



A Resource Guide for Teaching The Bill of Rights

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Acknowledgments

The ACLU of Maryland would like to extend our thanks to the staff and volunteers at the American Civil Liberties Union of Michigan, whose collaborative work culminated in the Resource Guide for Teaching the Bill of Rights.

Due to their efforts, we are able to offer a useful and extensive curriculum support package that will help students in Maryland become more knowledgeable about their individual rights -- an aim shared by ACLU affiliates throughout the nation.

We would especially like to thank Wendy Wagenheim, communications director at the ACLU of Michigan. It is through her help and generosity that this valuable guide will benefit students here in Maryland.

Susan Goering
Executive Director

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Welcome to the ACLU

Resource Guide for Teaching the Bill of Rights

This Resource Guide is designed to assist teachers in introducing Bill of Rights' issues to students – issues that affect their lives. Topics include the First Amendment issues of freedom of expression, speech, and religious freedom, as well as the Fourth Amendment issue of searches.

In the process of exploring these topics, students will be using Indicators within Goal I of the Maryland Government Standards:

- 1.1.1 The student will analyze historic documents to determine the basic principles of United States government and apply them to real-world situations.
- 1.1.2 The student will evaluate how the principles of government assist or impede the functioning of government.
- 1.1.3 The student will evaluate roles and policies the government has assumed regarding public issues.
- 1.1.4 The student will explain roles and analyze strategies individuals or groups may use to initiate change in governmental policy and institutions.
- 1.2.1 The student will analyze the impact of landmark Supreme Court decisions on governmental powers, rights, and responsibilities of citizens in our changing society.
- 1.2.2 The student will analyze legislation designed to protect the rights of individuals and groups and to promote equity in American society.
- 1.2.3 The student will evaluate the impact of governmental decisions and actions that have affected the rights of individuals and groups in American society and/or have affected maintaining order and/or safety.
- 1.2.4 The student will evaluate the principle of due process.
- 1.2.5 The student will analyze elements, proceedings, and decisions related to criminal and civil law.

The Resource Guide does not have to be used in its entirety to reap its benefit. Each unit or part of any section can be used on its own or to substitute text. Activities can be done in class, so that you and students may work together, or as homework. We encourage you to "mix and match" to suit your own creativity.

These materials offer the opportunity to discuss and understand the current and controversial nature of the Bill of Rights issues and the tension between the government's exercise of power and an individual's civil liberties as protected by them. Students should be encouraged to think, listen, and speak out while exploring these topics, as there are no absolute answers.

The Resource Guide is available online at www.aclu-md.org/billofrightsguide and can be downloaded in pdf format. The ACLU also would be happy to send copies to you at no charge.

Bill of Rights Pre-test

Students should take the following pre-test before beginning the unit. The pre-test will help identify a student's strengths and weaknesses of his/her knowledge of the Bill of Rights. The students can take the test again after the unit to measure what they learned.

1. List and write all that you can about the 5 parts of the First Amendment.

2. What is the Fourth Amendment?

3. List as many things as you can think of that relate to the Fourth Amendment.

4. Why is the First Amendment so important in protecting unpopular views?

5. Relate the following ideas to life at school (in your response, include how they relate to students, teachers, administrators, parents and/or the school board). List as many things as you can:

a) Freedom of speech and expression:

b) Freedom of religion:

c) Search and seizure:

6. Analyze the following quote:

“There is a crucial difference between government speech endorsing religion, which the establishment clause forbids, and private speech endorsing religion, which free speech and the exercise clause protect.”

Suggestions for Introducing Case Materials

The first and most obvious idea is to simply hand out the cases and tell the students to read them. If, however, you have doubts as to whether or not your students learn best by reading on their own, here are a few suggested activities.

Regardless of how you choose to relay the case information, it may be helpful to read through a case with your students before sending them out on their own. Keep in mind that these are legal cases and, therefore, the language and style of writing may be unfamiliar to your students.

1. Chart the information.

Sample:

Plaintiff	Defendant	Incident/ Punishment	Plaintiff Arguments	Defendant Arguments	Ruling/ Rationale

2. Group Work.

Divide students into small groups of at least two and give out the following assignments (assuming you have done one case together as a class):

- a. Assign one group per case to summarize the facts of the case and write them on overheads;
- b. Assign one group per case to summarize the ruling and the rationale and write them on the overheads;
- c. The remaining students (possibly those who volunteer) create role-plays of the cases.

You may want to check their work before it is shared to make sure the students hit the key ideas. Then, reconvene and go through the cases one-by-one so that the role-plays and all information on the overhead are shared. Allow the students to explain their work and then recap and fill in missing details needed for clarification. The entire class should write down the information for each case so although they may not have read each case, they still have a copy of the case, have heard the summaries, have written the notes and participated in the discussion.

3. Assign the students to read each case and do the above work for each case on their own.

4. Assign the students to read each case and complete the “key facts” activity that follows each case.

5. Read and discuss the cases together aloud as a class.

Teaching the First Amendment: Free Speech and Freedom of Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Introduction

Through the spectrum of the First Amendment, this unit provides the opportunity for students to explore the conflict between government's exercise of power and individual rights. While the courts have recognized students' rights guaranteed by the First Amendment, they have struggled with the knowledge that the exercise of those rights may occasionally interfere with education. Courts have tried to balance students' First Amendment rights with the valid need of schools to educate without the disruption that may be caused by free speech and expression.

Most school administrators and teachers feel that schools should promote tolerance and free speech because the exchange of ideas and thoughts is crucial in a learning environment.

In order for students to fully understand the First Amendment, it is critical that they see how it applies to their lives in school. Students should be aware that their right to free speech guaranteed by the First Amendment also includes freedom of expression. Although students' rights to freedom of expression are more limited in school than out of school, students have some constitutional protection to express themselves through what they wear in school.

Courts have ruled on students' rights with respect to the wearing of different types of fashions, political slogans, and hair length, and have held that schools may regulate students' mode of dress and hair length if the style interferes with health or safety regulations. School policies concerning clothing may exist with the intent to prevent a foreseen disruption, which would result from the message expressed by certain types of clothing. However, regulations cannot exist arbitrarily and must reflect a specific educational purpose.

Teaching the First Amendment: Freedom of Speech and Expression Unit Materials

Class Discussion and Pre-test:

Students should write their answers to the following questions before beginning discussion on this unit. Review answers again at the end of the unit to gauge any change of opinion. The pre-test can also be used as a journal activity in which students are later asked to reflect upon and analyze their opinion and/or change of opinion.

1. Should there be limits on free speech? Why or why not?
2. If there should be limits on free speech, who should decide those limits? What should those limits be? Explain.
3. Should students in school have the same free speech rights as adults? Explain.
4. If schools regulate dress with the intent to stop disruption and protect the entire student body, should the school similarly regulate dress with the interest of protecting the individual? For example, should articles of clothing, which could be considered dangerous to an individual such as platform shoes, spiked jewelry or baggy pants with large bell bottoms be banned?

Background Court Cases

Freedom of Speech

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, (1969).

This case involved students who were forbidden by school officials to wear black armbands in school to protest the war in Viet Nam. It was the first student's rights case to go before the U.S. Supreme Court.

*The following are edited excerpts from the decision. To read the entire decision, see:
<http://laws.findlaw.com/us/393/503.html>.*

In December 1965, a group of adults and students in Des Moines [Iowa] held a meeting at ... home. The group determined to publicize their objections to the hostilities in Viet Nam and their support for a truce by wearing black armbands during the holiday season....

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners [students] were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John *Tinker* wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired - that is, until after New Year's Day.

...As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.

... It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate....

... These [Boards of Education] have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of ... interference... with the schools' work or of collision with the rights of other students to be secure and to be let alone. ...

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or

any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

[It was] ... concluded [by a lower court] that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. ... Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, ... and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for ... school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. ...

... the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in ... Viet Nam.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol - black armbands worn to exhibit opposition to this Nation's involvement in Viet Nam - was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

... School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. ...

... Mr. Justice Brennan, speaking for the [Supreme] Court, said:

"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.' The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.'"

... A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Viet Nam, 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. But conduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred.

* * * * *

Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).

This case concerned a nomination speech that contained sexually explicit language given at a school assembly. The issue was whether standards applied to an adult making a political point also apply to a student speaking to a captive audience in a public school.

The following are edited excerpts from the decision. To read the entire decision, see: <http://laws.findlaw.com/us/478/675.html>.

...[A] public high school student ... delivered a speech nominating a fellow student for a student elective office at a voluntary assembly that was held during school hours as part of a school-sponsored educational program in self-government, and that was attended by approximately 600 students, many of whom were 14-year-olds. During the entire speech, ...[he] referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor. Some of the students at the assembly hooted and yelled during the speech, some mimicked the sexual activities alluded to in the speech, and others appeared to be bewildered and embarrassed. Prior to delivering the speech, ...[he] discussed it with several teachers, two of whom advised him that it was inappropriate and should not be given. The morning after the assembly, the Assistant Principal called ...[him] into her office and notified him that the school considered his speech to have been a violation of the school's "disruptive-conduct rule," which prohibited conduct that substantially interfered with the educational process, including the use of obscene, profane language or gestures. ...[He] was given copies of teacher reports of his conduct, and was given a chance to explain his conduct. After he admitted that he deliberately used sexual innuendo in the speech, he was informed that he would be suspended for three days, and that his name would be removed from the list of candidates for graduation speaker at the school's commencement exercises.

[A lower court ruled that the school had violated the student's First Amendment rights and said the school could not prevent him from speaking at the commencement ceremonies. This decision was overturned by the U.S. Supreme Court. Edited excerpts from the Supreme Court decision continue below. They ruled that:]

The First Amendment did not prevent the School District from disciplining respondent for giving the offensively lewd and indecent speech at the assembly. ... Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school. It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse.

* * * * *

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

This case concerns the extent to which educators may exercise editorial control over the contents of a high school newspaper produced as part of the school's journalism curriculum. Some journalism students contend that the school district violated their First Amendment rights by deleting two pages of articles from their school newspaper.

The following are edited excerpts from the decision. To read the entire decision, see: <http://laws.findlaw.com/us/484/260.html>.

... former high school students who were staff members of the school's newspaper, ...alleg[ed] that ...[their] First Amendment rights were violated by the deletion from a certain issue of the paper of two pages that included an article describing school students' experiences with pregnancy and another article discussing the impact of divorce on students at the school. The newspaper was written and edited by a journalism class, as part of the school's curriculum. ...[In accordance with] the school's practice, the teacher in charge of the paper submitted page proofs to the school's principal, who objected to the pregnancy story because the pregnant students, although not named, might be identified from the text, and because he believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students. The principal objected to the divorce article because the page proofs he was furnished identified by name (deleted by the teacher from the final version) a student who complained of her father's conduct, and the principal believed that the student's parents should have been given an opportunity to respond to the remarks or to consent to their publication. Believing that there was no time to make necessary changes in the articles if the paper was to be issued before the end of the school year, the principal directed that the pages on which they appeared be withheld from publication even though other, unobjectionable articles were included on such pages

[The District Court ruled that the students' rights were not violated. The Appeals Court reversed that decision and ruled that their rights were violated. The U.S. Supreme Court again reversed the decision. Edited excerpts from the Supreme Court decision continue below. They ruled that:]

... A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor similar speech outside the school.

