LESSON SAMPLER FOR

PATHWAY 1:

LAW AND JUSTICE

American Bar Association
Commission on Civic Education in the Nation’s Schools
OVERVIEW

This “Lesson Sampler” can be used with any Civics and Law Academy format. For three possible models, go to pages 12-13 of the Resource Guide, “Selecting Your Academy Format.” Organized into 8 sessions, this set of 10 lessons follows the “Pathway to Understanding” on Law and Justice, one of six featured in the Resource Guide (pages 5 – 8). The Pathways offer different curricular frameworks for the Civics and Law Academy. In addition to Law and Justice (Pathway 1), the other five are: 2: Power and Empowerment; 3: Constitutions and Constitutionalism; 4: Rights and Responsibilities; 5: Freedom and Equality; and 6: American Identity and Pluralism. The Resource Guide presents concepts, topics, and suggested court cases for each Pathway.

Concepts and Topics: concept of rules, principle of rule of law/due process of law, adversarial legal system, resolving disputes peacefully

Have these items available for each session:
- Handouts required for lessons
- Supplies and equipment: such as AV equipment, flip charts, markers, extra pencils/pens and notepads for participants,
- Refreshments (e.g., soft drinks/water and cookies) and service supplies

Arrange the setting:
- Set up room to facilitate group interaction and movement
- Have tables ready for refreshments, handouts, and other Academy materials
- Have refreshments available as students arrive.

Establish beginning and ending times and stick to them! Sessions that convene later than announced encourage latecomers and dishonor punctual arriviers. Participants will expect sessions to adjourn as announced and are likely to become distracted and disgruntled when sessions go over time.

Plan Ahead

Arrange a Court Visit for Session V
It would be a good time to take participants on a court visit for Session V, after you have completed the four sessions focusing on Law and Justice. This would be a good chance for students to test their new knowledge of abstract principles with the realities of the legal system. Having an off-site experience for your 5th Academy session will be something for participants to look forward to and gives a break in the usual schedule.


Decide on Guest Speakers and Presenters
Review the sessions to determine how guest speakers and presenters would enrich the experience for participants. Identify and invite them well ahead of the date of the session.

CONTENTS

This "Lesson Sampler" includes 10 lessons organized into 8 sessions. Each lesson includes detailed, step-by-step instructions on how to use it as part of an overall Academy curriculum.

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SESSION 1 – LAW AND JUSTICE: AN INTRODUCTION
[Time: 1 hr & 45 min]

Concepts and Topics: concept of rules, principle of rule of law/due process of law

Lessons
“Rules, Rules, Rules: The Eraser Game”
“Lesson Plan: Fractured Quotes on Justice”

Handouts
Prepare separate copies of the “Fractured Quotes” and the “Answers.”

Procedure
OPENING
(1) Welcome [15 minutes]
  - Introduce yourselves and participants
  - Give brief background on Civics and Law Academies
  - Review the curricular focus of this Academy (the Pathway you are following), the topics to be covered, and the schedule of sessions [Distribute handout with this information.]
  - Review session agenda

(2) Warm Up [15 minutes]
  - Use a warm-up group building activity such as The Eraser Game that fits the topics covered in this Academy, which focuses on Law and Justice.
  - Although this strategy was originally designed for young children, it works well with all age groups. Just follow the instructions given for playing the game adapting your words to fit the age of your participants. In reviewing problems in step #4, ask such questions as: Why were you so frustrated by the game? Was the game fair? What would make it fair? What makes rules and laws fair? [Stop here and move into the lesson.]

Curricular Focus
(3) Focus on Justice [60 minutes total]
  - [20 minutes] Begin this lesson by using the Brainstorming strategy [see page 14 of the Resource Guide] to explore participants’ understanding of the concept of justice. Ask an open-ended question on justice such as: What is justice? What are some examples of justice? What makes a just society?

  - [40 minutes] When you have wrapped up the brainstorm, turn to the “Lesson Plan: Fractured Quotes on Justice.” Distribute copies of the “Fractured Quotes” and follow the instructions given in this lesson plan. [You may wish to explicate the term “Answers” by noting that participants learn what was said and who said it.]
Closing

(4) Debrief and Wrap Up [5 minutes]
Briefly review what students said about justice in their brainstorm. Do they now have additional ideas to add to that list?

(5) Look Ahead [10 minutes]
Tell participants that in the next three sessions they will be examining three aspects or kinds of justice: corrective, procedural and distributive justice. Challenge participants to offer their thoughts on what each means. Don’t comment on any responses but close by telling them they will have a chance to evaluate their ideas in the coming sessions.
Alternatively: Have them write down their ideas and keep them to check against what they find out later.

(6) Adjourn – remind participants when and where they will meet next!
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RULES, RULES, RULES: THE ERASER GAME*

Begin the lesson by telling the participants that you want them to play the “Eraser Game.” Divide the group into two straight lines and say something like, “Okay, everybody, let’s play the Eraser Game.” Don’t say anything else. The participants will probably look very confused and ask you, “How do you play this game?” Lead them through a process that helps them understand that they need to understand the rules in order to play the game.

Procedures

1. Tell the first person in each line to pass the eraser from the front to the back of the line. Tell the last person to bring the eraser up to the first person in the line.

2. After participants begin to play, interrupt the game at various times to give one of the following directions:
   
   “Oh, you must pass the eraser with your eyes closed.”
   
   “Oh, wait, you must pass the eraser with your other (left or right, as appropriate) hand.”
   
   “Oh, everyone should be on their knees.”
   
   “Just a minute. You must come backwards towards me when you bring the eraser back.”

3. After each (arbitrary) interruption, ask the teams to begin again.

4. Stop to review problems the participants are having in playing the game. Note that they had difficulties because of the way the rules were given. Emphasize that a lack of agreement about the rules and constant and arbitrary changes of direction lead to confusion.

5. Write, “A rule should be easy to follow” on the board. Work with the participants to develop a clear set of rules for the Eraser Game. List their suggestions and then vote to select a few simple rules for the game.

6. Play the game again to demonstrate that clear rules and directions make for a good experience while playing—or working—together.

*The Eraser Game is adapted from the “Buckle Game” designed by Harriet Bickelman Joseph.

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Lesson Plan: Fractured Quotes on Justice

Suzin Glickman

Objectives
To present an opportunity for students to consider what "justice" means, and to facilitate discussion. Students will become exposed to how justice was viewed by others throughout history. In addition, the activity will provide them with an opportunity to exercise creativity, synthesis and comparing and contrasting skills.

Note: This lesson can be adapted to teach about famous quotes by one individual, like Confucius or Martin Luther King Jr.

Target Group
High school, middle school or upper elementary grades.

Time Needed
One class period. The lesson was conceived as a way to introduce the concept of justice to students. It can be used at any point in such a discussion.

Methods
Fill-in the blank, compare and contrast, discussion. Students may work individually, in small groups, or as a class.

Materials Needed
Copies of the "Fractured Quotes" handout. Or, as an alternative, the quotes may be copied onto the board or a flip chart, and students can work on that.

Procedures
Introduce the topic by explaining to students that they are going to be discussing notions of justice. Next, distribute the handout and review the instructions for completing it.

Tell students to read the fractured quotes and have them fill in the words they think are missing. It may be helpful to complete the first quote together as a group or to provide students with a sample. Reinforce with students the idea that the topic they are considering is justice.

Students can share some of their responses with their classmates. You may want to record some of them on the board or on a flip chart (having the fractured quote already there would be helpful).

Next, distribute the sheet that has the actual quotes on them, identified by author. Along with the students, compare and contrast the quotes as completed by the students with the actual quotes. Students will enjoy this aspect of this activity, and may also be surprised and impressed by the fact that their answers may not be that different from the actual quote.

The activity is designed to spark discussion about the definition of justice. It is a nebulous concept and while its basic meaning—fairness—is universal, concepts and interpretations of it can vary greatly, as students will see during the activity.

Possible questions to pose to students could include:
• How is justice viewed in the U.S.? Do different groups have different views of what justice is and whether our society achieves it?
• How is justice viewed internationally? Do standards of justice resolve international disputes? What is the role of the World Court? Do the nations of the world agree on standards of justice?
• How can we pursue justice both locally, nationally and internationally?
• What are some of the consequences when justice isn’t served or it fails? Are there self-correcting mechanisms in our systems (i.e., appeals, ability to change unjust laws through legislative action)?

At this point in the lesson, review the quotes and speak about them and the views of the persons who said them. Encourage students to grapple with the concepts of justice presented and develop their own definition of justice. Bring this aspect of the lesson to closure, establishing a context for further treatment of the topic of justice.

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Fractured Quotes: What Is Justice

Directions: Each of the quotes below attempts to define "justice" or indicate its importance. This exercise gives you the opportunity to express your views. Fill in the blanks, expressing as best you can your notions of justice.

1. Legal justice is the art of the _______ and the _______.

2. The love of justice in most men is simply the fear of _______.

3. Man's capacity for justice makes _______ possible, but man's inclination to injustice makes _______ necessary.

4. One man's _______ another man's _______.

5. Why has _______ been instituted at all? Because the passions of men will not conform to the dictates of reason and _______ without constraint.

6. _______ anywhere is a threat to _______ everywhere.

7. Justice is truth in _______.

8. ...the United States of America...established upon these principles of _______, _______, _______ and _______.

9. Justice, justice, shall thou _______.

10. There is no _______ so truly great and godlike as justice.

11. There is no such thing as _______—in or out of _______.

12. Delay of _______ is _______.

13. Let _______ be done, though the _______ fall.

14. _______ discards party, friendship, and kindred, and is therefore represented as _______.

15. Whenever a separation is made between _______ and justice, neither, in my opinion, is safe.

16. Justice is the sum of all _______ duty.

Answers

1. "Legal justice is the art of the good and the fair."
   —Anonymous

2. "The love of justice in most men is simply the fear of suffering injustice."
   —François, Duc de la Rochefoucauld, 1613-1680.

3. "Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary."
   —Reinhold Niebuhr, The Children of Light and the Children of Darkness, 1944.

4. "One man's justice is another man's injustice."
   —Ralph Waldo Emerson, 1803-1882, Circles.

5. "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice without constraint."

6. "Injustice anywhere is a threat to justice everywhere."
   —Martin Luther King, Jr., Letter from the Birmingham Jail, 1963.

7. "Justice is truth in action."
   —Benjamin Disraeli, Earl of Beaconsfield, Speech, February 11, 1851.

8. "...the United States of America...established upon these principles of freedom, equality, justice and humanity..."
   —William Tyler Page, 1868-1942, The American Creed.

9. "Justice, justice, shalt thou pursue."
   —The Bible, Deuteronomy 16:20.

10. There is no virtue so truly great and godlike as justice.

11. There is no such thing as justice—in or out of court.
    —Clarence Darrow, 1857-1938, Interview with N.Y. Times, April 19, 1936.

12. Delay of justice is injustice.
    —Walter Savage Landor, 1775-1864.

13. Let justice be done, though the heavens fall.
    —William Watson, 1602.

14. Justice discards party, friendship, and kindred, and is therefore represented as blind.

15. Whenever a separation is made between liberty and justice, neither, in my opinion, is safe.
    —Edmund Burke, 1729-1797.

16. Justice is the sum of all moral duty.
    —William Godwin, 1756-1836, An Enquiry Concerning Political Justice (1793).
SESSION II - CORRECTIVE JUSTICE
[Time: 1 hr & 45 min]

Concepts and Topics: principle of rule of law/due process of law

Lesson
“What are the Goals of Corrective Justice?”

Handouts
Intellectual Tool Chart for Corrective Justice Issues (p. 24 of lesson)
Critical Thinking Exercise 1
Critical Thinking Exercise 2

Procedure
Opening
(1) Welcome [5 minutes]
  - Refer to focus on justice during last session
  - Review session agenda

(2) Warm Up [10 minutes]
Use the Introduction to the Teaching Strategy as a warm up putting students into small groups to review the newspaper article you have selected.

Curricular Focus
(3) Focus on Corrective Justice [80 minutes]
Follow the instructions for the rest of the lesson.

You will need to carefully monitor the time used for the suggested lead-in activities in order to assure adequate time for Critical Thinking Exercises 1 and 2 on page 23 of the lesson. Exercise 2 will consume the most time.

Closing
(4) Debrief and Wrap Up [5 minutes]
Review the goals of corrective justice summarized on page 21 of the lesson—correction, prevention, deterrence. How does what they now know about corrective justice fit with the idea they had at the close of the first session?

(5) Look Ahead [5 minutes]
Inform the participants that the next session will focus on procedural justice.

(6) Adjourn – remind participants when and where they will meet next!
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What Are the Goals of Corrective Justice?

Joseph Jackson

Purpose of Lesson

This lesson introduces students to the goals of corrective justice and examines the difference between wrongs and injuries. When your students have successfully completed the lesson, they will be able to define corrective justice, explain its goals, and identify wrongs and injuries in different situations.

Terms to Know

wrong
injury
prevention
deterrence
proportionality
distributive justice

Introduction

If a man destroy the eye of another, they shall destroy his eye.
—Hammurabi, about 1750 B.C.

Find a newspaper article that describes a response to a wrong, an injury, or both. Have your students read the article and decide whether the response is fair and proper. Ask them to think of some other news stories they’ve heard where a wrong or injury was involved and someone sought a remedy. What do the students think of Hammurabi’s remedy above?

What Is Corrective Justice?

Use the following situations to introduce students to the concept of corrective justice. Tell students that each situation involves an issue of corrective justice. Corrective justice refers to fair or proper responses to wrongs or injuries.

- Convicted of theft, Mustafa was taken into the public square, where the executioner chopped off his right hand with a sword.
- While Paul was stopped for a red light, Sarah crashed into his car. The court ordered Sarah to pay $5,500 for damages to Paul’s car and $8,376 for his medical bills.
- Three members of a gang beat and robbed a 60-year-old woman standing at a bus stop. She was hospitalized for two months and is permanently crippled by the beating. The gang members were arrested and placed in juvenile hall for six months, where they were given psychological counseling, released, and placed on probation for one year.

What Do Your Students Think?

Ask students what is fair or unfair about the response to each wrong or injury described above. What values and interests, other than fairness, are important to weigh in choosing a proper response to a wrong or injury?

Why Is Corrective Justice Needed?

Explain to your students that, in all societies, there are situations in which one individual or group wrongs or injures another. The wrong or injury may be accidental or intentional. Historically, people have felt that, if someone commits a wrong or causes an injury, things should be set right again in some way. Ideally, this means restoring things to the way they were before the wrong or injury occurred. In some cases, this may be possible, but, in many cases, it is not. For example, one cannot restore a life. Since it is not always possible to restore things to the way they were before, people have developed other ways to respond to wrongs and injuries.

Fair or proper responses to wrongs or injuries may vary widely. In certain situations, one might wish to require a person to compensate in one way or another for a wrong or injury done to others. Sometimes, courts punish wrongdoers by fines, imprisonment, or even death. Such responses may not only correct the wrong or injury, but also may prevent or discourage further wrongs or injuries. On the other hand, the most desirable or proper response may serve other purposes, such as the wish to forgive or pardon a person. For example, if a friend with little money accidentally broke something you owned, you might not want to ask the friend to replace the object or compensate you for the loss. However, you might expect an apology.

The goals of corrective justice can be summarized as:

- correction—providing a remedy or imposing a penalty to set things right in a fair way
- prevention—responding in a way that will prevent the person from wronging or injuring again
- deterrence—discouraging people, for fear of the consequences, from committing wrongs and causing injuries

Ensuring proper responses to wrongs and injuries is important not only with regard to criminal behavior and civil matters but also in families, schools, and other areas of the private sector. Correction, prevention, and deterrence are essential to society’s very existence. Without them, disorder and chaos may result.
What Do Your Students Think?

1. Have students work with a study partner or in a small group to make a list of the most common responses to wrongs or injuries that they have observed.
2. Have students describe some situations in which a response to a wrong or injury was fair. Why was it fair?
3. Have students describe some situations in which a response to a wrong or injury was unfair. Why was it unfair?
4. What might happen in a family, school, community, or nation if no attempts are made to provide fair responses to wrongs or injuries, or to deter or prevent them? Why?
5. In what types of situations might it be right to let a wrong or injury go uncorrected, but still do something to make sure such wrongs or injuries do not occur again?

How Should We Deal with Corrective Justice Issues?

Explain to students that deciding how to respond to a wrong or injury may be simple in some situations, such as when a young child takes away the toy (property) of another child. Our sense of justice may be met by merely restoring the toy to the owner. Our interest in preventing such things from happening again may be met by informing the child that it is wrong to take another person's property without permission. It is hoped these actions will teach the child proper behavior.

In other situations, finding a fair response to a wrong or injury may be more difficult. Unfortunately, there is no simple formula in difficult situations. There are a number of "intellectual tools," however, that can be useful when making such decisions. They form a procedure students can use to make thoughtful decisions about how respond. Share the steps in this procedure with your students.

1. Identify the wrong and/or injury.
2. Evaluate its seriousness.
3. Evaluate the wrongdoer's conduct.
4. Evaluate background and character.
5. Consider possible responses to the wrong or injury and the reasons for choosing them.
6. To decide what the best response(s) is, consider related goals, values, and interests.

The chart organizes these steps for use with the second critical thinking exercise below. Have copies of the chart on hand for your students. Review "Terms to Know" with them before they use the chart.

What is the Difference Between Wrongs and Injuries?

In examining issues of corrective justice, it is important for your students to understand the difference between wrongs and injuries.
Hammurabi was the great Babylonian king who developed the Code of Hammurabi—one of history’s first law codes. Its main principle was that the strong should not injure the weak. Hammurabi ruled Babylon from 1792-1750 B.C. The stone slab on which the code was carved was found in Iran in 1901. It shows Shamash, the Babylonian patron of justice, commanding the king to establish just laws. If your students were the American “patrons of justice,” what codes would they command Congress to enact? On what would they place the codes, and where would they display them?

- A wrong is conduct that violates a duty or responsibility that is imposed by laws, rules, customs, or moral principles.
- An injury is harm or damage to persons or property, or violation of a person’s rights.

In some cases, conduct may be wrong and also cause an injury. In others, conduct may be wrong but cause no injury. There also may be injuries caused without wrongful conduct. The following exercise asks your students to determine whether situations involve a wrong, an injury, or both.

**Critical Thinking Exercise 1:**
*Examining Wrongs and Injuries*

With study partners, have your students read each of the following situations, answer the questions at the end of the exercise, and share their answers with the class.

1. George drove his car through a red light. Fortunately, no accident occurred.
2. Will, a mechanic, forgot to tighten the wheels after he changed the tires. The left front wheel came off while the customer was driving, and the car crashed into a parked truck.
3. When Monica dove for the volleyball to save the point, she slipped and broke her wrist.
4. Dozens of people died and hundreds of homes were destroyed when the hurricane swept across southern Florida.
5. The security guard shot at the bank robber but missed. The bank robber took a hostage to ensure his escape. Later, the hostage was released.

**What Do Your Students Think?**

1. In each situation, what were the wrongs and/or injuries?
2. In which situations does your sense of fairness or justice make you want to respond in some way to “set things right”?

**Critical Thinking Exercise 2:**
*Proposing Responses to Wrongs and Injuries*

Divide your class into four groups. Assign each group one of the following situations. After reading it, the group will answer the questions at the end of the exercise and use the tool chart to organize a class presentation of their answer.

1. Leslie went into a department store and tried on a shirt. She really liked the way it looked but didn’t have enough money to pay for it. Leslie decided to steal the shirt. She put it into her purse and left the store. Suddenly, a security guard grabbed her by the arm. She was caught.
2. Jalil drank too many beers while watching a football game with his friends. On the way home, he failed to stop as the traffic light turned red. Jalil’s car smashed into the side of a small pickup truck, killing the passenger and seriously injuring the driver. Jalil also suffered injuries. He is not expected to regain full use of his legs.
3. Peggy and Greg went to the same school. They had many of the same friends. One day, Peggy made fun of Greg’s haircut. Greg turned red with embarrassment. Later that day, he decided to get even. He took some scissors, sneaked up behind Peggy, and cut off a big piece of her hair.
4. Anita and her one-year-old daughter had just left the house. Suddenly, two men appeared at the side of the car and opened the door. “Get out!” they shouted. “We’re taking this car.” Anita screamed, “My baby!” The men grabbed Anita, pulled her out of the car, jumped inside, and started to drive. Anita’s arm was caught in the seat belt. She was dragged alongside the car. The driver wouldn’t stop. He drove the car against a fence to knock Anita off, and she was killed. The men stopped, put the baby on the side of the road, and sped away. Four hours later, they were caught.

**What Do Your Students Think?**

1. What are the wrongs and injuries described?
2. Given the information you have, what do you think is a fair or proper response to the wrongs and injuries?
3. What purposes or goals are your responses designed to promote?
4. What additional information might help you decide on a fair or proper response? Why might this information be important?

**Using the Lesson**

Encourage your students to interview professionals who are responsible for dealing with wrongs and injuries, such as police officers, lawyers, judges, probation officers, or school principals. As well as asking the professionals to describe some situations that they have handled, the students can identify other wrongs and injuries and ask the professionals for ideas about how to best respond.
# Intellectual Tool Chart for Corrective Justice Issues

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<th>Questions</th>
<th>Answers</th>
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<tbody>
<tr>
<td>1. What was the wrong, if any? What was the injury, if any?</td>
<td></td>
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<tr>
<td>2. How serious was the wrong and/or injury? Consider:</td>
<td></td>
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<tr>
<td>- Extent: How many people or things were affected?</td>
<td></td>
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<tr>
<td>- Duration: How long did the wrongful or injurious conduct last?</td>
<td></td>
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<tr>
<td>- Impact: How severe was the harm or damage?</td>
<td></td>
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<tr>
<td>- Offensiveness: How objectionable was the wrongful conduct in terms of</td>
<td></td>
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<tr>
<td>your sense of right and wrong, human dignity, or other values?</td>
<td></td>
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<tr>
<td>3. How wrongful was the wrongdoer's conduct? Consider:</td>
<td></td>
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<tr>
<td>- State of mind: Was the person's conduct intentional, reckless, or</td>
<td></td>
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<tr>
<td>merely careless? Was the person aware of probable consequences?</td>
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<tr>
<td>- Justifications or excuses: Was the person provoked, or were others</td>
<td></td>
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<tr>
<td>partially responsible? Did the person have good motives?</td>
<td></td>
</tr>
<tr>
<td>4. What is the wrongdoer's background and character? Consider:</td>
<td></td>
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<tr>
<td>- Past history: Has the person committed similar wrongs in the past?</td>
<td></td>
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<tr>
<td>- Personality and character: Is the person generally trustworthy,</td>
<td></td>
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<td>careful, nonviolent, and considerate of others' rights?</td>
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<tr>
<td>- Regret or remorse: Is the person sorry for the conduct or indifferent</td>
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<tr>
<td>about having committed the wrong or caused the injury?</td>
<td></td>
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<tr>
<td>5. What type of response is needed? Consider whether to:</td>
<td></td>
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<tr>
<td>- Inform</td>
<td></td>
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<tr>
<td>- Overlook or ignore</td>
<td></td>
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<tr>
<td>- Forgive or pardon</td>
<td></td>
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<tr>
<td>- Punish</td>
<td></td>
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<tr>
<td>- Require items to be restored</td>
<td></td>
</tr>
<tr>
<td>- Require compensation or payment</td>
<td></td>
</tr>
<tr>
<td>- Treat or educate</td>
<td></td>
</tr>
<tr>
<td>6. What do you think the best response would be? Consider:</td>
<td></td>
</tr>
<tr>
<td>- The goals of correction, prevention, and deterrence</td>
<td></td>
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<td>- The principle of proportionality (the punishment should fit the</td>
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<td>crime)</td>
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<td>- The values of distributive justice, human dignity, human life,</td>
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<td>freedom, practicality, revenge, and mercy</td>
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<td>Explain the reasons for your decision.</td>
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SESSION III – PROCEDURAL JUSTICE
[Time: 1hr & 45 min]

Concepts and Topics: principle of rule of law/due process of law

Lesson
“What is Procedural Justice?”

Preparation and Handouts
This lesson has all the content you will need. However, it does require reformatting of text for handouts and some adjustments in procedures.

Prepare these sections for handouts
- Introduction—prepare separate copies of the 4 situations and the 4 goals of procedural justice (p. 28 of the lesson)
- Fair Procedures: The Trial of Sir Walter Raleigh [pp. 28-29 of the lesson]
- Evaluating Whether Procedures Are Fair [pp. 29-30]—prepare copies for students to use by removing the answers in parentheses and leaving space for students to give their answers. [Note that Question 3c focuses on Distributive Justice, which will be covered in the next session. Therefore, you might consider just dropping it from this evaluation form.]

Procedure
Opening
(1) Welcome [5 minutes]
- Refer to the focus on corrective justice from the prior session
- Review session agenda

(2) Warm Up [10 minutes]
Distribute copies of the 4 situations and have students work in pairs to answer these questions about each: Is it fair? Why or why not? If not fair, what could make it fair?

Curricular Focus
(3) Focus on Procedural Justice [80 minutes]

Opening exercises [15 - 20 minutes]
- Distribute copies of the 4 goals of procedural justice. Ask students which goal was achieved or not achieved in each situation.

- Post the words “keystone of liberty” and “heart of the law.” Ask students why (as the text says) “Scholars and others who have studied the subject of procedural justice often claim that it is the “keystone of liberty” or the “heart of the law?” Ask: What might they mean by this? Follow up by summarizing the commentary in the text.

- Use the “What do you think” questions for brief small or whole group discussions.
Core exercise [45 – 60 minutes]

- Have students work in small groups to read “Fair Procedures: The Trial of Sir Walter Raleigh” and complete the evaluation form you have prepared.

- When the groups have finished, lead the participants in reviewing their responses. As each question is posed, ask each group for their response, discuss any differences and work to consensus. Be sure to discuss the italicized terms – “comprehensiveness, public surveillance, etc.” — and probe what each contributes to procedural justice and why the composite is critical?

Closing

(4) Debrief and Wrap Up [5 minutes]
Review the goals of procedural justice that you distributed. How does what they now know about procedural justice fit with the idea they had at the close of the first session?

(5) Look Ahead [5 minutes]
Inform the participants that the next session will focus on distributive justice. What do they think is involved in distributive justice? Can they give some examples?

(6) Adjourn – remind participants when and where they will meet next!
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Due Process

The following lessons are taken from several Law in a Free Society K-12 curriculum units on procedural justice, or due process. They are concerned with the fairness of the procedures used to gather information and make decisions.

The opening portion of the exercise could be used with students at any grade level 7-12. It introduces the concept of procedural justice with relatively simple examples.

For more advanced students (say those in high school), you might want to use the case of Sir Walter Raleigh (1603), which is included in this lesson, to illustrate how due process developed, and why the framers of the Constitution considered it vital. For younger students, use the case of John Lilburne (1637), in the box on page 30, and ask students to answer the same questions as follow the Raleigh case.

Introduction

Give students the following situations and ask them if they are fair.

- You are accused of having done something wrong and are punished immediately without having had an opportunity to tell your side of the story.
- You and several friends have planned to meet to go together to see a motion picture. When you arrive at one of the friends' homes to discuss which show the group should see, you are irritated to find the group has already made the decision to see a film in which you have no interest, without waiting to give you an opportunity to express your opinion.
- A city council holds a hearing during which it decides how to spend five million dollars of tax money. Notice of the hearing is published so that interested individuals and groups from the community may attend the meeting and express their opinions on how the tax funds should be used.
- A suspected terrorist is tortured for five days before confessing to having participated in several bombings in which a number of people were killed.

Each of the above situations involves an issue of procedural justice. Procedural justice refers to the fairness of the ways certain things are done. More specifically, procedural justice refers to (1) the fairness of the ways information is gathered, and (2) the fairness of ways decisions are made. (It does not refer to the fairness of the decisions themselves.)

The goals of procedural justice are: (1) to increase the chances that all information necessary for making wise and just decisions is gathered, (2) to ensure the wise and just use of information in making decisions, (3) to protect the right to privacy, human dignity, freedom, and other important values and interests such as distributive justice and corrective justice, and (4) to promote efficiency.

The "Keystone of Liberty"

Scholars and others who have studied the subject of procedural justice often claim that it is the "keystone of liberty" or the "heart of the law." Observers of world affairs have sometimes claimed that the degree of procedural justice present in a country is a good indication of the degree of freedom, respect for human dignity, and other basic human rights in that country. A lack of procedural justice is often considered an indication of an authoritarian or totalitarian political system. Respect for procedural justice is often a key indicator of a democratic political system.

People who are not familiar with the subject often place less importance on procedural justice than on other values or interests. To the average person it is sometimes difficult to believe that the way information is gathered and the way decisions are made are as important as the outcome. Some might claim, for example, that it is not so important how the Congress or the president or the courts make their decision as what decisions they make. It is sometimes difficult to be as concerned about how the police gather evidence on a suspected murderer or what procedures are used in the trial of such persons as about making right decisions and punishing guilty persons and/or putting them in a place where they cannot hurt anyone else.

WHAT DO YOU THINK

1. What situations have you observed in your home, school, and community in which issues of procedural justice have arisen?
2. Why might adherence to the goals of procedural justice be important in the private sector?
3. What might be the differences in adherence to the goals of procedural justice among democratic, authoritarian, and totalitarian political systems? What examples can you give from recent or historical events?

Fair Procedures: The Trial of Sir Walter Raleigh (1603)

Ask students to read the following account of the arrest and trial of Sir Walter Raleigh. Then ask them the questions that follow.

Sir Walter Raleigh (1554-1618) was one of the most colorful figures in English history. Soldier, sailor, explorer, poet, statesman, scientist—Raleigh seemed to do well in almost everything he tried.

As a young man, Raleigh caught the attention of Queen Elizabeth I of England, who was impressed by his handsome appearance, sharp wit, bold advice, and daring exploits. A fierce fighter and expert seaman, Raleigh rapidly became one of the queen's favorites.

When Elizabeth died in 1603, Raleigh had the bad luck to anger her successor, James I. This gave Raleigh's enemies, and he had made many over the years, a chance to plot against him. They told the new king that Raleigh had plotted to overthrow him and put Lady Arabella Stuart on the throne. They claimed that he had planned this rebellion with the help of a man named Lord Cobham.
On the night of July 20, 1603, as Raleigh stood on the
terrace of his home talking with friends, there was a
loud knock at the door.
"In the name of his majesty, James I, open up," rang
out a familiar voice
Suddenly the door was flung open and Sir Robert Cecil,
First Secretary to the king and Raleigh's sworn enemy, burst
in. With him were several members of the king's guard.
"In the king's name I place you under arrest," Cecil
said. "On what grounds?" Raleigh asked.
But Cecil would not reply and Raleigh was taken away.
His friends dared not protest.
Raleigh was questioned by Cecil in private. He had no
chance to know the full charges against him or to confront his
accusers. He was not permitted the help of a lawyer. Instead
he had to rely only on his quickness, and wit, and basic
knowledge of law and the current political situation.
During the time that he was being questioned by
Cecil, Raleigh learned that the First Secretary had
tricked Lord Cobham into bringing charges of treason
against him by telling Cobham that he, Raleigh, had
accused Cobham of that crime.
A wave of hopelessness swept over Raleigh. If the
king wanted him dead, there was little he could do. Judges
had lost their offices and juries had been put in jail for
acquitting prisoners that the king wanted found guilty.
There was almost no evidence against Raleigh. While
he may have known something about the plot against
the king, he was not a conspirator.
Raleigh was brought to trial on November 17, 1603.
The proceedings, which were directed by a group of
commissioners, took place behind locked doors.
Among the commissioners at Raleigh's trial was Lord
Thomas Howard, who had fought with Raleigh as a soldier
and hated him. There was Lord Henry Howard, who
later admitted that he had actually started the plot
against the king for which Raleigh was now being tried.
Sir Robert Cecil, the man who had trapped Raleigh in
the first place, was also one of the commissioners.
Raleigh had prepared himself as well as possible. But since
he did not have the help of a lawyer, this was a difficult
task. All Raleigh was allowed in the way of a defense was
ink and paper with which to take notes. He could not
speak until he was given permission to do so, and this
permission was almost never given. Whenever Raleigh
rose to protest a point in the prosecution's story against
him, or to tell his own version about what his involvement
in the plot actually was, he was silenced immediately.
The "confessions" written by Lord Cobham were the
most important evidence used against Raleigh. Raleigh
asked that Lord Cobham be brought to court so that he
could face and question him.
Lord Cobham was alive and could have been brought
to the trial. But the commissioners were afraid that in
this way Raleigh could prove his innocence. They refused
to let Raleigh face his accuser.
The commissioners took just fifteen minutes to find
Raleigh guilty. He was sentenced to be executed but, on
the day his sentence was to be carried out, Raleigh's
punishment was reduced. He spent the next thirteen years,
until 1616, as a prisoner in the Tower of London. Whenever
Raleigh would ask to speak with the king, in order to
have his case reopened, his request was always denied.

Evaluating Whether Procedures Are Fair

1. Information Sought or Decision to be Made
   a. What is the information being sought? (Evidence of
      whether Raleigh was involved in a plot to overthrow
      the king.)
   b. What is the decision being made? (Whether Raleigh
      was guilty of treason.)

2. Discovery and Use of Information
   a. Comprehensiveness
      To what degree does the procedure being used increase
      the chances that all information necessary for a
      wise and just decision is discovered?
      - What steps furthered this goal and how? (None).
      - What steps did not further this goal and how?
        (Raleigh was denied the right to speak at his
        trial, to have witnesses on his side, to have a
        lawyer help him answer the accusations, or to con-
        front and cross-examine his accuser.)
   b. Public Surveillance
      To what degree do the procedures used allow
      interested members of the public to observe how
      information is being gathered and/or used in the
      making of decisions?
      - What steps furthered this goal and how? (None).
      - What steps did not further this goal and how?
        (The trial was held in secret "behind closed doors.").
   c. Effective Presentation
      To what degree do procedures enable interested persons
      to effectively present information they wish to be
      considered in the decision making process?
      - What steps furthered this goal? (None).
      - What steps did not further this goal and how?
        (Several of the commissioners hearing the case were
        Raleigh's enemies and were responsible for his arrest
        and trial. Also, judges and juries knew that if
        they set free someone the king wanted found
        guilty, they could be put in prison.)
   d. Impartiality
      To what degree has there been impartiality in
      gathering information and/or making decisions?
      - What steps furthered this goal and how? (None)
      - What steps did not further this goal and how?
      (Several of the commissioners hearing the case were
      Raleigh's enemies and were responsible for his arrest
      and trial. Also, judges and juries knew that if
      they set free someone the king wanted found
      guilty, they could be put in prison.)
   e. Reliability
      To what degree do the procedures insure the reliability
      of the information gathered?
      - What steps furthered this goal and how? (None),
      - What steps did not further this goal and how?
      (The person who had brought charges against
      Raleigh had been tricked into doing so by one of the
      commissioners in order to save himself from
      prosecution. Raleigh was not allowed to confront
      and cross-examine this person.)
   f. Notice
      To what degree do the procedures provide inter-
      ested persons adequate notice of the reasons for

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gathering information and/or the time of a hearing to enable them to make adequate preparation?
* What steps furthered this goal and how? (None)
* What steps did not further this goal and how? (Raleigh was not informed of the charges against him until long after his arrest or of details until his trial.)

h. Detection and Correction of Errors
To what degree do the procedures enable interested persons to review what was done in order to detect and correct errors?
* What steps furthered this goal and how? (None)
* What steps did not further this goal and how? (Raleigh was imprisoned for 13 years and his requests to speak with the king to have his case reopened were all denied.)

3. Protection of Related Values and Interests
a. Privacy and Freedom
To what extent, if any, does the procedure protect the right to privacy or freedom?
* What steps furthered this goal and how? (None)
* What steps did not further this goal and how? (Raleigh imprisonment)
* Did the procedure endanger freedom for the individual or society? (The lack of procedural safeguards endangered Raleigh and all of society.)

b. Human Dignity
To what extent, if any, does the procedure protect the right of each person to be treated with dignity no matter what his beliefs or actions may be?
* What steps furthered this goal and how? (None)
* What steps did not further this goal and how? (All of the procedures used violated basic rights to proper procedures, protection of the innocent, etc.)

c. Distributive Justice
To what extent, if any, does the procedure protect basic principles of distributive justice?
* What steps furthered this goal and how? (None)
* What steps did not further this goal and how? (Burden of imprisonment without being deserving of such treatment)

d. Practical Considerations
To what degree, if any, are practical considerations important in deciding whether or not a procedure is proper?
* What steps furthered this goal and how?
* What steps did not further this goal and how?

What Do You Think
Were the procedures used for gathering information and making a decision fair? (Why)
What suggestions would you make, if any, for improving the procedures used? (Why)

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The Trial of John Lilburne (1637)

Ask students to read the following historical incident. Use the questions that follow the Raleigh case (pp. 29-30) to evaluate the procedures used in this incident.

During the 17th century in England, the kings created a court called the Court of the Star Chamber. The judges on this court were royal ministers. The Star Chamber had the authority to require any citizens to attend its sessions whether they were suspected of a crime or not. Persons brought before the court were often not accused of a crime or told why they were being questioned. Many times they were questioned at length in secret, even though there was no evidence against them, just on the chance that they might give information on themselves or others that would indicate a criminal act. Often people being questioned were tortured or threatened with cruel punishments if they failed to say what the judges or prosecutors wanted them to say.

John Lilburne was a Puritan. The Puritans were a group of people who criticized the official Church of England and had established their own church. They were unpopular with many of the people and, in particular, with some of the most important people in the government.

In 1637, John Lilburne was brought before the Star Chamber. He had just returned to England from Holland and was accused of sending unpopular and scandalous books from there to England. Lilburne said that he had the right to a trial in a regular court of law, to be given notice of the charges against him, to be formally charged with a crime, to have a lawyer help him answer the charges, to have witnesses on his side, to confront and cross-examine witnesses against him, and not to be forced to testify against himself. He was not given any of these rights.

For refusing to answer questions asked by the judges of the Star Chamber, Lilburne was fined, tied to a cart and whipped as the cart drove through the streets of London. He was then placed in a pillory in a public square with his back bared to the noon sun for two hours. He told everyone who would listen to resist the tyranny of the Church of England. Since he refused to be quiet, he was gagged so cruelly that his mouth bled. He was then placed in irons in prison for ten days without food.

After he was released, the English Parliament voted that he had been treated illegally, that he be paid to compensate what he had suffered, and that the Star Chamber be abolished.
SESSION IV - DISTRIBUTIVE JUSTICE
[Time: 1hr & 45 min]
Concepts and Topics: principle of rule of law/due process of law

Lessons
“Current Issues and Distributive Justice”

Handouts
Student Handout 1
Student Handout 2

Procedure
Opening
(1) Welcome [5 minutes]
   • Refer to focus on corrective justice and procedural justice during the past two sessions
   • Review today’s agenda

(2) Warm Up [10 minutes]
Use #1 under Procedure as your warm up.

Curricular Focus
(3) Focus on Distributive Justice [75 minutes]
Follow the instructions for the rest of the lesson.

Closing
(4) Debrief and Wrap Up [10 minutes]
Use the Debriefing Questions on page 18

(5) Look Ahead [5 minutes]
If you have arranged a court visit, prepare participants for that experience.

[If you have not arranged a court visit for Session V--Assign students a variation of #3 under “Using and Reviewing the Activity.” Instruct them to find 1 example of each of the 3 kinds of justice to bring to the next session and be prepared to share them with participants.]

(6) Adjourn – remind participants when and where they will meet next!
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Lesson Plan: Fractured Quotes on Justice |
| II      | What are the Goals of Corrective Justice? |
| III     | What is Procedural Justice? |
| IV      | Current Issues and Distributive Justice |
| V       | What is Justice? |
| VI      | Mini Mock Trials  
Criminal Law Mock Trial |
| VII     | Rights of the Accused |
| VIII    | Problem Solving Through Mediation |
Introduction

When most people are asked to give an example of an issue of justice, they usually think of criminal justice problems, such as unfair or inadequate procedures used by the police or other government officials, or correctional justice issues such as the use of the death penalty.

Nevertheless, most of the justice issues which affect average Americans involve questions of distributive justice, or fairness in the way things are distributed among individuals and groups. The things distributed might be benefits, such as positions in an entering freshman college class, job promotions, or medical benefits. On the other hand, what is distributed might be burdens such as taxes, required military service, or extra homework.

In this activity, students will have the opportunity to discuss a contemporary issue of distributive justice and be introduced to a set of intellectual tools which will be helpful in analyzing such issues and in developing reasoned opinions about them.

Objectives

At the conclusion of this activity, students should be able to:
- define what is meant by distributive justice;
- give examples of issues of distributive justice;
- analyze an issue of distributive justice using a set of intellectual tools designed for that purpose; and
- develop and express a reasoned opinion about an issue of distributive justice.

Procedure

1. Introduce students to the activity by sharing with them the information in the above Introduction. Ask them to give examples of benefits and burdens they have received, for example, grades or household chores. Do they think these benefits were given or distributed fairly? Then ask for examples of times they have distributed something, for example, choosing someone to be on a team or deciding how much friends should contribute to help pay for a party. How did they decide on a fair distribution of the benefits or burdens?

2. Explain to the class that they will take part in an activity in which they will discuss a current issue of distributive justice. Distribute Handout 1 and have students read about and briefly discuss the procedure they will follow to complete the activity. Then divide the class into small groups to prepare for the hearing on the proposed amendment.

3. Instruct each group to work together to complete Handout 2. This study chart will help students analyze the issue and clarify their thinking about it. After each group has completed the chart, assign each the task of speaking for or against the amendment. Group members should work together to develop the most cogent arguments to support the position assigned to them. (If completing this activity in more than one class period, you may wish students to do additional research to augment their arguments.) A recorder should make a list of the group’s best arguments with spokespersons selected to present them.

4. Reconvene the class and choose a chairperson or act in that capacity yourself. (You may wish to invite a community resource person, such as a staff member from your local congressional office or a state legislator, to participate in this activity and serve as chairperson of the hearing.) The chairperson should be prepared to question each side to stimulate discussion of the issue.

5. Call the meeting to order and ask spokespersons from each group to present their arguments for or against the proposed amendment. After the presentations, other group members who have not yet spoken should be allowed to rebut the arguments of their opponents and answer questions about the issue posed by the chair.

6. Conclude the discussion and call the question. At this point, students should vote according to their own personal views which may differ from those they were assigned to advocate during the hearing. Does the amendment pass by a two-thirds vote?

7. Complete the activity by conducting a debriefing discussion. (See questions below.) If you have invited a community member to participate, have the guest present his or her views on the issue. Finally, you may wish to assign students some of the suggested reinforcement activities.

Student Handout 1:

DO ALL AMERICANS DESERVE A MINIMUM STANDARD OF LIVING?

In 1991, we celebrated the 200th anniversary of our Bill of Rights, the first ten amendments to the Constitution. These amendments protect the rights most of us think of as fundamental—the right to freely express ourselves, to worship or not as we choose, and a series of rights designed to promote justice by, for example, prohibiting the government from illegally searching and seizing people and their property, holding secret trials, or denying them due process of law in other ways.

During his third term in office, President Franklin Delano Roosevelt proposed an additional or new bill of rights designed to “give security and prosperity [to all]... regardless of station, race, or creed.” This “economic bill of rights” went far beyond anything conceived by the Founders of our nation. Among the rights in this “second Bill of Rights” would have protected would be the “right” to food, clothing, recreation, decent homes, economic protection from unemployment, a good education, and a job that paid adequate wages.

Today, nearly 50 years later, many of these proposals are still being debated. For example, do all Americans deserve a guaranteed standard of living? Some delegates of a mock constitutional convention held in 1987 in Philadelphia thought so. They proposed a constitutional amendment which would guarantee all adult Americans a job at or above the minimum wage.

If you had been one of the delegates at that convention, would you have supported that proposal? If you were a
member of Congress would you introduce a proposed amendment? Work in groups to analyze this idea and to present your views at a simulated constitutional convention hearing on this proposal. A study chart is provided to help you. Note that the questions on the chart can also be used to analyze other issues of distributive justice.

What do you think?
What is your personal opinion on this issue and what reasons can you give to justify your position?

Debriefing Questions
1. What important interests and values are raised by the issue of guaranteed minimum standard of living?
2. What is your position on this issue of distributive justice and why?
3. Do you think that a constitutional amendment is the best way to address the problem of distributive justice raised in this activity? Are there any other ways in which it might be addressed?
4. What could you do to promote your views and achieve your goals on distributive justice issues such as this?

Using and Reviewing the Activity
1. Assign each student a study partner to research the issue of guaranteed health benefits for all Americans. Afterwards, have them write a pair of editorials for and against guaranteeing this benefit. The editorials can be read to the class and followed by a discussion.
2. Have students view a television show or film which raises issues of distributive justice and write a review of it. Have them explain what benefit or burden is being distributed and the fundamental values and important interests which they think should be considered before coming to a decision about such issues.
3. Instruct the class to collect clippings, cartoons, and photographs on issues of distributive justice currently in the news and post them on a bulletin board.
4. Have your class sponsor a forum on a contemporary issue of distributive justice with an impact on students, such as the availability of federally-funded college loans or mandatory national service. Assign research on the topic and invite knowledgeable members of your community to participate in the forum. You may wish to ask a member of the local press to serve as chair of the event. Select a panel of students to question the guests and invite questions from the audience as well.

Lorena Consuelo Rosal is a staff member of the Center for Civic Education in Calabasas, California. This activity is adapted with permission from Justice, part of the revised Law in a Free Society program developed by the Center, © 1990 Center for Civic Education.

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<td>DISTRIBUTIVE JUSTICE STUDY CHART</td>
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<tr>
<td><strong>Question</strong></td>
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<td>1. What benefit or burden would be distributed?</td>
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<td>2. Who would receive the benefit or burden?</td>
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<td>3. How are the people who would receive the benefit or burden similar or different in terms of:</td>
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<td>a. their need for what is being distributed?</td>
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<tr>
<td>b. their capacity or ability to use what is being distributed?</td>
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<tr>
<td>c. their desert or the degree they deserve to have what is being distributed?</td>
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<td>4. What other fundamental values, besides distributive justice, should be considered before making a decision in this case? For example, equality, compassion, or human dignity?</td>
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<tr>
<td>5. What other important interests should be considered before making a decision in this case? For example, the cost of providing the benefit, the impact on the country's economy, efficiency, or human resources?</td>
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<td>6. What arguments could you make for the proposed distribution?</td>
</tr>
<tr>
<td>7. What arguments could you make against the proposed distribution?</td>
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SESSION V – JUSTICE REVISITED

Court Visit
or

IF YOU HAVE NOT ARRANGED A COURT VISIT, HERE IS A FALL-BACK LESSON.

[Time: 1hr & 45 min]
[Concepts/topics: principle of rule of law/due process of law, adversarial legal system]

Lessons
“What is Justice?”

Handouts
Student Handout 1
Student Handout 2
Student Handout 3

Procedure
Opening
(1) Welcome [5 minutes]
   • Refer to focus on the three kinds of justice studies in the past two sessions
   • Review today’s agenda

(2) Warm Up [15 minutes]
Have students show and share their collections of examples of the kinds of justice they have studied.

Curricular Focus
(3) Revisiting Justice [75 minutes]
Follow the instructions for the rest of the lesson.
Handouts 1 and 2 could be completed by students working in pairs. The instructions have students divided into five groups to work on Handout 3.

Closing
(4) Debrief and Wrap Up [10 minutes]
Challenge students to name and give their own definitions of the 3 kinds of justice they have studied. Can they also give examples of when they have personally experienced one or more of these?

(5) Look Ahead
Explain that in the next session they will be conducting a mock trial.

(6) Adjourn – remind participants when and where they will meet next!
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This lesson is intended to stimulate students' interest in the concept of justice and to focus their attention on how the Constitution of the United States protects and promotes justice.

Students first read and discuss four brief examples that raise issues of distributive, corrective, and procedural justice and how these issues relate to the Constitution of the United States. Next, students read a selection which defines these three categories of issues of justice, and then they apply these categories to six situations and determine which types of justice are raised in each.

Once the basic concept of justice is defined, the class is divided into five groups to apply the concept to excerpts from the Constitution to help them understand how the Constitution was designed to protect and promote the idea of justice.

**Student Handout 1: How Does the United States Constitution Promote Justice?**

**What is justice?**

• The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread.

  Anatole France, *La Lys Rouge*, 1894

• At the end of the week, Jane received her paycheck for $72.00. She was upset and angry when she learned that Paul had received $14.00 for doing the same type and amount of work.

• During the riot, Ali had been arrested and dragged off the street by the secret police. He was questioned for about 10 minutes, then declared, “Guilty of rebellion against the government. Sentenced to death by firing squad at once!”

• Jean Valjean, the principal character in the novel *Les Miserables* by Victor Hugo, was sentenced to prison for stealing a loaf of bread to feed his sister and her children who were starving.

As you read each of the above situations, you may have had a common reaction: “That’s not fair!” Each of the situations illustrates issues of justice that have been raised since the dawn of civilization. Our feelings about justice and our desire to achieve it have shaped our history.

Some of the most obvious examples of our nation’s dedication to the ideals of justice can be found in our Constitution. Consider, for example, how the following excerpts from the Constitution are related to the types of situations described above.

**WHAT DO YOU THINK?**

1. What is fair or unfair about each of the situations above?
2. What relationship, if any, is there between those situations and the two excerpts from the Constitution of the United States?

**Student Handout 2: Justice Divided into Three Categories**

Scholars dealing with the subject of justice have divided questions about justice into three categories. These categories are: (1) *distributive justice*, (2) *corrective justice*, and (3) *procedural justice*. Definitions of the three categories are given below.

*Distributive Justice* is concerned with the fairness of the distribution of something among several people or groups. That which is distributed can be a benefit, such as pay for work or the right to vote, or it can be a burden, such as taxes, household chores, or homework.

*Corrective Justice* is concerned with the fairness of a response to a wrong or injury to a person or group. Common responses include making a person who has wronged or injured another give back something that was stolen, pay for damages, or suffer some form of punishment.

*Procedural Justice* is concerned with the fairness of the way information is gathered and/or the way a decision is made. Information might be gained from a person suspected of a crime, for example, by torture or by careful, unbiased investigation. A decision might be made after allowing all people interested in an issue to be heard, or it might be made without such a procedure. Procedural justice deals with the fairness of the way information is gathered or decisions are made, not with what information is gathered or what decision is made.

**WHAT DO YOU THINK?**

1. What are the three categories of justice and their definitions?
2. Why are they divided in this way?

**IDENTIFY EXAMPLES OF THE THREE TYPES OF ISSUES OF JUSTICE**

**Directions:** As you read each of the following examples, try to identify whether it raises an issue of distributive, corrective, or procedural justice.

1. To qualify for a driver’s license you must have an adequate knowledge of traffic laws, adequate driving skills, and be a certain age.
2. In the 1880s, thousands of Irish immigrants came to the United States. Often they were denied employment opportunities because of their Irish ancestry.
3. In a recent court case, a man sued a driver whose car ran into his car for $5,000 in damages to his automobile, $4,300 in medical bills, and $1,000 for inconveniences caused by the accident.
4. During the early part of our nation’s history, people convicted of certain crimes were placed in stocks in the public square for a specified period of time.
GROUP 3
Amendment XXVI, Section 1: (1971) “The rights of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”

Article 1, Section 9, Clause 2: (1787) “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

Amendment V: (1791) “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself...nor shall private property be taken for public use, without just compensation.”

GROUP 4
Amendment VI: (1791) “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

Amendment XIII: (1865) “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Amendment XXIV: (1964) “The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”

GROUP 5
Article III, Section 2, Clause 3: (1787) “The trial of all crimes except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.”

Amendment IV: (1791) “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or thing to be seized.”

Amendment XV: (1870) “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

Amendment XIX: (1920) “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”
WHAT DO YOU THINK?

1. Which of the foregoing excerpts deal with:
   a. Distributive justice?
   b. Corrective justice?
   c. Procedural justice?

2. What excerpts deal with more than one type of issue of justice?

3. What values or interests does each excerpt appear to be designed to protect or promote?

4. What similarities and differences are there among the values and interests protected or promoted by the excerpts?

5. What benefits and what costs accrue to society from each right protected or promoted by the United States Constitution?


This lesson on the Constitution of the United States is adapted from materials developed by the Center for Civic Education/Law in a Free Society.
SESSION VI – MOCK TRIALS
[Time: 1hr & 45 min]

Concepts and Topics: principle of rule of law/due process of law, adversarial legal system

Lessons
[Use the case given in “Criminal Mock Trial” and follow the procedures given in “Mini Mock Trials”]
“Mini Mock Trials”
“Criminal Law Mock Trial”

Handouts
Facts (of the case), page 31 – for all participants
“Mock Trial Procedures,” page 17 – for all participants
Copies of “Objections,” page 31 – for all participants
Copies of statement for each witness, page 31

Procedure

Opening
(1) Welcome & Warm Up [5 minutes]
   If you had a court visit last session, you may want to spend a little time debriefing the experience.
   Note that today they are going to experience holding their own mock trial...

Curricular Focus
(2) Conducting a Mock Trial

Follow the instructions given on pages 16-17 using the handouts to review procedures of trials.
Use the case detailed on page 31 (not page 18, which is for younger children)

Closing
(3) Debrief and Wrap Up
Follow the two-paragraph debriefing instructions given on page 17 beginning with the paragraph that starts “Debrief the trial. . . .“

(4) Look Ahead

(6) Adjourn – remind participants when and where they will meet next!
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Mock trials conducted within one or two class periods help students learn about courts and trials in an interesting and enjoyable way. Although students obviously will not be as polished as they are in more lengthy mock trial programs, their abilities to quickly become familiar with trial process, to learn their roles, and to discuss rules of evidence and constitutional protections will surprise even the most seasoned observer.

In addition to the value of the learning experience for students, mini mock trials are an excellent activity for lawyers who want a “guaranteed” success. With only little advance preparation, a lawyer can guide the students through the mock trial experience, helping them develop appropriate questions and then serving as the judge for the trial. Most lawyers are so comfortable with this activity, finding the positive student response so rewarding, that they are usually willing to schedule return engagements. Use the procedure in this lesson with the situation included on p. 18, or use it with a more complex situation given on p. 31 for older students.

The time needed for conducting a trial is only 1 1/2 to 2 hours. (If time is short, omit or greatly shorten the discussion in the next section.)

**Beginning**

Begin the class session by discussing trials. Because most students have seen television programs such as “People’s Court” and “Divorce Court,” they already have some basic information. Ask them if they watch these programs. Then ask them to list the people who are present in the courtroom. This list will include:

- lawyers
- judge
- jurors
- bailiff
- police officers
- clerk
- witnesses
- defendant
- plaintiff
- court reporter
- public
- sketch artist

Discuss what these people do in the courtroom. Depending upon the sophistication of the audience and the time available, short discussions of the following topics can be conducted: trial by judge or jury; civil vs. criminal trials; the need for a court reporter and court record; the constitutional right to a public trial; the controversy surrounding cameras in the courtroom; the reason for courtroom decorum.

**Preparation**

Read the one paragraph summary of the facts of the case with the students (see page 18). Ask the students to volunteer for the parts in the mock trial. Four students should be assigned to be the lawyers for each side of the case. One student may present the opening statement, one the direct examination, one the cross examination, and the other the closing argument. Reserve discussion of objections for later.

Students are also assigned to roleplay the witnesses, bailiff, court reporter, media representatives and sketch artists (these students can write articles and prepare drawings for the articles), and members of the jury and audience.

Before the start of actual trial preparation, briefly describe the steps of a trial. Remind students that they will be helped through the process by the judge and that confusion at this point is expected. If students have sufficient background and understanding of the trial process, explain the reasons and grounds for objections. I recommend using only a limited number of objections. If they lack knowledge, reserve discussion of objections until one occurs during the trial. (No matter what age the students are, one will object to a question during the trial. The objection might be made in the form of “She can’t do that, can she?” or “This isn’t fair!” Regardless of the language used, the students usually have made the objections at appropriate times. They are now ready to learn about objections.)

**Role-Playing**

Students are given approximately 15 minutes to review their statements and develop questions and opening and closing statements. Although this is a short period of time, the facts of the cases are simple and a longer period of time would result in a restless jury and audience.

Quickly review the parts with the other “actors.”
Mock Trial Procedures

PARTICIPANTS
- Judge
- Prosecution (in criminal cases), or plaintiff’s attorney (in civil cases)
- Defense attorney
- Witnesses for prosecution or plaintiff’s attorney
- Witnesses for defendant
- Bailiff
- Jury

Opening of Trial. Bailiff enters and says: “Please rise. The Court of ______________ is now in session, the Honorable __________ presiding.” Everyone remains standing until judge is seated. The judge asks that the calendar be called and the bailiff says, “Your honor, today’s case is _________ v. __________.” Judge asks if both attorneys are ready.

TRIAL
Opening statement—prosecution or plaintiff’s attorney introduces himself or herself and states what their side hopes to prove. State what facts on your side will show and ask for the verdict that you want.

Defendant’s attorney then introduces himself or herself and explains the evidence on her or his side that will deny what the prosecution is attempting to prove. State the decision you hope the jury will reach.

Direct examination—prosecution calls its first witness.

Witnesses should have reviewed their statements. Witnesses may testify to additional facts that logically follow from their statements but should not contradict the given facts. Prosecutor asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words.

Cross examination—defense attorney questions witnesses for the prosecution to try to discredit their testimony. Ask leading questions and emphasize portions of testimony that favor your side.

After all of the prosecution witnesses have been questioned and cross-examined, the defense calls its witnesses and questions them under direct examination. Then the prosecutor cross examines.

Closing statement—prosecutor speaks to the jury and tries to convince them that the evidence presented during the trial has proved his or her side of the case. Then the defense attorney does the same.

Jury instructions—judge instructs the jury as to the law that applies to the case and then directs them to retire and decide upon a verdict.

End of trial—jury deliberates and reaches a verdict. They report the verdict to the judge after returning to the courtroom.
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| III     | What is Procedural Justice? |
| IV      | Current Issues and Distributive Justice? |
| V       | What is Justice? |
| VI      | Mini Mock Trials  
**Criminal Law Mock Trial** |
| VII     | Rights of the Accused |
| VIII    | Problem Solving Through Mediation |
Due Process

Criminal Law Mock Trial/Middle/Secondary

Jennifer Bloom

(See article on pp. 16 for full run-down of this steps in conducting a mock trial. The same procedures can be used here.)

Facts

Mike and Diana are at a party. They are sitting on a couch talking. Nick approaches them. Saying he knows Diana, he tries to talk to her. Mike gets angry and asks Nick to go away. They argue and a fight breaks out. The police are called, and they arrest Nick for assaulting Mike. Nick claims that Mike caused the fight and that he was only defending himself.

WITNESS STATEMENTS

Witnesses for the prosecution are Mike and Diana. Witnesses for the defense are Nick and Jess, another partygoer.

Mike: I was minding my own business, sitting with Diana at this friend's party, when this guy walked up and started hassling Diana. I asked her if she knew him and she said "No." So I told him to leave. The guy kept bothering her. He wouldn't leave. So I stood up and told him I'd have him thrown out of the party if he didn't leave. He squared off like he wanted to fight, and when I turned to walk away he hit me.

Diana: I was sitting with my boyfriend Mike in the basement of a friend's house when an old friend Nick came over to the couch we were sitting on. Nick grabbed my arm and told me to dance with him. Mike asked me if I knew him and I said "No" because Mike is very jealous. Nick wouldn't leave after Mike told him there would be trouble if he didn't. Mike stood up to argue with him and the next thing I knew, they were fighting.

Jess: A boy and girl were sitting on the couch when Nick approached them. I've known Nick in school for a few months. I came with him to the party. Nick motioned to the girl to dance, and then he held her arm to help her up. The boy she was with got mad and began speaking loudly. Nick smiled and told him to be cool. The guy jumped and grabbed Nick. Nick hit him back and they both started swinging. After that, the cops came.

Nick: I was talking to Jess at this party when I saw Diana. I had been going with her for a couple of years, but I hadn't seen her in a few months. I went over to see how she was doing. I asked her to dance and the boy she was with gave me a funny look. I know Diana well, and I figured she wanted to dance with me, so I took her by the arm. Then this guy started to confront me. I told him I didn't want any trouble. Then he jumped up and suddenly grabbed me and hit me.

Instructions. The prosecution must set out such a convincing case against the defendant that the jurors believe "beyond a reasonable doubt" that the defendant is guilty.

Objections

Either the prosecutor or the defense counsel may object to a question or the admission of an exhibit. The judge will usually ask the person objecting "on what rule of evidence are you relying?" Then the judge either allows the objection, preventing the evidence from being introduced, or overrules the objection, allowing the question or exhibit to be admitted as evidence.

Reasons for objections (also known as grounds for objections or the rule of evidence being relied upon) include:

1. Leading question. Prosecutors must allow their witnesses to tell their own story; they must not lead their witnesses through the story. Defense attorneys must follow the same rule when questioning their witnesses.

2. Hearsay. The questions must limit witnesses to facts they know from personal knowledge. Other information they have is hearsay evidence.

3. Immaterial and irrelevant. The information is not closely related to the case, and is therefore not important.

4. Opinions and conclusions. Unless the witness is an expert, he or she should not give opinions or conclusions.

5. Nonresponsive answer. The witness is not answering the question asked.

These are only a few objections. They are probably the most common ones used. They will adequately serve your needs.

Jennifer Bloom is a lawyer and director of the Minnesota Center for Community Legal Education at Hamline University School of Law in St. Paul, Minnesota.
SESSION VII – RIGHTS OF THE ACCUSED
[Time: 1hr & 30 min]

Concepts and Topics: principle of rule of law/due process of law, adversarial legal system

Lessons
“Rights of the Accused”

Handouts
Make copies of the case that is described under Procedures #3, page 29
   (It would be helpful to leave room for participant to write their responses under each of the six issues.)

Student Handout, p 30

Procedure
Opening
(1) Welcome [5 minutes]
   • Reflect on their mock trial experience.
   • Review today’s agenda

(2) Warm Up [10 minutes].
Tell students that, as a role play, they are police officers who have just arrested a man for breaking into a house and must read his Miranda rights to him. Have them confer with a partner to identify those rights. Poll the group to generate an agreed-upon list of Miranda rights. Check their list with the actual rights under the Miranda rule.

Curricular Focus
(3) Focus on Rights of the Accused [60 minutes]

Follow the instructions for the lesson. As the instructions specify have the students use the handout on rights to examine the cases. However, tell them to wait to attempt the rank order exercise until all cases have been reviewed and discussed. Assign this task to be completed in small groups just before the Closing.

Closing
(4) Debrief and Wrap Up [15 minutes]
Compare and discuss group rankings of Constitutional Rights of the Accused. What challenges did they encounter in making their choices?

(5) Look Ahead
Tell participants that the next and last session will look at another way of settling disputes than going to court.

(6) Adjourn – remind participants when and where they will meet next!
SESSION | LESSONS
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I | Rules, Rules, Rules: The Eraser Game
   | Lesson Plan: Fractured Quotes on Justice
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V | What is Justice?
VI | Mini Mock Trials
   | Criminal Law Mock Trial
VII | Rights of the Accused
VIII | Problem Solving Through Mediation
Teaching Strategy

Rights of the Accused


Update on Law-Related Education, 21.2

Background
In criminal investigations, police and other officials must follow procedures to protect the rights of those suspected and accused of crimes. These procedures are based on guarantees provided by the United States Constitution.

This teaching strategy has been adapted from the Instructor's Guide to That Delicate Balance II: Our Bill of Rights. You can obtain information about the guide from the ABA.

Objectives
As a result of this lesson, students will
- Analyze the procedures followed in a hypothetical investigation and trial
- Identify constitutional rights that protect individuals suspected and accused of crimes
- Draw conclusions about whether constitutional rights were protected or violated

Target Group: Secondary
Time Needed: 1-2 classes
Materials Needed: Student Handout, legal resource adviser

Procedures
1. Invite a legal expert to assist in the activity. Tell students that they will consider the rights of the accused in a hypothetical murder case.
2. Introduce the case.

Seven-year-old Becky Carson has been brutally murdered at school. Police rush to the school and begin questioning students and school staff. When investigators question school custodians Frank and Hector about Becky Carson’s death, they suspect that there might be evidence of the crime in a gym bag on the floor in the custodian’s closet.

Investigators’ conversations with and observations of Becky’s friend Alice strongly suggest that Frank and Hector should be brought in for questioning, but they are not yet under arrest. An officer does read them their Miranda rights.

Each time investigators ask Frank a question, he just sits very quietly and does not say anything. One investigator lies in order to force Frank to confess, telling him that Hector is accusing him of the crime. Frank makes an incriminating statement.

Frank is indicted and a trial date is set. Frank’s counsel finds out what facts the prosecution has and instructs Frank not to talk to anyone unless counsel is present.

When Alice is questioned during the trial, she falters in her testimony and seems afraid to speak in Frank’s presence. The judge can opt to have her testify via closed-circuit TV. The defense strongly objects to this idea.

Frank is convicted; he will be sentenced in a separate proceeding.

3. Distribute the Student Handout. Review these terms: Miranda rights, writ of habeas corpus, double jeopardy, due process of law, and bail. Then discuss how each right helps protect those accused and tried for crimes.

4. Divide the class into small discussion groups. Explain that students will use the handout as a springboard for discussing the following issues related to the hypothetical murder case.

- The police have no search warrant, and they do not have enough cause to search the bag. When one officer nudges the bag open, he sees a doll that he suspects was Becky’s. Have the police legally found this evidence? Were they legally able to seize the bag and place it in evidence? Can they use it as evidence at the trial?
- The police have read Frank his Miranda rights. Frank does not ask for a lawyer. The police continue to question him, but Frank refuses to talk to them. Can the police force Frank to talk to them? Does Frank have the right to refuse to talk?
- Would allowing Alice to testify via closed-circuit TV violate any of Frank’s rights? Why or why not?
- A police officer admits that he lied when he told Frank that Hector accused Frank of the crime. Frank made an incriminating statement after he was told this. He said that he was tricked into confessing. Did the police officer’s lying violate Frank’s rights? Why or why not?
- Because of pretrial publicity, Frank’s trial was held in a neighboring county rather than his own. Did moving his trial to a different county violate Frank’s rights? Why or why not?
- If Frank had been found not guilty of the crime, could he be tried again for the same crime at a later time? Why or why not?

5. Ask a member of each group to present the findings of the group. If a legal adviser is present, ask the adviser to clarify the law following the group reports.
Constitutional Rights of the Accused

Discuss the following rights of those accused of and tried for crimes. Then use the numbers from each of these 14 principal constitutional rights to rank the rights from most important to least important.

1. A person being held in custody has the right to obtain a writ of habeas corpus, a written order demanding that he or she be taken to court where the reason for holding him or her is given. (Article I, Section 9, Clause 2)

2. Authorities cannot search for and take evidence or arrest someone in an unreasonable manner. In most cases, search and arrest warrants are required. (Fourth Amendment)

3. No one has to stand trial in a federal court unless a grand jury has indicted, or formally accused, him or her of a crime. (Fifth Amendment)

4. A person who is found not guilty of a crime cannot be put in double jeopardy, or tried again for the same crime. (Fifth Amendment)

5. A person cannot be forced to testify against himself or herself. (Fifth Amendment)

6. A person's life, liberty, or property cannot be taken without due process of law. (Fifth and Fourteenth Amendments)

7. The accused has the right to a speedy and public trial. (Sixth Amendment)

8. The accused has the right to a trial by an impartial jury. (Sixth Amendment)

9. The accused must be informed about the charges against him or her. (Sixth Amendment)

10. The accused has the right to question witnesses testifying against him or her. (Sixth Amendment)

11. The accused has the right to call witnesses to testify in his or her favor. (Sixth Amendment)

12. The accused has the right to a defense lawyer. (Sixth Amendment)

13. The bail that the accused can post must be fair. (Eighth Amendment)

14. A person convicted of a crime cannot be given cruel and unusual punishments. (Eighth Amendment)

Which right did you rank as most important? Why? Which did you rank as least important? Why?
SESSION VIII – MEDIATION
(Time: 1hr & 45 min)

Concepts and Topics: resolving disputes peacefully

THIS WOULD BE A GOOD SESSION TO INVITE SOMEONE WITH EXPERIENCE IN MEDIATION TO PARTICIPATE.

Lessons
“Problem Solving Through Mediation”

Handouts
Student Handout 1
Student Handout 2
Student Handout 3

Procedure
Opening
(1) Welcome [5 minutes]
   • Refer to the fact that they have visited a court and/or participated in a mock trial.
   • Review session agenda – note that today they will look at another way of settling disputes than going to court.

(2) Warm Up [15 minutes]
Use the chart (Handout 1) and the accompanying discussion guide under “Discussion Activity on Alternative Methods,” pages 50-52 as your warm-up activity.

Curricular Focus
(3) Focus on Mediation [75 minutes]
Follow the instructions for the rest of the lesson using Handouts 2 & 3.

Closing
(4) Debrief and Wrap Up [5 minutes]
Discuss the Hypotheticals, p 52

IF THIS IS THE FINAL SESSION OF YOUR ACADEMY, YOU WILL PROBABLY CLOSE BY DISTRIBUTING CERTIFICATES OR OTHER MEMENTOS TO PARTICIPANTS.
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Access to Justice

Problem Solving Through Mediation/Grades 9-12

JoEllen Ambrose

This lesson is designed to familiarize students with other ways of resolving disputes besides the traditional method of "taking it to court" or adjudication. There are three components to the lesson: (1) an explanation of mediation as an alternative dispute resolution process and how it differs from adjudication, (2) a role play activity where students act out the parties in a mediation situation, and (3) a discussion of the strengths and weaknesses of mediation and adjudication and when each process might best be used. This lesson is best used after students have some familiarity with the elements of a trial.

Rationale

Alternative dispute resolution has been developing rapidly over the last ten years, mostly in response to congested court calendars and the expense of litigation. In some cases, mediation and arbitration are required by state statute (Example: Farm Lender Mediation Act, Minn. Stat. 583.20-582.32). In other cases, alternatives to court are outlined as part of private contracts or employment agreements. Whatever the circumstance, students living in the 21st century will probably encounter mediation or arbitration in resolving family, work or community conflicts.

This lesson is appropriate for any mainstreamed civics, futures, or law course. It is a natural for any community resource person with experience in mediation or arbitration. It is also suitable for lawyers and judges more familiar with adjudication.

Time to Complete

Approximately two one-hour class sessions. It can be adapted easily to one hour to fit a resource person's presentation. The background on alternative dispute resolution could be presented by the teacher, with the resource person focusing on the role play and debriefing.

Goals

- Students will become familiar with the process of mediation as an alternative to going to court.

Update on Law-Related Education
Students will identify key characteristics of mediation and compare and contrast these characteristics with adjudication.

Students will adopt a problem-solving strategy while role-playing disputants and a mediator in a mediation situation.

Students will describe the strengths and weaknesses of mediation and traditional adjudication and identify types of conflicts that may better be resolved by these processes.

**Materials**

1. Student handout #1, with conflict resolution diagram and chart outlining major features of mediation and adjudication (litigation in court).
2. Student handout #2, summarizing mediation and the steps of a mediation session.
3. Handout #3, with confidential information for students role-playing disputants and mediators.

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### Procedure

**INTRODUCTION**

Alternative dispute resolution or ADR is used to describe how people can resolve conflicts besides going to court. Two of the most common methods are called mediation and arbitration.

Mediation is a voluntary process whereby two parties with differing viewpoints (disputants) create their own resolution under the guidance of an impartial and neutral mediator. The decision is binding only if the parties agree to make it so. Mediation is the process focused on in this lesson.

Arbitration is a more formal process, where the neutral third party listens to the evidence and arguments as presented by both parties and then issues a binding decision. Arbitration may be mentioned for background purposes.

Both of these methods are called “alternatives” because they are different from the court trial process called

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### Student Handout #1 Alternative Dispute Resolution

**Negotiation**

(2 people)

- **Mediation**
  - (2 people, with third party to help reach agreement)

- **Arbitration**
  - (2 people, with third party who resolves dispute, often binding)

- **Adjudication**
  - (Third party – judge or jury – hears facts and determines guilt or innocence or civil liability)

**Comparison of Dispute Resolution Processes**

<table>
<thead>
<tr>
<th>MEDIATION</th>
<th>ADJUDICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Process</strong></td>
<td>Emphasis on relationship and attitudes of parties</td>
</tr>
<tr>
<td><strong>Problem solving approach</strong></td>
<td>Problem solving approach</td>
</tr>
<tr>
<td><strong>Private proceedings</strong></td>
<td>Public process, matter of record unless sealed by court</td>
</tr>
<tr>
<td><strong>Role of Third Party</strong></td>
<td>Mediator is facilitator</td>
</tr>
<tr>
<td><strong>Mediator suggests alternatives to parties</strong></td>
<td>Parties (lawyers) present evidence and an argument</td>
</tr>
<tr>
<td><strong>End Result</strong></td>
<td>Mutually acceptable agreement sought</td>
</tr>
<tr>
<td><strong>Agreement written in a contract</strong></td>
<td>Agreement written in a contract</td>
</tr>
<tr>
<td><strong>Effect of Decision</strong></td>
<td>Recommendations of mediator are not binding</td>
</tr>
</tbody>
</table>

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**Student Handout #2: What is Mediation?**

Mediation is a way to solve problems between people. The people who are in conflict are called disputants. They have agreed to ask a third person or mediator to help them solve their problem. Most mediation is voluntary. In other words, the parties agree to mediate, to the rules that will be followed during the mediation, and to the solution that is reached as a result of the mediation.

