Hazelwood v. Kuhlmeier / Excerpts from the Dissenting Opinion—Answer Key

The following are excerpts of Justice Brennan's dissenting opinion joined by Justices Marshall and Blackmun:

When the young men and women of Hazelwood East High School registered for Journalism II, they expected a civics lesson. *Spectrum*, the newspaper they were to publish, . . . was a . . . forum established to give students an opportunity to express their views while gaining an appreciation of their rights and responsibilities under the First Amendment to the United States Constitution.

"If mere incompatibility with the school's pedagogical message were a constitutionally sufficient justification for the suppression of student speech, school officials could censor each of the students or student organizations in the foregoing hypotheticals, converting our public schools into "enclaves of totalitarianism," . . . that "strangle the free mind at its source," . . . The First Amendment permits no such blanket censorship authority. While the "constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings," *Fraser*, supra, at 682, students in the public schools do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker*, supra, at 506. Just as the public on the street corner must, in the interest of fostering "enlightened opinion," . . . tolerate speech that "tempt[s] [the listener] to throw [the speaker] off the street," . . . public educators must accommodate some student expression even if it offends them or offers views or values that contradict those the school wishes to inculcate.

In *Tinker*, this Court struck the balance. We held that official censorship of student expression—there the suspension of several students until they removed their armbands protesting the Vietnam war—is unconstitutional unless the speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others. . . . "

Official censorship of student speech on the ground that it addresses "potentially sensitive topics" is . . . impermissible. . . . The case before us aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the "mere" protection of students from sensitive topics.

Such unthinking contempt for individual rights is intolerable from any state official. It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.

Questions to Consider

1. Justice Brennan says that *Spectrum* was a "forum" for student expression. From what you read in the majority opinion, why is this an important distinction?
   It is an important distinction to make because if it is a forum, school officials cannot restrict speech, but if it is not a public forum, then school officials may "impose reasonable restrictions on the speech of students, teachers, and other members of the school community."

2. What does Justice Brennan fear will happen if schools are permitted to censor material that differs from their pedagogical (teaching) message?
   Justice Brennan fears that if schools are allowed to censor material that differs from their pedagogical message, they will become "enclaves of totalitarianism."

3. What did the *Tinker* decision say? What does Justice Brennan think of that decision? Do you agree or disagree with him? Why?
   The *Tinker* decision said that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." It also said that censorship is unconstitutional unless the speech "materially disrupts classroom discipline or involves substantial disorder or the invasion of the rights of others." Justice Brennan seems to agree with that decision, saying, "In *Tinker*, this Court struck the balance."

   Student answers will vary. Those who agree with Justice Brennan might say that censorship is not permissible and that school officials cannot censor something just because it is unpopular or "inconsistent with the school's pedagogical message." This would amount to totalitarianism. Those who disagree might say that students need to be protected from sensitive topics. Exposing them to material that is inappropriate may be disruptive.