



You Be the Justice

Applying media law through role-playing on Zoom

By Nicole Kraft, Ed.D.

*Associate Professor, Clinical Communication
The Ohio State University*

In our Media Law and Ethics class, we want students to do more than just memorize court cases, names and facts. We want them to be able to incorporate and apply what they have learned to real-world situations, and share that knowledge with others in a way that is both consumable and comprehensible.

To that end, we brought together Zoom technology and the “justices” of the Supreme Court.



Our assignment, “You Be the Justice,” lets each of our students become a Supreme Court justice from pre-selected cases. They are then instructed to extensively research that person and their judicial philosophy, as well as the First Amendment-focused case. However, instead of a sterile and formulaic research paper, these students “become” the justice by recording a video in character.

Writing a paper about a subject can lead to a lot of legalese and technical talk that does not really reflect understanding of a case or the resulting law. The need to actually discuss orally pulls from a different part of the brain and requires students to know and understand their material, but also be able to articulate it conversationally. It is very hard to fake knowledge this way, and students have shown a much stronger ability to connect class concepts from the entire semester in this format.

PREPARATION

To prepare, students are taught recording on Zoom, as well as editing in iMovie, and they listen to Supreme Court arguments from [Oyez.org](https://www.oyez.org) to get a sense of style. They also make sure they have a YouTube account on which to post recordings. The use of Zoom allows this project to be applicable in a live or online version, as students can gather to record from any location.



Next, they start researching the justice's history, judicial philosophy and significant cases of which they have been part. They examine personality traits, hobbies and characteristics. They then examine the assigned case and look at ways to apply the precedent cases they have learned earlier in the semester. They must figure out how to "dress the part"—to bring their justice to life through mannerisms, dress, voice and more.

Finally, through the lens of their justice, each student examines their assigned case—made up of real legal issues and facts that may have been decided at a lower court level but never made its way to SCOTUS. Examples are listed at the end of this document.

EXECUTION

Students join together on Zoom to discuss the facts of the case and render their decision. Often, they craft that narrative into a themed video podcast, such as "Just Chat," "Let's



Get Judicial" and "Chief Chat". Every justice must introduce themselves and explain a bit of their judicial philosophy, then apply precedent cases to the case before the court and explain if they would affirm precedent, modify precedent or overrule and set new precedent, and why.

In addition, the court must render a written decision, with each justice writing a 750-1,000 word majority, minority or concurring opinion that supports their position, application of constitutional law, and application of precedence. Within that decision they provide the citations they used in developing their case and justice understanding.

GRADING

All submissions are judged on the following criteria:

- Character development
- Character's history
- Judicial philosophy
- Justice's significant cases
- Understanding of this case
- Application of precedent cases
- Maintaining character
- Quality of citations
- Quality of recording and posting success
- Quality of narrative structure
- Writing quality—facts, grammar, etc.

The assignment is worth 200 points. Of that, 100 is evaluated as a group project among all justices. The additional 100 is applied individually to the written decision.

Sample Cases: You Be the Justice

Gawker v. Bollea (2018)

A Florida lawsuit in which Terry Gene Bollea, known professionally as Hulk Hogan, sued Gawker Media for posting portions of a sex tape of Bollea with Heather Clem, at that time the wife of radio personality Bubba the Love Sponge. Bollea's claims included invasion of privacy, infringement of personality rights, and intentional infliction of emotional distress. Prior to trial, Bollea's lawyers said the privacy of many Americans was at stake while Gawker's lawyers said that the case could hurt freedom of the press in the United States.

In March 2016, the jury found Gawker Media liable and awarded Bollea \$115 million in compensatory damages and \$25 million in punitive damages. On November 2, 2016, Gawker reached a \$31 million settlement with Bollea.

Let us envision this case was appealed and Gawker won the next round and it ended up at the Supreme Court, with Bollea as the petitioner and Gawker as the respondent.

Legal question: Does the First Amendment take precedence over a public figure's right to privacy (and can a celebrity separate his/her private personality from a stage persona)?

Geraci v. Philadelphia (2020)

In *Glik v. Cunniffe* (2011) the United States Court of Appeals for the First Circuit decided that a private citizen may record video and audio of public officials (including police) in a public place. The arrest of the Simon Glik for videotaping an arrest by Boston Police (he was charged with wiretapping) violated his First and Fourth Amendment rights.

