LESSON SAMPLER FOR

PATHWAY 4:

RIGHTS AND RESPONSIBILITIES
OVERVIEW: PATHWAY 4: RIGHTS AND RESPONSIBILITIES

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 Rights and Responsibilities, one of six featured in the Resource Guide (pages 5 – 8). The Pathways offer different curricular frameworks for a Civics and Law Academy. In addition to Rights and Responsibilities (Pathway 4), the other five are: 1--Law and Justice; 2--Power and Empowerment; 3--Constitutions and Constitutionalism; 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:  Bill of Rights, First Amendment Freedoms (speech, assembly, privacy), search and seizure & concept of right of privacy

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 arrivers. Participants will expect sessions to adjourn as announced and are likely to become distracted and disgruntled when sessions go over time.

Plan Ahead

Consider an Off-site Visit
Meeting in a different site can be both informative and rejuvenating. One possibility for an off-site visit is Session III. This session could be held in the law offices of the suggested resource lawyer.


Decide on Guest Speakers and Presenters
Review the sessions to determine how guest speakers and presenters would enrich the experience for participants. Be sure to identify and invite such guests well ahead of the date of the session.

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This “Lesson Sampler” includes 10 lessons organized into 8 sessions that explore the contexts and issues of rights and responsibilities. Each lesson includes detailed, step-by-step instructions on how to use it as part of an overall Academy curriculum.

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## PATHWAY 4: RIGHTS AND RESPONSIBILITIES

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SESSION I – BILL OF RIGHTS
[Time: 1 hr & 55 min]

Concepts and Topics: Bill of Rights, First Amendment Freedoms—speech

Lesson
To Protect or Not to Protect

Handouts
One of the following for each participant:
- The Bill of Rights Rap
- Handout 1: Political Action at Hatbury High School (first 2 paragraphs only)
- Possible Protests with the two-paragraph directions – options 1 through 13 (only)
- Set of index cards, each card with one case matching the thirteen options (remove the identifying numbers)

NOTE: You will probably want to have a video camera ready to capture the rap.

Procedure
Opening
(1) Welcome and Warm Up [30 minutes]
- Introduce yourselves and participants
- Give brief background on Civics and Law Academies
- Distribute copies of The Bill of Rights Rap and give participants a few minutes to read it through. Form small groups, assigning each group a portion of the Rap to “rap.” [The number of groups will depend on how many parts the Rap is divided.] Give the groups a little time to practice then bring them together to perform the Rap. [NOTE: THIS SHOULD BE A GREAT VIDEO OPP!]
- Enjoy the “Rap” then observe that in this Academy they will learn more about many of the rights and responsibilities in their rap. This session focuses the constitutional right of free speech.

Curricular Focus
Because of time considerations, limit the Possible Protests to numbers 1 through 13. The following is an adaptation of the Procedures given in the lesson.

(2) Distribute copies of Handout 1: Political Action at Hatbury High School and provide time for individuals to read the hypothetical.

(3) Form small groups. Distribute to each participant a copy of the adjusted Possible Protests (with directions)—numbers 1 through 13 (only) and a set of prepared index cards with the thirteen cases. Have participants work with group members to code their decisions AND identify the case that they think is relevant to each option and be prepared to explain why. [45 minutes]
(4) When the groups have a consensus response for each option, bring them together to compare and discuss their responses and reasoning. Provide insights to the Court’s decisions as per the suggested Procedures. [30 minutes]

Closing
(5) Debrief and Wrap Up [10 minutes]
  • Probe for examples of the kinds of free speech protected and not protected by the First Amendment.
  • If you videoed the Rap, close by showing it

(6) Look Ahead
Inform the participants that they will continue exploring issues related to freedom of speech in the next session.

(7) Adjourn – remind participants when and where they will meet next!
The Bill of Rights Rap

Listen up!
Here's what we're gonna do,
We're gonna explain
the Bill of Rights to you.
There's ten of them,
They're really neat,
So, listen closely,
Don't wanna repeat—
Don't wanna repeat—
Don't wanna repeat—
You're free to speak,
You're free to pray,
You're free to write
and assemble everyday.
You can write a letter
to make things better.
All these freedoms are packed together
to make Amendment Number One,
But, we're far from done—
far from done—
Amendment One.
We can form a militia
If there's an issue
That needs attending.
It's our rights we're defending!
Soldiers can't hang out in your home;
They can't raid the fridge,
Or use your phone.
Get off the phone, Get off the phone!
You, your house, and your personal stuff
Are protected, that's no bluff,
From searches and seizures by the government,
Only with a warrant may the police be sent.
Of course, there are exceptions to this rule,
Obey the law, don't be a fool.
I'm telling you—Don't be a fool.
You can't be on trial more than one time,
When accused of the same crime—
But if you're found guilty the first time
It's for sure, you'll be doing time.
Doin' time—Doin' time.

The trial is public,
Have no fear,
You'll get a jury of your peers.
You don't have to say something that'll
incriminate,
Or influence deciding your fate.
Your life, your property and your liberty,
Can't be taken away from you
Without a process
That needs adhering to.
It's called the process that you are due.
Going to trial must be speedy,
You'll get a lawyer,
If you're needy.
You'll need to know why you're on trial,
Who accused you,
And what's in your file.
You can bring friends who'll say
It ain't so,
And hopefully you'll be free to go.
Free to go—free to go.
The punishment must fit the crime,
It can't be cruel or undefined.
The laws that aren't set right here,
The states can write,
But they must be clear.
We hope you understand our rap,
That it makes your fingers snap and toes tap.
The Bill of Rights is important to you,
It's a part of all we do;
It makes us all one group of people.
That's why it's of, by, and for the people!
For the people—for the people!

Illustration by Slug Signorino
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Generations of Justice

To Protect or Not to Protect—That is the Question/Secondary

William R. Marcy

This one-to-two-day lesson introduces students to the implications and applications of constitutional free speech. Students are confronted with a hypothetical situation where they must decide if the actions proposed by "Hatbury High School's Political Action Committee" would be protected under the First Amendment of the Constitution as interpreted by the U.S. Supreme Court. Each proposed action is based upon an actual legal precedent established by the Supreme Court. The teacher is provided with case references to aid in discussion.

Lesson Objectives
At the conclusion of this lesson, students should be able to:
1. identify instances when an individual's free speech is protected or not protected by the First Amendment;
2. analyze and evaluate parameters of free expression.

Procedures
1. Provide individual students with the hypothetical, "Political Action at Hatbury High School." Students should read the story and 23 options, select their reasoned response, and write their decision on the line provided.
2. Conduct a class vote and write the plurality response on a continuum written on the board (see example; writing the class mean response may be more accurate and desirable but a plurality vote saves time.) A discussion of the responses will indicate the scope of expression protected or not protected by the Supreme Court. Perhaps a discussion of the "tests" and speech restrictions employed by the Supreme Court—balancing/position, incitement/fighting words, symbolic speech/excessive conduct, obscenity, defamation—will be beneficial for understanding the reasoning behind the Court's position.

Handout 1: Political Action at Hatbury High School

Hatbury is a small New England city with one high school. Over the last year local taxpayers have been bitterly complaining about rising taxes. The former mayor lost the last election over the tax issue. The new mayor promised to drastically reduce government spending. As a result, Hatbury High was forced to make the following cuts: all junior varsity sports, nine faculty positions (including the football coach, student government advisor, senior class advisor, and all of the recently hired young teachers), all senior elective courses, drastic cuts in language, art, music, and vocational education classes, all field and building improvement projects, and cancellation of the band and choir tour to the Washington, D.C., celebration of the 200th anniversary of the Supreme Court.

Christine Taylor, president of student government, and several student government representatives formed a "political action committee." They asked to speak at a public city council meeting to request additional funds for the high school and to explain the distressing damage being done to their education. The mayor and a majority of the council denied their request because the students were not registered voters due to their age. They were also not city property owners. Chris and a majority of Hatbury High's students were very upset over the budget cuts but infuriated over being denied the opportunity to address the mayor and city council.

Below is a list of possible protests being considered by Chris and the Hatbury High School's Political Action Committee. Which of these activities would be protected by the Constitution of the United States? Indicate your reasoning by putting one of the following codes in the space provided:


Be prepared to defend your reasoning.

Possible Protests

Chris and the other students protest in the following ways:

1. Speaking against the mayor and his budget on a street corner by the high school. The speech includes insults against the mayor and council. The crowd becomes angered and threatens the speaker. The police arrest the speaker for breach of the peace.
2. Speaking in the park, passing out pamphlets, and signing up students for violent student revolution against the city council and the mayor.
3. Giving a speech at the local park declaring: "We should revolt against the dictatorship of the mayor because he will not permit the expression our opinions at the public hearing."
4. Distributing pamphlets at the shopping mall criticizing the mayor and the council's budget cuts. Asking shoppers to sign a petition demanding more money for the school.
5. Picketing in the mall parking lot against the mayor's policies and budget cuts.
6. Parading around town using loudspeakers to address Hatbury's citizens.
7. Conducting a school walk-out march from the high school to city hall.
8. Marching to the city jail chanting, "the stupid mayor has imprisoned our school—smarten up and get rid of the fool!!"
9. Marching to the local courthouse chanting, "equal justice is for all—remove the mayor from city hall!"

10. Responding to insults from the mayor. The mayor conducts a special meeting with the council in the high school auditorium, and he refers to protesting students as "criminals, druggies, and social misfits who should be spanked for their silly protests." Students, outside picketing peacefully and quietly, are angered by the mayor's insults and start to yell and throw rocks at the auditorium windows.

11. Sitting-in silently and peacefully at the city library against the librarian's wishes.

12. Planning more protests at school. Political Action Committee members meet during their lunch period to plan protests, but a new school rule prohibits PAC members from meeting because it is not an "officially recognized" school organization.

13. Burning student identification cards that the board of education required to be carried by every student.

17. Publishing an article in the school paper questioning the mayor's "good judgment and character" because his wife recently filed for divorce due to his infidelity (his son attends HHS).

18. Purchasing an ad in the city newspaper attacking the mayor and his "fascist tactics."


20. Canvassing homes door to door, distributing pamphlets explaining the impact of budget cuts upon Hatbury High.

21. Camping overnight in a "non-violent sleep-in" at the city park to protest the mayor and council's policies and budget cuts (this is against a city ordinance).

22. Boycotting city merchants by not buying from their stores until the mayor and council increase the budget.

23. Burning the U.S. flag flying outside of the mayor's office and chanting, "the mayor disgraces our flag and our freedom—impeach the bum and unseat 'um."

(Adapted from "Freedom of Speech" activity by Norman Gross, ABA Committee on Youth Education for Citizenship)

Case References

1. Feiner v. New York, 340 U.S. 229 (1951) — Irving Feiner was a student speaking on a street corner of Syracuse, N.Y., urging blacks to fight for their rights. Insulting remarks were made toward the president and mayor. The public was forced to walk onto a busy street around the crowd of listeners. The crowd became hostile and threatened Feiner. The police arrested Feiner for breach of the peace. (Court declared 6-3 that public order and safety was of greater significance than Feiner's interest in free speech and therefore his speech was not protected under these circumstances.)

2. Gitlow v. New York, 268 U.S. 652 (1925) — Benjamin Gitlow was a member of the Socialist party. He gave speeches and passed out pamphlets advocating the revolutionary overthrow of the government by the "proletariat" using force and violence. Gitlow was arrested under the New York Criminal Anarchy Law. (Court ruled pamphlets were an abuse of free expression at the expense of the public welfare by "tending to corrupt public morals, incite to crime, or disturb the public peace" and therefore not protected.)

