

The Burger Court Opinion Writing Database

Bethel School District No. 403 v. Fraser

478 U.S. 675 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: **MAY 13 1986**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT No. 403, ET AL., PETI-
TIONERS *v.* MATTHEW N. FRASER, A MINOR AND
E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether the First Amend-
ment prevents a school district from disciplining a high school
student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser deliv-
ered a speech nominating a fellow student for student elec-
tive office at the Bethel High School in Bethel, Washington.
Approximately 600 high school students, many of whom were
14 year olds attended the assembly. Although attendance
was not mandatory, the assembly was held during school
hours and on school property, as part of a school-sponsored
educational program in self-government. Students who
elected not to attend the assembly were required to report to
study hall. During the entire speech, Fraser referred to his
candidate in terms of an elaborate, graphic, and explicit sex-
ual metaphor.

Prior to delivering his speech, Fraser discussed the con-
templated remarks with several of his teachers. Two of
them informed him that the speech was "inappropriate and
that he probably should not deliver it," (J. A. at 30) and that

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 20, 1986

PERSONAL

84-1667 Bethel School District v. Fraser

Dear Lewis:

I could probably accommodate most of your concerns if you do not write. However, if you intend to write there is reason for my trying to meet your point.

I agree that there is no issue on whether there is a duty on the school to act, but you can be darned sure that if I had a teenager in school and the authorities let this pass I'd castigate them as wholly incompetent to serve in their positions. But I'll "soften" the dictum if it will save writing.

Regards,

WEB

Justice Powell

*Dear Chief, gladly
I'll await your second
draft.*

Sincerely

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

Pages 6, 7, 9

From: **The Chief Justice**

Circulated: MAY 23 1986

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT No. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser delivered a speech nominating a fellow student for student elective office at the Bethel High School in Bethel, Washington. Approximately 600 high school students, many of whom were 14 year olds attended the assembly. Although attendance was not mandatory, the assembly was held during school hours and on school property, as part of a school-sponsored educational program in self-government. Students who elected not to attend the assembly were required to report to study hall. During the entire speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.

Prior to delivering his speech, Fraser discussed the contemplated remarks with several of his teachers. Two of them informed him that the speech was "inappropriate and that he probably should not deliver it," (J. A. at 30) and that

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: _____

5,6,7,9

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser delivered a speech nominating a fellow student for student elective office at the Bethel High School in Bethel, Washington. Approximately 600 high school students, many of whom were 14 year olds attended the assembly. Although attendance was not mandatory, the assembly was held during school hours and on school property, as part of a school-sponsored educational program in self-government. Students who elected not to attend the assembly were required to report to study hall. During the entire speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.

Prior to delivering his speech, Fraser discussed the contemplated remarks with several of his teachers. Two of them informed him that the speech was "inappropriate and that he probably should not deliver it," (J. A. at 30) and that

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: _____

CONFIDENTIAL - OFFICIAL USE ONLY

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETI-
TIONERS *v.* MATTHEW N. FRASER, A MINOR AND
E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether the First Amend-
ment prevents a school district from disciplining a high school
student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser deliv-
ered a speech nominating a fellow student for student elec-
tive office at the Bethel High School in Bethel, Washington.
Approximately 600 high school students, many of whom were
14-year-olds attended the assembly. Although attendance
was not mandatory, the assembly was held during school
hours and on school property, as part of a school-sponsored
educational program in self-government. Students who
elected not to attend the assembly were required to report to
study hall. During the entire speech, Fraser referred to his
candidate in terms of an elaborate, graphic, and explicit sex-
ual metaphor.

Prior to delivering his speech, Fraser discussed the con-
templated remarks with several of his teachers. Two of
them informed him that the speech was "inappropriate and
that he probably should not deliver it," App. 30, and that his

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: _____

1, 2, 7, 10

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser, a student at Bethel High School in Bethel, Washington, delivered a speech nominating a fellow student for student elective office. Approximately 600 high school students, many of whom were 14-year-olds, attended the assembly. Students were required to attend the assembly or to report to the study hall. The assembly was part of a school-sponsored educational program in self-government. Students who elected not to attend the assembly were required to report to study hall. During the entire speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.

Two of Fraser's teachers, with whom he discussed the contents of his speech in advance, informed him that the speech was "inappropriate and that he probably should not deliver

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated JUL 2 1985

Recirculated: _____

P 11

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS v. MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the First Amendment prevents a school district from disciplining a high school student for giving a lewd speech at a school assembly.

I

A

On April 26, 1983, respondent Matthew N. Fraser, a student at Bethel High School in Bethel, Washington, delivered a speech nominating a fellow student for student elective office. Approximately 600 high school students, many of whom were 14-year-olds, attended the assembly. Students were required to attend the assembly or to report to the study hall. The assembly was part of a school-sponsored educational program in self-government. Students who elected not to attend the assembly were required to report to study hall. During the entire speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.

