“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 2002-3 or 2003-4 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, prepare for in-class simulations, and participate in class discussions/activities.

(2) Written assignments.
   (a) Paper applying Tinker (2 pages); due on Th., Oct. 16,
   (b) Paper analyzing the policies on student speech and press in student handbook (2 pages); due on Th., Oct. 23,
   (c) Paper taking a position for the petitioner or respondent in the Earls case and also making a policy recommendation on random drug testing (4-5 pages; due on T., Nov. 4,
   (d) Memo outlining 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 (6-8 pages; due on Tues., Dec. 2

(3) Final exam (Mon., Dec. 8, 3 to 4:30 pm): a closed-book essay exam that will require you to analyze legal issues using principles from the cases examined in this class.

Assessment will be as follows:
class participation: 30 % 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 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:

Th., Sept. 25: Introduction to course

T., Sept. 30: 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 The Vacancy in course packet; Greenberg, pp. 1-12

Th., Oct. 2: The Route to the Supreme Court
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)
T., Oct. 7: 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

Th., Oct. 9: 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. Supreme Court? What are the best arguments for the school district?
Johnson, pp. 79-142

T., Oct. 14: 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

Th., Oct. 16: Applying Tinker
Questions to consider: How would Tinker guide your decision in cases involving student dress? Hair style? Threatening comments?
Bethel School District No. 403 v. Fraser;
paper due.
T., Oct. 21: 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

Th., Oct. 23: 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

T., Oct. 28: Search and seizure in the school setting
Questions to consider: How does the Court apply the Fourth Amendment in the school setting? Is it the same as in the community? If the standard is different, should it be?
Readings: New Jersey v. T.L.O.

Th., Oct. 30: Applying T.L.O.
Questions to consider: Does T.L.O. permit metal detector searches? Random drug searches? What is the holding of the Vernonia decision?
Readings: Vernonia School District 47J v. Acton

T., Nov. 4: 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; paper due
Th., Nov. 6: Due process of law in the school setting
Questions to consider: What is due process of law? How do we determine what process is due? What guidelines are school administrators to follow after Goss? What is undecided?
Readings: Goss v. Lopez

T., Nov. 11: Corporal Punishment
Questions to consider: How does the Eighth Amendment apply in school? What constitutes cruel and unusual punishment in the school setting? What are the policy arguments for and against corporal punishment?
Readings: Corporal Punishment in America’s Public Schools, Paddling and Pro-paddling Polemics

Th., Nov. 13: Hazing; Guest speaker: Dr. Michael Riggle, Principal of Glenbrook North High School
What constitutes hazing? Should schools be able to discipline students for actions that occur off campus? What process is due?
Readings: Glenbrook North case study materials

T., Nov. 18: 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?
Readings: Abington School District v. Schempp

Th., Nov 20: Developing Establishment Clause Jurisprudence
How has the Court applied Abington?
Readings: Lee v. Weisman
T., Nov. 25: Home schooling
Questions to consider: Must children attend public school? Private school? What is home schooling? Under what conditions can parents educate their children at home? What are the costs and benefits to society of the home schooling movement?


T., Dec. 2: Supreme Court oral argument simulation
Paper due

Th., Dec. 4: Review and discussion of current issues
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. 8, 3 to 4:30 pm: final exam