Howard University
Center for Excellence in Teaching, Learning and Assessment (CETLA)
Case-Based Teaching

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Overview

- Case-based teaching
- The common elements of a case
- Law and cases
- Legal case briefs
- Using cases in class
- Using cases to assess student learning
Case-Based Teaching
Case-based teaching:

involves analyses of real or hypothetical scenarios (stories);

permits instructors to guide students as they explore how the issues, principles, concepts and doctrine covered in class interact with real world situations;

and

provides opportunities to consider the same story from the different perspectives of those both directly and indirectly affected by the chain of events, including the decision maker.
Anatomy of a Case
Cases: Essential Elements

- **Real-Word Scenario** - Cases are generally based on real world situations, although some facts may be changed to simplify the scenario or "protect the innocent."

- **Supporting Data and Documents** - Effective case assignments typically provide real world artifacts for students to analyze. These can be simple data tables, links to real URL's, quoted statements or testimony, supporting documents, images, video, audio, or any appropriate material.

- **Open-Ended Problem** - Most case assignments require students to answer an open-ended question or develop a solution to an open-ended problem with multiple potential solutions. Requirements can range from a one-paragraph answer to a fully developed group action plan, proposal or decision.
Legal Stories: Case-Based Teaching and the Law
Cases: The Bedrock of the Law

For the Law, cases are:

• read as primary texts

• used to teach students legal rules, doctrine and reasoning

• cited as precedent to support positions advanced in real cases and controversies

• constructed to test the limits of positions taken either to change the law or to maintain the status quo

• used to test students’ analytical, writing and advocacy skills in exams, as well as in moot court and law journal competitions
Briefing a Case
A Legal Case Brief

• Title and citation
• Facts of the case
• Issues
• Holdings/Decisions
• Reasoning/Rationale
• Separate Opinions
Title and Citation

*Holder v. Humanitarian Law Project,*
561 U.S. ____ (2010)
Facts

- The Partiya Karkeran Kurdistan (PKK) and the Liberation Tigers of Tamil Eelam (LTTE) want to establish independent states for the Kurds in Turkey and for the Tamils in Sri Lanka. The U.S. Secretary of State has designated both the PKK and the LTTE “foreign terrorist organizations”. This designation triggers the prohibitions on material support found in 18 U.S.C. §2339B. The designation is not at issue in this case. Rather, the Humanitarian Law Project (HLP) wants to engage in the following activities, all of which are prohibited by 18 U.S.C. §2339B:

  - Train the PKK to use humanitarian and international law to peacefully resolve disputes;
  - Engage in political advocacy on behalf of the Kurds in Turkey and the Tamils in Sri Lanka; and
  - Teach members of the PKK how to petition representative bodies, e.g. the United Nations, for relief.
Does 18 U.S.C. §2339B violate HLP’s First Amendment (speech and association) and Fifth Amendment (due process) rights?
18 U.S.C. §2339B does not violate HLP’s First Amendment or Fifth Amendment rights as applied to the specific activities in which the HLP wants to engage. Training the PKK to use humanitarian and international law to peacefully resolve disputes, engaging in political advocacy on behalf of the Kurds in Turkey and the Tamils in Sri Lanka, and teaching members of the PKK how to petition representative bodies, e.g. the United Nations, for relief constitute “training,” “personnel,” “service,” and “expert advice or assistance,” all of which are properly prohibited by the statute.
This pre-enforcement challenge to 18 U.S.C. §2339B is a justiciable Article III case or controversy. The HLP faces “a credible threat of prosecution” and “should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.”
The Court cannot avoid the constitutional issues in this litigation by accepting the HLP’s interpretation of 18 U.S.C. §2339B as requiring specific intent to further the illegal activities of foreign terrorist organizations. Congress’ determination that knowledge of the organizations’ connections to terrorism is enough is entitled to a high level of judicial deference.

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18 U.S.C. §2339B is not unconstitutionally vague in its application to the advocacy in which the HLP wants to engage. The statute provides a person of ordinary intelligence fair notice of what is permitted and prohibited.