3. Brandenburg v. Ohio, 395 U.S. 444 (1969) — Mr. Brandenburg was a leader of the Ohio Ku Klux Klan who declared that the government was trying to suppress the white race and that "it's possible that there might have to be some vengeance [sic] taken." Brandenburg was arrested for violating Ohio's Criminal Syndicalism Act. (Court ruled a state can not forbid speech if it is not likely to incite or produce "imminent lawless action." Therefore, the speech is constitutionally protected.)

4. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980) — Mike Robins and a group of his high school classmates went to their local shopping mall to peacefully protest a United Nations resolution they believed to be anti-Semitic. They passed out pamphlets and asked shoppers to sign a protest petition. Mall security guards asked Robins and the others to leave and they did. (Court ruled that Robins's manner of speech was protected because it was orderly and the activity was conducted in common public areas of the mall.)

5. Amalgamated Food Employees v. Logan Valley Plaza, 391 U.S. 308 (1968) — Workers of a food employee union conducted a protest in the parking lot of Logan Valley Plaza by peaceful picketing. The signs indicated their displeasure with a food store which would not hire union workers or pay union wages. When refusing to leave the mall's private property, the protesters were arrested for breach of the peace. (The Court declared that a "private" shopping mall is the same as a town business district and therefore the mall cannot prohibit picketing that advanced the communication of ideas. This speech was protected.)

6. Kovacs v. Cooper, 336 U.S. 77 (1949) — Mr. Kovacs was publicly protesting a labor dispute through the city streets of Trenton, New Jersey, by using a sound track to broadcast his message. He was arrested for violating a local ordinance prohibiting the use of any sound equipment on public streets that emitted "loud and raucous noise." (The Court ruled that the city had a legitimate interest in reasonably regulating the time, place, and volume of sound, and that Kovacs's method of communication could be restricted as long as its content was not. He was free to communicate the same ideas in a different way. Therefore, his manner of speech was not protected.)
7. Edwards v. South Carolina, 372 U.S. 229 (1963) — Approximately 200 high school and college students conducted a peaceful march to the South Carolina State Capitol protesting racial discrimination. Government officials met with the protestors and stated that as long as their protest was peaceful, they could remain at the capitol. After a half hour of speeches, patriotic songs, and chants, police told demonstrators to leave. They did not leave and the police arrested the demonstrators for breach of the peace. (The Court ruled that a state may not “make criminal the peaceful expression of unpopular views” and declared that this form of protest was protected.)

8. Adderly v. Florida, 385 U.S. 39 (1966) — Black demonstrators in Florida protested the arrest of several students who tried to integrate a “white only” movie theater. The demonstrators were arrested for criminal trespass because they conducted their protest at the county jail. (The Court ruled that the place of the demonstrators’ expression was not protected by the First Amendment because jails are “built for security purposes” and therefore are not a “reasonable” place to conduct a civil rights demonstration.)

9. Cox v. Louisiana, 379 U.S. 536 (1965) — Reverend Cox and 2,000 black students conducted a peaceful march from the Louisiana State Capitol to a courthouse in protest of 23 other students being arrested for trying to integrate white lunch counters. The marchers were told to leave the courthouse area after they sang songs, picketed, and heard Reverend Cox urge all marchers to eat at white lunch counters. When the demonstrators did not leave, police fired tear gas into the crowd and arrested Reverend Cox for breach of the peace in violation of ordinance that prohibited demonstrations “in or near” the courthouse. (The Court held that “near” was a vague and arbitrary term and the protestors could not know what “near” meant, so the method of expression was proper under these circumstances and therefore protected by the First Amendment.)

10. Terminiello v. Chicago, 337 U.S. 1 (1949) — Mr. Terminiello spoke at a private meeting of the Christian Veterans of America, where he verbally attacked Jews, blacks, and the president. As 1,000 demonstrators gathered outside of the hall listening over a public address system, some began to throw rocks at the windows. The police were unable to contain the disturbance, so they arrested Terminiello for disorderly conduct. (The Court stated that the “function of free speech” is to invite dispute, and to be “often provocative and challenging.” Unless there was a clear and present danger of a serious substantive evil, free speech cannot be restricted. Terminiello’s speech was protected, but the demonstrator’s actions were not protected.)

11. Brown v. Louisiana, 383 U.S. 131 (1966) — Five black men staged a peaceful and orderly demonstration in protest of racial segregation at a public library reserved for whites. The silent protestors refused to leave when asked and were arrested for breach of the peace. (The Court held that First Amendment freedoms “embraced appropriate types of action which certainly include the right to protest in a peaceable and orderly manner” where the “protestant has every right to be.” The sit-in was protected by the First Amendment.)

12. Healy v. James, 408 U.S. 169 (1972) — Catherine Healy and other SDS (Students for a Democratic Society) members, who were Central Connecticut State College students, prepared to conduct a protest meeting in the student snack bar. In an effort to curb student unrest and disruption, the school dean prohibited SDS meetings on campus because they were a “disruptive influence” and not a “recognized college organization.” The students left peacefully but sued. (The Court distinguished between speech and conduct by sending the case back to the state court to determine if the students intended “imminent lawless action” along with their speech. If not, SDS would be a “recognized college organization” allowed to conduct their business and protests. They were protected by the First Amendment.)

13. United States v. O’Brien, 391 U.S. 367 (1968) — The Vietnam War caused much discontent and protest, particularly among college students such as O’Brien, who burned his draft-card and was arrested. (The Court made a distinction between speech and conduct by declaring that draft-card burning is beyond the protective mantle of symbolic speech. The government had an overwhelming interest in national security, which included issuing draft cards to eligible males, so it could prohibit such action. The burning therefore was not protected by the First Amendment.)

14. Bethel School District v. Fraser, 106 S. Ct. 3159 (1986) — During a high school assembly to elect student government officers, Fraser campaigned for votes by telling Jews jokes and performing gestures with sexual overtones. (The Court ruled that school officials had the right to discipline students whose speech in their judgment is offensively lewd and indecent. Fraser’s manner and content of speech was not protected by the First Amendment.)

15. Tinker v. Des Moines School District, 393 U.S. 503 (1969) — John Tinker and other high school students decided to wear black armbands to school in symbolic silent protest of the war in Vietnam. The principal had advance warning of the protest and declared that any student wearing an armband would be suspended because he anticipated a disturbance. Tinker and others wore the bands and were suspended. (The Court ruled the protest was symbolic speech protected by the First Amendment. A “undifferentiated fear or apprehension of disturbance is not enough” to deny freedom of expression.)

16. Elfrand v. Russell, 384 U.S. 11 (1966) — Barbara Elfrand, a Quaker and Arizona teacher, refused to take a state-mandated employee loyalty oath to the state and federal constitutions. The law also included the forbidding of future membership in the Communist Party under penalty of perjury. (The Court protected Elfrand’s rights by ruling “a law which applies to membership without ‘specific intent’ to further the aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of ‘guilt by association’ which has no place here.”)

17. Hazelwood v. Kuhlmeier, 108 S. Ct. 562 (1988) — Cathy Kuhlmeier, student editor of Hazelwood High’s newspaper, produced articles that described sexual experiences of three unnamed students and dramatized a student’s bitterness toward her father. The principal censored the publication to protect the identity of the students, to eliminate inappropriate sexual material, and to protect the rights of the father. (The Court ruled school officials have broad powers to regulate school newspapers in their effort to maintain a proper educational environment. Since the newspaper was part of the school curriculum, it could be regulated as part of the school’s mission to educate future
journalists into the practices and ethics of the profession. Speech in this instance was not protected.

18. New York Times v. Sullivan, 376 U.S. 254 (1964)—L. B. Sullivan, Montgomery, Alabama, commissioner of police, sued the N.Y. Times for libel because of a published ad claiming Montgomery police intimidated and brutalized civil rights demonstrators and Martin Luther King, Jr. The ad was placed by a group of civil rights leaders but did not specifically name Sullivan. (The Court unanimously ruled “debate on public issues should be uninhibited, robust, and wide-open, and sometimes [include] unpleasantly sharp attacks on government and public officials.” The Court protected such criticism as free speech.)

19. FCC v. League of Women Voters of California, 104 S. Ct. 3106 (1984)—A California public radio station received support from government grants which forbade editorials in an effort to avoid management’s bias in broadcasting. Suit was brought against the government, citing abridgment of free speech. (The Court ruled that this was unconstitutional censorship of “speech that is indispensable to the discovery and spread of political truth.” Public radio and TV editorials are therefore protected by the Constitution.)

20. Martin v. Struthers, 319 U.S. 141 (1943)—Martin, a Jehovah’s Witness, was distributing pamphlets door-to-door in Struthers, Ohio, advertising a religious meeting. Such activity was viewed as an invasion of privacy by a local ordinance prohibiting all distributors of handbills or other ads from knocking on doors of residents. (The Court ruled that this form of dissemination of ideas “is essential to the poorly financed causes of little people.” Door-to-door canvassing is therefore protected.)

21. Clark v. Community for Creative Non-Violence, 104 S. Ct. 3065 (1984)—A group of protestors concerned with the Reagan administration’s treatment of nation’s poor camped and demonstrated in Lafayette Park across from the White House. They were arrested for camping on restricted government property. (The Court held the prohibition of camping on designated property was a “reasonable restriction of the time, place, and manner in which the First Amendment rights could be exercised” and was therefore not protected.)

22. NAACP v. Claiborne, 458 U.S. 886 (1982)—A group of civil rights demonstrators conducted a non-violent boycott of white merchants in Port Gibson, Mississippi, protesting racial segregation. The merchants sued the demonstrators, claiming damages of significant economic loss as a result of the boycott. (Court declared the boycott was speech and conduct protected by the First Amendment.)

23. Texas v. Johnson, 57 U.S.L.W. 4770 (1989)—Gregory Johnson burned the American flag as participant in a political demonstration against President Reagan’s policies in Dallas during the 1984 Republican National Convention. He was arrested for violating the Texas statute prohibiting the desecration of the flag. (The Court ruled that burning the flag was “expressive conduct” protected by the First Amendment.)

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SESSION II – FREEDOM OF SPEECH AND EXPRESSION

[Time: 1 hr & 45 min]

Concepts and Topics: First Amendment Freedoms—right to assemble, speech

Lesson
Freedom of Speech and Expression

Handouts
Prepare separate copies of each case and each case decision

Procedure
Opening
(1) Welcome
   - Refer the highpoints of the focus on free speech during last session
   - Review session agenda

(2) Warm Up [5 minutes]
Focus attention by soliciting statements to complete this prompt:
“Free speech is __________.” Stop and turn to the lesson when a range of responses has been given.

Curricular Focus
This adaptation of the lesson provides for all participants to study all three cases.

(3) Divide participants into small groups of no more than 5 persons to study each case.
   - Case 1: [30 minutes total] Distribute copies of the background on Case 1 to each small group. Allow time for them to study the case and respond to the questions. [15 minutes] Bring the groups together to compare and discuss their responses. Distribute copies of the Court Decision. Review it and consider if the reasoning of the court affects their responses. [15 minutes]
   - Repeat above procedure for Cases 2 and 3. [60 minutes total]

Closing
(4) Debrief and Wrap Up [10 minutes]
Challenge participants to identify issues relating to free speech that were raised and addressed in these cases. Did any of the decisions surprise them? If they were a Justice, would they have joined the majority in each case? Why or why not?

(5) Look Ahead
Inform the participants that the next session will continue this exploration of First Amendment Rights.

(6) Adjourn – remind participants when and where they will meet next!
Using three landmark Supreme Court cases, students will work with a community legal expert to explore the benefits of and limits to freedom of speech. The teaching time of this one is approximately 45 minutes. It's a natural for a community legal expert (e.g., judge, lawyer or law professor).

Objectives

To identify benefits of freedom of speech; to identify limits of freedom of speech; to support constitutional guarantees regarding freedom of speech; to develop critical thinking and analytical skills.

