# Overview

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| **Student Pushes Back Against School Banning Use of an App*****Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

The Supreme Court’s decisions in *Hazelwood v. Kuhlmeier* and in *Mahanoy Area School District v. B.L.* set legal parameters for school limitations on student speech. In this activity participants apply these two cases to a contemporary scenario in which a student speaks both on-campus and off-campus about a school’s decision to ban a popular app. The program requires no pre-event preparation on the part of the teachers and students. All preparation is folded into the three-hour courtroom event.

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| **Optimal Group Size and Essential Courtroom Roles****30-60 Students – Student Roles*** 8 Student Judges
* 4 Student Attorneys
* All Others are Student Jurors: Centerpiece of the Event

**9 Adults*** 1 Presiding Judge
* 1 Program Facilitator (Runs Program and Jury Deliberations)
* 1 Visiting Teacher
* 4 Attorney Coaches (2 for Each Student Attorney Team)
* 2 Attorney Discussion Leaders for Student Jurors
 | **Recommended Arrangements** Rooms* 1 Courtroom
* 1 Presiding Judge’s Chambers
* 2 Attorney Preparation Rooms

Supplies* A flipchart and markers for the attorney discussion leaders assigned to the jury
* Pads of sticky notes with enough sheets to provide one note for each student juror
* Pencils (one for each student in the courtroom)
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**Program Structure**

1. **Start Here.** The **Activity Download** on the web landing page for the program is the place to find the courtroom- and classroom-ready handouts. They can be modified and customized.
2. **Engage.**  Choose from two optional activities that can be incorporated into the agenda: 1) Reality Check Quiz on situations that can have legal and long-term consequences and 2) Media Literacy Self-Reflection Quiz.
3. **Read and Prepare.**  In the courtroom before the simulated hearing, participants read the facts and case summaries of the two Supreme Court decisions. They also read the fictional scenario about a contemporary situation involving a student that draws on the two cases. Students will argue the issues in the fictional scenario. All preparation for the simulation is incorporated into the program. Students are coached by adults and have the following roles: judges, lawyers, and jurors.
4. **Analyze and Argue.** The visiting teacher picks eight student volunteers to be student judges and four student volunteers to be student attorneys. Two student attorneys are assigned to each side of the case and will prepare with the help of attorney coaches. Each side is provided with a list of suggested talking points to stimulate their thinking and arguments. During oral arguments they can read the points as they are, or they can use them as a basis for points they make in their own words.
5. **Deliberate.** The rest of the students are jurors who listen to the arguments, then deliberate in the courtroom guided by an adult facilitator. During the deliberations, the student attorneys observe and do not participate. While the jury deliberates, the student judges discuss the case in chambers with the Presiding Judge. All students and learning styles can participate in the jury deliberations. Due to time constraints, the jury verdict is decided by a show-of-hands vote that does not have to be unanimous.

