

Off-Campus Speech

Bell v. Itawamba County School Board

The Court Venue

- You will be making this argument as if you are arguing before the three judge panel (the first appeal).
- You should only rely on the briefs filed in that case.
 - You also have the decision of the three judge panel to help you understand the issues.
 - Remember, the school won in the District Court and it is the student who is appealing.
 - Ignore the decision made later by the en banc panel.
 - The full panel that heard the appeal form the three-judge panel.

Precedent

- Tinker v. Des Moines Independent Community School District (1969)
- Bethel School District No. 403 v. Fraser (1986)
- Morse v. Fredericks (2007)
 - Case that Group 4 is arguing

Circuit (Appeals) Court Cases

- Ponce v. Socorro Ind. Sch. Dist (5th Cir. 2007)
 - student suspended after fellow student read his diary which was filled with threats to the school and fellow students.
- D.J.M. v. Hannibal Pub. Sch. Dist. (8th Cir., 2011)
 - student suspended for sending text messages implying he would commit a violent act at school.
 - This case also mentions Wisniewski v. Weedsport Cent. Sch. Dist (2nd Cir., 2007)
- J.S. v. Blue Mountain Sch. Dist (3rd Cir. 2009)
 - Student suspension for creating fake profile of principal from home computer reversed because speech took place outside of school.

Petitioner's Argument

- First Participant
 - Facts
 - Argument
 - Supreme Court precedent regarding school cases can be distinguished from this case. (I)
 - Tinker should not be applied to off-campus and/or digital speech (II)
 - Note - this argument deals with precedent from other jurisdictions. I have posted edited summaries of these case on the website.
 - Speech not intended to be brought to school cannot be punished by it. (III)
 - Note - this argument also uses a court of appeals precedent. Just use what the brief says.

Petitioner's Argument

- Participant 2
 - The song did not cause a substantial disruption. (IV)
 - Note - this is an alternative argument that must be made just in case the Court applies Tinker to off-campus speech.
 - It was not reasonably foreseeable that the song could cause a disruption. (V)
 - The song addressed a matter of public concern, it was not a threat. (VI)
 - an analogy to employee speech (teachers) is being made here. In order for teachers' speech to be protected, it must relate to a "matter of public concern."

Respondent's Argument

- First Participant
 - Facts
 - Argument
 - The song was a threat (C1)
 - The argument could be made by relying more on the facts and common sense.
 - The song was not a matter of public concern (C2-3)
 - They are trying to draw an analogy to government employee speech cases which say the government can regulate their employee's speech unless it is on a matter of public concern. This argument focuses on whether this was a matter of public concern.
 - The song was intended to be seen by people in the school. (B)
 - This is setting up the argument that your partner will make.
 - This uses other court of appeals cases. The brief gives you enough info to make the arguments.

Respondent's Argument

- Second Participant
 - It was reasonably foreseeable that the song could create a substantial disruption in the school. (A1-2)
 - There were actual material disruption in the school because of the song. (A3)
 - Schools can regulate off-campus speech that causes disruption in school (A4-6)
 - the argument here is that disruption is disruption regardless of where the speech originated.
 - Note that point A5 could also made with A3. Not sure point A6 is necessary to make.
 - You can skip: C5, D and E.