Supreme Court Term Review:
Cell Phones, Protests, and Prayer

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If there is one thing that teenagers like to talk about when it comes to the law, it's who does and does not have the right to search their “stuff.” And in the world of “stuff,” there is nothing more important to average American teenagers than their cell phones. So when, in the waning days of its 2013–2014 term, the U.S. Supreme Court issued a landmark Fourth Amendment ruling in a cell phone search case, it might as well have put it in a box, wrapped it up with a tidy little bow and tied a tag indicating “for classroom use.”

Nearly two-thirds of the Court's 2013-2014 docket was decided unanimously, the highest percentage in more than 70 years. However, numerous Court commentators have pointed out that this facial unanimity often masked a deep divide on the rationales underpinning the decisions. Moreover, the most controversial issues still tended to be decided on razor-thin 5–4 margins.

One of the sweeping 9–0 decisions, California v. Riley, is one of a number of major Supreme Court cases from last term that could be used to jumpstart a discussion about the law with middle or high school students.1 Issues considered in other intriguing cases run the gamut from the intersection of religion and workplace benefits to the collision of the rights of protestors and the right to be left alone. They also include a bellwether affirmative action case and an important death-penalty issue.

Cell Phone Case Not a Close Call
David Riley was stopped by police in California for driving with expired registration tags. During the stop, the police officer learned that Riley's license had expired. The police officer then searched Riley's car and cell phone without a warrant. Riley sued, arguing that the warrantless search violated his Fourth Amendment right to be free from unreasonable searches and seizures.

The Supreme Court agreed, holding that law enforcement officials cannot conduct a warrantless search of a cell phone without a warrant. The Court reasoned that cell phones are capable of storing a large amount of data and that the information stored on a cell phone is the equivalent of a car's trunk. The Court also noted that the use of cell phones as a means of communication has increased dramatically in recent years, and that the search of a cell phone is more intrusive than a search of a home.

In addition to the cell phone case, the Court also decided several other important cases last term. One such case is Employment Division v. Smith, which involved a dispute over the scope of the Religious Freedom Restoration Act. The Court ruled that the Act only applies to actions by the federal government and not to actions by private parties.

The Court also decided a case involving affirmative action, Grutter v. Bollinger, which addressed the constitutionality of a university's race-conscious admissions policy. The Court ruled that the university's policy was constitutional, but only if the university could show that it is necessary to further a compelling interest in diversity.

Finally, the Court decided a case involving the death penalty, upcoming cases.
been suspended, and proceeded to impound the car. Pursuant to police policy, the officer conducted an inventory search of the vehicle and discovered concealed and loaded firearms. Riley was arrested.

Searching Riley after he was arrested, the officer discovered a cell phone. The officer accessed information on the phone, which was a smart phone, and noticed text messages preceded by the letters “CK”—a label that the officer believed to stand for “Crip Killer,” a slang term for members of the gang known as the Bloods. At the police station, a detective went through the data on Riley’s phone, discovering a host of other incriminating evidence, including videos with suspected gang activity and photographs of Riley with a car believed to have been involved in a recent shooting. Riley was ultimately charged with weapons violations and attempted murder in the earlier shooting. The state also intended to prove, based in part on evidence recovered from the phone, that these crimes were gang-related.

Riley moved to suppress the evidence relating to the cell phone, arguing that the warrantless search was unconstitutional. The motion was denied, and Riley was convicted and sentenced to 15 years to life in prison. He lost both his appeal to the state court appeals. Roberts Jr. noted in his opinion. Even the term “cell phone” is misleading because modern cell phones were not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans the privacies of life,” wrote Roberts. “Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.”

The cell phone case is the latest in a line of Fourth Amendment cases involving the need for a warrant when potentially invasive technologies are used. Other technology-related Fourth Amendment cases include:

— _Olmstead v. United States_— a 1928 Prohibition-era case holding that wiretaps on the phones of an alleged bootlegger did not violate the Fourth Amendment because they did not involve a physical intrusion into his house.

— _Katz v. United States_— a 1967 decision holding that wiretaps on public pay phones, while not involving an intrusion of a person’s home or body, violated reasonable expectations of privacy. (Katz effectively overturned the precedent set by Olmstead.)

— _Kyllo v. United States_— the 2001 ruling concluding that police needed a warrant to use a thermal-imaging device to scan the home of a suspect in a drug case to determine if heat emanating from the home was consistent with the use of high-intensity lamps to grow marijuana on the premises.