# Agenda – Arrival and Preparation (8:30 a.m. – 10:20 a.m.)

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

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| **8:30 – 9:00**(*30 minutes*) | **Students Arrive at the Courthouse and Go Through Security**They get settled in the courtroom and fill out:* Media Literacy Self Reflection Quiz
* **Optional:** Reality Check Quiz
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| **9:00 – 9:10**(*10 minutes*) | **Welcome**The facilitator welcomes the students.Attorney coaches and discussion leaders introduce themselves with one, brief heartfelt reason each for choosing the law. |
| **9:10 – 9:15***(5 minutes)* | **Setting Ground Rules for the Activity and Jury Deliberations** To raise awareness of inappropriate behaviors that undermine civil discourse, the facilitator asks students to list verbally their conversational pet peeves that are counterproductive in a conflict situation. Examples might include interrupting or rolling eyes in disgust. The facilitator uses this list to have students agree not to engage in inappropriate behaviors during the program, The activity can be as simple as making a list of pet peeves on a flipchart and getting agreement from students that they will not engage in those behaviors.  |
| **9:15 – 9:25**(*10 minutes*) | **Facilitator Leads Discussion on the Media Literacy Self-Reflection Quiz** The facilitator asks students to identify a situation they related to from the Media Literacy Self-Reflection Quiz. The facilitator uses the discussion prompts to draw out students’ experiences and opinions. |
| **9:25 – 9:35**(*10 minutes*) | **One Attorney Presents the Case Summaries and Fictional Scenario**Can be any of the attorney coaches or attorney discussion leaders. |
| **9:35 – 9:45***(10 minutes)* | **Visiting Teacher Assigns Roles*** 8 student judges:2 panels of4: A panel for Issue #1 and a panel for Issue #2.
* 4 student attorneys: 2 for Plaintiff Peters; 2 for Defendant Brookside.
* Student jurors:All other students are jurors who participate in the centerpiece of the program – jury deliberations.
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| **9:45 – 10:20***(35 minutes)* | **Groups Prepare*** Presiding Judge and 8 student judges:Meet in chambers.
* Plaintiff Peters (2 attorney coaches and 2 student attorneys):Meet in prep room 1.
* Defendant Brookside (2 attorney coaches and 2 student attorneys): Meet in prep room 2.
* Jury (2 attorney discussion leaders and all student jurors):Stay in the courtroom.
	+ **Arguments Worksheet:** Using the answer key, attorneys lead discussion. Students identify which arguments would be made by each side.
	+ **Question-Asking Activity:** Attorneys facilitate. Students write questions on sticky notes – one question per note. Attorneys collect and give the facilitator 1-2 questions on each issue for the Presiding Judge to ask from the bench.
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# Agenda – Simulated Hearing and Wrap-Up (10:20 – 11:30 am)

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| **10:20 – 10:25**(*5 minutes*) | **Everyone Takes Places for Oral Arguments**The Presiding Judge takes the bench with the student judges panel for Issue #1.The student judges panel for Issue #2 sits in the jury box. They take the bench when the Presiding Judge calls them up at the conclusion of Issue #1. Plaintiff Peters’ attorneys and coaches sit at counsel table closer to jury box.Defendant Brookside attorneys and coaches sit at counsel table farther from jury box.Student jurors and attorney discussion leaders sit in the courtroom gallery. |
| **10:25 – 10:30**(*5 minutes*) | **Opening**The Presiding Judge opens the hearing using the scripted opening protocol.Student attorneys respond using the scripted opening protocol. |
| **10:30 – 10:40**(*~10 minutes*) | **Oral Argument on Issue #1: Speech on the School Website**One student attorney for each party argues only Issue #1. The Presiding Judge and the student judges panel for Issue #1 ask questions. The Presiding Judge asks 1-2 questions from the student jurors’ sticky notes.  |
| **10:40 – 10:50**(*~10 minutes*) | **Oral Argument on Issue #2: Speech on the Outside App**The Presiding Judge calls the student judges panel for Issue #2 to the bench.The student judge panel for Issue #1 sits in the jury box.One student attorney for each party argues only Issue #2.The Presiding Judge and student judges panel for Issue #2 ask questions.The Presiding Judge asks 1-2 questions from the student jurors’ sticky notes. |
| **10:50 – 11:10**(*20 minutes*) | **Discussion and Deliberation**All student judges retire to chambers, where the Presiding Judge leads them in a discussion of the case, starting with Issue #1, then moving to Issue #2. At the same time, the facilitator leads the student jurors in deliberations in the gallery of the courtroom, starting with Issue #1, then moving to Issue #2.  |
| **11:10 – 11:20**(*10 minutes*) | **Verdict**The Presiding Judge and student judges return to the courtroom. Only the Presiding Judge takes the bench. All student judges sit in the jury box.The Presiding Judge asks for a show-of-hands vote from student jurors on **Issue #1: Speech on the School Website.** The majority vote is the verdict.The Presiding Judge asks the student jurors to explain their rationale. The Presiding Judge asks the student judges for their perspectives on Issue #1.The Presiding Judge then repeats for **Issue #2: Speech on the Outside App.** |
| **11:20 – 11:30**(*10 minutes*) | **Wrap-Up, Group Photo, and Feedback**The Presiding Judge opens the floor to questions on any topic. If the students have taken the Reality Check Quiz, the Presiding Judge can draw from it to encourage questions. At the conclusion of the Q-and-A session, the Presiding Judge invites all participants into the well where they gather on the elevated levels for a group photo. After the photo, students talk in small, informal groups with the Presiding Judge, attorney coaches, and attorney discussion leaders in the well.Students fill out and hand in the feedback form. |

