

How has the Supreme Court played a role in the school setting?

Eek!! What am I doing here?? 😊



Schools are considered quasi public establishments. They also receive federal funding. Therefore, people who are in these arenas fall under the protections of the Constitution. There are two terms you must understand before we discuss issues and cases...

In loco Parentis: This is Latin for ‘in place of the parent’.

Soooo..... Who's your daddy??



My illustrious Principal

Captive Audience Doctrine: Because students are mandated to attend school, they receive more protections from others as well as sacrifice more freedoms to prevent disruptions to others.



Justice Abe Fortas

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

SO... Let's see where that leads us...

Let's see how student rights have been affected by the first amendment

THE FIRST AMENDMENT
CONGRESS SHALL MAKE NO LAW RESPECT-
ING 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.

Tinker v. Des Moines (1969)

Do students leave their rights at the schoolhouse door?

To protest the Vietnam War, Mary Beth Tinker and her brother wore black armbands to school. Fearing a disruption, the administration prohibited wearing such armbands. The Tinkers were removed from school when they failed to comply.



[Tinker video](#)



Mary Beth Tinker (2013)

The Tinker case establishes what we call the ‘Tinker Standard’ for schools.
“Is it a material disruption, and... who’s it disrupting?”

GENERAL INFORMATION

CELL PHONES AND OTHER ELECTRONIC DEVICES

Although students are allowed to possess cell phones and other electronic devices (iPods, MP3 players, hand held game units, student personal lap tops etc.), they should be turned off, remain out of sight and may not be used during the school day (7:40-2:12) unless for explicit, pre-approved academic purpose. *Game playing of any kind is not allowed.*

Violation of this policy may result in confiscation of the phone or device for the remainder of the school day. Chronic violations may also result in further disciplinary action.

Cell phones may be subject to search if the administration suspects the phone has been used to bully, harass or for any type of prohibited communication.

DRESS CODE

We believe that a student’s appearance is primarily the responsibility of the student and parents/guardians. The school cannot permit clothing that is damaging to school property, disruptive to the educational process or offensive to human dignity.

Current fashion is not always conducive to attire to be worn at school. The following are the minimum standards that we expect all students to adhere to:

- Students may not go barefoot at any time.
- Students may not wear sunglasses.
- Students may not wear hoods.
- Students may not wear muscle shirts, low cut clothing, halter tops, spaghetti straps or clothing that exposes the midriff.
- Students may not wear clothing or accessories which are vulgar, obscene, that depict or advocate alcohol/illegal substances, depict weapons of any kind or is offensive.
- Students may not carry wallet chains, wear spikes or chains that decorate clothing or as accessories.
- Undergarments should not be visible.
- Hats may be worn in general areas of the building; individual teachers reserve the right to determine if hats can be worn in classrooms.

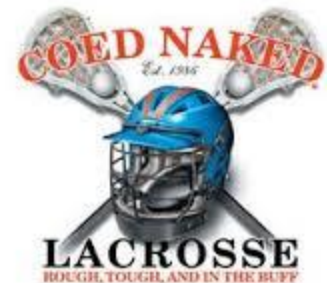
The shortest length of acceptable clothing will be measured by the longest finger of the student when standing upright with arms hanging naturally at their sides.

- Tights or leggings may be worn under clothing making the length acceptable.

If questioned, school administrators will determine whether or not a student’s appearance conforms to the dress code.

Disruptive

[Massachusetts Co-Ed Naked T-shirt Case](#)
[South Hadley HS](#)



So what else could be disruptive?



In 2004, Lexington, KY student Jaqueline Duty went to her prom in this dress and was told to leave.