The school newspaper here cannot be characterized as a forum for public expression. . . . school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community. The school officials in this case did not deviate from their policy that the newspaper's production was to be part of the educational curriculum and a regular classroom activity under the journalism teacher's control as to almost every aspect of publication.

. . . Educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical [educational] concerns.

The following is an explanation of the difference between the reasoning of the Court between Tinker and Hazelwood:

The question whether the First Amendment requires a school to tolerate particular student speech - the question that we addressed in *Tinker* - is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The first question addresses school officials' abilities to silence a student's personal expression that happens to occur on the school premises, such as wearing a black armband to protest a war. The latter question concerns school officials' authority over school-sponsored publications, theatrical productions, and other activities that students, parents, and members of the public might reasonably believe meets with approval from the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart specific knowledge or skills to students.

Educators are entitled to exercise greater control over this form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may as publisher of a school newspaper or producer of a school play disassociate itself, not only from speech that would substantially interfere with its work or impinge upon the rights of other students, but also from speech that is, for example, ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences. A school must be able to set high standards for the student speech that is disseminated under its sponsorship - standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the "real" world - and may refuse to disseminate student speech that does not meet those standards.

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their

actions are reasonably related to legitimate educational concerns. Accordingly, no violation of First Amendment rights occurred.

Freedom of Expression

Bivens v. Albuquerque Public Schools, 899 F. Supp. 556 (D. N. M. 1995).

This case involved a student who wore a style of pants prohibited by the school. The pants were prohibited due to the association between the pant style and gang activity. The student claimed to be making a statement about his culture by wearing the pants. The school argued that it was trying to create a safe learning environment for all students.

The following are edited excerpts from the decision. To read the entire decision, see: <http://www.tir.com/~sgifford/aclu/bivens.txt>

During the first semester of the 1993-94 school term Plaintiff [Bivens] was enrolled as a ninth grader at Del Norte High School, a school operated and maintained by Albuquerque Public Schools (APS) in Albuquerque, New Mexico. During the first week of the fall semester, the assistant principal warned [Bivens] that his wearing of sagging pants violated the Del Norte student dress code, and that he would not be allowed to wear them to school. [Bivens] persisted in wearing his sagging pants to school, and was given numerous verbal warnings and subjected to a few short-term suspensions ranging from one to three days between August and October 1993.

Finally, in late October 1993, [Bivens] was given a long-term suspension. He was required to turn in his school books and was sent home from school.

The prohibition against sagging pants is part of a dress code that was adopted at Del Norte High School in response to a gang problem. [Bivens] does not deny that a gang problem exists at the school, but maintains that he has never been a gang member, is not affiliated with gangs, and is not aspiring to be a member of a gang. Defendants [school officials] do not contend that [Bivens] is connected with gangs. [Bivens] asserts that he wears sagging pants as a statement of his identity as a black youth and as a way for him to express his link with black culture and the styles of black urban youth.

Types of expressive conduct that have enjoyed the protection of the First Amendment include the burning of an American flag at a political demonstration during the 1984 Republican National Convention to protest the policies of the Reagan administration and some Dallas-based corporations. ... As mentioned above, students' wearing of black arm bands to school to protest the Viet Nam War has also been held to enjoy First Amendment protection. ... Similarly, putting a

peace symbol on an American flag to protest the invasion of Cambodia and the killings at Kent State University has been afforded First Amendment protection.

Not all conduct, however, can be labeled speech. The wearing of a particular type or style of clothing usually is not seen as expressive conduct.

[School officials] argue that [Bivens] has no constitutional right to engage in the practice of sagging because sagging is not speech, nor is it expressive conduct protected by the First Amendment. They assert that the mere fact that [Bivens] may intend to convey some message by his conduct does not bring that conduct within the protection of the First Amendment. ... there must be a great likelihood that the message would be understood by people who observe it objectively. [School officials] also argue vigorously that if sagging is somehow protected by the First Amendment, the school dress code that prohibits sagging still passes constitutional muster.

Not every defiant act by a high school student is constitutionally protected speech. ... [School officials] have presented evidence ... that [Bivens'] ... message supposedly conveyed by wearing sagging pants is by no means apparent to those who view it. For example, sagging is understood by some as associated with street gang activity and as a sign of gang affiliation. Sagging pants and other gang style attire is also understood by some as would-be gang affiliation, because it is often adopted by "wannabes," those who are seeking to become affiliated with a gang. Sagging is not necessarily associated with a single racial or cultural group, and sagging is seen by some merely as a fashion trend followed by many adolescents all over the United States.

[The judge dismissed the case and ruled that the school officials did not violate Bivens' First Amendment rights.]

* * * * *

Castorina v. Madison County School Board, 246 F.3d 536 (6th Cir. 2000).

This case involved students who wore a controversial symbol on their shirts. The symbol was seen by some to be racist, but to the students it represented their heritage. The issue at hand was this particular symbol as well as the inconsistency in which the principal banned some symbols and not others.

The following is a summary of the decision. To read the entire decision, see: The full, unedited decision can be found at:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=6th&navby=case&no=01a0064p>

In the fall of 1997, students Timothy Castorina and Tiffany Dargavell arrived at school wearing matching concert T-shirts with country music star Hank Williams, Jr. pictured on the front and two Confederate flags displayed on the back, along with the phrase "Southern Thunder." The

students said that they were wearing the T-shirts in commemoration of Hank Williams, Sr.'s birthday and to express their southern heritage. The principal informed them that the Confederate flag emblem violated the school's dress code. He gave the students the choice of either turning the shirts inside out for the rest of the day or returning home to change. The principal based this instruction on his interpretation of the school's dress code, which prohibits students from wearing any clothing or emblem "that is obscene, sexually suggestive, disrespectful, or which contains slogans, words or in any way depicts alcohol, drugs, tobacco or any illegal, immoral, or racist implication." When Castorina and Dargavell refused to comply with his directives, the principal called their parents. Their parents strongly supported their children's decision, and the principal suspended both students.

At the end of the three days, Castorina and Dargavell returned to school wearing the same shirts. The principal again explained that the flag was offensive to other students and a violation of the dress code. When the parents reiterated their support for the students' desire to wear the T-shirts, the principal suspended them for a second three-day period. Castorina and Dargavell never returned to Madison Central and were subsequently home-schooled by their parents.

This case raises two main questions: (1) does wearing the Confederate flag T-shirts qualify as the type of speech protected by the First Amendment, and (2) if so, is that speech protected given the special rules governing schools' authority to regulate student speech? The lower court's (District Court) answer to the first question determined that wearing the Hank Williams, Jr. T-shirts did not qualify as "speech." That decision was overturned by a higher court when the Circuit Court determined that wearing the T-shirts did qualify as "speech." The students wore the shirts to express a certain viewpoint and that viewpoint was easily ascertainable by an observer.

On the second question, it appears that the school board enforced the dress code in an uneven and viewpoint-specific manner, thereby violating core values of the First Amendment. In addition, the school did not show that the students' conduct created a likelihood of violence or other disruption that warrants this kind of regulation.

Because the students' intended expression was both a commemoration of Hank Williams, Sr.'s birthday as well as a statement affirming the students' shared southern heritage, their decision to wear the Hank Williams T-shirts constitutes speech falling within the First Amendment.

The facts distinguish this high school's ban on Confederate flags from the bans upheld in other cases in which schools banned flags. First, the students testified that other members of the student body wore clothing depicting Malcolm X and were not disciplined. Second, the students were wearing the disputed clothing in a manner that did not disrupt school activity or cause unrest during the school day. Third, Castorina and Dargavell were clearly making a personal statement in deciding to wear the Hank Williams, Jr. T-shirts; in other words, there is no way that their speech could be considered to be "school-sponsored," nor did the students use any school resources to express their views.

If the students' claims regarding the Malcolm X-inspired clothing (i.e. that other students wore this type of clothing and were not disciplined) and their claims that there were no prior disruptive altercations as a result of Confederate flags are found to be true, the court would be required to strike down the students' suspension as a violation of their rights of free speech. In addition, even if there has been racial violence that necessitates a ban on racially divisive symbols, the school does not have the authority to enforce a viewpoint-specific ban on racially sensitive symbols and not others. On the other hand, if the students could not show this, then the principal and school board may have acted within their constitutional authority to control student activity and behavior.

[The outcome of this case is still undetermined and remains in the courts.]

* * * * *

Boroff v. Van Wert City Board of Educ., 220 F.3d 465 (6th 2000).

This case concerned a student who wore a controversial shirt that the school found offensive to others' religions. The same student continued to wear other "offensive" shirts all week that the school felt contradicted its mission. The school would not allow the student to wear the shirts.

The following is a summary of the decision. The entire, unedited opinion can be found at <http://laws.lp.findlaw.com/6th/00a0249p.html>.

In August 1997, Nicholas Boroff, then a senior at Van Wert High School, went to school wearing a Marilyn Manson T-shirt. The front of the T-shirt depicted a three-faced Jesus, accompanied by the words "See No Truth. Hear No Truth. Speak No Truth." On the back of the shirt, the word "BELIEVE" was spelled out in capital letters, with the letters "LIE" highlighted. Marilyn Manson's name was displayed prominently on the front of the shirt. At the time, the high school had a "Dress and Grooming" policy stating, "clothing with offensive illustrations, drug, alcohol, or tobacco slogans ... is not acceptable." A school official told Boroff that his shirt was offensive and gave him the choice of turning the shirt inside-out, going home and changing, or leaving and being considered truant. Boroff left school.

On the next school day, Boroff wore another Marilyn Manson T-shirt to school. The superintendent told Boroff that students would not be permitted to wear Marilyn Manson T-shirts on school grounds. In spite of the superintendent's warning, Boroff wore different Marilyn Manson T-shirts on each of the next three school days. The shirts featured pictures of Marilyn Manson, whose appearance can fairly be described as ghoulish and creepy. Each day, Boroff was told that he would not be permitted to attend school while wearing the T-shirts.

Boroff then claimed that the administrators' refusal to allow him to wear Marilyn Manson T-shirts in school violated his First Amendment right to free expression. Boroff stated that similar

T-shirts promoting other bands, such as Slayer and Megadeth, were not prohibited. He also felt that the T-shirts were not “offensive.”

The lower court determined that a school may prohibit a student from wearing a T-shirt on school grounds if it is offensive. It does not matter if the shirt is not obscene or has not been shown to cause a substantial disruption of the academic program. Therefore, the school was not unreasonable by enforcing its dress code.

The School in this case found the Marilyn Manson T-shirts to be offensive because the band promotes destructive conduct and demoralizing values that are contrary to the educational mission of the school. Specifically, the principal found the “three-headed Jesus” T-shirt to be offensive because of the “See No Truth. Hear No Truth. Speak No Truth.” mantra on the front, and because word “LIE” was highlighted in the word “BELIEVE” on the back of the shirt. The principal specifically stated that the distorted Jesus figure was offensive because “mocking any religious figure is contrary to our educational mission which is to be respectful of others and others' beliefs.” The other T-shirts were treated with equal disapproval.

Furthermore, the principal stated that some of the lyrics from Marilyn Manson songs were offensive. The principal attested that those types of lyrics were contrary to the school mission and goal of establishing a common core of values that include human dignity and worth, self respect, and responsibility. The principal also submitted magazine articles in which Marilyn Manson himself admits that he is a drug user and promotes drug use. The principal concludes from his fourteen years of experience that children are genuinely influenced by the rock group and such propaganda.