Procedure

Divide the class into groups of four students and assign each student primary responsibility for answering one of the four questions for the case assigned to their group. Give each group one case and ask students to analyze it and respond to their question. After each student responds to his/her question, the group should discuss that question to develop the best possible response. Students should be certain to have evidence to support their argument.

After each group has discussed its four questions, conduct a general class discussion of the three cases by considering the four questions associated with each case. List and define any legal terminology you may use. Emphasize that freedom of speech isn't license to say whatever you want whenever you want to say it, but rather that there are times when freedom of speech conflicts with other rights.

Case 1

Libel is publishing a false statement about someone which damages his/her reputation. Public officials are accorded less protection from libel. They must prove that the statements were not only false and damaging, but that they were also made with either malice or reckless disregard for the truth. In March of 1960, The New York Times ran a full-page advertisement calling for support of blacks protesting civil rights issues in the South. It described specific abuses and activities in Montgomery, Alabama. For example, it said blacks faced an “unprecedented wave of terror,” and went on to describe police harassment of Dr. Martin Luther King. No specific names were mentioned. The ad cost $4,800 and was placed by a gentleman who was known to the Times as a responsible person. However, the ad contained numerous inaccuracies. For example, police had been called to a college campus, but had never surrounded it and the campus dining hall had never been locked.

L. B. Sullivan, commissioner of police in Montgomery, said that some of the incidents described happened before his tenure in office. In addition, he contended that people who knew him associated him with the ad. Some had indicated that his activities threatened their friendship and that if it were their choice he would not be rehired as police commissioner. Sullivan sued the Times for libel.

STUDENT QUESTIONS

1. What would be the difference between you taking space in the local paper to say derogatory things about your next door neighbor and criticizing the mayor of the city for neglecting his duties?
2. Is it necessary to prove that every statement in a signed editorial or ad be true before the paper prints it? What would be the effect of such a policy on freedom of the press?
3. When he assumed the office of commissioner, did Sullivan relinquish to some degree any of his rights?
4. What are the advantages of a totally free press? The disadvantages?

Case 2


Feiner began making a speech at 6:30 p.m. on a city street corner. He wanted to publicize a political meeting to take place that evening. A crowd of about 80 people had gathered, along with two police officers.

In the speech, Feiner referred to the president as a “bum,” and called the mayor “a champagne-sipping bum.” Then he said that “minorities don’t have equal rights; they should rise up in arms and fight for them.”

As Feiner continued, there was some pushing and shoving in the crowd. One listener told the police officers that if they did not get Feiner “off the box,” he would do it. Others supported Feiner’s position. The police officers told Feiner to stop, but Feiner continued anyway. Feiner was arrested for disorderly conduct.

STUDENT QUESTIONS

1. Was Feiner’s speech likely to produce an immediate danger of disorder?
2. Who were the police officers protecting? Feiner himself? Feiner’s expression? The general public?
3. Who should have been arrested—Feiner or the listener who made the threat?
4. If Feiner had talked only to a supportive audience should he have been arrested for criticizing the President?

Case 3

Burning the American Flag.

On June 6, 1966, Street was listening to his radio, when a news report told of the shooting of James Meredith, a Southern civil rights leader, by a sniper. Angered, he took out a folded American flag, which he had displayed on national holidays, and walked to an intersection. There, in the presence of about thirty people, he burned the flag. A police officer observed him and heard him say: “We don’t need no damn flag.” When the officer asked him whether he had burned the flag, he replied:
“Yes, that is my flag; I burned it. If they let that happen to Meredith, we don’t need an American flag.”

Street was tried under a New York law which makes it a misdemeanor “publicly [to] mutilate, deface, defile, or defy, trample upon, or cast contempt upon either by words or act [any flag of the United States].”

He was found guilty and given a suspended sentence. He appealed on the ground that his free speech rights under the First and Fourteenth Amendments had been violated.

STUDENT QUESTIONS
1. Was the burning of the flag a form of expression?
2. Or was burning the flag an action which the state had a right to regulate? What is the distinction between expression and action?
3. Would the First Amendment protect burning a draft card as a protest against the Vietnam War?
4. What values are protected by the law against defiling the flag? What values are asserted by the act of burning the flag as a political protest? Which set of values should prevail? Why?

Case 1: Court Decision

In New York Times v. Sullivan, 376 U.S. 254 (1964), the Court held that a public official could recover damages for a defamatory falsehood only if the libelous material was deliberately false—made with malice—or if the statement was made with indifference to the possibility of its falsehood. They did not feel that this was the case in the instance of New York Times v. Sullivan.

Furthermore, the Court emphasized the need for citizens in our society to have the privilege of criticizing the government and public officials, pointing to the “profound national commitment that debate on public issues should be uninhibited, robust and wide open, and that may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”

The Court concluded its statement by saying:

As to the Times, we similarly conclude that the facts do not support a finding of actual malice… We think the evidence against the Times supports at most, a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice…

We also think the evidence was constitutionally defective in another respect: it was incapable of supporting the jury’s finding that the allegedly libelous statements were made “of and concerning” Sullivan. Sullivan relies on the words of the advertisement and the testimony of six witnesses to establish a connection between it and himself…

Case 1 decision from: Institute for Political and Legal Education, Individual Rights.

Case 2: Court Decision

Law enforcement authorities may require a speaker to stop making a speech on a public street when the authorities determine that the speech is a clear danger to preserving order.

REASONING OF THE COURT
The Court believed that Feiner’s speech passed the limits of persuasion and instead was an incitement to riot.

Because there was a clear and immediate danger of riot and disorder, the Court held that the officers must be allowed to order that Feiner stop making his speech. According to the Court, it was the duty of the officers to maintain order on the streets. Looking to the particular facts of this case, the Court said that because Feiner encouraged hostility among the audience, interfered with traffic on the public streets, and ignored the officer’s order to stop talking, his conviction for disorderly conduct did not violate his constitutional right of free expression.

Justice Black strongly disagreed in a dissenting opinion. The justice shifted his focus to the unpopular speaker. According to Justice Black, Feiner had been arrested for expressing unpopular views. He asserted the police officers had a duty to protect Feiner during his speech rather than to arrest him, since Feiner was exercising his constitutional right of free expression. In his view, it was the duty of law enforcement authorities to protect a person exercising his constitutional rights from those who threatened to interfere.


Case 3: Court Decision

In Street v. New York, 394 U.S. 576 (1969), the Court was badly split—a 5 to 4 decision. Writing for the majority, Justice Harlan overruled Street’s conviction on the ground that he was “punished merely for speaking defiant or contemptuous words about the flag.” The Fourteenth Amendment prohibits states from punishing those who advocate peaceful change in our institutions. The words used by Street were not “fighting words,” nor did they shock anyone in the crowd. What Street did was to publicly express his opinion about the flag. Justice Harlan concluded on this note:

We add that disrespect for our flag is to be deplored, no less in these vexed times than in calmer periods of our history… Nevertheless we are unable to sustain a conviction that may have rested on a form of expression, however distasteful, which the Constitution tolerates and protects…

It is on this very note that the dissents parted company with the majority. Chief Justice Warren and Justices Black, Fortas, and White saw the issue as one involving action—the burning of the flag. Each felt that a state has the right to prohibit and punish those who desecrate the flag. Justice Fortas reasoned as follows:

One may not justify burning a house, even if it is his own, on the ground, however sincere, that he does so as a protest. One may not justify breaking the windows of a government building on that basis. Protest does not exonerate lawlessness. And the prohibition against flag burning on the public thoroughfare, being valid, the misdemeanor is not excused merely because it is an act of flamboyant protest.


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| VI      | Student Rights |
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SESSION III – FIRST AMENDMENT FREEDOMS EXPLORED
[Time: 1hr & 45 min]

Concepts and Topics: First Amendment Freedoms—speech, freedom of assembly and association

Lesson
Come to the First Amendment Fair

Handouts
Handout 1
Handout 2
Handout 3

Procedure

Opening
(1) Welcome [5 minutes]
   • Refer to the focus on free speech cases in previous session
   • Review session agenda

(2) Warm Up [5 minutes]
Ask if anyone has had the experience of organizing a public event—in school/in the community. Did they face any challenges/problems in deciding whom to invite to participate? Tell them that they will confront such challenges in a hypothetical situation in this session.

Curricular Focus
(3) The accompanying lesson provides the background and directions you will need to conduct this activity. Students are likely to be more engaged if they work in small groups. Small group work on “Decisions” with reporter preparation--[45 minutes]. Full group discussion and evaluation of decision--[45 minutes].

Closing
(5) Debrief and Wrap Up [5 minutes]
Discuss which situations were the hardest to resolve or decide? What made them difficult?

(6) Look Ahead
Tell participants that the next two sessions will focus on a complex aspect of free speech, that is, issues relating to hate speech.

(7) Adjourn – remind participants when and where they will meet next!
Come to the First Amendment Fair/Secondary

Ann Blum

Of course the right to assemble and speak out is a right of citizens, but we shouldn’t forget to look at the other side of the coin, and see it as a limitation—on government. As Paul Murphy points out in Update, Spring, 1986, constitutions preserve the rule of law by preventing government from taking certain actions. This strategy will convey the point by focusing in on the standards that may limit government in the free speech area. The strategy will take one or two class periods. It will help students

- identify the issues posed in major Supreme Court cases pertaining to the First Amendment rights of free speech and freedom of assembly and association
- explain the protections given to and limitations allowed on these rights by the courts
- explain that governments must follow certain rules in dealing with speech and assembly issues
- develop skill in reasoning by analogy and in decision-making
- discuss the importance of freedom of association

Procedures

Distribute both handouts (pp. 12-13) to students. Handout 1, “Decisions for the Fair Director,” explains the activity. The second handout, “Relevant Court Cases,” provides the students with information for decision-making. Students can do the exercise individually, with written responses, or in small groups with a reporter for each group.

After completing the “Decisions for the Fair Director” activity, students should discuss and evaluate their decisions. Use the “Commentary on Decisions for the Fair Director” for this discussion/evaluation. An attorney versed in constitutional law could contribute greatly to the discussion of the situations, cases, and issues.

After the review of student decisions, ask the class

- What are the main issues in these cases and situations?
- What limitations have the courts allowed on the rights to associate and assemble?
- What protections have the courts clearly given for the rights to assemble and associate?
- Some of the situations evoke what is called the “heckler’s veto.” Ask students if they think it is right to give way to threats by canceling events. What should be done?
- What rules, if any, might the director have established beforehand to regulate the problems confronted?
- Should any of the groups have been excluded? Why or why not?
- Why is freedom of association so important? What are some threats to it?

Commentary on Decisions for the Fair Director

1. The decision in Hague v. CIO suggests that this is not good advice. The city ordinance appears to be a vague one, without narrow standards, that the courts would probably hold unconstitutional. Without such standards, any action to abridge rights taken by a fair director would be arbitrary and also unconstitutional.

2. Decisions on the “public enemy” laws suggest that the director could not turn down the request of the Super Sniffs without proof that they were going to use their booth to plan or commit a crime. People have a right to associate as long as their purposes are not criminal or disruptive.

3. The decision in the Skokie case indicates that this action would not be accepted by the courts. What if the director required such a bond or each exhibitor? This would probably be accepted by the courts if the amount of the bond was reasonably set—but the issue is still an open one. Note that governments have sometimes canceled events rather than hold them when associations like the Klan, held to be undesirable, want to take part.

4. Definitely not. Although the cases are more extreme, note decisions concerning right to assembly in Edwards v. South Carolina, Feiner v. New York, Gregory v. City of Chicago, and the Skokie cases. The director should instead act to alert police to assure protection for the union exhibitor if it is necessary.

