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ABSTRACT

This serial issue concerns itself with several conflicts between individual rights and allegedly wrongful acts that the Supreme Court has not considered previously. The articles on these topics illuminate the constitutional issues of equal protection, due process, and freedom of expression. Specific issues addressed include: (1) equal educational opportunities for women and the merits of single sex education; (2) prisoners' rights, specifically addressing access to prison libraries; (3) voting rights, specifically the issue of whether the right to significant representation for minorities means that congressional districts may be shaped oddly (gerrymandering) so that the otherwise outnumbered minorities become majorities within them; (4) a recent labor law ruling by the Court; and (5) student rights' pertaining to school uniforms and participation in competitive sports. The document provides the facts of the cases, legal precedents, significance of the issues, as well as suggestions for appropriate teaching methods, helping classroom teachers and law-related education program developers educate students about the relevant legal issues and the societal implications of the cases. (LH)

[Rights and Wrongs]

American Bar Association
Chicago, Illinois
1996

Covering U.S. v. Commonwealth of Virginia and Other Major Cases

$2.00

Rights and Wrongs . . .

Update on the Courts 4.3, 1996, pp. 1–2.

Americans have many guaranteed rights: the right to free speech, to free press, and to voting, to name just a few. Americans also have the right to sue if they feel they have been wronged—physically or financially, for example.

The Supreme Court is the ultimate adjudicative body that decides whether, with regard to federal issues, persons have had their rights violated or have been wronged. As is often the case, this term the Court is confronted with some questions of rights and wrongful acts that it has not considered previously.

One of the more publicized cases involves *gender discrimination in schools* and the Virginia Military Institute's all-male admissions policy. In existence since 1839, the Virginia Military Institute is a state military college that emphasizes physical rigor, mental stress, absolute equality of treatment, absence of privacy, minute regulation of behavior, and indoctrination of values. First-year cadets are on what is known as the "rat-line," being treated like the "lowest animal on earth."

A female high school student applied for admission to the college, and the United States brought a suit to force her admission. The Commonwealth of Virginia, for its part, wants to protect its all-male military institute from incursions by females. (See the case summary on pages 2–3 and the teaching strategy beginning on page 4 for a more detailed discussion of equal educational opportunity for women.)

In another case, the Supreme Court will consider what is the *right to access to a prison library* of incarcerated individuals who cannot read English. Do they have the right to help from the prison staff? Do they have the right to demand books that they can understand? A negative answer might amount to a violation of both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the Constitution. (See page 7.)

Equal access to the voting booth and *gerrymandering,* or aligning congressional districts to ensure the election of a candidate representative of a given group, are also coming under the scrutiny of the Court. In this instance, the question is whether a congressional district may be mapped out in a fashion that would virtually assure the election of an African-American congressional candidate. Does the right to significant representation for minorities mean that congressional districts may be oddly shaped so that the otherwise outnumbered minorities become majorities within them? Or should districts be mapped using more regular shapes such as squares or rectangles? (See page 10.)

Another question, recently decided: *Is waiting working?* More to the point, is the right of an employee not to be called to

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work for a specified number of hours following an on-duty stint breached when mandatory waiting time is not considered to be work? Engineers, conductors, and related personnel on trains must stop operations after a given number of hours, but they are required to stay on the trains until a relief crew shows up. The Supreme Court has ruled that this idle time is not "work" for the purpose of determining when they may be required to return to active duty. (See page 11.)

In cases that involve *students' rights,* lower courts have decided that public school districts have the power to require students to wear uniforms (see page 12 for this case, which involves *freedom of expression)*; that older students may be prohibited from participating in sports even if they were held back in early grades because of learning disabilities (*the rights of disabled persons,* page 12); and that rushing a student through a lunch period may create a situation in which a school is liable for damages if the student chokes to death on food as a result of negligence on the part of school employees (*negligence as a wrongful act,* page 12).

Sources

Cases are cited in their more detailed summaries, which follow. ◆

Sex Discrimination

U.S. v. Commonwealth of Virginia and Commonwealth of Virginia v. U.S.

Docket Nos. 94-1941 and 94-2107, consolidated; argued January 17, 1996.

Update on the Courts 4.3, 1996, pp. 2–3. © American Bar Association.

Petitioner: United States of America/Virginia Military Institute.
Respondent: United States of America/Commonwealth of Virginia.

