

Unit 5
Free Speech Rights in Schools

Unit Questions

How are students' free speech rights protected in a public school environment? To what extent can public school officials exercise discipline and control over a student's speech without infringing on the First Amendment? What role do negotiations play in the legal process and how can parties use a negotiation to resolve conflict without trial? How do court arguments work in the legal process?

Overview

This unit asks you to consider the permissible restrictions schools can place on students' freedom of speech, as they learn about the (fictional, but realistic) case of *Davis v. Ann Arbor School Board*. You will either conduct a mock negotiation in which they will try to resolve a First Amendment related conflict between a student and his public high school, or a mock argument in which you will argue for one side in front of a panel of student judges.

Unit Goals and Standards

- Summarize the facts and identify the First Amendment issues and holdings in opinions from the United States Supreme Court.
- Explain the importance and scope of First Amendment rights and the reasons for limitations on those rights in the public school context.
- Assess whether a (fictional) student's First Amendment rights were violated; support arguments with specific facts from the case materials and authority from United States Supreme Court opinions.
- Evaluate the advantages, disadvantages, and overall effectiveness of negotiations and oral arguments as a means of conflict resolution.
- Collaborate with other students to resolve multiple pieces of a conflict through a mock negotiation or mock argument.

Unit Assessment

You will either:

- conduct a mock negotiation and develop a settlement agreement that addresses the interests and goals of each party in the case *Davis v. Ann Arbor School Board*; or
- prepare and deliver a mock oral argument advocating for one of the parties, while supporting the arguments with holdings and reasoning from the U.S. Supreme Court.

Handout 1
Journal prompt

When should a school be permitted to censor student speech?

- a. Describe three different situations where, in your opinion, a public school teacher or principal should be allowed to penalize a student because of something the student said.

1)

2)

3)

- b. Explain your reasoning. Why should the school be allowed to punish the student in those situations, even though the U.S. Constitution guarantees the right of freedom of speech?

- c. Turn your examples into a rule by completing the following statement: “A school should be allowed to punish student speech if ...”

Handout 2

Plaintiff Kenji Davis's complaint

**In the United States District Court for the
Eastern District of Michigan**

Kenji Davis, Plaintiff,)
)
)
 vs.) **Case No. 1:12-cv-45678**
)
 Ann Arbor School Board, Defendant)
)
)
 _____)

COMPLAINT

NATURE OF THE CLAIM

This is a civil action for violation of Plaintiff's rights under the First Amendment to the United States Constitution. Plaintiff Kenji Davis alleges as follows:

PARTIES

1. Plaintiff Kenji Davis is a 17-year-old senior at Ann Arbor High School (AAHS). He currently resides in Ann Arbor, Michigan.
2. Defendant Ann Arbor School Board is located in Ann Arbor, Michigan.

GENERAL ALLEGATIONS

3. In May 2012, Davis was elected Senior Class Representative for the upcoming (2013-2014) school year.
4. Davis was a member of the AAHS computer science club. Club members meet weekly to engage in computer science projects, plan community activities, and compete in computer science competitions. Davis joined the computer science club when he was a freshman.
5. During Davis's junior year, the club supervisor announced that she was no longer able to work with the club due to a personal health matter. AAHS announced that a parent volunteer, Olivia Marquez, agreed to take over supervision and coaching of the club.
6. Ms. Marquez is a computer scientist who worked at the National Security Agency (NSA) in Maryland for 8 years. The NSA is an intelligence organization of the United States government, responsible for global monitoring, collection, and processing of information and data for foreign intelligence purposes. One of its goals is to protect United States government information systems against penetration and network warfare.

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7. At the request of the NSA, Ms. Marquez moved to Ann Arbor for a two-year assignment, collaborating with University of Michigan researchers on NSA projects.
8. Shortly after Ms. Marquez became the supervisor of the AAHS computer science club, Davis discontinued his participation in the club in protest of the NSA's surveillance programs and of AAHS's decision to permit Ms. Marquez to lead the club.
9. In Davis's senior year, AAHS invited Ms. Marquez to speak about the NSA at a school assembly. The assembly took place on February 2th, 2014, from 12:45-1:15 p.m. All students were required to attend. As a member of the student council, Davis was required to sit on the stage, facing the audience, during the assembly.
10. The purpose of the assembly was to allow Ms. Marquez to inform students about computer science careers with the government, and with the NSA specifically.
11. In the summer of 2013, public controversy erupted when a former NSA contractor, Edward Snowden, made unauthorized revelations of the NSA's vast capacity to spy on the private communications of United States citizens. In response to this controversy and his own beliefs that the NSA conducts unconstitutional surveillance activities, Davis opposed Ms. Marquez's appearance at the assembly. He believed it was inappropriate for the school to sponsor a speech that encouraged students to join the NSA.
12. Davis attended the assembly and sat on the stage as required. Right before he entered the auditorium, he taped a patch on the front of his T-shirt that said "The NSA SUCKS." This patch was intended to get the attention of his fellow students in order to encourage them to consider the appropriateness of having an NSA employee lead a student club and speak at a mandatory assembly. Davis's political message did not disrupt the assembly, which began and ended as scheduled without interruption.
13. Immediately after the assembly, Davis was approached in the hallway by other student members of the computer science club. The students told him that they disapproved of his message, that they were offended by his actions, and that they were planning to complain to the administration. They did not threaten him in any other way. Davis remained at school for the rest of the day. A few students made comments to him, some positive and some negative, but he attended classes and finished the day with no interference.
14. At 2:45 p.m., Davis was ordered to report to the office of George Carpenter, the Vice Principal. Carpenter told Davis that his actions were inappropriate, had disrupted classroom activities, and had violated school rules. One rule prohibited lewd speech. Another prohibited wearing buttons, shirts, patches, and other paraphernalia with political messages. Carpenter imposed a three-day suspension and told Davis he must withdraw from student council.
15. Davis and his parents appealed this decision to the Ann Arbor School Board. Their appeal was unsuccessful.
16. The school rule against wearing buttons, shirts, patches, and other paraphernalia containing political messages has been inconsistently applied. It began during the Vietnam War when pro- and anti-war students were having serious conflicts during the school day. Prior to its use against the plaintiff, it had last been applied to discipline a student in 1991.
17. In recent years, students have routinely violated the rule by wearing paraphernalia bearing political messages, including pro-government and pro-surveillance messages related to

national security, such as “Protect America: Arrest Snowden” and “See Something / Say Something” and “I’d Rather Be Waterboarding Terrorists.” No student has ever been disciplined for wearing paraphernalia bearing these messages.

18. The suspension and removal from student council has caused Davis significant reputational damage among his peers and the colleges to which he is applying. Davis is embarrassed about the suspension and his removal from student council, and has felt uncomfortable in school since the incident. Davis is a model student who had never suffered any disciplinary problems prior to this incident, and whose future plans have been negatively impacted by the school’s actions.

CAUSE OF ACTION

19. By suspending Davis and removing him from student council, Defendant infringed upon Davis’s constitutional right to freedom of expression, protected by the First Amendment to the U.S. Constitution.
20. Davis’s speech was intended to convey, and did convey, a political message.
21. Davis’s message was not lewd or vulgar.
22. The school rule prohibiting buttons and patches with political messages has been inconsistently applied. Specifically, it has not been applied against students expressing messages approving of the federal government’s “pro-security” and “pro-surveillance” policies.
23. Defendant restricted Davis’s speech because of its viewpoint.
24. Davis’s actions did not materially or substantially disrupt the work or discipline of the school, or infringe on the rights of other students.
25. The restrictions on Davis’s speech were not reasonably related to legitimate pedagogical concerns.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that judgment be entered against the Defendant, awarding him:

- A) declaratory and injunctive relief
- B) monetary damages for his emotional, psychological, and reputational injuries
- C) any further relief to which Plaintiff is entitled, and
- D) reasonable attorney fees, costs, and other damages.

Dated this 21st day of March, 2014
[Attorney's signature and contact information omitted]

Handout 3

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1969.

In 1965, a group of adults and students in Des Moines, Iowa, wanted to express their objections to the war in Vietnam. To protest the war, they planned to wear black armbands during the holiday season until New Years Day. 15-year-old John Tinker was one of the students.

When the principals of the De Moines schools learned about the group's plan to wear the black armbands, they adopted a policy that any student who wore an armband to school would be asked to remove it, and he would be suspended for as long as he refused. Tinker and the group knew about this policy, but wore the armbands anyway. They were all sent home and suspended until they would come back without the armbands. They refused to return until New Years Day.

The dispute

- The students said: The First Amendment of the Constitution protects students' right to freedom of expression, so we should have been allowed to wear the armbands.
- The school officials said: Because school officials may control student conduct in order to maintain discipline and avoid disruption in the school, the suspensions were allowed.

Opinion

Justice FORTAS delivered the opinion of the Court.

[T]he action of the school authorities was ... based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance¹ is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious², society.

In order for ... school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, the prohibition cannot be sustained³...

¹ *Undifferentiated fear or apprehension of disturbance* - a general fear of upsetting anyone.

² *Disputatious* - argumentative

³ *Sustained* - supported by the court

It is also relevant that the school authorities did not purport⁴ to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference⁵ with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves⁶ of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect ... In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved...

[A student] may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without materially and substantially interfering with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others. But conduct by the student, in class or out of it, which for any reason ... materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized⁷ by the constitutional guarantee of freedom of speech ...

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These [students] merely went about their ordained rounds⁸ in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

⁴ *Purport* - claim

⁵ *Material and substantial interference* - this means the expression must interfere in a big way—not just a little.

⁶ *Enclaves* - isolated groups

⁷ *Immunized* - free from regulation or prohibition

⁸ *Ordained rounds* - assigned schedule and activities, such as classes

Unit 5: Lesson 1
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Handout 4
Case organizer

	<i>Tinker v. Des Moines Independent Community Sch. Dist.</i>	<i>Hazelwood Sch. Dist. v. Kuhlmeier</i>	<i>Bethel Sch. Dist. No. 403 v. Fraser</i>
What was the student speech at issue?			
Who won in the Supreme Court – the school or the student?			
List at least 3 factors that influenced the Court’s decision.	1. 2. 3.	1. 2. 3.	1. 2. 3.
Choose one quote that best captures the court’s rule.			