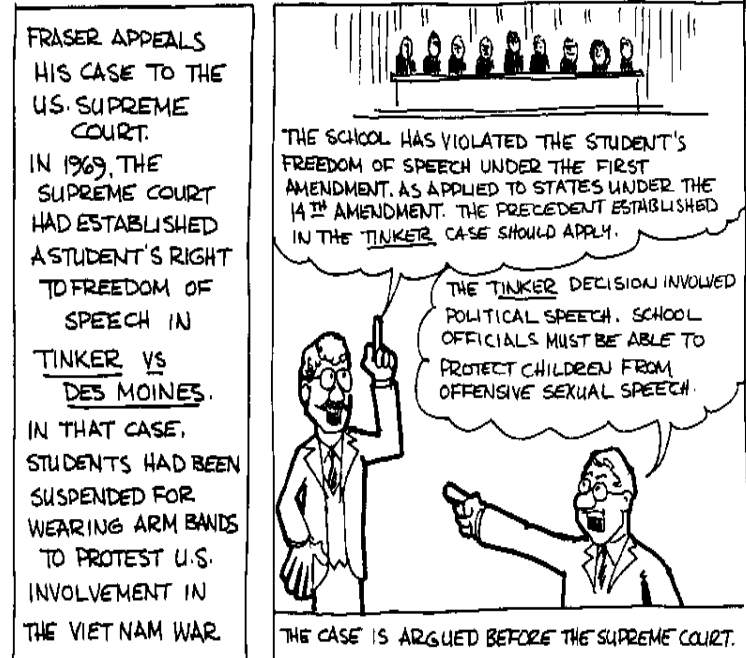
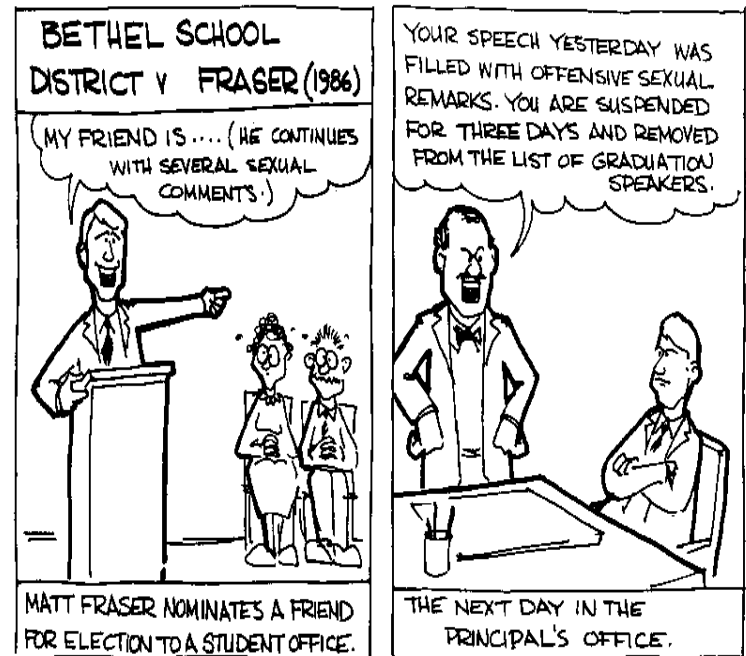
Candice Hardwick, 15, said she wants to wear the Confederate emblem to pay tribute to an ancestor who fought for the South in the Civil War.

http://www.huffingtonpost.com/2012/08/13/nearly-100-canton-high-st_n_1773803.html

Bethel School District #43 v. Fraser (1987)

Do students have a First Amendment right to make obscene speeches in school.

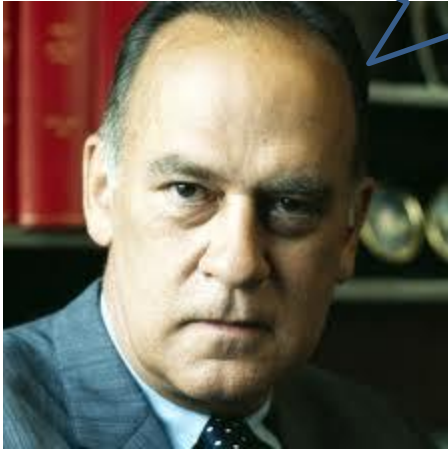
Matthew N. Fraser, a student at Bethel High School, was suspended for three days for delivering an obscene and provocative speech to the student body. In this speech, he nominated his fellow classmate for an elected school office. However, he used no 'swear words', just suggestive double entendres.



So.... What constitutes 'obscene'?

- The 1973 Miller v. California case produced the **'Miller Test'** as the standard for obscenity.