5. The director should not close the booth. As cases indicate, it is not illegal per se to be a member of the Communist Party. In regard to the pamphlets, note that the courts have held that abstract recommendations for political violence, like these, are protected by the First Amendment. See decisions in DeJonge v. Oregon and Communist Party membership cases.

6. There do not appear to have been any grounds—except dislike—for refusing this group a booth (see Niemotko vs. Maryland). It is wiser to allow them to stay even though they had been turned down. This is a very complicated legal issue—the courts would want to examine the procedural scheme set up for the permit procedure, the time available for judicial remedies, etc. Under the circumstances, the director couldn’t assume Poulos v. New Hampshire would be a precedent.

7. Edwards v. South Carolina, Feiner v. New York, and Gregory v. City of Chicago are all relevant to the issues posed. The cases indicate that the first responsibility of the police is to protect the speakers and control the hecklers. If all else fails, then the speaker can be removed.

Ann Blum is Law Education Coordinator, Governmental Education Division, of the Carl Vinson Institute of Government at the University of Georgia. This strategy is adapted from the teachers manual for An Introduction to Law in Georgia by Ann Blum and Jeannette Moon, Athens: Vinson Institute of Government, University of Georgia, in press. The strategy was reviewed by Paul Kurtz, a professor of law at the university, for legal accuracy.
Decisions for the Fair Director (Handout 1)

You are one of the directors of a fair of local associations to be held in the park in front of your city’s courthouse. The purpose of the fair is to celebrate our American rights to the First Amendment freedoms of expression and association. There is no thought or provision for excluding any organization. Through advertisements, you invite associations to apply for space for fair exhibition booths. Associations can use the booth spaces for displays or simple programs explaining and touting their organizations.

Unfortunately, problems about participation arise almost immediately. You are faced with a series of dilemmas. Obviously, you don’t want to step on the rights of any group. On the other hand, you don’t want the fair to be a series of disturbances. In dealing with the situations described below, use the handout “Relevant Court Cases” to guide your decisions. For each situation, record your decision and your reasons for making it. Cite any relevant cases.

Situations

1. The American Nazi Party immediately requests a booth. Because of the Jewish population of the city, you are very uneasy. A fellow fair director suggests you refuse the party a booth on the basis of a city ordinance that says permits for street meetings or similar gatherings can be refused “to prevent riots and disturbances.” Should you follow her advice?
2. The Super Sniffs, a group widely suspected of being drug smugglers and dealers, requests a booth. This is another group you don’t want to participate. What can you do, if anything, to refuse them space?
3. A request from the Ku Klux Klan for space makes you wonder why you accepted this job. You are advised to ask them to post a bond of $100,000 to participate, because this will surely keep them out. Should you do this? Why or why not?
4. A major issue in your town is the unionization of the local hat factory. The union requests a booth—and you receive several threats by phone that there’ll be trouble if those union blanket-blanks are there. Because of these threats, can you refuse them space?
5. You receive a request for a booth from the local chapter of the Communist Party. You allow them space and then, immediately after the fair opens, a man bursts into fair headquarters shouting that they should go to jail for allowing the Commies to participate. He says they even have pamphlets—he waves a handful of dull-looking papers at you—that indicate the overthrow of the government may be necessary to attain their ends. Those, too, are illegal, he shouts. Is he right? Should you close the booth?
6. You refuse a booth to what you regard as a very pushy religious group. They are particularly offensive because they never bathe and rarely change clothes. They come anyway and set up a booth. You ask them to leave; they refuse. You try to decide whether to ask the police to eject them. Should you do this?
7. A hostile crowd gathers around the booth of a pro-choice group. They become loud and jostling. Police advise you that trouble may result. You ask the pro-abortion group to leave. When they refuse, the police arrest them for breaching the peace. Was this the way to handle the situation? Would it have made a difference if the crowd had begun to throw bottles and rocks?

Relevant Court Cases (Handout 2)

COMMUNIST PARTY MEMBERSHIP CASES
The question of whether membership in the Communist Party can be made illegal by statute was confronted by the Supreme Court in the late 1950s and early 1960s. In Yates v. United States (354 U.S. 298 [1957]), the Court marked a difference between advocating abstract doctrines to overthrow the government and advocating action. The former was held to be permissible but not the latter. (Or, as the Court said in Brandenburg v. Ohio (395 U.S. 444 [1969]), a case concerning a Ku Klux Klan speaker, the mere abstract teaching of a moral need to resort to force and violence is not the same as “preparing a group for violent action and steeling it to such action.” Such teaching is protected by the First Amendment.)

In Scales v. United States (367 U.S. 203 [1961]), a divided Court struggled with the recognition that the party has both legal and illegal aims. Being a “knowing” member in an organization advocating overthrow of the government by force could be a felony, the Court said. But being a member “for whom the organization is a vehicle for the advancement of legitimate aims and policies” should not be a crime.

DEJONGE V. OREGON 229 U.S. 353 (1917)
In 1934 Dick DeJonge spoke at a meeting of the Communist Party in Portland, protesting actions used to break a longshoreman’s and seaman’s strike. He was arrested and convicted for “assisting in the conduct of a public meeting” held under the auspices of the Communist Party. His action was said to violate an Oregon law that prohibited advocating violence as a means of political reform.

The Supreme Court reversed the decision, holding the state law unconstitutional. The Court said that “peaceable assembly for lawful discussion cannot be made a crime.” Nor can persons assisting in the conduct of such meetings be “branded as criminals on that score.”
Relevant Court Cases (Handout 2)

EDWARDS V. SOUTH CAROLINA 372 U.S. 229 (1963)
In early 1961, about 190 black students marched to the park-like grounds of the state capitol in Columbia to protest segregation laws. Law enforcement officers told them as they entered the grounds that they had a right to do so as long as they were peaceful. The demonstrators marched, listened to a speaker, and sang—all in an orderly way. There was no obstruction of traffic. Onlookers gathered, but no one actually caused trouble. However the police and city manager were uneasy. The demonstrators were warned they would be arrested if they didn’t disperse in 15 minutes. They refused and were arrested and convicted under the state breach-of-peace statute.

The Supreme Court, in a 8-1 decision, held the state statute vague and indefinite, upholding the demonstrators’ rights under the First and Fourteenth Amendments to protest peaceably on public grounds.

FEINER V. NEW YORK 340 U.S. 315 (1961)
Feiner, a Syracuse University student, was addressing a crowd of 70 to 80 people on a city sidewalk. Some of the audience were hostile, and the police, summoned by a complaint, asked Feiner to stop talking after at least one threat of violence. Feiner refused and was arrested and convicted for violating the state’s disorderly conduct law.

The Supreme Court, by a 6-3 margin, upheld the conviction. The majority opinion made clear that Feiner was not arrested for making his speech but because of audience reaction. His speech had created a clear and present danger of riot or disturbance. The police, the Court said, could act in such circumstances.

GREGORY V. CITY OF CHICAGO 354 U.S. 111 (1957)
Accompanied by police, Dick Gregory led about 85 marchers to the home of the mayor to protest delays in desegregation of public schools. Crowds gathered and began to hurl not only threats and obscenities but rocks and eggs. The marchers remained orderly. The police asked the protesters to disperse. When they refused, they were arrested and charged with violating Chicago’s disorderly conduct ordinance.

On appeal, the Supreme Court overturned the decision. An orderly protest march, it said, falls under protection of the First Amendment. The city’s ordinance, the Court held, was too vague.

HAGUE V. CIO 307 U.S. 486 (1936)
Frank Hague, mayor and political boss of Jersey City, New Jersey, was anti-union. When the Committee for Industrial Organization (CIO) requested a permit for a street meeting, it was refused under a city ordinance, which said a permit could be turned down to prevent “riots, disturbances, or disorderly assemblages.”

In a 7-2 ruling, the Supreme Court declared the ordinance void. The reasoning was that without narrow standards (or guidelines), it allowed one person to suppress the rights of free speech and assembly in a public place solely on the basis of his or her opinion that the activity might cause a disturbance.

NIEMOTKO V. MARYLAND 340 U.S. 168 (1951)
A group of Jehovah’s Witnesses were refused a permit to hold Bible discussion meetings in the town park. There was no ordinance, but local custom required a permit be obtained from the park commissioner, with appeal on refusal to the city council. The Jehovah’s Witnesses held the meeting without a permit. They were arrested and convicted for disorderly conduct.

The Supreme Court reversed the decision. It said that a permit requirement is invalid as a prior restraint “in the absence of narrowly drawn, reasonable and definite standards for the officials to follow.” The only apparent reason for refusal of the permit in this case was dislike.

POULOS V. NEW HAMPSHIRE 345 U.S. 395 (1953)
Like Niemotko v. Maryland, this case concerned denial of a permit for a park meeting for a group of Jehovah’s Witnesses. This group also held their meeting anyway.

In this case, the Supreme Court, however, upheld the conviction and fine of Poulos. It held that the ordinance was valid, but the decision to deny the permit was arbitrary. However, Poulos, it said, had judicial remedies available to question the council’s decision. He did not use them. To take the law into one’s own hands, it said, is a dangerous course of action.

PUBLIC ENEMY CASES
In the 1920s and 30s, faced with very visible gangsterism, several states enacted so-called “public enemy” laws. These declared persons gangsters who belonged to groups consisting of people who had been convicted of crimes or ordinance violations. The courts found the basic terms of these laws too vague. In its ruling on a New York law, the New York Court of Appeals said that a state must prove that an association of “evil-minded people” are planning or doing something unlawful. “The consorting alone is no crime.” (People v. Pieri, 269 NY 315, 199 N.E. 495 (1926)).

AMERICAN NAZI PARTY V. VILLAGE OF SKOKIE 373 N.E.2d. 21 (1978)
In 1977, the city of Skokie, Illinois, sought to prevent a march of the American Nazi Party through the predominantly Jewish community. It tried to do this by requiring them to post $300,000 bond for a parade permit. A federal appeals court said that a community could not use its parade-granting power as a means of suppressing free speech and assembly. They said the Nazis could march without posting the bond. Having gained the right, the Nazis decided not to hold their demonstration in Skokie.
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SESSIONS IV & V – HATE SPEECH/FREE SPEECH
[Time: approximately 1 hr 45 min for each session]

NOTE: This lesson was originally designed for multiple classroom periods. It will require two Academy sessions to complete. During the first session participants acquire background on hate speech and prepare for a mock legislative hearing. The second session is devoted to the mock hearing and debriefing.

Concepts and Topics: First Amendment Freedoms—speech, judicial protection of individual rights,

Lesson
The Struggle with Hate Speech

Resource Persons
Consider inviting one or two legislators to be available to assist students in preparing for, conducting, and debriefing the hearing.

Handouts
Student Handouts 1, 2, and 3

Materials
Signage and other props for Hearing Chambers

FIRST SESSION [Session IV]
[Time: 1 hr & 45 min]
Procedure
Opening
(1) Welcome [5 minutes]
   • Briefly review the discussions of free speech in the previous sessions
   • Inform participants that during this session and the next they will be exploring hate speech.

(2) Warm Up [10 minutes]
   Use Procedure #1 as your warm up. [Directions for Brainstorming are found on page of the Resource Guide.]

Curricular Focus
The Procedures section provides a concise and comprehensive guide for conducting the lesson activities. The following may assist you in establishing time for each component.

(3) Procedures #2 & #3. [30 minutes]

(4) Procedures #4 - #6. [30 minutes]
(5) Procedures #7 & #8. [30 minutes]

**Closing**
(6) Wrap-up and Look Ahead
Assign “homework.” Tell participants to review Baron’s bill and the Hearing procedures and prepare for their role in the hearing.

(7) Adjourn – remind participants when and where they will meet next!

**SECOND SESSION [Session V continued]**
[Time: 1 hr & 45 min]
Because this is a continuation of the previous session, the standard format will not be followed.

