

EXAM # _____

**CHILDREN AND THE LAW
FINAL EXAMINATION**

Professor Pilkington-Casey

Fall 2006

INSTRUCTIONS:

This is an open book exam. You may use your text, notes, and additional cases I required you to read for class, but no computers. You have three hours to complete it. The questions should be answered with references to common principles of laws involving children, including cases in your text and/or those assigned in addition to the text that apply to the issue(s), as well as generally adopted uniform statutes in your text unless a question specifically sets out the law to apply.

Write all answers in the blue book(s). Write legibly. If you do not write legibly, you will lose points. Make sure your exam number is on all blue book(s). If the question asks for a brief answer, please provide a brief answer only as I shall not read more than the number of pages indicated for the question. You will lose points for sentences or paragraphs that run on.

Write only on the right hand side of the page.

ESSAY QUESTIONS

Thoroughly answer each question asked. However, please note that I subtract points for wrong answers or information or analysis not directed to the question asked.

QUESTION 1 (25 POINTS)

FACTS:

One January day, Coca-Cola and other private sponsors supported a "Winter Olympics Torch Relay" in Juneau, Alaska. Students were released from school so that they could watch the Olympic torch pass by. Joseph Frederick, then an 18-year-old senior at Juneau-Douglas High School, never made it to school that morning because he got stuck in the snow in his driveway, but he made it to the sidewalk, across from the school, where the torch would pass by. He and some friends waited until the television cameras would catch it, then unfurled a banner reading "Bong Hits 4 Jesus." Deborah Morse, the school principal, crossed the street, grabbed and crumpled up the banner, and suspended Frederick for ten days. He appealed the suspension administratively, but it was sustained. He then filed a 42 U.S.C. § 1983 action in the Federal District Court seeking declaratory and other relief.

There was disorder at the torch passing, but the uncontradicted evidence is that it had nothing to do with Frederick and his fellow sign-holders. Coca-Cola handed out samples in plastic bottles, and students threw them at each other. Students threw snowballs. Some students got into fights. But Frederick and his group did not participate in these disorders, saving their energy for what they hoped would be their nationally televised sign display. And, the disruption that took place occurred before the display of the banner, so it could not have been caused by it.

In subsequent days, there was some pro-drug graffiti in the high school which the principal thought was "sparked" by the banner, but the principal did not rip down the sign at the rally because she anticipated or was concerned about such possible consequences. When Principal Morse crossed the street from the school and confronted Frederick about the banner, he asked "What about the Bill of Rights and freedom of speech?" She told him to take the banner down because she "felt that it violated the policy against displaying offensive material, including material that advertises or promotes use of illegal drugs," and she grabbed it from him and crumpled it up.

Principal Morse does not contend that the display of the banner disrupted or was expected to disrupt classroom work. Asked for all the ways in which the banner display disrupted the educational process, she said:

Display of the banner would be construed by many, including students, district personnel, parents and others witnessing the display of the banner, as advocating or promoting illegal drug use which is inconsistent with the district's basic educational mission to promote a healthy, drug-free life style. Failure to react to the display would appear to give the district's imprimatur to that message and would be inconsistent with the district's responsibility to teach students the boundaries of socially appropriate behavior.

Frederick says that the principal initially told him that he was suspended for five days, but when he quoted Thomas Jefferson to her, she doubled it. The principal says that she does not remember whether he quoted Jefferson to her, but that was not why the suspension was ten days.

Frederick says that an assistant principal told him that the Bill of Rights does not exist in schools and does not apply until after graduation, but Principal Morse says that the assistant principal "made some remark to the effect that students do not have the same first amendment rights as adults." Frederick says that students were simply released from school so that they could watch the privately sponsored Olympic Torch being carried through a public street, and a student affidavit he submitted pointed out that the students did not have to obtain parental permission slips to be released, as is the routine for field trips and other supervised events off of the school premises. Principal Morse says that the release was "an approved social event or class trip," noting that the pep band played as the torch passed the school, the cheerleaders were out in uniform to greet the torchbearers, and teachers supervised.

Frederick says (without contradiction) that he had not gone to school that day prior to the banner display, that the banner display was off school property across Glacier Avenue from the campus, and that there were a lot of people, students and non-students, there to watch the torch pass. Other students filed affidavits saying that they were just released, not required to stay together or with their teachers, except for the gym class, and school administrators did not attempt to stop students who got bored and left. Frederick says that the "Bong Hits 4 Jesus" language was designed to be meaningless and funny, in order to get on television, but Principal Morse says that "bong hits" means puffs of marijuana and the words promote marijuana use.

View this matter on the basis that the banner expressed a positive sentiment about marijuana use, however vague and nonsensical.

QUESTION 1

Frederick has come to you for legal advice. Frederick wants to file an action against the principal and school board seeking declaratory judgment that his First Amendment rights had been violated by Principal Morse for waving the banner.

Part I. Is this a student speech case? Respond to this question on no more than one (1) page.

Part II. For the purposes of Part II, assume that Frederick's banner was student speech. Were Frederick's First Amendment rights violated by Principal Morse?

QUESTION 2 (35 POINTS)

You are the Judge in this matter.

FACTS

At trial the parties, Sharon Prost and Kenneth Greene, agreed upon little except the chronology of their marriage and the birth of their children, their respective employment histories, and their separation. The couple met in 1990 and were married in 1994. The first child, Matthew, was born in 1997; the second, Jeffrey, in 2000. From 1995 until October 2002, the couple lived in a home which they jointly purchased in the District of Columbia.

Both parties are requesting primary physical custody; they have agreed on joint legal custody.

