Judicial Program

LEADERSHIP

Irene Munn
Program Co-Coordinator
Principal,
The Munn Firm

Brad Vaughan
Program Co-Coordinator
Staff Attorney,
Georgia Supreme Court

Ben McMichael
Senior Program Staff

Jayda Mason
Program Staff

Drew Cribbs
Program Staff
# JUDICIAL PROGRAM SCHEDULE

## Sunday, November 13

<table>
<thead>
<tr>
<th>Courtroom 1</th>
<th>Conference Room 209/210</th>
<th>Courtroom 3</th>
<th>Conference Room 211</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courtroom 2</td>
<td>Conference Room 212</td>
<td>Courtroom 4</td>
<td>Conference Room 213/214</td>
</tr>
</tbody>
</table>

**Argument Schedule**
- 5:30 PM Session 1
- 6:20 PM Session 2
- 7:10 PM Session 3
- 8:00 PM Session 4

## Monday, November 14

<table>
<thead>
<tr>
<th>Courtroom 1</th>
<th>CAP 132 (Judiciary Room)</th>
<th>Courtroom 3</th>
<th>CAP 216</th>
</tr>
</thead>
<tbody>
<tr>
<td>Courtroom 2</td>
<td>CAP 321 (Appropriations Room)</td>
<td>Courtroom 4</td>
<td>CAP 133 (Ways &amp; Means)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>8:30 AM</th>
<th>9:20 AM</th>
<th>10:10 AM</th>
<th>11:00 AM</th>
<th>1:00 PM</th>
<th>1:50 PM</th>
<th>2:40 PM</th>
<th>3:30 PM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Session 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Session 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Session 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Session 4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Tuesday, November 15

**Championship Round**

<table>
<thead>
<tr>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>10:45 AM</td>
<td>Georgia Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Nathan Deal Judicial Center</td>
</tr>
<tr>
<td>12:00 NOON</td>
<td>Final Joint Session - All Programs</td>
</tr>
<tr>
<td></td>
<td>House Chambers</td>
</tr>
<tr>
<td>1:30 PM</td>
<td>Sine Die</td>
</tr>
</tbody>
</table>

CHAPTER 1
INTRODUCTION

§ 1-1 Welcome
§ 1-2 Format of the program
§ 1-3 The problem - factual situation
§ 1-4 Sources of legal research

§ 1-1 WELCOME

Welcome to the Georgia Center for Civic Engagement Youth Judicial Program. The Youth Judicial Program will be held on November 13, 2022 through November 15, 2022 (Sunday, Monday, and Tuesday) in Atlanta in conjunction with the Georgia Youth Assembly.

Preliminary rounds of oral arguments will take place on Sunday, November 13, 2022. Quarterfinal and semifinal rounds will take place on Monday, November 14, 2022. The final round between the two highest scoring teams in the competition will be held on Tuesday, November 15, 2022. After the final round, awards will be given for Best Brief, Best Orator, and Best Team. Additionally, the two Associate Justices and the Chief Justice for the 2023 Youth Assembly will be announced.

§ 1-2 FORMAT OF THE PROGRAM

The Youth Assembly legislative delegates decide what laws should be enacted. The Youth Governor is the executive branch of the government with veto power. As a Youth Attorney, you will be part of the third branch of government, the judicial branch, which decides how the law is interpreted. Once a law becomes effective, problems often arise regarding how to apply that law, as well as how to
interpret its meaning. Lawyers often say they don't know what a law means until the courts have told
them and interpreted it by applying it to various factual situations. Thus, the judiciary is a very
important branch of government.

An appeal from a trial court to an appellate court normally involves two components: a written
brief and an oral argument. These components are discussed in detail in Chapters 4 and 5. As Youth
Attorneys, you and your partner will argue an appellate case before a panel of judges. You will orally
argue both sides of the case. Each team member must participate in each oral argument, and must be
prepared to argue either side of the case. Each team will also prepare one written brief supporting one
side of the case. One member of the team will write on one issue, and the other team member will write
on the other issue.

§ 1-3 THE PROBLEM- FACTUAL SITUATION

Chapter 2 contains the problem which you are to address in oral argument. The hypothetical
factual situation contains all of the facts which are important to the legal issues presented. It also
contains some facts which are not important. One of the first things you need to do as a team is to
decide which of the facts are relevant. You may not create any extra facts. However, you may make
reasonable inferences from the facts presented.

We must emphasize that all the material which is included in this booklet has been assembled
just to create this exercise. For example, the definitions are not complete, and the facts may have been
drafted to allow alternative arguments without regard for jurisdiction or technical accuracy.

§ 1-4 SOURCES OF LEGAL RESEARCH- CASES

The statutes and cases which you will be using as your source of research and for the purpose
of citing to the court are summarized in Chapter 3.
If you choose, you may read articles and cases from other jurisdictions to get ideas and arguments, but any other cases may only be used to get ideas or to enhance your understanding of the legal issues. These additional articles and cases may not be cited as authority, since we want all participants to have the same controlling legal authority with which to work. It is certainly satisfactory that you work solely with the materials provided in this booklet.
CHAPTER 2

THE PROBLEM

§ 2-1 Procedure

§ 2-2 Issues on Appeal

§ 2-3 Hypothetical Facts

§ 2-1 PROCEDURE

The Armistead School, a private school located in Cobb County, Georgia, recently suspended from classes a student there by the name of Alex P. Wheaton. Alex, a tenth grader, was suspended after he refused to remove a shirt which bore the insignia of a radical political group. The political group represented on his shirt has ties to a militia group which recently attacked the government of the United States in a series of terrorist uprisings. Alex's suspension was recommended by the vice principal for discipline of the Armistead School, and was upheld by the acting principal of the school. Since there is no higher authority at The Armistead School, Alex and his parents filed this suit in the courts of the state of Youth Georgia to contest this decision. In a bench trial at the trial court level, the judge ruled for the school, holding there was no state action in the school's decision, and even if there was, the school's actions did not violate Alex's right to free speech or procedural due process. Dissatisfied with the outcome in the trial court, Alex and his parents appealed the trial court's decision to the Youth Georgia Supreme Court. The relief they seek is the removal of this suspension from Alex's permanent record with the school.

In order to learn the role of being an advocate in the legal system, you will argue both sides of the case. During one round of oral arguments, you and your partner will be the attorneys for Alex and his parents in their appeal. Alex and his parents are the "Appellants." In another round of arguments,
you and your partner will represent The Armistead School, defending against the Wheaton's appeal. The Armistead School is the "Appellee."

§ 2-2 ISSUES ON APPEAL

Alex and his parents appeal this decision of the Armistead School claiming Alex's suspension was a violation of his Alex's Constitutional Rights under the United States and Youth Georgia Constitutions. Specifically, Alex and his parents raise two Constitutional issues. First, Alex and his parents contend his suspension was a violation of his right to free speech under the First Amendment of the United States Constitution. They claim that wearing a t-shirt bearing the insignia of the political group to which they belong is protected speech under the First Amendment, and that the Armistead School had no basis for suspending Alex for wearing the shirt. Second, Alex and his parents contend his suspension was a violation of his right to Procedural Due Process under the Fourteenth Amendment to the United States Constitution. This claim is based on the argument that Alex was not afforded proper notice that his conduct could result in a suspension, was not afforded proper notice of the charges brought against him, and was not afforded a chance to respond to the charges which led to his suspension. However, before the Youth Georgia Supreme Court may reach these issues, there is another issue which must be addressed. It must first be determined whether Alex's suspension was a result of "state action," for if there is no state action in Alex's suspension, then there was no violation of his constitutional rights.

§ 2-3 HYPOTHETICAL FACTS

The Armistead School is located in Cobb County, Georgia, a fairly large county in the Metropolitan Atlanta Area of the State. Atlanta is the capitol of Georgia, and is situated in Fulton County, which borders Cobb County. The Armistead School and has been in Cobb County since the
turn of the 20th Century, being established in August of 1899. At its inception, The Armistead School was a public school of Cobb County, and was named after the family that donated the land for the school, the Armisteads. However, during the local educational reform movement of the 1950s, The Armistead School was abandoned by the Cobb School System, and it was vacant until 1968. In that year, the Armistead family decided to re-purchase the land from the County and open a private school on the property, keeping the name The Armistead School for identification purposes. Since that time, The Armistead School has been a major player in education in Cobb County, with an annual enrollment of over 7000 students in grades K-12.

