

**CONNECTICUT BAR FOUNDATION
JAMES W. COOPER FELLOWS
QUINTIN JOHNSTONE
2020-2021 ESSAY CONTEST TOPIC**

“IMITATION OR INTIMIDATION”

Jesse could not wait for class to end so he could get back to the art room - his respite. It was the place he missed most during virtual learning and the only part of school he looked forward to returning to. His school is not an easy place for a young black man to be.

Jesse's mom served in the military so his family had moved around... a lot. He was so happy when he learned they'd be staying in one place for a while. But once he got a feel for the town and the school, he began to wish he was anywhere but here. As a sensitive, artistic young black man, this seemingly forgotten, former manufacturing town in the Northeastern United States was not the place to find peace. Now he yearns for the days when he was invisible. Sure, black lives matter, but you won't see Jesse wearing any BLM clothing. He'd rather just get back to the art room and plunge into his world of colors and beauty.

Jesse walks the halls with his eyes downcast saying to himself “don't make eye contact, don't make problems” when he feels a shove from behind. And there he was... Mr. Confederate Flag ... wearing his flag T-shirt and knocking hard into Jesse, accidentally or on purpose, as he strolls down the hallway ignoring social distancing requirements. No one seems to do or say anything about that flag – to Jesse a symbol of unchecked violence against blacks – but Jesse sure isn't going to be the one to make waves. He thinks he saw some kids rolling their eyes at the shirt while others pointed to it and give the kid an air fist bump, but maybe he imagined it.

In the art room, there's a new project posted for all art students: Create a piece of art that reflects your life experience. This assignment will be reviewed by the curator of the ABC Art museum. What a great opportunity – to have his art seen by someone who knows what good art is!

Art is life for Jesse. The art room is the only place where he feels like he stands out for the right reason. He is admired and almost revered by at least a few students in the art room, where he feels free to be himself. He gets started right away.

On the day of the big reveal, Jesse's heart is about to burst from both pride and nervousness at how it will be received. He can't wait to show his piece, which reflects a mixture of his struggle as a black person in America, of being judged for his sensitivity, and his somewhat fluid gender expression. His painting—showing a closed black fist, rainbow colors in the background, teardrops falling, and hidden words saying “I matter”—captures his experience.

However, as Jesse approaches the art room, he sees his teacher, the curator, and a few students scattered around the room all looking at an easel right next to Jesse's. When he follows their gaze, he sees another painting that he has not seen in the art room before today and that seems to be a direct response to his own. In many ways, it mirrors the images in Jesse's painting, but the fist is pale and holds a Confederate battle flag, instead of rainbow colors the background reflects the colors and design of the "Stars and Bars," and in the place of teardrops there is a stream of raw cotton bolls. He doesn't know if it is someone's idea of a joke but he feels threatened. Someone has desecrated his life experience.

A silence hangs in the air of the art room. With tears in his eyes, Jesse asks to be excused, reports himself as sick at the office and goes home. His mother notifies the school that Jesse will opt into virtual learning for the remainder of the school year.

To the surprise of many, Shelby Sutter, a diminutive sophomore is identified as the student who created the artwork beside Jesse's. She explained that she used the assignment to draw attention to her own experience struggling to have her Southern pride heard over the noise of current social movements and the destruction of symbols she grew up with in the South. Shelby is proud of her Southern heritage and expresses that often, describing the kindness and neighborliness she experienced growing up, which she does not feel from her classmates or neighbors since moving here. But the school administration has struggled with how to address other comments Shelby has made, such as referring to the Civil War in class as "the War of Northern Aggression." These comments sometimes disrupt a teacher's lesson plan by eliciting emotional responses from her classmates. Generally, her teachers are able to steer the class back to the lesson plan or turn the situation into a productive, if tense, learning opportunity. The principal is concerned, however, that this incident seems different. This has taken on a new level of disrespect towards another student and possibly more than that.

The student handbook includes a school board policy providing that a student may be suspended or expelled if the student engages in:

"...Any behavior, verbal or physical, that harasses, threatens, intimidates, abuses or demeans certain individuals or groups on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, or handicap that creates a substantial or material disruption of the school's operation or is likely to incite a breach of peace..."

The superintendent is looking to you for guidance on how to proceed. Does the use of a Confederate flag in this manner violate the school board's policy? Is Shelby's use of that symbol through art protected by the First Amendment? Is it political speech? Are there other actions you would advise the school or district to consider taking? Advise the superintendent on the district's options, and how you would recommend they proceed.

Suggested Sources

US Supreme Court Cases Related to Student First Amendment Rights:

- *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)
- *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986)
- *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988)

Entrants are not limited to the sources provided and are encouraged to perform research and use diverse reference materials.