“That [school boards] 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.”

-U.S. Supreme Court Justice Jackson in West Virginia v. Barnette (1943)

“Does anybody know … where we can go to find light on what the practical consequences of these decisions have been?”

-U.S. Supreme Court Justice Felix Frankfurter

The United States Supreme Court decides cases that affect all of our lives, but few people understand how the Court operates or how these decisions are implemented. This course is designed to remedy this deficiency by providing an in-depth look at the United States Supreme Court decisions that have shaped K-12 public education. When examining each case, we will consider these questions: (1) why was this case important? (2) what constitutional principle was established? (3) what view of the ends and means of public education did this case embrace? (4) how did this case shape educational policy in K-12 public schools? We will also discuss the costs and benefits of implementing educational policy as a response to mandates from the judiciary.
About the instructor: Cynthia Kelly Conlon holds a B.S. in education from Northwestern University, a J.D. from the University of Pennsylvania, and a Ph.D. in education from Northwestern. She has held a position as a tenured faculty member at Loyola University Chicago School of Law and has co-authored five books on education law. She has served as an elected member of both a private elementary and a public high school board of education. She has been selected as a Fellow of the American Judicature Society and honored as a Robert F. Kennedy Fellow for her work in establishing the Chicago Street Law Project. She also was selected by the Chicago Bar Association as Outstanding Young Lawyer of the Year. She resides in Lake Geneva, Wisconsin, with her husband, three children, and two Labrador retrievers.

Required reading materials:

The Supreme Court Explained by Ellen Greenberg (W.W. Norton, 1997)

The Struggle for Student Rights by John W. Johnson (University Press of Kansas, 1997)

Course packet available at the SESP Student Affairs Office

A 2004-5 or 2005-6 high school student handbook (ideally, the high school from which you graduated)
(1) Attendance. Students are required to attend all classes, read the assigned material prior to class, prepare for in-class simulations, and participate in class discussions/activities.

(2) Written assignments.
(a) Paper applying Tinker (2 pages); due on T., Oct. 18;
(b) Paper analyzing the policies in student handbook (2 pages); due on T., Nov. 8;
(c) Paper setting forth the arguments for the petitioner and respondent in the Supreme Court simulation as well as your view of each justice’s likely position in the case (4-5 pages); due on T., Nov. 22.

(3) Final exam: Mon., Dec. 5, 3 to 5 pm.

Assessment will be as follows:
class participation: 30 % of final grade,
writing assignments: 30% of final grade,
final exam: 40% of final grade.

In compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, Northwestern University is committed to providing equal access to all programming. Students with disabilities seeking accommodations are encouraged to contact the office of Services for Students with Disabilities (SSD) at 467-5530 or ssd@northwestern.edu. SSD is located in the basement of Scott Hall. SSD also has an excellent web-site which is viewable at: http://www.stuaff.northwestern.edu/ssd/.

Northwestern students are expected to comply with the policies found in the booklet Academic Integrity at Northwestern. A copy of this booklet is found in section four of the SESP handbook or on-line at http://www. northwestern.edu/uacc/. Infractions may result in a grade of ‘F’ and/or probation or dismissal from the university.
Class assignments:

T., Sept. 20: Introduction to course

Th., Sept. 22: Meet the Supremes
Questions to consider: What is the role of the Court in our legal system? Who sits on the Court? What should be the qualifications to become a member of the Court?
Readings: Biographies of the justices and Selecting Supreme Court Justices: A Dialogue (in course packet); Greenberg, pp. 1-12

T., Sept. 27: The Route to the Supreme Court
Telephone discussion with Brian Murray, attorney with the firm of Jones Day in Chicago and former law clerk to Justice Scalia (October term 2002) and Judge Diarmuid O’Scannlain, U.S. Court of Appeals, Ninth Circuit (2001-2002)
Questions to consider: How do cases get to the Court? What role do law clerks play?
Readings: Greenberg: pp. 61-103, Rule 10 of the Rules of the Supreme Court of the United States (Greenberg, pp. 115-116)

Th., Sept. 29: Introduction to the First Amendment and the Tinker case
Questions to consider: How did the case arise? What happened at school? How did school authorities respond? What constitutional issues were claimed by the students? By the school board? How would you evaluate the effectiveness of the actions by board members? School administrators?
Johnson, pp. 1-78