Handout 5

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1988.

Three high school students were in a journalism class where they served as staff members for the school newspaper, *Spectrum*. The newspaper was distributed to students, school personnel, and members of the community. It was funded primarily by the Board of Education.

Before publishing an issue, the journalism teacher had to submit a draft to the principal, Mr. Reynolds, for his review. In the spring of 1983, the journalism teacher submitted a draft as usual, but the principal objected to two of the articles. One described three students' experiences with teen pregnancy, and the other discussed the impact of divorce on students at the school.

The pregnancy story used false names to keep the girls' identities secret, but the principal worried that the girls might still be identifiable from details within the story itself. He also believed the divorce story was inappropriate because in it, a named student made specific complaints about bad things her father did. Mr. Reynolds thought that, as a matter of journalistic fairness and integrity, the writers should have given the parents a chance to respond to these remarks, or at least obtained their consent before the article was published.

Because there was not enough time to make the edits before the end of the school year and the publishing deadline, the principal decided to delete the two pages with the articles.

The dispute

- The students said: The school violated our First Amendment free speech rights by deleting two pages of articles from the school newspaper based on what the articles said.
- The school officials said: The school should get to control what kinds of things are published in a newspaper that is school-sponsored.

Opinion

Justice WHITE delivered the opinion of the Court.

The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*¹—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school.² These activities may be fairly characterized as part of the school

¹ Remember, *Tinker* held that the school can't punish students for wearing black armbands, as long as they weren't causing a substantial disruption within the school.

² *Imprimatur of the school* - the school's official approval

curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression³ to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously⁴ attributed to the school... A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order, or to associate the school with any position other than neutrality on matters of political controversy...

Accordingly, we conclude that the standard articulated in *Tinker* for determining when a school may punish student expression need not also be the standard for determining when a school may refuse to lend its name and resources to the dissemination⁵ of student expression. Instead, we hold that educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical⁶ concerns...

It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so directly and sharply implicated⁷, as to require judicial intervention...

We also conclude that Principal Reynolds acted reasonably ...

The initial paragraph of the pregnancy article declared that “[a]ll names have been changed to keep the identity of these girls a secret.” The principal concluded that the students' anonymity was not adequately protected, however, given the other identifying information in the article and the small number of pregnant students at the school... In addition, he could reasonably have been concerned that the article was not sufficiently sensitive to the privacy interests of the students' boyfriends and parents, who were discussed in the article but who were given no opportunity to consent to its publication or to offer a response...

The student who was quoted by name in the ... divorce article ... made comments sharply critical of her father. The principal could reasonably have concluded that an individual publicly identified as an inattentive parent ... was entitled to an opportunity to defend himself as a matter of journalistic fairness...

³ Expression that is part of the school curriculum

⁴ *Erroneously* - incorrectly

⁵ *Dissemination* - spread; circulation

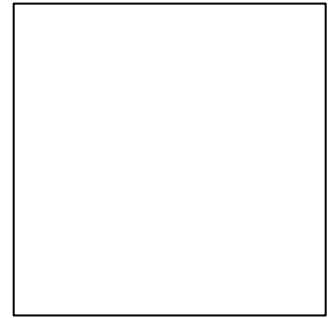
⁶ *Pedagogical* - related to teaching

⁷ *Implicated* - involved; violated

Here, the Court lists some of Principal Reynold's legitimate pedagogical concerns – that is, concerns about the speech that are related to education.

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[The Principal] could reasonably have concluded that the students who had written and edited these articles had not sufficiently mastered those portions of the Journalism II curriculum that pertained to the treatment of controversial issues and personal attacks, the need to protect the privacy of individuals whose most intimate concerns are to be revealed in the newspaper, and “the legal, moral, and ethical restrictions imposed upon journalists within [a] school community” that includes adolescent subjects and readers... Accordingly, no violation of First Amendment rights occurred.



Handout 6

Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).

Factual overview

This is an actual case, decided by the U.S. Supreme Court in 1986.

At a school assembly, Matthew Fraser gave a speech to nominate a fellow student for student council. Students were required to either attend the assembly or go to study hall. The assembly was part of a school-sponsored educational program in self-government.

During his entire speech, Fraser referred to his candidate in terms of an elaborate sexual metaphor:

“I know a man 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. [He] 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 finally he succeeds. [He] is a man who will go to the very end—even the climax—for each and every one of you... He’ll never come between you and the best our high school can be.”

Fraser had discussed this speech with two teachers beforehand, and both teachers told him that his speech was inappropriate and that he should probably not deliver it.

During the speech, some students hooted and yelled, some made sexual gestures, and some seemed bewildered and embarrassed. One teacher reported that the next day, she had to interrupt her lesson plan in order to discuss the speech with the class.

The school had a rule that prohibited the use of obscene, profane language or gestures. When confronted by the Assistant Principal, Fraser admitted that he deliberately used sexual innuendo in the speech. As punishment, the school declared that he would be suspended for three days, and his name would be removed from the list of candidates to be a speaker at graduation.

The dispute

- The student said: Suspending me for my speech was a violation of my First Amendment right to freedom of speech.
- The school officials said: The school may choose to punish speech that is lewd, indecent, or disruptive to the educational process.

Opinion

Chief Justice BURGER delivered the opinion of the Court.

[P]ublic education must prepare pupils for citizenship in the Republic. ... It must inculcate¹ the habits and manners of civility...

These fundamental values ... must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular. But these fundamental values must also take into account consideration of the sensibilities² of others, and, in the case of a school, the sensibilities of fellow students. The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior. Even the most heated political discourse³ in a democratic society requires consideration for the personal sensibilities of the other participants and audiences...

[T]he constitutional rights of students in public school are not automatically coextensive⁴ with the rights of adults in other settings...

Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the fundamental values necessary to the maintenance of a democratic political system disfavor the use of terms of debate highly offensive or highly threatening to others. ... The inculcation of these values is truly the work of the schools. The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers—and indeed the older students—demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment⁵ in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd,⁶ indecent, or offensive speech...

This Court's First Amendment jurisprudence⁷ has acknowledged limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children... These cases recognize the obvious concern on the part of parents, and school authorities acting *in loco parentis*,⁸ to protect children -- especially a captive audience -- from exposure to sexually explicit, indecent, or lewd speech...

¹ *Inculcate* - instill; persistently teach

² *Sensibilities* - emotional responses

³ *Discourse* - spoken or written conversations or debates

⁴ *Coextensive* - to the same extent or amount; equal

⁵ *Deportment* - behavior

⁶ *Lewd* - crude and offensive in a sexual way

⁷ *Jurisprudence* - way of thinking about the law about the law

⁸ *In loco parentis* - in place of the parents

We hold that [the] School District acted entirely within its permissible authority in imposing sanctions⁹ upon Fraser in response to his offensively lewd and indecent speech. Unlike the sanctions imposed on the students wearing armbands in *Tinker*, the penalties imposed in this case were unrelated to any political viewpoint. The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent's¹⁰ would undermine the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students. Accordingly, it was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the "fundamental values" of public school education.

⁹ *Sanctions* - penalties

¹⁰ *Respondent* - in this case, the Court is referring to Fraser, the student.

Handout 7
Fact and argument organizer

Plaintiff - The Student	Defendant - The School
The speech was <u>not</u> disruptive	The speech <u>was</u> disruptive
The speech <u>was</u> political	The speech was <u>not</u> political
The school selectively enforced the rule in a way that discriminated against one viewpoint.	The school did <u>not</u> selectively enforce the rule in a way that discriminated against one viewpoint.

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The speech was <u>not</u> school sponsored	The speech <u>was</u> school sponsored
The speech does <u>not</u> raise legitimate educational concerns	The speech <u>does</u> raise legitimate educational concerns
The speech is <u>not</u> lewd, vulgar, or socially inappropriate	The speech <u>is</u> lewd, vulgar, or socially inappropriate

Handout 8
Deposition of Olivia Marquez

Q. Ms. Marquez, are you the supervisor for the Computer Science Club at Ann Arbor Public High School?

A. We call it the “coach,” but yes.

Q. How long have you been the coach of the Computer Science Club?

A. Just about two years now, or almost two years, I guess.

Q. How did you come to be the coach?

A. Well, my daughter is a student at the school, and she is in the club. She told me that the previous coach had to step down because he became ill. They needed a new coach, so I volunteered to step in.

Q. What led you to volunteer?

A. Well, it was important to my daughter. But also, I really enjoy working with kids, and I think it is important to encourage kids to consider computer science, and other STEM fields, as a career.

Q. Sorry, other what fields?

A. Oh, right, STEM. It’s an acronym that stands for Science, Technology, Engineering, and Mathematics.

Q. Do you also encourage students to work for government agencies like the NSA?

A. Well, I certainly discuss it with them. I think that working for the government gets a bad reputation. Teenagers especially see it as bureaucratic and boring. I want to make sure they know how important the work we do is, and how interesting it can be. I want them to view a government job as a terrific use of their talents. The government needs talented scientists and engineers. And high school is a perfect time to get kids thinking about these things, while they are thinking about where they want to go to college.

Q. So do you talk about those things as coach of the club?

A. Yes, absolutely. I expose them to opportunities for careers in the STEM fields, and tell them how to train for those jobs, and encourage them to have the confidence to take the necessary classes.

Q. Ms. Marquez, how do you know the Plaintiff, Kenji Davis?

A. Kenji was a member of the Computer Science Club. I met him about a year before I became the coach, because I was a guest speaker at one of the club meetings and he came up to chat with me afterwards. I was impressed with his passion for computer science and math, and his ability to engage with me in a very mature and articulate way.

