Rita G. Koman

The Supreme Court Speaks on Student Rights

"If they [the Bill of Rights] are incorporated into the Constitution, independent tribunals of justice will consider themselves...the guardians of those rights...."

—James Madison
Speech on Amendments to the Constitution, 1789 (1).

"It [the Supreme Court] is the body to which all Americans look for the ultimate protection of their rights."

—Sandra Day O'Conner, Confirmation Hearing, 1981.

"It can hardly be argued that either students or teachers shed their constitutional rights to free speech or expression at the school house gate."

—Abe Fortas, *Tinker v. Des Moines*, 1969 (2).

Of the three branches of federal government, the Constitution detailed the judiciary branch the least. It simply said, "The Judicial Power of the United States shall be vested in one supreme Court, and in such inferior courts as Congress may from time to time ordain and establish" (3). Alexander Hamilton stressed in his *Federalist Papers* the necessity of judicial independence in order for the court to serve as a reviewer of the actions of the other two branches. However, he also said "...in a government in which they [the branches] are separated from each other, the judiciary...will always be the least dangerous to the political rights of the Constitution" (4). Over the years, the initial skeletal outline of district and circuit court systems evolved and grew with the demands of the growing nation. Today the branch includes ninety-four district courts, thirteen circuit courts, a U.S. tax court and the court of military appeals along with several specialized courts (5). As the court of last resort, most of the Supreme Court's cases, therefore, are made up of appeals from these lower courts.

Among the multitude of legal issues that have landed before the Court, perhaps the most far-reaching for individual citizens have been those involving their rights as expressed in the first eight amendments. The applicability of these amendments to students in the twentieth century highlights the significant impact the Supreme Court plays in daily life. Long considered to act *in loco parentis*, school divisions have increasingly found themselves and their decisions placed under the microscope of judicial review. In this lesson, students will have the opportunity to study actual Supreme Court cases involving schools.

Objectives

1. To gain exposure to real decisions involving fundamental principles of the Constitution.
2. To establish a basic understanding of constitutional law and how it affects students' daily lives.
3. To improve critical thinking and analytical skills.

Procedures

I. A description of the judiciary branch appears in Article III of the United States Constitution, and the first ten amendments are referred to as the Bill of Rights. Most textbooks carry these documents in their appendices. Have students read both and answer the following questions to insure basic knowledge.

A. What courts does the Constitution establish?

B. What criteria is established for holding a judge's position?

C. How does the Constitution distinguish between original and appellate jurisdiction?

D. Why are the first ten amendments referred to as the "Bill of Rights?"

II. Briefly review with students the idea of the school acting *in loco parentis* and how such things as student conduct, dress codes, drug use, and violence in schools play into this idea.

III. Divide the class into five small groups and assign each group one of the cases described in the handouts.

IV. Provide copies of the documents **(Part A Only)** for each student within each group. Direct students to read their group's case and provide the following information:

A. Name and date of case.

B. Identity of the parties involved.

C. Facts of case.

D. Lower court decision.

E. The potential student rights violation(s) providing grounds for appeal (TEACHER NOTE: Direct students to review amendments if needed).

F. Group Decision: appeal or not, and why.

V. Have one person from each group report on itsanalysis of its case. Encourage students to exchange ideas and react to each other's ideas.

VI. Provide copies of Part B of each case and have students read the outcome of their group's case. (Part B details the Supreme Court's decision.) Direct students to:

A. Compare their decision with that of the Court. How many were in agreement, disagreement?

B. Discuss collectively whether they can detect any change in the Court's interpretation of students' rights between 1969 and 1996.

VII. Should time permit, students could:

A. Hold a discussion on issues they think the Court should review today.

B. Debate the question: Should the Supreme Court review the Constitution in a strict fashion or interpret it in light of today's society when deciding cases? (See Jennifer Rader's lesson plan in this issue.) Interview several local attorneys for their views on the Supreme Court and/or student rights. Report results to the whole class.

C. Find the full text of one of the original decisions discussed in this exercise in a law casebook and read about the details. Then report the findings to the entire class. ❑

Endnotes

1. Robert A. Rutland, *James Madison: The Founding Father* (New York: MacMillan, 1987), 64.
2. Richard J. Hardy, *Government in America* (Boston: Houghton Mifflin Company, 1996), 462.
3. Article III, U.S. Constitution.
4. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, 1961), Paper 78, 465.