FACTS

An all-male, state-supported college, The Virginia Military Institute (VMI) emphasizes rigorous physical and mental training. All cadets are required to wear the same uniforms, live in the same austere quarters, attain the same level of physical fitness, and undergo the same constant scrutiny by other cadets.

In response to a complaint from a female high school student, the United States brought suit against Virginia and VMI for allegedly violating the prohibitions against sex discrimination.

The case went back and forth between the federal district and appeals courts. Finally, the Fourth Circuit ruled that establishment of a separate Virginia Women's Institute for Leadership (VMIL) satisfied the antisex bias provisions of the law. The court concluded that VMI and VWIL are substantially comparable because "both seek to teach discipline and prepare students for leadership. The missions are similar and the goals are the same. The mechanics for achieving the goals differ . . . but the dif-

ference is attributable to a professional judgment of how best to produce the same opportunity."

The Supreme Court granted both the government's petition challenging the adequacy of Virginia's parallel-program remedy and VMI's separate petition as to whether or not the appellate court was correct in imposing a parallel program at all.

While conceding that some women may wish to attend VMI and could succeed there, Virginia nevertheless seeks judicial deference to its single-sex policy to take into account the differing educational needs and interests of male and female students. The state noted that it supports not only 14 coeducational public colleges, but also a number of private institutions of higher learning, including four that are all-female and one that is all-male. Virginia also argues that the appeals court's requirement for a college separate from VMI to be created for women disregards student needs and preferences, the professional judgment of educators, and the irrationality of having to expend limited public resources on a VWIL program—the demand for which is virtually nonexistent.

The government argued that Virginia has no law or written policy regarding single-sex education, that the exclusion of women from VMI is unconstitutional per se, and that the merits or demerits of single-sex education have no bearing on the case. The government also challenged the creation of VWIL as an equal entity because it does not insist upon the same level of harassment as VMI and there are no barracks at the facility. Students at VWIL live in housing provided by the sponsoring women's college and are afforded a level of privacy not available at VMI.

SIGNIFICANCE

A ruling by the Supreme Court that all gender distinctions are inherently suspect and subject to judicial scrutiny could usher in a wholly unintended new dispute. At the same time that such a holding may remove harmful stereotypes, it could also undo programs designed to meet the needs of inner city boys or abused women who require gender-specific support. To the extent that single-sex education is advantageous, eliminating public support for all-male and all-female schools would undercut the educational opportunities of students incapable of paying the substantial tuition charged by private single-sex schools.

In addition, there is the question of whether a state should be ordered to establish a program (such as that at VWIL) if the costs would far exceed the benefits by siphoning funds from popular education programs to support a facility that has garnered little interest on the part of students.

Adapted from Preview of United States Supreme Court Cases, *no. 4 (December 22, 1995): 160–65.* ◆

TEACHING STRATEGY

Equal Educational Opportunity for Women: How Should It Be Defined?

Julius Menacker

Update on the Courts 4.3, 1996, pp. 4–6.

OBJECTIVES

Students will be able to

- Explain the meaning of the Equal Protection Clause.
- Appreciate the extent to which females have been subjected to unequal treatment in public education.
- Understand the differences in, and importance of, applying the strict scrutiny standard (which applies to racial discrimination) rather than the intermediate level of scrutiny (which applies to gender discrimination) to determine the outcome of *U.S. v. Commonwealth of Virginia.* (See page 6.)
- Evaluate and appreciate the positive and negative consequences of a policy requiring all public educational institutions to be coeducational rather than single-sex institutions where the state deems them appropriate.

Target Group: Secondary level students
Time Needed: 3–4 class periods
Materials Needed: Student Handout

PROCEDURES

1. Distribute photocopies of all materials for student review. Clarify, elaborate on, and answer questions about the materials in a class discussion.

2. Divide the class into four groups, one composed entirely of girls, one entirely of boys, and two composed of equal numbers of boys and girls if possible. Have each group appoint a member to report the major results of the group's investigation to the class. Each group should

- Identify any evidence in your school of girls receiving unequal treatment, compared to that of boys.
- Present opinions about whether single-sex institutions or coed institutions have more advantages or disadvantages.

3. After discussing the group reports, help the class identify any significant differences among the attitudes of the single-sex and mixed-sex groups, as well as between girls and boys. Have the class suggest reasons for any differences.