Despite its official severance from the County School System in 1968, The Armistead School has maintained a close relationship with the other educational institutions in Cobb County, and with the Cobb County School System. For example, the two entities share the same substitute teacher list, though the list is maintained by the County School System. Also, teachers come and go between The Armistead School and the County School System with surprising regularity, such that some say there is a virtual revolving door between the two. Finally, there is an "Administrator Cover Plan" in the County School System, and The Armistead School participates in this plan. However, The Armistead School receives its funds entirely from private sources, comprised of student tuition and the endowment funded by the Armistead family. No school funds come from public sources.

The Administrator Cover Plan was devised in 1988 when two County School System principals resigned suddenly and without notice right before school started in August. In order to cover those vacant positions until permanent replacements could be found, the County School System devised the Administrator Cover Plan, whereby administrators from nearby schools and county school officials would cover the duties of the vacant position. The Armistead School, which was within two miles of one of the public schools with a vacancy, sought permission to enter the plan with the County Schools. It did so, providing administrative aid to help cover the vacancies in the County Schools until replacements were hired.
In June of 2021, Ms. Mary Cunningham, principal of The Armistead School, resigned amidst complications from heart disease. Immediately, The Armistead School began looking for a replacement for Ms. Cunningham, but had not found someone suitable by the time school started in August. Since it was a member of the Administrator Cover Plan, The Armistead School asked for and received help from the Cobb School System to cover Ms. Cunningham's duties while The Armistead School continued to search for a replacement. The Cobb School System, rather than pull from its public schools to cover for Ms. Cunningham's absence, asked one of its recently retired administrators to step in for the time being. The administrator they asked was Mr. Wallace Belvedere, and he readily agreed. Mr. Belvedere was at The Armistead School covering for Ms. Cunningham's absence from August of 2021 through February 2022, when The Armistead School finally hired a permanent principal. Mr. Belvedere continued at the school until the first of May 2022 in order to facilitate the transfer between principals. Despite working at The Armistead School for nine months, Mr. Belvedere was compensated for his services by the Cobb School System, and was identified as an employee of the Cobb County School System for that period of time.

In the summer of 2021, Alex P. Wheaton and his family moved to Cobb County. Alex's parents had heard wonderful things about the surprisingly affordable private Armistead School, and decided to enroll him there. Alex started at The Armistead School in August of 2021, then headed by interim principal Wallace Belvedere under the Administrator Cover Plan. On the first day of class, Alex was given a copy of The Armistead School Student Handbook, which contained all the rules and regulations for the school.

Alex was in tenth grade, and took a normal course load for tenth graders at The Armistead School. His algebra teacher, Ms. Ethel Mertz, was only there for the first three weeks of class, as she then left for maternity leave. For the rest of the term, Alex's algebra teacher was Mr. George Bailey. Mr. Bailey was a long term substitute located by The Armistead School on the substitute teacher list shared by The Armistead School and the County School System. Despite being on the County School
System's substitute list, Mr. Bailey was compensated for his services as a long term substitute by The Armistead School.

Alex's parents were members of what some in the community have referred to as a "radical political movement" known as PAUSE (People Against United States Expansion). PAUSE believes that the United States is using its position of dominance in the global economy to exploit smaller countries for natural resources, while withholding from those smaller countries the resources they need to become equal players in the world market. PAUSE, while not a vocal advocate of violence, has significant ties to the militia which has claimed responsibility for a number of recent terror attacks across the United States. Several of the higher ranking members of PAUSE were indicted on charges stemming from those attacks, and many more members are under investigation. Alex's parents are not under investigation, though they know several people in PAUSE who are. It is a common opinion among insiders in the investigation of the attacks that the hierarchy of PAUSE knew about and helped fund the attacks.

Despite the significant attention from the government regarding the attacks, PAUSE itself continues to maintain a very low profile in American politics. PAUSE has no official candidates for national political office, and outside law enforcement spheres, PAUSE is relatively unknown. In fact, in a recent poll conducted by Wall up Inc., 92% of people between the ages of eighteen and sixty-five could not identify the PAUSE insignia (two short vertical lines lying parallel to each other inside a drawing of the United States) with the PAUSE political group. Further, 94% of people polled could not identify the political orientation or beliefs of PAUSE.

Alex’s parents raised Alex to believe in the ideals espoused by PAUSE, and Alex does believe in those ideals. Alex has been an active member of PAUSE since the age of 4 (he is now 16) which was when his parents became involved with PAUSE. He enjoyed the PAUSE political meetings he attended with his parents, and believed that the United States should do more to help underdeveloped countries. Alex was aware of the ties between PAUSE and the militia responsible for the terrorist
attacks. While Alex felt sympathy for the innocent lives lost and the property destroyed, he saw the attacks as part of a bigger picture whereby PAUSE would help to save many more innocent lives in underdeveloped nations being exploited by the United States.

Part of what Alex enjoyed about PAUSE was when members would go to meetings and all wear clothing bearing the PAUSE insignia. The PAUSE insignia was on t-shirts, sweat shirts, ties, jackets, hats, and all manner of clothing. Members, however, were instructed not to wear their PAUSE clothing outside of those times when they were meeting as an official group.

In the first week of November, 2021, Alex's American Government class began a discussion of non-mainstream political parties. The teacher for that class, Mr. Ricardo, asked each of his students to prepare a presentation on a non-mainstream political party. The class plan was to discuss each of the political parties and their beliefs in class. Alex chose PAUSE for his presentation. He worked on his project for six days, trying to find a way to present the ideas of PAUSE in an effective manner, but at the same time being sure not to cause a confrontation with his presentation at school. Alex felt sure that his classmates were not aware of PAUSE, its beliefs, or its ties to terrorism. He did not expect to have any problems. However, Alex wanted to be careful all the same; he did not want to get into trouble.

Alex was the second person to present his political party to the class. He stood up and began his presentation, describing the beliefs fostered by PAUSE. Newman Wedgewood, a member of the class and a political buff, recognized PAUSE from some articles and pictures he had seen on social media since the attacks. Once Alex was done, he asked if anyone had any questions. Newman asked Alex about PAUSE's ties to the militia responsible for the terrorist attacks. Alex acknowledged there were allegations about the ties, and that there was probably some truth to them. Alex then told the class what he believed; he told them that while what happened was horrible, he hoped the attacks would eventually bring about good results by forcing the United States to re-evaluate how it treats lesser-developed countries.
Alex's American Government class was thrown into an uproar. People began yelling at Alex and some students started to cry. Some students even threatened Alex physically. Teachers from across the hall came to see what the disturbance was, and Alex was escorted from the room to a place where he could be safe. The classroom never calmed down, and finally the school day ended. Word spread quickly, however, across the school as to Alex's beliefs and the alleged ties his political group had to the terrorist attacks. Alex left school unnoticed; his parents picked him up after hearing about the problems at school.

Alex was upset. He wanted to enlighten people, but instead all he did was make them mad. Alex knew he could not talk about PAUSE again at school in any kind of open way for fear he might start a fight. However, Alex was still proud of his party and what it stood for. He decided to wear a PAUSE sweat-shirt to school to show support for his group without doing it in a way that anyone would notice. Alex had not included the PAUSE insignia as part of his presentation, and he believed that the students at school probably had no idea what the symbol looked like. He had doodled it at school before and no one seemed to notice. Alex wore the shirt even though PAUSE members were not supposed to wear their apparel outside of PAUSE meetings. He did not tell his parents for fear they would object. Alex wore the shirt to school the next day.