(1) Before participants arrive, arrange the room to represent the “Hearing Chambers.”

(2) Allow time for participants to review their roles (individually and in relevant groups) and prepare for the Hearing. [15-20 minutes]

(3) Conduct the Legislative Hearing. [approximately one hour]

(4) Wrap Up and Debrief
Procedure #10 provides suggestions for your debriefing. If legislators are present ask for their feedback and observations on experiences they have had in such hearings. [15-20 minutes]

(5) Look Ahead
Tell participants that the next session will focus on two valuable and related First Amendment Freedoms—privacy and the right to be secure in one’s home.

(6) Adjourn – remind participants when and where they will meet next!
Teaching Strategy

The Struggle with Hate Speech

Jennifer Bloom

It is important to often repeat that the freedoms guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.


Background

Just as American history is full of stories about the lives and accomplishments of Native Americans, Europeans, Africans, Asians, Muslims, Jews, Protestants, Catholics, atheists, men and women, heterosexuals and homosexuals, and others, it is also full of stories of hatred and violence among these groups. As our traditionally rich and diverse society becomes even more so, will we view our diversity as a source of strength or of division and intolerance? How far should our government go in forcing us to be "nice"?

This tradition of hate-motivated violence, which has been passed from generation to generation, has resulted in many states treating it as a special social problem that requires special laws aimed at deterrence. Because hate-motivated behavior is often seen by the perpetrator as serving a higher social good by ridding society of “bad people,” and, in fact, is often not perceived as wrong at all, states are seeking alternative ways to end the victimization of the “bad.”

Two examples of state responses to the increase in violent attacks against minority group members are a St. Paul, Minnesota, city ordinance aimed at behavior such as cross burning, and a Wisconsin law that increases a sentence if the defendant selects a victim because of bigoted beliefs. (Such laws are known as enhancement laws.)

These and other laws have resulted in a somewhat confusing area of law that attempts to distinguish between speech and conduct. Laws in this area can be classified broadly as hate speech laws and hate crime laws. Hate speech laws are legal restrictions on what people may communicate to one another even if it is said in words that may be offensive. Hate crimes are those acts of conduct motivated by hatred. In order to be classified as a hate crime, a perpetrator's act must be a violent criminal act such as assault, battery, murder, or arson. Whether an act is expression, and therefore governed by hate speech laws, or conduct, governed by hate crime laws, can be confusing.

Objectives

As a result of this lesson, students will:

• identify how the constitutional principles of equal protection and free speech conflict
• identify arguments supporting and opposing hate speech laws
• analyze arguments to determine which laws are more important in meeting society's needs
• apply Supreme Court decisions to proposed legislation
• describe procedures used in, and conduct, legislative hearings

Target Group: Grades 9–12

Time Needed: 4 days

Materials Needed: Student Handouts 1–3

Procedures

1. Explain to students that, for the next few days, they will be exploring hate speech. Ask them to brainstorm examples of hate speech. Next, ask them to brainstorm the damage it does.
2. Explore with students what, if anything, should be done about hate speech. What should government do? What should parents and communities do? What should friends do?
3. Have students read the two case studies on Student Handout 1. After discussing what happened in each, ask students to consider questions in the accompanying “Teacher's Discussion Guide” on page 34.
4. Discuss with students the roles that hate speech and hate crime laws can play in developing respect for diversity. Explain that many efforts have been made to limit the use of hate speech. The students are going...
to consider one such effort in a mock legislative hearing.
5.Have students read “Baron’s Hate Speech Bill” on Student Handout 2 and then prepare for their mock legislative hearing by familiarizing themselves with “Committee Hearing Procedures” on the same handout.
6.Pass out Student Handout 3, which includes the opinions of 10 experts (5 for and 5 against the proposed hate speech bill) who may testify before the legislative committee. Assign these roles to students, as well as those of committee chairperson and author of the bill. The committee chairperson will be responsible for implementing the hearing procedure as outlined on Handout 2. The author of the bill will briefly explain it at the beginning of the hearing.
7.Allow students time to become familiar with their roles. The experts should talk with one another to better understand their positions. They must be prepared to answer questions related to their positions and to provide answers consistent with them.
8.Assign students to the legislative committee (in most cases, this will be the remainder of the class). The committee should be thoroughly familiar with the committee procedure and the proposed bill on Student Handout 2. They may discuss the bill.
9.Have students conduct the legislative hearing.
10.Ask the class to evaluate the proposed/revised bill. Review the questions that were to be considered by the legislative committee. Ask for a hand vote indicating support for the bill. Have students anticipate what court challenges might result from the bill’s passage and what the court rulings might be.

**Teacher’s Discussion Guide**

a. *Why should speech be protected?*

Write the question on the chalkboard along with this quote: “The constitutional right of free expression is... intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us... in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests.”


Make sure to bring out in the discussion the idea that speech is essential to debate and decision making in our democracy, where we foster a “free marketplace of ideas.” Also, discuss how speech is fundamental to individual fulfillment and conscience.

b. *What is the difference between symbolic speech (as in R.A.V.) and conduct (as in Mitchell)?*

Write the question on the chalkboard along with the phrase “dragging a flag through the mud.” Lead students to the understanding that, to determine whether conduct is symbolic speech, one must look to the intent to convey an idea. Explain that, in *Texas v. Johnson*, 491 U.S. 397 (1989), Justice Brennan distinguished dragging a flag through the mud with “no thought of expressing an idea” from doing so with such a motivation. He suggested that the former, is not expressive conduct protected by the First Amendment, while the latter is, even if it is not offensive to others.

c. *How can one identify a hate speech law?*

Write the question on the chalkboard along with: “Can this law be violated solely by engaging in speech or expressive conduct?” Explain to students that whenever the answer to the question is yes, the law is a hate speech law.

d. *Are all laws regulating hate speech unconstitutional?*

Write the question on the chalkboard along with the definition for *fighting words* (see Student Handout 1). Explain that the First Amendment protects the right to be a racist, to join racist organizations, and to express racist beliefs. However, the First Amendment does not protect the right to commit racist assaults or to use “fighting words.”
Student Handout 1


On June 12, 1990, five adults and R.A.V., a 17-year-old youth, were arrested for burning three crosses, one inside the fenced yard of an African-American family that lived across the street from the house where R.A.V. was staying. R.A.V. was charged with violating a St. Paul ordinance providing that “Whoever intentionally, or with reckless disregard of so doing, puts another in fear of immediate bodily harm or death by placing on public or private property a symbol, object, appellation, characterization or graffiti, including but not limited to a burning cross or Nazi swastika, which is reasonably understood as communicating threats of harm, violence, contempt, or hatred on the basis of race, color, creed, religion or gender, commits an assault and shall be guilty of a misdemeanor.”

On July 17, 1990, the trial court dismissed the charge of violating the St. Paul ordinance, ruling that the ordinance was too broad and that it violated the First Amendment’s guarantee of free speech.

The city of St. Paul appealed to the Minnesota Supreme Court, which concluded that the ordinance, if narrowly construed to reach only unprotected conduct (fighting words), was constitutional.

R.A.V. appealed to the U.S. Supreme Court, which overruled the Minnesota Supreme Court, ruling that “The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects.” The Court held the ordinance content discriminatory because it applies only to fighting words that insult, or provoke violence, on the basis of race, color, creed, or religion but not when applied to political affiliation, union membership, or homosexuality. Justice Scalia pointed out that, while fighting words are an exception to First Amendment protection, a state may not pick and choose which fighting words are the ones to be punished.

The Court also held that the ordinance was not necessary to achieve the city’s interest in protecting groups historically subject to discrimination. Justice Scalia wrote, “We have long held, for example, that nonverbal expressive activity can be banned because of the action it entails, but not because of the ideas it expresses—so that burning a flag in violation of an ordinance against outdoor fires could be punishable, whereas burning a flag in violation of an ordinance against dishonoring the flag is not.” The Court found that, although “Burning a cross in someone’s front yard is reprehensible, . . . St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire.”


A group of young blacks in Kenosha, Wisconsin, had been discussing a scene in Mississippi Burning, a movie about the Ku Klux Klan during the 1960s, in which a white beat a young black. Todd Mitchell, the 19-year-old defendant, asked the group, “Do you all feel hyped up to move on some white people?” When 14-year-old Gregory Reddick, a white, walked by a short time later on the other side of the street, Mitchell said: “There goes a white boy; go get him.” Mitchell then urged the group to surround the victim.

The group ran toward Reddick, surrounded him, and repeatedly kicked and beat him until he was unconscious, resulting in permanent brain damage. They then stole his tennis shoes. Mitchell was convicted of aggravated battery. The jury also found that he intentionally selected Reddick as the victim because of his race. Under Wisconsin law, one who “intentionally selects” a felony victim “because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person” is subject to an increased penalty of up to five years.

Mitchell’s sentence for aggravated battery was increased by two years. He appealed to the Wisconsin Supreme Court.

Relying on the U.S. Supreme Court’s decision in R.A.V. v. St. Paul, the Wisconsin Supreme Court ruled the law unconstitutional because racist thought (motive behind the selection of a victim) is protected by the First Amendment. Wisconsin appealed to the U.S. Supreme Court, which overruled the Wisconsin court, finding that the Wisconsin law not in violation of the First Amendment because it was directed at conduct (the “selection” of a victim) rather than speech (including beliefs and thoughts). It distinguished R.A.V. v. St. Paul because the law in that case was explicitly directed at speech (symbolic speech as expressed in burning a cross).

Vocabulary

*Fighting words* are words that are likely to provoke immediate violence. If a law is aimed only at fighting words, it might be held constitutional.

*Symbolic speech*, such as cross burning or dragging the American flag through the mud, expresses an idea without spoken words.
Baron's Hate Speech Bill

The state of Baron is considering the enactment of anti-hate speech legislation. This bill has been drafted and is being debated by a legislative committee.

It shall be a petty misdemeanor to express racist or discriminatory comments, epithets, or other expressive behavior (including symbolic speech) directed at an individual or, on separate occasions, at different individuals if such comments, epithets, or other expressive behavior:

a. demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry, or age of the individual or individuals, and
b. create an intimidating, hostile, or demeaning environment.

Although such speech or expressive conduct may often be accompanied by violent behavior, violent behavior is not required for a violation of the law to occur.

Because of the Supreme Court’s decisions in related cases, the Baron legislature has decided to seek advice from experts representing many of the groups interested in the bill. Questions that the legislative committee should consider include
1. Should government be involved in this? Why or why not?
2. Is the proposed law constitutional?
3. If not, can it be changed so that it is constitutional?

What Is a Legislative Hearing?

After a bill is introduced in Congress, it goes to a committee for consideration. If committee members decide to proceed with the bill, they usually hold public hearings, where testimony is given for and against it. Cabinet members, scholars and various experts, members of Congress, and others may be asked to testify.

Committee Hearing Procedures

1. Committee chairperson calls the meeting to order.
2. Chairperson announces that there is one item on the day's agenda: the proposed bill regarding hate speech.
3. Chairperson calls on the bill's author to explain the bill.
4. Author briefly explains the bill, states that there are witnesses who want to testify in favor of it.
5. Chairperson calls on those in favor of the bill to testify. These experts stand before the committee, and each begins with “Mr./Madam Chair, members of the committee—” One by one, they explain their positions.
6. Chairperson asks for questions from the committee members. Anytime committee members wish to speak, they say “Mr./Madam Chair” and wait to be called upon.
7. Chairperson asks if others want to testify. Experts opposing the bill stand before the committee and, following the same protocol, explain their opposition one by one.
8. Chairperson asks for questions from the legislative committee members.
9. Committee discusses the bill. They may change the language of the bill by adding or deleting words. “I move to amend the bill by—” The amendment is then voted on separately. If it passes, it is incorporated into the bill.
10. Committee member moves for the bill to pass.
11. Chairperson asks for those in favor of the motion to say aye and for those opposed to say nay. The chairperson estimates the vote on each side and announces “The motion prevails (or fails).” Any member may ask for a roll-call vote, in which the chairperson asks each member to register a vote on paper or by voice. The chairperson announces the vote.
12. Chairperson says “Having no other items on the agenda, the meeting is adjourned.”
Hate Speech Bill Proponents and Opponents

Note: These arguments have been taken from actual Supreme Court arguments, court opinions, advocacy pieces, and news reports.