The Circuit Court’s view was that the evidence did not indicate that the school intended to suppress the expression of Boroff’s viewpoint because of its religious implications. The court felt that the School prohibited Boroff’s Marilyn Manson T-shirts generally because this particular rock group promotes disruptive and demoralizing values that are inconsistent with and counter-productive to education. The court determined that all of the T-shirts were banned in the same manner for the same reasons--they were determined to be vulgar, offensive, and contrary to the educational mission of the school.

NOTE: Students may observe that the outcome of this case may be quite different from the outcome in *Castorina v. Madison County School Board* though the facts are very similar. This is a good illustration of the fact that individual courts can and do, on many issues, come to very different decisions.

ACTIVITIES

Underlying Goals: Students should begin to appreciate that the law is not just abstract, but applies to them in very real ways. Opposing views and full discussion by everyone who wants to speak should be encouraged. Using the background cases, some of the following activities can be done either by the class as a whole or individually.

Activity #1: Key Facts

After reading the summaries of the First Amendment cases, fill in the key facts. (*Suggested answers are in parentheses.*)

Tinker v. Des Moines Independent Community School District

The strongest argument made during the trial, on behalf of Tinker, was that the armbands caused no (*substantial disruption or material interference*) with the learning environment of others. (*Fear*) or (*Apprehension*) are not sufficient reasons for schools to be able to infringe on students' rights to free speech. In addition, another important issue in the *Tinker* case was the (*inconsistency*) in which restrictions were applied to students. In other words, the black armbands were (*prohibited*) while other symbols, such as pins, were not.

Bethel School District No. 403 v. Fraser

Fraser's nomination speech that contained sexually explicit language was considered to be in violation of the school's ("*disruptive-conduct rule.*") The "disruptive-conduct rule" prohibits (*offensive language*). The Supreme Court ruled that the school has the right to discipline (*a student's*) speech. The First Amendment protects (*political speech*) by adults to make a (*political point*), but does not extend the protection to (*students*) in public school.

Hazelwood School District v. Kuhlmeier

Educators have (*control*) over the school newspaper produced as part of its journalism class if educators decide that the message is inconsistent with the (*school's mission*). Educators have the right to editorial control if their decisions to edit are based on legitimate (*educational concerns*) or if they feel the articles would interfere with the rights of (*others*).

Bivens v. Albuquerque Public Schools

The school in this case adopted their dress code in response to (gang activity). One reason Bivens gave for wearing the pants was (culture), but since his fellow students did not understand his message, the courts decided to (dismiss the case). Therefore, not all conduct, including one's style of clothing, can be labeled (protected speech).

Castorina v. Madison County School Board

After the students were suspended for wearing T-shirts with the confederate flag on them, they argued in court that first, the school had allowed other students to wear T-shirts with (symbols). Second, they argued that they did not cause a (disruption) in school and third, their speech could in no way be considered (school-sponsored). The court ordered the case be heard because if the school is to put a ban on racially divisive symbols, it has to apply the ban (consistently).

Boroff v. Van Wert City Board of Education

Boroff claimed that the school violated his (First Amendment Rights) by not allowing him to wear Marilyn Manson T-shirts. The shirt primarily in question was said to go against the school's educational mission in two ways: 1) (mocked the religious values of others) and 2) (offended others).

Activity #2: Class Discussion

Use any of the following questions to discuss the background cases:

1. In *Tinker v. Des Moines*, the facts of the case indicate that only a few students wore the armbands and only 5 students were suspended. Should there be a number attached to situations like this in order for them to be considered "disruptive" or "a group demonstration?" For example, if thousands of students would have worn the armbands, should there have been a different consequence? Explain. (*Tinker*)

2. Should students be allowed to swear in the classroom? Under what circumstances is that OK? Not OK? Are there certain words that are acceptable? Are some words not acceptable? What about insulting words that may not be considered swearing? Who should decide those rules and why? (*Fraser*)

3. If someone in a classroom is offended by having the Lord's name said in vain, should such phrases be disallowed? Explain. (*Fraser*)

4. What is the difference between tolerate and promote? (*Hazelwood*)
5. What is the difference between the “speech” in *Tinker* and in *Hazelwood*? (*Hazelwood*)
6. If school related media is held to higher standards than media in the “real” world, why doesn’t society just raise the standards for the “real” world too? (*Hazelwood*)
7. If a student’s style of dress is controversial and he or she wears it to convey a message, but observers do not notice that message, should the student be able to use the intended message as a justification to continue wearing the clothes? Explain. (*Bivens*)
8. In *Bivens v. Albuquerque*, the student was not allowed to wear sagging pants because of the association with gangs. The student, however, claimed that he wore the pants as a link to black culture. Do you think the situation would be different if the clothes in question were the traditional garments actually worn in someone’s homeland? Explain. (*Bivens*)
9. Compare and contrast the symbolism of a Malcolm X T-shirt and the symbolism of a T-shirt that displays the Confederate flag. Should the same dress code rules apply to both types of shirts? Explain. (*Castorina*)
10. The school involved in *Castorina v. Madison County* is located in Madison County, Kentucky. Explain how you think the situation may have been handled differently either by fellow students, parents or school administrators if the school were located in Michigan, for example. (*Castorina*)
11. In *Boroff v. Van Wert*, Nicholas Boroff used one of the same defenses used in the *Castorina* case: the administration was not applying the dress code consistently. Students at his school had worn other rock shirts and they were not forced to change. The argument worked in the *Castorina* case, why do you think it did not work in the *Boroff* case? What other things were involved? (*Boroff*)
12. There are many rock groups that have “offensive” lyrics that promote messages that challenge school missions, but a band’s T-shirts may not be offensive or challenging. What do you think would happen if a student wore a shirt to school that indicated the band’s name, but had no offensive language actually on the shirt? Would disciplinary action be likely? Should disciplinary action be taken? How would the administration know which T-shirts to ban? (*Boroff*)

Activity #3: Role-play

Working in groups, students can develop a skit to demonstrate the essential points of each background case.

Activity #4: Presentation

Working in groups, students can develop overhead or multi-media presentations to explain the case, ruling and significance to the rest of the class.

Activity #5: First Amendment Scenario - Free Speech

The following case is an actual court case. However, this activity is organized in a way that allows your students to read the facts before knowing how the court really decided. After reading the beginning of the case, students can draw their own conclusions about how the case should be decided. After doing one or both of the next two activities, the students can read the court's decision.

Discuss the case and vote on the decision as a group or write the decision individually answering the following question: Should Emmett's punishment be dropped or not? You can provide the list of arguments below, or have the students brainstorm their own list and compare it with the provided arguments and discuss which arguments are stronger.

Emmett v. Kent School District, 92 F. Supp. 2d 1088 (Western District of Wa. 2000). The following are edited excerpts from the decision. To read the entire decision, see: <http://www.edlaw.fplc.edu/Text/Library/case-emmett-n.html>.

The plaintiff is a high school student, Nick Emmett, who is seeking a restraining order to prevent his school district from enforcing a suspension against him. Emmett posted a web page on the Internet that was created from his home without using school resources or time. The Web page was entitled the "Unofficial Kentlake High Home Page," and included disclaimers warning a visitor that the site was not sponsored by the school, and for entertainment purposes only. It contained some commentary on the school administration and faculty. Two aspects of the site are at issue. The page posted mock "obituaries" of at least two of Emmett's friends. The obituaries were written tongue-in-cheek, inspired, apparently, by a creative writing class in which students were assigned to write their own obituary. The mock obituaries became a topic of discussion at the high school among students, faculty, and administrators. In addition, Emmett allowed visitors to the web site to vote on who would "die" next -- that is, who would be the subject of the next mock obituary.

Three days later, an evening television news story characterized Emmett's web site as featuring a "hit list" of people to be killed, although the words "hit list" appear nowhere on the web site. That night, Emmett removed his site from the Internet. The next day, he was summoned to the school principal's office, and eventually told that he was placed on emergency expulsion for intimidation, harassment, disruption to the educational process, and violation of Kent School

District copyright. The emergency expulsion was subsequently modified to a five-day short term suspension. Emmett's suspension also includes a prohibition on participation in school sports, including basketball practice and his team's playoff game.

The School's Arguments:

1. Students maintain some, but not all, First Amendment rights in a school setting; the school has authority to restrict those rights to ensure a proper learning environment.
2. The school's name was used on web site and it was not an authorized site.
3. Emmett used names of specific students and staff in an intimidating and harassing way.
4. Harassment and intimidation are well within the boundaries of school disciplinary action.
5. The intended audience was obviously students of Kentlake High School.

Emmett's Arguments:

1. His speech was not at a school assembly as it was in *Fraser*.
2. His speech was not in a school newspaper as it was in *Hazelwood*.
3. The web site was entirely outside of the school's supervision and control; a warning was also on the site that said the site was "unofficial" and not sponsored by the school.
4. No evidence was shown to prove that the web site intended to threaten anyone, did actually threaten anyone, or manifest any violent tendencies.

Human Graph - Vote With Your Feet

This activity is a way to physically demonstrate that opinions change as circumstances change. Draw or tape a line for students to stand on down the middle of the classroom. After the case is presented, all of the students should stand on the line. Ask the question: Do you think that Emmett should have been suspended? The students who agree with the suspension should take a step to the right. If they disagree with the suspension, they should take a step to the left. Using the questions below, change the facts. Students can continue to move to the right if they still think he should have been suspended or to the left if they don't.

- ◇ What if the media would have covered his story in a positive light, portraying Emmett as the victim just trying to be creative and have typical teenage fun? What if the media would not have covered it at all?
- ◇ What if the obituaries were about people who were not Emmett's friends? What if they were about his enemies? What if they were about people who he seemingly had no relationship to at all? What about teachers or administrators?
- ◇ What if Emmett did not take the web site off the Internet? What if he continued the site as if nothing happened? What if after he was suspended, he targeted his site at the people who punished him?

- ◇ What if Emmett used school equipment to create and maintain the site? What if he used time in computer class for the site? What if he stayed after school and used his own time in the school's computer lab?

Court Decision for Emmett v. Kent

The First Amendment provides some, but not complete, protection for students in a school setting. The Supreme Court in *Tinker* stated that students do not abandon their right to expression at the schoolhouse gates, but that prohibition of expressive conduct is justifiable if the conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school.

The Supreme Court defined the limits of *Tinker* in two cases in the 1980s. In *Bethel v. Fraser*, the Court held that a student's sexually suggestive speech at a school assembly was justifiable grounds for punishment because obscene speech is entirely unprotected by the First Amendment. In his opinion in *Fraser*, Justice Brennan pointed out that case does not suggest that the student's speech would be grounds for punishment if it were given outside the school setting. And in *Hazelwood v. Kuhlmeier*, the Court found that school administrators could ban student writings from the school-sponsored newspaper because the paper was a nonpublic forum in which content restrictions are allowable.

In the present case, Emmett's speech was not at a school assembly, as in *Fraser*, and was not in a school-sponsored newspaper, as in *Hazelwood*. It was not produced in connection with any class or school project. Although the intended audience was undoubtedly connected to Kentlake High School, the speech was entirely outside of the school's supervision or control.

The school district has presented no evidence that the mock obituaries and voting on this web site were intended to threaten anyone, did actually threaten anyone, or manifested any violent tendencies whatsoever. This lack of evidence, combined with the above findings regarding the out-of-school nature of the speech, indicates that Emmett has a substantial likelihood of winning in court.

