Taking Stock of Student Rights Forty Years after Tinker

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Introduction

Taking Stock of Student Rights

Forty Years after Tinker

By Stephen J. Wermiel

Next February marks the fortieth anniversary of the decision in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), the high watermark in U.S. Supreme Court recognition of the rights of students in school. It is an appropriate time to take stock of the rights of students and the issues they face in school.

Let's start on a positive note. Our Human Rights Hero for this issue is Mary Beth Tinker who, as a thirteen-year-old girl, wore a black armband to school to protest the Vietnam War and was suspended. Her courage led to the landmark Tinker decision. We honor her in this issue and hear from her about how she is still fighting for the rights of students after nearly forty years.

She has been extremely generous for many years with the time she devotes to speaking to student groups throughout the country about their rights. For example, in my own program, the Marshall-Brennan Constitutional Literacy Project at American University Washington College of Law, she is always very willing and excited to visit some of the fourteen regular constitutional law classes in Washington, D.C. public high schools that are taught by forty-six law students.

The rest of the story is not as rosy. When the Supreme Court in 1988 gave school officials more leeway to control school newspapers and student speech, Justice William J. Brennan Jr. wrote in dissent, "The young men and women...expected a civics lesson, but not the one the Court teaches them today." Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 291 (1988). When it comes to student expression, the civics lesson has not gotten any better. Articles in this issue discuss how school officials have won court battles that continue to expand school control over student free expression, even when it does not take place at school. The most recent was the Supreme Court's ruling that a student's banner declaring "Bong Hits 4 Jesus" was not protected by the First Amendment, Morse v. Frederick, 127 S. Ct. 2618 (2007).

The rights of students face numerous other challenges as well, and this issue of Human Rights examines several areas of conflict. One important and multifaceted topic is the way students are treated depending on who they are. In different articles, we explore issues facing students because they are female or because they are gay or because they are members of a racial or ethnic minority or are poor. Each of these group characteristics brings with it a set of challenges to the rights of students and to their ability to function on an equal footing in school. We also examine our failure as a nation to make a serious commitment not just to equal educational opportunity but educational quality for all. On some controversies, the articles examine only students in secondary schools; on others, college students are also part of the focus.

At the college level, we also update the debate between student privacy and campus security that was taking place well before the Virginia Tech tragedy but that has been in sharper focus ever since the 2007 shooting rampage in which a gunman killed thirty-two people. The concerns remain difficult ones: How should we enhance safety and security on campus, and how should we continue to protect the academic and medical records of students?

By discussing these matters, we hope to promote a critical examination of just what the civics lesson should be about the rights of American students.