The start of Alex's day was uneventful. Some people cast him mean or dirty glances, but no one said anything to him about PAUSE (indeed, no one spoke to him at all) and no one threatened Alex. However, Mr. Bailey, who taught Alex algebra for the first class of the day, recognized the PAUSE symbol on Alex's sweat-shirt as soon as Alex walked into school that day. Mr. Bailey knew what PAUSE stood for, its political beliefs, and that PAUSE was linked to the attacks in the United States. Mr. Bailey was also aware of the events of the previous day involving Alex's presentation on PAUSE. Mr. Bailey became concerned that Alex's wearing of the unique PAUSE symbol on his clothing might cause a disturbance in the school. He did not know whether any of the students in Alex's classes were aware of what the symbol stood for, but he nevertheless was concerned the unique symbol
might prompt questions from his classmates and lead to a disturbance at school. Mr. Bailey asked to speak to Alex outside. When he confronted Alex about the symbol, asking him if he knew what a heinous group PAUSE was, Alex went into a defense of PAUSE and its political beliefs. Mr. Bailey asked Alex to remove the sweat shirt and told Alex he was concerned it might cause a disturbance. After refused, Mr. Bailey escorted Alex to the office Ms. Everett, the school's vice principal for discipline.

Ms. Everett, though aware of the disturbance of the previous day, was not familiar with the PAUSE symbol. However, after Mr. Bailey linked Alex's sweat-shirt to the PAUSE group Ms. Everett, too became concerned that the symbol might cause problems at school. She was concerned some students might be familiar with the symbol and would cause a disturbance due to PAUSE's beliefs and ties to terrorism. Ms. Everett was also concerned there might be a disturbance if some students inquired of Alex as to what the symbol meant. Ms. Everett told Alex he would have to remove the shirt under the school's no disturbing clothing policy. When Alex refused, Ms. Everett told him she was recommending Alex for suspension. Ms. Everett forwarded the discipline recommendation on to Mr. Belvedere, the administrator from the County System filling in under the Administrator Cover Plan. Mr. Belvedere approved the suspension without question, as was his custom and the custom at The Armistead School. Alex was sent home for a four-day suspension. Alex's parents were upset he wore the PAUSE insignia sweat-shirt outside of PAUSE functions, but they were even more upset that their son was suspended for wearing the shirt. As there is no higher authority at The Armistead School than the principal position, Alex's parents filed this lawsuit to contest the school's decision.
Exhibit 1: the PAUSE party symbol.
CHAPTER 3
THE LAW AND REGULATIONS

A. Student Handbook

§ 3-1 The Armistead School Student Handbook Rule 1: Discipline
§ 3-2 The Armistead School Student Handbook Rule 4: Dress Code

B. Statutes

§ 3-3 Youth Georgia Statute # 17- Free Public Schooling

C. Constitutional Law

§ 3-4 First Amendment of the United States Constitution
§ 3-5 Fourteenth Amendment of the United States Constitution

D. Case Law

§ 3-6 Rendell-Baker v. Kahn
§ 3-7 Goss v. Lopez
§ 3-8 Bethel School District # 403 v. Fraser
§ 3-9 Tinker v. Des Moines Community Independent School District
A. STUDENT HANDBOOK

§ 3-1 The Armistead School Student Handbook Rule 1: Discipline

(a) Students of The Armistead School are required to follow each and every rule contained in this handbook. Failure to follow the rules of this handbook will subject the student to punishment from the administration of The Armistead School. A student may be disciplined with any of the punishments listed below in section b, or with a combination thereof.

(b) The following are the punishments utilized at The Armistead School, in order from least to most severe: warning; written warning; break detention; before/after school detention; Saturday school; in school suspension; out of school suspension; expulsion; any other disciplinary measure so long as it is described in written form and approved by two members of the administration of The Armistead School.

(c) Teachers at The Armistead School may administer any punishment up to and including before/after school detention. For a punishment of greater severity, the vice principal for discipline shall recommend a punishment to the principal for his approval.

§ 3-2 The Armistead School Student Handbook Rule 4(g): Dress Code

(g) Students are not allowed to wear clothing advertising tobacco, alcohol, or other controlled substances. Students are not allowed to wear any clothing which is reasonably expected to cause a disturbance at school.
B. STATUTES

§ 3-3 Youth Georgia Statute #17: Free Public Schooling

*In the state of Youth Georgia, all those residents between the ages of 5 and 21 shall be provided, free of charge, a public education covering grades kindergarten through 12th grade. School attendance is mandatory until the age of 17.*

C. CONSTITUTIONAL LAW

§ 3-4 The First Amendment of the United States Constitution

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

§ 3-5 The Fourteenth Amendment of the United States Constitution

*Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or properly, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*
D. CASE LAW

§3-6 Rendell-Baker v. Kohn

In this case, former teachers of an alternative school for "mal-adjusted" students sued the school, their former employer, claiming they were discharged in violation of their First, Fifth and Fourteenth Amendment rights. The Supreme Court of the United States held that the teachers had not shown that the school acted under color of state law when it terminated their employment (i.e. there was no state action) and that therefore, the teachers had not stated a claim for relief. The school won the case.

The alternative school in this case, the New Perspectives School, was a private school operating in the state of Massachusetts. Though private, nearly all of the students at New Perspectives were referred there by public school committees or state agencies. These committees and agencies would refer to this private school’s students who were thought to be "mal-adjusted," and who they believed would perform better at a different location. Many of those students referred to New Perspectives had drug, alcohol or behavioral problems. If they completed the New Perspectives school, the students would receive high school diplomas certified by one of the local public school systems.

Though private, the school received significant public funds. In fact, nearly 90% of New Perspectives operating budget came from public sources, such as federal and state agencies. In one year, this figure jumped to 99%. Furthermore, in order to qualify for and receive these funds, the school had to comply with numerous state regulations. The public school systems referred to the New Perspective's school as a contractor to carry out the individualized educational plan for each of the students referred there. The contract between New Perspectives and the public schools specified that the employees at New Perspectives were not public employees. There was a similar contractual agreement with the state agencies who would refer students to the school. Despite these regulations
and public funding, the school’s personnel policy was generally not covered by any state regulation or influence.

In this case, five petitioners claimed the New Perspectives school had violated their Constitutional rights under the First (free speech), Fifth (federal due process) and Fourteenth (state due process) amendments. Petitioners were fired after voicing their concern over employment matters. One petitioner, a counselor at the school, was terminated after supporting more student-staff input in the school's hiring decisions. The four other petitioners were terminated after they voiced opposition against the Director of the New Perspectives school and threatened to form a union. They claimed they were fired on the basis of protected speech, and that they were denied procedural due process.

Chief Justice Burger delivered the opinion for the Court.

The Court noted that the First Amendment and the Fourteenth Amendment do not protect people from the acts of private parties. Rather, they only offer protection from government infringement on the rights contained in those amendments. So, in order to have a claim under the First and Fourteenth Amendments, there must be a "state action" (i.e. government action). Said the Court, "[t]he core issue presented in this case is not whether petitioners were discharged because of their speech or without adequate procedural protections, but whether the school's action in discharging them can fairly be seen as state action. If the action of the respondent school is not state action, our inquiry ends."

Noting that the New Perspectives School is a private institution, the Chief Justice said "a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." With this as the standard, the Supreme Court went on to discuss each of the facts that the petitioner; argued made the actions of the New Perspectives School state actions.

As for the New Perspectives School's reliance on public funds, the Supreme Court said that such was not sufficient to make the school's actions state actions. The Court noted that it is not uncommon for entities to receive significant funds from the government and still be considered private
actors. This was such a case despite the school’s reliance on public funds for survival, the actions of
the school's administrators were still private actions. Therefore at least as to the reliance on public
funding, such was not enough to create state action for the purposes of constitutional claims.

As for the contracts with the state for the "mal-adjusted" students, "[t]he school ... is not
fundamentally different from many private corporations whose business depends primarily on
contracts to build roads, bridges, dams, ships, or submarines for the government. Acts of such private
contractors do not become acts of the government by reason of their significant or even total
engagement in performing public contracts." Thus, the government contracts did not make New
Perspectives' actions state actions.

