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Exam No. _____

FEDERAL JURISDICTION

Semester II, 2001-02

Final Examination
UNM School of Law
Three Credits

Professor M. Browde
May 1, 2002
9:00 a.m. to noon

INSTRUCTIONS

1. This is a three hour exam. There are two questions—one is allocated one hour, and the other is allocated two hours. While you are free to use your time as you wish, grading of the questions will be weighted in proportion to the time allocated to each.
2. Please number your bluebooks in consecutive order; put your exam number and the name of this course on each bluebook; and turn in both the bluebooks and the exam.
3. In preparing your answer you may consult the textbook, supplement, handouts, hornbooks, your notes, or any other textual materials you might find helpful. Outlines, however, are limited to those you participated in producing—i.e., no commercial outlines are allowed! You must bring your casebook to have access to the constitutional and statutory appendices.
4. The questions asked are somewhat open-ended. Thus, although the issues are not hidden, they are not labeled for you. In any event, it is not sufficient that you merely identify the issues. Reasoned analysis of the issues is expected, and will be rewarded accordingly.

[EXAMINATION BEGINS ON PAGE 2]

QUESTION I
(One Hour)

You are the Chief Counsel to the Senate Judiciary Committee, and you have just received the following:

MEMORANDUM

To: Chief Counsel, Senate Judiciary Committee
Fr: Chairman, Senate Judiciary Committee
Re: Jurisdictional Reform

I have been thinking long and hard about the unfinished business from the 1980 Federal Judicial Reform Act which dropped the jurisdictional amount from federal question jurisdiction and retained general diversity jurisdiction, despite much testimony that it is outmoded and no longer necessary. I am not unmindful that there might be some limited circumstances where out-of-state defendants could be treated unfairly in state court. I am also troubled by the burgeoning caseloads in our federal courts stemming from the ever increasing addition of federal crimes to the statute books, and the growing number of civil cases, especially § 1983 cases.

There is not much we can do about the increasing criminal jurisdiction—especially in light of 9-11—but here are my suggested changes in the civil jurisdictional statutes which I plan to join together in a Federal Judicial Reform Act of 2002 (additions are indicated by underscores; deletions are indicated by ~~strikeouts~~):

District Court Jurisdiction.

28 U.S.C. § 1331. Federal Question; amount in controversy; costs

The district courts shall have original jurisdiction of all civil actions ~~arising under the~~ where the validity of a treaty or statute of the United States is drawn in question or where the validity of a law of any State is drawn in question on the ground of its being repugnant to the Constitution, laws, or treaties of the United States and where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

~~28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs~~

[the entire provision is to be deleted]

28 U.S.C. § 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) ~~and (e)~~ or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims, irrespective of amount in controversy, that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

~~(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.~~

~~(e)~~ (b) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

~~(d)~~ (c) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

~~(e)~~ (d) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Removal

28 U.S.C. § 1445. Nonremovable actions

(a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1-4 and 5-10 of the Act of April 22, 1908 (45 U.S.C. 51-54, 55-60), may not be removed to any district court of the United States.

(b) A civil action in any State court against a carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11706 or 14706 of title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds \$10,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

(d) A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any district court of the United States.

(e) A civil action in any State court against a governmental agency or governmental official of that state where the validity of a law of that state is drawn into question on the ground of its being repugnant to the Constitution, laws, or treaties of the United States may not be removed to any district court of the United States.

Supreme Court Jurisdiction.

28 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by a writ of certiorari where no federal question is drawn into question, but where a non-resident defendant makes a substantial claim of discrimination in the state court treatment of a non-resident defendant based on his residency.

~~(b)~~ (c) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Please provide me a memo either supporting or opposing my proposed changes to the jurisdictional statutes, explaining what alterations in existing law would result from these changes and why you support or oppose them. I realize that changes made in the jurisdictional statutes may have implications for the venue statutes as well, but I am not concerned about the venue statutes at this juncture.

Write the requested memorandum.

QUESTION II
(Two Hours)

As you may recall, as a result of pressure from various local groups, the New Mexico Legislature created a statutory regime which allows for semi-autonomous “Charter Schools,” which may be operated by local communities outside the structure of existing school boards. The statute does require that Charter Schools comply with the rules and regulations of the State Board of Education governing Charter Schools, as administered by the State Superintendent of Public Instruction. Once approved by the State Board, each Charter School is governed by a local Charter School Board, made up of parents, teachers, and community leaders

The existing State rules and regulations permit each local Charter School Board (subject to State Board approval) to: 1) set the curriculum consistent with state requirements; 2) establish rules governing appropriate behavior by students; and 3) establish rules governing discipline and enforcement of discipline at the school.

The Charter School Act also provides a comprehensive regulatory scheme for any complaints about the policies, procedures, or actions of a local Charter School. Those procedures provide for full adjudicatory hearings before the State Charter School Review Board (CSRB), which has extensive remedial powers. It may, if necessary, alter local Charter School policies, found inconsistent with state law and policy; impose new rules and regulations on local Charter Schools; and may make compensatory awards to individuals found to be unfairly treated by the School. Either the complaining party or the school may appeal, on the record, to the First Judicial District Court in Santa Fe.