# Reality Check Quiz – Blank Worksheet for Students to Fill Out While Waiting for the Simulation to Start

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| **Reality Check Quiz: Sometimes There Are No Do-Overs*****Today’s Decisions Can Have Legal and Long-Term Consequences*** |

**Optional:** *To get the Q-and-A session started, the Presiding Judge might ask the students if they have questions about any of the situations in the quiz.*

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|  | I go on a road trip to a national park with my best friend’s family. My best friend and I spray paint our initials on one of the rocks there. Lots of people do it. No one cares. |
|  | **TRUE or FALSE** |
|  | I can text an X-rated photo of myself or ask someone to send me an X-rated photo of themselves as long as we’re both under 18. |
|  | **TRUE or FALSE** |
|  | While I am outside my apartment complex, FBI agents ask me if I’ve seen a couple of my neighbors go by. I saw them, but I don’t know why the FBI is looking for them. I tell the agents my neighbors walked in the opposite direction from the direction they actually went. I may have legal problems. |
|  | **TRUE or FALSE** |
|  | Medical marijuana is legal in the state where I live. I have a prescription for it from my doctor to manage nausea related to my medical treatment, and I use it regularly. The federal government may refuse to hire me because I use marijuana even though it is prescribed to me. |
|  | **TRUE or FALSE** |
|  | My friends and I like to party at a lake in a state where drinking is legal at 18. I’m 18 and I don’t drink or do drugs. We usually ride together, and my friends have their beer and drugs in the car. I can get in trouble even if I don’t use. |
|  | **TRUE or FALSE** |
|  | On April Fool’s Day, some friends and I stole my neighbor’s mail. We figured we’d give it back, but my little brother spilled grape juice on it and ruined it, so we threw it away. Since it was just a prank, I won’t get in trouble. |
|  | **TRUE or FALSE** |
|  | My older sibling gave me their ID to use to get into bars. We look a lot alike, so I won’t get caught, but even if I do, I would just be turned away from the bar. |
|  | **TRUE or FALSE** |
|  | If I get pulled over while I’m texting and driving when I’m 16, the ticket will be taken off my record when I turn 18. |
|  | **TRUE or FALSE** |

# Reality Check Quiz – Answer Key and Discussion-Starter Prompts: For Discussion After Simulation

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| ***Reality Check: Sometimes There Are No Do-Overs*****Today’s Decisions Can Have Legal and Long-Term Consequences** |

**How This Quiz is Used After the Simulation:** *To get the Q-and-A session started after the verdict is discussed, the Presiding Judge may want to ask students if they have any questions about the following situations.*

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|  | I go on a road trip to a national park with my best friend’s family. My best friend and I spray paint our initials on one of the rocks there. Lots of people do it. No one cares. |
|  | **FALSE. Defacing any part of a national park is a federal offense of trespassing, tampering, and vandalism.** |
|  | I can text an X-rated photo of myself or ask someone to send me an X-rated photo of themselves as long as we’re both under 18. |
|  | **FALSE. This is self-produced child pornography. Child pornography is illegal and there is no exception for minors to exchange it among themselves.** |
|  | While I am outside my apartment complex, FBI agents ask me if I’ve seen a couple of my neighbors go by. I saw them, but I don’t know why the FBI is looking for them. I tell the agents my neighbors walked in the opposite direction from the direction they actually went. I may have legal problems. |
|  | **TRUE. Falsifying, concealing, or covering up a material fact about an investigation is a serious crime that can carry up to a five-year federal prison sentence.** |
|  | Medical marijuana is legal in the state where I live. I have a prescription for it from my doctor to manage nausea related to my medical treatment, and I use it regularly. The federal government may refuse to hire me because I use marijuana even though it is prescribed to me. |
|  | **TRUE. Marijuana use is a violation of federal law. Federal employees who work in safety-sensitive jobs may not use marijuana and are subject to federal drug-testing regulations. Hiring for these positions may require a clean drug test.** |
|  | My friends and I like to party at a lake in a state where drinking is legal at 18. I’m 18 and I don’t drink or do drugs. We usually ride together, and my friends have their beer and drugs in the car. I can get in trouble even if I don’t use. |
|  | **TRUE. It is illegal for a person under 21 to transport alcohol.** |
|  | On April Fool’s Day, some friends and I stole my neighbor’s mail. We figured we’d give it back, but my little brother spilled grape juice on it and ruined it, so we threw it away. Since it was just a prank, I won’t get in trouble. |
|  | **FALSE. Taking mail from a mailbox and concealing it are federal offenses with penalties of up to five years in prison.** |
|  | My older sibling gave me their ID to use to get into bars. We look a lot alike, so I won’t get caught, but even if I did, I would just be turned away from the bar. |
|  | **FALSE. Under certain circumstances, use of another person’s identification is a federal offense of aggravated identity theft with a mandatory two-year federal prison term.** |
|  | If I get pulled over while I’m texting and driving when I’m 16, the ticket will be taken off my record when I turn 18. |
|  | **FALSE. Different jurisdictions have different rules, but many do not automatically expunge juvenile records.** |