As for the regulation of New Perspectives, the Court relied on earlier holdings and said that
"regulation, even if 'extensive and detailed' did not make a utility's actions state action." The Court did
point out, however, that the regulations to which New Perspectives was subject did not involve
personnel matters.

As for the argument that the school should be held to be a state actor because education is a
public function, the Supreme Court disagreed. The Court made clear that the test was not merely
whether the school was performing a public function, but whether it was performing a function which
was traditionally the "exclusive prerogative" of the state. Unless that was the case, there was no state
action. Since education has not traditionally been the "exclusive prerogative" of the state, that alone
does not establish state action.

Finally, the Supreme Court rejected the argument of the petitioners that there was a symbiotic
relationship between New Perspectives and the state. Relying on earlier precedent, the Court appeared
to say that the kind of relationship which would qualify as a "symbiotic relationship" resulting in state
action, is when the state will benefit from the school's violation of the constitutional rights of its
students. The Supreme Court said there was no such relationship here, and that the school was more
akin to a government contractor than a partner in a symbiotic relationship with the state.
Accordingly, the Supreme Court held there was no state action in *Rendell-Baker v. Kahn*, and so the appeal was denied. Without state action, there can be no infringement of constitutional rights.

§ 3-7 *Goss v. Lopez*

In this case, students in the Public School System of Columbus Ohio complained that they were denied procedural due process rights when they were suspended for violations of school system rules. The United States Supreme Court agreed, and held that when a student is suspended from school for up to ten days, the student must be afforded procedural due process rights of notice and an opportunity to be heard.

All of the students in this case were from the Public School System in Columbus Ohio. Under Ohio law, all students were guaranteed a free education up until age 21. Principals were given the authority to discipline students and could suspend them for up to ten days or expel them so long as the parents were notified of the decision and the reasons therefore within twenty-four hours. If the student was expelled there was a detailed appellate procedure, but there was no such procedure if the student were suspended.

As for the students in this case, their suspensions arose out of various disciplinary problems at school, described by the court as a period of widespread political unrest. The behavior of the students all dealt with protests, resisting discipline and some destruction of school property. While some of the schools had an informal policy of presenting the students with the charges against them before administering a punishment, such policies were not followed in this case- the punishments were administered summarily.

Mr. Justice White delivered the opinion of the Court.

Since the procedural due process guarantees of the Fourteenth Amendment are designed to prevent deprivations of life, liberty or property without due process of law, the Supreme Court first set
out to determine whether there was a "right" to education in Ohio. The Court found such a right in the Ohio statute calling for a free public education for all students up to the age of 21 years. The Court emphasized that the rights protected by the due process clause of the Fourteenth Amendment are often statutory rights, like the educational right in this case. The Court said "here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education." Having determined there was a right to an education in Ohio, the Court went on to determine whether there was a deprivation of that right via suspension, and if so, whether it was accompanied by procedural due process. The Court said "[a]mong other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause."

The Court determined that the suspension was a real deprivation of the right to an education. The Court focused on the nature of a suspension of up to ten days and how that could affect the student's grades, his learning, and even his chances at getting into college or obtaining a job after high school. The Court felt there was a significant deprivation of a property right whenever a student is suspended for up to 10 days. They went on to note that even if the deprivation had been less severe, such would not matter in determining whether a state must afford a student due process rights. The necessity for due process is determined by the nature of the right involved; the degree of its deprivation goes only to the type of notice and hearing which must be provided.

Having determined that due process applied, the Court turned to the question of what process was due. The Court was cautious about entering into the area of school discipline, for they recognized that education is an area traditionally administered by the states on a local level. Rather than lay down strict procedures, the Court remained more ambiguous in what was required, simply stating that in order to comply with due process, before suspending a student, the school must provide notice of the charges and an opportunity to be heard on them. The Court said, "[t]he fundamental requisite of due
process of law is the opportunity to be heard, a right that has little reality or worth unless one is informed that the matter is pending and can chose for himself whether to contest." The Court required that before a student can be suspended, the student must be afforded "some kind of notice" and "some kind of hearing."

The Court did not stop there, but rather elaborated on the due process requirements for school suspension. The Court held, "due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and a chance to present his side of the story." The Court, however, did not require that there be any kind of delay between the notice of the charges and the hearing - they can follow each other closely. The Court also recognized that in some circumstances, the need for protection of others and the need to preserve the academic environment may require suspension and removal with the due process rights to follow as soon as practical thereafter. However, as a general rule, the Court said the notice and hearing should precede any suspension of the student.

The Court stressed that the process which is required is not that of an adversarial trial. There is no need for the presentation of witnesses or any type of cross examination. However, allowing the student to be disciplined to present his side of the dispute will alert the administrator to the student's side of the situation. Such will give "the student the opportunity to characterize his conduct and put it in what he deems to be the proper context." Here, since there was no proper notice and hearing, the students won the case.

§ 3-8 Bethel School District No. 403 v. Fraser

This case deals with a high school student who, in a nominating speech for a fellow student for a school office, referred to the nominee in terms of an elaborate, graphic and explicit sexual metaphor. The student discussed the speech prior to delivering it with some teachers. Two of his teachers told
him that they thought the speech was a bad idea, and that it might have severe consequences if he gave it. He gave the speech anyway.

The reaction to the speech from the students was mixed. Some "hooted and hollered" and made gestures designed to simulate the sexual acts referred to in the speech. Other students seemed embarrassed and confused by the speech, and one teacher had to spend part of her class the next day discussing the speech with her students. Some of the students attending the speech were as young as fourteen.

One of the rules at the High School was the following:

*Conduct which materially and substantially interferes with the educational process is prohibited, including the use of obscene, profane language or gestures.*

The morning after the assembly, the student was called in and notified that the school considered his speech to be a violation of the rule. He was shown the complaints of five teachers. He admitted making the speech and explained himself. The student was then suspended for three days, and his name was removed from the list of those who might be allowed to speak at graduation. The student's suspension was upheld on appeal via the District's grievance procedures, and this lawsuit followed.

Mr. Justice White delivered the opinion of the Court.

The Supreme Court first recalled the crux of the case from the *Tinker* decision (discussed below). “The marked distinction between the political “message” of the armbands in *Tinker* and the sexual content of respondent's speech in this case seems to have been given little weight by the Court of Appeals. In upholding the students' right to engage in a non-disruptive, passive expression of a political viewpoint in *Tinker*, this Court was careful to note that the case did "not concern speech or action that intrudes upon the work of the schools or the rights of other students." The work of the schools, according to the Court is to inculcate into students "fundamental values necessary to the
maintenance of a democratic political system." But this work must be balanced with the need to consider personal sensitivities. The Court said,

[These fundamental values of "habits and manners of civility" essential to a democratic society 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 sensibilities 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 discourse in a democratic society requires consideration for the personal sensibilities of the other participants and audiences.

From there the Court went on to discuss how even in the nation's halls of political debate, there were rules of decorum prohibiting the use of obscene and profane language.

The First Amendment, according to the Court, permits a wide array of beliefs and views to be expressed in public places. However, the Court points out that the same level of free expression may not be available in a public school. The Court said, "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings. As cogently expressed by Judge Newman, "the First Amendment gives a high school student the classroom right to wear Tinker's armband, but not Cohen's jacket," (a jacket worn in a courthouse, not a school, bearing profane language).

Given the mission of the school system and the more limited free speech rights in school, the court said,

[s]urely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse." "The determination of what manner of speech in the classroom or in school assembly is inappropriate rests with the school board." "The
pervasive sexual innuendo in Fraser's speech was plainly offensive to both teachers and
students--indeed to any mature person. By glorifying male sexuality, and in its verbal content,
the speech was acutely insulting to teenage girl students. The speech could well be seriously
damaging to its less mature audience, many of whom were only 14 years old and on the
threshold of awareness of human sexuality. Some students were reported as bewildered by the
speech and the reaction of mimicry it provoked.

The Court then went on to discuss how on previous occasions they had upheld restrictions on speech
dealing with sexual content or obscene language when directed at or presented to minors, while for
adults it was perfectly within First Amendment protection. The Court held it was proper for the school
to sanction the student for the content of his speech. The Court then addressed the procedural due
process claim asserted by the student. He claimed that he had no way of knowing that giving this
speech might lead to disciplinary sanctions. The Court dismissed this argument as being without merit.
Schools require a degree of flexibility in their procedures, and the Court in the past has sought to
preserve some informality in the student-teacher relationship. "Given the school's need to be able to
impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational
process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal
sanctions. Two days' suspension from school does not rise to the level of a penal sanction calling for
the full panoply of procedural due process protections applicable to a criminal prosecution." The
disciplinary rule which prohibited "obscene" language and the warnings before the speech from some
teachers gave adequate notice to Fraser that his speech could result in sanctions. The Court found that
the student was aware that his speech might result in action being taken against him by the school. The
student lost in this appeal.
This case deals with students who wore armbands to show their protest to the Vietnam war. The Court found that doing so was protected speech in this case, and that the school's discipline of these students for wearing black armbands to school was in violation of their First Amendment rights.

Mr. Justice Fortas delivered the opinion of the Court.

"First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The Court was quick to recognize the difference in the amount of free speech provided in public generally and that provided at school. "[T]he Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools."

Distinguishing this case from past cases dealing with dress codes and grooming codes, the Court noted the nature of this inquiry was different. Here, a student wanted to make a political statement by wearing a black arm band to school. The Court addressed this as "a direct, primary First Amendment (right) akin to pure speech." Moving to the heart of the matter, the Court discussed the effects, both real and potential, of what the petitioners had done in this case. "There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises."
The decision of the school board, said the Court, was based on a fear of disturbance from the wearing of arm bands. The Court challenged the rationale behind this fear, and ultimately rejected it as a reason to suppress speech. The Court said

in our system, undifferentiated fear or apprehension of disturbance 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." To justify restricting speech, the Court said a school "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 sustained.

The Court found no such threat. Instead, the Court believed that the reason behind the ban was the school's desire to avoid the controversy which might come out of a public statement on the nation's role in the war in Vietnam.

The Court was also very critical of the fact that the school sought only to prohibit one symbol, the black arm band, while others were allowed. "Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible." The schools of this nation cannot be an enclave where the only permissible speech is that which the school desires. Students have first amendment rights in school, and albeit they are not as broad as in public generally, what rights they do have must be respected and enforced.

The Court expounded on the reasons for its holding.
The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection.' "A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without 'materially and substantially interfer(ing) 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--whether it stems from time, place, or type of behavior--materially disrupts class work or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. In this case, there was no actual or threat of "substantial disorder or invasion of the rights of others." The wearing of the arm bands was protected First Amendment speech, and the Court found for the students.

§ 3-10 *Morse v. Frederick*

Joseph Frederick, a senior at an Alaska high school, held up a banner saying: "Bong Hits 4 Jesus" during the Olympic Torch Relay through Juneau, Alaska on January 24, 2002. Frederick's attendance at the event was part of a school-supervised activity, and he was standing on the sidewalk across from the high school when he displayed the banner. He waited to do so until television cameras would be in a position to capture the image of the banner. School principal Deborah Morse told Frederick to put away the banner because it could be interpreted as advocating illegal drug activity. When Frederick refused, she took the banner. Frederick was suspended for 10 days for violating a school policy forbidding advocacy for the use of illegal drugs. The U.S. District Court for the District of Alaska in Juneau ruled for the principal, saying that Frederick's action was not protected by the First Amendment. The U.S. Court of Appeals for the Ninth
Circuit reversed and held that Frederick's banner was constitutionally protected. The principal appealed, and the U.S. Supreme Court granted certiorari (agreed to hear the case).

Chief Justice Roberts delivered the opinion of the Court.

In a 5-4 decision, the Court ruled that the conduct took place at a school event and should therefore be considered like other First Amendment cases involving students at school. The Court held, however, that the First Amendment does not prevent school administrators from restricting student expression that reasonably is viewed as promoting the use of illegal drugs and that the principal had reasonably determined that the “Bong Hits 4 Jesus” sign did so. The majority acknowledged that the Constitution affords lesser protections to certain types of student speech at school or at school-supervised events. It found that Frederick’s message was, by his own admission, not political, as was the case in Tinker. The Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use. Accordingly, the state had an "important" if not "compelling" interest in prohibiting/punishing such student speech, given the pervasiveness of teen drug use and schools’ desire to warn school children about the dangers of drug use. The Court held that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" without violating a student's First Amendment rights.
CHAPTER 4
WRITING THE BRIEF

§ 4-1 Deadlines of briefs

§ 4-2 Contents of briefs

§ 4-3 Practical Considerations

§ 4-1 DEADLINES OF BRIEFS

Briefs are mandatory. All briefs must be completed no later than the evening of Sunday, November 13, 2022 and will be due to be turned in at the initial introductory meeting for the judicial program that evening. Please consider that in actual legal practice, failure to meet deadlines can result in disastrous consequences for lawyers and clients.

§ 4-2 CONTENTS OF BRIEFS

The Brief is a written version of your reasons why your client's position should prevail based on the facts of the Case and the applicable law.

Appellant's Brief.

The brief of the appellant (the loser in the lower court who requests the appeal) consists of three main parts. Part I is the "Statement of the Case and Factual Background," which should contain four things in substantially the following order:

1. A concise (one or two sentences if possible) introductory explanation of the general nature of the case as a lead-in to the brief;

2. A short statement of the proceedings in the court below and the ruling or judgment of the trial court which is being appealed;
3. A concise statement of the three issues before the Court on appeal from the appellant's perspective; and

4. A concise statement of the important facts.

The statement of facts should accurately reflect the facts established by the evidence at trial (as explained in the problem). The statement of facts should not be argumentative, but should be presented in a light favorable to your side and contentions in the case. Be sure to include all of the facts which you believe are important or material to your contentions and arguments regarding the issues on appeal. Do not include facts that you do not consider important to your argument and which only cause the court to be sidetracked from the path you want to lead it down as you argue the facts and the law.

Part II of the Appellant Brief is the "Argument and Citation of Authorities." This portion of the brief should discuss each of the issues, arguments, and legal authorities (statutes and case law) which support your position on each side. If the case law is favorable to your side, show how the case authorities are applicable to the facts and how they support your position rather than the position of your opponent. If a case is not favorable to your position on a particular issue, try to distinguish the facts of that case from the present one.

Part III of the Appellant Brief is the "Conclusion." This is a summary of your answers to the issues on appeal (the questions set out and the problem) and should consist of only a few sentences. It is a very concise statement of why you want the Youth Supreme Court to agree with you. The conclusion should also state what relief is being requested from the Court, for instance, reversal of the appellant's conviction in a criminal case or reversal of the judgment of the trial court in a civil case.

**Appellee's Brief**

The Appellee's brief follows essentially the same form as the Appellant's brief. The first part of the Appellee's brief is the "Statement of the Case and Factual Background." In the usual case, the Appellee will have received a copy of the Appellant's brief before beginning his or her brief; and, therefore, if the Appellee
totally agrees with the Appellant's Statement of The Proceedings Below, the Issues, and the Facts, this portion of the Appellee's brief would simply contain a statement of such agreement. For purposes of this problem, however, the Appellee's brief needs to contain a complete Statement of Facts. As with the Appellant's brief, the Appellee needs to be sure to include all facts which he believes to be important to his arguments.

As with the Appellant's brief, Parts II and III of the Appellee's brief will be the "Argument and Citation of Authorities" and the "Conclusion." The above suggestions regarding those portions of the Appellant's brief apply equally to those portions of the Appellee's brief.

All briefs should be no more than five (5) pages on letter-sized 8 1/2” x 11” paper. Spacing should be no less than 1.5 with 12-point font and one inch margins on all sides of each page. Please also attach a cover sheet bearing the names of each participant, school and address. Also indicate whether the team is writing as Appellant or Appellee. Each team is to write one brief for an assigned part of the case. Each member of the team is to write at least one of the three issues (with all three issues covered in the Brief) and both members of the team should write the facts section together. A sample Appellant's Brief and a sample Appellee's Brief are included in the "Appendices" section of this material. These sample briefs are based on the hypothetical case used for this program in 1985. Note that these briefs are included as examples to show the proper form of the briefs, not for their content. Before you start to write your briefs, you may want to ask your attorney adviser for a copy of sample briefs so you may read them and see how lawyers write their briefs.