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5. CloseUp, *The Washington Notebook* (Alexandria, VA: CloseUp Publishing Company, 1997), 22.

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Group 1 - Part A

Tinker v. Des Moines (1969)

As part of a plan formulated by a group of adults and students in Des Moines, Iowa, John Tinker, a public high school student, and his sister Mary Beth Tinker, a public middle school student, wore black armbands to their schools to publicize their objections to the Vietnam War and their support of a truce. When knowledge of the plan reached the local school board, they adopted a regulation to suspend any student wearing such an armband in order to avoid potential conflict. The students wore their armbands anyway, were asked to remove them, and, upon their refusal, were sent home on suspension.

Through their father, they filed a complaint in the United States District Court for the Southern District of Iowa seeking damages and asking for an injunction restraining school authorities from disciplining the students. The district court dismissed the complaint, upholding school authorities on the ground that their actions were reasonable in order to prevent a disturbance of school discipline.

Group 2 - Part A

New Jersey v. TLO (1985)

A teacher discovered a fourteen-year-old freshman girl smoking in a school restroom, in violation of school policy, and brought her to the office. Upon questioning by an assistant vice principal, the student denied smoking, claiming she did not smoke, whereupon the principal asked to see her purse. When opened, he found a pack of cigarettes which he removed and noticed a pack of cigarette rolling papers closely associated with marijuana use. He then proceeded to conduct a more thorough search of the purse and found a small amount of marijuana, a pipe, a number of plastic bags, a substantial quantity of one dollar bills and two letters implicating the student in marijuana dealing.

In a New Jersey juvenile court all of the above evidence was admitted, and the court upheld the school official's position of properly conducting a purse search based upon reasonable suspicion that the student had broken school policy. The student was declared delinquent and sentenced to a year's probation. The appellate division affirmed the trial court's finding that there had been no Fourth Amendment violation, but it vacated the adjudication of delinquency and remanded a determination of whether the student willingly waived her Fifth Amendment rights. On appeal of the Fourth Amendment ruling to the New Jersey Supreme Court, the appellate court judgment was reversed to favor the student. This court ordered a suppression of the evidence found in her purse, holding the search to be unreasonable.

Group 3 - Part A

Bethel School District v. Fraser (1986)

At a student assembly in the late spring of his senior year in high school, Matthew Fraser made a nominating speech for a friend running for a student government office. Throughout the entire speech the candidate was referred to in terms of sexual metaphors, despite the fact that several teachers who reviewed the speech suggested to Fraser that it was "inappropriate" and could result in "severe consequences" if delivered. Students in the assembly, which included many fourteen-year-olds, were there by choice as they could opt to attend a study hall instead. Behavior in reaction to the speech included hooting, suggestive gestures, and embarrassment. A school disciplinary rule prohibited conduct that substantially interfered with the educational process, including the use of obscene language and gestures.

The morning after the assembly, school authorities notified Fraser that his speech was a violation of the disciplinary rule and suspended him for three days. Additionally, they removed his name from a list of potential graduation speakers. A school district hearing examiner upheld the decision but dropped one day of suspension. Fraser's father brought an action against the school district in the United States District Court for the Western District of Washington, seeking injunctive relief and monetary damages. The district court held that the student's rights under the First and Fourth Amendments were violated, awarded him damages, and enjoined the school district from preventing him from speaking at graduation. Fraser's class then chose him to be their graduation speaker, and he spoke at commencement.

Group 4 - Part A

Hazelwood School District v. Kuhlmeier (1988)

In Missouri, a high school journalism class wrote and edited a school-sponsored student newspaper as part of its coursework. School board policy allowed student publications free expression of diverse viewpoints within the rules of responsible journalism as developed within the accepted regular curriculum taught by a faculty member. The teacher had final review of each issue prior to publication. On the masthead it was noted that the paper was a student-run publication with "all rights implied by the First Amendment."

Prior to the last issue's publication in May, a new faculty advisor took over the journalism class. Editor Cathy Kuhlmeier submitted proofs to the advisor who, in turn, submitted them to the principal. One article described pregnancy experiences of three students and raised the principal's concern about their anonymity and the invasion of their boyfriends' and parents' privacy. He also questioned the appropriateness of references made to sexual activity and birth control for the younger students at the school. Another article on the impact of divorce upon students included critical comments by an identified student about her father. Although the student's name was to be eliminated in the final copy, the principal believed the student's parents should have had an opportunity to respond to the remarks and given consent for publication. Accordingly, due to the lack of time to rearrange the paper and meet the printing deadline, the advisor was directed to withhold from publication the two pages containing the offensive articles.