4. Create four new groups with the same gender distributions, but with a different mix of individuals. Assign all groups the task of discussing whether or not VMI should be required to admit female students based upon the facts of the case. Ask students to pay particular attention to the matters of the proper level of scrutiny to apply and the issue of the "separate-but-equal" solution proposed by VMI. A reporter from each group should present the major outcomes of the group's discussion, followed by teacher-led discussion of the reports. Again, note any attitude differences that may be based on the gender composition of groups.

5. Have students submit papers presenting their decision as judges of this case, supporting their judgment with both legal analysis regarding the Equal Protection Clause and the proper level of scrutiny to be applied in the case and opinions about why their decision is good public policy.

Julius Menacker is a professor and chair of the Policy Studies Area in the College of Education at the University of Illinois at Chicago.

Terms

gender discrimination—Unfair and unequal treatment that is based solely on whether a person is male or female

intermediate level of scrutiny—An examination of a state law that is less favorable to the state than the class, but not as favorable as strict scrutiny

separate but equal—The idea that each race should have its own housing, schools, churches, jobs, public transportation, and so on; racially segregated

strict level of scrutiny—A close examination of a state law, with the outcome weighted in favor of the challenger

U.S. v. Commonwealth of Virginia and Commonwealth of Virginia v. U.S.

BACKGROUND

The struggle for making the Constitution's Fourteenth Amendment Equal Protection Clause a reality for all Americans has often centered on issues of educational opportunity. In *Plessy v. Ferguson,* 163 U.S. 537 (1896), the Supreme Court decided that public schools could legally segregate students by race, under the doctrine of "separate-but-equal." This doctrine was reversed by the decision in *Brown v. Board of Education of Topeka, Kansas,* 347 U.S. 483 (1954), in which the Court declared segregation in public education violated the Equal Protection Clause because such segregation was inherently unequal.

While national policy makers struggled to make integrated education a reality, the call for equal educational opportunity sounded by the *Brown* decision led to action to equalize such opportunity in areas other than race. The Rehabilitation Act and the Education for All Handicapped Children Act (reauthorized in 1990 as the Individuals with Disabilities Education Act) provided improved educational opportunities for students with special needs related to physical, mental, and emotional disabilities. Also, the Bilingual Education Act and the Equal Educational Opportunity Act equalized opportunity for students whose native language is not English.

The concern for equal opportunity in education has also focused on inequalities experienced by female students. This concern caused Congress to pass Title IX of the Education Amendments of 1972, which required that girls be given school program opportunities equal to those of boys. In the development of policy for gender equality in education, whether based on Title IX or (as in *U.S. v. Commonwealth of Virginia and Commonwealth of Virginia v. U.S.*) on the Equal Protection Clause of the Fourteenth Amendment, one of the issues has been deciding when and where activities should provide for "separate-but-equal" programs and when and where the "separate-but-equal" doctrine was as invalid in matters of gender discrimination as in racial discrimination.

U.S. v. Commonwealth of Virginia and Commonwealth of Virginia v. U.S. is the latest case in which the Supreme Court has been asked to decide a matter of equal protection in education. Virginia and the Virginia Military Institute (VMI) claim that, in order to be effective, the military program at VMI must be limited to males only. In response to demands for female admission to VMI, Virginia has proposed funding a "comparable" military-training program for women at a private women's liberal arts college in the state. Now the Supreme Court must decide whether the Equal Protection Clause can be satisfied with this "separate-but-equal" arrangement, given the special, unique needs associated with military training or whether equal protection requires VMI to become coeducational regardless of the claimed benefits of all-male military training.

The Fourteenth Amendment

The Fourteenth Amendment, which was proposed and ratified after the Civil War, was intended, among other things, to establish the citizenship of former slaves and to ensure that the states did not deny equal rights to any person. The part of the Fourteenth Amendment that is referred to as the Equal Protection Clause reads: ". . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws." The Supreme Court has often relied on the phrase "equal protection of the laws" as the basis for its civil rights rulings, including its decision in *Brown v. Board of Education* (see page 5).

A. Coed v. Single-Sex Education

1. A growing body of scholarly literature points to the benefits of single-sex education.
2. A prominent Harvard sociologist claims that "for many men, a single-sex college is optimal."
3. The American Association of University Professors and the Center for Women Policy Studies argue that single-sex education has been shown to be primarily of benefit to young *women* in secondary school.
4. The benefits to females from single-sex education comes from the elimination or reduction of discrimination favoring males in coeducational settings.
5. "Sex, like race, is an immutable and highly visible characteristic that frequently bears no relation to ability to perform or contribute to society." (Quoting the Supreme Court opinion in *Frontiero v. Richardson,* 411 U.S. 677 (1973).

B. Legal Factors Related to Equal Protection Cases

Levels of Scrutiny

1. *Strict scrutiny.* When it is determined that the basis for student classification and differential treatment is race or ethnicity, courts employ the strict scrutiny test. This test requires that the public institution justify its policy of differential treatment by showing that it is necessary to accomplish a compelling state purpose and is the least restrictive means that is as narrowly tailored to that purpose as possible. This is very difficult for the public school to do.
2. *Substantial relation* (intermediate level of scrutiny). When it is determined that a public school is classifying on the basis of gender, courts employ this intermediate-level test. Although not as demanding as strict scrutiny, it still places the burden for justifying the policy of differential treatment on the government. Gender-based classifications will be upheld only if the government can demonstrate that they are substantially related to the achievement of an important government purpose. While this is still a difficult barrier for the public school to surmount, it is easier to meet than the strict scrutiny standard is.
3. In *Mississippi University for Women v. Hogan,* 458 U.S. 718 (1982), the Supreme Court held that gender distinctions should be measured by intermediate judicial scrutiny, which requires an important governmental objective and asks whether gender distinctions are substantially related to the objective.

Legal Principles Applied to Equal Protection

1. The general concept behind the Equal Protection Clause is that government should not invidiously (i.e., with bad intent) discriminate among classes of persons within its jurisdiction. All should be equal before the law.
2. Certain factors, such as race, are inherently suspect and almost always deemed unconstitutional in discrimination cases. However, schools may discriminate when a rational basis for discrimination is established, such as, for example, age.
3. Intangible social and psychological effects of discrimination may be considered by courts as evidence in reaching determinations of equal protection violations.

Prisoners' Rights

Lewis v. Casey

Docket No. 94-1511, argued November 29, 1995

Update on the Courts 4.3, 1996, pp. 7–9.

Petitioner: Samuel Lewis, et al.
Respondent: Fletcher Casey, Jr., et al.

FACTS

Incarcerated individuals have rights, one of which is "meaningful access" to the courts. This includes access to prison law libraries and/or to assistance by persons knowledgeable in the law, but does this access apply to prisoners who are illiterate or who do not speak English?

A federal district court in Arizona, affirmed by the Ninth Circuit, has answered yes to this question as it relates to inmates in Arizona because a large number of prisoners cannot use the materials available to them. Thirty-five percent cannot read English above the seventh-grade level and 15 percent cannot speak English at all.

These prisoners, in response to an appeal by the State of Arizona, contend that

- Illiterate inmates and those who cannot speak English are not provided with the legal assistance needed to litigate violations of their constitutional rights.
- Some prison law libraries are staffed by officials with no legal training.
- Some libraries are inadequate because they do not contain court decisions pertaining to their region.
- Inmates who are on lockdown status (confined to their cells) have no meaningful access to the courts because they may not go to the law library.
- Substantial restrictions impede prisoners' ability to make telephone calls to their attorneys.
- Prison officials read documents that inmates photocopy.

The state argues that

- Most of its prison libraries are staffed by legal assistants (inmate volunteers) who, unlike law clerks, are permitted to help other inmates conduct research and draft legal documents. These legal assistants are screened to ensure that they have a working knowledge of the law.
- The Supreme Court, in *Bounds v. Smith,* 430 U.S. 817, 823 (1977), held that prisoners must have access to adequate law libraries or be provided with adequate assistance from persons trained in law. Since inmates in Arizona have access to both a broad array of legal materials and the help of legal assistants, their right to access to the courts is doubly protected.
- Courts generally recognize that there may be some deficiencies in petitions filed by nonattorneys. These, the Supreme Court ruled in *Haines v. Kerner,* 404 U.S. 519 (1972), must be liberally construed by lower courts regardless of how crudely the documents are drafted. And there was no evidence cited in the instant case that any Arizona prisoner has sustained actual injury because of some lapse in the manner in which a petition was presented (missing a filing deadline, failure to state a claim, for example).
- More fundamentally, prisoners have no more of a right than free citizens to high-quality legal assistance when litigating constitutional issues. It is, therefore, of no consequence that prisoners, like many free citizens, cannot effectively use law libraries because of their lack of a legal education.
- Although most prisoners on lockdown status are not permitted to go to the law library, they have access to a paging system through which a written request for law books and other legal materials is made to the library.

The federal district court essentially agreed with the prisoners, finding that the following practices appear to be objectionable:

- Inmate legal assistants in some cases need only to be literate in English to qualify for the position.
- There is an apparent lack of communication between legal assistants in prison libraries and non-English-speaking prisoners.
- The limits are low, sometimes as low as one or two books, on the number of volumes that may be requested by a prisoner who is on lockdown status.
- There are restrictions preventing locked-down inmates from keeping books for more than a day.
- There are requirements that prisoners provide an exact case name and docket number before a book request will be processed.
- Delays ranging from a few days to a few weeks occur before requested materials are received.

• Delays in making updated lists of library inventories available to inmates occur.

The federal district court directed that changes be made in the recruitment, training, and supervision of prisoner legal assistants; library hours be extended; librarians be adequately educated in their fields; and officials not read prisoners' photocopies. The Ninth Circuit Court of Appeals affirmed that decision, but it was stayed by the Supreme Court's pending review.

SIGNIFICANCE

The question in this case is one of due process and equal protection of the rights of prisoners. Specifically, what does it mean to say that the Constitution requires that inmates have access to adequate law libraries and adequate assistance from persons trained in the law?

If the Supreme Court agrees with the prisoners, Arizona and other states will be faced with new responsibilities and burdens, both economic and logistic. If the decision goes the other way, for all practical purposes, entire segments of the prison population may have no access to the courts. The inmates most affected by such a decision would be those who are blind, illiterate, mentally ill, and unable to read or write English.

Adapted from Preview of United States Supreme Court Cases, *no. 3 (November 17, 1995): 123–27.* ◆

Lewis v. Casey

Stephen A. Rose

Update on the Courts 4.3, 1996, p. 9. © American Bar Association.

This activity has been structured to allow students to gain experience in identifying a position and developing supporting arguments. The small-group activity that follows has three groups of students form the main actors of the Supreme Court—Justices, petitioners, and respondents. Hence, nine students will constitute a court, and in a class there may be enough students for several courts.

Directions

1. Form groups of three students each, and assign each trio to one of the three main roles in the U.S. Supreme Court—Justices, petitioners, and respondents.
2. All actors are to read the entire preceding article about *Lewis v. Casey,* while paying close attention to the information that directly pertains to their roles.

Roles

Petitioners (Arizona prison officials): You need to develop arguments that convince the court that current regulations pertaining to prisoner access to the courts do not violate inmates' constitutional rights. Further, you must develop arguments that the relief (remedies) ordered by the district and affirmed by the appeals court are far broader than necessary to remedy any constitutional violations that may exist. In formulating your arguments, you may want to consider the following questions:

a. What are the facts and arguments that have been advanced in the lower courts?

b. How do existing regulations pertaining to court access meet constitutional requirements?

c. Do existing regulations about access to the courts cause legal harm to prisoners?

d. Do prisoners have a constitutional right to have access to high-quality legal assistance?

Respondents (Prisoners in Arizona): Your oral arguments need to convince the Court that "meaningful access" to the courts is not being provided to all inmates. Specifically, mere access, even to an adequate law library, does not give prisoners who are illiterate or who do not speak and/or understand English meaningful access to the courts as guaranteed by the Constitution. For meaningful access to become a reality for these individuals, experienced persons will have to help them read and understand the legal materials and write complaints/petitions to the courts. In formulating your arguments, you may want to consider the following questions:

a. What are the facts and arguments that have been advanced in the lower courts?

b. What are the type and quality of legal assistance that illiterate and non-English-speaking inmates need?

c. What access to legal resources should inmates in lockdown status have?

d. What is the quality of existing prison law libraries and associated personnel?

e. What prison regulations impede inmates' effective communication with attorneys, and what is the legal harm that results from those regulations?

f. How might court interpretations of constitutional amendments support your plea for meaningful access to the courts?

Justices: You will address two central questions: (1) whether Arizona prison officials have violated inmates' right of access to the courts as found by the district and appellate courts and (2) whether the relief ordered by the district court and affirmed by the appellate court is far broader than necessary to remedy any constitutional violation that may exist. In preparation for hearing oral arguments from both parties, you need to

a. Review past precedents established in *Wolff v. McDonnell,* 393 U.S. 483 (1969) (the right of illiterate and poorly educated prisoners to receive assistance from other inmates with a better understanding of the law), *Bounds v. Smith,* 430 U.S. 817, 823 (1977), and *Haines v. Kerner,* 404 U.S. 519 (1972), concerning prisoners having "meaningful access to the courts."

b. Review past district and appellate court decisions.

c. Review relevant constitutional amendments.

d. Develop questions to ask petitioners and respondents during their oral arguments.

e. Decide and write an opinion about the case.

Class Discussion

Once student courts have rendered their decisions, have a class discussion that identifies their reasoning and compares and contrasts their decisions.

Stephen A. Rose is a professor of education at the University of Wisconsin—Oshkosh.

Voting Rights

Bush v. Al Vera

Docket Nos. 94-805, 94-806, and 94-988, Consolidated, Argued December 5, 1995.

Update on the Courts 4.3, 1996, pp. 10–11.

Petitioner: George W. Bush, Governor of Texas, et al.
Respondent: Al Vera, et al.

FACTS

Gerrymandering—the practice of creating congressional districts in such a way as to serve political ends—has existed almost from the beginning of American democracy. More recently, irregularly shaped districts have been drawn to permit minorities to have representatives in Congress and, at the same time, to ensure that incumbent representatives have constituencies that will return them to office.

In 1991, Texas State Senator Eddie Bernice Johnson, an African-American female, set out to create a congressional district in which she could be elected to Congress. Johnson, as chair of the Texas State Subcommittee on Congressional Districts, was in an excellent position to create her own constituency when in 1990 her county of residence—Dallas—became entitled to an additional representative.

In creating the new district, Johnson first selected a majority African-American area that routinely voted for her as state senator. Her proposed district was compact and followed voting precinct lines, but the plan drew stiff opposition from two white Democratic incumbents who felt they would lose votes from that area.

Turf battles arose. Both Johnson and one incumbent wanted a portion of western Dallas County in their districts, so they split the area between themselves. The same happened on the eastern side with the other incumbent. But the result left the proposed new district short of the total population needed to create a new district, and the nearest area was a majority-white Republican district.

Bypassing that, Johnson proposed an area that snaked into another region farther north that included a Jewish neighborhood and two small African-American communities. As finally adopted by the Texas legislature, the new district was 50 percent African-American, and it had a highly irregular shape, consisting of a South Dallas core and seven segmented portions that stretched into the northern and western portions of the county. Existing congressional districts were reformed into convoluted entities to accommodate the new district. The U.S. Department of Justice approved the new pattern.

Republicans sued, and a federal district court held that a redistricting plan is subject to strict judicial scrutiny if the plan results in "bizarrely shaped districts whose boundaries were created for the purpose of racially segregating voters." Strict scrutiny requires the government to establish a compelling interest for taking a particular action and to show that the action is narrowly tailored to establish that compelling interest. The court held that a state's purpose in protecting the election or reelection chances of candidates is not a compelling interest.

The Supreme Court has already ruled that a redistricting plan violates the Equal Protection Clause if it is "so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles." In *Miller v. Johnson,* 115 S. Ct. 2475 (1995), the Court stated further that strict scrutiny applies whenever "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." The distorted shape of a district may provide circumstantial evidence that race-neutral districting principles are being violated, the Court added.

In the present case, Texas claims that the new district has a population of 50 percent African-Americans, but those of voting age amount to only 47.1 percent. Therefore, the state argues, it is not an African-American district, but rather a minority "opportunity district." Texas further contends that the new district alignment is necessary to comply with the state's compelling interest in following the dictates of the antidiscrimination provisions of the Voting Rights Act, which prohibits any practices that make it more difficult for minorities to elect representatives of their choice.

SIGNIFICANCE

The Court, here, will determine the extent of the bizarreness factor. How convoluted must the configuration of a congressional district be to be considered "bizarre"? In addition, the Court will decide for the first time whether or not a state's compliance with the Voting Rights Act is a compelling state interest for the purposes of strict scrutiny.

Adapted from Preview of United States Supreme Court Cases, *no. 3 (November 17, 1995): 137–41.* ◆

For more information and student activities involving voting rights, see *Update on Law-Related Education* 19.1 (winter 1995), pages 25–27 and 38–40; *Update on the Courts* 3.1 (fall 1994), pages 5–10; and *Making Rules and Laws,* I'm the People—It's About Citizenship and You Series (Chicago: American Bar Association, 1995, pages D-30–36). To obtain copies of *Making Rules and Laws,* call your UPDATE PLUS Circulation Manager at (312) 988-5735.

Labor Law

Brotherhood of Locomotive Engineers v. Atchison, Topeka, and Santa Fe

64 U.S.L.W. 4045 (U.S. January 8, 1996)

Update on the Courts 4.3, 1996, p. 11.

FACTS

Under the Federal Hours of Service Act, a train crew that reaches the end of a 12-hour work period without getting to its destination must stop the train and wait for a relief crew.

Although the train is no longer in transit, the crew members are required to wait for relief, and they are typically responsible for train safety and security. As originally written in 1907, the Act divided all train employee time into two categories—on duty and off duty—but provided no definition of either. Waiting time was considered to be on duty. In 1969, Congress reduced the number of consecutive hours of on-duty time and expressly stated that time spent waiting for transportation to work was on duty, while time spent waiting for transportation from a job was neither time on duty nor time off duty.

From 1969 to 1992, the Federal Railroad Administration took the position that employees who were relieved of all responsibilities and were simply waiting for transportation home were neither on duty nor off duty for the purposes of the Hours of Service Act. Employees who performed any service for the railroad during that waiting period, however, were considered to be on duty.

In 1990, the United Transportation Union and the Brotherhood of Locomotive Engineers challenged the Railroad Administration's interpretation of the law. The unions claimed that waiting time was work for all practical purposes. Since they could not leave the train, the employees should be considered as on-duty workers. They argued that their right to real time off between shifts was being violated. The Ninth Circuit Court of Appeals agreed with the unions, and the Railroad Administration changed its policy.

The railroads objected and sued to overturn the ruling in another court. They convinced the Seventh Circuit Court of Appeals to strike down the revised policy. This led the Railroad Administration to make waiting for transportation at the end of a shift a "limbo" situation in all states except those under the jurisdiction of the Ninth Circuit, which include Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. Trains were ordered to move as quickly as possible out of those areas when the on-duty maximum-hour limitation was about to be reached.

DECISION

Waiting, when such activity is merely waiting for transportation home at the end of a shift, was deemed by the Supreme Court not to be work for the purposes of time spent on duty.

Adapted from Preview of United States Supreme Court Cases, *no. 2 (October 16, 1995): 81–83.* ◆

Schools and the Courts

Update on the Courts 4.3, 1996, pp. 12–13. © American Bar Association.

In Uniform

Seventh- and eighth-grade students at the Phoenix Preparatory Academy in Arizona must wear white-collared shirts and blue slacks, shorts, or skirts under a policy that has been approved by Judge Michael Jones of the Maricopa County Superior Court. The policy does not violate students' First Amendment right to free expression, according to the court, even though it is the first uniform policy in the nation that has no opt-out provision (previously, public schools that adopted dress codes permitted opt-outs).

Backed by the American Civil Liberties Union, two families challenged the policy, and two students attended class wearing T-shirts with religious/patriotic messages to protest the dress code. Both students were expelled.

Judge Jones ruled that the school district acted reasonably in adopting the dress code. He said that the district had legitimate goals in eliminating gang-related clothing and in placing students of varying socioeconomic levels on an even footing regarding appearance.

Phoenix Elementary School District No. 1 v. Green, October 26, 1995.

. . . Tip of the Iceberg?

Uniforms may become more prevalent in public schools if the White House gets its way. President Clinton has ordered the Department of Education to distribute manuals on the subject to the nation's 15,000 school districts.

"If school uniforms can help deter violence, promote discipline, and foster a better learning environment, then we should offer our strong support to the schools and parents that try them," the President wrote in a memorandum to Education Secretary Richard Riley.

One school district in southern California that has experimented with a policy on uniforms registered a dramatic improvement in discipline problems. Physical fights between students dropped by 51 percent, and suspensions fell by 32 percent during the first year of the program. In a survey of 5,500 middle and secondary school principals, some 70 percent said that they believe that requiring students to wear uniforms in school would reduce violence and discipline problems, and nearly 60 percent said they thought mandatory dress codes would lead to greater academic achievement.

As reported in *Education Week,* March 6, 1996, page 27.