Q. But he isn’t currently a member of the club, correct?

A. No, he dropped out about a month after I took over as coach.

Q. What were your impressions of Mr. Davis?

A. I thought he was bright, motivated, disciplined, mature, and not afraid to tackle a challenge.

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Q. Was he well-liked by the other club members?

A. Oh yeah. I get the sense that the computer science club is like a second family for these kids, especially because if they aren't into sports, or the arts, or things like that. And from what I saw, Kenji got along well with the other kids and was part of that family, at least until he quit.

Q. Did you discuss his decision to quit with him?

A. Yes, I tried, but he wasn't really responsive. He developed this conspiracy-theory mindset about how the government is spying on everyone all the time. I think he spent a lot of time reading some fringe websites and believing everything he read. I tried to talk to him about his views, and how the NSA does a lot of things other than some of the controversial programs he sees in the news. I told him about all of the other math and science opportunities there are, both in the government and out of it. But he still quit the club.

Q. Did that bother you?

A. Well, a bit, I guess. I hated to think that he was giving up participating in this club that had been so important to him just because I was the coach and I work for the NSA. But I wasn't going to stop volunteering, because I knew the club really needed me.

Q. Ms. Marquez, let's turn now to February 20, 2014, the day of the assembly. Why were you asked to speak at the assembly?

A. The Principal asked me to speak as a computer scientist and government employee, to inform the students about careers in the STEM fields and in the government, and also to talk about what the computer science club does and how to get involved.

Q. Did you see Mr. Davis at the assembly?

A. Yeah, he was hard to miss. He was on stage and in the front row. Not to mention the patch on his shirt that read "The NSA Sucks" in big bold letters. You couldn't really miss it.

Q. Did Mr. Davis interrupt your speech?

A. Well, not orally. There were students murmuring before the assembly began, but I gave my speech as planned. I don't hold anything against Kenji, but he definitely disparaged the computer science club and my employer in front of the entire student body, which is disappointing.

Q. Were any of the club activities affected, either that day or in the days following the assembly?

A. The other students in club were noticeably upset. You know, these kids, they devote a lot of time and passion to computer science club and believe in it and they are sort of protective of me, I think. That day some of the other club members were calling him a traitor.

Q. Did anyone mention confronting Mr. Davis?

A. Not that I can remember. They were clearly upset but no one said anything to me about approaching him, or getting revenge or anything like that, if that's what you're asking.

Q. Since the incident, have you observed any interaction between Mr. Davis and the current members of computer science club?

A. Well, I think he was suspended for the rest of the week of the incident. Since then, I've seen some students give him the cold shoulder, but I have not seen any actual interaction between Kenji and the rest of my kids in the club.

Handout 9
Deposition of George Carpenter

Q. Mr. Carpenter, you are a Vice Principal at Ann Arbor High School, is that correct?

A. Yes.

Q. Did you handle the disciplinary action against the Plaintiff, Kenji Davis, on February 20th, 2014?

A. Yes.

Q. Let's turn to that day, the day of the assembly. First, can you tell me a little bit about what type of assembly this was?

A. Well, we hold periodic mandatory assemblies about issues facing the school and the community. Sometimes we use them to educate the students on different programs available to them outside of classes that they may not otherwise know about, and we also use them as an opportunity expose students to careers and other opportunities they might not know a lot about, and to take advantage of the many accomplished people in our community who have a message we think our students would benefit from hearing.

Q. Are the assemblies open to the public?

A. No. Only students and faculty of the school may attend.

Q. Who was at the assembly on February 20th, 2014?

A. The entire student body because it was a mandatory assembly.

Q. Can you describe the format of the assembly on that day?

A. Well, as the students entered the auditorium, the student council members filed into their seats on the stage. The speakers usually wait behind the stage until the Principal introduces them. On that day, Ms. Marquez was the speaker, and she was standing with the Principal backstage while the students were all taking their seats.

Q. So what was the subject of the assembly on this particular day?

A. Ms. Marquez was going to speak about careers in science and engineering and related fields.

Q. Was she also supposed to talk about how to get a job working for a government agency like the NSA?

A. Well, it was certainly something I had discussed with her when we arranged for her to speak. She is a terrific ambassador for the computer sciences, and also for bringing those talents to bear in the service of your government. So that was something I knew she planned to discuss, particularly in the context of her own career, how she ended up working for the NSA, why she found it rewarding.

Q. You mentioned that the student council members sit on the stage. Is that usually the case at assemblies?

A. Yes.

Q. Why do they sit there?

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A. Well, it's a longstanding tradition at our school. I guess it's a chance for them to shine as representatives of their class during a school event.

Q. Did the assembly start and end on time?

A. Yes it did.

Q. Were there any interruptions during the assembly?

A. No, well, not really during the assembly.

Q. What do you mean by that?

A. Well, as Kenji sat down in his seat, there was an unusual buzz in the auditorium. There were hoots and hollers coming from the audience.

Q. That was before the assembly began, is that correct?

A. Yes, the rowdiness was before the Principal addressed the students.

Q. And what do you exactly mean by 'rowdy'?

A. Well, the students were shouting Kenji's name, and shouting different comments, as they all filed into the auditorium.

Q. And did those comments from the crowd continue during the assembly?

A. Everyone pretty much quieted down once the Principal took the podium.

Q. Were you able to decipher what the comments were about?

A. Well, no not at first. I mean, I was at the front of the auditorium, near the stage along with the other vice principals. It took me a second to figure out that the hoots and hollers were directed at the stage. Then, just as the student council members were taking their seats, I saw that Kenji's t-shirt read "The NSA Sucks." Kenji was sitting in the front row. When I realized the noise was directed at Kenji, it was just a few seconds before the Principal began the assembly.

Q. Did the rest of the assembly run as planned?

A. Well, Ms. Marquez spoke and then the students were dismissed, so I guess it did, but I was pretty focused on Kenji's shirt the whole time.

Q. Has there ever been any "rowdy" behavior at any other assembly?

A. Maybe on occasion, during a particularly controversial assembly, but like I said, it's unusual.

Q. Mr. Carpenter, let's move on to after the assembly. Did the remainder of the school day run as planned?

A. Yes, I mean if you're asking about the bell schedule, well that went as planned. But outside of that, the faculty lounge had an unusual buzz of conversation, centering around the assembly fiasco.

Q. What do you mean by that?

A. A lot of teachers were discussing the issue of Kenji's inappropriate t-shirt in the faculty lounge during lunch. One teacher mentioned that one of her students approached her expressing discomfort with her class representative sporting an unpatriotic message in front of the whole school. Other teachers were just generally discussing their opinions. Ms. Marquez's daughter told me she was really embarrassed for her mom.

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Q. Did the student who reported her discomfort to a teacher specifically identify Kenji's message as being "unpatriotic"?

A. I don't know. The teacher used the phrase "unpatriotic message" when she described the student's complaint to me, but I don't know if the student used those words.

Q. Did any teachers report that their lesson plans were affected?

A. No, not that was specifically reported to me. Several teachers commented that their students were talking about the t-shirt, Kenji, and the NSA, in the hallways and in between classes. I could tell that both the students and teachers were riled up over the t-shirt.

Q. Did you take any actions after hearing this in the faculty lounge?

A. First I went outside to the courtyard where students sometimes gather, and heard a lot of students talking about Kenji.

Q. What were they saying?

A. Well, some of them were saying he was an activist standing up for what was right, and others said that the computer science kids and Alice Marquez were probably not going to be very happy about it. That kind of stuff. They seemed upset with each other. It seemed to me that something had to be done before the situation escalated.

Q. Did you hear any specific threats or arguments?

A. Not specifically, no. But like I said it seemed like something was on the verge.

Q. At what point did you talk directly with Mr. Davis?

A. I met with Kenji after his last class ended, at approximately 3pm.

Q. Did you punish him?

A. Yes, I suspended him for three days. I also told him that due to his disregard for school rules and due to the fact that his message offended his fellow classmates, he would no longer be able to serve as senior class representative.

Q. Had Kenji ever had disciplinary action taken against him before?

A. No, he didn't have any other adverse actions in his file.

Q. What was the basis for suspension of Mr. Davis?

A. Well, as I explained to Kenji, the language "The NSA Sucks" is inappropriately crude and offensive language at school, and he inappropriately used his position as a student council member to send a derogatory message about an assembly that the school specifically sponsored and about career opportunities the school chose to publicize. We discussed the divisive atmosphere the message had created at school that day, and I suspended him for breaking School Rule #45 which specifically prohibits students from wearing t-shirts, buttons, patches, and any paraphernalia that contain a political message.

Q. Why do you think "The NSA sucks" is inappropriately crude and offensive language?

A. Well, "sucks" can refer to a sexual act. I think all the students know that.

Q. You mentioned the divisive atmosphere Mr. Davis's shirt created. What exactly were you afraid would happen?

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A. I was afraid there might be unrest. Some of the other students and teachers were offended by the patch and I thought they might be unhappy if we did nothing about it. Plus I didn't want it to become even more of an issue in the school, and I thought that by removing Kenji for a couple of days it would help quiet things down.

Q. So you weren't afraid of violence?

A. No, not violence, but I was afraid of confrontation between Kenji and the other students. And, I want to emphasize, I was also afraid for Kenji's safety when he was off campus.

Q. Why were you afraid for his safety while off campus?

A. Well, I know that once or maybe twice in the last several years there have been problems off campus.

Q. Can you describe those incidents?

A. I remember one student in a government class expressed disdain for how the United States was conducting the war on terror, and was then followed home from school and harassed when she was off campus.

Q. Any other incidents?

A. That's the only one I remember the specifics of.

Q. Did that make you concerned about Kenji?

A. Yes, of course. And I thought that since Kenji's message was a personal one directed at a beloved volunteer coach, as opposed to a more general political one, he might be more likely to be harassed.