In the *ACLU v. Alvarez*, the Illinois Eavesdropping Act was found to be unconstitutional and could not be enforced against the American Civil Liberties Union of Illinois when it recorded conversations of police officers openly engaged in their public duties, according to the U.S. Court of Appeals in Chicago (7th Cir.).

In 2016, a pair of plaintiffs lost in U.S. District Court against Philadelphia police who they captured using mobile device cameras ([Fields/Geraci v. Philadelphia](#)). The Third Circuit Court of Appeals, however, overturned that ruling and said the First Amendment's protections extended to two people who used their smartphones to record police interactions with a third party.

In 2018, the Denver's police department detained [Susan Greene, editor of The Colorado Independent](#), who was photographing officers as they tended to a man sitting naked on a downtown sidewalk.

We are projecting that Philadelphia and Denver police have appealed their rulings through the courts, and the Supreme Court has decided to take the case. The case has now been appealed to the Supreme Court as *Philadelphia Police v. Geraci*.

Legal question: Does the First Amendment protect journalists when they record police in the line of duty?

Trump v. New York Times (2020)

The New York Times on Sept. 5 ran an opinion piece entitled, "[I Am Part of the Resistance Inside the Trump Administration.](#)" in which an unnamed Trump administration official laid out how the source and others are protecting the American people from Donald Trump's worst instincts as president.

Trump has demanded that the Times opinion section provide the name of this source, stating that it is 2) a danger to national security and b) treasonous. The Times, of course, refuses. Let's imagine that using original jurisdiction, SCOTUS considers the president's requirement that the Times identify its confidential opinion writer.

Legal question: Does the First Amendment protect the Times from revealing the name of this unnamed author?

Connecticut Law Tribune v. Cousineau (2020)

The case in question involves three children who were removed from their parents' custody and put into foster care eight months ago by the Connecticut Department of Children and Families, which investigates cases of child abuse and neglect.

[New Britain Superior Court Judge Stephen Frazzini granted a request](#) from the child's mother and ordered the Connecticut Law Tribune not to publish a story involving a child protection case before him. An order from a judge barring publication of a news story — known as a prior restraint — is rare and faces a high Constitutional bar.

The Connecticut State Supreme Court declined to hear an appeal and court rejected the newspaper's request to completely vacate the ruling of a trial judge who initially barred publication.

Let's imagine the Supreme Court of the United States has decided to hear the case at the request of the newspaper, which is the petitioner.

Legal question: Does the First Amendment protect the newspaper from a legal mandated prior restraint when it comes to reporting on child abuse and neglect?

Linfesty v. Montana Republican Committee (2020)

[Tyler Linfesty](#), a 17-year-old high school senior at Billings West High School, was randomly selected for V.I.P. seats to Donald Trump's rally in Montana, which meant he got to meet the president and have access to premier seating. He asked organizers whether he and his friends could sit together behind the stage, and he was placed behind the president and instructed to clap and cheer, but Linfesty said he could not bring himself to applaud for things that he did not agree with. At one point during the speech, he put on a pin showing support for the Democratic Socialists of America.

Eventually, a woman slid into the aisle and whispered something to him. He walked off and she replaced him in the crowd: a new face, now smiling pleasantly in the background. Shortly afterward, his friends were replaced, too.

Backstage, Mr. Linfesty said he was pulled aside while police officers and Secret Service officials checked his identification. After about 10 minutes, he said, "they respectfully told me to just leave and not come back."

A man wearing a plaid shirt sitting directly behind Trump at his Montana rally was asked to leave after making faces and mouthing messages during the president's speech pic.twitter.com/yXtKTRU7hE ([Links to an external site.](#))

— Reuters Top News (@Reuters) [September 7, 2018](#)

Let's imagine if Linfesty sued claiming his facial expressions and pin were signs of political speech, and his First Amendment rights were violated when he was removed. He loses at the lower court and 9th Circuit Court of Appeals, but the Supreme Court of the United States decides to take his case.

Legal question: Does the First Amendment protect a student protestor's right of free speech at a political rally to which he has been granted access by a specific political party?