Two of Fraser's teachers, with whom he discussed the contents of his speech in advance, informed him that the speech was "inappropriate and that he probably should not deliver

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

M

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1986

No. 84-1667

Bethel School v. Fraser

Dear Thurgood and John,

We three are in dissent in the
above. I'll be glad to take it on.

Sincerely,

Bull

Justice Marshall

Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 28, 1986

No. 84-1667

Bethel School v. Fraser

Dear Chief,

Although I am not yet certain what disposition I'll reach, I will be writing separately in this case.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: JUL 1 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July —, 1986]

JUSTICE BRENNAN, concurring in the judgment.

Respondent gave the following speech at a high school assembly in support of a candidate for student government office:

"I know a man who is firm—he's firm in his pants, he's firm in his shirt, his character is firm—but most of all, his belief in you, the students of Bethel is firm.

Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he'll take an issue and nail it to the wall. He doesn't attack things in spurts, he drives hard, pushing and pushing until finally—he succeeds. Jeff is a man who will go to the very end—even the climax for each and every one of you.

So vote for Jeff for ASB vice president—he'll never come between you and the best our high school can be."
Joint App. 47.

The Court, referring to these remarks as "obscene," "vulgar," "lewd," and "offensively lewd," concludes that school officials properly punished respondent for uttering the speech. Having read the full text of respondent's remarks, I find it difficult to believe that it is the same speech the Court describes. To my mind, the most that can be said about respondent's speech—and all that need be said—is that in light

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.

~~SEE PAGES.~~

From: Justice Brennan

Circulated: _____

Recirculated: JUL 2 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July —, 1986]

JUSTICE BRENNAN, concurring in the judgment.

Respondent gave the following speech at a high school assembly in support of a candidate for student government office:

“I know a man who is firm—he’s firm in his pants, he’s firm in his shirt, his character is firm—but most . . . of all, his belief in you, the students of Bethel, is firm.

“Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he’ll take an issue and nail it to the wall. He doesn’t attack things in spurts—he drives hard, pushing and pushing until finally—he succeeds.”

Jeff is a man who will go to the very end—even the climax, for each and every one of you.

“So vote for Jeff for A. S. B. vice-president—he’ll never come between you and the best our high school can be.” App. 47.

The Court, referring to these remarks as “obscene,” “vulgar,” “lewd,” and “offensively lewd,” concludes that school officials properly punished respondent for uttering the speech. Having read the full text of respondent’s remarks, I find it difficult to believe that it is the same speech the Court describes. To my mind, the most that can be said about re-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 19, 1986

84-1667 -

Bethel School District No. 403 v. Fraser

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1986

Re: No. 84-1667-Bethel School District No. 403 v.
Matthew N. Fraser

Dear Chief:

I await the dissent.

Sincerely,

JM

T.M.

The Chief Justice

cc: The Conference

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: JUL 2 - 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July 3, 1986]

JUSTICE MARSHALL, dissenting.

I agree with the principles that JUSTICE BRENNAN sets out in his opinion concurring in the judgment. I dissent from the Court's decision, however, because in my view the school district failed to demonstrate that respondent's remarks were indeed disruptive. The District Court and Court of Appeals conscientiously applied *Tinker v. Des Moines School District*, 393 U. S. 503 (1968), and concluded that the board had not demonstrated any disruption of the educational process. I recognize that the school administration must be given wide latitude to determine what forms of conduct are inconsistent with the school's educational mission; nevertheless, where speech is involved, we may not unquestioningly accept a teacher's or administrator's assertion that certain pure speech interfered with education. Here the board, despite a clear opportunity to do so, failed to bring in evidence sufficient to convince either of the two lower courts that education at Bethel School was disrupted by respondent's speech. I therefore see no reason to disturb the Court of Appeals' judgment.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

July 1, 1986

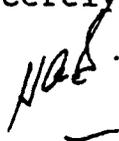
Re: No. 84-1667, Bethel School v. Fraser

Dear Chief:

At the foot of your opinion, would you please add:

"JUSTICE BLACKMUN concurs in the result."

Sincerely,



The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

May 19, 1986

PERSONAL

84-1667 Bethel School District v. Fraser

Dear Chief:

I agree, of course, with the result reached by your opinion for the Court. I also think the opinion correctly and satisfactorily distinguishes Tinker as protected political speech.

My concern relates to language in the opinion that can be read as imposing a "duty" on the part of a school board to take action in cases such as this. For example, the draft states that "it became imperative for the school to disassociate itself [from this speech] to make the point to the pupils that vulgar speech and lewd conduct is wholly inconsistent with the 'fundamental values' of public school education." P. 9. In addition, the draft states:

"The essential lessons of civil, mature conduct cannot be conveyed in the school that tolerates lewd, indecent or offensive speech and conduct such as that indulged in by this misguided boy." (p. 7).

While I agree with the sentiments you express, I do not think this Court should say that a school must impose discipline. Perhaps because I served for eleven years on the Richmond School Board, I would write the opinion in terms of the Board's authority to discipline respondent as distinguished from an obligation or duty to do so.