# Media Literacy Self-Reflection Quiz – Blank Worksheet for Students

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| *Students Fill Out This Quiz While Waiting for the Program to Start* |

**Instructions:** Circle the option that best applies to you.

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| 1. **I get all my news and information from one place.**
 |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
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| 1. **I read more than one viewpoint about the same issue before making up my mind.**
 |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
|  |
| 1. **I think about a source’s possible motivations, perspectives, or biases when I read something.**
 |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
|  |
| 1. **When I see a news story, I think about what facts might be missing and useful to know.**
 |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
|  |
| 1. **I tend to reconsider what I think about something if I learn new information.**
 |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
|  |
| 1. **Some people and groups are so wrong that I refuse to consider what they have to say.**
 |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
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*Media Literacy Self-Reflection Quiz – Discussion-Starter Prompts for Facilitator*

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| Self-Reflection Tool: Discussion Starter  |

**Instructions:** Circle the option that best applies to you.

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| **1. I get all my news and information from one place.** |
|   | • Often | • Sometimes | • Rarely | • Never |
| *When you think about your go-to source of information, why do you choose that source? Do you think that source has a particular point of view? Does that point of view support your own? What might be a downside of reinforcing your own point of view without investigating other perspectives?* |
| **2. I read more than one viewpoint about the same issue before making up my mind.** |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
| *How might this practice be useful? Is it worth the time and effort? Where do you find other viewpoints?*  |
| **3. I think about a source’s possible motivations, perspectives, or biases when I read something.** |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
| *What might be some possible motivations, perspectives, or biases? How might you determine a source’s motivations, perspectives, or biases?* |
| **4. When I see a news story, I think about what facts might be missing and useful to know.** |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
| *How do you try to identify what might be missing? What questions might you ask?* |
| **5. I tend to reconsider what I think about something if I learn new information.** |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
| *What might be useful about incorporating new information into your perspectives? What if learning something new changes your mind or your opinion? Does that make you inconsistent?* |
| **6. Some people and groups are so wrong that I refuse to consider what they have to say.** |
| • Usually | • Often | • Sometimes | • Rarely | • Never |
| *Why do you decide not to consider what “the other side” is saying? What might you learn from people or groups you believe are wrong? Why might it be useful to consider their viewpoints? What next steps might you take—or not take—if you disagree?* |

# Case Summaries

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

**Reading the Two Cases**

Students’ rights to free speech and schools’ authority to regulate student speech depend on context. A school generally has the right to limit student speech when it sponsors that speech within a school activity. However, a school has less authority to limit student speech outside of school, even if the speech is about school.

*Hazelwood* and *Mahanoy* demonstrate the development of student free speech law in the United States. Several other Supreme Court cases, including *Tinker v. Des Moines* and *Bethel v. Fraser*, also contributed to growth in this area of law.

***Hazelwood v. Kuhlmeier*,484 U.S. 260 (1988)**

*Facts:* Cathy Kuhlmeier and other high school students in St. Louis, Missouri, took a journalism class that produced a school newspaper. The school principal reviewed each newspaper draft before it was published. One draft included articles about divorce and student pregnancy. The principal objected to these two articles and the school newspaper was published without them. Kuhlmeier and the other students sued the school, arguing their First Amendment rights had been violated. The U.S. District Court for the Eastern District of Missouri and the U.S. Court of Appeals for the Eighth Circuit each ruled on the case before it reached the Supreme Court.

