

Voices of American Law. US Supreme Court Cases Meet the 21st Century

BY LAUREN COLLINS

Christopher Columbus Langdell, former dean of Harvard Law School, is credited with popularizing the case method of teaching law at the end of the 19th century. One hundred years from now, *Voices of American Law* will be named among the initiatives that brought the case method into the 21st century and extended the relevance of this learning tool beyond legal education into legal practice.

At various times in history, teaching the law through the analysis of legal opinions has been given boundless praise and equal criticism. Once again, the arguments regarding the credibility of the case method have picked up recently as the literature regarding human learning styles increasingly shows that people, especially those brought up in the eras of television, personal computers, and the Internet, learn better when multiple senses are stimulated. Rather than argue about its strengths or weaknesses, a project undertaken at the Duke University School of Law expands upon the case method to bring cases alive in a way that would likely soothe objectors at the same time as it supports the belief that a legal opinion can provide a thorough understanding of the law behind the decision. It's all in the presentation.

Voices of American Law provides innovative educational materials to assist those who study the law in their understanding of the Supreme Court and its role in American society. The project was originally conceived as a way to make the case method easier for international students to grasp, introducing American Constitutional Law in a way that was more accessible to those who were newly exposed to the American legal system. Led by Professor Thomas Metzloff and producer Sarah Wood, the series is made up of 12 20-

minute documentary depictions of critical cases, with five more to be completed in the coming year. Each documentary includes interviews with the parties and lawyers who shaped the case. They tell the stories of the real people behind the Court's opinions, making the cases feel more authentic to students learning the law from their analysis of the cases. They can do the same for practitioners using the precedential value of the cases to shape local law and policy.

Gaining a better understanding of the significance of the Court's decisions.

The *Voices* documentaries, which serve as

an extension of the case method, are meant to "get students ready to understand the significance of court decisions," Metzloff says. Several of the cases that have been examined for the *Voices* project are those that Professor Metzloff has taught for years as a Civil Procedure professor, but the documentaries provide something additional. By learning more about the background of a case, Metzloff says, "I came to understand the legal arguments and how they fit together, and what was actually at stake in the case. I figured that if I'm learning something having taught the case 20 times, there's something to it."

Every day, Thomas Van Orden passed a granite monument carved with the Ten Commandments on the grounds of the Texas State Capitol in Austin. Believing that a religious text on government property violated the First Amendment, he sued the state of Texas to have it removed. Through interviews with the people involved, the documentary explores the history and context of the monument, and the story of Van Orden's journey to the US Supreme Court.



Through the project, students have reported gaining a better understanding of the reasons a lawyer takes a case and the commitment a party makes when she decides to fight for a cause. For example, Casey Dwyer, a recent Duke Law grad, was struck by her interaction with David Baugh, an African-American attorney who defended the right of Barry Black, a Virginia Klansman, to burn crosses in *Virginia v. Black*, 538 U.S. 343 (2003).

"My experience on the project has taught me to keep in mind that every case has at least two, and often times many more, sides," says Dwyer. She has carried this realization into her work with a major law firm. "The video's focus on the human elements of the cases has helped remind me that my work as a lawyer has real consequences on real people's lives." Her work on *Voices* has influenced her decision to make pro bono cases a significant part of her work as an attorney.

Marla Zimmerman, also a recent Duke grad, learned first hand about the level of commitment clients challenging what they deem to be personal rights violations have through her interaction with a teen who challenged school drug testing in *Board of Education v. Earls*, 536 U.S. 822 (2002). The encounter has had an impact on her work. "My experience with the *Voices of American Law* project continues to influence my legal career. As a practicing lawyer, I make it a practice to analyze and discover the story behind a legal dispute. I believe that understanding the personal backgrounds and motivations of those involved in a case is just as important as understanding the legal arguments."

Shortly after work on the series began, Professor Metzloff integrated the documentary about *BMW v. Gore*, 517 U.S. 559 (1996) into his Civil Procedure course. As a test of the impact of the project, half of the class viewed the video while the other half did not and the entire class was quizzed. The results were that those who had viewed the video showed a significantly better understanding of the facts of the case and were less swayed by the persuasive stance that the author of the opinion had taken. This indicates *Voices* enhances students' learning of the practical skill of assessing factual situations and applying the law to them. This is an intended goal of Professor Metzloff who believes that "law school is about lawyering." To this end, *Voices* "[gives students an] inde-



Pharmaceutical company, Pfizer, was at the center of the planned redevelopment in Kelo v. New London, which sparked the city of New London's actions to exercise its power of eminent domain. Above are the modern offices of Pfizer's headquarters. Kelo's home is on the back side.

pendent basis to assess the Court's logic and rationale." What attorney preparing to attack unfavorable law could not benefit from that?

Voices of American Law benefits those in practice, too.

But *Voices* does not only benefit law professors and the students they teach. Practicing attorneys with limited time and large case loads can take advantage of the level of analysis given to key Supreme Court cases through the documentary series. Rather than researching news articles and broadcasts from scratch, in addition to reading briefs and pleadings, attorneys can get a better feel for a case and its players through *Voices*. The documentaries reveal the interaction between the lawyers and clients in the cases, says Metzloff. This is most certainly instructive to members of the practicing bar dealing with similar issues and clients.

Having collected additional, candid information about the case, the documentarians present it in a form that is engaging, both in its content and format. *Voices* responds to the current research that overwhelmingly finds people learn better when multiple senses are stimulated. "Most people learn better when they have multiple sources of information," says Wood. "You read the case and you get something out of that. You see the case, and you get something out of that. Because of the way that people learn, you get something visually that you don't get from reading."

Each *Voices of American Law* documen-

tary includes the litigation and a journey through the events leading up to it as well as personal interviews with many of the people involved. As an added bonus, the *Voices* website, www.voicesofamericanlaw.org, includes various documents from each case including pleadings, transcripts, amicus briefs, news articles, and evidence raised in the cases being explored. Thus, the series presents the case in many dimensions.

Examined cases can be important to state litigation or extend beyond daily practice to the creation of policy change.

Though each clip is about a Supreme Court case examining constitutional and federal law issues, the documentaries are often directly relevant to issues likely to arise even in a practice limited to state law. One such example is the issue of takings and eminent domain, examined through a greater look at the decision in *Kelo v. New London*, 545 U.S. 469 (2005). The decision in *Kelo*, in which the Supreme Court upheld economic development takings of unblighted, residential property as an extension of the idea of "public use," caused immediate reactions in states across the country, including North Carolina. A review of the opinion might make it easy for the practitioner to intuit the logic and legal position of a homeowner afraid of losing her land or a government official wishing to sustain a small municipality, but falls short of helping one fully understand the extent of the emotions



Susette Kelo's home.



involved on either side of the controversy.

Beginning shortly after the Court's ruling, and as recently as August 2007, editorials and news stories expressing concern in North Carolina demonstrate that the issues raised in *Kelo* have consistently remained on the agenda of the citizenry and state and local governments beyond the boundaries of New London. A call for legislation protecting North Carolina citizens from eminent domain abuse was made after *Kelo* was decided and news accounts that the General Assembly planned to consider the issue were reported in September of 2005, just months after the Supreme Court released its opinion. Thus, litigation on this issue may be ahead of some North Carolina practitioners, giving rise to a need for better understanding of the Court's decision.

Though the reader knows from the opinion that the city had been declared a "distressed municipality" under state guidelines, mightn't it mean more to a practitioner representing a similar client to know that the city of New London is only one mile by six and was fully developed before the economic development plan considered by the Supreme Court was presented? The opinion clearly points out that increased tax revenue was a goal of the plan but fails to include the fact that property tax was the prime method of raising funds for municipality functions and, before the plan, 56% of the land base in the city was non-taxable.

For one representing a property owner, an attorney may wish to understand the life factors that make one staunchly stand up for her

right to retain her property. Perhaps it makes a difference in asking yourself whether you would have taken Susette

Kelo's case to know that she was recently divorced, returning to the town where she grew up, and that the house she fought so fervently to save was one that she watched sit empty for more than two years before she was able to purchase it and fix it up as her own. One might care to know that Kelo's other neighbors who decided to fight for their homes were older, in their 70s and 80s, and depended on Kelo, as the younger and stronger resident, to help them wage their fight. It might also matter that Kelo was present when one of her neighbors was physically removed from his home, which had been condemned and was subsequently torn down. From her account, one might imagine the responsibility she felt and recall it when a client facing a similar challenge walks through the door.

For those who became lawyers to change the world, consider documentaries about one of the many cases that, according to Wood, were specifically selected to provide insight into the use of litigation to affect policy. These have been cases that involved prominent institutions like the University of Michigan in *Grutter v. Bollinger*, 539 U.S. 982 (2003), and significant legal interest groups like the ACLU in *Earls*. The documentaries study the means by which these institutions position themselves to challenge and change law. No matter

the incentive for sustaining a legal career, *Voices* has a case that will be relevant to one's goals and practice.

The reason that students have as much to gain from the *Voices of American Law* series is clear for Metzloff:

Even the most ardent supporters of the case method recognize that after many months (or years) of the same type of analysis, students can easily become bored or angry with the case method. If the power of the case method can be extended so that the richness of actual disputes can be explored more fully, certainly that is a worthy goal. Documentaries on the "master cases" offer that possibility.

This idea is easily extended to the practicing attorney. It is not a stretch to imagine that practitioners, having studied cases over many years, can become frustrated with the traditional review of case law and are able to benefit from more information and detail to help them understand, embrace, and use legal opinions as precedent in their arguments. That frustration is no longer an obstacle, at least with regard to the 17 pivotal US Supreme Court cases that can now be studied in vivid detail through the *Voices of American Law* series. ■

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