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ILLINOIS STATE
BAR ASSOCIATION

LAW-RELATED EDUCATION

The Newsletter of the ISBA's Committee on Law-Related Education

The Illinois State Bar Association's Law-Related Education Newsletter is provided free of charge on a quarterly basis during the school year. We are dedicated to promoting law-related education resources and discussion topics appropriate for use in classroom or community settings. If you do NOT wish to receive this complimentary newsletter, please reply and indicate in the message line that you wish to be removed from our mailing list. Statements, expressions of opinion or comments appearing herein are those of the editors or contributors, and not necessarily those of the Association or the Committee.

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**2011 Illinois State Bar Association High School Mock Trial Invitational
Successfully Completed**

Thank you to all who participated in, or helped us with, the 2011 Illinois State Bar Association High School Mock Trial Invitational. This year we had 47 exceptionally talented and dedicated teams come to Springfield and a number of volunteer judges, lawyers and paralegals, all helping to make this even possible.

We are very pleased to announce the achievement awards:

Top Eight Scoring Teams (Alphabetical Order):

Chatham Glenwood, Chatham
Glenbard East, Lombard
Guerin College Prep, River Grove
Hinsdale Central, Hinsdale
Normal Community, Normal
St. Charles East, St. Charles
St. Charles North, St. Charles
Timothy Christian, Elmhurst

1st place – Chatham Glenwood

2nd place – Timothy Christian High School

3rd place – (tie) Glenbard East and Hinsdale Central

Law Test

The team scoring the highest team average was: Evanston Township
Law Test Honorable mention – Hinsdale Central

Law Test – Individual scores (highest 6) tie 38/40 points

Anthony Angiulo - Glenbard North
Kendall Karr – St. Charles North
Anne Kelly – Hinsdale Central
Henry Leaman – St. Charles East
Nathan Richards – Deerfield
Ben Shane – Chatham Glenwood

Volunteers who made this all possible!

The Illinois State Bar Association and its Standing Committee on Law-Related Education for the Public would like to thank the volunteer judges, lawyers, retired lawyers, paralegals and ISBA staff who undertake the task for coordinating, hosting and supporting the High School Mock Trial Invitational. This year, the following individuals helped to make the event possible.

David N. Anderson
Jessica Baer
Brad Bauer
Melinda Bentley
Sarah Beuning
Peter Blackburn
Suzanne Borland
Ben Brown
Rex Brown
James Caruso
Hon. Michael Chmiel
Hon. John Coady
Virginia Cooper
Terence Corrigan
Randy Cox
Lauren DeJong
Pablo Eves
Jennifer Franklin
Jill Gilpin
Joanna Gunderson
Jeanne Heaton
David Hennessy
Grady Holley
Edward Huntley
Stephen Iden
Art Inman
Kenya Jenkins Wright

Mary Kinsley
Jamie Knodel
Mark Lee
Paula Magdich
Mark Matthewson
Tom McClure
Dianne McNamee
Tim Morris
Crystal Myers-Wilkins
Nicole Nelson
Charles Northrup
Ann Pictor
Hon. Carol Pope
Tracy Potter
Stephanie Radliff
Amy Romano
Mike Robinson
Amber Samuelson
Donna Schechter
Suzanne Schmitz
Renee Snow
Melissa Steward
Ron Stradt
John Taylor
Sarah Taylor
Stanley Wasser
Zee Williams

Named for Outstanding Achievement as a High School Mock Trial Lawyer:

Taylor Johnson	Bartlett
Jacob Logli	Boylan Catholic
India Daniels	Chicago Christian
Mollie Thiriot	Deerfield
Jeremy O'Brien	De La Salle
Julia Brady	Evanston (named in two trials)
Win Lalley	Evanston
Melissa Cyrwus	Guerin College Prep
Blake Harwood	Highland Park (named in two trials)
Anne Kelly	Hinsdale Central
Megan McCormick	Hinsdale Central
Molly Hogan	Hinsdale South
Mario Orozco	Hubbard
Kate Fundarek	Huntley Consolidated
Teresa Russo	Huntley Consolidated
Dan Szoke	Mundelein
Blake Cecil	Normal Community
Brittany Ross	Normal West
Ben Chertok	Oak Park & River Forest
Tarah Plut	Providence Catholic
Shang Sharpe	Providence Saint Mel
Stuart Angleton	Roxana
Katie Reiter	St. Charles East
Katy Karayannis	St. Charles North
Dylan Jennings	Salem
Jasmine Stein	Timothy Christian

Named for Outstanding Achievement as a High School Mock Trial Witness:

Natalie Ibarrientas	Bartlett
Sara Watson	Benet Academy
James Prather	Carmel Catholic
Rachel McGilivray	Carmel Catholic
Quinn Marschik	Chatham Glenwood
Ashley Swarhout	Chicago Christian
Rebecca Sarkauskas	De La Salle Institute
Jacob Frank	Evanston
Jacob Cholewa	Glenbard East
Shawn McDuffee	Glenbard East
Rebecca Benner	Glenbard South
Merrick Topping	Glenbrook South
Jenna Zacharias	Guerin College Prep
Andrew Rangel	Guerin College Prep
Devin Shaffer	Highland Park
Meredith Christian	Hinsdale Central



Sydney Randell	Homewood-Flossmoor
Amanda Svoboda	Huntley Consolidated
Jeremy Dorsey	Huntley Consolidated
Kwynn Riley	Kenwood Academy
Connor O'Brien	Lexington
Pat Wohl	Maine South

Named for Outstanding Achievement as a High School Mock Trial Witness:
Continued:

Jordan Reich	Maine South
Kevin Andres	Mount Carmel
Chris Varney	Normal Community
Harrison Meece	Normal Community
Sarah Formentini	Providence Catholic
Nicholas Holy	Providence Catholic
Kilah Bacon	Providence St. Mel
Krista Sheets	Roxana
Chelsea Knaak	Salem
Whitney Baldrige	Salem
Clayton Davis	St. Charles East
Danny Huizenga	Timothy Christian
Ben Franz	Wheaton

Again – Thank You!