At the time they married (1994), Sharon was employed as Assistant Solicitor for the National Labor Relations Board (NLRB). Kenneth was the executive director of the National Education Association Staff Organization (NEASO).

In April 1998 Kenneth left NEASO to become executive director of Council 20 of the American Federation of State, County and Municipal Employees (Council 20). In March 1999, Sharon became Chief Minority Labor Counsel of the Senate Labor and Human Resources Committee.

When Kenneth was employed at Council 20 he worked virtually 7 days a week, however, he maintains that a substantial amount of this work was done at home late in the evening, after Matthew had gone to bed. Kenneth testified that the excessive work hours were one reason he had left Council 20.

In September 2000 Kenneth quit his job with Council 20; thereafter he held a temporary position with the Peace Corps, then served briefly as a consultant or contractor to the Peace Corps, and worked for short periods as a field examiner with the NLRB and under a contract with the Federal Mediation and Conciliation Service. Except for these brief intervals, Kenneth was unemployed from the time he left Council 20 until March 2003, when he became assistant executive director of the American Federation of Television and Radio Artists and Screen Actors Guild (AFTRA). Meanwhile, in January 2003, Sharon moved from the Senate Committee on Labor and Human Resources to the Senate Judiciary Committee, where she became chief counsel.

By December 2001 Sharon had consulted a lawyer about divorcing Kenneth, and by January 2002 the parties had agreed to divorce, but also to delay the divorce until Kenneth found employment. By early 2002 they had moved into separate bedrooms in the family house. On October 29, 2002, Sharon filed suit for divorce. At a

temporary hearing in December 2002, the court gave temporary custody of the children to Sharon, but with allowance for liberal visitation by Kenneth. This order remained basically in effect through the trial, which began in December 2003.

In general, both parents were responsible for and provided care for their children. Specifically, except during the first several months of Matthew's life, Sharon and Kenneth were full and equal caretakers of Matthew from his birth, in 1997, through at least February 1999. During this time they placed Matthew in a daycare facility across the street from Sharon's office and commuted to and from work together, dropping him off and picking him up on the way home.

A change in the couple's relationship began in approximately March 1999, when Sharon left the NLRB for her job with the Senate, a position that was much more demanding than the NLRB had been, in terms of both time and energy. Sharon now worked much longer hours, and Kenneth began bringing Matthew home in the evenings, alone. This custom persisted with the result that since at least March 1999 Kenneth was the more nurturing parent of the children, assuming the greater portion of the parental obligations and handling the daily details necessary to provide for the children's physical and emotional well-being and development.

The couple's au pair, Stephanie, testified that Sharon generally returned home from work between 7 and 8 p.m. Stephanie recalled only 4 or 5 instances, during the year that she lived with the parties, that the whole family had dinner together, and that was when Gary Palmquist, a friend of the couple, joined them. Otherwise Sharon ate dinner alone and very late at night--often, while sitting in the kitchen, talking on the telephone or writing while she was eating. About once a month, Stephanie reported, Sharon came home early, to cook dinner for the children; this was always treated as a special event.

The two children are described by their au pair, Stephanie, as being charming, bright and healthy youngsters who love their parents and each other.

Kenneth was very involved in the children's activities and has made them a priority in his life while Sharon was absorbed by her work and her career. In addition, Kenneth made two employment decisions -turning down a job in 2000 and taking his present job despite a pay reduction- which both stemmed from his desire to spend as much time as possible with the children.

While evidence was presented of Kenneth's close involvement in Matthew's kindergarten schooling during 2002-2003 school year, evidence also showed Sharon was equally attentive in her involvement in Matthew's education.

In the past Sharon also made many positive contributions to the family unit which now have been limited by her employment. Sharon's career choice of demanding jobs have made her the primary source of income for the family, but required her to

work late nights and a number of weekends which necessarily cut into the time available for her family.

Testimony suggested that Sharon displayed insensitivity towards Kenneth during his periods of unemployment and resultant depression.

In a letter dated June 1, 2002 to his friend and then-attorney, the husband referred to the wife as a "slimey [sic], sleazey [sic], vile and disgusting leech." At trial, he introduced into evidence as an exhibit a doctored version of the letter with the disagreeable language excised. The original letter was revealed on cross-examination, when counsel for the wife produced the undoctored letter.

On December 10, 2002, not even 2 months after the parties separated, Sharon filled out a 'Parent Information Form' for an employment agency that had found her a live-in child care provider. In the space for 'Father's Name' Sharon wrote 'N/A.' She left blank the lines for 'Father's Profession and Telephone Number.' And she listed the name and telephone number of her mother, Ester Prost, as the 'Individual To Contact In Case Of An Emergency.'

Despite a marriage and separation marked increasingly by a high level of stress, tension and animosity between the parties, both parents provided a supportive, loving, structured and nourishing environment in which the children may thrive.

QUESTION 2

As the Judge in this matter which parent should have primary physical custody of Matthew and Jeffrey? Explain your decision including the factors, if any, that you utilized to reach your decision.

QUESTION 3 (30 POINTS)

FACTS

On the morning of July 19, 1999, Michael and Zelia McCauley brought their eight year old daughter, Elisha, to Leonard Morse Hospital. After a series of tests, the physicians there made an initial diagnosis of leukemia. They referred Elisha and her parents to the hospital. Laboratory tests performed at the hospital disclosed a hematocrit reading (percentage of red blood cells to whole blood) of 14.5%. A normal hematocrit for a young child is approximately 40%. Further laboratory tests disclosed the presence of probable lymphoblasts, consistent with the initial diagnosis of leukemia. In order to determine with greater certainty whether Elisha had leukemia, and, if so, which type, the physicians needed to perform a bone marrow