There will be close questions as to whether the language used by a student requires discipline, and the facts and circumstances can vary widely. In this case, for example, although I think the Board clearly acted correctly, I would not hold that the Board had a duty to impose discipline. All we really need to decide is that the speech was not political (as in Tinker), and therefore respondent's First Amendment rights were not violated when the School Board exercised its reasonable discretion.

I probably will write a brief concurring opinion to make the above distinction explicitly clear.

Sincerely,

The Chief Justice

lfp/ss

May 20, 1986

PERSONAL

84-1667 Bethel School District v. Fraser

Dear Chief:

I'll gladly await your second draft.

Sincerely,

The Chief Justice

lfp/ss

2nd draft received
& it still has language
that doesn't belong in
this opinion. I have
talked to SOIC who
agrees with me. She
will now write the
CJ a personal
letter 5/24



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 12, 1986

84-1667 Bethel School District v. Fraser

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: 84-1667 - Bethel School District No. 403 v.
Fraser

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

[redacted]

84-1667 - Bethel School District v. Fraser

JUSTICE STEVENS, dissenting.

"Frankly, my dear, I don't give a damn."

When I was a high school student, the use of those words in a public forum shocked the nation. Today Clark Gable's four-letter expletive is less offensive than it was then. Nevertheless, I assume that high school administrators may prohibit the use of that word in classroom discussion and even in extracurricular activities that are sponsored by the school and held on school premises. For I believe a school faculty may regulate the content as well as the style of student speech in carrying out its educational mission.¹ It does seem to me,

1

"Because every university's resources are limited, an educational institution must routinely make decisions concerning the use of the time and space that is available for extracurricular activities. In my judgment, it is both necessary and appropriate for those decisions to evaluate the content of a proposed student activity. I should think it obvious, for example, that if two groups of 25 students requested the use of a room at a particular time--one to view Mickey Mouse cartoons and the other to rehearse an amateur performance of Hamlet--the First Amendment would not require that the room be reserved for the group that submitted its application first. Nor do I

(Footnote continued)

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: JUL 1 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June —, 1986]

JUSTICE STEVENS, dissenting.

"Frankly, my dear, I don't give a damn."

When I was a high school student, the use of those words in a public forum shocked the nation. Today Clark Gable's four-letter expletive is less offensive than it was then. Nevertheless, I assume that high school administrators may prohibit the use of that word in classroom discussion and even in extracurricular activities that are sponsored by the school and held on school premises. For I believe a school faculty may regulate the content as well as the style of student speech in carrying out its educational mission.¹ It does

¹"Because every university's resources are limited, an educational institution must routinely make decisions concerning the use of the time and space that is available for extracurricular activities. In my judgment, it is both necessary and appropriate for those decisions to evaluate the content of a proposed student activity. I should think it obvious, for example, that if two groups of 25 students requested the use of a room at a particular time—one to view Mickey Mouse cartoons and the other to rehearse an amateur performance of Hamlet—the First Amendment would not require that the room be reserved for the group that submitted its application first. Nor do I see why a university should have to establish a 'compelling state interest' to defend its decision to permit one group to use the facility and not the other. In my opinion, a university should be allowed to decide for itself whether a program that illuminates the genius of Walt Disney should be given precedence over one that may duplicate material adequately cov-

Join?

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: _____ JUL 2 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1667

BETHEL SCHOOL DISTRICT NO. 403, ET AL., PETITIONERS *v.* MATTHEW N. FRASER, A MINOR AND E. L. FRASER, GUARDIAN AD LITEM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[July —, 1986]

JUSTICE STEVENS, dissenting.

“Frankly, my dear, I don’t give a damn.”

When I was a high school student, the use of those words in a public forum shocked the Nation. Today Clark Gable’s four-letter expletive is less offensive than it was then. Nevertheless, I assume that high school administrators may prohibit the use of that word in classroom discussion and even in extracurricular activities that are sponsored by the school and held on school premises. For I believe a school faculty must regulate the content as well as the style of student speech in carrying out its educational mission.¹ It does

¹“Because every university’s resources are limited, an educational institution must routinely make decisions concerning the use of the time and space that is available for extracurricular activities. In my judgment, it is both necessary and appropriate for those decisions to evaluate the content of a proposed student activity. I should think it obvious, for example, that if two groups of 25 students requested the use of a room at a particular time—one to view Mickey Mouse cartoons and the other to rehearse an amateur performance of Hamlet—the First Amendment would not require that the room be reserved for the group that submitted its application first. Nor do I see why a university should have to establish a ‘compelling state interest’ to defend its decision to permit one group to use the facility and not the other. In my opinion, a university should be allowed to decide for itself whether a program that illuminates the genius of Walt Disney should be given precedence over one that may duplicate material adequately cov-



CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

Supreme Court of the United States
Washington, D. C. 20543

June 12, 1986

No. 84-1667 Bethel School District No. 403 v.
Fraser

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS