

Northwestern University
Legal Aspects of Education
Soc Pol 310
Fall 2009
Class meets in Annenberg 303

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Office hours: 10:30 am to 11:00 am on Tuesdays and Thursdays
and after class by appointment

“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)

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 some of 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 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 served as an elected member of both a private elementary and a public high school board of education. She was 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 received the Outstanding Professor award from SESP in June of 2007. She resides in Lake Geneva, Wisconsin, with her husband, three children, and two Labrador retrievers.

Required reading materials:

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

Course packet (available at Quartet Copies, 825 Clark
Street)

A 2008-09 or 2009-10 high school student handbook
(ideally, the high school from which
you graduated)

Course requirements:

- (1) Attendance. Students are required to attend all classes, read the assigned material prior to class, and actively participate in class discussions/activities.
- (2) Mid-term exam: Tuesday, October 20th.
- (3) Written assignments.
 - (a) Paper reviewing the policies in student handbook and proposing revisions (3-4 pages): due in class on Thursday, Nov. 5th;
 - (b) 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 in class on Tuesday, Dec. 1st.
- (4) Final exam: in class on Thursday, December 3rd.

Assessment will be as follows:

mid-term exam: 10% of final grade,
class participation: 20 % of final grade,
writing assignments: 40% of final grade,
final exam: 30% 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 website 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. 22: Introduction to course

Th., Sept. 24: 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 information about the Supreme Court (in course packet)

T., Sept., 29: Supreme Court Procedures

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: excerpt from The Supreme Court Explained, Rule 10 of the Rules of the Supreme Court of the United States, Supreme Court calendar, Murray bio (in course packet)

Th., Oct. 1: Introduction to the First Amendment and the Tinker case

Questions to consider: How did the case arise? What happened at school? What constitutional issues were raised by the students?

Reading: Johnson, pp. 1-78

T., Oct. 6: Oral Argument in the Tinker case

Questions to consider: What is the best argument for the students? For the school district? What role did the justices play during the oral argument? What is the purpose of oral argument?

Reading: Johnson, pp. 79-142

Th., Oct. 8: the Supreme Court decision in Tinker

Questions to consider: 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?

Readings: How to brief a case and Tinker v. Des Moines Independent Community School District

T., Oct. 13: Applying Tinker

Questions to consider: How would Tinker guide your decision in cases involving student dress? Hair style? Threatening comments?

Reading: Bethel School District No. 403 v. Fraser

Th., Oct. 15: 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?

Reading in course packet: Hazelwood v. Kuhlmeier and Analysis of High School Newspaper Editorials before and after Hazelwood

T., Oct. 20: Mid-term Exam/Current Status of Students'
Free Speech Rights

Questions to consider: What was the result in the case? What are the views of each justice? What is the current state of the law?

Reading: Morse v. Frederick

Th., Oct 22: Due Process of Law in the School Setting

Questions to consider: What process is due? When? What guidelines does Goss offer? What is left undecided?

Reading: Goss v. Lopez

T., 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?

Reading: New Jersey v. T.L.O.

Th., Oct. 29: Student Drug Testing

Questions to consider: Does T.L.O. permit random drug testing? Can schools test all students? What are the arguments for and against mandatory drug testing?

Reading: Vernonia School District 47J v. Acton

T., Nov. 3: Strip Searches of Students

Questions to consider: How far can schools go when searching students? Does T.L.O. permit strip searches? If so, when?

Readings: transcript of the oral argument in Safford Unified School District # 1 v. Redding

Th., Nov. 5: Policy Analysis of High School Student Handbooks
Questions to consider: To what extent are high school handbooks in compliance with the law? Which topics receive most emphasis? Do schools educate students about their rights?

Paper due

T., Nov. 10: Developing Education Policy

Questions to consider: How do administrators learn about changes in the law that apply to schools? How do they develop policy? How are parents and students involved in developing policy?

Guest speaker: Dr. Jerry Hawver, Administrator,
Alternative High School, Elkhorn, Wisconsin

Th., Nov. 12: Freedom of religion in the school setting

Questions to consider: What are the values underlying the separation of church and state? What activities are prohibited by the Establishment Clause of the First Amendment? Must religion be completely excluded from schools?

Reading: Abington School District v. Schempp

T., Nov 17: Developing Establishment Clause Jurisprudence

Questions to consider: How has Establishment Clause jurisprudence evolved? Can schools ever allow prayer in school? When?

Reading: Lee v. Weisman

Th., Nov. 19: Current Establishment Law Principles

Questions to consider: When can students speak about their faith? When are other students captive? When does student speech bear the imprint of the school?

Reading: Good News Club v. Milford Central School

T., Nov. 24: Preparation for Supreme Court oral argument simulation

Questions to consider: What is the purpose of oral argument?

What are the best arguments for the student? The school district?

Readings: Guide for Counsel in cases to be argued
before the Supreme Court of the United States

T., Dec. 1: Supreme Court oral argument simulation

Paper due

Th., Dec. 3: In-class final exam