The mediator's role is to allow each party an opportunity to tell its side of the story, identify the facts and issues that are in conflict, and suggest alternatives that would help solve the problem. As a facilitator, the mediator tries to bring out underlying concerns and help the parties arrive at a solution both sides can agree to. Sometimes a mediator may discuss the problem alone with a disputant in order to find out where the parties can agree. Then the mediator brings the parties together to find common ground. Other times a mediator may ask the parties to reverse roles so they can better understand the other person's position.

It may take one meeting or several before a solution is reached that is acceptable to both parties. A mediator cannot force a decision on the parties. If the parties wish, they may write up their agreement in a contract that will be enforceable by law.

**Steps of Mediation**

**STEP 1. INTRODUCTION**

The mediator sets the parties at ease and explains the ground rules. The mediator's role is not to make a decision but to help the parties reach a mutual agreement. The mediator explains that he or she will not take sides.

**STEP 2. TELLING THE STORY**

Each party tells what happened. The person bringing the complaint tells his or her side of the story first. No interruptions are allowed. Then the other party explains his or her version of the facts.

**STEP 3. IDENTIFYING FACTS AND ISSUES**

The mediator attempts to identify agreed-upon facts and issues. This is done by listening to each side, summarizing each party's views, and asking if these are the facts and issues as each party understands them.

**STEP 4. IDENTIFYING ALTERNATIVE SOLUTIONS**

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each possible solution. The advantages and disadvantages to each solution are discussed by the parties.

**STEP 5. MODIFYING AND DISCUSSING SOLUTIONS**

Based on the expressed feelings of the parties, the mediator revises possible solutions and attempts to identify a solution that both parties can agree to. The mediator may ask to talk with each party individually in order to find out where middle ground can be met. Another technique a mediator may use is called role reversal, where the mediator asks disputants to repeat what they hear the other party saying.

**STEP 6. AGREEING ON A SOLUTION**

The mediator helps the parties reach an agreement that both can live with. The agreement should be written down. The parties should also discuss what will happen if either of them breaks the agreement.

(Source: *Street Law*, p. 25)

Adjudication. Adjudication is the most formal process because the parties are represented by lawyers who argue their cases before a judge or jury as the neutral third party. Formal rules determine what evidence is allowed as well as court procedures. The decision by a court of law is binding over the parties unless or until a higher court alters the decision as a result of an appeal. The parties can't appeal automatically; one of them must convince the appeals court that there was a possible error requiring review by the higher court.

An underlying difference between adjudication and mediation is the overall objective of the parties. The goal of adjudication is to win—each party wants to achieve the outcome most favorable to its side. Usually there is a clear winner or loser. In mediation, a problem-solving process is used. The objective of the process is to maximize the joint gain (or minimize the joint loss) of the parties—to split the largest possible pie between the parties.

**DISCUSSION ACTIVITY ON ALTERNATIVE METHODS**

Student handout #1, containing a dispute resolution diagram and characteristics of dispute resolution processes, should be given to each student.

Start with the dispute resolution diagram. Ask the students if they have ever disagreed with a sibling over which television program to watch. What process is being used to help decide which program to watch? (Negotiation)

If the two of you cannot agree, you might ask an older brother or sister to listen to the problem. This person may be good at suggesting different compromises that might help solve the problem. However, he or she may not force a solution. That person wants the two of
you to learn to work things out. (Mediation)
But the problem only gets worse, and now you and your sibling must present your case to a parent. Your parent sits back and listens to both sides carefully. Then he or she makes a decision that you are better off not contesting because it is "the law." (Arbitration)
If the conflict has not been resolved by any of these first three methods, you may take your "case" to a stranger (judge or jury), who listens to arguments presented on your behalf by lawyers and will enter a decision for

Handout #3: Roleplaying Information

**MR./MRS. WILSON'S CONFIDENTIAL INSTRUCTIONS**

You have filed a complaint against Dennis/Denise the Menace with the City Attorney. The lawyer in the City Attorney's office referred you to the local neighborhood justice center, which scheduled a mediation hearing. You are not sure what mediation is about, but you are angry with Dennis and you think that he/she should be punished for this act of vandalism.

Dennis broke the windshield on your car by throwing a brick through it. You did not see Dennis throw the brick, but just before the windshield was broken you and Dennis had exchanged angry words. You had gone into the house and a short time later came out to find the windshield broken.

You want Dennis to pay for the damage. You have one estimate for $700 from a local Oldsmobile dealer. You have insurance that could cover the damage, but you would have to pay a $200 deductible. You want Dennis to pay the full amount because you fear your insurance rates would go up if you submit a claim.

You have lived next door to Dennis ever since he was born, 18 years ago. You have watched him grow up, and until lately you have always shared a special relationship with Dennis. But ever since he graduated from high school he has not had time to visit with you, and you miss the special times you had together. Shortly before the brick incident, you had asked Dennis why he hadn't mowed your lawn that week, as you hired him to. You don't understand kids these days and think Dennis has turned into a selfish member of the "me" generation.

**DENNIS/DENISE'S CONFIDENTIAL INFORMATION**

Mr./Mrs. Wilson has filed a complaint against you with the City Attorney and the local neighborhood justice center. Mr. Wilson claims that you broke the windshield in his car by throwing a brick through it. The Neighborhood Justice Center has scheduled a mediation hearing. You don't know exactly what this means, but you are worried because you have just turned 18 and don't want this to become a criminal matter in adult court. You did break the window in a fit of anger. However, you are pretty sure that no one saw you.

The incident happened last Saturday in the early evening, just as it was getting dark.

You are 18 years old and have known Mr. Wilson all your life. When you were a kid you used to spend a lot of time visiting the Wilson's, and Mr. Wilson often took you to sporting events as a special treat. Since junior high, you have been hired by the Wilsons to mow their lawn every week during the summer. But since graduating from high school you have been busy working two jobs (to save money for college) and sometimes forget to mow Mr. Wilson's lawn. You have never explained to Mr. Wilson why his lawn hasn't been done.

Last Saturday, you had just turned in the driveway when Mr. Wilson ran out of his house to talk to you. In a screaming voice he yelled how irresponsible and untrustworthy you were. You were embarrassed and responded by yelling back. Mr. Wilson slammed the door as he went inside. You went in your house, but just thinking about the incident made you angry. Later, in a fit of rage, you picked up the brick and threw it, not intending to hit the windshield. You are embarrassed about acting childishly, and you would rather Mr. Wilson didn't know that you broke the windshield, but you do value Mr. Wilson's friendship.

You are unwilling to pay for the windshield because you assume Mr. Wilson has insurance that will replace the windshield free.

**MEDIATOR'S INFORMATION**

You are a volunteer mediator at the neighborhood justice center. The City Attorney diverts to your program minor complaints of vandalism, theft, etc. She has referred this matter to you for an out-of-court resolution. Mr. Wilson has complained that Dennis threw a brick through the windshield of Mr. Wilson's car. The City Attorney, rather than treating this as a criminal matter, prefers that the parties solve their own problem through mediation.

You should explain that the parties should make a good faith effort to solve their problem here and now, since any criminal case will involve much more time and effort on the part of both parties.

Try to get at the parties' underlying concerns and urge them to come up with their own solutions.
Bibliography


or against you. (Adjudication)

Today we will focus on only one of these methods—mediation. First, let's read through the explanation of mediation on student handout #2.

Now let's compare and contrast key characteristics of mediation with the process of court trials or adjudication. See chart on student handout #1. You may want to leave the characteristics of adjudication blank so students can recall how a trial would differ from mediation.

ROLEPLAY ACTIVITY

In order to understand more about mediation, the class will divide up into groups of three and roleplay a mediation session.

Explain the steps in a typical mediation session (student handout #2).

Students should choose one of the three parties to roleplay in a mediation session. These roles are Mr./Mrs. Wilson, Dennis/Denice the Menace, or the mediator at the Neighborhood Justice Center.

Hand out to each student the appropriate confidential instructions. Allow five minutes for students to become familiar with the facts and then allow groups of three to mediate the dispute. Fifteen to twenty minutes should be sufficient time.

DISCUSSION

Ask each group to share with the class the terms of the agreement reached through mediation. Note the wide range of solutions and creative ways of solving the problem. How would a trial have resolved this case? Did participants feel the process was an effective one? Why or why not?

Debriefing

Now that students have experienced a mediation, see if they can identify its strengths and weaknesses. This list can be compared and contrasted with a similar list for adjudication.

Put on board:

<table>
<thead>
<tr>
<th>Mediation</th>
<th>Adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strengths</td>
<td>Weaknesses</td>
</tr>
</tbody>
</table>

What do students see as the weaknesses of mediation? List them. Listen for: Quicker process; cheaper; more efficient; more creative solutions; less of a traumatic impact on parties; better chance of maintaining a workable relationship after the conflict is resolved.

What do students see as the weaknesses of mediation? List them. Listen for: Difficult where more than two parties are involved in the dispute; less effective with complex issues; a party that has less power may be taken advantage of by a stronger party; parties that need to vindicate their position may not be satisfied; since a resolution is only binding if the parties agree to make it so, there may not be a true resolution of the dispute.

What do students think are the strengths of adjudication? List them. Listen for: Justice will be done where each party has its day in court; consistency of application of the law; orderly process for complex issues; balancing of power between two parties; vindication of a party's position; binding decision.

What do students think are the weaknesses of adjudication? List them. Listen for: Formal rules limiting evidence and remedies; narrow focus on conflict through the framing of issues; time and costs of litigation; emotional trauma to parties of testifying in court and being in an adversarial stance.

DISCUSSION

Read through hypotheticals representing different types of conflict. Have students explain whether mediation or adjudication would be a better way to resolve the problem. Students should give reasons to support their choice. Brainstorm solutions that might be created if this problem were approached in a mediation session.

HYPOTHETICALS

1. John Jones is shot in the arm by a person trying to burglarize his home.

2. Mr. and Mrs. Smith are getting a divorce. Mr. Smith wants custody of the children. Mrs. Smith strongly disagrees.

3. A car mechanic friend of Jane's went ahead and did $500 worth of work when Jane only authorized $200 of work to be done.

4. A car manufacturer produces a car that has the gas tank in the back where it explodes too easily upon impact. There are hundreds of injuries all over the country reported from this defect in the design of the car.

5. Mrs. Green is a very shy person and gets embarrassed easily. Her husband wants a divorce and wants her to get nothing—no maintenance or property. They have no children.

6. Northland Development Company is having a contract dispute with the general contractor who is building a shopping center. Northland could lose millions if the problem isn't solved quickly.

JoEllen Ambrose teaches ninth grade at Anoka-Hennepin District No. 11, Coon Rapids Junior High School, Coon Rapids, Minnesota. This activity is adapted from an activity which will appear in Righting Your Future: LRE Lesson Plans for Today and Tomorrow, a book written by the SPICE III teachers and published by the Center for Research and Development in Law-Related Education (CRADLE), in cooperation with Wake Forest University School of Law.