— _United States v. Jones_— a 2012 case holding that a GPS tracking system placed by law enforcement officials to track a suspect’s vehicle 24/7 required a warrant.

— _Maryland v. King_— a 2013 opinion holding the law enforcement officials’ use of a cheek swab to obtain DNA from individuals arrested for serious offenses and then entering that sample into a DNA database, is permissible without a warrant as part of standard police booking procedures, much like fingerprinting and photographing.

Taken together, these cases illustrate the ways in which our understanding of Fourth Amendment protections has evolved along with new technologies and changing expectations of what is and what is not private. The American Bar Association Division for Public Education has a comprehensive secondary-level lesson plan, “Technology and the Fourth Amendment,” available for download online (www.americanbar.org/groups/public_education/resources/lesson-plans.html).

**Some Other Major Cases**

In addition to the cell phone search case, the 2013–2014 Supreme Court term included several other blockbuster decisions that could spark a dialogue with students on the role of law in American governance and society.

In _Burwell v. Hobby Lobby,_ the Court concluded 5–4 that closely held for-profit corporations with sincerely held religious beliefs are entitled to protection under the Religious Freedom Restoration Act of 1993. Thus, Hobby Lobby was within its right to refuse to offer healthcare coverage for certain types of contraception mandated under the Patient Protection and Affordable Care Act. In a strongly worded dissent, Justice Ruth Bader Ginsburg warned that the court had “ventured into a minefield,” with corporations making all sorts of claims that following laws violate their religious rights. This case presents an excellent opportunity to have a discussion with students about the role of corporations, and what rights they have or should not have under the law. What happens when an individual’s beliefs conflict with those of the corporation? How far should the law go in recognizing corporate rights when they potentially conflict with individuals’ rights?

In _Hall v. Florida,_ the Court rejected
a strict standard requiring an IQ score of 70 or below for a death row inmate to present intellectual disability evidence. “Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution. Florida’s law contravenes our nation’s commitment to dignity and its duty to teach human decency as the mark of a civilized world,” wrote Justice Anthony Kennedy.

The Hall case provides a chance to explore the death penalty, whether it is administered fairly, what purpose it is intended to serve, and which values it represents or contradicts. Is it primarily a punishment or a deterrent? What are some of the exceptions (e.g., youth, mental disability, etc.), and why do we have them? What’s good and bad about having a bright-line test for determining when these exceptions apply?

In McCullen v. Coakley, the Court concluded that Massachusetts’s 35-foot-buffer zone to distance protestors in front of reproductive health care facilities violated the First Amendment. However, the Court did not overturn its 2000 decision in Hill v. Colorado, which upheld an eight-foot buffer zone.

The McCullen case illustrates the difficulty of line drawing when it comes to First Amendment restrictions. A close comparison of the opinion of the Court to the concurrences of Justices Antonin Scalia and Samuel Alito in this unanimous case will demonstrate how there is a lot more to a Supreme Court ruling than the final disposition.

In Town of Greece v. Galloway, a divided Court voted 5–4 to uphold a town’s practice of opening town board

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**Cases to Watch in 2014 – 2015**

**Holt v. Hobbs**

This case involves a claim by a Muslim prisoner against the Arkansas Department of Corrections over its policy against beards. The prisoner, arguing he should be able to grow a beard as dictated by his religious beliefs, has asked the corrections facility to waive its policy and allow him to grow a half-inch beard. In response, prison officials offer a number of reasons in support of the no-beard policy, including assertions that prisoners may hide contraband in their beards and that an escaped prisoner may shave off facial hair to alter his appearance. The prisoner countered that a half-inch beard would be too short in which to hide anything and that there is no record of an escaped prisoner ever using the appearance changing trick about which prison officials say they are concerned.

**Heien v. North Carolina**

Here, the Court has been called on to decide whether a police officer’s mistake of law can provide the suspicion required under the Fourth Amendment to justify a traffic stop. The defendant was pulled over by police in North Carolina for driving a vehicle with a faulty brake light. During the traffic stop, the officer became suspicious that the vehicle contained contraband. He was given permission to search the car and found, among other things, cocaine. Noting that state law requires only one operational brake light and does not make it a violation for one of the brake lights to be nonoperational, the defendant argued the stop violated his Fourth Amendment rights, and that the evidence seized as a result must be suppressed. If the U.S. Supreme Court rules that police officers’ belief that they are acting legally is enough to validate a search, such a holding could have broad implications that stretch beyond a traffic stop. The defendant points to the ancient maxim that ignorance of the law is no excuse.

