

GANGS, TATTOOS, AND SYMBOLIC SPEECH

The rise of gangs has been a major problem. In June of 2000, the Los Angeles Police Department (LAPD) issued statistical evidence of the problems associated with gang violence. At the time, police were able to account for 407 gangs in Los Angeles whose combined membership totaled over 64,500. These gangs wreaked havoc in homes, communities, and schools where criminal activities such as gang-related homicide and attempted homicide increased more than 130 percent between 1999 and 2000. As a result of statistics such as these and the fact that a large number of gang members are under the age of 18, school districts around the United States attempted to reduce gang violence by regulating which types of symbols students could display during school. Specifically, school officials banned gang symbols.

If you were a school official, how easy or difficult would it be to enforce this ban? Look at the tattoo below. Would you be able to say whether this was a gang symbol?

In 1969, the Supreme Court of the United States ruled on the case of *Tinker v. Des Moines*. The Court decided that a student's constitutional right to freedom of expression existed in schools as long as the expression did not cause - or could not reasonably be predicted to cause - a substantial disruption to the work of the school. At the time, the expression being considered was the right to symbolic speech through the wearing of armbands to protest U.S. involvement in the Vietnam War.

Now, over 30 years later, tattoo art has become an accepted form of symbolic speech. In October of 2000, Massachusetts Judge Barbara Rouse recognized the First Amendment implications of tattooing. In a case that struck down a 38-year old ban on tattooing, she noted, "persons obtain tattoos to demonstrate commitment to other persons, to institutions, to religious beliefs, and to political and personal beliefs. The medium on which the drawn image appears should not be relevant when determining whether something is 'speech'; the tattoo itself is symbolic speech deserving of First Amendment protection."

If Judge Rouse is correct, it would seem that the right of students to display tattoos would be governed by the standard applied to armbands in *Tinker*.

Stephenson v. Davenport Community School District

Facts

In 1992, Brianna Stephenson was an honor roll student at West High School who teachers described as "conscientious and diligent." During this time, gang activity at West had become a significant problem, with gang members using school grounds to intimidate and recruit other students. In an attempt to combat the escalating gang activity, the school district created a new rule that said "gang-related activities such as display of 'colors', symbols, signs, etc. will not be tolerated on school grounds. Students in violation will be suspended from school and/or recommended to the Board for expulsion."

Brianna went to visit her counselor in August of that year to discuss routine schedule matters. During the meeting, the counselor noticed a small cross tattoo on her hand. After the counselor, the assistant principal, the school's police liaison officer, and another officer ruled that the tattoo was a gang symbol, Brianna was told that she would be suspended with a recommendation for expulsion if she did not remove or change the tattoo.

Although Brianna maintained that her cross tattoo was over two years old and she had no gang affiliation, the school district stood by both its policy and disciplinary decision. After undergoing painful and expensive laser surgery to remove the tattoo, Brianna was allowed to return to school. Upon her return, she filed a lawsuit against the school district, claiming that her First Amendment right to free speech was violated. The United States District Court dismissed her case, but the U.S. Court of Appeals for the Eighth Circuit heard her appeal.

Question presented to the court

Did the school district's policy barring the display of gang symbols violate Brianna's First Amendment rights?

Ruling

The Eighth Circuit Court of Appeals ruled that the school district's policy was unconstitutional. Specifically, the Court found fault with two characteristics of the policy.

- 1) According to the Court, the school's policy was too vague because it did not give students enough information about exactly what conduct/expression was prohibited.
- 2) Furthermore, the Court held that such a vague policy invited unconstitutional, arbitrary, and discriminatory enforcement because it allowed school administrators, police officers, judges, and juries to determine on a case-by-case basis exactly which colors, symbols, signs, etc. violated the policy.

DIRECTIONS

You are a member of the Davenport Community School District's School Board. As a board member, it is your job to create and approve specific school policies. With your fellow board members, revise the school's policy prohibiting the display of gang symbols so that it is constitutional.

"Gang-related activities such as display of 'colors', symbols, signs, etc. will not be tolerated on school grounds. Students in violation will be suspended from school and/or recommended to the Board for expulsion."

Amend the policy to make it less vague.

- 1) Specifically, how would you define "gang"?

- 2) What specific conduct and symbols would you prohibit?

- 3) Which colors/color combinations are gang-related?

- 4) What other guidelines would you provide school officials with to ensure that only those students who were truly advertising gangs would be punished?