Q. What do you mean by "beloved volunteer coach"? Can you say more about that characterization?

A. Oh, sure. Students absolutely love Ms. Marquez. She has really gotten a lot of them so engaged in science and technology, she plans lots of activities and field trips to the university, and she is tremendously warm and mentoring. She just has one of those personalities that really connects with teenagers, which not very many people have. And she has made herself available to our students who want advice or help about just about anything.

Q. When was the rule against political buttons and patches put into place?

A. It was formally adopted in 1972. It's a long-standing rule and has been on the books ever since.

Q. And in what context was the rule enacted?

A. It was during the Vietnam Era, when activism on campuses – not only college campuses, but also on high school campuses such as Ann Arbor High School – was soaring. From what I understand, the tension between the pro- and anti-war activists was at its all time highest, and resulted in a series of incidents during which both pro- and anti-war student activists were harassed on campus. The curriculum and learning were both suffering, and the Administration prohibited political and other controversial messages and paraphernalia in an effort to curb the disputes at school.

Q. When was the last time the rule was enforced?

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A. Um, after the havoc of the 1970s, there were some problems with political issues on campus arising out of the Iran-Contra affair in the mid-1980s, and a few students were disciplined for violating Rule 45 in 1986 or 1987, and around the time of the first Gulf War in the early '90s. And then there was another flare-up of problematic political messages in the immediate aftermath of the contested presidential election in 2000, and students had to be disciplined then. But after that political activism really died down.

Q. So was Kenji's suspension the first time that the school has enforced the rule since December 2000?

A. Yes, that's right.

Q. So between 2000 and Mr. Davis's punishment in 2014, the rule had not been enforced?

A. No, I mean, there was no need until now.

Q. Mr. Carpenter, isn't true that students regularly wear t-shirts to school that say things like "I'd Rather Be Waterboarding Terrorists?"

A. I don't think that's the case.

Q. What about shirts that say "Protect America: Arrest Snowden?"

A. I haven't seen those shirts either.

Q. What about shirts that say "See Something / Say Something"?

A. No.

Q. So you don't have any awareness of students wearing any of those shirts?

A. I haven't noticed those shirts, at least not as a regular occurrence.

Q. Have any students been disciplined for wearing shirts or buttons or patches with those messages?

A. No, and I mean, those wouldn't even be the same as Kenji's display.

Q. What do you mean by that?

A. Well, those messages are not the type of inflammatory political or controversial messages prohibited by the Rule. "The NSA Sucks" is lewd language that has no place inside a school.

Q. Have there been any other incidents on school premises involving messages about the government's surveillance program or war on terror?

A. Not on school premises as far as I'm aware, no.

Q. Are you aware of any other incidents involving such messages that occurred off of school premises?

A. Like I said earlier, I know one student who expressed concern about U.S. government actions during a government class was harassed by other students at his home once or twice. Her parents called me to express concern. There could be others, but that's the only one I'm aware of.

Handout 10
Deposition of Kenji Davis

Q. Please state your name for the record.

A. Kenji Davis.

Q. How old are you?

A. Eighteen.

Q: Were you recently a student at Ann Arbor High School?

A: Yes. I just graduated a few months ago, in June.

Q. While you were a student at Ann Arbor High School, were you a member of the Computer Science Club?

A. For a little while. I joined in the spring of my freshman year, and I quit in the middle of my junior year because Ms. Marquez became the coach of the club and she works for the NSA.

Q. And why did that make you want to quit?

A. Well, I did some research and learned that the NSA spies on American citizens, wiretaps phones, that sort of thing.

Q: And did that make you dislike Ms. Marquez?

A. Well, I don't like the NSA and what it does to citizens. I wanted to take a stand for what I believed in, and quitting seemed like an effective way to do that. I didn't think it was right that someone who worked for this agency was now supposed to be someone we looked up to.

Plus all she did was encourage us to work for the government, to be computer scientists for the government.

Q. Did she tell you much about her job?

A. Not really, or at least, nothing specific. She was very clear that she couldn't tell us anything about what she actually did, except that she used her computer science degree a lot. It's all super secret.

Q. Is it fair to say that you and Ms. Marquez had substantial differences of opinion?

A. Yes, we disagreed about the NSA's spying programs, among other things. She defended the NSA, saying that it did everything necessary to keep Americans safe. She thinks it's OK for the government to do anything it wants as long as it says it is trying to protect Americans. And I think that civil rights and civil liberties are actually important. It doesn't matter whether Americans are protected if our core values are completely undermined in doing so.

Q. So you disliked Mr. Marquez?

A. Not personally, no. We disagreed on a lot of things, but she was always nice to me and we got along well personally. I just felt like I couldn't stay in the club once I started to think about the terrible things our nation has done in the name of "protecting" Americans.

Q. How did you get along with the other students in the Computer Science Club?

A. I got along well with them when I was in club. Not as well when I started talking to them about how I felt about the NSA

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Q. Did the other students generally agree with Ms. Marquez?

A. Well, yeah. I mean, she's really nice and all. The other kids seemed really eager to just believe everything she said about how great it was to be a computer scientist at the NSA, and they all wanted to be just like her. So they seemed willing to defend her and the NSA every time it came up. So yeah, they agreed with her, but I think it's mostly because they didn't really spend a lot of time thinking about it and learning about what the NSA actually does.

Q. Let's talk about what happened on February 20, 2014. You attended an assembly at school, right?

A. Yes.

Q. Can you tell me a little bit about these assemblies generally?

A. We have them about once a month. We usually have a speaker. Sometimes someone from outside the school, sometimes a teacher, sometimes a student. They talk about various topics and issues facing the school or the community.

Q. Where do you usually sit during the assemblies?

A. Well, I'm in student council, or, at least I was, at that time. Student council members sit on the stage behind the speaker, facing the audience.

Q. And that's where you were sitting during this assembly?

A. Yes.

Q. Who was the speaker at the February 20th assembly?

A. Ms. Marquez. I knew she was going to be a speaker because they announce the speakers to the whole school the week before. Also, the student council gets to propose speakers, and we usually get early notice of who the speaker is going to be.

Q. Did the student council propose Ms. Marquez?

A. No, the administration did that all on their own, I think because it was so early in the school year, and we hadn't really had time to meet and propose speakers yet.

Q. Were you upset that Ms. Marquez was speaking?

A. Well, yeah, of course. I didn't like what she was there to say. I didn't think it was appropriate to have a speaker encouraging students to join an organization that spies on Americans in violation of the Constitution.

Q. Did you do anything at the assembly?

A. I wore a patch to the assembly, attached to the front of my shirt, that said "The NSA Sucks."

Q. Why did you wear the patch?

A. To express my disagreement with NSA. I wanted to bring the issue to the attention of the students, and let them know that lots of people don't like what the NSA does.

Q. Why did you choose that message?

A. I thought it would get people's attention. Also it was short enough to fit on my shirt and still be visible from the audience.

Q. You were sitting on the stage during the assembly, correct?

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A. Yes. I was sitting on the stage with the rest of the student council, behind Ms. Marquez, facing the audience.

Q. So the audience could see you?

A. Yes.

Q. Could Ms. Marquez see you at all?

A. I think she saw me when I walked in, but she wasn't looking at me while he was speaking or anything.

Q. Did Ms. Marquez react to seeing the patch?

A. Like I said, I think she saw me but I'm not sure. She didn't do or say anything about it if that's what you're asking.

Q. And how did the other students react?

A. They didn't really. There were a few murmurs from the audience, but they quieted down as soon as the assembly started.

Q. Did some students laugh?

A. I guess so.

Q. And some booed?

A. One or two maybe.

Q. Were the murmurs, laughter, and boos typical for this type of assembly?

A. Kind of. Anytime there's a controversial topic at the assembly, like when we had someone come in to talk about sexual health and stuff, there's a reaction from the students.

Q. But people don't react that way to every assembly, right?

A. They do when the topic is interesting to them. But I guess not to every single one, no.

Q. Did anyone ask you to leave the stage or say anything to you during the assembly?

A. No.

Q. What happened after the assembly?

A. Not much. I went out into the hallway and chatted with friends.

Q. Were you still wearing the patch?

A. I wore it out into the hall but I took it off while I was talking to my friends. There was no point in wearing it all day.

Q. Did anyone from the computer science club approach you?

A. Yeah. Some guys came up to me and started giving me a hard time, saying that I wasn't patriotic and that they didn't like how I'd embarrassed Ms. Marquez and her daughter.

Q. Did these students insult you?

A. Um, I know they called me unpatriotic and a bully.

Q. Did these students threaten you?

A. No. They were actually pretty calm about it.

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Q. What else did they say?

A. They said they were offended and were planning to complain to Mr. Carpenter.

Q. How did you respond?

A. I just shrugged it off. Mr. Carpenter was at the assembly and I figured if he had a problem with it, he would have approached me about it right away.

Q. Did the students say anything else?

A. No, not really. They walked away and I went to eat lunch.

Q. Did you hear anything else about the assembly and your patch over the rest of the day?

A. Yeah. People were coming up to me all day. Some of them were saying that that they were happy someone was finally telling it like it is. Other people didn't like it.

Q. Were people talking to you during class?

A. No, nothing in class. Just in the halls and at lunch.

Q. Was the conversation disruptive to your classes?

A. No. People were chatting about it a little before and after class, but once the teachers started class it was normal.

Q. But it was a big deal around the school?

A. Not really. Like I said, a few people said stuff to me, but it didn't really seem to be a huge issue or anything.

Q. You said you were suspended at the end of the day. How did you learn you were suspended?

A. Well, I was in my last class and I got a note that I should go to Mr. Carpenter's office. Mr. Carpenter told me that he thought my actions were disrespectful and inappropriate. He said that other students were distracted and upset by what I'd done, and that I had disrupted the activities of the school. He also told me that I had violated school rules about lewd speech and wearing patches that convey political messages. I was pretty surprised and told him so. I said I thought he was wrong, especially about the lewd thing, because I certainly wasn't intending to be lewd and I didn't think what I said was lewd at all. I knew about the patches rule but I never thought they'd bring it up since students always wear T-shirts and patches and buttons and stuff, and the administration never does anything about it. In fact, I heard that the last time they enforced the rule was before I was even born.