1. School Superintendent: "We must look at this situation with the balancing notion that speech must sometimes be suppressed for the common good. If someone feels personally offended by something someone says, that's grounds for a case of harassment, in which case the student should be suspended. We must take a stand against this racism-promoting climate."

2. College President: "The college’s most important challenge is to achieve a fruitful balance between respecting the rights of its individual members to operate and speak freely in pursuit of the truth, and fostering a climate of mutual respect and adherence to accepted community values. Speech codes put people on notice that certain speech is frowned upon. It’s all part of learning to live in a diverse world. Students must learn to discuss and argue on the basis of reason, without attacking people."

3. Director, Association to End Racial Violence: "Bias crimes are on the increase. These shocking stories recently made headlines. In a Washington, D.C., suburb, two youths wanted revenge for being called ‘honkies.’ They assaulted two blacks. One of the blacks escaped, but the other was attacked and called names, and the attackers threatened to set her on fire. In Kentucky, assailants beat a young gay male with a tire iron. He now has severe brain damage. In California, a 15-year-old high school cheerleader was badly beaten because she has one white and one black parent."

4. Special Assistant Secretary, Department of Education Office of Civil Rights: "The Department of Education Office of Civil Rights (OCR) recently issued ‘Guidance for Racial Incidents and Harassment,’ which, although lacking the force of law, does state enforcement policies under Title VI of the Civil Rights Act of 1964. The document sets forth the liability of public school officials for racist activity by students and employees.

"OCR investigates complaints of racial harassment and racial incidents at federally funded educational institutions, including public elementary and secondary schools. OCR’s involvement may result in a charge of ‘hostile environment’ at any school that allows students or employees to create an environment that interferes with a student’s ability to participate in, or benefit from, services, activities, or privileges the school provides. OCR advises that, in developing and implementing policies to assure that a hostile environment is not created, schools must not forget First Amendment free speech principles, which must be reconciled with the harassment guidelines."

5. Lawyer, State School Boards Association: "Governmental officials, which include school employees, are responsible for any conduct that violates a clearly established constitutional right. The U.S. Supreme Court has determined that, although children retain their constitutional rights, including freedom of expression, when they attend school, these rights must be balanced against the need for school officials to maintain order in the schools. "Constitutionally protected speech may be limited if a school official determines that the expression will cause disruption or interfere with school discipline. In making this determination, the school official may consider the age of the children involved."

1. Civil Liberties Union Representative: "Expression of ideas is the most absolute of the values protected by the U.S. Constitution. An infringement upon expression may not be permitted unless the expression is directed to inciting or producing imminent lawless action. Questions to ask include, Did racial violence follow the expression of ideas? Did the person expressing the ideas threaten someone? We make no attempt to condone racist testimony. In fact, we find these statements very offensive. However, we stand firmly in arguing that there is a constitutional right to express the ideas, regardless of their offensive message."

2. Constitutional Lawyer: "Hate speech laws create a mine field. It is very hard to define what constitutes hate speech. Are there certain words that are by their very nature so offensive that their utterance should be punishable? What would they be? Should the hate speech law list these words? Would a list trigger charges of content discrimination if it failed to include every possible offensive word? Does it matter who says them? For example, does it matter whether the person yelling ‘nigger’ is white or black?

"These kinds of laws are vague standards that give authorities the power to label speech as something else, punishing it because it has crossed an undefined line of propriety, turning into behavior that flagrantly disdards the well-being of others or subjects others to demeaning actions."

3. President, Center for School Change: "Schools should provide the campus conditions under which racist, sexist, and homophobic ideas can be effectively countered with the weight of other humane, respectful, and constructive ideas. Instead of punishing speech, there should be race relations counseling programs, required courses on the historical roots of discrimination, recruitment of minority students and teachers, and curriculum changes that bring all cultures into the mainstream of study."

4. Political Science Professor, President of Academic Freedom Coalition: "Many words are terribly hurtful, and some evoke the worst aspects of our national history. But banning hateful comments only chills campus discussion and debate by making students and teachers afraid to speak out. It interferes with the search for truth. In fact, allowing racist speech may enable society to deal with causes of racism, while suppressing the speech merely hides the problem. Let’s talk about it. Let’s learn from it."

5. Chairman, Free Speech Committee, Center for Individual Rights: "Laws similar to the St. Paul ordinance in R.A.V. face possibly insurmountable constitutional problems. For example, a St. Paul resident who erected a billboard on his own property expressing his view that women belong at home rather than at work can easily be subject to prosecution under the proposed law. Or the victims in the cross-burning case would face prosecution if they responded to the cross burning by placing a sign on their front lawns condemning white racism."
PATHWAY 4: RIGHTS AND RESPONSIBILITIES

SESSION  LESSONS
I       The Bill of Rights Rap
       To Protect or Not to Protect—that is the Question
II      Freedom of Speech and Expression
III     First Amendment Freedoms Explored
IV & V  Hate Speech/Free Speech
VI      Student Rights
VII & VIII The Right of the People to be Secure
SESSION VI: STUDENT RIGHTS
[Time: 1 hr & 45 min]

Concepts and Topics: concept of right to privacy, search and seizure

Lesson
Teaching About Search and Seizure

Handout
New Jersey v. T.L.O.
The 4 hypothetical situations [with adjusted questions]
Actual Search Warrant

Preparation
Make these adjustments for the handouts:
- For the student handouts, remove the last three paragraphs (starting with “The extent of a student’s . . .”) of the boxed overview of New Jersey v. T.L.O. Keep those three paragraphs for reference in the discussion of the students’ analyzes of the hypotheticals.
- Reduce and alter the Discussion questions accompanying the hypotheticals Whose Locker is It? and Warriors v. Giants to parallel the questions for the other two situations. Provide no more than three or four questions for each.

Resources for Reference
See discussion of 4 Fourth Amendment cases relating to schools at the University of Missouri, KC, School of Law website: http://law2.umkc.edu/faculty/projects/ftrials/conlaw/searches.htm

Procedure
The following adaptation of the lesson gives students the opportunity explore issues raised in New Jersey v. T.L.O. and relate the Court’s decision to the hypothetical situations.

Opening
(1) Welcome
- Refer to the previous investigations of free speech. Tell them that in the next three sessions they will study how search and seizure laws protect Constitutional rights.
- Review session agenda

(2) Warm Up [10 minutes]
Turn the questions under Procedures into a brainstorm activity asking participants: “What rights do you have?” Write “RIGHTS” on the board and list responses under it. When the posted list contains several different rights, ask: “Where do these rights come from?” Write “SOURCE” on the board next to the rights column and probe for possible sources for each right listed. Project or distribute copies of the Fourth Amendment. Are any of their listed rights protected by the 4th Amendment? It is likely that one or more of the listed rights will relate to the 4th Amendment. Refer to those in introducing the lesson focusing on such rights.
Curricular Focus
(3) *New Jersey v. T.L.O.* Distribute copies of the case and give students time to read it, either independently or with a partner. Review the facts of the case and the Court’s decision with the whole group. [30 minutes]

(4) Hypothetical Situations. Form small groups. Provide each person with copies of the 4 hypothetical situations, with questions attached. Instruct the group to read each situation and use their knowledge of the New Jersey case (which they will have in hand) to answer the questions. [60 minutes]

(5) Bring the groups together to report, compare, and discuss the responses.

Closing
(5) Debrief and Wrap Up [5 minutes]
Point out that the New Jersey case is only one of several Supreme Court cases that focus on schools and students’ rights. Briefly review cited cases and provide participants with this website that discusses 4 of them, including the New Jersey case: http://law2.umkc.edu/faculty/projects/ftrials/conlaw/searches.htm

(6) Look Ahead
During the next two (and last) sessions of this Academy, participants will delve more deeply into search and seizure and Constitutional rights.

(7) Adjourn – remind participants when and where they will meet next!
Here is a “model” class on the Bill of Rights, search and seizure and student rights and responsibilities.

Before going to class, get to know the subject. Review the brief description of New Jersey v. T.L.O on page 43.

**Why You Are Here**

- To introduce to students the meaning of the Fourth Amendment’s protection against unreasonable search and seizures and the source of that protection in the constitutions of the United States and your state.
- To have students apply their Fourth Amendment protections to situations which arise within a school setting.
- To have students understand the reasons why limitations exist to students’ Fourth Amendment protections.
- To have students recognize how the responsibilities of school administrators may conflict with students’ Fourth Amendment protections.
- To give students the opportunity to discuss constitutional issues which directly affect them.

**Procedures**

Classroom activities can be performed within the 45 minute time period.

Questions to start you out include

- “Do you have any rights?”
- “What are they?” (This can produce a myriad of variations.)
- “Where do they come from?” (Here you can start from the particular [school rules] and go all the way to the Constitution.)
- “Where does it say in the Constitution that you have a right not to be searched?” (Here you get into the Fourth. Use concrete examples: Find a student with a purse, gym bag, etc. and ask if you can look into it. If not, why not?)

Following are four hypotheticals, any of which you can use to spark discussion of rights and responsibilities in a school search situation. (One way to relate the situations more directly to the students you're talking with is to change the names of the students in the hypotheticals to names of students in your class.)

You can either read the hypothetical to the class or summarize it for them before getting into the suggested questions.

**Whose Locker Is It?**

Dwayne’s high school had been having many problems with vandalism. In the past week there had been a fire in the girls’ rest room, four windows broken, and a small explosion caused by three cherry bombs in the boys’ locker room in the gym. Rumors were running all through the school as to who caused the explosion. One such rumor made it to the principal’s office when two students told the principal that they had heard that Dwayne had a bag of cherry bombs in his locker.

The principal called Dwayne into his office and asked him if he had any cherry bombs in his locker. Dwayne said he did not, but the principal was not convinced. He told Dwayne that if he did not have the cherry bombs in his locker, then he would not mind the principal’s opening the locker to make sure. Dwayne said he did not want anybody going through his locker and would not open it up for the principal.

The principal became angry and said he would open it anyway and called the custodian to bring the master key. Dwayne became very upset and yelled at the principal that he knew his rights and that the locker was his and no one could open it without his permission. Disregarding what Dwayne said, the principal went to Dwayne’s locker, opened it with the master key and found all kinds of art supplies which had been missing from the art room, but found no cherry bombs.

**SUGGESTED QUESTIONS FOR DISCUSSION**

Do you think the principal had good reason to open and search Dwayne’s locker?
Do you think the principal had a responsibility to the students and teachers to follow all leads in order to find out who set off the explosion in the boys’ locker room? Who do you think owns the lockers in schools?

Can you think of how use of a school locker may be different from use of a locker in a bus station, or a post office mailbox?

Do you think a principal should have the right to open and search a student’s locker without that student’s permission?

Can you think of any situations where you might open and search a student’s locker without permission if you were a principal?

Did Dwayne know his rights?

May a principal open and search a student’s locker without the student’s permission?

Do you think Dwayne set off the explosion in the boys’ locker room? Why? Why not?

Did the principal find in Dwayne’s locker what he was looking for?

Do you think a policeman can open a student’s locker without that student’s permission?

What does a policeman need to have before he/she could open a student’s locker?

What is a search warrant? When is one used? Who uses search warrants?