The staff, led by their editor, filed suit in United States District Court for the Eastern District of Missouri against the school district and school officials seeking declaratory and injunctive relief and monetary damages based upon the violation of their First Amendment rights. Although the district court denied an injunction, the United States Eighth Circuit reversed the decision, stating that the newspaper was a public forum and censorship could occur only under potential tort liability.

Group 5 - Part A

Virginia v. United States (1996)

In 1839 a small military academy for men was established in Lexington, Virginia for the dual purposes of providing a higher education and developing military leaders to serve the nation. Over the years many traditions were established, and frequently several generations of young men within families attended. To produce citizen soldiers, a physically and mentally grueling program evolved. The system involved, in part, humiliation implemented by upperclassmen upon first year students. Out of this regimented environment, Virginia Military Institute (VMI) fashioned well-disciplined officers trained to uphold the honor and pride of their school and nation. Many of its graduates have distinguished themselves in various United States wars. Two renowned graduates were Thomas "Stonewall" Jackson and George C. Marshall.

For a variety of reasons, the institute was placed under the state's mantle some years ago and became a public university eligible for state funding. VMI continued to maintain itself as a single-sex school, however, long after all other single-sex public universities in Virginia ceased to exist. In 1990 the Bush administration Justice Department acted on complaints it received from young women and sued the state of Virginia over VMI's admission policy. Since the university received tax dollars, the argument was made that women should have equal access with men to this special educational opportunity now denied. To counter this argument, the state of Virginia devised the Virginia Women's Institute for Leadership at nearby Mary Baldwin, a private women's college, in the fall of 1995. In general, VMI believed its program was too arduous for women, and the Institute, and they did not want to weaken it in order to admit them. A strong alumni supported this position, as did the state. The Fourth United States Circuit Court of Appeals ruled that education for sexes can be "separate but substantially comparable" and endorsed Virginia's two separate programs.

Group 1 - Part B

Tinker v. Des Moines (1969)

Upon reaching the United States Supreme Court on certiorari, seven justices upheld the Tinkers' right to wear armbands on the grounds that armbands are akin to "pure speech" and entitled to comprehensive protection under the First Amendment. Additionally, they noted there had been no disruptive conduct, therefore there was no reason to violate the students' free speech. Attempting to avoid a potential disruption was not seen as an urgent reason to single out such prohibition. Those justices who dissented stressed the fact that local authorities, not courts, should make such decisions and the limitations of public protest should be treated by school authorities.

—From 393 U.S. 503, 506 (1969).

Group 2 - Part B

New Jersey v. TLO (1985)

On certiorari to the United States Supreme Court, the decision for the student was reversed. The Court held that the Fourth Amendment applies only to unreasonable searches but school officials need not have a warrant before searching a student under their authority. Searches based upon probable cause and reasonableness are not a violation of the Fourth Amendment. Two justices issued a partial dissent.

—From 469 U.S. 325 (1985).

Group 3 - Part B

Bethel School District v. Fraser (1986)

In an appeal to the United States Ninth Circuit, the judgment of the district court was upheld rejecting all of the school district's arguments. Upon certiorari to the United States Supreme Court, however, the decision was reversed. Six justices ruled that the school district could impose restrictions upon such a speech despite the First Amendment, as it was unrelated to a political viewpoint and proved disruptive. The student had also been forewarned that delivery of the speech could subject him to sanctions. The dissenting judges felt that the school district failed to produce evidence sufficient to convince them that the educational process had been disrupted.

—From 478 U.S. 675 (1986).

Group 4 - Part B

Hazelwood School District v. Kuhlmeier (1988)

On certiorari, the United States Supreme Court reversed in favor of the school district. The Court's majority held that the newspaper was not a forum for public expression and that educators were entitled to exercise control over all school-sponsored publications, theatrical productions, and other expressive activities bearing the school's imprimatur. Further, as long as their actions are reasonably related to pedagogical concerns they do not offend First Amendment rights of students. In dissent, three justices expressed the view that a violation of the First Amendment did occur because the free expression of students in the newspaper did not disrupt classwork nor the rights of others.

—From 484 U.S. 260 (1988).