The only Charter School currently established in the Albuquerque metropolitan is SV Charter School, located in a corner of the South Valley populated primarily by Orthodox Jews with strong ties to Israel and Palestinian Arabs. In addition, there are a smattering of Anglos and Hispanics in the school’s community, as well as a fairly good size group of Isleta tribal members who live just north of the reservation. Of the 9 member SV Charter School Board, 5 members are from the Jewish community, and 4 members are from the Palestinian community.

Until the recent escalation of the Palestinian-Israeli conflict in the middle-east, the SV Charter School was a model Charter School—the community was harmonious in its support of the school, academic standards were very high, its sports teams were very successful, and it had

built a tradition of free expression, both through its uninhibited, student-run newspaper, and its open policy of “freedom of discussion” which allowed all student groups to conduct forums on any topic of “public concern.”

As the middle-east conflict grew in intensity, the Principal, J.C. Allison recommended to the the SV Charter School Board that in an overabundance of caution, the school should have a policy in place to avoid any potential violence. After consultation with its lawyer,¹ the SV Charter School Bd. passed a resolution (5-4) reaffirming its commitment to freedom of expression, but authorizing the Principal to limit such freedom if, in his judgment, it might threaten the peace and good order of the school. That new policy was approved by the State Board on the recommendation of the State Superintendent.

After the Board meeting Allison didn't do anything on this subject as he got busy with other things. When, however, in March of this year the Arab League Club of the school conducted a school-yard rally in opposition to the Israeli government incursions into the West Bank, Allison ordered State Police Officer Jimenez² to “break up” the rally because it violated his policy which forbade any criticism of the Israeli government until the crisis in the mid-east subsided. Jimenez went into the school yard, where he tried to convince everyone to disburse. He seemed to be getting good cooperation from the students because they liked and respected him. When, however, he told the organizers that they had to desist because “it is school policy that there can be no criticism at school of the Israeli government,” all hell broke loose. The Palestinian students demanded their right to speak. In addition, a bunch of Jewish students (some of whom supported the Israeli government and some of whom did not) who, up until then, were peacefully observing the rally also became riled up by Jimenez' statement.

Jimenez didn't know what to do and he panicked. He called the County Sheriff and the nearby Isleta Tribal Police asking for help, saying in a very distraught tone that he had a “riot on his hands.” Based on the “riot call,” both police offices responded in full riot gear and plunged into the fray without evaluating the situation. It was only then that fights broke out. All of the sophisticated sound equipment owned by the Arab League Student Club was destroyed. The Arab League Student Club President and one of the Jewish students were badly beaten by Deputy Sheriff Gonzales in the struggle which ensued, but neither of the students hit the other. In any event, both of them were taken off to jail and booked for “breach of the peace.” Isleta

¹ The advice from the lawyer indicated that there were no U.S. Supreme Court cases directly on point, but there were two conflicting Court of Appeals rulings: In *Jones v. Independent School Dist.*, the 8th Cir. had ruled that if there is a reasonable threat of violence, the school district may consistent with the First Amendment suspend any categories of speech which it reasonably believes may trigger violence. In *Smith v. Consolidated School Dist.*, the 9th Cir. had ruled that the First Amendment requires that any restraints on free expression in a high school must be “content neutral.”

² Under state law, a State Police Officer is assigned full-time to each high school in the state to enforce the law and school policy with respect to peace and good order. Officer Jimenez was a month out of the Police Academy when this incident arose. According to the Chief of the State Police, school duty is one of the first assignments for graduating cadets because it is thought to be an easy way for cadets to break in to police work. No special training is afforded for this duty, either by the Academy or the local school.

Police Officer Abeyta also arrested four Isleta students for interfering with a police officer, although they claimed they were only watching when they were hit by Deputy Sheriff Gonzales and Officer Abeyta.

The parents of the Jewish student filed a complaint with the State CSRB claiming a wholesale civil rights violation, including free speech violations, and due process violations. They also sought an order revoking the school policy on criticizing the Israeli government, as well as damages on behalf of all the students involved in the event.

The parents of the Arab League Student Club President, and the Club filed a federal civil rights action under 28 U.S.C. § 1983 against the State Board of Education and the State Superintendent, the State Police and Officer Jimenez, the County of Bernalillo and Deputy Sheriff Gonzales, the SV Charter School and Principal Allison. The suit seeks declaratory and injunctive relief to overturn the school policy, and for property and personal injury damages. They claim willful destruction of property and the use of excessive force, all in violation of the due process clause of the fourteenth amendment. The parents of the Isleta children joined in that lawsuit, and they added an Indian Civil Rights Act claims against the Tribe and Tribal Officer Abeyta. The CSRB proceeding was half finished by the time the federal suit was filed.

Your law firm has been retained to defend the federal law suit. Reserving the question of whether the firm can represent all of the defendants, **the senior partner has asked you to prepare a memorandum evaluating the potential defenses available to each of the defendants.**³ The senior partner is not interested in the any consideration of the merits of the case at this juncture. **Write the memorandum.**

[END OF EXAM]

³ In the course of your research you discover that there is a rather obscure N.M. state statute which provides:

“Notwithstanding any narrower state or federal Constitutional law principles applicable to schools, students in New Mexico high schools, other than in extreme emergencies, shall be, as a matter of state law, afforded the fullest protection afforded to the citizens of the United States engaged in free expression activities in a public forum.”