**Warriors v. Giants**

The past two weeks at the high school had been terrible. Four students were sent to the hospital, two students arrested, and all the students frightened about their safety as a result of a gang war between the Warriors and the Giants taking place not only in the school but also in the community. The two gangs began warring when the Warriors blamed the Giants for slashing the tires on the car of one of its members. The Giants denied having done it, but soon tempers began to rage and within two weeks there was a near riot in the school cafeteria resulting in the injuries and arrests.

In order to ensure the safety of the students and the staff, the principal decided that each student would be frisked upon entering school to check for weapons. Many of the students thought this was a good idea, but others believed the principal had no right to frisk them and would not allow themselves to be frisked. Some of these students were not members of either gang. When they refused to be frisked, they were not permitted to enter the school.

**SUGGESTED QUESTIONS FOR DISCUSSION**

Why did the principal decide to frisk each student as he/she entered school?

What exactly takes place when a person is frisked?

Does a principal have the responsibility of maintaining a safe school?

Do you think that by frisking each student as he/she enters school the students and teachers will be safe? Why? Why not?

Do you think the principal has the right to frisk students before they enter the school?

Why would a student object to being frisked before entering school?

Would you mind being frisked each morning before you entered school? Why? Why not?

Do you think a policeman instead of the principal should be the person doing the frisking at the school?

What if a parent had a meeting at the school? Would the principal frisk the parent?

Do you think the principal frisked each teacher before he/she entered the school?

Do you think the teachers would object to being frisked before they entered the school each morning?

**Missing Books**

The school librarian, Mr. Richland, informed the social studies department faculty that three expensive books on ancient Greece, which had been purchased recently by the school for reserve use but had not yet been checked in, processed, and labeled by the library, were already missing. Miss Sullivan, a world history teacher, said that she had recently given her students a research assignment and that she knew that one boy had decided to write about the government of Athens. She suggested that the librarian check with the boy, Bruce Dandridge.

Because of a rash of book thefts during the past year (hundreds of dollars worth of books had “disappeared”), Mr. Richland decided to take the information directly to the school principal. He asked that Bruce’s locker be inspected to search for the books.

The principal, in the librarian’s presence, opened the boy’s locker while Bruce was in class. They discovered the new ancient history books, which had not been checked out from the library. When confronted with the evidence, Bruce admitted that he had taken them, but argued that his right to privacy had been violated by the locker search. Because he had been in some disciplinary trouble before in school, and in view of the strict school rules against misappropriation of school property, a suspension hearing was called, and Bruce came to his parents’ and their family lawyer.

**Questions.** What are the main issues raised in this case? How does the interest of Bruce’s privacy balance out against the school’s interest in preventing theft? If this case were to come before a court, how do you think it would be decided?

**Police Called In**

Frank Perkins had a free period plus his lunch period back to back on Monday. Since school rules permitted students to leave the grounds when they did not have class commitments, he went downtown to the Sound and Fury record store. The store owner, Jack Maloney, was sure that he had seen Frank put one or more albums under his coat and leave the store without paying for them, but he was unable to catch up with Frank.

As an independent businessman, Mr. Maloney was concerned about the increased costs of shoplifting. He thought he recognized Frank as a student from nearby River View High School, and upon checking with the school over the phone he was able to ascertain his name.

Later that afternoon, Detective Shableski of the local police came to the school following a complaint from Maloney and asked the school principal whether he...
could have permission to search the boy's locker for the records. Consent was given.

Questions. If stolen record albums are found, are they legally admissible evidence? A police search without a warrant is valid only if consent has been given. Who has the authority to give consent? Only Frank Perkins?

If you are a student in school, do you give to the administration the right to consent to a search of your locker when it issues you a locker? If a locker is protected from warrantless search, can you be forced to give up that protection by signing a release?

An Actual Warrant

Another way of initiating a discussion of search and seizure with students is to pass out copies of a sample search warrant (see page 12 of the Spring, 1978 issue of Update on Law-Related Education) and discuss its contents and its use. (Make sure to have enough copies for everyone made ahead of time.)

After students have examined the warrant and shown that they understand the terminology, you can use its various components to illustrate such concepts as the need for probable cause, a specific description of the place to be searched and property to be seized, etc.

AFTER LEAVING THE CLASSROOM

If you said you would send students or the teacher material, don't forget to do so.

A letter to the class thanking them for the opportunity to discuss a very important subject is a nice touch.

This exercise was written by Denise Merrill, Margaret Richards, and Joseph Shortall, and is based in part on Phi Alpha Delta's A Resource Guide on Contemporary Legal Issues.

New Jersey v. T.L.O.


FACTS

A high school principal searched the purse of a 14-year-old female student after the student denied an accusation by a teacher that she was smoking cigarettes in a nonsmoking area, a violation of a school rule. The search resulted in the discovery of cigarettes and rolling papers, the latter item, in the experience of the principal, being associated with marijuana. The discovery of the rolling paper prompted a more thorough search of the purse which revealed marijuana, a pipe, and other items implicating the student in marijuana dealings.

The principal notified the authorities and subsequently turned over the seized evidence to the police, who on the basis of the evidence and a confession, filed delinquency charges. At her delinquency hearing, T.L.O. sought to suppress the evidence and the confession because the former was alleged to have been seized in violation of the Fourth Amendment while the latter was alleged to have been tainted by the alleged unlawful search.

DECISION

The Court was asked to determine whether the Fourth Amendment’s “prohibition on unreasonable searches and seizures applies to searches conducted by school officials.” A majority of the Court held that it did.

The majority reasoned that school officials, in carrying out searches, were representatives of the state and not merely surrogates for the parents.

Having determined that the Fourth Amendment was applicable to school officials, the Court was faced with a determination as to the standards governing such searches. In so deciding, the Court had to strike a “balance between the school child’s legitimate expectations of privacy and the school’s equally legitimate need to maintain an environment in which learning can take place.” The majority held that “the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.”

The reasonableness of a search is determined by (1) “whether the search was justified at its inception;” and (2) “whether the search was reasonably related in scope to the circumstances which justified the interference in the first place.” The Court held that “when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school” the search is justified at its inception.

The Court noted that the search must not be “excessively intrusive in light of the age and sex of the student and the nature of the infraction.”

The extent of a student’s protection from unreasonable searches and seizures usually depends upon whether (1) a school or a police official conducted the search, and (2) the search is of one’s person or of a place.

Although it is clear that the Fourth Amendment protects people and not places, the nature of the place may determine whether the person had a reasonable expectation of privacy. Thus, courts have upheld warrantless searches of lockers by school officials where it was known that school officials had a master key and reasonable grounds existed for the search. An authorized and voluntary consent to a search by a student will usually validate a search that would otherwise be illegal.

Courts have found that a student has no reasonable expectation of privacy in his/her school locker but have usually provided minimal safeguards where a student’s clothing or body has been searched. A recent court ruling upheld a decision that dragnet sniffing of children by dogs (to search for drugs) was impermissible, but noted that such sniffing of cars or lockers by dogs was permissible.
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PATHWAY 4: RIGHTS AND RESPONSIBILITIES

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I      The Bill of Rights Rap
       To Protect or Not to Protect—That is the Question
II     Freedom of Speech and Expression
III    First Amendment Freedoms Explored
IV & V Hate Speech/Free Speech
VI     Student Rights
VII & VIII The Right of the People to be Secure
SESSIONS VII & VIII – THE RIGHT OF THE PEOPLE TO BE SECURE
[Time: approximately 1 hr 45 min for each session]

This lesson will require two sessions to provide sufficient time for participants to engage in the interactive strategies.

Concepts and Topics: privacy, search and seizure

Lesson
The Right of the People to be Secure

FIRST SESSION [Session VII]
[Time: 1 hr & 45 min]
Handouts
Writs of Assistance: Instructions for Students (1-7)
Writs of Assistance Background (3 paragraphs)
Writs of Assistance Worksheet (box, p. 11)
Fourth and Fourteenth Amendments (entire Constitution or separately)

Procedure
This lesson has a nice variety of learning experiences that are sure to engage the students. Follow the procedures as presented.

Opening
(1) Welcome [5 minutes]
  • Reflect on hate crime and the experience of the Legislative Hearing
  • Review the session

Warm Up
(2) Use this adaptation of Procedure 1 as your warm-up. [25 minutes]
  • Conduct a variation of a brainstorm by recording students’ responses to the probe: “I feel secure when _______.” When a variety of responses have been listed, stop.
  • Turn to the concept of “privacy.” Use the probe: “When I think of privacy I think of______.” Allow time for a variety of responses to be listed.
  • Spend some time discussing each of the lists. What do they reveal about participants’ values? Are any of the items on both lists similar?
  • Write on the board: “A man’s home is his castle.” [There are likely to be observations about the apparent sexism. Its origin undoubtedly accounts for this?] Probe for what the phrase means and what rights are claimed. Link this discussion to their brainstorm entries.
  • Turn to the lesson exploration of the evolution of constitutional rights of privacy and security.

Curricular Focus
(3) Part 2: Writs of Assistance. Give participants some guidance on how much time they should plan to spend visiting the stations before they judge the case and complete their worksheet. [45 minutes total]

(4) Part 3: Privacy and the U.S. Constitution. Be sure that participants understand what is meant by each of the 4 requirements for a search warrant to be issued. Then spend some time exploring why the framers included the first three and why the third was added. Be prepared to provide information on United States v. Ventresca. [20 minutes]

Closing
(5) Debrief and Wrap Up [10 minutes]
Ask participants to consider how the First and Fourth Amendment rights are related.

(6) Look Ahead
Announce that the next session will continue the focus on search warrants.

(7) Adjourn – remind participants when and where they will meet next!

NOTE: Consider inviting a police officer to assist with the focus on search warrants in the second session. Feel free to develop additional or substitute role-play situations for that session.

SECOND SESSION [Session VIII]
[Time: 1 hr & 45 min]

Lesson
Right of the People to be Secure (continued)

Handouts
For everyone: Authority to Search Without a Warrant (box, p. 14)

Copies of each of the situations—without the accompanying questions. Make enough copies of a situation for each member of a group assigned to that situation.
- Situations 1 through 8 [and/or one’s you have developed]

Procedure
Opening
(1) Welcome and Warm-up [5 minutes]
Remind participants that this is a continuation of the last Session.
Challenge them to name the 4 requirements for issuing a search warrant. List these prominently for later reference.

Curriculum Focus
Part 4: Searching Without a Warrant.
[If a police officer is present, be sure to involve him throughout this exercise.]
(2) Start this exercise by forming pairs and providing time for them to make a list of situations when the police may not need a warrant to conduct a search. As each group reports their ideas, make a composite list on the board – without commenting. [15 minutes]

(3) Distribute the handout Authority to Search Without a Warrant. Discuss the conditions described here. Then [as the lesson instructions specify] list on the board the 8 examples. Compare this list with the participants’ list. Are there any questions about items on the participants’ list. Any research needed to clarify situations they identified? [15 minutes]

(4) Follow the directions under Procedure of Part 4 for conducting and debriefing each roleplay. Be sure to provide time for preparation. Tell participants that they might want to have a narrator to provide some of the information; however, as much as possible, the words and actions of the role players should tell the “story.” Note that participants assigned to Situation 1 (airport security) will need to adjust their roleplay to more accurately depict contemporary situations. Each roleplay should be no more than 3 minutes to allow time to review the questions. [60 minutes]

Closing
(5) Debrief and Wrap Up
Challenge participants to identify some of the First Amendment Freedoms they have studied during the Academy. Which did they find most interesting and/or challenging to explore?

IF THIS IS THE FINAL SESSION OF YOUR ACADEMY, YOU WILL PROBABLY CLOSE BY DISTRIBUTING CERTIFICATES OR OTHER MEMENTOS TO PARTICIPANTS.
Part 1: The Right to Privacy

PURPOSE
To clarify the meanings of “secure” and “privacy.”

