Bong Hits 4 Jesus—Final Episode

Maybe I should have gone to law school. But only if God promised I would grow up to be a justice on the Supreme Court. The Nine Interpreters may have more fun than anyone in public life. Tip the United States on its side and eventually everything loose rolls into the Supreme Court. Justice Antonin Scalia, a skilled ironist, by now treats the court's annual agenda like a man at a driving range with a bucket of golf balls. What fun.

The U.S. began as a complex country—thus the genius of the Founders' template Constitution—and now finds itself in an infinitely complex era. The solution of we moderns to this inexorable multiplier effect has been to burden our institutions with more laws and more lawsuits. The inevitable result is a society steeped in unintended consequences. Ask the principal of a public high school.

WONDER LAND
By Daniel Henninger

You have guessed by now that we are going to discuss the famous case known as "Bong Hits 4 Jesus," aka *Morse v. Frederick*, decided by the Supreme Court this past Monday. Juneau, Alaska high-school principal Deborah Morse defeated high-school troublemaker Joseph Frederick in a split decision, 5-4.

Years back, as the Olympic Torch parade passed by her Alaskan high school, Principal Morse ran across the street from the school's front door and ordered Student Frederick to lower his "Bong Hits 4 Jesus" banner, judging it a violation of the school district's anti-drug policy. A "bong" is a marijuana water pipe. A "hit" is the extraction of marijuana smoke from the bong. The meaning of "4 Jesus" remains in dispute. Mr. Frederick demanded his constitutional rights. On Monday, the High Court said, not this time.

It is no exaggeration to say the basis for the decision was akin to passing a camel through the eye of a needle. For space reasons, I will briefly "interpret" Chief Justice Roberts's ruling. What he said is that the list of things the Constitution forbids a child to say in our public schools is very short. You can say almost *anything*. But as of Monday, the list is a little longer: You can't engage in speech "promoting illegal drug use." Hereafter, speech "promoting illegal drug use" may be regarded as "disruptive" to school life, as defined by the Supreme Court in *Tinker* (1969), *Fraser* (1986) and *Kuhlmeier* (1988).

Justice Roberts was at pains to make clear that speech promoting "illegal drug use" is the only thing this decision proscribes. That wasn't narrow enough for the court's other new Bush nominee, Samuel Alito. He called it a "dangerous fiction" to "pretend" that parents hand over to school administrators the authority for what their children may say or hear. The only speech he'd forbid is that which threatens "the physical safety of students." Drug promotion qualifies. He ended by warning that *Morse* "does not endorse any further extensions" of speech limits.

Two quick thoughts: What the majority did is use the "Bong" case to throw what weight it could muster behind school authorities beset with drugged-out students and pushers. Fine. But those confirmation-hearing wails about Messrs. Roberts and Alito "overthrowing" *Roe v. Wade*? Not likely, so long as *Roe* qualifies as a precedent.

Meanwhile, Justice Clarence Thomas, in a concurring opinion, took about half a line to say, "I agree," and proceeded to write one of the most compelling essays I've seen on the decline and fall of American public education. I would happily hand out Justice Thomas's opinion on street corners (though www.supremecourtus.gov relieves me of that burden).

> The cultural disarray of the past 35 years flowed from the schools.

What he's done is rummage back through school cases, mostly from 19th century state courts, to invoke *the idea* of a public school. His premise is that the schools' role was most certainly *in loco parentis*, in that they and parents broadly agreed on what made an adolescent grow into a good person; what schools need least is court interference in this hard job.

A North Carolina court in 1837 spoke of the need "to control stubbornness, to quicken diligence and to reform bad habits." In 1886, a Maine court said school leaders must "quicken the slothful, spur the indolent and restrain the impetuous." An 1859 Vermont court spoke of preserving "decency and decorum."

Missouri's court in 1885 found reasonable a rule that "forbade the use of profane language." Indiana's in 1888 ruled in favor of "good deportment." An 1843 manual for schoolmasters speaks of "a core of common values" and teaching the "power of self-control, and a habit of postponing present indulgence to a greater future good."

Antique words from a world long gone? Even Justice Thomas admits "the idea of treating children as though it were the 19th century would find little support today." I'm not so sure about that. How else can one explain the flight from the public schools—into home-schooling, parochial schools, private schools and even charter schools, which invest public principals with greater control? Parents are spending thousands to have what American schools had from 1859 to 1959—some basic measure of the Three Ds: decorum, decency and diligence. Self-control as a higher "common value" than out-of-control.

Justice Thomas argues that the 1969 *Tinker* case dragged the schools into a morass of arcane First Amendment jurisprudence. He's right.

Here's a final quotation from Monday's "Bong" decision to pass out on street corners: "Students will test the limits of acceptable behavior in myriad ways better known to schoolteachers than to judges; school officials need a degree of flexible authority to respond to disciplinary challenges; and the law has always considered the relationship between teachers and students special. Under these circumstances, the more detailed the Court's supervision becomes, the more likely its law will engender further disputes among teachers and students. Consequently, larger numbers of those disputes will likely make their way from the schoolhouse to the courthouse. Yet no one wishes to substitute courts for school boards, or to turn the judge's chambers into the principal's office." More right-wing rant from Clarence Thomas? Nope, that's liberal Justice Stephen Breyer's concurrence.

I'll go further. Because of the *Tinker* case in 1969, much of the cultural disarray of the past 35 years flowed out of schools and into society. Teachers today will tell you their discipline problems start at home. *Tinker* should be tossed. Once the schools can again help people learn the value of a relatively orderly life and self-control, the rest would follow.

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