Vagueness and overbreadth as procedural safeguards for First Amendment rights.
Substantive Subjects Covered

- Constitutional challenges (as applied and facial)
- Protected and unprotected speech (including advocacy of illegal action)
- Content-based and content-neutral regulation of constitutionally-protected speech
- Separation of powers
- Special expertise of the political branches in matters of foreign relations and national security and impact on judicial review/deference

As applied, 18 U.S.C. §2339B does not violate the freedom of speech guaranteed by the First Amendment. The statute is content-based and presumptively unconstitutional. To pass constitutional muster, the statute must be narrowly tailored to achieve a compelling government interest. National security and combating terrorism are compelling government interest. The means chosen by Congress, and ratified by the Executive Branch, to further this interest appear to be justified in light of concerns about national security and foreign policy. The fact that the statute does not prohibit independent advocacy to support the lawful objectives of the PKK and the LTTE further supports the Court’s conclusion that 18 U.S.C. § 2339B is narrowly tailored.
18 U.S.C. §2339B does not criminalize mere association but rather the specific activities the HLP wants to pursue. HLP can remain associated with both the PKK and the LTTE, as well as pursue independent advocacy to support the legal activities designed to achieve independence for Kurds in Turkey and Tamils in Sri Lanka. The HLP, however, cannot give these foreign terrorist organizations material support as defined in the statute.

First Amendment associational rights

Reasoning/Rationale

Substantive Subjects Covered
Breyer dissented and was joined by Ginsburg and Sotomayor. Breyer agreed with the majority that 18 U.S.C. §2339B was not unconstitutionally vague. He disagreed, however, with the majority’s conclusion that the Constitution permitted the Government to prosecute the HLP criminally for engaging in coordinated teaching and advocacy furthering the lawful political objectives of the PKK and the LTTE. In this case, the Government failed to meet its burden of showing that an interpretation of the statute that would prohibit this speech-and association-related activity serves the Government’s compelling interest in combating terrorism. Breyer would interpret 18 U.S.C. §2339B as normally placing activity of this kind outside its scope.
Substantive Subject Summary

Holder v. HLP

- Article III’s “case or controversy” requirement
- Constitutional challenges (as applied and facial)
- Separation of powers
- Special expertise of the political branches in matters of foreign relations and national security and impact on judicial review/deference
- Pre-enforcement challenge
- Statutory interpretation
- First Amendment intent requirements
- Vagueness and overbreadth as procedural safeguards for First Amendment rights
- Protected and unprotected speech (including advocacy of illegal action)
- Content-based and content-neutral regulation of constitutionally-protected speech
- First Amendment associational rights
Using Cases in Class
Legal Rules – Contract Formation

• Offer and Acceptance
• Agreement/Contract
• Offeror and Offeree
• Consideration
• Unilateral/Bilateral Contract
• Revocation
• Rejection
• Counter Offer
Hypothetical 1

- O offers P $1,000.00 to paint O’s house. O’s offer states it can be accepted only by performance. P starts painting. Can O revoke the offer?

- No. O’s offer is for a unilateral contract (promise for performance). When P starts to perform, O loses the power to revoke the offer, but acceptance is not complete until the house is painted.
O offers P $1,000.00 to paint O’s house. O’s offer states it can be accepted only by performance. P purchases paint. Can O revoke the offer?

Yes. Purchasing paint is preparing to perform rather than beginning performance.
Hypothetical 3

- O offers P $1,000.00 to paint O’s house. O’s offer is silent regarding the mode of acceptance. P begins painting O’s house. Has P accepted O’s offer so that P is contractually obligated to continue painting O’s house?

- Yes. O’s offer is for a bilateral contract (promise for promise). By beginning performance, P has accepted O’s offer and must complete the painting job. If P fails to complete the job, then O has a cause of action for breach of contract.
Hypothetical 4

- O offers P $1,000.00 to paint O’s house. P responds, “I’ll do it for $1,500.00.” O refuses to agree to the higher price. Can P later accept O’s $1,000.00 offer?

- No. P’s response constitutes a counter-offer for $1,500.00 which O could choose to accept or to reject. Without more, P cannot attempt to revive O’s original $1,000.00 offer.
Hypothetical 5

- O offers P $1,000.00 to paint O’s house. P responds, “Would you be willing to pay $1,500.00?” O refuses to agree to the higher price. Can P later accept O’s $1,000.00 offer?

- Yes. P’s response is an inquiry rather than a counter-offer. If O has not revoked the $1,000.00 offer or the offer has not lapsed, then P can accept the $1,000.00 offer.
Using Cases To Assess Student Learning
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