*Supreme Court Decision:* In a 5-3 decision, the Supreme Court held that the school did not violate the First Amendment rights of Kuhlmeier and the other students. The Court explained that a school does not have to “affirmatively promote particular student speech.” Because publishing the articles would have affirmatively promoted the speech through the school newspaper, the school **did not** violate the First Amendment when it refused to publish them.

***Mahanoy Area School District v. B.L.*, 594 U.S. 180 (2021)**

*Facts:* B.L., a high school sophomore in Mahanoy City, Pennsylvania, tried out for the varsity cheerleading team but was put on the junior varsity team. When she learned she did not make the varsity team, B.L. went to a convenience store after school and posted a selfie on Snapchat with her middle fingers raised and the caption “F\*\*\* school . . . f\*\*\* cheer f\*\*\* everything.” The cheerleading coaches and school principal suspended B.L. from the junior varsity team because she used profanity in connection with an extracurricular school activity. B.L. sued the school, arguing her First Amendment rights had been violated. The U.S. District Court for the Middle District of Pennsylvania and the U.S. Court of Appeals for the Third Circuit ruled on the case before it reached the Supreme Court.

*Supreme Court Decision:* In an 8-1 decision, the Supreme Court held that the school **did** violate B.L.’s First Amendment rights. Because the Snapchat post was made off-campus outside of school hours and was not threatening or substantially disruptive, the school violated the First Amendment when it suspended B.L. from the cheerleading team as a consequence.

# Fictional Scenario

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

Swarm is a new app that combines all the feeds of a user’s online accounts into a single stream of news, shopping, sports, entertainment, and social media. Swarm becomes the most popular download in app stores almost overnight. Data shows that teen users come to rely on it as their primary online source for social connections and schoolwork as well as warnings of severe weather and school safety threats.

At Brookside High School, students use Swarm for academic and other purposes from pooling notes and study guides to shopping during class. However, one day, a rumor is posted that basketball players and soccer players at Brookside High are betting on which team will win more games this year. The rumor gets boosted and displayed to all Swarm users. The next day, an argument breaks out between the basketball and soccer players in the hallway. A crowd gathers that could have prevented some students from getting to their classes on time. Fearing that students may resort to violence, Principal Max Newport calls police to the scene.

Shortly after the hallway argument, the Brookside school board bans student use of the Swarm app on campus for any purpose. The board also bans off-campus use when the posts are school-related. The board decides that suspension is the appropriate consequence for violating the school policy—the same punishment students receive when they are found with contraband. Newport explains the school is responsible for maintaining an orderly learning environment and the hallway incident demonstrated that Swarm is disruptive. He also shares his concern that youthful indiscretions captured on Swarm could follow students throughout their lives and jeopardize their educational and career opportunities.

At Brookside High, it is standard practice for the principal to review and approve student-generated content to ensure that articles posted on the school’s website follow school policy and editorial standards, which require articles to be “school related and in good taste.” Student Lane Peters writes an opinion piece for the school’s online newspaper *The Brookside Beat* arguing that the Swarm ban violates students’ First Amendment rights because it suppresses free speech and expression. The principal informs *The Beat’s* editorial board that he will not permit Lane’s piece to be posted on the school’s website.

When *The Beat* is published without Lane’s commentary piece, Lane goes to a local coffee house after school with friends and posts a meme on Swarm with an unflattering picture of Newport holding a duct taped phone and the caption: “Principal Duct Tape.” Along with the meme, Lane posts several critical statements about Newport. Lane sets the post privacy function to “public” so that anyone who searches Max Newport or Principal Max Newport online can view it. When Newport learns of Lane’s post, he suspends Lane.

Lane’s family sues the principal and the school board, arguing they violated Lane’s First Amendment right to free speech both by suppressing Lane’s commentary piece on the school’s website and by punishing Lane for posting on Swarm. The school district and the principal argue that their actions did not violate the First Amendment and were necessary to maintain a safe and orderly learning environment.

