knew that wasn't how the case came out, but I didn't argue with her. And I think what ultimately happened was that suspension was lifted, and the school changed its mind, rightly so. But that's sort of the default interaction between administrators and students, it seems to me. But that speech could be interpreted to be controversial, and so it has no place in the schools, and we have to get rid of it.

And I'm not saying they adopt Justice Black's view, but his view and his dissent was that the court had, in Tinker, subjected all the public schools in the country to the whims and caprices of their loudest mouthed, but maybe not their brightest, students. And that's a dangerous attitude, I think, for a justice to have, but certainly for a school administrator to have.

So to end on a positive note, I think what Tinker is important for, in addition to the rights that students have in school, no viewpoint discrimination and whatever other rights are enforced on their behalf, is that it has a legacy with respect to student activism. What you see today, in terms of walkouts, with respect to gun violence, the March for Our Lives, right? I think you can trace all of that to Tinker, and I think that's a very positive legacy.

**KIMBERLY ROBINSON:** All right. So I'd love to hear a couple of questions from the audience, and we can actually do--

**AUDIENCE:** [INAUDIBLE]

**KIMBERLY ROBINSON:** OK. Do we have a couple of questions from the audience?

**AMANDA:** Hi. My name is Amanda. I'm an organizer here with Hate-Free Schools Coalition in Albemarle County. And over the last two years, we've been able to influence our school board to put in place a racism policy. It's pretty loosey-goosey and doesn't have a lot of bite to it, but they're starting that work.

One of the biggest issues that we've had it trying to influence them to ban Confederate and white nationalist imagery post- [INAUDIBLE]. What has happened over the last year has been really fascinating. So we work with both city schools as well as Albemarle County. The city schools put in place a resolution to ban the imagery from the dress code, as well as the vehicles and anything on school property outside of textbooks and learning materials.

So they did it as a resolution. The Albemarle County school is scared to be sued, so they don't want to put it into their official dress code policy. But what they did, mid-year or last year, was the superintendent went ahead and made it what they're calling an operational policy. So it's not living and breathing in the dress code policy that's formalized, but it is floating around. Right?

So they've sent children home from school that were wearing Confederate imagery, educated



them on why you can't wear it. So that's the teaching moments that you all talked about which is great. We're still trying to get that into the dress code policy, and my question to you is, from legal standpoint, we've got resolutions. We've got operational policies and procedures and then this formalized school division policy handbook.

What do you all see-- like, what's the right angle? How far should we push them? Is it an acceptable legal stand point to have these operational policies or resolutions that don't really have legal unfolding. What are your thoughts on all of this?

**MARY-ROSE  
PAPANDREA:**

I don't understand. They're not going to avoid a First Amendment problem by having an operational standard and sending kids home and telling them to change. That's not the conversation, by the way, I was talking about which was more, you allow the speech, and you have a conversation, and maybe then they change their mind about wearing it. But I understand why that's problematic and blah, blah, blah, but just to clarify what I meant by that.

Because it sounds like they are punishing the students, or at least they're not allowing that speech, and that's what triggers the conflict that Tim was just talking about. They don't allow the Bush "International terrorist" T-shirt. That's the conflict. That's when the student calls the ACLU.

So you could point that out to them. Like you're going to face the problem, and why not come out strong and make it clear where you stand. If there are already students getting sent home, those students could already be calling lawyers.

**EMILY GOLD  
WALDMAN:**

I agree. I was actually thinking, in a way, it's riskier for them not even to have a written policy, because now they're sending people home. Then, they challenge it. Now, there's nothing in writing. Now, that students can also say, this is arbitrary, and you don't even have a rule. But now you're applying it to me, but not someone else. Once they're going to do it, they'd be better off having a clear view across the board.

**KIMBERLY  
ROBINSON:**

I'll take one more question.

**SPEAKER 1:**

Yeah.

**KIMBERLY  
ROBINSON:**

I'm sorry. I was pointing to--

**SPEAKER 2:** I just want to add, because there's also [INAUDIBLE] that says you cannot impinge on the rights of others with your free speech. So I mean, that's a very wide latitude for schools to assess. I've never seen a Confederate flag case that won with students, because [INAUDIBLE] impingement on the rights of others. And also as far as [INAUDIBLE] there is a campaign in 14 states now to pass legislation to circumvent the censorship of school papers. And there's a big campaign in Virginia right now. It's called [INAUDIBLE] Voices. Also, it seems to me like maybe [INAUDIBLE] affects the First Amendment in schools more than anything.

Because when you go to schools that-- well, first of all, 75% of schools don't have a school newspaper. So [INAUDIBLE] doesn't matter in most of the schools around the country. There is no free press. They also have strict uniform policies at low-income schools, schools with a lot of kids of color. It seems like inequality. They have a sliding scale for free speech, it seems like, and the First Amendment of the US. I was wondering if you notice things like that.

**EMILY GOLD** Well, one of the things I was going to say in response to--

**WALDMAN:**

**KIMBERLY** And this is going to be our last set of comments.

**ROBINSON:**

**EMILY GOLD** Very quick, is that we see some of these cases, but this is just the surface of all the free  
**WALDMAN:** speech suppression that happens, because who are the kids that end up suing? These are the kids who are privileged. These are kids who have parents who get involved. They tend to be wealthier. They tend to be white, well-educated kids.

And there are so many other things that are happening we never even hear about. Maybe Tinker is helpful because it's out there, and to the extent educators learn about it, they might be less likely to restrict speech. But most students who find themselves with a speech restriction just have to do what the administrators say, and a lawsuit is not really an option.

**KIMBERLY** All right. Thank you very much to our panel.

**ROBINSON:**

[APPLAUSE]