

## **LESSON PLAN: Advice and Consent - The Senate Considers the President's Supreme Court Nominations**

STUDENT HANOUT: Recent Supreme Court Decisions

**Background:** As interpreter of the Constitution, the Supreme Court has tremendous powers that greatly impact the lives of common Americans. The judicial history of the Supreme Court is rich with these examples– *Hirabayashi v. The U.S.* which upheld the internment of 120,000 Japanese-Americans during WWII, *Miranda v. Arizona* which made informing a suspect of his/her rights mandatory, or *Vernonia School Dist. v. Acton* which allowed for random drug testing of students involved in athletic events. Review these recently decided Supreme Court cases that have a direct affect on students.

**Directions:** In your small groups review one of the following cases assigned to you by your teacher (All the cases have a direct affect on students). Then discuss in your group the debriefing questions.

### **Pottawatomie Independent School District v Earls, et al. - 2002**

The school district adopted a policy of mandatory, suspicionless drug testing of high school students participating in any extra curricular activity. Students refusing to take the test were barred from participation.

Lindsay Earls, a member of the choir and marching band challenged the drug testing policy stating that the 4<sup>th</sup> Amendment against unreasonable searches and seizures protects members of extra curricular school activities from suspicionless, mandatory urinalysis.

The Court ruled in a 5-4 decision that the random drug testing of students who participate in competitive extracurricular activities reasonably furthers the district's interest in detecting and preventing drug use, and therefore doesn't violate the 4th Amendment.

### **Owasso Independent School District vs. Falvo – 2002**

Many teachers in Oklahoma's Owasso School District have their students exchange assignments and tests and correct them with the teacher providing the answers. Upon completion of the paper grading, the students would re-exchange their papers and would call out their own grades to the teacher to be recorded in the grade book.

A parent of the three of the students claimed that her children (one a special education student, the others two "straight A" students) were subjected to unwarranted criticism and teasing by having their grades publicly announced. She contended such practice was in violation of the *Family Education Right and Privacy Act* which requires educational institutions to preserve the confidentiality of "educational records."

The Court unanimously sided with the school district concluding that peer grading by students does not violate the *Family Education Right and Privacy Act* because the act of peer-to-peer grading does not constitute an educational record as described under the act. The grade only becomes an "educational record" when it is placed in the grade book and from that point on should be kept in confidence.

### **Metro-Goldwyn-Mayer Studios, Inc., et al v. Grokster, LTD, et al – 2005**

For several years, millions of people logged on to peer-to-peer file-sharing sites to download movies and music for free. Peer-to-peer sites allow computers to connect with other computers to share and copy

each other's files. Grokster produced software that could be downloaded from their site to personal computers and then used to download music and movies from other personal computers. This case differed from the 2001 Napster case in that Napster offered a service to download copyrighted material whereas Grokster provided a product (software) to its customers to download files from other person's computers that held the desired movies or music.

Grokster maintained that since they only made file-sharing software available and had no control over the use of the product by people who downloaded the software, they were innocent of any wrong-doing. Grokster also maintained that the entertainment industry's efforts to stop file-sharing programs like Grokster would stifle technology innovation by denying them the opportunity to develop more software. Finally, Grokster claimed the product they provided could be used for legitimate purposes and noninfringing uses such as downloading public domain (non-copyrighted) material.

The entertainment industry, represented by MGM, maintained that avoiding having to pay for copyrighted material was the primary use for Grokster's services (90% of the uses of the product were for downloading such material). It also maintained that Grokster's business model depended on a high volume of people downloading the software, indeed their advertising revenues were directly tied to the increasing amount of people who downloaded the software. So even if the actual peer-to-peer exchange of copyrighted material didn't occur under Grokster's control, its sole purpose was to promote such illegal file-sharing because the more people who downloaded their software, the more people received the advertising they subsequently sent out thus increasing their advertising revenue.

The Court ruled unanimously that Grokster and other peer-to-peer network providers are liable for the resulting acts of infringement even though the actual downloading occurred on private computers. The court determined that the networks were aiming to satisfy a known demand for copyright infringement; the networks didn't try to develop filtering tools to prevent unlawful uses; and that the networks made money off advertising in which the higher volume of people downloading Grokster's software created greater advertising revenue for the company. Thus they profited from the illegal transfer of copyrighted materials.

**Discussion Questions:**

1. Why do you feel the Court ruled the way it did?
2. Explain why you agree or disagree with the Court's decision on the case you reviewed.
3. How would you have ruled on the case if you were a justice? Be sure to explain your reasoning.
4. How do you feel the Court would decide these cases if a more conservative or liberal justice is nominated to the Court?