# Instructions for Attorney Discussion Leaders Working with Student Jurors

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

During this part of the program, two attorney discussion leaders have two tasks: 1) They work with student jurors to identify which arguments each side might make during the oral arguments. 2) They also help students develop questions the Presiding Judge will ask the student attorneys during oral arguments.

**Sequence of Events**

1. The attorney discussion leaders take the students through the Arguments Identification Activity and have students identify the arguments for each side: The student Lane Peters (LP) or school officials at Brookside High (BH).
2. The attorney discussion leaders guide the student jurors through the Question Formulation Activity. *(See instructions for the Question Formulation Activity – Guide for Attorney Discussion Leaders)*

# Arguments Identification Activity – Blank Worksheet for Student Jurors

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

Put **LP** next to the arguments Lane Peters might make.

Place **BH** next to the arguments Brookside High might make.

1. Students don’t lose their constitutional rights to free expression at the schoolhouse gate.
2. Exercising free speech is not the equivalent of possessing contraband, and it is inappropriate to discipline the two at the same level of severity.
3. School officials are obligated to maintain an orderly learning environment. They have some discretion to restrict speech in order to serve this goal.
4. Free speech on campus is not confined to teacher-supervised discussions in classrooms.
5. The fear or anticipation of disruption is not a valid reason to restrict speech on campus.
6. Off-campus speech is primarily within the authority of a student’s parent or guardian, not the student’s school.
7. A school has authority to set standards for the student speech it distributes through its website. School-set standards may be higher than those in the real world. A school may refuse to distribute student speech that does not meet its standards.
8. The learning environment had already been disrupted by the use of Swarm when the hallway argument drew a crowd and may have made it difficult for some students to get to class on time. It was necessary for the police to be called.
9. Courts should be skeptical of regulating off-campus speech. Off-campus speech occurs 24 hours a day—most of which is outside of school hours.
10. A school has authority to determine appropriate discipline as part of its daily operations.
11. Disallowing disrespectful memes featuring school administrators is within a school’s authority because negative memes can undermine the administration’s credibility and legitimate responsibility for an orderly learning environment.
12. Maintaining an orderly learning environment can involve regulating some off-campus behavior, particularly when it might disrupt the students’ experience at school.

# Arguments Identification Activity – Answer Key for Attorney Discussion Leaders

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

Put **LP** next to the arguments Lane Peters might make.

Place **BH** next to the arguments Brookside High might make.

1. Students don’t lose their constitutional rights to free expression at the schoolhouse gate. **LP**
2. Exercising free speech is not the equivalent of possessing contraband, and it is inappropriate to discipline the two at the same level of severity. **LP**
3. School officials are obligated to maintain an orderly learning environment. They have some discretion to restrict speech in order to serve this goal. **BH**
4. Free speech on campus is not confined to teacher-supervised discussions in classrooms. **LP**
5. The fear or anticipation of disruption is not a valid reason to restrict speech on campus. **LP**
6. Off-campus speech is primarily within the authority of a student’s parent or guardian, not the student’s school. **LP**
7. A school has authority to set standards for the student speech it distributes through its website. School-set standards may be higher than those in the real world. A school may refuse to distribute student speech that does not meet its standards. **BH**
8. The learning environment had already been disrupted by the use of Swarm when the hallway argument drew a crowd and may have made it difficult for some students to get to class on time. It was necessary for the police to be called. **BH**
9. Courts should be skeptical of regulating off-campus speech. Off-campus speech occurs 24 hours a day—most of which is outside of school hours. **LP**
10. A school has authority to determine appropriate discipline as part of its daily operations. **BH**
11. Disallowing disrespectful memes featuring school administrators is within a school’s authority because negative memes can undermine the administration’s credibility and legitimate responsibility for an orderly learning environment. **BH**
12. Maintaining an orderly learning environment can involve regulating some off-campus speech particularly when it might disrupt the students’ learning experience at school. **BH**

# Question Formulation Activity for Student Jurors – Guide for Attorney Discussion Leaders

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

**Go Over the Procedures for Students’ Participation**

* List as many questions as you can.
* Do not stop to discuss, judge, or answer the questions.
* Change any statement into a question.