Held-Back Athletes Get Penalty Box

Students who have lost their athletic eligibility because a learning disability held them back a year or two have no recourse to the reinstatement rights afforded disabled persons under the Americans with Disabilities Act or other antidiscrimination laws, according to the U.S. Court of Appeals in Cincinnati. Two boys in different schools were retained in grades during their early elementary years because of learning problems. As a result, each turned 19 before starting his senior year in high school and was, therefore, ineligible to engage in competitive sports under Michigan's Athletic Association rules that prohibit the participation of students over the age of 18. The three-member court unanimously ruled that the youths' age, and not their impairments, was the basis for barring them from interscholastic competition.

Sandison v. Michigan High School Athletic Association, September 12, 1995.

School Negligent in Choking Death

A New York City jury has awarded more than $1 million to a woman whose 13-year-old daughter choked to death on a hot dog at school. Lawyers for the mother of the seventh grader said that the student was forced to eat her lunch hurriedly when it was served just minutes before the end of the lunch period.

While finishing the hot dog in class, the girl was called on by her teacher. The girl pointed to her throat in distress because she had begun to choke on the food. The teacher told her to go to the restroom, which was locked. A school aide opened it for her, and she went in but emerged moments later still

choking. She collapsed in the hallway. The aide summoned a teacher who knew first aid, but the Heimlich maneuver—an emergency technique used to dislodge an object from the windpipe—was not performed. An autopsy confirmed that the girl choked to death on a piece of hot dog lodged in her throat.

The mother claimed that her daughter had a right not to be placed in a life-threatening situation because of the inattendance of the faculty, and the resulting lawsuit sought $10 million from the city and the board of education—which rejected a pretrial demand for $250,000. The jury awarded $2,000 for funeral expenses and $1 million for pain and suffering.

As reported in *Education Week,* November 15, 1995, page 9.

Teachers Take Offensive on Violence

Teachers who are threatened by students, either verbally or physically, and who find themselves frustrated by the inability of school administrators to guarantee order in the classroom, are retaliating on a new level: they are suing their students.

"Teachers have been victimized so long by students and parents, physically and emotionally, they are now beginning to fight back," according to Ronald Stephens of the National School Safety Center. One such teacher, shaken and fearful after being threatened by a student, has been awarded $25,000 in punitive damages (the decision is being appealed).

But it is not so much the money that these teachers want, but rather to send a message to those students who think they are above the law. A 1993 National School Board Association report said that 82 percent of the districts surveyed had a five-year increase in student assaults, fights, knifings, and shootings; 61 percent cited weapons as a problem. About 5,200 of the nation's 2.5 million teachers are attacked monthly, 1,000 of them seriously enough to require medical attention.

As reported in *USA TODAY,* October 18, 1995.

Juveniles Poorly Represented in Court

The American Bar Association reports that there is widespread evidence that juveniles are not receiving adequate legal representation in the justice system across the United States. ABA found that:

- Significant numbers of youths appear in juvenile court without lawyers.
- Fifty-five percent of public defenders stay less than 24 months as juvenile defenders.
- Juvenile defenders, on average, carry staggering caseloads (more than 500 cases per year), resulting in inadequate representation of youths accused of crimes.

Appeals are rarely taken; and

- Eighty-seven percent of the public defender offices surveyed do not have a budget for lawyers to attend training programs.

In addition to large caseloads (considered to be the single most important barrier to effective representation), many defender offices suffer from severe underfunding, low morale, high turnover, inadequate training, political pressure, and low salaries.

"The impact of this on youth in juvenile court is devastating," according to Mark Soler, President of the Youth Law Center. "Children represented by overworked attorneys receive the clear impression that their attorneys do not care about them and are not going to make any effort on their behalf."

Juveniles are getting the short shrift on legal representation at the same time that the courts are cracking down on youthful offenders. Young people now face the prospect of longer sentences, mandatory incarceration times, and being sent to adult jails or prisons.

Yet appeals are rare. Among public defender offices responding to the ABA survey, 32 percent reported that they are not authorized to handle appeals. Of the offices that can appeal adverse rulings, 46 percent reported that they took no appeals in juvenile cases during the year prior to the survey. Court-appointed lawyers also rarely take appeals. Among those surveyed, three-quarters were authorized to handle appeals, but four out of five of those took none during the previous year.

American Bar Association News Release, *System Defects Mean Juveniles Poorly Represented in Court According to Report Released by the ABA,* January 1, 1996.

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ABA American Bar Association
DIVISION FOR PUBLIC EDUCATION/YEFC

541 N. Fairbanks Court, Chicago, IL 60611-3314
http://www.abanet.org/publiced/home.html
(312) 988-5735 (Internet: abapubed@attmail.com)

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