

Kennedy v. Bremerton School District: A First Amendment Case

PROGRAM FACILITATOR GUIDE

Overview

This slide-driven lesson can serve as a supplementary lesson to any U.S. history or U.S. government course's content regarding the First Amendment, particularly its religion and free-speech clauses. As an alternative, show [The Constitution and Bill of Rights](#) slide presentation from Teach Democracy before showing this slide presentation. This presentation provides a visual medium to accompany the presenter's oral narrative.

The slide-driven lesson includes a moot-court activity: *Kennedy v. Bremerton School District: A First Amendment Case*. In this activity, students apply their knowledge about the Constitution and Bill of Rights as they prepare for and present a modified moot court.

NOTE: This Program Facilitator Guide can serve as a lesson plan for classroom teachers. It is also intended for lawyer or judge-facilitators in Teach Democracy's *Courtroom to Classroom* program. Sections applicable to those facilitators are noted below.

Time Estimations

Part I: Kennedy v. Bremerton slide show	10–15 minutes
Part II: Moot court activity	20 minutes
Part III: Share the court's decision	<u>5 minutes</u>
	40 minutes

Materials

- *Kennedy v. Bremerton School District* [slide presentation](#)
- [Student Handout: Kennedy v. Bremerton](#) (one per student)

Suggested Presentation Strategy (for Courtroom to Classroom Facilitators)

1. Preview the slides and summary U.S. Supreme Court decision before presenting to the students.
2. Prepare to narrate the slide presentation. You may want to provide additional information on specific topics, depending on what you predict the students will be most interested in.
3. Explain to students that they are going to have a chance to participate as attorneys and justices in a Supreme Court case. Using the slide presentation, guide students through the activity, *Kennedy v. Bremerton School District: A First Amendment Case*. Step-by-step procedures are included in the Notes section of each slide. Below you will find questions and analyses to consider prior to your visit in preparing to work with the student/attorney and student/justice groups, as well as a set of prompts you might use during your visit to help students develop their arguments and questions.

Tips for Conducting a Moot Court Activity

There are two recommended methods for conducting the moot court activity: “Time Efficient” and “Participatory.” Before beginning this activity, determine which method you will utilize in the classroom.

Time-Efficient Method

1. Divide students into three groups (see role assignments below).
2. Students work with their assigned group to prepare the case and work with any outside resource people, such as attorneys or law students who may have accompanied the classroom facilitator.
3. A few minutes before the moot court starts, ask representatives from each group to present the case in front of the class.
 - Three attorneys per side
 - Seven justices
4. After the presentation and decision, the teacher asks the other student attorneys what arguments they might have included, and the other justices how they might have decided the case differently.

Role assignments:

- Students are divided into three groups: Justices, Appellants, and Respondents
- The quickest and easiest method for assigning roles is to leave the students seated where they are and divide the room into three sections. Assign each section *one* role.
- Counting off by 3s is another quick method, but the students will have to physically re-group. Once they are in three groups, assign each group *one* role.

Participatory Method

1. Divide the class into groups of seven students and label them Group A, Group B, etc.
2. Within each group of seven, assign the students a role (see role assignments below). After the role assignments you will have two appellants, two respondents, and three justices in *each* group.
3. Ask all the justices from each group to gather on one side of the room, all the appellants in another area of the room and all the respondents in another part of the room.
4. Students work with their assigned group role to prepare the case and work with any outside resource people available, such as attorneys or law students who may have accompanied the classroom facilitator.
5. A few minutes before the moot court starts, the students return to their original groups of seven (e.g., Group A, Group B, etc.) and present their case simultaneously.

6. Each set of justices deliberates and decides its own case. Then each set shares its decision and rationale with the rest of the class. The students who were attorneys discuss the most compelling and weakest arguments they think they made.

Role assignments:

- Each moot court has three roles: Justices, Appellants, and Respondents.
- Count off by 7 is a quick method to group students.
- Within each group of seven, assign roles (three justices, two appellants, and two respondents) by one of the methods below:
 - Hand each student a colored file with the student handout inside (blue for the justices, red for the appellants, and green for the respondents).
 - Hand each student a strip of paper with a role assignment (justice, respondent, or appellant).
 - Ask students within their group to decide who will be the three justices, two appellants, and two respondents.

Possible Questions to Assist Student Attorney and Justice Groups

Kennedy v. Bremerton School District

Prior to conducting the moot court, but after showing the slides about the case facts, consider the following questions and how you might use these analyses to focus discussions among the students in the attorney and justice groups.