**Student Jurors Talk to the Person Next to Them**

To prime the pump and to give quieter students the opportunity to speak, start by having students turn to their neighbor. Both students brainstorm and develop questions without judging them.

**Student Jurors Write Questions on Both Sides of Issue #1**

Attorney discussion leaders provide each student with a pad of sticky notes and a pencil. They facilitate student jurors in developing questions on both sides of **Issue #1:** Did Brookside High School violate Lane Peters’ First Amendment rights when it did not publish Peters’ commentary piece on the school website? Students brainstorm as many questions as possible and write each one on a separate sticky note labeled **Issue #1.**

**Student Jurors Write Questions on Both Sides of Issue #2**

Student jurors next develop questions on both sides of **Issue #2:** Did Brookside High School violate Lane Peters’ First Amendment rights when it suspended Peters for posting commentary about the school on outside social media? Students brainstorm as many questions as possible and write each one on a separate sticky note labeled with **Issue #2**.

**Student Jurors Share with the Group**

The attorney discussion leaders ask student jurors to volunteer the questions they wrote down. When called on, student jurors give their sticky notes with questions written on them to one of the attorney discussion leaders, who puts them on the flipchart. If a question comes up in conversation that has not been put on a sticky note, the student who raised the question writes it on a sticky note and gives it to the attorney discussion leaders to be put on the flipchart.

**Select Questions for the Presiding Judge**

Attorney discussion leaders choose one or two questions for **Issue #1** and **Issue #2** and give them to the facilitator to hand to the Presiding Judge for possible use during the simulation.

# Scripted Hearing Opening

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

*The Presiding Judge and student judges are announced as they enter the courtroom. The Presiding Judge and student judges for Issue #1 take the bench. The Presiding Judge welcomes the group. The student judges for Issue #2 sit in the jury box.*

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| **Presiding Judge:** | Are counsel for the student ready? |
| **Counsel for Plaintiff Peters:** | *(Student Attorney #1 stands at counsel table and speaks)*Yes, Your Honor. |
| **Presiding Judge:** | Are counsel for the school ready? |
| **Counsel for Defendant Brookside:** | *(Student Attorney #1 stands at counsel table and speaks)*Yes, Your Honor. |
| **Presiding Judge:** | Please go ahead and introduce yourselves.We’ll start with the attorneys for the student. |
| **Counsel for Plaintiff Peters:** | *(Student Attorney #1 goes to the podium and speaks)*Good (*morning or afternoon*) and may it please the Court. My name is (*first and last names*). I am from (*city and state*).My colleague and I are counsel for student Lane Peters. I will be handling Issue #1 asking if Brookside High School violated Peters’ First Amendment rights when it blocked Peters’ commentary piece from appearing on the school website.My colleague will be handling Issue #2. He/she will come to the podium, then our attorney coaches also will introduce themselves.*(Student Attorney #1 sits down at counsel table. Student Attorney #2 goes to the podium and speaks)*I am (*first and last names*) from (*city and state*) and I will be handling Issue #2: Did Brookside High School violate Lane Peters’ First Amendment rights when it suspended Peters for posting commentary about the school on outside social media?*(Student Attorney #2 sits down at counsel table. Attorney coaches go to the podium and introduce themselves, then sit down.)* |
| **Presiding Judge:** | Attorneys for the school, please introduce yourselves. |
| **Counsel for Defendant Brookside:** | *(Student Attorney #1 goes to the podium and speaks)*May it please the Court. My name is (*first and last names*). I am from (*city and state*). My colleague and I represent Brookside High School. I will be handling Issue #1 asking if Brookside High School violated Lane Peters’ First Amendment rights when it declined to publish Peters’ commentary piece on the school website. My colleague will be handling Issue #2. At this time, my colleague will come to the podium to make an introduction. Our attorney coaches also will introduce themselves. (*sits down*)*(Student Attorney #1 sits down at counsel table. Student Attorney #2 goes to the podium and speaks)*I am (*first and last names*) from (*your city and state*). I will be arguing Issue #2: Did Brookside High School violate Lane Peters’ First Amendment rights when it suspended Peters for posting commentary about the school on outside social media? *(Student Attorney #2 sits down at counsel table. Attorney coaches go to the podium and introduce themselves, then sit down)* |
| **Presiding Judge:** | Thank you, counsel. We have two issues before us today.*(Continue to Scripted Hearing Talking Points)* |

