

Talking Points – Morse v. Frederick Workshop

- I. Arguments made by attorneys for Frederick:
- A. Technically, this is not even a “school speech” case:
 - 1. Frederick was not on school property, but rather across the street on a public sidewalk. Public sidewalks are traditionally a “public forum” where free speech is strongly protected. Thus, his display of the banner can’t be regulated by the school and should be protected under the 1st Amendment.
 - 2. Furthermore, Frederick hadn’t even come to class that morning. He was skipping school, and therefore was outside of school authority and acting on his own as a private party. Principal Morse had no right to punish him for free speech activity undertaken on his own time (although she could certainly punish him for being truant from school).
 - B. The message on Frederick’s banner did not violate school policy regarding promoting drug use and wasn’t disruptive to the operations of the school. The phrase “BONG HiTS 4 JESUS” was just harmless, amusing “nonsense meant to attract television cameras.” Principal Morse violated Frederick’s 1st Amendment rights by restricting this meaningless, nondisruptive speech.
 - C. Principal Morse disciplined Frederick because she disagreed with his message, which violates the Constitution.
- II. Arguments made by attorneys for Principal Morse and the school district:
- A. This is obviously a school speech case:
 - 1. The opportunity to view the Olympic torch occurred during normal school hours.
 - 2. The event was allowed by Principal Morse as an “approved social event or class trip.”
 - 3. The school district rules state that students in approved social events and class trips are “subject to district rules for student conduct.”
 - 4. School teachers and officials were in the crowd supervising students at the event.
 - B. The message on Frederick’s banner could be interpreted as a pro-drug message in violation of school policy:
 - 1. The reference to “bong hits” obviously referred to smoking marijuana. The phrase “BONG HiTS 4 JESUS,” although silly and cryptic, could be viewed as celebrating, promoting, or minimizing the seriousness of illegal drug use.
 - 2. School district policy is to discourage the use of illegal drugs by students, and Congress has said that part of a school’s job is educating students about the dangers of drug abuse. Exhibiting a banner with an arguably pro-drug message at a school-sponsored event clearly violates this policy. Just as a school can prohibit offensive

or indecent speech by students, it can prohibit speech that violates school policy. Principal Morse was within her rights to confiscate the banner and punish Frederick for his speech. She needed to show how serious the school was about the dangers of illegal drug use.

School Speech Cases

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Freedom of expression cannot be restricted unless it would “materially and substantially disrupt the work and discipline of the school.”

Tinker v. Des Moines Independent Community School Dist., 1969 S. Ct. Decision (school officials adopted a policy prohibiting students from wearing armbands upon learning that a group of students planned to wear black armbands to protest the Vietnam War – found unconstitutional).

“[T]he constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings”.

Bethel School Dist. No. 403 v. Fraser, 1986 S. Ct. Decision (high school student suspended for delivering a speech during an assembly in which he used “offensively lewd and indecent speech.” -- found constitutional)

Rights of students under the First Amendment “must be ‘applied in light of the special characteristics of the school environment.’”

Certain speech may be regulated in a school environment “even though the government could not censor similar speech outside the school.”

Hazelwood School Dist. v. Kuhlmeier quoting Tinker, 1988 S. Ct. Decision (high school officials refused to publish two articles in a student-run newspaper – found constitutional based on concept that speech bore “the imprimatur of the school.”)