"I know it when I see it"

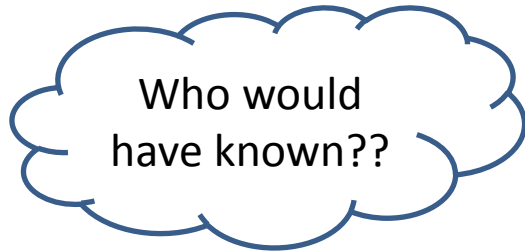


**Associate Justice
Potter Stewart**

- The average person, applying local community standards, looking at the work in its entirety, appeals to the prurient interest.
- The work must describe or depict, in an obviously offensive way, sexual conduct or excretory functions.
- The work as a whole must lack "serious literary, artistic, political, or scientific values".



- DANVERS, Mass. – Who knew "Meep!" was a four-letter word? The utterance favored by bungling lab assistant Beaker of "The Muppet Show" has been banned at Danvers High School in Massachusetts after students said it to repeatedly interrupt school.



Principal Thomas Murray said the word was part of a disruption planned using Facebook.

The Salem News reports that parents recently got an automated call about "Meep!" from Murray. He warned them that students who said or displayed the word at school could be suspended.

Murray says the warning was needed because students didn't heed his "reasonable request" to stop the meeping.



Hazelwood v. Kuhlmeier (1983)

Can administrators edit the content of school newspapers.

The principal of Hazelwood East High School edited two articles in the school paper *The Spectrum* that he deemed inappropriate. The student authors argued that this violated their First Amendment right to freedom of speech. The Supreme Court disagreed, stating that administrators can edit materials that reflect school values.



Tinker, Bethel and Hazelwood are generally considered the ‘holy trinity’ of HS first amendment cases....

UNTIL...

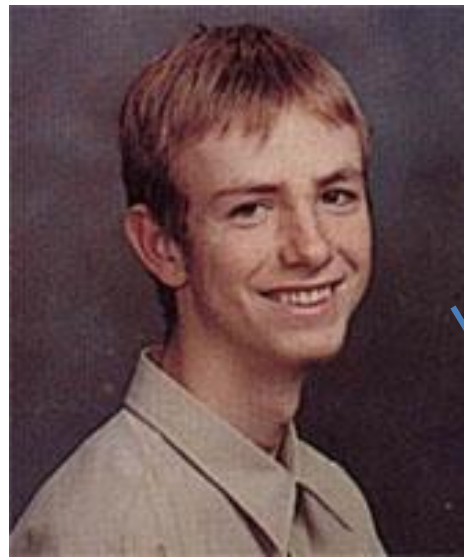
WAIT
FOR
IT...

Morse v. Frederick (2007)

Facts of the Case

At a school-supervised event, Joseph Frederick held up a banner with the message "Bong Hits 4 Jesus," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued under 42 U.S.C. 1983, the federal civil rights statute, alleging a violation of his First Amendment right to freedom of speech.

Principal
Deborah
Morse



There I am...



[C Span Morse v. Frederick](#)

[Band teacher posts silly faculty photo](#)

Teacher approved ??...

Not Teacher approved...



[Sidney Spies](#)

Blake Douglass Londonderry HS 2004

Other 1st amendment Cases

West Virginia State Board of Education v. Barnette (1942)

Facts of the Case

- The West Virginia Board of Education required that the flag salute be part of the program of activities in all public schools. All teachers and pupils were required to honor the Flag; refusal to salute was treated as "insubordination" and was punishable by expulsion and charges of delinquency. A group of students who were Jehovah's Witnesses refused to pledge because they did not believe in saluting symbols (against their religion).

- **Question:** Did the compulsory flag-salute for public schoolchildren violate the First Amendment?

[Barnette v. West Virginia](#)

There are a number of religious cases involving students and schools

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

Issue:

Whether state legislation can require principals, teachers and students to begin the day with prayers that are sponsored and written by the state.

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

Issue:

Whether the Ten Commandments may be permanently and compulsorily posted in public school classrooms by state law.

Lemon v. Kurtzman, 403 U.S. 602 (1971)

Wallace v. Jaffree, 472 U.S. 38 (1985)

Issue:

Whether a law that authorizes a period of silence in public schools for "meditation or voluntary prayer" is a violation of the Establishment Clause.

Zelman v. Simmons-Harris, 536 U.S. 639 (2002)

Issue:

Whether Cleveland's voucher program aided private religious schools in violation of the Establishment Clause.



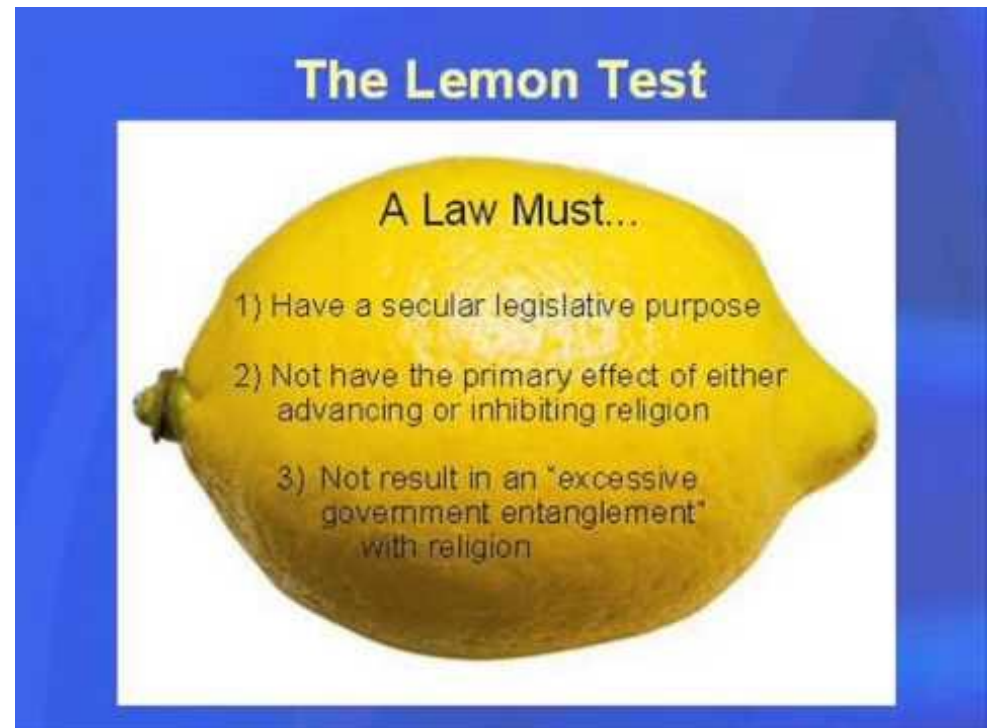
A general rule of thumb...
Student led..... Good....
Faculty led.....Bad.....

The Lemon Test

- Does the challenged law, or other governmental action, have a bona fide secular (non-religious) or civic purpose?
- Does the primary effect of the law or action neither advance nor inhibit religion? In other words, is it neutral?
- Does the law or action avoid excessive entanglement of government with religion?

Don't forget Justice O'Connor's
Endorsement Test (Lynch v. Donnelly
1984)

And the Coercion Test
(Lee v. Weisman 1992)



4th Amendment

Search and Seizure in a school setting

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



New Jersey v. T.L.O. (1985)

Do students have a reduced expectation of privacy in school?

A teacher accused T.L.O. of smoking in the bathroom.

When she denied the allegation, the principal searched her purse and found cigarettes and marijuana paraphernalia.

Key words:

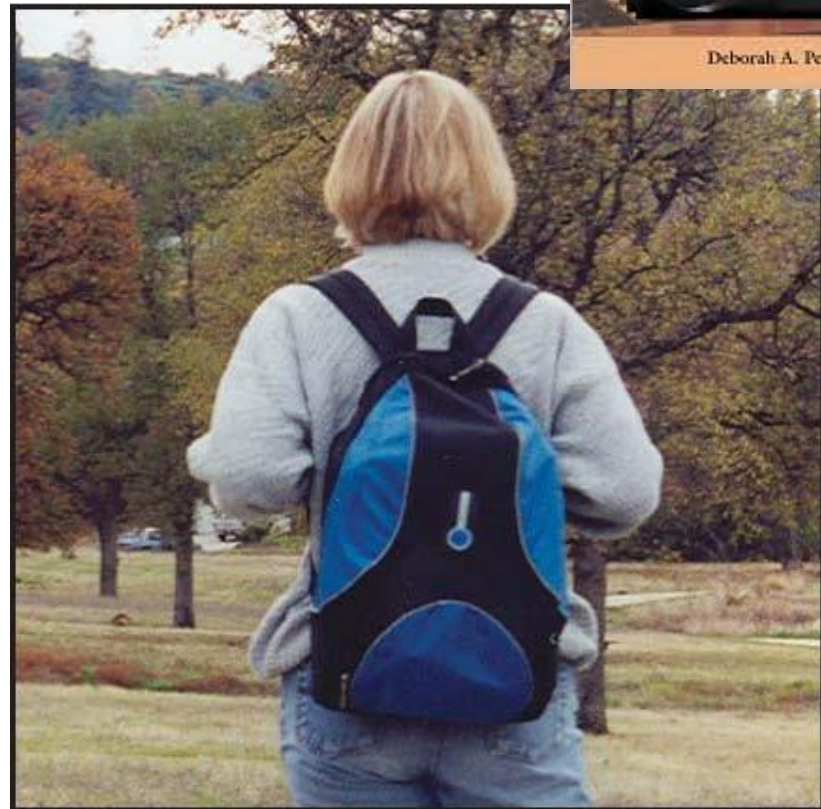
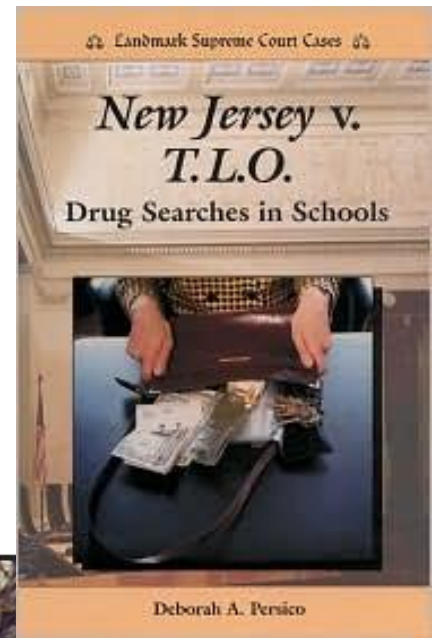
Scope

Inception

Probable Cause

Reasonable Suspicion

Slippery Slope



**Board of Education of Independent School District #92
of Pottawatomie County v. Earls (2002)**

*Do random drug tests of students
involved in extracurricular activities
violate the Fourth Amendment?*

In *Veronia School District v. Acton*
(1995), the Supreme Court held that
random drug tests of student athletes
do not violate the Fourth
Amendment's prohibition of
unreasonable searches and seizures.
Some schools then began to require
drug tests of all students in
extracurricular activities.



But wait...I'm
in the choir !!



Lindsay Earls

Safford Unified School District v. Redding 2009

Facts of the Case:

Savana Redding, an eighth grader at Safford Middle School, was strip-searched by school officials on the basis of a tip by another student that Ms. Redding might have ibuprofen on her person in violation of school policy.

She alleged her Fourth Amendment right to be free of unreasonable search and seizure was violated.

Question:

Does the Fourth Amendment prohibit school officials from strip searching students suspected of possessing drugs in violation of school policy?



[Savana Redding Interview](#)