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| **Note to Student Attorneys:** |
| * When talking to the Presiding Judge and student judges, address them as “Your Honors.”
* The first time each attorney addresses the bench, say: “*May it please the Court*.”
* Always stand and use the microphone when speaking to the Presiding Judge and student judges.
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# Scripted Hearing Talking Points

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| ***Hazelwood* Meets *Mahanoy***Student Clashes with School Over First Amendment Issues |

*Instructions for Presiding Judge:*

* *The first student attorney for each side addresses Issue #1 – Lane Peters, then the School.*
* *The second student attorney for each side addresses Issue #2 – Lane Peters, then the School.*
* *After each student attorney’s oral argument, the Presiding Judge asks the first few questions.*
* *A question or two for each student attorney may come from the sticky notes.*
* *The Presiding Judge then allows student judges on the bench to ask questions.*
* *The Presiding Judge has the option of asking the last question before moving on.*

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| **Presiding Judge:** We will start with Issue #1.Did Brookside High School violate Lane Peters’ First Amendment rights when it did not publish Peters’ commentary piece on the school website?Because the student brought this action, their attorney will go first. | **Presiding Judge:** Now we will hear from counsel for the school officials on Issue #1. Did Brookside High School violate Lane Peters’ First Amendment rights when it did not publish Peters’ commentary piece on the school website? |
| **Plaintiff Peters’ Attorney #1** | **Defendant Brookside’s Attorney #1** |
| **YES*** Students don’t lose their constitutional rights to free expression at the schoolhouse gate.
* The fear or anticipation of disruption is not a valid reason to restrict speech on campus.
* Free speech on campus is not confined to teacher-supervised discussions in classrooms.
* The best way to handle controversial speech is more speech, not less speech.
 | **NO*** School officials are obligated to maintain an orderly learning environment. They have some discretion to restrict speech in order to serve this goal.
* The learning environment had already been disrupted by the use of Swarm when the hallway argument drew a crowd and may have made it difficult for some students to get to class on time. It was necessary for the police to be called.
* A school website, publication, or performance is effectively part of the school’s curriculum, whether or not it occurs in a classroom, so it is not a public forum under the First Amendment.
* A school has the authority to set standards for the student speech it distributes through its website. School-set standards may be higher than those in the real world. A school may refuse to distribute student speech that does not meet its standards.
 |
| **Presiding Judge:** We turn our attention now to Issue #2, starting with the student. The next panel of judges will now join me on the bench. The first panel of judges will be seated in the jury box. Did Brookside High School violate Lane Peters’ First Amendment rights when it suspended Peters for posting commentary about the school on outside social media? | **Presiding Judge:** Issue #2 for the school is the same: Did Brookside High School violate Lane Peters’ First Amendment rights when it suspended Peters for posting commentary about the school on outside social media? |
| **Plaintiff Peters’ Attorney #2** | **Defendant Brookside’s Attorney #2** |
| **YES*** Off-campus speech has greater First Amendment protections for students than on-campus speech.
* Off-campus speech is primarily within the authority of a student’s parent or guardian, not the student’s school.
* Courts should be skeptical of regulating off-campus speech. Off-campus speech occurs 24 hours a day—most of which is outside of school hours.
* Exercising free speech is not the equivalent of possessing contraband, and it is inappropriate to discipline the two at the same level of severity.
 | **NO*** Maintaining an orderly learning environment can involve regulating some off-campus speech, particularly when it is school related and might disrupt the students’ experience at school.
* Disallowing disrespectful memes featuring school administrators is within a school’s authority because negative memes can undermine the school’s legitimate responsibility for an orderly learning environment.
* The school took action here because off-campus speech on Swarm had already prevented some students from getting to class on time during school hours.
* A school has authority to determine appropriate discipline as part of its daily operations.
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**Presiding Judge:** The case is submitted. The court will be in recess while the jury deliberates.

*The Presiding Judge and all student judges leave the bench and recess to chambers to discuss the case. All other participants remain in the courtroom for jury deliberations guided by the program facilitator. Student attorneys and their coaches observe, but do not participate in the jury deliberations.*