CONSTITUTIONAL ISSUES AND TEENAGERS

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Grade level: High School

Subject area: American History, Law, Civics

Objectives: 1. The students will become acquainted with the appellate process.

2. The students will become familiar with court cases that addressed constitutional rights and high school students.

Materials: Handouts for the students

Directions and activities:

1. Choose a Supreme Court case that may interest high school students. Summaries of four famous cases where the parties are high school students are attached as handouts to this lesson. The holdings in these cases were:

   New Jersey v. T.L.O, 469 U.S.325, 105 S.Ct. 733, 83 L.Ed.2d 720(1984). The United States Supreme Court found that a search of T.L.O.'s purse was reasonable because the vice-principal had information from a teacher that T.L.O. had violated school rules.

   Bethel School v. Fraser, 478 U.S. 675, 106 S.Ct. 3159, 92 L.Ed.2d 549(1986). The United States Supreme Court held that it is a "highly appropriate" function of public school education to prohibit vulgar and offensive terms in public discourse and that Fraser's "offensively lewd and indecent speech" was not protected by the First Amendment.

   Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988). The United States Supreme Court held that the principal's decision to disallow two articles in the school newspaper did not violate the First Amendment. The court held 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 United States Supreme Court further held that school facilities may be deemed to be public forums only if the school has opened its facilities for "indiscriminate use by the general public" Since the Hazelwood School District did not open its facilities to the public at large, its student newspaper was not considered a public forum, and, therefore was not entitled to the same First Amendment protection as a public newspaper.

   Vernonia School District 47J v. Acton, 515 U.S.____, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995). The United States Supreme Court held that the Vernonia School could test its athletes for drugs without violating the students' Fourth Amendment Rights. The court held that requiring a student to submit to a urine test is a search within the meaning of the Fourth Amendment and that an individual's right to privacy must be balanced against the school's interest in curbing illegal during use among the student body. However, a school may exercise greater supervision over school children than the state can over adults. Although students do not leave their constitutional rights at the school door and any search or seizure must be considered reasonable, school children have a lesser expectation of privacy than adults in that they are required to have physical examinations and vaccinations in order to attend school. Student athletes have an even lesser expectation of privacy in light of the fact that they often undress in open locker rooms. As to the balancing test, the privacy interests involved with urine testing are minimal compared to the school's interest in curbing the use of illegal drugs among the students. Furthermore, student athletes have a greater potential to harm themselves and otherwise while using illegal drugs, and, in the Vernonia School District, the results of the drug test would be kept confidential and not turned over to law enforcement officials.

2. After choosing a case or several cases for study, have the students work individually or in groups to answer the following questions:

   a. Who are the parties in the case?
   b. What constitutional right is at issue?
   c. How many courts was this case in before coming to the U.S. Supreme Court?
   d. What happened in the case in the lower courts (the courts that heard the case before the Supreme Court)?
   e. What is each party's best argument?

3. Do a simple moot court appellate argument. First, divide the class into the following groups:

   a. Seven to nine judges. This group should meet and come up with questions for both parties. They should pick someone to act as the Chief Justice.

   b. Appellant team. This group should choose one spokesperson to do the argument, but everyone in the group should help with the argument and will sit with the spokesperson at the argument. Everyone on the team will be allowed to answer the judges' questions.

   c. Respondent's team. This group should choose one spokesperson to do the argument, but everyone in the group should help with the argument and will sit with the spokesperson at the argument. Everyone on the team will be allowed to answer the judges' questions.

   d. Reporters. This group will study the cases and do a short story about the upcoming argument and a short story after the argument. They may interview the parties, but not the judges.

   Next, explain the rules of a moot court:

   a. The judges, appellant team and respondent team will sit as panels. The room should be arranged so that the judges are seated in front, a speaking podium is in front of the "bench," and the appellant and respondent teams are seated on either side of the speaking podium. The judges should not enter the "courtroom" until court is called to order by the teacher-bailiff.

   b. When the appellant and respondent teams are seated, the teacher-bailiff will call the court to order: "Oyez (oy-yay)! Oyez! Oyez! The Supreme Court of the United States is now in session with the Honorable (name of Chief Justice) presiding. All will stand and remain standing until the judges are seated and the Chief Justice has asked all present to be seated.

   c. The Chief Justice will then call the case and ask if the parties are ready. Each spokesperson should answer, "Yes." The appellant spokesperson should approach the podium first, and say, "May it please the court." The Chief Justice should say, "Yes" and the argument begins. Judges should know that they may (and should) interrupt at any time to ask a question. Any member on the panel may answer a question. NEVER tell a judge to "wait a minute" in order to finish a point in an argument. All questions must be answered as they are asked.

   d. Each side should be given 10 minutes to argue. The teacher-bailiff should announce when there is one minute left. When time is up, the spokesperson should be seated immediately unless a judge asks him/her to complete an answer. A party never asks for more time.

   After all the arguments, the teacher-bailiff should have all rise as the judges retire to chambers to make a decision. (Allow 5 minutes) The judges re-enter and all rise. The Chief Justice announces the court's decision.

4. After the moot court, the teacher should announce the actual holding of court in the case(s).

Handout

SIMPLIFIED BILL OF RIGHTS

First Amendment--This amendment guarantees the right of freedom of religion, freedom of speech, freedom of press, freedom for people to assemble peaceably, and freedom for people to petition the government for change.

Second Amendment--This amendment states that, in order for there to be a prepared state military, people are guaranteed the right to keep and bear arms.

Third Amendment--This amendment states that the government cannot force people to house and feed soldiers in their homes during times of peace.

Fourth Amendment--This amendment states that people, their homes and their belongings are protected from unreasonable searches or seizures by the government, including law enforcement officers. Even a reasonable search or seizure usually requires a proper search warrant. A court may not issue a proper search warrant unless there is probable cause that the person or place to be searched or the thing to be seized is involved in a crime.

Fifth Amendment--This amendment guarantees a person accused of a serious crime the right not to be forced to testify against himself or herself. This amendment also guarantees that a person who is found not guilty of a crime will not be tried for this crime again.

Sixth Amendment--This amendment guarantees a person accused of a crime a speedy trial by a fair and impartial jury and the right to hear and see witnesses against him/her. This amendment also guarantees the accused that the accused will know with what crime he/she is charged and guarantees the right to a lawyer.

Seventh Amendment--This amendment guarantees a trial by a jury in a civil case.

Eighth Amendment--This amendment guarantees that excessive bail and excessive fines will not be given and that punishment will not be cruel and unusual.

Ninth Amendment--This amendment states that the people have other rights that are not stated in the Constitution.

Tenth Amendment--This amendment states that the people have all the powers not given to the government.

Handout

NEW JERSEY v. T.L.O.[1]

Facts of the Case

On March 7, 1980, a teacher at Piscataway High School in New Jersey found two girls smoking in a restroom. Since this was a violation of school rules, the teacher took the two students to the principal's office. The assistant vice-principal questioned the two girls separately. One student admitted that she had been smoking. However, T.L.O. denied that she had been smoking in the restroom and claimed she did not smoke at all. The assistant vice principal then asked to see T.L.O.'s purse. When he opened the purse he found a pack of cigarettes and also noticed a package of rolling papers which the vice-principal knew were associated with marijuana use. He then searched the purse more thoroughly and found a small quantity of marijuana, a pipe, several empty plastic bags, a substantial amount of money, a card that

[1]T.L.O. is the initials of the juvenile in this case. Since the person involved in the case is a minor, her name may not be used in order to protect her privacy.

appeared to be a list of students who owed T.L.O. money, and two letters that implicated T.L.O. in the distribution and sale of marijuana, a crime under New Jersey law.

What Happened in State Court

The State of New Jersey brought delinquency charges against T.L.O. in Juvenile Court. T.L.O. argued that the vice-principal violated her Fourth Amendment rights to be free from unreasonable searches and seizures by government officials because the vice-principal had no reason to believe a crime had been committed and had no search warrant. The Juvenile Court agreed that a vice-principal was a government official and that Fourth Amendment protections applied to searches by school officials, but found that the vice-principal's search of her purse was reasonable. The New Jersey Supreme Court reversed the Juvenile Court and found that once the vice-principal had found the cigarettes in T.L.O.'s purse, the search should have ended and there should have been no further exploration of the purse.

Appellant's (State of New Jersey) argument: The vice-principal's search of the purse was reasonable because a teacher had told the vice-principal that T.L.O. had been smoking. Thus, the vice-principal had *reasonable cause to suspect* a school rule had been broken. When the vice-principal was searching for the cigarettes, the drug-related evidence was in plain view. Plain view is an exception to the warrant requirement of the 4th Amendment.

Respondent's (T.L.O.) argument: The vice-principal had no probable cause to believe that T.L.O. had committed a crime when he searched her purse. Possession of and use of cigarettes (at that time) were not crimes. Belief that a school rule has been broken is not grounds for a warrantless search. Furthermore, even if the vice-principal had the right to search T.L.O.'s purse for cigarettes that the search should have ended when the cigarettes were found.

Food for thought: If the Court should find that the vice-principal's search of T.L.O.'s purse was reasonable, does this open the door to school administrators randomly searching students' lockers, desks and belongings?

Handout

Bethel School v. Fraser

Facts of the Case

Matthew Fraser was a student at Bethel High School. On April 26, 1983, he gave a speech to 600 high school students to nominate a student candidate for a school officer. The students had a choice to attend the assembly or go to study hall.

Bethel High School had a rule against using obscene or profane language on school grounds and at school functions. Fraser had shown his nominating speech to two of his teachers before he gave it. They warned him that it was inappropriate, that he probably should not give it, and that he would probably get in trouble if he did because it contained obscenities. Fraser gave the speech anyway. The following is the entire text of Fraser's nominating speech:

I know a man is who is firm--he's firm in his pants, he's firm in his shirt, his character is firm--but most of all his belief in you, the students of Bethel, is firm. Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts--he drives hard, pushing and pushing until he finally succeeds. Jeff is a man who will go to the very end and even the climax, for each and every one of you. So vote for

Jeff for ASB vice-president--he'll never come between you and the best our high school can be.

The speech drew a variety of responses. Students hooted and hollered some seemed embarrassed, and some were seen making what appeared to be sexual gestures. As a result of the speech, one teacher reported that ten minutes of her class time was taken up with discussion of the speech. No other evidence of disruption of the educational process was reported.

The day after he delivered the speech, Fraser was asked to report to the assistant principal's office and to produce a copy of the text of his speech. At the meeting, Fraser was given notice that he was being charged with violating the school's rule prohibiting disruptive conduct. Disruptive conduct was defined as conduct which materially and substantially interfered with the educational process, including the use of obscene, profane language or gestures.

After he was given an opportunity to explain his conduct, Fraser was suspended for three days. Fraser, who was a member of the Honor Society and the debate team and the recipient of the "Top Speaker" award in statewide debate championships for two consecutive years, was also informed that his name would be removed from a previously approved list of candidates on the ballot for graduation speaker. Even though his name was stricken from the ballot, his classmates on a write-in vote, receiving the second highest number of votes cast elected him as a graduation speaker. The school district, nevertheless, continued to deny him permission to speak.

What Happened in the Lower Federal Courts

Fraser sued the school district in the federal court, alleging that the school had violated his First Amendment right of freedom of speech. The Federal District Court held that the school's actions
(*Fraser continued*)

violated Fraser's First Amendment right to free speech. The United States Court of Appeals for the Ninth Circuit affirmed the District Court's opinion.

Appellant's (Bethel School) argument: The school had a rule against the use of obscene language and respondent had been warned that his speech was in violation of that rule. Furthermore, a school has a special interest in protecting students from lewd and offensive language or conduct.

Respondent's (Matthew Fraser) argument: In the case of ***Tinker v. Des Moines Independent Community School District***, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d. 731(1969) the Supreme Court held that a student's First Amendment right to free speech does not end at the school door and that a student has the right to express his/her political beliefs. The students were not required to attend the function so Fraser was not forcing his speech on anyone. Only one teacher reported any kind of disruption and that was for only ten minutes. Furthermore, Fraser had no notice that the school officials would react so harshly to his speech.

Handout

Hazelwood School District v. Kuhlmeier

Facts of the Case

The student newspaper at Hazelwood East High School in St. Louis County was published by the members of the Journalism II class. The students acted as editors with some oversight by the teacher. The principal of the school would read the typeset copy before it went to press. School Board policy said, "school-sponsored student publications will not restrict free expression of diverse viewpoints within the rule of responsible journalism."

For one particular issue, the students had written two articles that met with the disapproval of the principal: (1) an article on teenage pregnancy which had quotes from unnamed students about sexual activity and birth control methods. The principal thought the pregnant students could be identified by the text of the article and thought the article was inappropriate for younger students; and (2) an article about divorce that quoted, by name, a student who

said her father did not spend enough time with the family before the divorce and was always out of town on business. The principal thought that the quoted student's parents should have had the opportunity to comment on the article or to consent to it before publication. Due to the principal's claim that there was not enough time left in the school year to carry out major revisions or reviews of the articles, he did not give the editors the opportunity to revise the articles. The principal ordered that the two articles be deleted from the newspaper.

What Happened in the Lower Federal Courts

The student editors sued the school district in federal court, alleging that their First Amendment freedom of the press right had been violated. The Federal District Court held that no First Amendment violation occurred when the principal ordered that the articles be deleted. The United States Court of Appeals for the Eighth Circuit, however, reversed the district court, finding that there had been a violation.

Appellant's (Hazelwood School District) argument: The student newspaper was not a public forum and was part of a journalism class. The articles that the students wanted to print did not meet the standards of the journalism class. Schools have a duty to screen materials for appropriateness for its students.

Respondent's (Journalism students) argument: In the case of ***Tinker v. Des Moines Independent Community School District***, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d. 731(1969), the Supreme Court held that a student's First Amendment right to free speech does not end at the school door. The articles were about issues that are important to teenagers. The privacy of everyone concerned had been protected.

Food for thought: If a school newspaper is not part of a journalism class, would that make a difference? If the school newspaper allowed advertisements from outside businesses, would the newspaper then be a "public forum?"

Handout

VERNONIA V. ACTON

Facts of the Case:

Vernonia, Oregon, is a small community of about 3,000 people with a student population of 690 students. In this small logging community, most of the students participated in school athletics and school athletic programs are a major focus of the community. Between 1985 and 1989, the teachers and administrators of Vernonia School District became concerned about what they observed to be a dramatic increase in the use of illegal drugs among the students, many of them student athletes. The increase in drug use corresponded with an increase in student disciplinary problems. Many student athletes openly bragged about using drugs.

Prior to 1989, administrators instituted drug education programs and used drug-sniffing dogs to combat the escalating drug problem. These measures did not work. Thus, in 1989, the administration adopted a policy that required all students who participated in interscholastic athletics to take a drug test at the beginning of the athletic season and at random times throughout the season. The urine of athletes was tested strictly for the presence of drugs. The type of test used is considered 99.94% accurate. The results were kept confidential and were strictly used by the school. Those athletes who tested positive for drugs had to participate in a drug counseling program for six weeks. They also had to agree to weekly drug testing or face being suspended from the team for the current season and all following seasons. If a student refused to be tested, the student was suspended from inner scholastic athletics for the season.

After the policy went into effect, disciplinary complaints dropped by 50%. Teachers saw a drop in the use of drugs among their students and saw approval for drug use also drop.

James Acton was in seventh grade during the 1991-1992 school year and wanted to play football. However, he and his parents refused to sign the consent form for the drug testing. In accordance with the school policy, he was suspended from interscholastic athletics. The Actons brought a suit against the school in the federal district court, claiming that the school's policy violated James' Fourth Amendment right to be free from unreasonable searches and seizures.

What Happened in the Lower Federal Courts

The Actons lost in district court and then appealed to the Ninth Circuit Court of Appeals. They won in the Ninth Circuit. The School district then asked the United States Supreme Court to review the case.

Arguments for the Parties

Justice Scalia's Views (for appellant, the school):

1. Collecting a student athlete's urine is a "search" and, therefore, the Fourth Amendment issue of whether the search is reasonable. Reasonableness is judged in this case by balancing the intrusion of requiring a student athlete to provide a urine sample against the school's interest in curbing illegal drug use.

2. School children require a greater degree of supervision than do adults. The requirements that school children receive physical examinations and have vaccinations indicate that they have a lesser expectation of privacy than the general population. Student athletes have an even lesser expectation of privacy because they undress in open locker rooms, are subject to preseason physical exams and rules regulating their conduct.

3. The urine is tested only for drugs and only a very limited group knows the results. The results are not released to medical personnel or the law enforcement community.

4. The importance of deterring illegal drug use by school children cannot be doubted. Moreover, the policy of drug testing athletes is directed strictly to student athletes who are more susceptible to injuring themselves or others while using illegal drugs.

Justice O'Connor's Views (for the respondent, James Action):

1. The Fourth Amendment generally forbids searches of whole groups. There must be suspicion of the individual to justify the search.

2. Students who are disruptive or act suspicious should be tested--this would not violate anyone's constitutional rights.

3. By focusing on individual suspicion, the whole process is kept confidential and then "any distress arising from what turns out to be a false accusation can be minimized."

4. "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."