- In a prior Supreme Court case called *Santa Fe Independent School District v. Doe*, the court held that student-led, student-initiated prayer at high school football games violated the Establishment Clause. No one disagreed that the football game was a school-sponsored event. The court stated that even if some students led the prayers, the *school* was subtly coercing other students to join in the prayers because of its sponsorship of the event. Would the court decide it differently today if considering students' rights under the Free Exercise Clause?
- In the Supreme Court case *Engel v. Vitale* (1963), the court held that public schools could not hold prayers each morning, even if student participation in the prayers was voluntary. The prayers were verbal, nondenominational prayers (not connected to any particular church). This violated the Establishment Clause. Is this similar to the Bremerton School District case? How so? Is it different? How so?
- Just before the school district placed Coach Kennedy on administrative leave, they had had many communications back and forth with Kennedy's lawyers. Kennedy's prayers one night prompted local news media coverage. The school followed up with a rule disallowing the public from entering the field after games, and local police were involved in securing the field. Then, after a game one night, no players but several adults joined Kennedy in praying at the 50-yard-line. It was then that the district placed him on leave. Do all these facts change your opinion of the case? Why or why not?
- Many schools have a "moment of silence" to open the school day, as long as it is neutral. This means the school cannot encourage students to pray during the moment of silence, though students are free to silently pray if they wish. Any silent, contemplative activity is permitted. The Supreme Court has never heard a case about the moment of silence. What

if a teacher or a coach suggests that students “pray or meditate” during the moment of silence? Would that be constitutional? Why or why not?

During the Moot Court activity, you might use the following questions to help the student groups get started:

Attorneys representing Bremerton School District:

How could you convince the justices that ...?

- Coach Kennedy’s prayer at the 50-yard-line was not a private activity. He was visible to virtually everyone there.
- Coach Kennedy was deliberately trying to encourage players to pray with him. He was given the chance to pray either non-demonstratively (without kneeling or bowing his head) or in a private space out of players’ sight.
- Students felt coerced into joining him in prayer. He does not have a right to free speech in this case because it was done while he was in his position of authority as a coach.

Attorneys representing Coach Kennedy:

How could you convince the justices that...?

- Kennedy complied with the school’s demands by never encouraging or discouraging players to pray with him. He also had already ceased putting religious messages in his post-game talks with students.
- Kennedy was at a school-sponsored event, but he was not praying during any official duties. The game was over, and players were in the process of leaving (getting on buses, socializing, etc.).
- Kennedy’s quiet prayer was protected by his right to freedom of speech.

Justices:

What questions might you ask to help you decide...?

- If Coach Kennedy deliberately disregarded what the school district had asked him to do.
- If the school district was wrong for disciplining Coach Kennedy by placing him on leave.
- If quiet prayer at the 50-yard-line is private speech (Kennedy acting for himself) or official speech (Kennedy speaking for the school district).

Student Handout

Kennedy v. Bremerton

Facts of the Case

- Joseph Kennedy, a high school football coach, often gave motivational speeches to his players after games. Sometimes the speeches had religious content.
- His employer, the Bremerton School District, warned him that his religious speeches violated the establishment clause under the First Amendment.
- Kennedy instead began to kneel midfield and quietly pray by himself for about 30 seconds. Sometimes, players from both teams would join in on the prayers.
- The school district told Kennedy he could pray, but that his prayers needed to be “nondemonstrative” (so no one could tell he was praying) or out of sight of students.
- Kennedy continued his after-game prayers on the football field. The school district placed him on administrative leave.

Arguments Made in Lower Courts

Take a look at the arguments each side made in the lower courts. This could help you think about arguments and questions you might use.

Attorneys for Kennedy

- Kennedy never demanded that students join him in prayer.
- Kennedy’s quiet, post-game prayers were not government speech just because he was “on duty.”
- The school district wrongfully restricted his private religious practice and should have remained neutral.

Attorneys for Bremerton School District

- The school district properly restricted his speech because he was on duty at a school-sponsored event.
- Kennedy’s rights to free speech and to free exercise of religion were not violated because his prayers were not private.
- Kennedy’s prayers after games gave the impression that the school endorsed his prayers.

Question Before the Court

Did the school district violate Kennedy’s rights to free speech and free exercise of his religion when it placed him on leave?

To Prepare for the Case

Attorneys for Kennedy: You believe the school district violated Kennedy’s rights to free speech and free exercise of his religion. Create arguments to convince the justices that the school district wrongfully restricted Kennedy’s post-game prayer.

Attorneys for Bremerton School District: You believe the school district did *not* violate Kennedy’s rights to free speech and free exercise of his religion. Create arguments to convince the justices that the school district rightfully restricted Kennedy’s post-game prayer.

Justices of the U.S. Supreme Court: Create at least three questions to ask each side to help you determine the case.

Rules of Oral Argument

1. Attorneys for Joseph Kennedy will present first.
2. Attorneys for Bremerton School District will present second.
3. Justices will ask questions of both sides during the arguments.

The Justices' Decision

1. After oral arguments, the justices meet and discuss the case.
2. Then, they vote.
3. The justices will explain the reasons for the decision.

Notes