**Zivotofsky v. Kerry**

This case was brought by the parents of Menachem Binyamin Zivotofsky, who was born in Jerusalem on Oct. 17, 2002. The State Department, pursuant to a long-standing presidential policy, only puts the city, rather than the country, name as the place of birth when issuing passports for those born in Jerusalem. The parents want their son’s passport to indicate that he was born in Israel. Typically the parents would be out of luck because the executive branch enjoys broad discretion over passports and foreign policy matters. However, in early 2002, Congress passed a law that requires the recording of “Israel” as the birthplace of a child born to American citizens in Jerusalem upon request. The Zivotofskys argue that the secretary of state must comply with that law and issue a passport with “Israel” listed as Menachem’s birthplace. Predictably, this has turned into a separation-of-powers case pitting the executive branch against the legislative, and has the potential to garner a lot of media attention, particularly given the current geopolitical climate.

**Department of Homeland Security v. MacLean**

This case would be nothing more than a straightforward whistleblower claim if the employee blowing the whistle had not been a federal air marshal and had the information he revealed not been sensitive security information about cuts to the number of marshals on certain flights. Robert MacLean argued he was acting out of concern for public safety when he leaked to a reporter the story about the reductions in marshals on flights. When the TSA discovered this, MacLean lost his job. MacLean argued his rights were violated under the Whistleblower Protection Act (WPA). The Supreme Court has been asked to decide whether the protections of the WPA, which are inapplicable when an employee intentionally makes a disclosure specifically prohibited by law, can still protect an employee who discloses Sensitive Security Information (SSI).
meetings with a prayer. Most of the prayers were Christian, but the town had a policy that allowed other denominations the same opportunity. The majority cited the long-held practice of lawmakers starting legislative sessions with prayer, a custom that stretches back to the nation’s early history.

This case is an excellent starting point for a dialogue on trying to balance freedom of religion with inclusivity for all people who participate in civic functions. The connection made to historical practice of starting public meetings with prayer is also a great discussion point for a dialogue on how closely courts should look at what the Framers did when they interpret the Constitution. Students may be asked to learn and think about various schools of thought on constitutional interpretation.

In Schuette v. Coalition of Affirmative Action, the Court found that a provision Michigan voters approved for their state constitution banning race- and sex-based discrimination in public university admissions did not violate the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. In the majority opinion, Justice Kennedy said it would be demeaning to the democratic process to presume that voters lacked the capacity to “decide an issue of this sensitivity on decent and rational grounds.” In a stinging dissent, Justice Sonia Sotomayor said the decision “eviscerates an important strand of our equal protection jurisprudence.”

Schuette presents all sorts of interesting starting points for a discussion on the role of majority rule in our system of government. What protections are available in the system to ensure the rights of those outside the majority are protected? Are they sufficient? When and how can they be changed, when and if circumstances change?

Conclusion
The cases decided in the last Supreme Court term present many opportunities for vibrant classroom discussions on important principles of the law and how those principles connect to the rest of society. By exploring recent Supreme Court cases in the classroom, students will have an opportunity to examine the law in action as “we the people” grapples with some of the most pressing issues of the day. With a new Supreme Court session, which kicked off on the first Monday of October 2014, teachers aren’t likely to run out of intriguing legal fodder from the nation’s highest court.

Notes
1. Docket No. 13–132
3. Olmstead v. United States, 277 U.S. 438 (1928)
10. Docket No. 12–10882
11. Docket No. 12–168
13. Docket No. 12–696

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www.supremecourtpreview.org

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U.S. Supreme Court
www.supremecourt.gov

The Supreme Court website includes links to the current docket, transcripts of recent arguments, and links to latest opinions. Once a number of opinions have been issued to fill a bound volume, they are compiled into volumes, which the Court also offers as downloadable PDF files.

Oyez Project
www.oyez.org

Developed by the Illinois Institute of Technology’s Chicago-Kent College of Law, the Oyez Project includes links to recent and historical Supreme Court oral arguments and opinions. Supplemental videos that feature scholars or case personalities enhance the site.

Legal Information Institute
www.law.cornell.edu

The Institute website is very similar to that of the Oyez Project, but features more law resources than U.S. Supreme Court opinions. Legal forms, a legal encyclopedia, and links to state and federal law resources make the site comprehensive. It is managed by Cornell Law School.