ISBA Lawyers in Classrooms

As part of the Illinois State Bar Association's initiative to make a difference in the lives of Illinois students, and to assist in expanding diversity in the legal profession, the Committee on Law-Related Education for the Public has invited lawyers across the state to go back to school and speak to students on law-related topics. This informal program provides ways for Illinois teachers to search an ISBA volunteer database to find lawyers in their areas who are willing to speak on specific subjects. The list is available on our law-related education website, <http://www.isba.org/lawyersinclassrooms>, as an on-going resource for teachers.

"Come Home When the Street Lights Come On!" A Community Safety Act-Mock Community Debate

A lesson plan created by Barry C. Townsend, Quilliam Penn High School, New Castle Delaware
CRADLE LESSON PLAN NO. 71593A

INTRODUCTION: The actions and decisions of legislators are crucial to society; however, there is no more important office in a democracy than that of a citizen. As individual citizens we can actively support, oppose, or propose legislation. This lesson is designed to promote student awareness and knowledge of citizen participation through existing organizations. Students will discuss and debate the contents of a hypothetical bill designed to cope with the crime problem in a fictitious state. Students will read and study the background of the proposed bill and the opposition to the bill. Students will role play a meeting between legislators and groups of students who favor and support the proposed bill.

GOALS/OBJECTIVES: The students will:

- * exercise their right to organize with the purpose to support or oppose the bill
- * exercise listening, public speaking and reading skills through writing and presenting oral arguments
- * describe how the law-making process can be influenced by lobbyists and constituents
- * develop an understanding of the legislative process

AUDIENCE: This lesson is appropriate for students in grade 9 through 12.

TIME TO COMPLETE: Two to three (45-minute) class periods to complete.

MATERIALS: This lesson plan with Appendices

PROCEDURES: A. Distribute "Community Safety Act" (Handout 1). Read the Act aloud as the class follows along silently. After completing the reading tell the students they will be debating in support or opposition to the bill.

Follow up discussion questions:

- a. What is the problem the state is trying to address with the proposed bill?
- b. What is the legislative intent of the state in drafting the bill?
- c. What are the specific details of the bill?



- d. What groups, organizations or businesses are likely to lobby for or against the proposed bill?
- e. Does the proposed legislation violate the First and/or Fourth Amendments?

B. Choose students to play the role of legislators representing each party.

C. Place the remaining students in groups of 3-5 students. Inform the students that they will be representing one of the following groups.

- American Civil Liberties Union (ACLU) (opposes the bill)
- Parent Teachers Association (PTA) (supports the bill)
- Safe Streets Alliance (SAA) (supports the bill)
- National Rifle Association (NRA) (opposes the bill)
- Atlantis Taxpayers Alliance (opposes the bill)

D. Pass out Handout 2 and Handout 3 which includes proposed legislation and opposition notes. Allow the students to discuss, share, clarify views and make arguments for their particular interest group.

E. Each group should study the following proposed law and report its results and opinions to the legislative committee.

F. Committee members will clarify facts, develop questions to clarify relationships between present laws, and develop questions to clarify the proposed legislation and the implication of passing such a bill.

G. The Hearing (suggested times for each group's arguments). Each group has a maximum of 5 minutes for their arguments. The committee has a maximum of 4 minutes for questions and answers.

H. Open Hearing (discussion in front of whole class). Committee indicates strongest argument by the groups. Committee members each state their personal opinions after hearings.

EVALUATION: The lesson may be evaluated in several ways:

- through informal observation(s) of student participation in classroom discussion(s), debate(s), and role playing;
- through participation in gathering facts for the classroom debate and or participation in the role play;
- through the preparation of a position paper on the bill which addresses the various issues and questions raised in class on the various constitutional amendments affected by the bill

HANDOUT #1 - "COMMUNITY SAFETY ACT"

Background: Fear of violent crime in the state of Atlantis has emerged as the most prominent concern. A special bipartisan commission (henceforth known as the "Commission"), appointed by the governor and approved and funded by the state legislature, assigned investigators and held numerous hearings and has reported its conclusions as follows:



1. "The public is fed up with persistent violent crime concentrated, especially, in the urban areas of Atlantis. A public opinion poll conducted by the Commission showed that 88% of the people surveyed are scared and blame the government of the state for failure to promote law and order -- perhaps the most important single obligation of any government. They demand that the government do something."

2. "Criminal gangs control whole neighborhoods. Some government projects supporting low income housing suffer from illegal tenants, random sniper fire, drug activity, and gang warfare. Some residents sleep in bathtubs to avoid stray bullets from gunfire exchanged by competing gangs. Many residents report having to pay gang leaders money just to use the stairways of their apartment buildings. Children have been killed playing in yards adjacent to their homes and now live in fear of being shot just walking to school. Gangs are so dominant that they chased away repair crews sent in by the housing authority; more than 300 shots were fired forcing the repair crews to flee in fear of their lives."

3. "Most of these gangs consist exclusively of young people, perhaps a majority of whom are teenagers, and their principal 'trade' illegal drug dealing which generates sufficient money fully to arm these gang members with sophisticated weapons to patrol the neighborhoods threatening residents and even the most fully equipped police force."

4. "Young women and girls report being physically and sexually abused by gang members. Sexual abuse, they say, is rampant in neighborhoods dominated by these gangs."

5. "These alarming conditions are spreading into what have traditionally been assumed to 'safe' suburban areas. Police reports indicate that neighborhood criminal gangs have begun to "colonize" surrounding communities, and the police themselves indicate that they may not have the resources to halt what they regard as "invasion" by these gangs."

The findings of the Commission were forwarded to the Atlantis state legislature. A committee within the legislature then held hearings and agreed with the Commission that a distressing crime problem was plaguing the state.

The legislative committee subsequently proposed a bill which you, as a member of the state legislature, must debate and vote "up" or "down" at a special legislative session requested by the Governor. The bill, as presented to the Atlantis state legislature, reads in full, on the Handout 2.

HANDOUT #2 - PROPOSED LEGISLATION (BILL No. 424)

WHEREAS, the people of the State of Atlantis have every right to be secure and safe in their neighborhoods and communities against violence and crime; and

WHEREAS, a serious breakdown in law and order has occurred as a result of armed criminal gangs and drug dealers dominating various neighborhoods and communities in the State of Atlantis; and

WHEREAS, the majority of such criminal gangs consists of teenagers, be it



RESOLVED, that possession and/or sale of all "automatic" weapons be a felony; and that the number of State police officers be doubled, supported by whatever increase in state personal income taxes might be necessary; and that a daily curfew, from 10:00 P.M. to 6:00 A.M., be imposed on all persons ages 19 or under, (subject to exceptions for lawful employment and other legitimate causes to be determined by the Attorney General); and that the Attorney General be authorized to order police "sweeps" of individual residences or whole neighborhoods or communities whenever and wherever the Attorney General has sufficient evidence that dangerous criminal activity; occurring.

HANDOUT #3 - Opposition Notes:

During committee hearings regarding the proposed measures, the state chapter of American Civil Liberties Union (ACLU) protested that the bill could be unconstitutional. Representatives of the ACLU argues that the "sweep" provision and even the "curfew" might violate the Fourth Amendment to the U.S. Constitution which forbids the state from conducting "unreasonable" searches and seizures. Regarding the "sweep," the ACLU warns that the U.S. Supreme Court has ruled that with or without a warrant, the police may search and seize only specific places or persons, that is, the police may not "sweep" whole residential areas or blocks in search of criminal activity. The curfew might also be unconstitutional for the same reasons, the ACLU lawyers objected. Other advocates and lawyers testifying before the legislature stated that the Fourth Amendment forbids only unreasonable police action, and that, in view of the circumstances facing the people of Atlantis, the proposed measures are surely reasonable. Ross Perot, former chairperson of the Texas War on Drugs Committee, urged the Atlantis legislature to authorize police to go into high crimes areas to cordon off such areas in search of drugs and guns. In view of such gang violence, he said, "house to house" searches were reasonable.

The Atlantis Taxpayers Association (ATS), an organized interest group opposed to tax increases, testified that the taxes needed to double the state police force, ought not to come from any more income taxes. The problem, it members argued, is basically an inner city problem or one attached to low income neighborhoods. Why, ATS complained, should the middle class have to pay more taxes to confront the breakdown of law and order in low income and isolated communities within the state?

The local chapter of the National Rifle Association (NRA) objected to the prohibition against the sale and/or possession of any and all "automatic" weapons. The NRA threatened to challenge the law in court as a violation of the Second Amendment right to "bear arms." They also promised to mount electoral campaigns against any member of the legislature who votes for the "gun control" portion of the proposed bill.

REFERENCES

Arbetman, Lee P., McMahon, Edward T., and O'Brien, Edward L., Street Law, West Publishing Company, 1994.

American Bar Association, Update, Spring 1989.

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Illinois Curfew Laws

By Frank Kopecky

Curfew laws restrict the rights of youngsters to be outdoors or in public places during certain hours of the day. Such laws seek to establish a safer community and better protect children from the negative influences that they may encounter while being away from the home late at night.

There is a state curfew law in Illinois (720 ILCS 555). A person under 17 years of age cannot be outside on public or private property or in a public place after midnight until 6 am on Friday or Saturday and after 11pm on Sunday through Thursday. **Be aware that municipalities and counties may also have curfew laws that often are stricter than the state law.** These local laws frequently apply to youth under 18 and begin earlier in the evening.

The driver's license of a person under 18 who is driving during curfew hours without a parent, guardian or responsible adult approved by the parent or guardian is not valid. The license or permit may be suspended for driving during a state or local curfew.

There are exceptions to curfew laws if the person is participating in certain activities or is going directly to or returning from these activities without deviation in route taken. Such exceptions include:

- Participating in religious, educational, or political activities
- Running an errand for a parent or guardian
- Working or going to or from their place of employment
- Responding to some type of emergency situation

Also, being accompanied by a parent, guardian, or responsible adult approved by a parent or guardian is an exception.

The police if they suspect that the minor is violating the curfew law are to ask the minor their age and inquire about any exceptions. They are to arrest or issue a citation only if they determine that a violation has occurred and there is no exception. A minor arrested for curfew cannot be placed in a jail. Most police departments will call the parent to pick up the child or will escort the child home.

If you don't know whether your community has a curfew call your local police department. If your community has a curfew ordinance obtain a copy of the law and the list of exceptions.

Juvenile Justice Legislation Lesson Plan

Introduction

There are two bills amending the Juvenile Court Act in the 2011 Illinois Legislature which take very differing views of how to address crimes committed by youth. One of these bills House Bill 83 (HB 0083) would clearly establish the principle that a sentence to a state juvenile correction institution should be used as a last resort. The other bill, House Bill 2067 (HB 2067) would require a youth 15 or older who is charged with the possession of a loaded firearm to be tried as an adult. Both bills as of March 20, 2011 have passed out of committee and can be called for a vote in the House.



This lesson plan will allow students to follow the legislation through the legislative process and to learn about alternative methods for addressing crimes committed by young persons.

Objectives of the Lesson Plan

- Learn to use the Illinois General Assembly website and to follow legislation through the process.
- Learn to read legislation
- Gain greater knowledge of the legislative process.
- Become familiar with some of reasons for establishing a juvenile court for young offenders

Grade

This lesson plan is appropriate for high school students. Access to the internet is required.

Step One – Finding the Legislation

Have the students go to the Illinois General Assembly webpage <http://www.ilga.gov> and find HB 0083 and HB2760. These bills can be found by clicking on Bills and Resolutions on the home page and then clicking on the appropriate House Bill number on the screen which appears. Alternatively the bill number can be typed into the box that appears on the left hand column.

Once the appropriate bill appears the student can determine the sponsor and any co-sponsors, the status of the bill, and the bills actual language. The student should be asked to answer the following questions for each of the two bills.

- Who is sponsoring the bill? Are there any co-sponsors? What district does the sponsor represent?
- What is the final action listed for the bill? Has the bill been voted out of committee? Have there been any votes? What was the vote total? Has the bill made it to the Senate?
- What is the language of the bill? Have there been any amendments? At the point in the legislative process that is being observed what is the final language?

The website will allow the user to track the legislative history of the bill. Every bill has a primary sponsor who is responsible for moving the bill through the legislative process. There may be one or more co-sponsors.

Every bill starts in either the Senate or the House of Representative of the General Assembly. These two bills started in the House. In order to become law these bills must pass out of a committee and pass the House with a majority vote. They then will be sent to the Senate where they must once again pass out of a Senate Committee and then receive a majority vote in the Senate. If the bill passes both houses with the same language it will then go to the Governor for signature or veto.

It is not unusual for a bill to be amended several times during the legislative process. These amendments may be made by supporters of the bill to improve the language or they may reflect compromises that have been made with opponents of the legislation. A bill must pass both House and Senate in the same form. If a bill passes one house and then is subsequently amended in the other house, it will be return to the original house for what is known as a concurrence vote. If the original house does not concur the bill will not be passed.



The legislative process is long and difficult and a bill must pass several hurdles before it can become law. By learning how to use the General Assembly webpage the student can observe the process and see the many steps that must be followed before a bill can become a law.

Step Two – Determining What Each Bill Does

Once the bills have been found and the final language determined the student will have to read the bills. Reading legislation can be difficult because technical legal terms are used and legislation often refers to other legislative sections. Bills can often be long because the entire section of the statute which is being amended must be included even if only one word in the section is being change. In reading legislation new language that is being added will be underlined. Language that is being deleted will appear but will be stricken over.

House Bill 83 requires a court to treat sentencing a youth to a juvenile institution as a last resort. It requires the court to sentence a youth to the least restrictive alternative consistent with the social history of the youth and the extent of the criminal behavior. Additionally, if an institutional placement is going to be made the court is to document why a less restrictive alternative is not appropriate. Second if the youth is found delinquent for a misdemeanor or a non-violent felony there is a presumption in favor of a community placement. A presumption means that the court must do what the presumption states unless there is evidence to rule the other way. In this amendment several factors are list that a judge must consider in determining whether the presumption has been overcome. Finally the amendment requires that the process of planning for the youths return to the community begin before the person is sent to a juvenile correctional institution. If this legislation were enacted it would be less likely that a youth would be sentenced to a correctional institution and more likely that a community based alternative would be used. This would be particularly true if the youth were charged with a misdemeanor or a non violent felony because of the presumption.

House Bill 2067 takes the opposite approach to sentencing. In fact, if enacted this bill would require that youth charged with aggravated unlawful use of a weapon m would not be in juvenile court at all, but the case would tried in regular criminal court. If found guilty they would be given an adult sentence and have an adult record. The crime of unlawful use of a weapon occurs when a minor possesses loaded firearm outside the home. There are several other ways that the law can be violated. Section 24-1.6 is a very complicated section of the criminal code. It is incorporated by reference into this amendment. Section 24-1.6 of the Criminal Code may be found by using the General Assembly webpage. On the home page click on Illinois Compiled Statutes. Scroll down the page that appears and click on Chapter 720 Criminal Offenses. On the page that appears the first entry will be the Criminal Code of 1961. Click on this and go to the appropriate section in Article 24 Deadly Weapons. (720 ILCS 5/24-1.6)

Have the students read each of the bills and list what each bill is attempting to accomplish. Do this as a group activity and continue to stress the difficulty of reading legislative language

Step Three – Determining the Merits of Each Bill

Ask the students which bill they would favor. Hopefully, there will be some students on supporting each of the bills. If there is not a more or less even split assign students to one side or the other for purposes of discussion. Ask the students to discuss the pro and cons of each of the bills.

Follow up discussion questions:

- Why do they favor this legislation over the other?
- What is the problem that is being addressed in each bill?
- What is the legislature trying to accomplish with each bill?
- What are the main arguments in support of the legislation you favor?



- What are the main arguments against the legislation?
- Who would be the likely supporters and opponents of each bill?
- Finally, of the two bills which is most consistent with the theory, philosophy and traditions of juvenile justice?

House Bill 83 is being promoted as a way of reducing the number of youth who are sentenced to a state run correctional institution. Proponents of the legislation argue that juvenile institutions are little more than prisons for children, and that rehabilitation and restorative justice can take place more effectively in a community setting. They point toward the high cost of incarceration and the high recidivism rate, repeat offending, by youth released from correctional institutions. Also they point out that there is often little or no aftercare services provided for youth released from a correctional institution. This legislation would require that the aftercare planning begin at the sentencing stage.

House Bill 2067 is an effort to address the serious problem of gun violence. Proponents of the legislation argue that there should be no tolerance for the possession of a firearm. They contend that transferring a youth to the adult court will send a clear message deterring others from carrying weapons. Additionally they contend that the offenders will be removed from the streets for a longer period of time than if they were handled in the juvenile court. This type of legislation is often referred to as automatic transfer legislation from juvenile court. The Juvenile Court Act already requires the transfer of certain offenses where guns are actually used.

There are several websites that a student may use to research juvenile justice issues and the pros and cons of transfer legislation. A good starting point is the website of the Illinois Juvenile Justice Initiative <http://www.jjustice.org> which can also be reached through a link from the ISBA Law Related Education page. The Juvenile Justice Initiative has links to other sites on juvenile justice including the Illinois Criminal Justice Information Authority and the U.S Office of Juvenile Justice and Delinquency Prevention. The Illinois State's Attorney Association is one of the proponents of House Bill 2067.

In the next edition of the news letter there will be an additional lesson plan on the theory, philosophy and history of juvenile justice. This lesson plan was prepared by Frank Kopecky. He can be reached for questions at fkope1@uis.edu.

The Freedom to Differ: First Amendment Rights during World War II.

A lesson plan created by Eileen F. Wilkinson, St. Mark's High School, Wilmington, Delaware
CRADLE Lesson Plan No. 71566A

Here's a lesson plan for use as you prepare for Holocaust Remembrance Day and Memorial Day!

INTRODUCTION: This activity involves students in an exercise which requires them to apply the First Amendment and The Espionage Act of 1917 to situations that occurred during World War II. They are to explain their decisions using the concepts of "the rights of another," "peaceable and orderly protest", and "clear and present danger."

RATIONALE: After World War I, many Americans were critical of the type of censorship employed by George Creel, director of the Committee for Public Information. As a result, there was a climate of increased tolerance during World War II. General Dwight D. Eisenhower encouraged



"the widest possible latitude in the gathering of legitimate news". Photographers employed by The Office of War Information, who ultimately answered to its director, Archibald MacLeish, were given directives on what to include rather than what to exclude on photographic shoots. However, this latitude did not always extend to private citizens. This activity examines three specific instances where freedom of expression was questioned during World War II.

AUDIENCE: This activity is most appropriate for students in grades ten, eleven and twelve. This should complement a unit of study on the Home Front during World War II or a unit on the history of the First Amendment.

TIME TO COMPLETE: The estimated time to complete this activity is three forty-five minute class periods.

GOALS: As a result of this lesson students should be able to:

- * develop the critical thinking skill of decision making;
- * increase their understanding of the First Amendment, as it has developed throughout time;
- * appreciate that the First Amendment is interpreted within an historical context, and realize that this context may influence the interpretation;
- * understand that the right to free expression is not absolute.

MATERIALS:

1. A copy of *West Virginia State Board of Education et al. v. Barnette et al.*, 63 S. Ct. 1178. Available on line at <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/barnette.html> and other sites.
2. Invite a lawyer into class during day one to explain the constitutional issues involved in the *West Virginia Board of Education et al v. Barnette et al* case.
3. A standard American History textbook, such as *The American Pageant*.
4. Excerpts from *Social Justice* which may be found in *The National Lawyers Guild. The Prosecution of "Social Justice" and Charles E. Coughlin under the Espionage Act of 1917*. New York: The Hecla Press, 1942. <http://www.nlg.org/about/>
5. Yes/No cards for Day Three.
6. The First Amendment:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

PROCEDURE, PART ONE

DAY ONE: *West Virginia Board of Education et al v. Barnette et al.* Prior to class, place a statement on the board which you will ask the students to recite which they may find objectionable. It is best to exercise caution here and create a statement which does not address any specific belief.



For example:

I agree wholeheartedly with the views of (insert your name) as presented in this class.

or

I accept that the information presented in this course is 100% accurate.

As class begins ask the students to stand and recite the statement on the board. Explain that the faculty wishes to introduce this saying in order to increase morale in the building and student loyalty to the teachers.

You may immediately experience dissension. Should your class cooperate fully, ask them to be seated and begin discussing how they felt saying this quote. Have them to list other statements they are asked to recite. Write these on the board. Make sure they include the Pledge of Allegiance. Ask them if they have ever felt uncomfortable with this statement. Also ask what should be done if anyone feels uncomfortable with the Pledge.

Ask students to explain how and where their right to speech is protected. Refer to their textbook and get the exact wording of the First Amendment. You should write this on newsprint and tape it to the wall for the duration of this activity.

Explain the situation in the *Barnette* case. Background and synopses can be found on-line. For instance: http://en.wikipedia.org/wiki/West_Virginia_State_Board_of_Education_v._Barnette

Use a lawyer as an outside resource person here. Students in West Virginia who were Jehovah Witnesses did not salute the flag during the 1942 academic year. Based on a prior court decision in 1940 (Gobitis) the students were eventually expelled from school. These students faced the possibility of being charged with delinquency and being placed in reform school for not attending school after their expulsion. Their parents faced the possibility of being fined. A lower court ruled that this did violate the students' right to free speech and ruled in favor of the students and their families. Thus, the West Virginia Board of Education appealed to the U.S. Supreme Court.

Divide the class into three groups which will represent the following:

- The West Virginia Board of Education
- The Barnette family and other families involved expelled from school
- The Supreme Court which included: Chief Justice Harlan Fiske Stone, Justices Owen J. Roberts, Hugo L. Black, Stanley F. Reed, Felix Frankfurter, William O. Douglas, Frank Murphy, Robert J. Jackson, James Frances Byrnes (retired 1003-42 Wiley Rutledge (appointed 02-11-43).

Allow each side five minutes to create an argument to present to the group which represents the Supreme Court. At this time your guest attorney should work with the Supreme Court group and explain the court's decision. Give the West Virginia Group and the Barnette group two minutes to present their argument. Have the students from the Supreme Court group pick one person to express the opinion of the court and one student express the dissenting opinion. Have the guest attorney explain the decision again.



Place the terms "clear and present danger," "peaceable," and "orderly expression", and "the rights of others" on the board.

DEBRIEFING:

- * Ask the students how they felt when they were forced to say something they found disagreeable.
- * Have students name times when the government limits First Amendment Rights.
- * Explain to students how the climate in the United States had changed between 1940 and 1943. By 1943 we believed Hitler would be defeated in time. We were not sure in 1940 This belief may have allowed the court to be more permissive in 1943 with Barnette than it was in 1940 with Gobitis.
- * Have the students name the tests the Supreme Court uses when examining a right to free speech or the violation of this right.

In preparation for the remaining activities distribute Handout 1. Help students fill this out based on today's activity. Tell them they are to use this sheet to summarize the activities of the next two days. It can be collected and graded. For Day Two, assign each student one Supreme Court Justice mentioned above. Have students write a one to two page biography of the Justice as an outside assignment. Explain to the students that they will need the information to answer a quiz/test question later in the week. For Day Three have students prepare a one-page biography on either Arhibald MacLeish or Ezra Pound.

PROCEDURE, PART TWO

DAY TWO

The Proceedings Against Social Justice and Charles E. Coughlin.

Check to see that each student has completed the biography of the Supreme Court Justice assigned to them during Day One. Remind students to have their handouts available so they can complete it as they proceed.

Explain the Espionage Act of 1917. This may be found in any textbook, or search on-line. For instance: <http://www.firstworldwar.com/source/espionageact.htm>

An excerpt is provided for your convenience:

"Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with the intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies, and whoever when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States, or shall willfully instruct the recruiting or enlistment service of the United States, shall be punished by a fine of not more that 10,000 or imprisonment for not more than twenty years or both."

Ask the students what test of the First Amendment which they discussed during Day ones allows this Act to be considered constitutional.



Explain the case of Charles E. Coughlin. Again a textbook may help students with needed background. (Charles E. Coughlin was a Catholic priest who opposed Franklin Roosevelt and the New Deal; he had a radio show and published a magazine *Social Justice*. In April of 1942, Postmaster general Frank C. Walker ordered *Social Justice* to be withheld from the mail. In the case against Charles E. Coughlin issues of *Social Justice* were examined.)

Coughlin was accused of the following:

Appealing to people not to serve in the armed forces.

- Justifying the Axis Powers and their "New orders".
- Creating an impression that the Allies would loose the war.
- Creating distrust of Franklin Roosevelt and the Allies Spreading racial and religious hatred and class conflict.

Have the students discuss if the date these statements were made is of any significance: prior to 1939, between 1939 and December 1941, or after December 7, 1941.

Have the students decide if Charles E. Coughlin was responsible for ideas published as letters to the editor.

Use a continuum to elicit student opinions. one the left place the statement "Charles E. Coughlin should be allowed to print what he wants in his magazine, and it should be allowed in the United States mail." In the middle place the statement "Charles E. Coughlin should be allowed to print what he wants in his magazine, but the government should not have to allow it in the mail." To the far right place the statement "The government has the right to forbid Charles E. Coughlin from printing his magazine, and can punish him for what it contains.

Read quotes from the magazine. These can be found in *The National Lawyers Guild. The Prosecution of "Social Justice" and Charles E. Coughlin under the Espionage Act of 1917.* New York: The Hecla Press, 1942.

Allow students to move along the continuum if they choose. Conclude by telling the students that *Social Justice* was removed from the mail. Because Charles E. Coughlin was a Catholic priest, his religious superiors intervened. They told Coughlin that he was not allowed to be involved in politics anymore. He lived a relatively quiet life until his death in 1979.

DEBRIEFING

What was your original opinion on censoring Charles E. Coughlin?

Did your opinion change, if so why?

Do any of the three tests which limit free expression apply here?

Students should prepare one page biographies of Archibald MacLeish and Ezra Pound. So that each is equally represented, assign half the room one and half another.

PROCEDURE, PART THREE

DAY THREE



Check to see that each student has a biography of either MacLeish or Pound.

To set the tone for this activity, have two volunteers stand at opposite sides of the room and read selections from the writings of Archibald MacLeish and Ezra Pound.

In order to review the chronology of MacLeish's and Pound's lives, divide the students into two lines based on which biography they prepared. Have each student write one fact from their summary. Remind the students not to duplicate facts. After each student has written one fact, lead the class to circle where the lives of the two men intersected.

Explain that Pound broadcasted negative remarks about MacLeish from Italy in April of 1942. MacLeish was then Director of the office of Facts and Figures (which was later renamed the office of War Information). Pound was indicted in absentia in 1943. Pound returned to the United States in May of 1945. He went through a psychiatric evaluation and committed to St. Elizabeth's Mental Hospital located in Washington, D.C.

Give each student a yes card and a no card. A simple way to do this is to designate the cards by color. Read through the following series of questions. Record the number of responses to the questions.

- * Ezra Pound's remarks were dangerous because they were sent over the radio, and we were at war.
- * Ezra Pound had the right to say what he felt about Archibald MacLeish, even if MacLeish was a government official.
- * Ezra Pound Had no right to criticize President Franklin Roosevelt.
- * The United States should have ignored Ezra Pound since he was living in Italy.
- * By going to a mental hospital, Ezra Pound tricked our judicial system.
- * Since the war ended in 1945, the government should have forgotten this whole incident.

DEBRIEFING

- * Allow students to explain their choices from the previous activity.
- * Inform the class that Pound was released from the mental hospital in 1958 and returned to Italy; where he lived until his death in 1972.

EVALUATION

There are numerous ways for the teacher to evaluate the students' performance during this lesson. Here are a few suggestions:

- * Collect the handout given at the beginning of this activity and grade it as to its thoroughness.
- * Devise a quiz similar to the one included in this activity which is based on the handout.
- * Allow students to work cooperatively to compare and contrast the views of two Justices using the biographies they completed after Day One.
- * Distribute a scenario which involves another historical period, such as the Vietnam or Persian Gulf Wars and have the students write their decision as to how the situation should be handled.



Explain that the criteria for evaluation will include developing the concepts of "clear and present danger", peaceable and orderly conduct" and "interfering with the exercise of the rights of another."

* Interested students may complete research assignments on First Amendment Rights during specific eras: The War of 1812, World War I, The Vietnam War and The Persian Gulf War.

TIPS FOR THE TEACHER

* The decisions cited in this lesson are long and sometimes technical. Most students would have difficulty reading these if for no other reason that lack of interest. It is suggested that the teacher summarize the decisions for the students. This can be effectively accomplished through short lectures prior to the debriefing of the activity.

* Many students do believe that First Amendment Rights should be restricted during times of national crisis and will create their own scenario. Allow the students to express this opinion. However, help the students to define a "national crisis" crisis" in specific terms. Also, encourage the students to explain what condition is threatened by the exercise of free speech in the example they have presented.

* Debriefing was covered after each activity rather than after the whole unit. Since First Amendment issues are often controversial, it is best to debrief the class before you send them out for the day. This material involved anti-Semitic remarks. You may need to take time to discuss anti-Semitism. You may wish to state that the opinions of Charles E. Coughlin and Ezra Pound are not held by you/you school. You may also allow students to write any additional comments on a quiz or test. This may point out any issues you need to address with the class.

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HANDOUT ONE

REVIEW SHEET

THE FREEDOM TO DIFFER: FIRST AMENDMENT RIGHTS DURING WORLD WAR II

Barnette

Conflict:

Resolution:

Agent of the government responsible:

Final outcome:

Charles E. Coughlin

Conflict:

Resolution:

Agent of the government responsible:

Final outcome:

Ezra Pound

Conflict:

Resolution:

Agent of the government responsible:

Final outcome:

HANDOUT TWO - QUIZ

THE FREEDOM TO DIFFER: FIRST AMENDMENT RIGHTS DURING WORLD WAR II

True or false

1. Our First Amendment Right to freedom of speech and expression is an absolute.
2. In *West Virginia School Board et al v. Barnette et al* the Supreme Court realized that one of its previous decisions was having a negative effect on children.



3. The *West Virginia School Board et al v. Barnette et al* was a unanimous Supreme Court decision.
4. Charles E. Coughlin was denied to freely express his religion. Social Justice was sympathetic to the Axis Powers.
5. Archibald MacLeish worked quietly to have Ezra Pound released from St. Elizabeth's mental hospital.

Fill the blank

6. *West Virginia School Board et al v. Barnette et al* reversed the _____ decision of 1940.
7. During the 1930's, Charles E. Coughlin opposed the _____, the reform program of Franklin D. Roosevelt.
8. Ezra Pound broadcasted his questionable statements from _____, which was an Axis power.
9. Name four members of the 1943 Supreme Court.

Write a short answer for each of the following:

10. Why did the Barnette children, and other students in West Virginia, refuse to salute the flag?
11. What elements of Social Justice were found in violation of the Espionage Act of 1917?
12. For what was Ezra Pound indicted in absentia?
13. Should our First Amendment Rights be restricted during times of war? Why or why not?

Online Lingo

There's a new form of short-hand that parents and teachers may not know. It's the digital shorthand that's being used in e-mails, instant messages, etc. Do you know what they mean? Some are pretty obvious, but others seem are far less straight forward. See which ones you know.

- | | |
|---------------------------------|------------------------------------|
| 121 – one to one | A/S/L? – age, sex, location |
| BCNY – I'll be seeing you | BF – boyfriend |
| B/W/O – black, white, other | CUL8ER – see you later |
| CUNS - see you in school | DGT - don't go there |
| DIKU – do I know you? | EMA - what is your e-mail address? |
| F2F – face to face | FAWC – for anyone who cares |
| GGOH – got to get out of here | IMS – I am sorry |
| LMIRL – let's meet in real life | LOL – laughing out loud |
| MA - mature audience | NAZ - name address zip |
| NP - nosy parents | P911 – my parents are coming! |



PA - parent alert
PAW - parents are watching
POS - parents over shoulder

PAL - parents are listening
PIR - parent in room
WYRN - what's your real name?

For a more complete list, go to <http://www.missingkids.com/adccouncil/pdf/lingo/onlinelingo.pdf>
Source: *National Center for Missing & Exploited Children*

Sexual Predators and the Computer Age

Hand in hand with the above information, parents and teachers can help to minimize the chances of an online exploiter victimizing children in your care or under your supervision:

- Communicate and talk to your child about sexual victimization and potential online danger.
- Spend time with your children online.
- Keep the computer in a common room in the house, not in your child's bedroom.
- Utilize parental controls provided by your service provider and/or blocking software. While electronic chat can be a great place for children to make new friends and discuss various topics of interest, it is also prowled by computer-sex offenders.
- Always maintain access to your child's online account and randomly check his or her e-mail.
- Teach your child the responsible use of online resources.
- Find out what computer safeguards are utilized by your child's school, the public library and at the homes of your child's friends.
- Understand, even if your child is a willing participant in any form of sexual exploitation, that he or she is not at fault.
- Instruct your children:
 - To never arrange a face-to-face meeting with someone they met online
 - To never upload (post) pictures of themselves onto the Internet or online service to people they do not personally know
 - To never give out identifying information such as their name, home address, school name or telephone number
 - To never download pictures from an unknown source
 - To never respond to messages or bulletin board postings that are suggestive, obscene, belligerent or harassing.
 - That whatever they are told online may or may not be true.

Source: *Federal Bureau of Investigation Innocent Images National Initiative*

Tips for Teens who Socialize Online:

What to Type: Be smart, if you don't use privacy settings, anyone has access to your blog or profile, not just people you know.

DON'T

- Post your cell phone number, address or the name of our school
- Post your friends' names, ages, phone numbers, school names or addresses
- Add people as friends to your site unless you know them in person
- Communicate with people you don't know
- Give out your password to anyone other than your parent or guardian



- Meet in person with anyone you first “met” on a social networking site
- Respond to harassing or rude comments posted on your profile
- Make or post plans and activities on your site
- Post photos with school names, locations, license plates or signs
- Post photos with the name of your sports team
- Post sexually provocative photos
- Respond to threatening or negative e-mails or IMs.

DO

- Check the privacy settings of the social networking sites that you use
- Set privacy settings so that people can only be added as your friend if you approve them
- Set privacy settings so that people can only view your profile if you have approved them as a friend
- Remember that posting information about your friends could put them at risk
- Consider going through your blog and profile and removing information that could put you at risk
- Delete any unwanted messages or friends who continuously leave inappropriate comments
- Report comments to the networking site if they violate that site’s terms of service
- Save or print questionable activity and include date and time
- Tell you parents or guardian if anything happens that makes you feel scared, uncomfortable or confused.

Source: www.2SMRT4U.com (2SMRT4U campaign sponsored by the National Center for Missing & Exploited Children and the U.S. Postal Inspection Service.)

Search and Seizure in Public Schools

SEARCH AND SEIZURE IN PUBLIC SCHOOLS

By: Lauren Evans DeJong

The Fourth Amendment to the Constitution protects United States citizens from unreasonable searches and seizures. It is concerned with privacy and making sure that government entities do not get overzealous in investigating misconduct. School officials and courts are struggling with the issue of how the Fourth Amendment applies to students in public schools. The challenge for school districts and courts is to balance students’ constitutional rights with the need for safety and preventing violence or disregard for school rules.

The Fourth Amendment of the Constitution generally requires that law enforcement officials have probable cause in conducting a search. However, in 1985, the United States Supreme Court determined that although searches in public schools are within the purview of the Fourth Amendment, warrants and probable cause are not required in the context of a search by school officials. The Court stated, “[t]he accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based upon probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on reasonableness, under all of the circumstances, of the search.”

Courts determine whether a search is reasonable by assessing whether there is a reasonable suspicion to justify starting the search and whether the scope of the search is reasonable based on the suspected conduct. Reasonable suspicion exists when there is specific and describable conduct



leading a reasonable person to conclude a student has engaged in prohibited conduct. There must be more than a rumor or speculation that a student has engaged in prohibited conduct. Reasonable suspicion that a student is carrying drugs or weapons will generally not arise because a student wears clothing with depictions of drug paraphernalia or weapons. Rather, school officials must be able to articulate a specific reason for the search.

A search includes any act by a teacher or administrator intruding into a person's protected privacy interests. A protected privacy interest usually refers to places that are not in open public view. This would include opening a locker, inspecting the contents of a student's backpack, feeling an object concealed in a student's clothing, reading a student's notebook, or looking through a student's possessions after he has been ordered to empty his pockets.

Privacy expectations are highest when contact with a person's body occurs and become lower in relation to possessions that can be separated from a student's person. Students' privacy expectations are generally minimized by telling students beforehand that certain locations such as lockers or vehicles parked on school grounds are subject to random searches. Notice can reduce a student's privacy expectation, but will not reduce privacy expectations related to a student's body.

Illinois' School Code authorizes warrantless, suspicionless searches of "lockers, desks, parking lots and other school property and equipment owned or controlled by the school, as well as personal effects left in those places and areas of students". The General Assembly found that as a matter of public policy, students have no reasonable expectation of privacy in those places and areas or in their personal effects left in those places or areas.

Based on the above theories of privacy expectations, courts have generally upheld locker searches, canine searches (generally seen as non-intrusive since there is no expectation of privacy in the air around an object), and searches of personal items if reasonable suspicion exists. Pat-down searches are seen as minimally intrusive and are generally allowed if reasonable suspicion exists. Strip searches are seen as highly invasive and generally not allowed. In fact, in 2009, the Supreme Court held that a strip search of a 13 year old girl suspected of hiding prescription strength ibuprofen on her person violated the girl's Fourth Amendment right against unreasonable search and seizure. However, this recent decision was made only after several decisions by lower courts which gave considerable deference to judgments of school officials in conducting strip searches.

Fundamental questions related to balancing school safety and discipline with students' rights will continue to be debated in the courts, especially as communities become more sensitized to instances of violence and drugs in their schools. Issues of privacy, search and seizure and due process can be highly charged and emotional; arguments abound on both sides of the issues. For these reasons, these issues will be front and center for school officials and students for years to come.

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