Held: The school district was prevented from imposing the suspension upon Emmett because missing school and sporting events would cause irreparable injury to him.

Follow-up Discussion:

These questions, related to the Emmett case, can be used for discussion, journal writing, essay starters, etc.

1. Should students be able to publish or make widely known their dissatisfaction or satisfaction with a teacher (e.g. write a letter to the editor, stand outside school with a sign, complain at a

PTSA meeting, display comments on a web site)? If no, why not? If yes, what would be considered reasonable or unreasonable things to say?

2. Should teachers be allowed to publicly express dissatisfaction or satisfaction with students (e.g. announce failing students during an assembly, publish a “dunce” list, talk about bothersome students at a party, write an article to the paper reporting a specific student as a cheater and liar)? If no, why not? If yes, what are reasonable or unreasonable things to say?

3. What does this case say about our right to free press? Are there times when the press should be restrained? Should a teenager’s reputation be subjected to a media that is willing to exaggerate for a good story? What are the risks if some things are off limits to the press? What should be off limits? Who should decide?

4. Using context clues, define “irreparable injury” as it is used in the last sentence of the case.

Activity #6: Public Opinion Polling

1. Have students create a short public opinion poll that relates to their First Amendment right to free speech. For example, the poll could address censorship of music or television, burning the American flag or how their rights are affected in school. (Make sure the poll includes a space to record the person’s age and gender for purposes of analysis.)

2. Arrange for students to visit other classrooms to distribute and collect the information. If that is not logistically possible, the students could be assigned to ask the poll questions on their own time and then bring the results to class. (If that approach is taken, it may be helpful to set guidelines about who should be polled because, for example, if some students ask their grandparents and some ask their younger siblings, the results may be hard to analyze. Asking a variety of people is great, but making sure all ages and genders are polled evenly is helpful).

3. Spend some time tallying the data -- first in small groups and then combine the group results on a large chart on the board.

4. Analyze the results in order to draw conclusions. This can be done as a class or in small groups. If the small group approach is used, each group should report to the class what conclusions they reached from their data.

5. Write about it. If possible, coordinate the project with the school newspaper. Submit the results and some articles for publication. This is a great way for the students polled to see the results and learn about the First Amendment at the same time. Suggestions: create charts of the results breaking them down by age and/or gender, write an article about the experience and the process the students went through in obtaining the information, write an analysis article about

some of the interesting poll results, write an article about the First Amendment itself and how it affects youth in this country.

6. If you do not have access to the school newspaper, the students can create a class newspaper and get permission to distribute it in the school. This is a wonderful real-life exercise about free speech and free press.

Activity #7: Freedom of Speech and Press at your School

Have students write a variety of articles about potentially controversial topics that they would like to see printed in the school newspaper. The class could even put the articles into newspaper format. Then, submit the articles to the journalism teacher, principal and possibly even the superintendent or school board to see if the articles would be approved for printing in the school newspaper. Also, have the students make appointments to speak with the people who have editorial control over the paper and ask some follow-up questions: Why was the article approved? Why was the article not approved? What could be changed in order to turn an unaccepted article into an acceptable article?

Teaching the First Amendment: Religious Freedom

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Introduction

The Establishment Clause of the First Amendment prohibits the federal government from establishing one or more official religions for the country. It also prohibits the government from favoring one religion over another or religion over non-religion. The Free Exercise Clause of the First Amendment prevents the government from putting unreasonable restrictions on particular religious practices.

Almost every government in Europe had a government-sponsored Christian church. Those who were not members of that established church were denied certain rights. They were often excluded from universities and disqualified for civil or military positions. Sometimes they were persecuted or even killed for their beliefs.

The concept that different religions could coexist was not yet widely accepted. Most colonies had an established church, and there was general intolerance for nonmembers.

The religious movement of the 18th century, the Great Awakening, drew many away from the idea of an established church. As evidenced by the Constitution, many also believed that freedom to practice the religion of one's choice was an essential right that needed protection.

James Madison, author of the First Amendment, believed that government should do only what is necessary to keep the peace and prevent one religious group from violating the rights of others and that government should not otherwise interfere with religion in any way.

Teaching the First Amendment: Religious Freedom Unit Materials

Class Discussion and Pre-test:

Students should write their answers to the following questions before beginning discussion on this unit. Review their answers again at the end of the unit to gauge any change of opinion. The pre-test can also be used as a journal activity in which students are later asked to reflect upon and analyze their opinion and/or opinion change.

1. What are the advantages and disadvantages of having religious diversity in a society?
2. Since most people in America are Christians, why shouldn't we take a vote to make Christianity the official religion of the United States?
3. Almost everybody agrees that prayer is a good thing. Why don't we say a short prayer before school starts every day asking God to guide us in our studies and work for that day?
4. Would there be less violence in school if there was religion in school? Do you think that school tragedies could be averted?

Background Court Cases

Engel v. Vitale, 370, U.S. 421 (1962)

This case involved the reading of a prayer at school that was written by the school. The issue was whether or not the prayer should be read even if it did not address a specific religion and even if the school allowed students to remain silent during the prayer.

The following are edited excerpts from the decision. To read the entire decision, see:
http://supct.law.cornell.edu:8080/supct/historic_idx/370_421.htm)

Because of the prohibition of the First Amendment against the enactment of any law "respecting an establishment of religion, ... state officials may not compose an official state prayer and require that it be recited in the public schools of the State at the beginning of each school day -- even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while the prayer is being recited."

“Shortly after the practice of reciting the Regents' prayer was adopted by the School District, the parents of ten pupils brought this action in a New York State Court insisting that use of this

official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children.” They ruled that the schools could use “the Regents' prayer as a part of the daily procedures of its public schools so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection.”

The Supreme Court overruled the decision and said, “by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this...

...the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention, since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that, in this country, it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.”

* * * * *

School District of Abington Township, Pennsylvania v. Schempp, 374 U.S. 203 (1963)

This case involved reading Bible verses during the morning announcements at school. Students were not required to listen to the verses, but if they left the room to avoid hearing the prayer, they also missed any important announcements and were separated from their peers.

The following are edited excerpts from the decision. To read the entire decision, see:
http://supct.law.cornell.edu:8080/supct/historic_idx/374_203.htm

School Policy at issue: At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.

Edward Schempp, the children's father, testified that, after careful consideration, he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be "labeled as `odd balls'" before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable "to lump all particular religious difference[s] or religious objections [together] as `atheism,'" and that, today, the word "atheism" is often connected with

"atheistic communism," and has "very bad" connotations, such as "un-American" or "anti-Red," with overtones of possible immorality. Mr. Schempp pointed out that, due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that, if Roger and Donna were excused from Bible reading, they would have to stand in the hall outside their "homeroom," and that this carried with it the imputation of punishment for bad conduct.

On each school day at the Abington Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system, and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages and read from any version he chooses, although the only copies furnished by the school are the King James version, copies of which were circulated to each teacher by the school district. During the period in which the exercises have been conducted, the King James, the Douay, and the Revised Standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made, and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not participate in the exercises.

It appears from the record that, in schools not having an intercommunications system, the Bible reading and the recitation of the Lord's Prayer were conducted by the home-room teacher, who chose the text of the verses and read them herself or had students read them in rotation or by volunteers. This was followed by a standing recitation of the Lord's Prayer, together with the Pledge of Allegiance to the Flag by the class in unison and a closing announcement of routine school items of interest.

There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And, so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment, within the scope of its coverage, permits no exception; the prohibition is

absolute. The First Amendment, however, does not say that, in every and all respects, there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to . . . freedom of worship . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality.

* * * * *

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000).

This case involved reading a prayer that was approved by the community at a school football game. The prayer was written by a student who was elected “chaplain” and who read the prayer at all of the games.

The following are edited excerpts from the decision. To read the entire decision, see: <http://supct.law.cornell.edu/supct/html/99-62.ZO.html>.

Prior to 1995, a student elected as Santa Fe High School’s student council chaplain delivered a prayer over the public address system before each home varsity football game. Respondents, Mormon and Catholic students or alumni and their mothers, filed a suit challenging this practice and others under the Establishment Clause of the First Amendment. While the suit was pending, the school district adopted a different policy, which authorizes two student elections, the first to determine whether “invocations” should be delivered at games, and the second to select the spokesperson to deliver them. After the students held elections authorizing such prayers and selecting a spokesperson, the District Court entered an order modifying the policy to permit only nonsectarian, nonproselytizing prayer.

Held: The District’s policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause.

(a) ... The District argues unpersuasively that ... the policy’s messages are private student speech, not public speech. The delivery of a message such as the invocation here—on school property, at school-sponsored events, over the school’s public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as “private” speech. ... The District simply does not evince an intent to open its ceremony to indiscriminate use by the student body generally, ... but, rather, allows only one student, the same student for the entire season, to give the invocation, which is subject to particular regulations that confine the content and topic of the student’s message. The majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced. The policy involves both perceived and actual endorsement of religion, ... declaring that the student elections take place because the District “has chosen to permit” student-delivered invocations, that the invocation “shall” be conducted “by the high school student council” “[u]pon advice and direction of the high school principal,” and that it must be consistent with the policy’s goals, which include “solemniz[ing] the event.” A religious message is the most obvious method of solemnizing an event. Indeed, the only type of message expressly endorsed in the policy is an “invocation,” a term which primarily describes an appeal for divine assistance and, as used in the past at Santa Fe High School, has always entailed a focused religious message. A conclusion that the message is not “private speech” is also established by factors beyond the policy’s text, including the official setting in which the invocation is delivered by the policy’s sham secular purposes and by its history, which indicates that the District intended to preserve its long-sanctioned practice of prayer before football games.

(b) The Court rejects the District’s argument that its ... does not coerce students to participate in religious observances. The first part of this argument—that there is no impermissible government coercion because the pre-game messages are the product of student choices—fails for the reasons discussed above explaining why the mechanism of the dual elections and student speaker do not turn public speech into private speech. The issue resolved in the first election was whether a student would deliver prayer at varsity football games, and the controversy in this case demonstrates that the students’ views are not unanimous on that issue. One of the Establishment Clause’s purposes is to remove debate over this kind of issue from governmental supervision or control. Although the ultimate choice of student speaker is attributable to the students, the District’s decision to hold the constitutionally problematic election is clearly a choice attributable to the State. The second part of the District’s argument—that there is no coercion here because attendance at an extracurricular event, unlike a graduation ceremony, is voluntary—is unpersuasive. For some students, such as cheerleaders, members of the band, and the team members themselves, attendance at football games is mandated, sometimes for class credit. The District’s argument also minimizes the immense social pressure, or truly genuine desire, felt by many students to be involved in the extracurricular event that is American high school football. The Constitution demands that schools not force on students the difficult choice between whether to attend these games or to risk facing a personally offensive religious ritual.

(c) ...Another constitutional violation warranting the Court's attention is the District's implementation of an electoral process that subjects the issue of prayer to a majoritarian vote. Through its election scheme, the District has established a governmental mechanism that turns the school into a forum for religious debate and empowers the student body majority to subject students of minority views to constitutionally improper messages.

* * * * *

Stone v. Graham, 449, U.S. 39 (1980)

This case involved a state law that required schools to post the Ten Commandments in all classrooms. The law did not require, however, that the Commandments be discussed or read, they must simply be posted on the wall.