Q. Do other students wear paraphernalia bearing political messages?

A. Oh, yeah, definitely. Many students wore pro-government and pro-surveillance shirts and buttons, and stuff that say things like "I'd Rather Be Waterboarding Terrorists" and "See Something / Say Something" and "Protect America: Arrest Snowden." And none of those kids were ever suspended or anything like that.

Q. Mr. Carpenter told you that you were suspended for breaking the school rules -- not for the viewpoint you expressed. Correct?

A. He might have said that, but all I know is that I was suspended for what I said. The school didn't like what I had to say, some of the other students didn't like it.

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Q. So what about the lewd language? You've testified that the patch said "The NSA Sucks." "Sucks" refers to a sexual act, right?

A. Um, no.

Q. Well then what does it mean, in your opinion?

A. It just means "stinks" or "is lame."

Q. But it is commonly understood to refer to a sexual act, correct?

A. No, not really.

Q. So after your suspension, what happened after you returned to school?

A. Pretty much nothing. A few people said stuff to me, both positive and negative, but it wasn't really a big deal around the school after I got back. I was really embarrassed about being suspended, and I didn't want to talk about it, so no one really bugged me about it.

Q. Are you in college now?

A. No.

Q. Why not?

A. Well, I decided to take a year off and so I'm applying this year.

Q. Why did you decide to take a year off?

A. A lot of it was because of the suspension. I had already applied to colleges when I got suspended, but then I had to update them about the suspension, so I decided to withdraw my applications instead.

Q. Why did you withdraw your applications?

A. I was worried that the suspension would negatively impact my chances for acceptance. So I wanted to wait until I could get the school to withdraw the suspension or until the court case finishes.

Q. Prior to this incident, had you ever gotten into trouble in school?

A. No, never.

Q. What about your performance in school? Were you a good student?

A. Yes. I graduated with a 3.8 GPA.

Q. How did you get along with your classmates?

A. Really well. I mean, that's probably one of the reasons I was elected to student council in the first place. I think like 8 or 9 kids ran for just 2 senior class rep spots, and I got the most votes out of everyone.

Q. And what about your teachers? Did you get along well with them?

A. Of course. Up until the suspension, I always really liked school, my classes, all that stuff.

Handout 11

Principles of Negotiation

(adapted from Roger Fisher and Douglas Stone,
Consensus Building Institute and the Program on Negotiation at Harvard Law School,
<http://www.pon.harvard.edu>)

Negotiations do not just happen during the litigation process; negotiations occur throughout our daily lives and are used to decide many conflicts, big and small. A negotiation can result in two countries signing a trade agreement or can help you and a friend decide what restaurant to go to for dinner. A negotiation is a bargaining process that involves both give and take – parties must work together to find common ground and reach a solution that settles the conflict.

At the center of every negotiation is the conflict between the parties. This conflict, however, does not mean that the negotiation is a zero sum game where one party can only gain if the other party loses. Instead, negotiations can be *value adding* by addressing and satisfying each party's underlying interests and needs. Parties can create a value-adding negotiation by focusing on the different sources of conflict. There are four main sources of conflict:

- **Interests**
 - **Interests** are what the party wants and their reasons for wanting those things. During a negotiation it is important to listen to the party's demands and to analyze the underlying needs or desires that drive those demands. Basing a negotiation off a discussion of true interests, instead of a debate about demands, will help both sides get what they want and help generate nuanced and creative solutions.
 - During a negotiation it may be helpful to ask questions such as: Why is that important to you? How does this demand address your goals or interests?
- **Beliefs**
 - **Beliefs** underlie the positions of each party. There are two types of beliefs: beliefs about the way the world is (beliefs about what is true) and beliefs about the way the world should be. Both types of beliefs are often affected by the parties' past experiences or the parties' relationships with each other.
 - During a negotiation it may be helpful to ask both yourself and the other side: Why do you believe that your proposed solution is the best way to resolve the issue?
- **Emotions**
 - **Emotions** are how a person feels about something, whether it is the conflict, a demand, or a proposed solution. It is difficult to keep emotions out of a negotiation, however it is important that parties make sure their emotions don't get in the way of reaching a solution. Parties often feel anger toward the other side, fear of losing what they want, or pride about their own beliefs.
 - During a negotiation, it will be particularly important to understand the party's emotions when you are discussing the facts. It may be helpful to ask: How did that make you feel? What caused you to feel that way? How does this solution make you feel better?

- **Roles**
 - **Roles** are the labels people use to define themselves and the groups they identify with and belong to, such as student, parent, or teacher. The identity of each of these roles is shaped by history, culture, qualities, and characteristics.
 - During a negotiation it may be helpful to ask: What roles do you represent in the negotiation? How does this role shape your demands?

Once you have analyzed the conflict from both parties' points of view, it is important to think about developing solutions. A good starting point is to think about the likely outcomes if you are *not* able to reach an agreement in the negotiation. It is important to think about both your ideal solution and the least favorable deal that you would be willing to except. Establishing both a bottom line and an ideal solution will determine a framework that you can work within and help you create a range of options that address different aspects of your party's goals and interests. This framework can help you create a structure of what you value; during a negotiation each party will have to make trade-offs and its important to know what issues you care about most and what issues you are more willing to concede. As you develop your solutions, look back to the interests of both parties, and think about how that option addresses each party's interest.

As you begin a negotiation, it is useful to build a relationship with the opposing party. A good way to do this is to the negotiation with small or easily resolved issues. Once you have found common ground with the opposing party it will be easier to work towards resolving the more difficult conflicts and developing more nuanced solutions. You will want to draft a set of initial questions and solutions you can explore with the opposing party. As you begin to draft solutions, think about how you can invent a solution that is beneficial for all parties. How does this solution respond to the needs of both your party and the opposing party? Together you will work together towards building a solution that addresses the underlying interests and needs of both parties.

Handout 12A
Confidential Information for Plaintiff's Counsel

Davis v. Ann Arbor School Board

The judge has ordered the parties to engage in negotiations. Your client and his parents have asked you to try to settle the case. You have learned the following information from them to help you in your negotiations with counsel for the School Board.

The Davis family would prefer that this case not proceed to trial. They think that a trial could come out either way and do not want to risk losing. Kenji Davis is at a point in his life where he just wants to move on. The whole episode has been emotionally taxing, and he'd really like to move past the issue before he goes away to college. Although Kenji has graduated from high school, he is taking a gap year and will not apply to college until this coming fall. Kenji is worried that he will not be able to go to the college of his choice because he was suspended and lost his position on student council. He hopes that by settling this case and getting some sort of admission of wrongdoing out of the School Board, he can regain his prior competitive edge in the college admission process.

Kenji genuinely believes it was wrong that the school interfered with his right to express himself. He also believes that the school should not have held a mandatory assembly that highlighted working for a government organization that unconstitutionally spies on Americans. Even though he wants to settle for the reasons discussed above, it's important to him as a matter of principle that he stand up the school's policies, which he believes are unjust.

Details on what Mr. Davis is willing to settle for are as follows:

1. Money: Kenji's trial lawyer has taken the case "on contingency." That means she has agreed to forego any attorney's fees if Kenji loses the case. If Kenji wins at trial, the Defendant (the School Board) must pay for Kenji's reasonable attorney's fees. Kenji's lawyer's (reasonable) rate is \$200 per hour, and she will spend about 200 hours preparing for trial. This means his lawyer would be entitled to \$40,000 of attorney's fees if Kenji wins the case. (In a real trial, both the cost and the hours would likely be substantially higher). So either way, if the case goes to trial, Kenji doesn't have to worry about paying his attorney; if he wins, the Defendant pays, but if he loses, the lawyer does not get paid by anyone.

Kenji's lawyer has already spent 100 hours preparing for trial. To settle the case, Kenji and his family would like the School Board to pay the \$20,000 her time is worth.

Kenji would also like compensation for his reputational and emotional injuries, the full extent of which he believes is not yet measurable. He thinks that \$10,000 would be the proper amount for this harm, but recognizes that this might be difficult to obtain.

Kenji further believes that there is a good chance that these events could lead to a loss in earnings down the line. He already fears that he won't get into good colleges when they

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see that he has been suspended and kicked off of student council. (Kenji is very concerned that the college he attends will make or break his future.) He knows this number is tough to quantify, but ideally he'd like \$50,000 to offset his lost earning potential. That is, he says he won't be able to go to as good of a college, and therefore he won't get as good of a job, and won't earn as much money. If the School Board is reluctant to compensate him for lost earning potential, he would be satisfied if it agreed to the non-monetary conditions below, particularly those that would help him regain his status as a student leader and get into the colleges of his choice.

2. Other considerations: It is very important to Kenji that this episode not affect his future. Thus, he wants the suspension removed from his permanent record. He also wants a letter of recommendation to colleges from the Principal or Vice Principal, admitting that the suspension was wrong.
3. Kenji would also very much like to be reinstated, retroactively, to his position on student council. While that wouldn't have a practical effect because he has already graduated, it would allow him to list his student council membership on his resume and his college applications. As an active student leader for many years, Kenji is frustrated that he has had to essentially erase this important part of his high school experience from his resume, and of course, he believes that this important leadership role will help his college applications.
4. Lastly, Kenji feels this whole episode would be pointless if it does not result in some change to school policy regarding political speech, and assemblies in general. He'd like to see the school rule forbidding political buttons or messages rescinded, because he believes students should have the right to express their political opinions in school. Kenji also believes that the school shouldn't host assemblies promoting any topic the student body votes not to hear about. He thinks having students vote about every assembly would encourage them to learn more about current events. At a minimum, the assemblies shouldn't be mandatory; if students don't want to hear a particular speaker try to tell them about how great the NSA is, or the military, or some other potentially controversial employer, they shouldn't have to. Alternatively, because he is concerned about other kinds of mandatory assemblies that contain a political component, he wants the school to enact a policy under which an opposite political view is presented.
5. While they don't want to go to trial given the information above, the Davis family will take the risk if the Defendant plays hardball. Therefore, their absolute bottom line is (1) \$22,000 in money, of which \$20,000 would go to the attorney, and (2) the School somehow lessening the impact of the suspension on Kenji's permanent record, backed up by a glowing letter of recommendation from an appropriate employee of the High School. If the Defendant won't agree to that, they would prefer to go to trial. Of course, they would like to settle for a lot more.