PROCEDURE
Discuss the meaning of the words “secure” and “privacy.”
Ask the class:
1. If they have ever heard the phrase, “A man’s home is his castle.”
2. Where did the phrase originate?
3. What is its meaning?

Part 2: Writs of Assistance

PURPOSE
To trace the history of the American concept of privacy.

PROCEDURE
Mount each of the 12 arguments listed below on a piece of construction paper and set up learning stations around the classroom with one of the arguments on the case posted at each station.

Review the information in your U.S. history textbook on the writs of assistance to provide a background for the case.

Give each student a copy of the worksheet on page 11 and the background of the writs of assistance case. Read aloud the instructions which follow. Allow sufficient time for each pair of students to visit each learning station and complete their worksheets.

Probable answers are: for the plaintiff—1, 2, 5, 11, and 12; for the defense—3, 4, 6, 7, 8, 9, and 10

After each pair of students has reported its decision and reasoning, read the following decision to the group:

DECISION (1761)
The Massachusetts court decided that the writs of assistance were legal. Thus, the privacy of American colonists was not given the same protection as that allowed other Englishmen. The writs continued to be one of the many sore points between the colonies and England which eventually led to the outbreak of the Revolutionary War in 1775.

Conclude the activity with a brief discussion based on the following questions:
1. Why is each argument relevant to the side on which you chose to list it?
2. Did you reach the same decision as the court?
3. Do you think your decision would have been different if you had lived in the same period of history in which the case actually occurred?

WRITS OF ASSISTANCE:
LEARNING STATIONS CASE STUDY
INSTRUCTIONS FOR STUDENTS

1. Select a partner and together read the background of the writs of assistance case.
2. With your partner go to a vacant station with your student worksheet and a pen or pencil.
3. When you reach the station, one partner should read the argument listed there and tell his/her understanding of that argument and what bearing it would have on the case.
4. The listening partner should paraphrase his or her partner's ideas and write the number of the station on your student worksheet under the side (plaintiff or defendant) that would make that argument.
5. Go to the next vacant station. Reverse the above steps (one partner reads, tells, and the other listens and paraphrases).
6. After all the stations have been visited, decide how you would judge the case. Write your decision and the reasons for it on your worksheet. (It is not necessarily the number of arguments for each side but how convincing the arguments are that should help you make your decision.)
7. Be prepared to report your decision and your reasoning to the class.

Writs of Assistance 
Background

In the 1700s, England passed trade laws that said colonists had to buy and sell certain goods only in England. If they traded with other countries, the colonists had to pay taxes to England.

Many colonists tried to get around these trade laws by smuggling—that is, they secretly brought goods into the colonies and did not pay taxes on them. Instead, they hid the goods in their houses and barns until they could be sold.

English officials tried to catch the smugglers. They searched homes, warehouses, and ships. To make these searches lawful, the courts issued orders called writs of assistance. These writs allowed or helped officials make their searches. The colonists grew angry over these writs. In Boston, a group of colonial businessmen hired a lawyer, James Otis, to attack the writs.

Learning Stations

STATION 1
Argument:
The key right of all Englishmen is the right of privacy in one's home.

STATION 2
Argument:
The American colonists are Englishmen and should have the same rights as other Englishmen.

STATION 3
Argument:
It was wrong for the colonists to disobey laws passed by England.

STATION 4
Argument:
It was wrong for the colonists to smuggle goods and not pay taxes on them.

STATION 5
Argument:
In England, an official needed a special search warrant whose powers were very limited. It was issued by a judge to one official to search one specific place for a good reason. This kind of search was acceptable.

STATION 6
Argument:
The writs of assistance were necessary.

STATION 7
Argument:
Many colonists were breaking the trade laws.

STATION 8
Argument:
It would be impossible to catch smugglers if officials had to get a search warrant for every search.

STATION 9
Argument:
A government should have the right to collect evidence that a law has been broken.
STATION 10
Argument:
The colonists should have traded with England. England needed the colonists' products such as tobacco, rice, lumber, rum, and furs. The colonists should have sold these to England and not to other countries. In exchange, the colonists should have bought manufactured goods from England.

STATION 11
Argument:
The writs of assistance powers were too broad. They could be used by any official to break into a person's home any number of times, for any reason.

STATION 12
Argument:
"A man's home is his castle." In his home, a man should be free to do whatever he wants— as long as he does not break the law.

Part 3: Privacy and the U.S. Constitution
PURPOSE
To enable the student to realize that personal privacy is protected by the Fourth Amendment to the U.S. Constitution.

PROCEDURE
Instruct the students to read the Fourth and Fourteenth Amendments of the U.S. Constitution.

AMENDMENT IV
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 things to be seized.

AMENDMENT XIV
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS
1. To what level of government does the Fourth Amendment apply?
2. What amendment could be used to apply the language of the Fourth Amendment to the individual states?
   Ask the students to help you list on the blackboard the three things the Fourth Amendment demands before a search warrant may be issued:
   1) probable cause supported by oath or affirmation;
   2) particularly describing the place to be searched; and
   3) particularly describing the persons or things to be seized.
   Inform the students that in United States v. Ventresca (1965) the requirement of judicial intercession for measuring the sufficiency for a finding of probable cause was established, and so add a fourth requirement to the list:
   4) a judge or magistrate must decide if the warrant should be issued.

Explain the concept of probable cause by placing the continuum shown below on the board. Explain to students that although police officers must have probable cause, the Supreme Court ruled in the case of T.L.O. v. New Jersey (1985) that reasonable cause was sufficient cause for student searches by school authorities.

<table>
<thead>
<tr>
<th>No Information</th>
<th>Hunch</th>
<th>Suspicion</th>
<th>Probable Cause</th>
<th>Beyond Reasonable Doubt</th>
<th>Absolute Certainty</th>
</tr>
</thead>
</table>

Part 4: Searching Without a Warrant
PURPOSE
To acquaint students with some of the occasions when a search warrant is not necessary.

PROCEDURE
Contact your local police department or law enforcement agency and arrange for an officer to be present to watch the role-play activity and help with the discussion. Explain the topic to be covered and describe the activity. Using the officer as suggested will help keep the speaker and students focused on the topic.

Distribute copies of "Authority to Search Without a Warrant" (see page 14). List on the blackboard the eight examples of situations when a search warrant is not necessary.

Divide the class into eight groups and give each group a situation to role-play.

After each role-play discuss the type of search with the students using the questions which follow.

Ask the police officer to comment on the search by discussing why a warrant is not needed and to relate other relevant experiences.

SITUATION 1
Set up a scene for searching passengers about to board a commercial airliner. Give the security personnel doing the searching badges to show their authority.

The searchers should be courteous to all the passengers, but they should also be insistent about searching luggage, packages, purses, or any other items the passengers may be carrying. Each passenger must also walk through an electronic scanner which can be simulated by having the passengers walk between two chairs.

Questions
1. According to the list, what kind of search was this? (lawful inspection)
2. What was the reason for the search? (to ensure the safety of all passengers)
3. Do you think this reason is more important than one passenger's privacy? Why?
4. What other lawful inspections can you name? (border inspection, health inspection of restaurants, and postal inspection)
SITUATION 2

A police officer knocks on the door of a home and the owner of the house answers the door. The officer asks to search the room of the owner's 16-year-old son for narcotics. The officer says:
- you need not give consent if you do not wish to;
- the search will not be made if you do not consent; and
- if you do consent, anything we find may be used against your son in a criminal prosecution.

The father gives consent, the officer searches the son's bedroom and finds narcotics under the son's pillow.

Questions
1. What kind of search was this? (with consent)
2. Do you think the search would be legal if the father had been coerced (forced) to give this consent? (no)
3. Do you think the following persons could give consent? Landlord for a tenant? (the law says "no") Husband or wife for the other? (The law says "yes" if the usual amicable relation exists.) A child? (no) An employer for an employee's locker or desk? (no)

SITUATION 4

Neighbors call police to report that they have not seen a 70-year-old man in or around his home for the last two days. The neighbors say they were. Worried because he lives alone and had a heart attack a few years earlier. The man did not mention to anyone that he was going on a trip.

When the police approach the house, they notice that newspapers for the last two days are still at the front door. After ringing the doorbell repeatedly and knocking at the front and back doors, they look in and knock on the windows. They try the doors and windows. Finding them locked, they break a window and enter the house.

Questions
1. What kind of search was this? (emergency)
2. Do you think there was enough "probable cause" for this search?
3. Do you think the officers explored all other alternatives before they broke in?

SITUATION 5

A police officer stops a car for a routine license check. He notices an open whisky bottle on the front seat beside the 16-year-old driver. He arrests the driver.

Questions
1. What kind of search was this? (plain view)
2. The law says: "If the officer is lawfully where s/he has a right to be, and whatever s/he observes is in the open, where it can be observed by anyone who cares to look, it is in plain view and is not a search." Do you agree? Why
**Authority to Search Without a Warrant**

Search warrants provide the authority for only a small percentage of the searches that are made every year in the United States. The great majority of police searches are perfectly legal, even under the Fourth Amendment, because there are many circumstances in which even common sense will teach us that the police are authorized to search or arrest without first obtaining a warrant.

Probably the best example of a common sense situation where a warrantless arrest or search would be allowed is a situation where there is simply no time to obtain a warrant. For example, if a police officer sees a burglary in progress, obviously he would not be required to go before a magistrate and make an oath, obtain a piece of paper, and return to the scene of the crime in order to arrest the suspect. Why? Because the police officer has probable cause in seeing the burglary in progress, and it is simply unreasonable to require him to obtain a warrant before making an arrest in such circumstances. Furthermore, the same would be true for a search of the suspect, or perhaps of the suspect’s car, under similar circumstances. Again, there is simply no time to obtain a warrant and it is clear that the officer has probable cause.

The underlying rule, then, is that the officer must always have probable cause, but need not always obtain a warrant. The warrant requirement is desirable and it applies if there is time to obtain a warrant, but if there is no time to obtain a warrant, the warrant is not necessary so long as probable cause exists.

The following are examples of times when a search warrant is not necessary:

1. In time of an emergency (bomb threat, fire, screams);
2. Incident to a lawful arrest (persons in the immediate area may be searched for weapons and/or evidence);
3. During temporary detention (stop and frisk to protect an officer’s safety);
4. With consent (self, spouse or parents);
5. Lawful inspection (border and airport);
6. When item is in plain view;
7. Hot pursuit;
8. When there is probable cause known to the officer that an automobile (or any mobile object) contains illegal items.

Although these situations generally do not call for search warrants, there might be other circumstances involved which might change the situation and make it necessary to obtain a warrant. In some cases, it is very difficult to determine if a search was legal or not, and it must be decided by a court.

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**SITUATION 6**

An officer sees three men on a street corner. They take turns walking down the street, looking in store windows, and then returning to the corner. After they have repeated this five or six times, the officer approaches them, identifies himself as a police officer, and asks for their names. They mumble answers. Fearing that they might have a gun, the officer pats them down and finds guns on two of the men. The officer arrests these two men.

**Questions**

1. What kind of search was this? (temporary detention)
2. Do you think the officer had “reasonable suspicion” to stop the men?
3. How did the men respond to the officer’s questioning?
4. What is the reason for frisking? How does it feel to be frisked? (Ask the persons frisked in the role-play.) (Note: This incident is based on the case of Terry v. Ohio, 1968.)

**SITUATION 7**

A sheriff receives a phone call from a reliable informant that some stolen merchandise is now on a truck leaving for another state. The sheriff gives the truck’s license plate number, description, and location to one of his deputies and tells him to go quickly and search the truck.

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This lesson was adapted from Law in a Changing Society, a project of the State Bar of Texas.