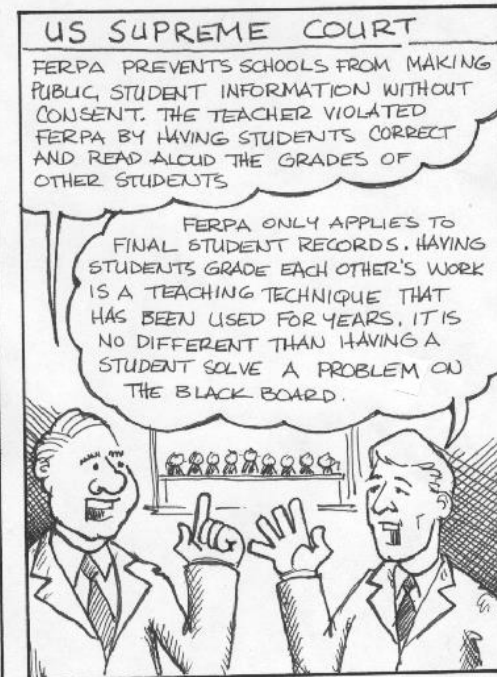
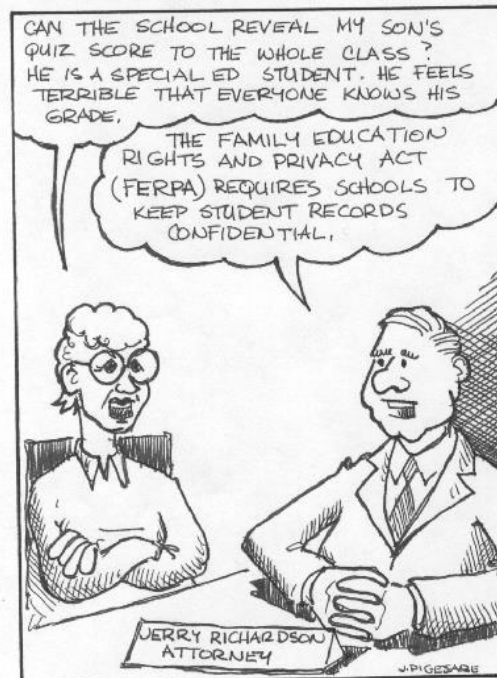
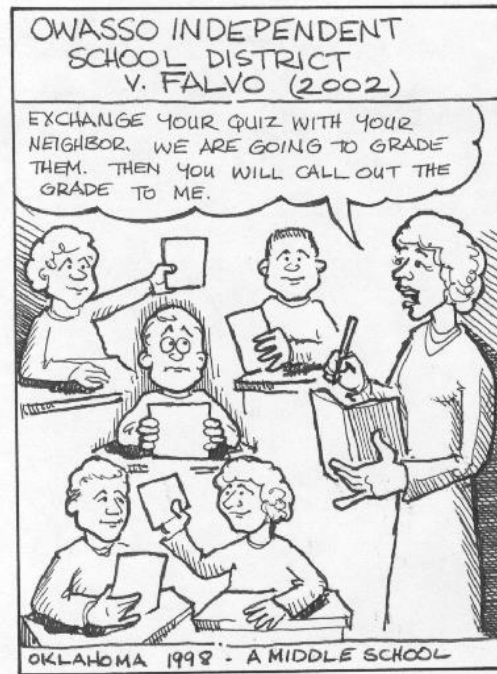
**OWASSO INDEPENDENT SCHOOL DIST. NO. 1011
v. FALVO (2002)**

Facts of the Case

Kristja J. Falvo asked the Owasso Independent School District to ban peer grading, or the practice of allowing students to score each other's tests, papers, and assignments as the teachers explain the correct answers to the entire class, because it embarrassed her children. When the school district declined, Falvo filed an action against the school district, claiming that such peer grading violates the Family Educational Rights and Privacy Act of 1974 (FERPA).

Question:

Does the practice of peer grading violate the Family Educational Rights and Privacy Act of 1974?



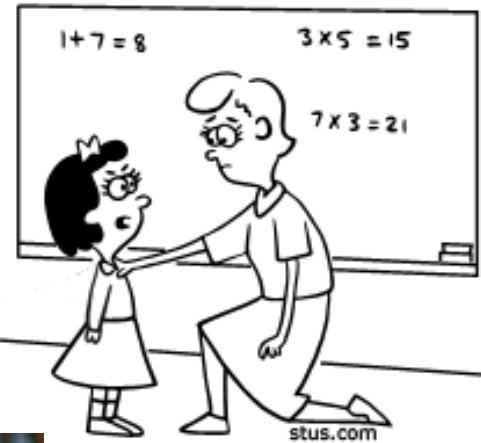
Elk Grove Unified School District v Newdow (2004)

Michael Newdow's daughter attended public school in the Elk Grove Unified School District in California. Elk Grove teachers began school days by leading students in a voluntary recitation of the Pledge of Allegiance, including the words "under God" added by a 1954 Congressional act. Newdow sued in federal district court in California, arguing that making students listen - even if they choose not to participate - to the words "under God" violates the establishment clause of the U.S. Constitution's First Amendment.

Question

Does Michael Newdow have standing to challenge as unconstitutional a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance? Does a public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance, which includes the words "under God," violate the Establishment Clause of the First Amendment?

By including "under God" in the Pledge of Allegiance, the school just opened up a new front in my parents' divorce war.



Does this apply to NH?

Freedom from Religion Foundation v. Hanover School District

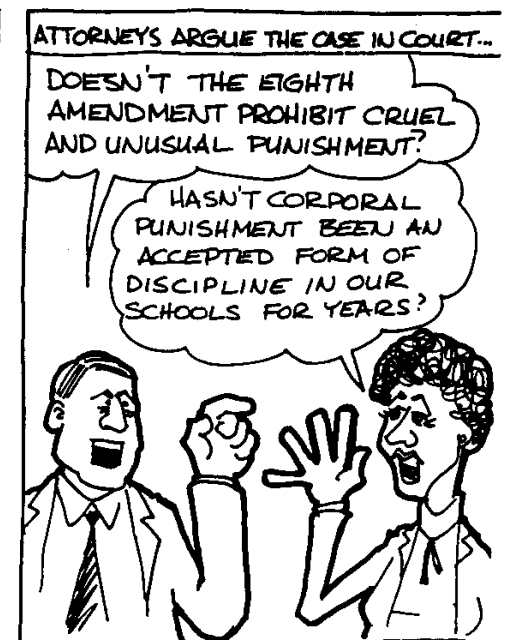
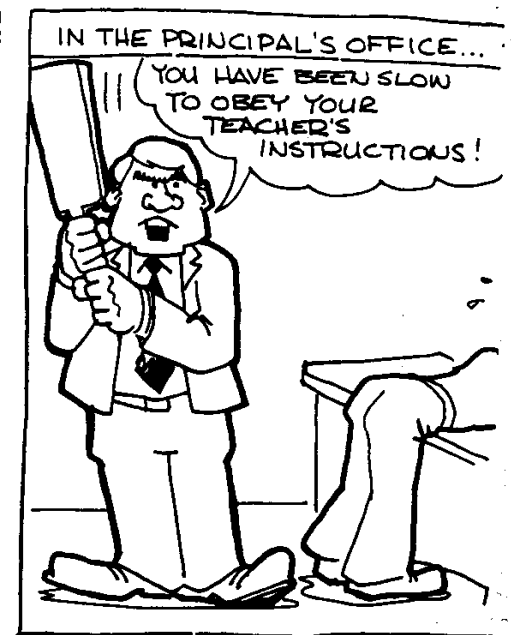


- The Freedom from Religion Foundation (FFRF) filed suit against two New Hampshire school districts, challenging the voluntary recitation of the Pledge of Allegiance and, specifically, the words “under God” in the Pledge. In *Freedom From Religion Foundation v. Hanover School District*, 626 F. 3d 1 (1st Cir. 2010), the First Circuit held that the New Hampshire School Patriot Act, which required the state’s public schools to authorize a period of time each day for students to voluntarily recite the Pledge of Allegiance, was constitutional. The Supreme Court denied the FFRF's petition in June of 2011.

Ingraham v. Wright (1977)

Question:

Is corporal punishment allowed in a school setting?



Miller v. Alabama (2011) decided June 25, 2012

Facts of the Case

In July 2003, Evan Miller, along with Colby Smith, killed Cole Cannon by beating Cannon with a baseball bat and burning Cannon's trailer while Cannon was inside. Miller was 14 years old at the time. In 2004, Miller was transferred from the Lawrence County Juvenile Court to Lawrence County Circuit Court to be tried as an adult for capital murder during the course of an arson. In 2006, a grand jury indicted Miller. At trial, the jury returned a verdict of guilty. The trial court sentenced Miller to a mandatory term of life imprisonment without the possibility of parole.

Question

Does the imposition of a life-without-parole sentence on a fourteen-year-old child violate the Eighth and Fourteenth Amendments' prohibition against cruel and unusual punishment?



Colby Smith and Evan Miller



Kuntrell Jackson

- 2005: Roper v. Simmons

- No death penalty for youths

- 2010: Graham v. Florida

- No life in prison for non-homicidal crimes

Wednesday, June 27, 2012

Supreme Court ruling may apply to Steven Spader's life sentence

The lawyers who defended Steven Spader in the Kimberly Cates murder trial are exploring whether a U.S. Supreme Court decision issued this week will affect the life sentence without parole that their client received.

Andrew Winters, half of the defense team that represented Spader during the 2010 trial, said he and his partner, Jonathan Cohen, are looking closely at the ruling that mandatory sentences of life without parole for juveniles are unconstitutional.

The Supreme Court decision issued Monday left open the possibility that judges could sentence juveniles to life without parole in individual cases of murder, but said state laws cannot automatically impose such a sentence.

It said nothing about whether the ruling should apply retroactively to cases that have been adjudicated. That is left for lower courts to hash out.