Handout 12B
Confidential Information for Defendant's Counsel

Davis v. Ann Arbor School Board

The judge has ordered the parties to engage in negotiations. Your client has asked you to try to settle the case. You represent the School Board. You have learned the following information from the members of the School Board to help you in your negotiations with counsel for Mr. Davis.

The School Board would like to avoid trial in this case. The Board thinks that a trial could come out either way. It is concerned that a trial would generate a lot of bad publicity, especially given the generally liberal leanings of the Ann Arbor community. Board members fear that this negative publicity would be a distraction to the High School's educational mission (as well as endanger their chances of being reelected to the School Board). Negative publicity could also negatively affect enrollment, which would reduce the per-pupil funding the district receives from the state. That is a particular concern during these difficult economic times, when budget pressures are intense. (The Governor has just released his proposed budget, which would further decrease the funding the Ann Arbor schools receive. That makes it even more important to maintain enrollment numbers.)

The Board is also concerned that a trial would be extremely costly. The School Board's trial attorney charges \$200 per hour and has already worked on this case for 100 hours, which means the School Board already owes him \$20,000. If they go to trial, the attorney will put in another 200 hours to prepare for trial, which adds \$40,000 to the bill. (In a real trial, both the cost per hour and the hours of preparation would likely be substantially higher).

Additionally, if Kenji wins at trial, the School Board will be required to pay for Kenji's attorneys' fees as well as their own. Assuming Kenji's lawyer charges \$200 an hour and will spend 200 hours preparing for trial, she would be entitled to \$40,000 if Kenji wins the case. If Kenji loses, the School Board doesn't have to pay Kenji's attorney, but must still pay their own attorney.

The School Board is also concerned about maintaining the public perception that it can control and discipline its students. It is concerned that if it appears to make too many concessions to Kenji, other students will act out in similarly obnoxious and juvenile ways and the administration's ability to maintain discipline in the High School will be compromised.

Details on what the School Board is willing to settle for are as follows:

1. Money: The School Board is willing to pay some money to avoid having the case go to trial. Kenji is likely to demand the school board pay for his attorneys' fees, which he would be entitled to get if he won the case. While the Board is willing to provide some of Kenji's attorneys' fees, it is less willing to pay a substantial amount in compensation for Kenji's alleged reputational and emotional injuries. The Board would prefer to keep the total payment (for attorneys' fees and any damages) at \$15,000 or less, but is willing

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to pay up to \$30,000 if absolutely necessary to settle the case. Anything above that, and the Board would prefer to take its chances at trial.

2. Other considerations: The Board recognizes that Kenji will also likely make some non-monetary demands as a condition for settling the suit. Due to the concerns about negative publicity discussed above, the Board is wary of any sort of public admission of wrongdoing. The Board recognizes, however, that Kenji was a model student prior to this incident and does not feel the need to further punish him.
3. Removing the suspension from Kenji's permanent record is something the Board is reluctant to do. The School maintains that it was an appropriate punishment for disruptive behavior. However, the Board does not want to prevent Kenji's from going to a good college and would be willing to note in Kenji's permanent record that aside from the suspension, he had no other disciplinary problems. Furthermore, given its recognition that Kenji has for the most part been a good student, the Board is willing to agree that the High School will provide a letter of recommendation for his college applications, although it is not willing to admit to wrongdoing in relation to the suspension in the letter. Given the school's reluctance to admit wrongdoing by the administration, the Board thinks it would look foolish to have a principal or vice principal at the High School write the recommendation.
4. Your client is willing to retroactively reinstate Kenji to the student council. While that wouldn't have a practical effect because he has already graduated, it would allow him to continue to list his student council membership on his college applications and resume. The School Board is willing to take that step only if he takes responsibility for his actions. This would ideally require some sort of public acknowledgment that he acted in an immature manner, or at least a private written statement to Vice Principal Carpenter and Ms. Marquez acknowledging poor judgment.
5. Finally, Kenji has suggested he may make demands concerning future assemblies, political speech, and viewpoint neutrality at the school. The School Board is unwilling to repeal the rule forbidding political T-shirts or patches, as they believe it is necessary to maintain a peaceful and focused learning environment. As for assemblies, the School Board has a relationship with many local university and government leaders, and views assemblies featuring those individuals as valuable to students as they consider their futures. The Board wants the High School to be able to continue telling students about many different career opportunities in a highly publicized way, although you can explore options besides a mandatory assembly. The school is reluctant to have too many assemblies and is reluctant to invite overly political speakers to the High School. Any assembly has to have a clear educational purpose.

Handout 13
Negotiation Planning

	Plaintiff (student)	Defendant (Vice Principal, school)
Interests <i>“The plaintiff wants _____ because...”</i>		
Beliefs <i>“The defendant believes _____ because ...”</i>		
Emotions <i>“The plaintiff feels _____ about”</i>		
Role <i>“The defendant’s role as _____ influences...”</i>		

1. What are your client’s goals? How flexible or firm are each of your client's demands or wishes?

2. What is your ideal outcome? What do you think is your opponent's ideal outcome?

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3. What is your "bottom line" -- the absolute minimum that your client would settle for? How do you think your opponent would answer this question?

4. What challenges do you think you will face in coming to an agreement? How do you plan to overcome those challenges?

5. How will you begin the negotiation and establish a rapport with the opposing party?

6. Develop a negotiation strategy. What will you start out asking for? What things do you want to reveal to the opposing party, and when? Is there anything you will keep hidden?

7. Brainstorm proposed solutions, considering:

- Money awarded
- Policy changes
- Actions that the school must take
- Actions that Kenji must take

Handout 14
Negotiation Report

In the space below, provide the detailed results of your settlement agreement. Once both parties have agreed to the written terms, each group member must sign the agreement.

Terms of the Settlement Agreement:

Money awarded:

Policy changes within the school:

What Plaintiff (Kenji) has agreed to do:

What Defendant (the Ann Arbor School Board) has agreed to do:

Signatures of Plaintiff's Counsel

Signatures of Defendant's Counsel

Handout 15
Negotiation Evaluation

1. How does your solution achieve each party's goals and interests? What trade offs did you have to make?

2. What was your overall negotiation strategy? Was it effective?

3. What did you reveal to the other party? What did you keep secret? Why? How did this impact the overall negotiation?

4. What obstacles did you face in reaching an agreement? How did you overcome these obstacles?

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5. What did you learn about your opponent's bottom line and ideal solution? Which party do you think had the stronger negotiating position?

6. Are you satisfied with the settlement agreement? What mistakes do you think you made? If you could redo the negotiation what would you change?

7. What did you learn about yourself as a negotiator?

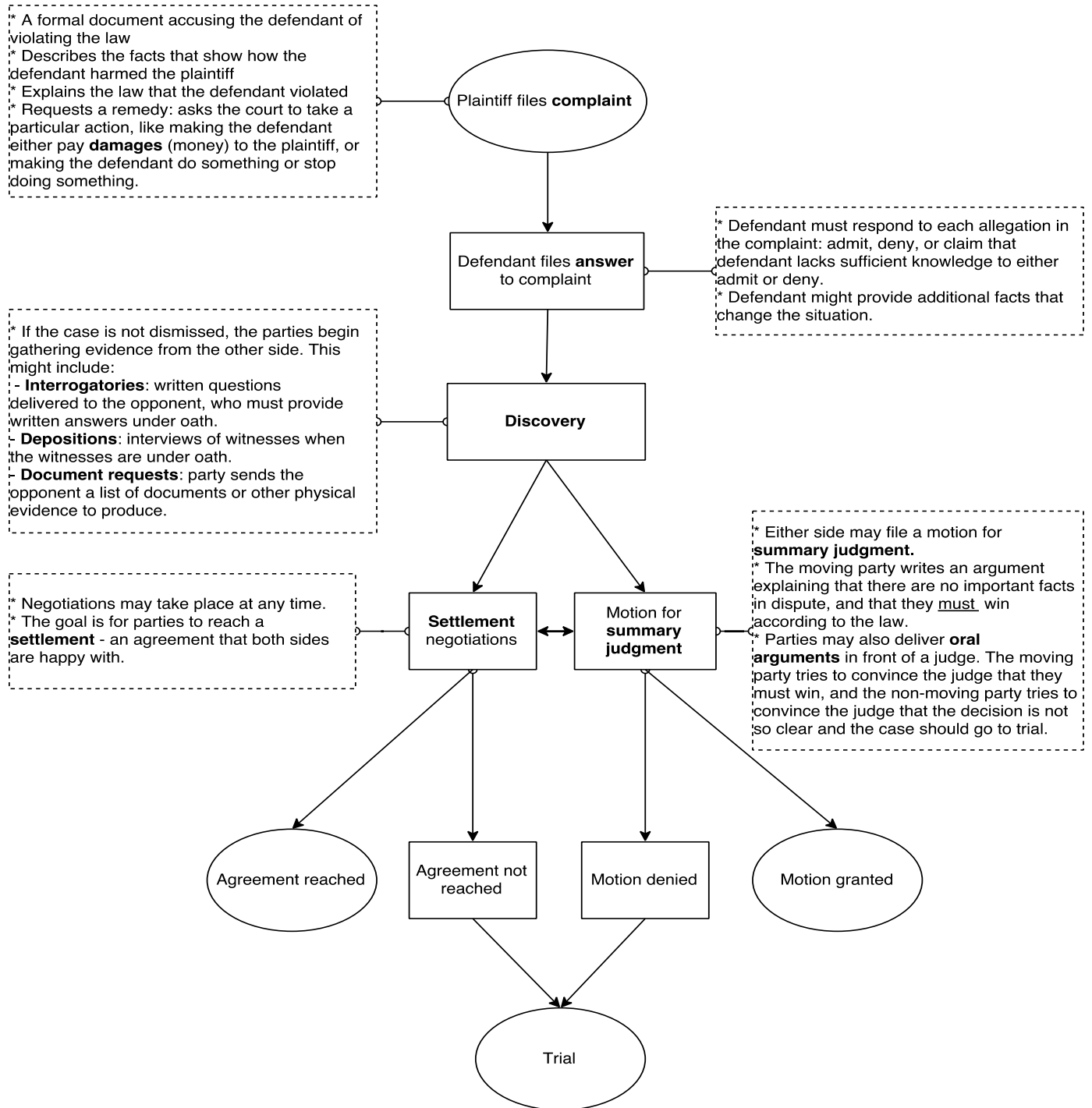
Handout 16
Summary judgment video quiz

Answer the following questions while watching the short video at this link:
<https://www.youtube.com/watch?v=hMhIyh2WjjY>