§ 4-3 PRACTICAL CONSIDERATIONS

The Georgia Supreme Court has an extremely voluminous case load. Accordingly, the justices read several briefs per day. This reality gives rise to the following rules which lawyers hear from judges, but which too often they violate:

1. Make certain your brief is concise and clear;
2. Put your best point forward first;

3. Do not make a point you do not believe in; and

4. When in doubt, leave it out.

Consider the equitable positions as well as the already established legal arguments. Judges, like everyone else, have the desire for cases to "come out right" in spite of legal constraints. In your brief and in your oral argument, tell why your side of the case has justice and equity in its favor. In some appellate cases, you are dealing with an issue that has not been decided in your state, and your role includes "what the law ought to be." If there is law on the issue, you may want to argue that it is time to overrule prior decisions. Argue why your case presents issues that are "of great concern, gravity, and importance" to the public - how the court's decision will affect all or many citizens.

If there is a point that hurts your side of the case, it is best to face the issue head on. Admit it but give the Court guidance as to why it can and should decide in your favor in spite of this one unfavorable element or help the Court understand why the unfavorable fact is not as important as the other side argues. Credibility is an important element of persuasion.

Do not assume that the judge is familiar with a given field of law. Each judge's legal background may be different before serving on the appellate court (i.e., trial lawyer, tax lawyer, district attorney, etc.).
CHAPTER 5
THE ORAL ARGUMENT

§5-1 Procedures

§5-2 Practical considerations

§5-1 PROCEDURES

Each team will argue both sides of the case. Accordingly, you are responsible for knowing and being prepared to argue both sides of the case. Depending on the number of teams, each team may argue the case three to four times in the preliminary rounds. The top four teams will compete in the semi-finals on Monday afternoon. The top two teams will be chosen to argue on Tuesday.

Best Team, Best Orator, and Best Brief awards will be given Tuesday during the Joint Session of the legislature in the House chambers in conjunction with Youth Assembly. Each team will have a maximum of 20 minutes each round to argue its side of the case. Never go past your allotted time. The time keeper will notify you at the 5-minute mark, the 2-minute mark, the 1-minute mark, and when your time is completed.

§5-2 PRACTICAL CONSIDERATIONS

The appellant's counsel has the right to open and conclude the arguments, and his/her conclusion shall be confined to matters covered in the argument of opposing counsel. Start your presentation with, "May it please the Court..." Usually your best strategy is to make all of your arguments first and save only about 1 to 2 minutes for rebuttal. Rebut only if necessary.

The judges or justices will be encouraged to ask questions during the argument. Part of your role will be to respond to questions, rather than merely "give a speech" on your side of the issue. Work
your argument into the answer. Also, be creative! The judges may want to ask you about hypothetical situations that have slightly different facts than this case. Doing so helps them understand the broader implications of deciding the case for or against you. Good answers to hypothetical questions can help judges see the practical benefits of agreeing with your arguments.

Personal remarks, whether oral or written, which are discourteous or disparaging to opposing counsel or to any judge are strictly forbidden. Argue the issues and the justice behind your cases, not the personality of opposing counsel.

The key is a persuasive oral presentation. Good lawyers don't just practice the law. They practice persuasion-discovering in the particular case the available means of persuasion.

Think through your summary of your oral presentation by putting yourself in the shoes of the judges. What is it you would want to know first about the case? How and in what order would you want the story told? You have only a short time and you may have to address some issues more fully than others. Which issue is the key to your side winning?

Judges, like all people, have established attitudes, beliefs, and values that influence their decisions. Approach your argument with these in mind and also listen for "friendly questions." One justice may help to guide your argument in a way that will persuade the Court. You must adapt your argument to the questions. They may give you clues to the Court's thinking. Also, pay close attention to the questions the judges ask the lawyers for the other side. If they ask something of the Appellant, it is often very effective for the Appellee to provide a response to that question during the Appellee’s portion of the argument. Rebuttal time is also a great time for the Appellant to address questions the judges asked the Appellee.

The key to effective oral argument is organization as well as language usage and delivery.

Don't write out or read your argument; use a "key word" outline to organize your thoughts. One approach to organization is to identify or name the issue, to explain it, to address its application to your case, and to summarize what the Court should do in this case.
Don't try to use big words. You are trying to persuade, not to impress the judges with your vocabulary.

During your statement of the facts, be accurate, but create the image that will lay the foundation needed to show that justice is on your side. You may want to list a few key words or phrases that will be repeated throughout the argument that remind the judges of the theme or theory of your case. It may be how you restate "the issue" in the case. You have to address the two issues listed, but how you paraphrase them for argument purposes is sometimes the key persuasion.

Look at the judges and speak so you can be heard. Confidence helps project credibility and justified belief in one's side of the issue. Never start by apologizing. Use proper emphasis, but don't use the style of a "country preacher." You must project an "energy level" that makes someone want to listen to you. Never read your argument. Many attorneys effectively use a "conversational" tone establishing rapport with the court and talk to the judges like they're simply having a (very respectful) conversation about the case.

You should also clearly understand and state what you are asking the Court to do. If you are the Appellant, you are telling the Court that it should “reverse” (or set aside) the judgment from the lower court. If you are the Appellee, you probably want the Court to agree with what the lower court did and therefore “affirm” its decision. You should make this clear early in the argument and reiterate it near the end.

During each round of argument, both Young Attorneys on each team must participate in the argument. We suggest that one attorney may want to take two of the issues stated in the problem, leaving the third issue for the partner. You may want to state this at the beginning of your argument so a judge will not ask you a question on your teammate's issue. However, be generally familiar with each issue in case a judge insists on a limited response from you.
CHAPTER 6
LEGAL TERMS

The following list of terms and definitions is set out for quick reference and better understanding of the words and phrases used throughout this Issue Booklet. Consult your attorney adviser for any terms not understood which are not listed here.

**APPEAL.** A request that a court's decision be reviewed.

**APPELLANT.** The party who requests the appeal (i.e., the "loser in the lower court").

**APPELLEE.** The party who did not ask for the appeal (i.e., the "winner in the lower court").

**ARGUMENT.** A statement of why a position should be adopted.

**CASE LAW.** Law made by decisions of state and federal trial and appellate courts (see chart of courts, chapter 7) applying and interpreting statutory and constitutional provisions and other case law in the factual situation presented.

**CIVIL SUIT.** A non-criminal matter where a person sues another person or legal entity for money damages or other form of recovery, such as an injunctive relief.

**CODIFIED.** Statutes enacted by or promulgated by legislative authority and arranged into systematic order.

**DEFENDANT.** The party who is sued in a civil suit or who is charged with a crime in a criminal suit.

**GEORGIA SUPREME COURT.** The appellate court which decides appeals of certain types of cases; the highest court in the State of Georgia.

**LEGAL AUTHORITY.** The two types are (1) controlling decided by a court which has binding authority over the state i.e., Georgia Supreme Court or U.S. Supreme Court, also referred to as "binding precedent"; and (2) persuasive a decision in another state's appellate courts or a federal court outside of the 11th circuit, of which Georgia is a member.
PLAINTIFF. The party who sues another party in a civil suit.

REMAND. The action of one court sending a case back to a lower court for further consideration.

STATUTE. An act of legislation or a written law.

TORT CLAIM. A civil claim that does not involve contractual rights but involves injury or damages from a violation of a duty imposed by general law; the three elements are: (1) the existence of a legal duty, (2) a breach or violation of that duty, and (3) damages as a proximate result of the breach.

YOUTH GEORGIA. Used when reference is made to a hypothetical set of facts or a hypothetical law, etc.
APPENDICES - SAMPLE BRIEFS

TO BE USED AS A FORMAT GUIDE FOR YOUR BRIEF.
STATE YMCA YOUTH JUDICIAL PROGRAM

IN THE SUPREME COURT OF YOUTH GEORGIA

YOUNG PERSONS, Appellant

vs.