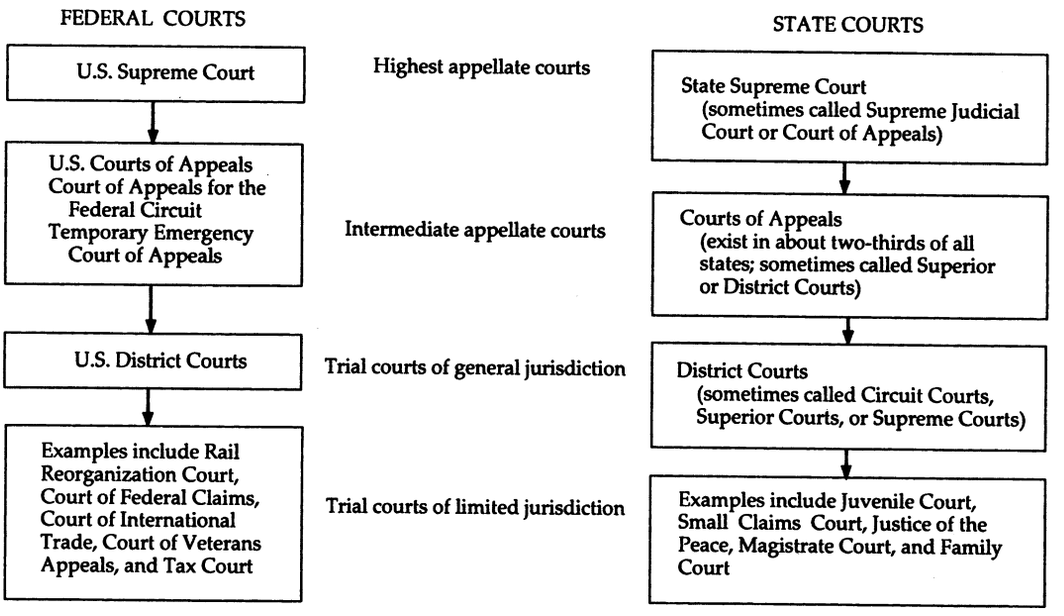
Group 5 - Part B

Virginia v. United States (1996)

The Justice Department appealed that ruling to the United States Supreme Court. In a 7-1 decision, the Court disagreed with the Fourth Circuit. (Justice Clarence Thomas abstained.) The majority opinion written by Justice Ruth Bader Ginsburg stated that while Virginia "serves the state's sons, it makes no provision whatever for her daughters. This is not equal protection...." The state could not decide arbitrarily that the school's program was inherently unsuitable to women. The hastily established Mary Baldwin program was declared "distinctly inferior" and did not justify VMI's position on the grounds of diversity since only men were admitted to the actual VMI program. In his dissent, Justice Antonin Scalia stated he could not see how the nation would be better off by destroying this historic institution through the admission of women.

—From 518 U.S. 515 (1996).

The American Court System



Source: Lee Epstein, Jeffrey A. Segal, Harold J. Spaeth and Thomas G. Walker, *The Supreme Court Compendium: Data, Decisions and Developments*, (Washington, D.C.: CQ Inc., 1994), 634. (Reprinted courtesy of the publisher.)

Glossary

Adjudication: a judicial decision or sentence.
Appeal: an application for the removal of a lawsuit from an inferior to a superior court for re-examination or review.
Appellate Court: a court authorized to hear appeals.
Certiorari: a common law writ issued by a superior court to one of inferior jurisdiction demanding the record of a particular case.
Circuit: a certain division of a state or country, established by law for a judge to visit, for the administration of justice.
Circuit Court: a court which sits successively in different places in its circuit.
Dissent: the difference of one judge's opinion from that of the majority.
District Court: a subordinate municipal, state, or United States tribunal, having jurisdiction in certain cases within a judicial district.
Enjoin: to prohibit or restrain by a judicial order or decree.
Hearing Examiner: an official appointed by a government agency to conduct an investigation or administrative hearing so that the agency can exercise its statutory powers.
Injunction: a judicial remedy issued in order to prohibit a party from doing or continuing to do a certain activity.
Juvenile Court: a court having jurisdiction over dependent and delinquent children.
Liability: the state of being legally obliged and responsible.
Remand: to recommit; to send back.
Tort: any wrongdoing for which an action for damages may be brought.
Uphold: to keep or maintain in unaltered condition.

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