1. Summary judgment is when a judge makes a decision with / without a trial.
2. What happens during discovery?
 - (a) The parties negotiate and try to settle the case
 - (b) The Plaintiff writes a complaint against the Defendant
 - (c) The judge makes a decision
 - (d) The parties share all the relevant evidence with each other
3. A motion for summary judgment would only be appropriate if:
 - (a) There are no important facts in dispute
 - (b) The parties do not agree on the important facts
4. If summary judgment is granted, that means:
 - (a) If there were a trial, the jury could reasonably decide in favor of either party.
 - (b) We know that if the jury follows instructions, the jury would have to decide in favor of the party seeking summary judgment.
 - (c) We know that if the jury follows instructions, the jury would have to decide in favor of the party opposing summary judgment.

Handout 17

The Litigation Process



Handout 18
Oral Argument

A. What is an oral argument?

In an oral argument, the lawyers for each party stand up in front of a judge or a panel of judges to explain their legal arguments and answer the judge's questions. Before the oral argument, the lawyers submit written briefs, which are persuasive documents explaining the facts of the case, the relevant law, and the lawyers' analysis. By the time the oral argument begins, the judges have usually had a chance to read the lawyers' briefs. That means the judges already have some knowledge about what is going on in the case, and they might have some questions in mind that they want to ask the lawyers.

B. What does an oral argument look like for a summary judgment motion?

In this case, the plaintiff Kenji Davis is moving for summary judgment. That means, according to Kenji (the "moving party,") two things are true:

- (1) There are no important facts in dispute; both sides agree about what happened.
- (2) Kenji should win as a matter of law because his First Amendment rights were clearly violated. There is no need to go to trial; the judge should decide right now.

Meanwhile, the Defendant, the Ann Arbor School Board, wants to oppose the motion. Their goal is to convince the judge that the plaintiff does *not* win, because the law could be interpreted reasonably in favor of the Defendant.

For this exercise, there will be a few important differences between the class oral argument and a real life oral argument for a summary judgment motion.

Class oral argument	Real oral argument for summary judgment
The lawyers will argue in front of a panel of several judges.	Lawyers would argue in front of just one district court judge.
Each side will have many lawyers. Each lawyer will make just one argument, so that everyone gets to participate.	Each side would be represented by 1 lawyer, who makes all of the arguments. (Occasionally, two lawyers will split the arguments).
Lawyers will deliver an introduction to lay out the facts of the case and a roadmap, as well as a conclusion to sum up the arguments and ask the court for relief.	Usually, lawyers do not bother with an introduction or conclusion because the judge has already read the briefs, and the lawyers want to use all of their time for the legal arguments.
The plaintiffs will have a chance to rebut each point.	The moving party would only have one chance at rebuttal, after the opponent has finished.

C. What roles may students play during the class oral argument?

- Judges - The judges' job is to listen to the lawyers present their arguments, ask clarifying or challenging questions, and ultimately decide whether summary judgment should be granted -- that is, whether Plaintiff Kenji Davis should win without even going to trial. Judges are free to interrupt the lawyers with questions. When the judge interrupts, the lawyer should stop speaking, listen to the question, and immediately answer it before proceeding with his or her prepared arguments.
- Lawyers for Plaintiff - Kenji Davis's lawyers will present several arguments to persuade the court that Kenji's First Amendment rights were violated. These arguments include: the speech was not disruptive; the speech was political; the school engaged in viewpoint discrimination; the speech was not school sponsored; the speech does not raise legitimate educational concerns; and the speech is not lewd, vulgar, or socially inappropriate.
- Lawyers for Defendant - The Ann Arbor School Board's lawyers will present several arguments to persuade the court that a summary judgment for the Plaintiff is not appropriate. In other words, the Defendant's lawyers are arguing that Kenji's First Amendment rights were not clearly violated as a matter of law. These arguments include: the speech was disruptive; the speech was not political; the school did not engage in viewpoint discrimination; the speech was school sponsored; the speech does raise legitimate educational concerns; and the speech was lewd, vulgar, or socially inappropriate.

D. How do the lawyers use case law to support their arguments?

Lawyers should use controlling case law to help make their points. Here, the lawyers will be able to refer to *Tinker*, *Fraser*, or *Hazelwood*. Because everyone needs a chance to participate, each lawyer will only make one argument, and therefore should only refer to one case during his or her turn. Of course, real lawyers will incorporate many different cases.

Here are some ways to use a case.

- Cite the rule of law. Use the case to explain what the rule is that the court must follow.
 - Example: "In *Fraser*, the Supreme Court held that school officials may prohibit student speech that undermines the school's basic educational mission because it is lewd and vulgar. Kenji's speech fit this description. It is lewd because ..."
- Use persuasive language. You might wish to quote an opinion, even if the quote does not constitute the holding, because the language is especially persuasive.
 - Example: "The Supreme Court pointed out in *Tinker* that 'students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.' By censoring Kenji's speech, the Defendant was wrongfully trying to confine him to school-approved viewpoints. Therefore..."
- Analogize. Explain how the facts of the case are similar to the facts at issue here. Explain why, because *this* case is like *that* case, the outcome should be similar.

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- Example: "There was no substantial disruption in *Tinker*. There, the school day continued without disturbance; there were no interruptions in school activities and no interference with classes. The same is true here because..."
- Distinguish. Explain how the facts of the case are different from the facts at issue here. Because the facts are different, the outcome should be different too.
 - Example: "In *Hazelwood*, the speech was clearly school sponsored because the content of the newspaper was supervised and approved by school officials. In contrast, no school official purported to approve the message on Kenji's T-shirt..."

Now you try. Refer to *Tinker*, *Hazelwood*, and *Fraser* (Handouts 3, 5, and 6) and think of another way that you can use one of them for each of the purposes below.

(1) Cite the rule of law.

(2) Use persuasive language.

(3) Analogize.

(4) Distinguish.

Handout 19

Mock argument role assignments

Sequence of events:

1. The Plaintiff gives introduction. Then the Defendant gives introduction.
 2. The Plaintiff presents argument #1 (2 mins)
 3. The Defendant presents argument #1 (3 mins)
 4. The Plaintiff presents rebuttal to argument #1 (1 min)
 5. The Plaintiff gives conclusion. Then the Defendant gives conclusion.
- } Repeat for arguments #2-6

Plaintiff			Defendant		
Content	Time	Student name	Content	Time	Student name
Introduction	2 mins		Introduction	2 mins	
Argument #1: The speech was not disruptive	2 mins + 1 min rebuttal		Argument #1: The speech was disruptive	3 mins	
Argument #2: The speech was political	2 mins + 1 min rebuttal		Argument #2: The speech was not political	3 mins	
Argument #3: The school engaged in viewpoint discrimination	2 mins + 1 min rebuttal		Argument #3: The school did not engage in viewpoint discrimination	3 mins	
Argument #4: The speech was not school sponsored	2 mins + 1 min rebuttal		Argument #4: The speech was school sponsored	3 mins	
Argument #5: The speech does not raise legitimate educational concerns	2 mins + 1 min rebuttal		Argument #5: The speech does raise legitimate educational concerns	3 mins	
Argument #6: The speech is not lewd, vulgar, or socially inappropriate	2 mins + 1 min rebuttal		Argument #6: The speech is lewd, vulgar, or socially inappropriate	3 mins	
Conclusion	2 mins		Conclusion	2 mins	
Judges:					

Clerk:					

Handout 20A
Prep for introduction

Name: _____

Plaintiff or Defendant: _____

After you greet the judges and introduce yourself, what will be the very first thing you say about the case? This should be a strong statement of what your team is here to argue.

How will you introduce your client? Remember that you want to personalize your client to the judges and characterize your client in the most sympathetic way possible.

How will you summarize what happened in the case? Think about how you want to present the story. You want to (truthfully) paint the picture in a way that makes your client look the best. You should choose 3 main points that you want to emphasize.

At the end of the mock argument, what do you want the judges to do for your client? How should the judges rule?

Practice your introduction with two other students on your team. Have them sign here when finished:

(1) _____ (2) _____

Handout 20B
Prep for argument

Name: _____

Plaintiff or Defendant: _____

Which argument are you making?

Which facts from the depositions will be helpful for your argument?

Which facts from the depositions are not so good for your argument, and how will you respond if the judge or your opponent brings them up?

Because you will only have a few minutes to argue, you should choose just one case to discuss. Which case will you use: *Tinker*, *Hazelwood*, or *Fraser*? What does the case say that will help you make your point?

Write down any relevant quotes or language from the case that you will want to use.

Overall, how would you rate the strength of your argument on a scale of 1-10? (10 is the strongest). Why?

Practice your argument with two other students on your team. Have them sign here when finished:

(1) _____ (2) _____

Handout 20C
Prep for conclusion

Name: _____

Plaintiff or Defendant: _____

How will you summarize the conflict in this case? Explain what happened, from your client's perspective.

