



COLLEGE OF LAW

THE UNIVERSITY OF TOLEDO

*48th Annual Charles W. Fornoff
Competition*

October 24, 2019

**The College of Law is Honored to have
Presiding:**

Honorable Denise Page Hood

**U.S. District Court for the
Eastern District of Michigan**

Judge Denise Page Hood is a federal judge for the United States District Court for the Eastern District of Michigan. President William J. Clinton nominated Judge Hood in March of 1994. On June 15, 1994, the United States Senate confirmed her appointment.

Judge Hood graduated from Yale University with a B.A. in 1974. She earned her law degree at the Columbia University School of Law in 1977. Judge Hood then worked in the City of Detroit Law Department until 1982 before beginning her judicial career.

Judge Hood served as a judge in Michigan's 36th District Court Judge from 1983 through 1989, as a judge in Detroit Recorder's Court from 1989 through 1992, and a Wayne County Circuit Court Judge from 1993 until 1994, when she was appointed to the federal bench. She became Chief Judge for the U.S. District Court of the Eastern District of Michigan in 2016.

Issues on Appeal

- 1) Whether *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) applies to students' off-campus speech?
- 2) If *Tinker* applies, then whether the School's discipline of the Student's off-campus speech violated Student's First Amendment rights under *Tinker*?

Legal Background

In its landmark case, *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the United States Supreme Court held that student speech is protected under the First Amendment, stating “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Id.* at 506 (emphasis in original).

However, the constitutional rights of students in public school “are not automatically coextensive with the rights of adults in other settings.” *Bethel Sch. Dist. N. 403 v. Fraser*, 478 U.S. 675, 682 (1986). A student “may express his opinions...if he does so without materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.” *Tinker*, 393 U.S. at 513 (internal quotation marks omitted). Lower courts have held that this standard can be met either by showing a disruption has occurred, or by showing demonstrable facts that would give rise to any reasonable forecast by the school administration of a “substantial disruption of or material interference with school activities...” *Id.* at 514.

Balancing these competing interests, *Tinker* provides the standard for evaluating whether the First Amendment protects a student’s speech. The Supreme Court has not yet addressed whether and how these precedents apply to off-campus speech.

**The College of Law is Honored to have
Presiding:**

Honorable Christine Mayle

Ohio Sixth District Court of Appeals

Presiding Judge Christine E. Mayle was elected to the Sixth District Court of Appeals in November 2016. Judge Mayle received her J.D. degree, cum laude, from the University of Notre Dame Law School in 2001, and her B.A. degree, summa cum laude, from Providence College in 1998.

Upon graduation from law school, Judge Mayle practiced law with Dewey Ballantine LLP in New York City for several years. She then moved to Toledo and joined the law firm of Cooper & Walinski LPA where she practiced business litigation in state and federal courts across the country. In 2011, she joined Thacker Robinson Zinz LPA where she continued her business-litigation practice until her election to the Court of Appeals.

Judge Mayle and her husband Andrew have three children.

**The College of Law is Honored to have
Presiding:**

Honorable Thomas Parker

**U.S. District Court for the
Northern District of Ohio**

Judge Thomas Parker is a U.S. Magistrate Judge for the Northern District of Ohio. Judge Parker graduated from Miami University, *cum laude*, with an A.B. in 1976, and from Case Western Reserve University with his J.D. in 1979. After receiving his J.D., Judge Parker spent his legal career in private practice in Akron, Ohio. There he worked for Roetzel and Andress from 1979 through 2002, then for Parker, Leiby, Hanna & Rasnick, Co. from 2002 through 2009. He left that firm after being elected to the Summit County Court of Common Pleas, where he served as a judge from May 1, 2009 through March 24, 2016. He was appointed a U.S. Magistrate Judge for the Northern District of Ohio on March 25, 2016.