The following are edited excerpts from the decision. To read the entire decision, see:
http://supct.law.cornell.edu:8080/supct/historic_idx/449_39.htm

A Kentucky statute requiring the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public school classroom in the State has no secular legislative purpose, and therefore is unconstitutional as violating the Establishment Clause of the First Amendment. While the state legislature required the notation in small print at the bottom of each display that the secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States, such an "avowed" secular purpose is not sufficient to avoid conflict with the First Amendment.

The preeminent purpose of posting the Ten Commandments, which do not confine themselves to arguably secular matters, is plainly religious in nature, and the posting serves no constitutional educational function. That the posted copies are financed by voluntary private contributions is immaterial, for the mere posting under the auspices of the legislature provides the official support of the state government that the Establishment Clause prohibits. Nor is it significant that the Ten Commandments are merely posted, rather than read aloud, for it is no defense to urge that the religious practices may be relatively minor encroachments on the First Amendment...

The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters, such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day.

This is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization,

ethics, comparative religion, or the like. Posting of religious texts on the wall serves no such educational function. If the posted copies of the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective under the Establishment Clause.

* * * * *

Equal Access Act

For more information, see: http://www.fac.org/publicat/cground/ch11_1.html.

The Equal Access Act became law on August 11, 1984. Congress's primary purpose in passing the Act, according to the Supreme Court, was to end "perceived widespread discrimination" against religious speech in public schools. While Congress recognized the constitutional prohibition against government promotion of religion, it believed that non-school-sponsored student speech, including religious speech, should not be excised from the school environment.

There are three basic concepts in the Act. The first is *nondiscrimination*. If a public secondary school permits student groups to meet for student-initiated activities not directly related to the school curriculum (non-curriculum related student groups, such as chess club, stamp-collecting club, or community service club), it is required to treat all such student groups equally. This means the school cannot discriminate against any students conducting such meetings "on the basis of the religious, political, philosophical, or other content of the speech at such meetings." This language was used to make clear that religious speech was to receive equal treatment, not preferred treatment.

The second basic concept is protection of *student-initiated and student-led meetings*. Student-initiated means that the students themselves are seeking permission to meet and that they will direct and control the meeting. Teachers and other school employees may not initiate or direct such meetings, nor may outsiders. The Supreme Court has held unconstitutional state-initiated and state-endorsed religious activities in the public schools. (This Act leaves the "school prayer" decisions undisturbed.) However, in upholding the constitutionality of the Act, the Court noted the "crucial difference between government speech endorsing religion, which the Establishment clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect."

The third basic concept is *local control*. The Act does not limit the authority of the school to maintain order and discipline or to protect the well being of students and faculty.

ACTIVITIES

Underlying goals: Students should begin to appreciate that the law is not just abstract, but applies to them in very real ways. Opposing views and full discussion by everyone who wants to speak should be encouraged. Using the background cases, some of the following activities can be done either by the class as a whole or individually.

Activity #1: Key Facts

After reading the summaries of First Amendment cases, fill in the key facts. (*Suggested* answers are in parentheses).

Engel v. Vitale

The First Amendment (prohibits) prayer in public school even if it is (denominationally neutral) and students want to remain (silent).

School District of Abington Township, Pennsylvania v. Schempp

Abington High School began each morning reading (Bible verses), (The Lord's Prayer) and a (flag salute). The Supreme Court ruled that these practices (violated the First Amendment).

Santa Fe Independent School District v. Doe

Two elections were held, one to decide if (there should be prayer at the games), a second to (elect a spokesperson). The school district argued that reading the prayers was (private) speech. The Court disagreed because the speech was on (school property) at a (school-sponsored event) given over the (school's public address system) supervised by (school faculty).

Stone v. Graham

A Kentucky law required that the (Ten Commandments) be posted on classroom walls. Copies of the document were paid for by (private contributions). The Bible may be used in classes to discuss (history, civilization, ethics, and comparative religion).

Equal Access Act

The three concepts of the Act are (*non-discrimination, student-initiated or student-led meetings, and local control*). Religious speech must receive (*equal treatment*), but not (*preferred treatment*). All non-curriculum related groups must be (*treated equally*).

Activity #2: Class Discussion

Use any of the following questions to discuss the background cases:

- 1) What do the religious clauses of the First Amendment mean?
- 2) What is the purpose of the First Amendment as it applies to majority v. minority)?
- 3) If the community wants prayer, why shouldn't they be able to have it?
- 4) Should there be majority rule regarding religion? Explain.
- 5) When is speech considered private speech?
- 6) When is speech public speech?
- 7) Should there be different rules for school and after-school events? Why or why not?
- 8) Is it a violation of the Constitution for a student to pray by his/herself? What about with another student before school, during lunch, or after school? Explain.
- 9) Is it okay to have a religious activity in the classroom if students don't have to participate? Explain.
- 10) What if the courts allowed school board members to independently make decisions on this subject? How could things change? Would this be beneficial or harmful? Explain.
- 11) In the *Santa Fe* case, what was the goal of the policy and why did the school district change it?
- 12) What were the elections all about?
- 13) Should invocations be delivered at school events? If so, what student should deliver them?
- 14) In *Stone v. Graham*, how did the state justify the posting of the Ten Commandments in the classroom?
- 15) Can a document be both a legal code and religious in nature? Explain the similarities and differences.
- 16) Would there be a difference if the Commandments were simply hanging on the wall or read out loud?

Activity #3: Role-play

Working in groups, students can develop a skit to demonstrate the essential points of each background case.

Activity #4: Presentation

Working in groups, students can develop overhead or multi-media presentations to explain the case, ruling, and significance to the rest of the class.

Activity #5: First Amendment Scenario - Religious Freedom

After reading the following case, students can make their own conclusions about how the case should be decided. The case can be discussed and voted on as a group or written up individually: Should Wanda's punishment be dropped or not? You can provide the list of arguments below, or the students can brainstorm their own list and compare it with the provided arguments and discuss which arguments are stronger. After doing this, the students can determine how a court should decide.

The following scenario was an actual situation in a public high school. However, a settlement was reached and the case never went before the court:

Wanda is a member of the Wiccan faith. Wicca is a pagan religion recognized by the U.S. courts. Wiccans celebrate the changing of the seasons and nature. They do not worship the devil; they do not promote violence; they do not try to convert others to their faith.

The major icon of the Wicca religion is the pentagram, a five-pronged star inside of a circle. It is symbolic in the same way that a cross is to members of the Christian faith or the Star of David is to members of the Jewish faith. Wanda wears the pentagram that her parents gave her to school every day. The pentagram is also a gang symbol. Wanda is not a gang member.

The principal at Center High School, which Wanda attends, saw incidences of gang violence becoming more frequent at the school. In the middle of the school year he issued a new policy banning gang symbols because gangs have used the symbol to intimidate rival gangs and other students.

The principal told Wanda that she could continue to wear her pentagram, but that she would have to wear it under her clothing.

Wanda's lawyer says that she has a right to celebrate her religion as much as Christians who wear the cross do. The school lawyer says that the principal's first duty is to maintain order and discipline in the school and that he feels that the display of pentagrams is disruptive.

The School's Arguments:

1. While the right to hold particular religious beliefs is absolute, the right to freely exercise those beliefs in school is not. The Wicca religion does not require its followers to wear pentagrams.
2. The school district is not trying to influence Wanda's religious beliefs. The policy allows her to wear her pentagram under her clothing while in school and does not address wearing the

pentagram off school grounds. The policy is only concerned with conduct, not religious beliefs.

3. The purpose of the policy is to provide a safe and secure educational environment for all students without interfering with discipline and learning. In a high school setting, these concerns must override the concerns of one particular student.

Wanda's Arguments:

1. The school district has an obligation to provide a safe environment. But the constitutional rights of its citizens overrides that obligation. The Supreme Court has stated that “the loss of First Amendment rights for even a short period of time unquestionably constitutes irreparable injury.”
2. The policy is constitutionally overbroad because it prohibits the First Amendment guarantee of freedom of religion. The school has no conceivable valid interest in prohibiting Wiccans from carrying on their activities in a school setting.
3. The policy directly violates the Establishment Clause because it illegally favors some religions (Christianity) over another (Wicca). The Establishment Clause guarantees complete neutrality by the state.
4. The policy directly violates the Free Exercise Clause because it is specifically directed at Wanda's religious beliefs.

Human Graph - Vote With Your Feet

This activity is a way to physically demonstrate that opinions change as circumstances change. Draw or tape a line for students to stand on down the middle of the classroom. After the case is presented, all of the students should stand on the line. Ask the question: Do you think Wanda was justified in wearing her necklace? The students who agree should take a step to the right. If they disagree, they should take a step to the left. Using the questions below, change the facts. Students can continue to move to the right if they still think Wanda was justified or to the left if they don't.

- ◇ The student is a Satanist who believes in animal sacrifice and devil worship. (NOTE: This can be a really touchy issue in some situations).
- ◇ The student belongs to a religion that requires her to pray in a loud manner that might be disruptive to the educational process.
- ◇ The student is a known gang member who says she joined the Wicca religion, but has no knowledge of or seeming interest in the religion.

Activity #6: Polling

The class should brainstorm questions for two different polls to be taken by non-class members to see what arguments are most persuasive.

Poll #1: Questions should be based on the school lawyer's arguments (example: Do you believe the school has a right to regulate behaviors that could cause a serious disruption?)

Poll #2: Questions should be based on Wanda's lawyer's arguments (example: Do you believe schools have the right to violate students' Free Speech rights in order to maintain order?)

NOTE: The last question on both polls ought to be "Should a student be allowed to wear a religious symbol to school that bothers others?"

The students should then distribute both polls to other students. In order to have the best data for analysis, make sure that the students who are polled are evenly distributed among sex and age.

The results of the poll can be analyzed to see if responses to the last question are influenced by the previous questions. To do this analysis, have students compile their results so that the entire class has access to everyone's data and then, as a class, discuss the conclusions. After the class has an understanding of how to analyze poll data, divide students into groups to come up with an analysis on their own. Reconvene as a class and share the analyses.

The chart on the following page may be useful for students to log their results as they give the poll or it could be used to display the tally of the class' polling results.

Poll Results Discussion:

1. Which arguments, the school's or Wanda's were more persuasive to other students?
2. Did you personally agree with the poll results?
3. How can survey data be distorted?
4. What are the implications of survey bias?

POLL #1

1. Do you believe the school has a right to regulate behaviors that could cause a serious disruption?	yes (female)		no (male)		2.Should a student be allowed to wear a religious symbol to school that bothers others?		yes (female)		no (male)	
	yes (female)	no (female)	yes (male)	no (male)	yes (female)	no (female)	yes (female)	no (female)	yes (male)	no (male)
Age 14										
Age 15										
Age 16										
Age 17										
Age 18										
Age 19										
Totals										
Total yes										
Total no										

POLL #2

1. Do you believe schools have the right to violate students' Free Speech rights in order to maintain order?	yes (female)		no (male)		2.Should a student be allowed to wear a religious symbol to school that bothers others?		yes (female)		no (male)	
	yes (female)	no (female)	yes (male)	no (male)	yes (female)	no (female)	yes (female)	no (female)	yes (male)	no (male)
Age 14										
Age 15										
Age 16										
Age 17										
Age 18										
Age 19										
Totals										
Total yes										
Total no										

Activity #7: Post-Test

These questions can be used to further discussion, as a written activity, or to reflect upon in a journal. Remember to review the pre-test questions and add the following:

1. In the interest of creating a more civil society, what values should be taught in public schools?
2. Is religion that important any more? As we enter the 21st Century might we not be better off by de-emphasizing religion in and out of schools?
3. Has your mind changed about the question of religion in school? Explain.