How is the other side at fault?

What are the strongest facts from the depositions that support your client?

What facts from the depositions hurt your side? How will you explain or address those facts?

Why is the outcome of this case important? What message will this case send to society as a whole if the judges rule for you? What if they rule for your opponent?

How should the judges rule? If they decide that the School Board violated the First Amendment, what should they tell the Defendant to do?

Practice your conclusion with two other students on your team. Have them sign here when finished.

(1) _____ (2) _____

Handout 20D
Prep for judges

Name: _____

How to Play ‘Devil’s Advocate’

(Adapted from Jonathan Dorn, "For Argument's Sake: Playing 'Devil's Advocate' with Nonfiction Texts," http://www.readwritethink.org/files/resources/lesson-docs/HowtoPlay_Devils_Advocate.pdf)

Playing ‘devil’s advocate’ is taking an opposing viewpoint or raising an objection to a claim merely for the sake of argument. You do not actually have to believe what you are saying when you raise these questions or objections; you are simply arguing in order to clarify issues and generate debate. This is a skill that requires considerable practice but when executed well, offers new insights, challenges stagnant thinking, and increases the rigor of debate and level of understanding.

In 2015, the Supreme Court held that the right to marry is a fundamental right, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same sex may not be deprived of that right. Therefore, States must allow same-sex marriage and must also recognize lawful same-sex marriages performed in other States. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

The examples below will provide strategies to help you become an astute yet insightful devil’s advocate. The “speaker” in these examples wants the Supreme Court to change its mind and stop requiring States to recognize same-sex marriages. Meanwhile, the “devil’s advocate” wants to uphold the Supreme Court’s decision.

<p>1. Ask incisive questions.</p> <p><u>Speaker</u>: “The Supreme Court should reverse its decision that required states to recognize same-sex marriages.”</p> <p><u>Devil’s Advocate</u>: Who does this disadvantage? Are there any exceptions to this proposal? Should the Court overturn the entire decision, or just parts of it?</p>	<p><u>Plaintiff</u>: The school should repeal the rule against political buttons, patches, and T-shirts.</p> <p><u>Judge</u>:</p>
<p>2. Consider proposals from other people’s perspectives.</p> <p><u>Speaker</u>: “States should no longer have to recognize same-sex marriages.”</p> <p><u>Devil’s Advocate</u>: What about the couples who are already married? What about the children who live with married same-sex couples? Should their opinions be given any weight?</p>	<p><u>Defendant</u>: Kenji's speech was disruptive to the school.</p> <p><u>Judge</u>:</p>
<p>3. Think of comparable scenarios that refute the original claim.</p>	<p><u>Defendant</u>: Kenji's speech was considered to be school-sponsored speech.</p>

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<p><u>Speaker</u>: "Marriage is meant to provide a stable and safe relationship in which couples can procreate. Since same-sex couples cannot procreate, they have no need for marriage."</p> <p><u>Devil's Advocate</u>: Many straight couples are infertile, are too elderly to have children, or simply do not want children. Does that mean they too have no need for marriage?</p>	<p><u>Judge</u>:</p>
<p>4. Pose hypothetical situations to clarify issues.</p> <p><u>Speaker</u>: "States should be allowed to recognize same-sex marriages if they want to, but they shouldn't be forced to."</p> <p><u>Devil's Advocate</u>: Suppose a same-sex couple gets married in one state and lives there for several years. Then they have a career change or a family emergency which requires them to move to another state, which does not recognize same-sex marriage. What happens to the couple?</p>	<p><u>Plaintiff</u>: Kenji's speech was not lewd or vulgar.</p> <p><u>Judge</u>:</p>
<p>5. Pose alternative explanations or solutions to problems.</p> <p><u>Speaker</u>: "Judges, clerks, and magistrates are unfairly forced to violate their religious convictions by being required to marry same-sex couples."</p> <p><u>Devil's Advocate</u>: But as government workers, they are supposed to uphold the laws of the United States. If their job requirements would violate their religious convictions, wouldn't it make more sense for them to pursue a different job?</p>	<p><u>Plaintiff</u>: The school should allow students to express their political opinions during mandatory school assemblies that feature political speakers.</p> <p><u>Judge</u>:</p>
<p>6. Use <i>reductio ad absurdum</i> – the technique of reducing an argument or hypothesis to absurdity, by pushing the argument's premises or conclusions to their logical limits and showing how ridiculous the consequences would be, thus disproving or discrediting the argument.</p> <p><u>Speaker</u>: "The United States is a Christian nation, and should base its laws in the Bible."</p> <p><u>Devil's Advocate</u>: But the Bible has a lot of rules that we don't follow today. Are you really saying we should follow all of them? What about...?</p>	<p><u>Defendant</u>: The school must be allowed to censor what is on a student's T-shirt.</p> <p><u>Judge</u>:</p>

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<p>7. Expose an exception to the proposal.</p> <p><u>Speaker</u>: "Marriage is a traditionally religious institution and should remain such."</p> <p><u>Devil's Advocate</u>: What about civil marriages that take place in courthouses or other non-religious environments?</p>	<p><u>Plaintiff</u>: A message on a student's T-shirt or clothing can never be considered school-sponsored speech.</p> <p><u>Judge</u>:</p>
<p>8. Identify hidden assumptions</p> <p><u>Speaker</u>: "Homosexuality is wrong because it is unnatural."</p> <p><u>Devil's Advocate</u>: You are assuming that if something is unnatural, it is wrong. Man-made medications are also unnatural. Does that mean medications are wrong too?</p>	<p><u>Defendant</u>: The students were acting rowdy during the assembly because of the lewdness of Kenji's message.</p> <p><u>Judge</u>:</p>
<p>9. Provide evidence that is ignored but contradicts the proposal</p> <p><u>Speaker</u>: "Studies show that children benefit from having both a mother and a father in the household."</p> <p><u>Devil's Advocate</u>: While that is true, studies also show that children raised by two same-sex parents do not show any developmental disadvantages compared to children raised by two opposite-sex parents.</p>	<p><u>Plaintiff</u>: Kenji's speech was not disruptive in any way.</p> <p><u>Judge</u>:</p>
<p>10. Show the downside of the proposal</p> <p><u>Speaker</u>: "No one is stopping same-sex couples from living together and loving each other; it's just that state should not have to recognize their relationships as a marriage."</p> <p><u>Devil's Advocate</u>: The problem with that idea is that the couples would lose out on all of the legal benefits associated with marriage.</p>	<p><u>Plaintiff</u>: "The NSA sucks" should be considered political speech.</p> <p><u>Judge</u>:</p>

Handout 21
Mock argument rubrics

For arguers:

Category	3	2	1	0
Factual support	Refers to facts from the depositions regularly and accurately	Sometimes refers to facts from the depositions	Regularly forgets, misstates, or ignores the facts of the case	Does not demonstrate any knowledge of the facts of the case
Legal support	Refers to and effectively uses relevant Supreme Court opinions when arguing	Refers to relevant Supreme Court opinions but is not clear about how those opinions support the speaker's point	Demonstrates minimal knowledge of any of the Supreme Court opinions	Does not attempt to refer to any relevant Supreme Court opinions
Rebuttals and Questions	Comfortably responds to questions from the judges and unfavorable arguments from the opposite side	Responds to some questions or opposing arguments, but ignores others that need to be addressed	Gives quick and minimal answers to judge's questions without engaging in the problem presented	Does not attempt to respond to questions or address the other side's arguments at all
Listening	Listens attentively to judge's questions, opposing arguers, and arguers on own team	Listens attentively during own round but does not listen to everyone else's round	Does not pay attention when opposing side is arguing	Distracts the class from the mock arguments and does not engage
Preparation and participation	Completed all necessary preparation and practice during class time	Completed some necessary preparation and practice during class time	Did not complete all necessary preparation or did not practice during class time	Did not turn in the preparation at all and did not use class time to practice or prepare

Name: _____

Total: _____ / 15 points

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For judges:

Category	3	2	1	0
Factual knowledge	Asks questions with accurate references to the facts from the depositions	Questions are sometimes grounded in the facts from the depositions	Regularly forgets, misstates, or ignores the facts	Does not demonstrate any knowledge of the facts of the case
Legal knowledge	Asks detailed questions with accurate references to the Supreme Court opinions	Questions are sometimes related to the Supreme Court opinions, but only superficially	Demonstrates minimal knowledge of any of the Supreme Court opinions	Does not attempt to ask about any Supreme Court opinions
Rebuttals and Questions	Asks several relevant questions throughout the arguments; interrupts politely and asks follow-up questions when appropriate	Asks some questions throughout the arguments but does not engage with the speaker's responses	Only asks one or two questions throughout the arguments; questions are over-simplified	Does not attempt to ask any questions or engage with the speakers at all
Listening	Listens attentively to other judge's questions and all arguers	Listens attentively during some rounds but does not others	Does not pay full attention to the arguers or other judges	Distracts the class from the mock arguments and does not engage
Preparation and participation	Completed all necessary preparation during class time	Completed some necessary preparation during class time	Did not complete all necessary preparation during class time	Did not turn in the preparation at all and did not use class time to prepare

Name: _____

Total: _____ / 15 points

Handout 22
Mock argument reflections

Name: _____

Role: _____

What did you do well during the mock argument?

What did you find to be the most challenging? How did you address this challenge and what would you do differently if you had the chance?

How do you feel about the format of a mock argument? Do you think it is effective to have the judges ask questions and interact with the attorneys, or not? Why?

Do you think the clients (Kenji Davis and the School Board) would be happy with how they were represented? Why or why not?

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In your opinion, should the judges grant summary judgment for either party, or should this case proceed to a formal trial? Why?

What advantages or disadvantages might each party experience if the case proceeded to trial?

Which arguments did your classmates make that you hadn't thought of before? Did any of your classmates make you think of the case a little differently?