T., Oct. 4: Tinker at the federal district court level
Questions to consider: What did the district court decide? What happened at the U.S. Court of Appeals? What are the best arguments for the students to raise before the U.S.
district?
Johnson, pp. 79-142

Th., Oct. 6: the Supreme Court decision in Tinker
Questions to consider: What is the purpose of oral argument before the Supreme Court? What questions would you put to each attorney? What was the holding of the case? What was not decided? What was the reason for Black’s dissent? What is the view of the goals of public education held by the majority? The dissent? With which view do you agree? Why?

Johnson, pp. 143-180; readings in course pack: Tinker v. Des Moines Independent Community School District

T., Oct. 11: Applying Tinker
Questions to consider: How would Tinker guide your decision in cases involving student dress? Hair style? Threatening comments?
Readings in course packet: Bethel School District No. 403 v. Fraser

Th., Oct. 13: Freedom of the press in the school setting
Questions to consider: What are students’ rights to freedom of the press in the school setting? What would the decision in Tinker suggest? What does the Court decide in Hazelwood? What is the majority’s view of the goals of education?
Readings: Hazelwood v. Kuhlmeier

T., Oct. 18: Assessing Supreme Court impact
Questions to consider: How can we measure the effect of Court decisions? What are the methodological concerns? How would you assess the impact of the Hazelwood decision?
Readings: Analysis of High School Newspaper Editorials Before and After Hazelwood; paper due
Questions to consider: What process is due? When? What guidelines does Goss offer? What is left undecided?
Readings: Goss v. Lopez

T., Oct. 25: Hazing/the Reality of Applying education law in the high school setting
Guest speaker: John Lorenz, principal of Highland Park High School, Highland Park, Illinois
Questions to consider: What constitutes hazing? Should schools be able to discipline students for off-campus behavior? What process is due?
Readings: Hazing in High Schools: Ending the Hidden Tradition and Alfred University Hazing Study

Th., Oct. 27: Search and Seizure in the School Setting
Questions to consider: How does the Court apply the Fourth Amendment in schools? Is the standard different than in the community? Why? Do you agree?
Readings: New Jersey v. T.L.O.

T., Nov. 1: Applying T.L.O.
Questions to consider: Does T.L.O. permit metal detector searches? Random drug searches?
Readings: Vernonia School District 47J v. Acton

Th., Nov. 3: Applying Vernonia
Readings: transcript of the oral argument in Board of Education of Independent School District No. 92 v. Earls, What’s Wrong with Student Drug Testing

T., Nov. 8: Policy Analysis of High School Student Handbooks
Telephone conversation with Linda Greenhouse, Supreme Court Correspondent for the New York Times and author of Becoming Justice Blackmun
with the law? Which topics receive most emphasis? Which schools do the most to educate students about their rights?

Paper due

Th., Nov. 10: Freedom of religion in the school setting
Questions to consider: Can public schools require students to recite prayers? What activities are prohibited by the Establishment Clause of the First Amendment? Must religion be completely excluded from schools?

T., Nov 15: Developing Establishment Clause Jurisprudence
Questions to consider: How has Establishment Clause jurisprudence evolved? Can schools ever teach about religion? When?
Readings: Edwards v. Aguillard

Th., Nov. 17: Preparation for Supreme Court Simulation
Readings: Freiler v. Tangipahoa Parish Board of Education; Intelligent Design bill proposed in Pennsylvania; Hearings on Pennsylvania “intelligent design” bill; complaint filed by plaintiffs in Kitzmiller v. Dover Area School District

T., Nov. 22: Supreme Court oral argument simulation
Paper due

T., Nov. 29: Policy Debate
Question to consider: how should local and state school officials approach this controversy?
Readings: Survival of the Fittest? and Intelligent Design is Sorely Misunderstood and Schools’ Science Standards will Serve Students Well
Questions to consider: What trends can you identify in education cases decided by the Supreme Court over the last 30 years? What data support your conclusions? What current issues do you see as likely to be addressed by the Court?

Readings: National Trends in Education Litigation: Supreme Court decisions concerning Students

Mon., Dec. 5, 3 to 5 pm: final exam