Teaching the Fourth Amendment: Search and Seizure

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Introduction

The colonists' experience with house-to-house searches by British officers led to the Fourth Amendment requirement that the police obtain a warrant from a judge upon showing probable cause that a crime has been committed by a particular individual. The underlying philosophy can be put simply as the citizen's basic "right to be left alone" by government. Although the word "privacy" is not used in the Bill of Rights, the Fourth Amendment protects our right to privacy while curbing police abuse of power.

Two standards are used by the courts before a warrant to stop or search is given. The first, *probable cause*, is knowledge of enough facts to cause a cautious person to believe that a particular person has committed a crime. The second, *reasonable suspicion*, is reason to suspect that a person has committed or is about to commit a crime. Reasonable suspicion is a less demanding standard than probable cause. However, reasonable suspicion does not exist unless a person can give a reasonable explanation of why he/she suspects that a particular person is involved in illegal activity.

The Fourth Amendment places a limitation on the government's power. Although the police might solve crimes more efficiently without the Fourth Amendment, the Amendment guarantees a citizen's right to be left alone unless there is sufficient cause to believe that a crime has been or is about to be committed.

Teaching the Fourth Amendment: Search and Seizure Unit Materials

Class Discussion and Pre-test:

Students should write their answers to the following questions before beginning discussion on this unit. Review their answers again at the end of the unit to gauge any change of opinion. The pre-test can also be used as a journal activity in which students are later asked to reflect upon and analyze their opinion and/or opinion change.

1. Why do you think the Framers of the Constitution thought the Search and Seizure Clause of the Fourth Amendment was so important? Explain why we have it in the Bill of Rights and why it is still so important today. Briefly explain what society would be like without the Fourth Amendment.

2. What does privacy mean to you? How do you feel about a friend opening a private letter you wrote? How do you feel about your parents searching your room? What happens to a friendship when a “friend” tells a teacher a secret about you that may get you into trouble or may lead to a search of your private property? How would you feel about that friend? How would you feel about the school after the search? Would your attitude about school authority change? Explain your answers.

3. Is the right to privacy absolute or does it depend on the circumstances? For example:
 - Do parents have the right to search their child’s room just because they are “nosey?”
 - Do parents have the right to search their child’s room if they have good reason to suspect use of drugs?
 - Does a teacher have the right to search a student’s backpack if he/she thinks the student is lying about losing their homework?
 - Does a teacher have the right to search a student’s backpack if he/she has good reason to believe the student is carrying drugs to school?
 - Does a principal have the right to search a student’s backpack for the same reasons?

Explain why all of those circumstances are justified, why none of them are justified or why some of those circumstances seem to justify a search and others do not.

Background Court Cases

New Jersey v. T.L.O., 469 U.S. 325 (1985).

The following case involved two students caught smoking in a school restroom. A search for cigarettes in one of the student's purses led to the discovery of drug paraphernalia.

The following is a summary of the decision. To read the entire decision, see: <http://laws.findlaw.com/us/469/325.html>.

In 1980, a teacher at Piscataway High School in New Jersey discovered two girls smoking in a lavatory. One of the two girls was T.L.O., who at that time was a 14-year-old high school freshman. Because smoking in the lavatory was a violation of a school rule, the teacher took the two girls to the principal's office, where they met with the assistant vice principal. In response to questioning by the assistant principal, T.L.O.'s companion admitted that she had violated the rule. T.L.O., however, denied that she had been smoking in the lavatory and claimed that she did not smoke at all.

The assistant principal asked T.L.O. to come into his office and demanded to see her purse. Opening the purse, he found a pack of cigarettes, which he removed from the purse and held before T.L.O. as he accused her of having lied to him. As he reached into the purse for the cigarettes, the assistant principal also noticed a package of cigarette rolling papers. In his experience, possession of rolling papers by high school students was closely associated with the use of marihuana. Suspecting that a closer examination of the purse might yield further evidence of drug use, the assistant principal proceeded to search the purse thoroughly. The search revealed a small amount of marihuana and other paraphernalia that implicated T.L.O. in marihuana dealing.

The State brought delinquency charges against T.L.O. in the local juvenile court. Contending that the assistant principal's search of her purse violated the Fourth Amendment, T.L.O. asked the Court to not allow that the evidence that was found in her purse, as well as her confession, which, she argued, was tainted by the allegedly unlawful search to be used against her. After hearing the arguments on the legality of the search of T.L.O.'s purse, the court decided that the search did not violate the Fourth Amendment.

What follows are excerpts from the Court's decision:

... a few courts have concluded that school officials are exempt from the dictates of the Fourth Amendment by virtue of the special nature of their authority over schoolchildren. Teachers and school administrators, it is said, act in loco parentis in their dealings with students: their authority is that of the parent, not the State, and is therefore not subject to the limits of the

Fourth Amendment.

If school authorities are state actors for purposes of the constitutional guarantees of freedom of expression and due process, it is difficult to understand why they should be deemed to be exercising parental rather than public authority when conducting searches of their students.

Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place. The determination of the standard of reasonableness governing any specific class of searches requires balancing the need to search against the invasion which the search entails. On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order.

The State of New Jersey has argued that because of the pervasive supervision to which children in the schools are necessarily subject, a child has virtually no legitimate expectation of privacy in articles of personal property unnecessarily carried into a school.

Students at a minimum must bring to school not only the supplies needed for their studies, but also keys, money, and the necessities of personal hygiene and grooming. In addition, students may carry on their persons or in purses or wallets such nondisruptive yet highly personal items as photographs, letters, and diaries. Finally, students may have perfectly legitimate reasons to carry with them articles of property needed in connection with extracurricular or recreational activities. In short, schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds.

Against the child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds. Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.

How, then, should we strike the balance between the schoolchild's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place? It is evident that the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject. The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools. We hold today that school officials need not obtain a warrant before searching a student who is under their authority.

The legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Under ordinary circumstances, a search of a student by a teacher or other school official will be justified when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.

There remains the question of the legality of the search in this case. Our review of the facts surrounding the search leads us to conclude that the search was in no sense unreasonable for Fourth Amendment purposes.

T.L.O. had been accused of smoking, and had denied the accusation in the strongest possible terms when she stated that she did not smoke at all. T.L.O.'s possession of cigarettes, once it was discovered, would both corroborate the report that she had been smoking and undermine the credibility of her defense to the charge of smoking. To be sure, the discovery of the cigarettes would not prove that T.L.O. had been smoking in the lavatory; nor would it, strictly speaking, necessarily be inconsistent with her claim that she did not smoke at all. Thus, if the assistant principal in fact had a reasonable suspicion that T.L.O. had cigarettes in her purse, the search was justified ...

Our conclusion that the assistant principal's decision to open T.L.O.'s purse was reasonable brings us to the question of the further search for marijuana once the pack of cigarettes was located. The suspicion upon which the search for marijuana was founded was provided when the assistant principal observed a package of rolling papers in the purse as he removed the pack of cigarettes. The discovery of the rolling papers concededly gave rise to a reasonable suspicion that T.L.O. was carrying marijuana as well as cigarettes in her purse. This suspicion justified further exploration of T.L.O.'s purse, which turned up more evidence of drug-related activities: a pipe, a number of plastic bags of the type commonly used to store marijuana, a small quantity of marijuana, and a fairly substantial amount of money. Under these circumstances, it was not unreasonable to extend the search to a separate zippered compartment of the purse; and when a search of that compartment revealed an index card containing a list of "people who owe me money". In short, we cannot conclude that the search for marijuana was unreasonable in any respect.

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Cales v. Howell Public Schools, 635 F. Supp. 454 (E.D. Mich. 1985).

This case involved a student who was found hiding behind cars in the school parking lot when she should have been in class. This caused the school administration to believe she may have been carrying drugs and therefore led to a search of her person.

The following is a summary of the case and excerpt's of the Court's decision to allow this case to go to trial. A final ruling has not been made. No website is available for this case.

In April 1980, Ruth Cales was 15 years of age and a 10th grade student at Howell High School in Howell, Michigan. At a time when she was required to be in school session, she was observed by the Howell High School security guard in the parking lot attempting to avoid detection by “ducking” behind a parked car. When confronted by the guard and asked to identify herself, she lied and told him the wrong name. Cales was subsequently taken to the office of the assistant principal where she was made to dump the contents of her purse on a desk, which included Howell High School “readmittance slips” which were improperly in her possession. Cales was then instructed to turn her jean pockets inside-out, and she subsequently completely removed her jeans. She was then required to bend over so that a female assistant principal could visually examine the contents of her brassiere.

The basis for the search was the belief of one of the assistant principal’s that Cales was in possession of illegal drugs. At no time was Cales’ person or body touched in any manner.

The Supreme Court in *New Jersey v. T.L.O.* articulated the standard to be applied in deciding whether the search of a student by school officials violates his or her Fourth Amendment rights, stating:

...Under ordinary circumstances, a search of a student by a teacher or other school official will be “justified at its inception” when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

Cales was observed ducking behind a car in the Howell High School parking lot at the time she should have been in school. When questioned by a security guard, she gave a false name. Based on this conduct, the assistant principal concluded that Cales was involved in drugs and should be searched. It is clear that Cales’ conduct created reasonable grounds for suspecting that some school rule or law had been violated. However, it does not create a reasonable suspicion that a search would turn up evidence of drug usage. Cales’ conduct ... could have indicated that she was truant, or that she was stealing hubcaps, or that she had left class to meet a boyfriend. In short, it could have signified that Cales had violated any of an infinite number of laws or school rules. This Court does not read *T.L.O.* so broadly as to allow a school administrator the right to search a student because that student acts in such a way so as to create a reasonable suspicion that the student has violated some rule or law. Rather, the burden is on the administrator to establish that the student’s conduct is such that it creates a reasonable suspicion that a specific rule or law has been violated and that a search could reasonably be expected to produce evidence of that violation.

For the reasons set forth above, Howell Public Schools and the assistant principal will not be dismissed from this case and it may proceed to trial.

* * * * *

Greenleaf v. Cote, 77 F. Supp. 2d 168 (Dist. Me. 1999).

This case involved a student who was believed to be drinking in school. Upon suspicion of this behavior, the school administration thought she may be carrying alcohol and, therefore, searched her belongings.

To read the entire, unedited document, see:

http://www.med.uscourts.gov/opinions/brody/1999/mab_1-98cv250_greenleaf_v_cote_doc34_nov.pdf.

In March 1998, at a middle school in Litchfield, Maine, a female student overheard two eighth-grade female students talk about how, earlier in that school day, they had been drinking beer in the girls' locker room. In the course of this overheard conversation, one of these students disclosed the names of the two other students with whom they had been drinking beer. One of those students named was Jennifer Greenleaf. Shortly after overhearing this conversation, the student notified a school staff member of what she had heard. The student-informant specifically recounted that she had heard two girls discuss that they had been drinking beer with two others, and she disclosed the names of the four alleged participants. The staff member then alerted the school's vice-principal, Cathy McCue, of what the student-informant had revealed.