STATE OF GEORGIA, Appellee

BRIEF FOR APPELLANT

Your Name Here
Youth Attorney for
Appellant or Appellee (choose one)
STATEMENT OF THE CASE AND FACTS

Appellant, 17-year-old Young Persons, was tried as an adult and convicted in the superior court below with the criminal offense of possession with the intent to distribute marijuana. Appellant's arrest arose out of an illegal search of appellant’s private school locker by his high school principal. A motion to suppress and exclude the marijuana from evidence at trial on the grounds that it was obtained by an illegal search and seizure in violation of the Fourth Amendment to the United States Constitution was denied by the trial.

This appeal presents the first opportunity for this Court to address the construction and constitutionality of Youth Statute No. 1 as well as questions relating to Youth Statute No. 2 dealing with the “Exclusionary Rule.” This appeal presents three issues for decision by this Court. First, is Youth Statute No. 1 governing a search by a public school official on public school property constitutional in consideration of the United States Supreme Court Case of New Jersey v T.L.O.? Second, is the search of a public school student locker by a principal under the facts and circumstances of this case one which was “reasonable” (a) under Youth Statute No. 1 and the 1975 decision in State v Young, 234 Ga. 488 (1975), and (b) under New Jersey v T.L.O? third, if there has been a violation of the Fourth Amendment under the Georgia standard of reasonableness and/or the U.S. Supreme Court standard, should the Exclusionary Rule keep the evidence out of the criminal trial?

The facts shown by the evidence at trial are as follows. All students enrolled at Plain View High School have personal lockers on which they place combination locks in order to ensure the
privacy of their belongings in the locker. There is no provision in the school rules for the conduct of a search or inspection of the student’s lockers except at the beginning and end of the school year. Adjacent to the wing of the school where all of the seniors' lockers are located is an outside patio that is designated smoking area for seniors and juniors. During the time in question, a new wing was being constructed adjacent to this smoking patio which required a number of construction workers to be in this area.

On several occasions over a three-week period a school maintenance worker had found the remains of hand-rolled cigarettes on the smoking patio which the maintenance worker thought might be marijuana cigarettes, and he reported this to the principal, Mr. Choplock. When Mr. Choplock brought this up at a faculty meeting, one teacher, Mr. Heard reported overhearing a comment by a student in the hall a few days before that “I just bought some good stuff from a senior." Mr. Heard did not see who either student was since the hall was crowded during the change of classes. Some of the teachers at the meeting and the principal decided that this comment overheard by Mr. Heard might have been a reference to a sale of marijuana. The following morning, the principal Choplock supervised the maintenance personnel in cutting the personal locks off the lockers of every senior student. Mr. Choplock then searched the contents of each of these lockers and in doing so found two of the lockers to contain green, leafy material in plastic bags. Mr. Choplock called the police and turned the bags over for evidence and the occupants of the two lockers, appellant Young Person and a 16-year-old student, Bob Minor, were arrested by the police on charges of possession of marijuana with intent to distribute. Appellant was subsequently convicted on these charges after the trial court denied his motion to suppress the marijuana uncovered by the school principal's unreasonable and illegal search of appellant’s sealed locker.
II.

ARGUMENT AND CITATION OF AUTHORITIES

A. Youth Statute No. 1 violates the constitutional prohibition against “unreasonable searches and seizures” under the test laid down by the United States Supreme Court in *New Jersey v. T.L.O.* for searches on school premises.

The Fourth Amendment to the United States Constitution protects all citizens from "unreasonable" searches and seizures. In the 1975 Georgia Supreme Court case from which Youth Statute No. 1 was taken, *State v. Young*, 234 Ga. 488 (1975), this Court, like the United States Supreme Court in *New Jersey v. T.L.O.* held that the Fourth Amendment’s prohibition against unreasonable search and seizures did apply to searches by school officials on school premises. In *New Jersey v. T.L.O.*, the Court held that the legality of a search by school on school premises depends on “the reasonableness, under all of the circumstances of the search,” and the Court laid down a two-fold inquiry to determine reasonableness. First, the search must be reasonable at its inception; that is, there must be reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Second, a reviewing Court must consider whether the search as actually conducted was "reasonably related in scope to the circumstances which justified the interference in the first place." The Court went on to hold that in order to justify a search by school officials, there must be a "reasonable suspicion justifying the belief by the school officials that some violation has been committed." There must be "positive evidence" of a violation, and not simply "mere evidence," and there must be more than "an inchoate and unparticularized suspicion or hunch."
Youth Statute No. 1 clearly violates this "reasonableness" standard laid down by the United States Supreme Court in *New Jersey v. T.L.O.*, Youth Statute No. 1 is a word-for-word adoption of a portion of the Court's opinion in *State v. Young*, in which the Court held that searches by school officials on school premises are only subject to the "most minimal restraints necessary to ensure that students are not whimsically stripped of personal privacy and subjected to petty tyranny." Under this Georgia standard, the type of "mere evidence" and "an inchoate and unparticularized suspicion or hunch" held in *New Jersey v. T.L.O.* to be insufficient to authorize a search would be sufficient to justify school officials in Georgia in searching students and their private belongings. Since the standard in Youth Statute No. 1 is contrary to the standard for reasonableness under the Fourth Amendment laid down by the United States Supreme Court in *New Jersey v. T.L.O.*, Youth Statute No. 1 should be declared to be unconstitutional since it allows the type of "unreasonable search and seizure" prohibited by the Fourth Amendment.

B. The search of Appellant's school locker in this case violated even the minimal standard of reasonableness in Youth Statute No. 1. Under the facts in this case, it is clear that the school officials did not act even with the "minimal restraints" required by Youth Statute No. 1. Even this statute requires that school officials act within "reasonable bounds" when attempting to preserve order and discipline in the school. The search here clearly exceeded all bounds of reasonableness. The remains of the cigarette papers discovered by the maintenance worker could just as easily have been real cigarettes smoked by the construction workers who worked in this area on a daily basis. The reference to "good stuff" overheard by one teacher in the hall could have referred to a number of things besides marijuana. With only these two bare threads of inconclusive circumstances, the school principal rushed headlong like a lynching mob and forcibly entered the private lockers of every senior student at the school. The principal had a number of reasonable alternatives before
taking such drastic action. A more reasonable approach would have been to have a faculty member observe the student's smoking area to catch anyone smoking marijuana, or to have someone patrolling the halls to observe any sales of marijuana that might take place between students. The principal's action in this case "whimsically stripped appellant and all other school seniors of their personal privacy and subjected them to petty tyranny." For these reasons, appellant's motion to suppress the marijuana should have been granted by the trial court even under the standard of reasonableness in Youth Statute No. 1.

C. Since there was a clear violation of the Fourth Amendment prohibition against unreasonable searches and seizures, the Exclusionary Rule set forth in Youth Statute No.2 should have been applied to exclude the illegally seized marijuana from evidence. Youth Statute No. 2 provides that "evidence seized in an unlawful search and seizure shall not be admissible as evidence against a defendant" and should be excluded from evidence on the trial of the case on a motion to suppress by the agreed defendant. This statute is an adaptation of the Exclusionary Rule laid down by the United States Supreme Court in cases construing the Fourth Amendment's prohibition against unreasonable searches and seizures. The purpose of the Exclusionary Rule in the context of criminal cases is to prevent abuses by law enforcement officers. The same rationale requires application of the Exclusionary Rule where the evidence is illegally seized by school officials and turned over to law enforcement authorities and later serves as the basis for a criminal conviction of a student. In other words, the Exclusionary Rule should apply in such cases in order to prevent similar abuses by school officials of students' constitutional rights. Whatever civil remedies might in theory be available to the student, if any, are not a sufficient substitute for excluding illegally seized evidence from a criminal trial.
III

CONCLUSION

The standard of reasonableness contained in Youth Statute No. 1 violates the Fourth Amendment to the Constitution as construed by the United States Supreme Court in New Jersey v. T. L. O., and therefore should be declared unconstitutional. Nevertheless, even applying that standard, the search of appellant's school locker under the facts and circumstances here constituted an unreasonable and illegal search and seizure, and the Exclusionary Rule set forth in Youth Statute No. 2 required that the marijuana be excluded from evidence. For all of these reasons, the trial court erred in denying appellant's motion to suppress, and therefore appellant's conviction was unconstitutionally tainted and should be reversed. RESPECTFULLY SUBMITTED this 10th day of January, 1986.