Summary of the Facts

Over one weekend in April 2018, then-eleventh grade student, Ms. Maxine McKinney (“Maxine”), created several digital pieces mocking a high school teacher/coach for his alleged unfair attitude towards female students. Maxine posted them to her Facebook account. Huntington County School District, Lincoln High School Board of Education, and Michelle Hawthorne, Principal of Lincoln High School, Appellees (collectively, the “School”) disciplined her for these posts. Maxine and James McKinney, her father, Appellants, brought a lawsuit in the District of Huntington under 42 U.S.C. §1983 alleging the School violated the Maxine’s First Amendment rights when it disciplined her for her off campus speech.

Both parties filed motions for summary judgment. The District Court of Huntington granted the School’s motion for summary judgment finding that the School did not err in punishing Maxine for publishing her off-campus speech to her Facebook account. The court determined that it was at least reasonably foreseeable that the off-campus expression might reach campus, and that the posts in fact caused a material and substantial disruption at school and that it was reasonably foreseeable to school officials that the posts would cause such disruption. Maxine is appealing the granting of the School’s motion for summary judgment to the Fourteenth Circuit Court.

Dana Pasiwk--Finalist

Dana graduated from the University of Toledo magna cum laude with a Bachelor of Arts in History. She is currently Vice President of Christian Legal Society, Secretary of Health Law, and a member of Federalist Society. During the summer of 2019, she interned for Kershaw, Vititoe, and Jedinak Law Offices in Monroe, Michigan. During her free time, Dana enjoys community theater, arts, and showing her pug in local dog competitions. She would like to thank her family, boyfriend, friends, mentors, past teachers, and faculty members for their continuing support and encouragement. She would also like to thank her fellow competitors for their hard work in preparation for today's argument.

Nicole Cote—Finalist

Nicole graduated from Western Michigan University with a Bachelor of Arts in Criminal Justice. She is currently a member of the Family Law Moot Court Team, a student ambassador in the admissions office, and recently represented Toledo Law by traveling to Guantanamo Bay, Cuba as a Non-Governmental Observer to observe the Military Commissions. During the summer of 2019, she was a legal extern at the United States Attorney's Office in the Northern District of Ohio's Toledo branch office. Nicole would like to sincerely thank the involved faculty and students for helping her prepare for today's argument. She would also like to thank her friends and family for providing unwavering support and inspiring Nicole to dare greatly.

The Moot Court Board would like to extend our sincere thanks to the following for their time and dedication to the competition:

Dean D. Benjamin Barros	Professor Kenneth Kilbert
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Professor Rick Goheen	

Special Thanks to:

Professor Eric Chaffee—Fornoff Faculty Advisor
Professor Bryan Lammon—Moot Court Advisor
Honorable James G. Carr
Krys Beech
Mary Lynn Valdes-Dapena

**CIRCUIT COURT FOR THE
14TH CIRCUIT OF THE UNITED STATES**

MAXINE McKINNEY, et al.

Appellant,

v.

**HUNTINGTON COUNTY SCHOOL DISTRICT, et
al.,**

Appellee.

ARGUING BEFORE THE COURT:

Samuel Gold

Nicole Cote

Counsel for Appellant

Ruth Willer

Dana Pasiwk

Counsel for Appellee

Introducing the Attorneys:

Samuel Gold—Barrister

Samuel graduated from the University of Toledo with both a Bachelor and Master's Degree in Philosophy. Currently, he is an associate member of the Law Review. Samuel would like to thank family and friends, as well as the faculty who have helped prepare the finalists for this competition.

Ruth Willer—Solicitor

Ruth is from Lindsey, Ohio and graduated from Concordia University Ann Arbor with a Bachelor of Arts in Secondary Social Studies Education. She holds a Master's of Arts in Government and Politics from St. John's University in Rome, Italy. Currently, she is the Vice President of Family and Juvenile Law Society, the Clerk of Rolls of Delta Theta Phi, and the Secretary of the Public Interest Law Association. This past summer Ruth worked as a law clerk at Wright Patterson Air Force Base. Ruth would like to thank her family, friends, and professors for their support and encouragement.

Thank you for attending!



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