

## EXAMINERS' ANALYSIS OF QUESTION NO. 12

The facts as presented raise a question regarding whether Signet's rights to free speech under the First Amendment are abridged. The First Amendment states in pertinent part: "Congress shall make no law . . . abridging the freedom of speech . . ." The First Amendment is made applicable to the states under the 14<sup>th</sup> Amendment. *Gitlow v New York*, 268 US 652 (1925).

However, the contours of Signet's First Amendment right to free speech are more particularly shaped by applicable precedent in the school setting. Students do not shed their constitutional rights at the schoolhouse door, nor are a student's free speech rights in the school setting co-extensive with adults' free speech rights in a more general venue. *Tinker v Des Moines Independent County School District*, 393 US 503 (1969); *Bethel School District No. 43 v Fraser*, 478 US 675, 682 (1986); *Hazelwood School District v Kuhlmeier*, 484 US 260, 266 (1988). Without question, greater restrictions on speech are allowable in the student school setting.

The facts as presented raise basically two issues. First, whether the free speech denial claim should be viewed through the prism of school speech. Second, as compared against the appropriate standard, whether Principal Kelly's actions violated Signet's right to free speech. Both questions are answered by the Supreme Court's decision in *Morse v Frederick*, 551 US 393 (2007).

As in *Morse*, it can easily be concluded that this is a school speech case as opposed to a more generally based First Amendment speech case. The facts indicate the event in question occurred during normal school hours, permission had been sought by students from school officials to attend, and participation was sanctioned as an approved social event or class trip. Rules of conduct at approved social events or class trips are like those during "school" proper. Moreover, teachers and administrators were present at the parade to monitor student behavior. On these facts it is easy to conclude this is a school speech case.

Because this is a school speech case, the precedent concerning this genre of First Amendment speech rights cases applies.

As such, Principal Kelly's actions, *vis-a-vis* Signet's rights, must be analyzed in light of the special characteristics of the school environment. *Kuhlmeirer, supra.* Pursuant to *Morse*, school officials may take steps to safeguard those entrusted to their care from speech that can be reasonably regarded as encouraging illegal drug use. *Morse*, at 397.

As *Morse* indicated, Signet's intent would not be determinative. Whatever his intent, the words must still be analyzed. The notion that the words used here, "Meth Shots 4 Moses," may be silly, nonsense, ambiguous, and the like, does not per se detract from Principal Kelly's conclusion that drug use was being promoted, nor the reasonableness of that conclusion and the need to act consistent with the schools anti-drug policy.

Focusing on the language, "Meth" is a common truncation of methamphetamine, a drug of concern to the schools. The word "shot" is reasonably thought to be a method of ingesting methamphetamine. The number "4", used as an apparent substitute for the word "for," while arguably nebulous, does not detract from the focus on meth shots' meaning. "Moses" contributes similar analysis. In total, if forced to choose between the message being senseless, meaningless fun and promoting drug use, Principal Kelly did not act unreasonably by choosing the latter.

In conclusion, Signet's suit will fail. This is a school speech case. A student's rights in this regard must be analyzed in that vein. The school's anti-drug use policies are consistent with the obligation of school authorities. The words on the banner could reasonably have been concluded to promote illegal drug use. Principal Kelly's actions, therefore, did not violate Signet's First Amendment right to free speech.