Since the student-informant was a trustworthy student who had previously provided the administration with accurate information regarding student conduct, McCue had reason to trust the report. McCue proceeded to tell Principal Cote about the four named students alleged to have been drinking in the school that morning. While they had no basis to suspect that the named students had previously consumed alcohol on school grounds, the student-informant's report did lend credence to growing concerns about drinking and drug use in the school. Prior to the report, members of the community had informed the school administration of drinking and drug use by students, and administrators and teachers themselves had overheard students discussing this problem. Although they had not caught any student using drugs or alcohol at the school, they had previously uncovered possible drug paraphernalia in the student bathrooms. Given all this information, Cote and McCue believed that they had a reasonable basis to search the four students for evidence of beer drinking, which might include beer cans and bottles, as well as bottle caps and openers.

Having never conducted a search at the middle school, Cote and McCue first decided to call the principal at the local high school to get some advice on the propriety of and protocol for conducting a search in this instance. Concluding that Cote had reasonable grounds to conduct a search, the local high school principal told Cote that he should ask the students to open up their

backpacks and lockers, turn out their pockets, take off their shoes, and unroll their socks. If the students would not consent to such a search, this principal told Cote, he should end the search.

Following this advice, Cote and McCue proceeded to search the four students, including Jennifer, sometime after lunch on that school day. Cote and McCue went to Jennifer's classroom, where McCue asked her to come into the hallway. Since classes were in session, no one was in the hallway at that time. Nevertheless, in order to ensure privacy, either Cote or McCue shut various doors in the hallway to prevent students from entering that particular section. After closing these doors, either Cote or McCue asked Jennifer to open her locker and backpack, to turn out her pockets in her pants and jacket, and to shake her shirt and pants. They never told Jennifer why they made these requests, and they did not inform her of the object of the search. Nonetheless, Jennifer complied with their request. At one point during the search, a small four-by-six-inch denim bag fell out of Jennifer's backpack, leading her to utter nervously, "ummm ... ummm". Recognizing that this bag might contain feminine hygiene products, Cote turned and walked away from Jennifer and McCue. McCue and Jennifer then stepped into the doorway of an unoccupied room, where McCue inspected the bag for any evidence of beer drinking. Neither Cote nor McCue ever touched Jennifer during the search. They found no evidence of beer drinking.

In order for a search to be justified at its inception, there must be reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. The Court concludes that Cote had such grounds. First, the student-informant was reliable, as demonstrated by her prior discussions with school officials. Second, the students who were overheard by the student-informant participated in the beer drinking. The student-informant, therefore, was not reporting mere rumor or gossip, but the admissions by students that they had been drinking that morning in the girls' locker room with Jennifer. Third, given the reports from the community and the discovery of possible drug paraphernalia, Cote had reason to be concerned about drinking and drug use at the school.

This Court concludes that this search was reasonable in its scope. First, evidence of beer drinking could be found in the places searched. Second, Jennifer consented to the search. Third, if Jennifer refused to consent to the search, the protocol the administrators followed in conducting the search called for ending the search. Fourth, the search was conducted in the hallway, an area that was private at the time since classes were in session and hallway doors closed off that particular section to pedestrian traffic. Fifth, neither Cote nor McCue touched Jennifer during the search, which was generally unobtrusive. Finally, Cote turned and walked away during the search of Jennifer's small denim bag.

For the foregoing reasons, the Court concludes that the search of Jennifer did not violate the Fourth Amendment, as construed in *New Jersey v. T.L.O.*

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Tannahill v. Lockney Independent School District, U.S.d. 2001

This case involved a district-wide drug testing policy that required all students in the upper grades be drug tested whether or not there was suspicion of drug use by the students.

The following is a summary of the decision. To read the entire decision, see:

http://www.aclu.org/issues/drugpolicy/cases/Tannahill_v_Lockney/tannahill%20district%20court%20opinion.html

Tannahill was a sixth-grade student at the time this lawsuit was filed. Lockney Independent School District is an independent school district in Texas. The District's "Reasonable Suspicion Drug Testing Policy" required the students to submit to drug or alcohol testing if there was reasonable suspicion that a student was under the influence of a drug or alcohol while at school or a school-related activity. According to the policy, reasonable suspicion appears to exist when a student exhibits "at-risk" behaviors or when a drug dog "alerts" to the presence of drugs.

In addition, the District also maintained a voluntary drug testing policy by which a parent and/or student could request that the student be tested for drug use. One paragraph of the policy notes that the District's School Board "affirms the fact that parents are the main force in influencing their children and should bear the primary responsibility in controlling their children in relation to drug use outside of school hours." No parent took advantage of the voluntary drug testing policy, and no student was ever tested under the policy.

After several community meetings to discuss the perceived drug problems in the fall of 1997, the Board passed a resolution offering students and parents the opportunity to participate in a voluntary drug testing program. A bi-annual survey administered to more than 200 students in ninth through twelfth grades in the spring of 1998, the Texas School Survey, concluded that "overall, the use of illicit drugs, and of marijuana in particular, among Lockney ISD secondary students in 1998 was lower than that reported by their counterparts statewide."

After the survey, the Board again discussed a drug testing program in September of 1999. The Board implemented a mandatory drug testing plan for all students in the District in grades 6 through 12 even though drug use had not increased in Lockney schools during the period leading up to adoption of the District's drug policy.

The District's rationale for the new policy reads as follows:

Based on input from staff, students, community members, parents, and law enforcement officials, it has been determined that there is a significant drug and alcohol use (and possibly abuse in some instances) among students, to a point that warrants implementation of a drug testing program.

The original plan then implemented the following:

All students [in grades six through twelve] and their parents will sign a consent form agreeing to be a part of the drug testing program for Lockney ISD. During initial implementation, all students will take a mandatory drug test, and all students will be involved in random testing.... In subsequent years, incoming sixth graders will take a mandatory drug test, and all students, grades six through twelve, will be involved in random testing.... Students entering the district after the first day will be given the test at the next random testing date.

When a student is tested, he or she is required to produce a urine sample in two bottles. Students and their parents have the opportunity to provide information concerning any prescription medication being taken by the student. Parents may also request to be in attendance during the specimen collection.

If a student tests "positive," the parents or guardians of the student have an opportunity to request a second test using the second bottle. Parents may also choose the certified

lab to perform the second test. If the retest results are also "positive," the parents or guardians are financially responsible for the cost of the retest, and the student will be subject to the consequences of the policy, the student code of conduct, and the student handbook.

In addition to a screen for tobacco use, the drug screen also tests for opiates, cocaine, amphetamines, cannabinoids, phencyclidine, barbiturates, methaqualone, benzodiazepines, methadone, and propoxyphene.

A parent's refusal to consent to the student being drug tested is construed as the equivalent of a "positive" test. With the exception of students testing positive for tobacco, the student's first offense results in a suspension from participation in all extracurricular activities for 21 days and an in-school suspension for a minimum of 3 days. Continued refusal of a parent to consent to the child's being tested for drugs would, as with continued positive test results, result in escalation of the punishments, up to placing the child in alternative school and disqualifying him from participating in any activity or receiving any honors for the year.

Students testing positive for tobacco are subject to the following consequences:

1. Parents will be notified that their child has tested positive for tobacco use.
2. Sponsors of the extra-curricular activities will be informed of the positive test. This information should result in counseling in the first positive test. For subsequent positive tests, the sponsor may apply consequences as outlined in guidelines for that activity and the Student Code of Conduct.

When a positive drug test causes a student's removal from extracurricular activities, it would be apparent to the activity coach and participants in the activity that the child has tested positive for drugs, since the only reason for a sudden 21-day removal from the activity is the fact that the student tested positive.

Except for the Tannahill's, all parents consented to have their children submit to the drug test. The drug tests indicated that five students or staff members tested positive for marijuana use.

In July of 2000, the District revised its drug testing policy by eliminating the requirement that sixth grade students submit to the mandatory drug tests. In addition, rather than treating a refusal to consent to a drug test the same as a positive test result, the consequence for refusing to consent to a drug test results in "removal from participation in all extracurricular activities until participation in the drug testing program."

In 1989, the U.S. District Court for the Southern District of Texas examined a school district's mandatory, suspicionless drug testing program for all students in grades 7-12 who participated in extracurricular activities. Much like the facts presented in the Tannahill case, there existed "very

little evidence that drug or alcohol abuse by [the district's] students constituted a major problem in the operation of the schools."

In fact, the district court observed the following about the drug testing program:

"The testing program in place at [the District] is the most intrusive of any school district in Texas. It tests the widest range of students, grades seven through twelve -- originally grades six through twelve -- participating in extra-curricular activities. In the [District], that is over half the student body It is an across-the board, eagle eye examination of personal information of almost every child in the school district. It is difficult to imagine any search of school children being more intrusive."

The school district admitted that the general testing program was not based on individual suspicion of drug use. The court found the school district's drug testing policy was unconstitutional.

ACTIVITIES

Underlying Goals: Students should begin to appreciate that the law is not just abstract, but applies to them in very real ways. Opposing views and full discussion by everyone who wants to speak should be encouraged. Using the background cases, some of the following activities can be done either by the class as a whole or individually.

Activity #1: Key Facts

After reading the summaries of the First Amendment cases, fill in the key facts. (*Suggested answers are in parentheses*).

New Jersey v. T.L.O.

In *T.L.O.*, two girls were caught (*smoking*) in the restroom. T.L.O. was one of those girls and when questioned by the assistant principal about her behavior, she denied any wrongdoing. Because of this denial, the assistant principal proceeded to (*search her purse*). While doing so, he found (*cigarettes*) which caused him to continue his search and eventually find (*rolling papers*) and (*other drug paraphernalia*). T.L.O. claimed the search violated her (*Fourth Amendment*) rights, but the court sided with the school claiming they had (*reasonable*) grounds for continuing the search beyond the pack of cigarettes.

Cales v. Howell Public Schools

Ruth Cales was found (*ducking*) behind a car in the school parking lot while she should have been in (*class*). She was brought into the office and was (*searched*) by the Assistant Principals, although no physical contact was made. The principals found (*a book of hall passes*), which she was not supposed to have, but the principals were actually looking for (*drugs*). None were found. The courts ruled that a student being outside when they should be have been in class did not justify a search (*of her person*).

Tannahill v. Lockney Independent School District

In *Tannahill*, the school district eventually imposed mandatory (*drug testing*) for every student in grades 6 through 12. The school required (*parental*) consent prior to testing the students, but parental refusal was at first, treated as a (*positive*) test. Tannahill's parents (*refused*) to provide the consent for the drug test, therefore their son was (*punished*). The court found the district's policy (*unconstitutional*) because it did not require the district to show (*individual*) suspicion that the search will discover evidence of (*drugs*).

Greenleaf v. Cote

In *Greenleaf*, a student who had previously shown herself to be a reliable source, overheard two girls discussing that they had been (*drinking*) in the locker room earlier that day. The two girls also mentioned (*two other girls*) who were with them in the locker room. One of those girls, Greenleaf, was asked to open her (*purse*) and (*school bag*) and was asked to turn out her (*pockets*). Greenleaf was never (*touched*) by the administrators during the search and she (*agreed*) to the search. Because the school had good reason to believe alcohol may have been discovered and because they conducted the search in a non-obtrusive way, the court sided with the school even though no (*alcohol*) was found.