__________________________
Your Name Here
Attorney for Appellant or Appellee (choose one)
STATE YMCA YOUTH JUDICIAL PROGRAM

IN THE SUPREME COURT OF YOUTH GEORGIA

YOUNG PERSONS, Appellant

VS.

STATE OF GEORGIA, Appellee

__________________
BRIEF FOR APPELLEE

__________________

Richard Simmons
Youth Attorney for Appellee
STATEMENT OF CASE AND FACTS

Appellant was properly tried and convicted for the criminal offense of possession with the intent to distribute marijuana after a search of appellant's school locker by his high school principal revealed a bag of marijuana. The trial court properly denied a motion by appellant to suppress the marijuana from evidence. Appellant's arguments in this appeal raises three issues. First, is Youth Statute No. 1 governing a school official on public school property constitutional in consideration of the United States Supreme Court case of *New Jersey v. T.L.O.*? Second, is the search of a public school student's locker by a principal under the facts and circumstances of this case one which was "reasonable" (a) under Youth Statute No. 1 and the 1975 decision in *State v. Young*, 234 Ga. 488 (1975), and (b) under New Jersey v. T. L. O.? Third,’ if there has been a violation of the Fourth Amendment under the Georgia standard of reasonableness and/or the U. S. Supreme Court standard, should the Exclusionary Rule keep the evidence out of the criminal trial?

The facts at trial clearly support the trial court's finding that the search of appellant's locker by his school principal was justified and reasonable under all of the circumstances. The evidence showed that during a several-week period, a school maintenance worker had found the remains of numerous hand-rolled marijuana cigarettes on a patio that the school designated as a smoking area for seniors and juniors. Although construction on a new wing of the school was going on near this designated smoking patio, contrary to the appellant's statement of the facts, there was no evidence that this construction caused any of the construction workers to be in the area of this patio. This undercuts appellant's theory that the cigarette papers could have been real cigarettes smoked by the construction workers. The evidence further showed that the maintenance worker that discovered the hand-rolled marijuana cigarettes on the patio reported this to the principal, Mr. Choplock. When Mr. Choplock brought this up at a faculty meeting, a teacher reported overhearing a comment by a student in the hall a few days before that “I just bought some good stuff from a senior.” "Stuff" in the vocabulary of
present-day high school students unquestionably refers to marijuana. It was obvious to everyone at the faculty meeting that this comment referred to a purchase of marijuana by a student from a senior student. The next morning, prior to the students' arriving at school, Mr. Choplock had the maintenance personnel remove the locks from the lockers of the senior students, which were all in a separate area of the school. Upon inspecting the contents of appellant's locker, Mr. Choplock discovered a plastic bag containing green leafy material which he recognized as marijuana. Mr. Choplock requested the assistance of police, and appellant was arrested and charged with possession of marijuana with intent to distribute and subsequently convicted on those charges.

II.

ARGUMENT AND CITATION OF AUTHORITIES

A. Youth Statute No. 1 does not conflict with the Fourth Amendment Standard of "reasonableness" in school searches announced by the United States Supreme Court in New Jersey v. T.L.O. and, therefore, cannot be held unconstitutional. The ruling of the United States Supreme Court in the case of New Jersey v. T.L.O. recognizes that a lesser standard than probable cause governs searches by school officials on school premises. In such cases, the legality of a search is judged by "the reasonableness, under all of the circumstances, of the search." The Supreme Court in its opinion specifically held that a search will be justified where there are "reasonable grounds" or a "reasonable suspicion" that a student has violated or is violating either the law or the rules of the school. While Youth Statute No. 1 uses different language, the standard of reasonableness contained therein is essentially the same and is not in conflict with the standard announced in New Jersey v. T.L.O. While Youth Statute No. 1 refers to school officials being bound by only "minimal restraints," the language of the statute becomes more specific in requiring that school officials "shall not conduct searches and seizures on school property except when in the good faith exercise of their public trust; ... " It further requires that school officials must act within "reasonable bounds" in preserving of order and discipline. In essence, Youth Statute No. 1, like the Supreme Court's decision in New Jersey v. T.L.O., requires that the search be "reasonable under all of the circumstances." Thus, Youth Statute No. 1 does not conflict with the Supreme Court's ruling in New Jersey v. T.L.O. and therefore cannot be held unconstitutional.
B. The search by school officials in this case was reasonable under both Youth Statute No. 1 and the ruling of the United States Supreme Court in *New Jersey v. T.L.O.*

The search of students' lockers by school officials in this case was clearly justified and was "reasonable under all of the circumstances." It was apparent from the discovery of a number of cigarette papers on the students' smoking patio that one or more students had been smoking marijuana. A teacher at the school specifically overheard one student say to another student that he had "purchased some good stuff from a senior." Any school official knows that in the language of present day high school students, "stuff" refers to marijuana. Further, contrary to appellant's arguments, the lockers provided the students by the school are school property which school officials have the right, and indeed the responsibility, to enter if a student is suspected of a criminal violation or a violation of school rules. Under all of the circumstances here, the school principal had reasonable cause for suspecting that a senior at the high school was selling marijuana to the other students, and it was his responsibility as school principal to try and determine who that student was. Under all of the circumstances, the search in this case by the school principal was justified and reasonable under the standards in Youth Statute No. 1 and *New Jersey v. T.L.O.*, and, therefore, the trial court properly denied Appellant's motion to suppress the marijuana from evidence at trial.

C. The Exclusionary Rule does not apply in this case. Even if the search by the school principal in this case could be found to have violated appellant's Fourth Amendment rights, the Exclusionary Rule was not applicable under the facts and circumstances of this case and, therefore, the marijuana was properly admitted into evidence. There are at least three reasons why the Exclusionary Rule was properly found by the trial court not to apply in this case. First, the Exclusionary Rule is not a constitutional rule but a court-made rule adopted in the context of efforts by law enforcement officials to catch criminals. It should not be applied where the search in question does not involve law enforcement officials. Second, the Exclusionary Rule should only apply where the person claiming a violation of his rights has a "legitimate expectation of privacy in the area of thing searched." In this case, and in the usual high school situation, neither appellant nor any other student had such a legitimate expectation of privacy in the contents of his locker. During breaks between classes and at other times, numerous other students may pass by a student's open locker as he is removing or putting books or other articles in his locker, and all students that pass by can see the contents of the locker. Thus, a student cannot have a legitimate expectation in the privacy in the contents of his locker, whatever those contents may be. Finally, as held by this Court in *State v. Young*, 234 Ga. 488 (1975), "students aggrieved by the action of their officials must fall back upon such other legal remedies as applicable
law may allow them,” including actions based upon a constitutional violation of their civil rights by state offices or by some tort claim seeking damages against the official. Such civil remedies are adequate protection against abuses by school officials.

III.

CONCLUSION

Youth Statute No. 1 does not conflict with and therefore cannot be held unconstitutional under the U. S. Supreme Court's ruling in New Jersey v. T. L. O. Further, the facts of this case clearly show that the search conducted by the school officials in this case was "reasonable under all of the circumstances" and thus satisfies the standard of Youth Statute No. 1 and New Jersey v. T. L. O. Finally, even assuming the search to be improper, in this non-law enforcement context, the Exclusionary Rule does not apply. The trial court properly denied the Appellant's motion to suppress the marijuana from evidence at trial and appellant's conviction should be upheld by this Court.

RESPECTFULLY SUBMITTED this 10th day of January, 1986.

________________________
RICHARD SIMMONS
Attorney for Appellee