Activity #2: Class Discussion

Use any of the following questions to discuss the background cases:

1. In *New Jersey v. T.L.O.*, the court ruled that finding rolling papers while the principal looked for T.L.O.'s cigarettes justified continuation of the search. Should a search stop when the object of the search has been found? If you believe it should continue, at what point should it be stopped? For example, the rest of the purse, the locker, her person? Explain.
2. In your opinion, do you think the Fourth Amendment's Search and Seizure Clause should be applied differently to students in a school than to adults at work? Should it be applied differently to students in school than to students in their home? Explain.
3. Throughout these cases, the courts struggle with making sure schools find a "balance" between two important factors relating to students' Fourth Amendment rights in school. What are the two things that the courts must ensure are in balance and why do you think schools and the courts struggle with it?
4. The courts have decided that schools have the right to conduct searches and seizures on school grounds under certain circumstances. What are those circumstances?
5. In the United States, it is becoming more and more common for employees to take drug tests mandated by their workplace. Are there any specific jobs that should require drug testing as a condition of employment or is this an invasion of people's privacy? Explain.
6. What is the difference between searching a purse or a bag compared to a locker? Explain.
7. What circumstances, if any, would justify a strip search of a student's person? Explain.

8. The Latin term *loco parentis* means that teachers and school administrators have the authority of the parent while the student is in school and are, therefore, not subject to the limits of the Fourth Amendment. What are the positive and negative aspects of *loco parentis*?

Activity #3: Role-play

Students can role-play the background cases. Working in groups, students develop a skit to demonstrate the essential points of each case.

Activity #4: Presentation

Working in groups, students can develop overhead or multi-media presentations to explain the case, the court's ruling and the significance of the case to the rest of the class.

Activity #5: Fourth Amendment Scenario - Search and Seizure

The following is an actual case. However, it has not gone to trial and there is no final decision as of yet. The case can be discussed and the question of whether or not the strip-search was justified can be voted on as a group or written up individually. You can provide the list of arguments below, or the students can brainstorm their own list and compare it with the provided arguments and discuss which arguments are stronger. After doing this, the students can determine for themselves how a court should decide.

Beard v. Whitmore Lake High School

The following is a summary of the case. No website is available.

A Whitmore Lake High School student claimed to have lost \$264 of other students' money and \$90 of her own. The gym teacher, after the loss was reported to him, "immediately closed off the class." The gym teacher then let "one of the students (he) trusted" leave to contact the acting principal. He claimed that the acting principal "said that we need to search everyone and that no one was leaving until we found the money." Without any investigation and without any individualized suspicion, the school administrators began a series of increasingly intrusive group searches of the entire second-hour gym class, including a group strip-search of eight students. The administrators and teachers never searched the belongings or the shoes and socks of the girl who claimed to have lost the money. The student who reported the lost money never claimed that anyone in particular had stolen her money and no witnesses or other evidence suggested a particular culprit.

The school administrators never had a basis to suspect any one student or any particular group of students of having stolen the money. In fact, they failed to even investigate the alleged theft to determine if the funds were stolen or merely lost. In a normal investigation, the first person to come under suspicion is the custodian of the money, especially when the money was in an unlocked locker that could have been locked.

The school district policy regarding searches is as follows: “Strip searches are to be conducted only by law enforcement personnel.” Notwithstanding that the lost money was last seen in the girls’ locker room, a strip-search of the boys was initiated by the school administrators and teachers. They were asked to lift their shirts, remove their pants and drop their underwear. The girls were then searched in the same way.

The money was never found.

The Fourth Amendment to the U.S. Constitution protects students against unreasonable searches. The Court in *T.L.O.* set forth a two-part test for determining whether a student’s Fourth Amendment rights had been violated, namely: (1) whether the search was justified at its inception; and (2) whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.

To pass constitutional muster, the government generally must show an “individualized suspicion of wrongdoing.”

Given their highly intrusive nature, “strip-searches have been found to be reasonable under the circumstances only where school officials have had a reasonable suspicion that the students in question were in possession of drugs.” Strip-searches to find money have been regularly condemned.

The School’s Arguments:

1. The school officials were acting in good faith, simply trying to investigate a reported crime within their facility.
2. It is the role of school officials to maintain order and investigating a reported felony would fall under that responsibility.
3. *Qualified immunity* protects government officials when they are unaware that they are violating anyone’s constitutional rights.
4. The searches were not seen by school officials as an unusual invasion of privacy because they took place in a gym locker room where changing and showering are a normal occurrence.

The Student's Arguments:

1. In a normal investigation, the student who reported the missing money should have been questioned first, but in this case, she never was.
2. School policy indicated that strip searches are to be conducted by law enforcement personnel, but in this case, the searches were conducted by school personnel.
3. When held to the two-part standard set forth in the T.L.O. case, this case did not comply with either part.

Human Graph - Vote With Your Feet

This activity is a way to physically demonstrate that opinions change as circumstances change. Draw or tape a line for students to stand on down the middle of the classroom. After the case is presented, all of the students should stand on the line. Ask the question: Do you think the strip-search was justified? The students who agree with the search should take a step to the right. If they disagree with the search, they should take a step to the left. Using the questions below, change the facts. Students can continue to move to the right if they still think the students should have been searched or to the left if they don't.

- ◇ What if the "victim" thought she saw a specific person take the money from her locker, should that person be searched?
- ◇ Should only his/her locker be searched?
- ◇ Should the student be searched as well?
- ◇ Is it okay if the search was conducted by law enforcement personnel as the district policy indicated?
- ◇ Is it okay if a search of all lockers is done, both males and females?
- ◇ If a person in the gym class was already under suspicion for thefts done earlier in the year, should that person's locker and/or person be searched first?

Follow-up Discussion:

These questions, related to the Whitmore Lake case, can be used for discussion, journal writing, essay starters, etc.

1. How do you think a situation like this could effect the relationship between the school officials involved in the search and the students? Do you think it would affect the view students have on their school officials?
2. If the money had been found, would the search have been justified? In other words, does the result of a search affect your view on whether or not the search should have been conducted? Explain.

3. Using context clues, define the following elements of the two-part T.L.O. test mentioned in this case:
 - a) “justified at its inception”
 - b) “related in scope to the circumstances which justified the interference”
4. Explain how the Whitmore Lake scenario did not follow either part of the two-part T.L.O. test.
5. Provide an example of how both parts of the T.L.O. test could have been met and the search could have been considered reasonable.

Activity #6: Class Court

1. Individually, have the students create situations involving search and seizure in schools. The students should come up with as many details about the situation as they can, but their description should not include their opinion of whether or not it was handled properly. They may want to include the following information:
 - background on the student(s) involved in the search
 - what the student did or what they are being accused of doing that lead to the search
 - how the administration or people in charge found out about the incident
 - how the administration conducted the search
 - what was discovered as a result of the search
 - school policies regarding search and seizure
2. In groups of two or three, students should analyze each other’s written situations, looking for information and detail gaps. If the facts are not clear, the original author should make corrections and additions. The group should then answer the following for each situation:
 - Was the search justifiable? Defend your answer.
 - Was the way the search was handled justifiable? Defend your answer.
 - If taken to court, who do you think would win? Defend your answer.
3. As a class, discuss some or all of the situations to determine if the class agrees with the groups’ decisions. The class could even act as a court and provide the arguments they think would be given by the real prosecutors and defense attorneys.

Variations on the class “court”:

Have an administrator come into class and explain how the school might handle similar situations or how similar situations have already been handled.

Research other court cases to find out how real courts dealt with similar situations, pointing out the similarities and differences.

Invite an expert, a lawyer or judge, into the classroom to help the students see how the facts would really be sorted through and how it may really have been decided.

Activity #7 Graphic Organizers

This activity involves comparing and contrasting the cases using a graphic organizer or a Venn diagram.

There are a variety of ways in which this activity can be approached depending on your personal teaching style.

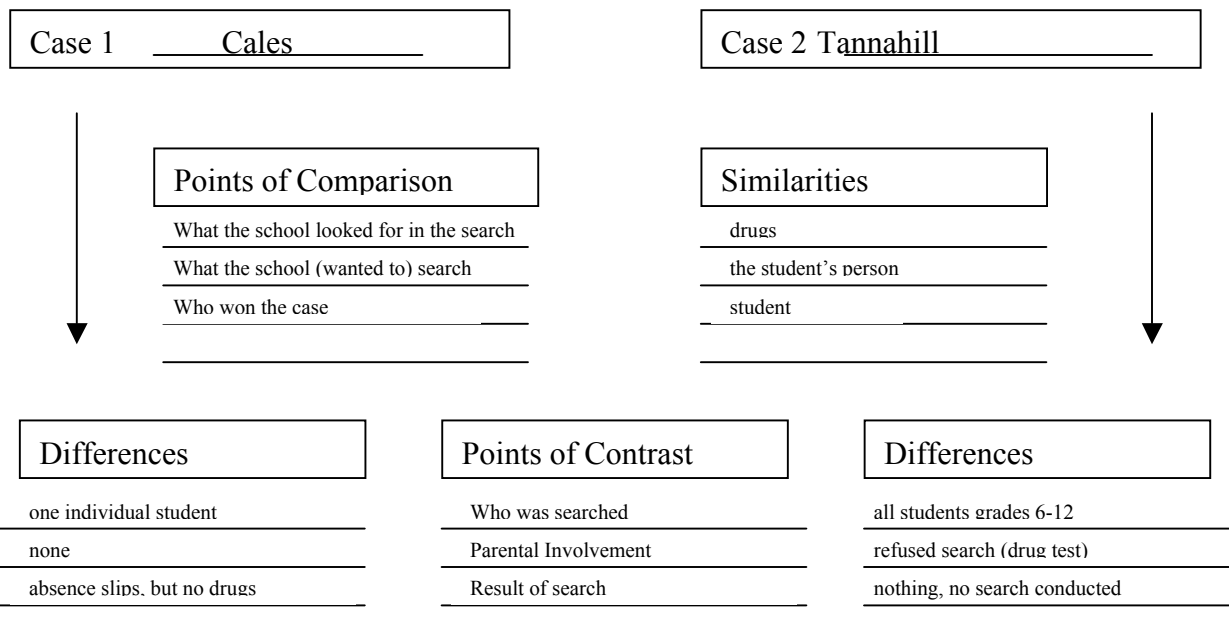
The following is a list of suggestions for implementation:

- ❖ Divide the class into two groups, each assigned to two of the cases. The students in each group will individually compare and contrast their assigned cases using the graphic organizer. Each student will then pair up with a student from the other group to find similarities and differences between the four cases.
- ❖ Divide the class into two groups, each assigned to two of the cases. The students in each group will individually compare and contrast their assigned cases using the graphic organizer. Then, as a whole class, the similarities and differences between all four cases can be written on the board.
- ❖ Individually, students complete a graphic organizer that compares and contrasts all four cases.

How to use the graphic organizer below:

1. Write the names of the cases at the top of the organizer.
2. Identify points of comparison/ways the cases are similar (see sample organizer below).
3. List the specifics of as many similarities as possible between the cases.
4. Identify points of contrast/ways the cases are different (see sample organizer below).
5. List the specifics of as many comparisons as possible between the cases.

Sample organizer:



How to use the Venn diagram below:

A Venn diagram is much like a graphic organizer, but the students do not identify points of comparison or points of contrast. The students need only identify the similarities and the differences between cases.

1. Write the names of the cases at the top of the diagram.
2. Write the similarities in the intersection of the two circles.
3. Write the differences in the left and right part of the circles, where they do not intersect.

